

**FIFTH REGIONAL SEMINAR ON GOOD GOVERNANCE
FOR SOUTHEAST ASIAN COUNTRIES**

**Hosted by UNAFEI
With the support of the Ministry of Foreign Affairs of Japan
7-9 December 2011, Tokyo, Japan**

**August 2012
TOKYO, JAPAN**

The views expressed in this publication are those of the respective presenters and authors only, and do not necessarily reflect the views or policies of UNAFEI, the Government of Japan, or other organizations to which those persons belong.

FOREWORD

It is my great pleasure and privilege to present this report of the Fifth Regional Seminar on Good Governance for Southeast Asian Countries, which was held in Tokyo from 7 – 9 December 2011. This was our first time to hold a Good Governance Seminar in Tokyo, and it was our great pleasure to welcome participants to the Japanese capital. We hope that we have repayed the hospitality always extended to us on our previous visits to conduct the Seminar.

The main theme of the Seminar was “Preventing Corruption: Effective Administrative and Criminal Justice Measures,” and it was attended by sixteen participants and one observer — all criminal justice practitioners — from Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Thailand and Vietnam. The Seminar was organized by UNAFEI, with a contribution from the Ministry of Foreign Affairs of Japan.

Corruption destroys nations. It undermines democracy and the rule of law, distorts business activities and competition, and hinders sustainable development and prosperity. It is also a threat to the security of societies as it creates environments in which organized crime, terrorism, and other forms of unlawful activity may prosper.

Such enormous negative impacts of corruption and its increasing transnational aspects led to the adoption of the United Nations Convention against Corruption (UNCAC), the first global, legally binding anti-corruption instrument, by the UN General Assembly on 31 October 2003.

UNCAC introduces a comprehensive set of standards, measures and rules that all countries can apply in order to better counter the problem of corruption. It takes a multidisciplinary approach and, recognizing the significance of both punitive and preventive measures, devotes one full chapter to “Criminalization and Law Enforcement” and another to “Preventive Measures.”

Criminal justice measures still perform core functions in addressing and deterring corruption. However, given the magnitude of the problem and inherent difficulties in detecting and prosecuting corruption, the importance of prevention can neither be overlooked nor overstated. A range of preventive measures and policies with

varying degrees of legal obligations are provided for in the UNCAC, and it also calls on States Parties to promote active participation of wider society in the fight against corruption and to raise public awareness regarding corruption and its threats.

The Fifth Regional Seminar aimed not only to develop human resources but also to deepen mutual understanding of the current situation and mechanisms in regard to preventing corruption. Through discussion of the issues, participants' experiences were exchanged, and their knowledge of effective strategies and best practices in this regard was further improved.

It is my pleasure to publish this Report of the Seminar as part of UNAFEI's mission, entrusted to it by the United Nations, to widely disseminate meaningful information on criminal policy.

Finally, I would like to express my sincere appreciation, on behalf of UNAFEI, to the Department of Foreign Affairs of Japan, for its contribution in convening the Fifth Regional Seminar.

A handwritten signature in black ink, appearing to read 'T. Sakuma', written in a cursive style.

Tatsuya SAKUMA
Director, UNAFEI

August 2012

INDEX

– PREVENTING CORRUPTION – EFFECTIVE ADMINISTRATIVE AND CRIMINAL JUSTICE MEASURES

Introduction	1
Opening Address by Mr. Tatsuya Sakuma, Director, UNAFEI	3
Introductory Remarks by Mr. Haruhiko Ukawa, Deputy Director, UNAFEI	5
 Papers and Contributions	11
Visiting Expert, UNODC, Ms. Jo Dedeyne-Amann	13
Visiting Expert, Hong Kong, ICAC, Mr. Joseph Lee Yat-Sau	34
Adviser, Ms. Chie Miyahara (JICA)	65
Adviser, Mr. Fumio Noguchi (Japan Fair Trade Commission)	75
Adviser, Mr. Toshifumi Ishida (Ministry of Foreign Affairs of Japan)	81
Adviser, Mr. Hideshiro Karasawa (FSA)	87
Adviser, Mr. Junichi Izumi (Ministry of Finance)	91
Adviser, Mr. Yuji Takada (National Public Service Ethics Board)	98
Philippines	107
Cambodia	118
Viet Nam	130
Indonesia	148
Lao PDR	173
Malaysia	187
Myanmar	208
Thailand	227
 Discussions and Chair's Statement	243
Panel Discussion Summary	245
Chair's Statement	247
 List of Visiting Experts, Participants, and Organizers	251
 Seminar Schedule	257
 Appendix	259
Photographs	260

INTRODUCTION

Opening Remarks by
Mr. Tatsuya Sakuma
Director of UNAFEI

Introductory Remarks by
Mr. Haruhiko Ukawa
Deputy Director, UNAFEI

OPENING REMARKS

Tatsuya SAKUMA

Director, UNAFEI

Mr. Katsuyuki Nishikawa, Honourable Vice Minister of the Ministry of Justice, Mr. Tamotsu Shinotsuka, Honourable Ambassador in charge of International Cooperation for Countering Terrorism and International Organized Crime, Ministry of Foreign Affairs, Mr. Osamu Shimizu, Honourable President, Research and Training Institute of the Ministry of Justice; honourable guests, distinguished experts and participants, ladies and gentlemen;

It is a great pleasure and privilege for me to announce the opening of the Fifth Regional Seminar on Good Governance for Southeast Asian Countries. On behalf of UNAFEI, I would like to extend my heartfelt welcome to the honourable guests, the distinguished experts and participants who come to join this significant forum.

I would like to take this opportunity to thank the Government of Japan for its continued support as the host country of UNAFEI. I would also like to express my deepest appreciation to the Japanese Ministry of Justice and Ministry of Foreign Affairs for their assistance in organizing this Seminar.

The topic to be discussed at the Seminar is “Preventing Corruption: Effective Administrative and Criminal Justice Measures”. Corruption destroys nations. Every country has to make serious efforts to address this destructive force. This requires a multidisciplinary approach involving all government departments. While criminal justice measures play a core function of punishing acts of corruption and deterring future corrupt conduct, the importance of other preventive measures can neither be overlooked nor overstated.

This meeting coincides with the United Nations’ International Anti-Corruption Day, 9 December, which was designated to commemorate the historic High-level

Political Conference for the purpose of Signing the UNCAC, convened from 9 to 11 December 2003 in Merida, Mexico. Further, less than two months ago, the fourth session of the Conference of the States Parties to the UNCAC was held in Marrakech, and one of its core outcomes was the adoption of “the Marrakech Declaration on the Prevention of Corruption.”

I believe this seminar, and particularly this year’s seminar topic, to be highly relevant and very timely. As a United Nations affiliated institute in the field of crime prevention and criminal justice, UNAFEI, by holding this seminar, wishes to contribute to the efforts of Southeast Asian countries in their fight against corruption.

I look forward to seeing this Seminar provide a useful forum to exchange expertise and knowledge in our common endeavour against corruption, contributing further to the promotion of good governance in Southeast Asia.

Thank you very much for your attention.

PREVENTING CORRUPTION: EFFECTIVE ADMINISTRATIVE & CRIMINAL JUSTICE MEASURES

*Haruhiko UKAWA,
Deputy Director, UNAFEI*

It is my pleasure to open the discussions at the Fifth Regional Seminar on Good Governance for Southeast Asian Countries. Before going into this year's seminar topic, let me provide a brief introduction to the activities of UNAFEI and our Good Governance Seminar.

I. INTRODUCTION

UNAFEI¹ is an international training and research institute in the field of crime prevention and criminal justice, established in 1962 by agreement between the United Nations and the Government of Japan. A major focus of its activities is to provide training programmes for criminal justice practitioners from around the world in a multinational format.

While the Japanese Government now bears the sole responsibility for administrative matters such as funding, facilities, and personnel, UNAFEI continues to be run under the joint auspices of the United Nations and the Government of Japan, and it endeavours to assist in the sound development of criminal justice systems and international cooperation among UN Member States, particularly in the Asia and Pacific Region, in line with the UN Conventions and its Standards and Norms.

Every year, UNAFEI offers four multinational training courses that last for five to six weeks, each of which addresses a different subject. The spring course covers offender treatment; the summer course is UNAFEI's basic anti-corruption programme; the autumn course tackles various criminal justice issues in investigation, prosecution, adjudication and international cooperation; and the winter course is called "The International Senior Seminar" and is designed for senior officials.

In choosing the specific topic to be addressed in each programme, every effort is made to incorporate the priority issues identified by the United Nations. As a result, we find ourselves more frequently and regularly choosing topics related to the challenges posed by transnational organized crime and corruption.

This provides the background to the present seminar. The Good Governance Seminar is a recent

¹ United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders

initiative, begun in 2007, in order to enhance our capacity-building and networking efforts in the field of good governance and anti-corruption. Every year, we choose one topic of substantive importance related to UNCAC,² and invite participants from eight Southeast Asian countries for discussion.

The topics for the first four seminars have been “Corruption Control in the Judiciary and Prosecutorial Authorities”, “Corruption Control in Public Procurement”, “Asset Recovery and Anti-Money Laundering”, and “Measures to Secure Witness Protection/Co-operation,” respectively. The first two seminars were held in Bangkok, in partnership with the Office of the Attorney General of the Kingdom of Thailand, and the next two were held in Manila, in partnership with the Department of Justice of the Republic of the Philippines.

This year, for the first time, we chose Tokyo, the home of UNAFEI, as the seminar venue, and took the opportunity to double the number of participants that we invite. Therefore, this year, we have participants not only from general criminal justice authorities but also from specialized anti-corruption agencies. Another advantage of this year’s format is that we were able to invite a number of speakers from Japanese government authorities. These features have enabled us to address issues and challenges that require multidisciplinary responses.

This brings us to this year’s seminar topic, “Preventing Corruption: Effective Administrative & Criminal Justice Measures.”

II. PREVENTING CORRUPTION

“Corruption threatens the integrity of markets, undermines fair competition, distorts resource allocation, destroys public trust, and undermines the rule of law. Corruption is a severe impediment to economic growth, and a significant challenge for developed, emerging and developing countries” – G20 Anti-Corruption Action Plan (2010).

Corruption undermines every legitimate goal that states strive so hard to achieve. It threatens the rule of law and democracy, impedes economic growth, and erodes the overall well-being of a state as a whole.

Anti-corruption efforts require a whole governmental and multidisciplinary approach that consists of prevention (including awareness-raising/education) and enforcement. This notion is enshrined in the UNCAC, the first legally binding global anti-corruption instrument, which devotes an entire chapter to preventive measures and another to criminal justice measures.

² United Nations Convention against Corruption

Of these two, it has been pointed out that, first and foremost, corruption requires prevention. Why is prevention so important?

As a general principle, prevention is better than taking subsequent remedial measures, and this is particularly true of corruption because it is difficult to detect and to prosecute after the fact. Unlike crimes of violence, corruption leaves no readily identifiable traces such as bloodstains or dead bodies. On the contrary, offenders will employ sophisticated *modus operandi* and technology to hide their corrupt activities and the proceeds derived therefrom. Further, corruption takes place between guilty parties. There is no victim to come forward and file a complaint; innocent or neutral witnesses are hard to come by; and the most corrupt and powerful offenders will do everything to discourage witnesses and accomplices from cooperating with the authorities.³ The nature of the offence thus makes preventive efforts essential.

It should be noted also that, while it may be difficult to prevent crimes that are committed in the heat of the moment, prevention works for corruption. We know where and under what circumstances corruption is likely to occur. Public sector corruption occurs in connection with governmental activities and involves government officials. Opportunities for corruption can be limited by promoting the efficiency, transparency, and accountability of governmental businesses, and corruption risks can be reduced by improving the integrity of officials.

One particular area identified by UNCAC as requiring special attention is public procurement (Article 9). We invited speakers from the Japanese Fair Trade Commission and Ministry of Finance to explain how they ensure objectivity and competition in public procurement and prevent corruption.

With respect to the integrity of government officials, UNCAC calls for adequate human resource management (Article 7.1), and mentions codes of conduct (Article 8.2) and reporting requirements (Article 8.3) for government officials. We invited speakers from the National Personnel Authority and Financial Services Agency of Japan to offer examples of how they endeavour to ensure staff integrity.

We also invited Ms. Jo Dedeyne-Amann from the UNODC,⁴ and Mr. Joseph Lee Yat-Sau from Hong Kong's ICAC.⁵ The UNODC is the guardian of UNCAC, and Ms. Dedeyne-Amann will talk about the Convention and prevention of corruption in general. ICAC is Hong Kong's anti-corruption

³ To remedy these difficulties, UNCAC requires States Parties to: introduce anti-money-laundering measures, including suspicious transaction reporting (article 14.1(a)); take appropriate witness-protection measures (article 32); consider adopting whistle-blower protection (article 33); and take appropriate measures to encourage cooperation with the authorities (article 37).

⁴ United Nations Office on Drugs and Crime

⁵ Independent Commission Against Corruption

authority, renowned for its success in keeping the Special Administrative Region clean. You will hear Mr. Yat-Sau talk about ICAC's strategies and measures for preventing corruption in Hong Kong.

III. CRIMINAL ENFORCEMENT

Turning now to criminal enforcement, the critical question is this: *If preventive measures and awareness-raising/education were appropriately implemented, would that make criminal justice measures unnecessary or less important?*

The answer is “No.” At the risk of contradicting myself, I need to emphasize that criminal punishment still is the key in the fight against corruption. Just think of the most corrupt and criminally minded: preventive measures and education alone will not stop them from taking advantage of their offices for personal gain. They will continue as long as the risks of detection and punishment are small. We need to make corruption a high-risk crime, and the only way to do that is to actually prosecute and punish those who commit corruption. In that sense, criminal justice measures have a special effect in preventing corruption – in criminal law parlance, this is known as “deterrence”.

Apart from providing specific and general deterrence, the significance of criminal enforcement is manifold. It sends out a strong message that corruption will not be tolerated, and especially when influential figures such as politicians or high-ranking officials are prosecuted, it demonstrates the political will and determination of the government to fight corruption. This in turn cultivates a culture of zero-tolerance and provides a basis for public education, especially of the younger generation. Moreover, the investigation may reveal the shortcomings of the existing system and give impetus for reform that would better prevent corruption. Two Japanese laws, which you will hear about during this seminar – The National Public Service Ethics Act of 1999⁶ and the Involvement Prevention Act of 2002⁷ – were enacted in the aftermath of large-scale scandals and are examples of such reform efforts. They show that prevention and enforcement are interrelated and that they must go hand-in-hand.

IV. CONCLUSION

There is a global consensus that a total anti-corruption package consists of prevention,

⁶ Act No.129 of 1999.

⁷ Act on Elimination and Prevention of Involvement in Bid Rigging, etc. and Punishments for Acts by Employees that Harm Fairness of Bidding, etc. (Act No.101 of 2002).

awareness-raising/education, and enforcement. There are different approaches and varying options regarding how countries design, mix, and implement these measures. To better prevent and fight corruption, learning from other countries' experiences and looking into emerging good practices should be particularly useful.⁸ This Seminar is intended as an opportunity to share experiences, exchange ideas, and to build a network of counterparts. Your fight is our fight, and I hope the seminar will help you in your efforts to curb corruption.

⁸ Paragraph 7 of the Marrakech Declaration on the Prevention of Corruption (Oct. 2011), adopted at the fourth session of the Conference of the States Parties to UNCAC, requests Member States to promote bilateral, regional and international activities to prevent corruption, including workshops for the exchange of relevant experiences and good practices.

VISITING EXPERTS AND ADVISERS' PAPERS AND CONTRIBUTIONS

Ms. Jo Dedeyne-Amann, Visiting Expert
Chief, Implementation Support Section, Corruption and Economic Crime Branch,
Division for Treaty Affairs, United Nations Office on Drugs and Crime

Mr. Joseph Lee Yat-Sau, Visiting Expert
Independent Commission against Corruption,
Hong Kong Special Administrative Region of the People's Republic of China

Ms. Chie Miyahara, Adviser
Japan International Cooperation Agency

Mr. Fumio Noguchi, Adviser
Director General, Trade Practices Department, Japan Fair Trade Commission

Mr. Toshifumi Ishida, Adviser
International Safety and Security Cooperation Division, Ministry of Foreign Affairs of Japan

Mr. Hideshiro Karasawa, Adviser
Financial Services Agency, Japan

Mr. Junichi Izumi, Adviser
Legal Division, Budget Bureau, Ministry of Finance, Japan

Mr. Yuji Takada
Ethics Officer for Planning
Secretariat of the National Public Service Ethics Board

PREVENTION OF CORRUPTION

*Jo Dedeyne-Amann*¹

I. THE IMPORTANCE OF PREVENTING CORRUPTION AND THE UNITED NATIONS CONVENTION AGAINST CORRUPTION (UNCAC)

Corruption undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish. Fighting corruption is of utmost importance to ensure that the State's funds are used to improve people's quality of life through the delivery of basic services and the establishment of a good business environment and, hence, to reduce poverty and achieve sustainable development. This was also acknowledged by the United Nations General Assembly, during the High-Level Meeting on the Millennium Development Goals in September 2010. The Assembly supported urgent and decisive steps to continue to combat corruption in all of its manifestations, and urged all States to consider ratifying or acceding to the United Nations Convention against Corruption and to begin its implementation.²

The UNCAC is the first and only all-inclusive, legally-binding anti-corruption instrument that encompasses the comprehensive and multidisciplinary approach needed to successfully counter corruption. To date, more than four countries out of five all

¹ Chief, Implementation Support Section, Corruption and Economic Crime Branch, Division for Treaty Affairs, United Nations Office on Drugs and Crime, Vienna. The opinions expressed in this article are those of the author and do not reflect the views of the United Nations. I would like to express my gratitude to Mr. Jason Reichelt whose assistance was indispensable to this article.

² A/Res/65/1 (19 October 2010).

around the world have ratified it, signalling that the world considers it as the suitable framework to prevent and fight corruption.

The Convention devotes an entire chapter to the prevention of corruption, highlighting that although corruption needs to be investigated and prosecuted, first and foremost, it requires preventive action. The Convention requires States parties to introduce effective anti-corruption policies and practices. It calls for the introduction of a variety of measures concerning both the public and the private sectors. Such measures range from institutional arrangements, such as the establishment of a specific anti-corruption body, to codes of conduct and policies promoting good governance, the rule of law, transparency and accountability. The Convention pays special attention to the issue of public procurement, as a sector proven to be particularly prone to corruption. It further contains measures to promote transparency and accountability in the management of public finances. Significantly, the Convention underscores that each of us, individually and collectively, can and must contribute to a culture of integrity.

These preventive measures, together with the Convention's provisions on criminalization and law enforcement as well as international cooperation and asset recovery, make it a valuable tool in protecting the public purse. If properly implemented, the Convention can help to curtail illicit financial flows and stop leakages of public resources, thereby making more resources available for basic services, such as education, health care, clean water and sanitation.

Considerable progress has been made since the adoption of the Convention in October 2003, and its entry into force in December 2005. With 158 States parties having

adhered to the Convention,³ it has nearly reached universal application. Much work, however, remains to be done to translate the text of Convention into reality on the ground and to achieve an effective global regime against corruption.

II. IMPLEMENTATION OF THE UNITED NATIONS CONVENTION AGAINST CORRUPTION

A. The Conference of the States Parties

The Conference of the States Parties to the Convention aims to improve the capacity of, and cooperation between, States parties to achieve the objectives of the Convention and promote and review its implementation.⁴ The United Nations Office on Drugs and Crime (UNODC) acts as Secretariat to the Conference of the States Parties to the Convention. The Conference has held four sessions to date and established working groups to assist it in its work in the fields of review of implementation, asset recovery, and prevention.

The fourth session of the Conference, held from 24 to 28 October 2011 in Marrakech, was attended by 125 countries, by 28 intergovernmental organizations and 200 delegates representing non-governmental organizations. In addition to its main agenda, the conference hosted nineteen side events, which were very well frequented and contributed significantly to raising the profile of the Conference as the main international anti-corruption event.

³ Status 25 November 2011, <http://www.unodc.org/unodc/en/treaties/CAC/signatories.html>

⁴ Article 63, UNCAC.

One of the key outcomes from the fourth session of the Conference is the adoption of resolution 4/3 entitled “Marrakech declaration on the prevention of corruption”.⁵ The resolution, while recognizing that the implementation of the Convention is the responsibility of States parties, reiterated that the promotion of a culture of integrity, transparency and accountability is a responsibility to be shared by all stakeholders, including civil society and the private sector. The resolution requests the Secretariat, among other things, to:

- Continue to assist the Open-ended Intergovernmental Working Group on Prevention;⁶
- Continue to function, subject to voluntary contributions, as an observatory of good practices in preventing corruption;
- Continue to assist in promoting awareness of the principles of the Convention among the business community;
- Create opportunities for the involvement of young people as key actors in the prevention of corruption;
- Promote the responsible and professional reporting of journalists on corruption;
- Continue to cooperate with UN DESA (Department for Economic and Social Affairs) in the prevention of corruption, in particular with regard to the UN Public Service Awards;
- Continue to provide technical assistance for the implementation of Chapter II of the Convention.

⁵ <http://www.unodc.org/unodc/en/treaties/CAC/CAC-COSP-session4.html>

⁶ See Chapter C below.

B. The Implementation Review Mechanism

The Conference at its third session in Doha in November 2009 adopted landmark resolution 3/1 on the review of the implementation of the Convention.⁷ It established a review mechanism aimed at assisting countries to meet the objectives of the Convention through a peer review process. Under the new mechanism, which is now fully operational, all States parties are reviewed on the fulfillment of their obligations under the Convention. This further enhances the potential of the Convention, by providing the means for countries to assess how they are doing in implementation, identify potential gaps in national anti-corruption laws and practices, and develop action plans to strengthen the implementation of the Convention domestically. There are two review cycles of five years each: The current cycle addresses the implementation of the Chapters on (i) criminalization and law enforcement and (ii) international cooperation in criminal matters. The second cycle, starting in 2015, will then focus on (iii) prevention and (iv) asset recovery.

Reviews are based on responses to the self-assessment checklist submitted by countries under review. Countries do not have to wait until they are up for review; neither do they have to limit themselves to the chapters on criminalization and law enforcement and international cooperation, which are under review during the current review cycle. The self-assessment checklist also covers the chapters on preventive measures and asset recovery. Some States parties have started, on a voluntarily basis, a comprehensive assessment and gap analysis, in accordance with the Guidance note on UNCAC self-assessments “Going beyond the minimum”, developed jointly by UNDP and UNODC, along with a number of other partners.

⁷ <http://www.unodc.org/unodc/en/treaties/CAC/CAC-COSP-session3.html>

The Implementation Review Mechanism is meant to become the main interface for review and delivery of technical assistance in the field of anti-corruption. Its basic objective is to determine priorities and strategies to that effect and to promote and facilitate technical assistance provision. The Mechanism also has a great potential in measuring the impact of assistance provided.

The Convention itself, as well as resolutions by the Conference, the General Assembly and the Economic and Social Council have mandated UNODC to support Member States in the ratification and implementation of the provisions of the Convention, in particular in strengthening legal, institutional, and operational capacities at the domestic level, and to promote international cooperation among States parties. UNODC has been developing a series of technical assistance services to meet the growing demands of Member States in this field,⁸ including through its Anti-Corruption Mentors

⁸ An indicative list of such services includes, inter alia, the following:

- Provision of advice and expertise to support the development of a wide range of policies and programmes to ensure the effective implementation of the UNCAC provisions on the prevention of corruption, including national anti-corruption strategies and action plans, codes of conduct, asset declaration systems, conflict of interest policies and human resource management systems based on principles of efficiency, transparency and objective criteria;
- Provision of advice and expertise to support the development of domestic legislation aiming at ensuring full compliance with the provisions of UNCAC. In addition to legal advisory services, the development of such tools as legislative guides, model legislation and electronic libraries is another pillar of legal assistance provided by UNODC;
- Provision of assistance to States parties in enhancing the integrity, accountability and oversight of their criminal justice and security institutions with a view to enhancing their capacities to effectively carry out their mandate, implement the provisions of UNCAC and reduce their vulnerability to corrupt practices;
- Conduct of corruption risk assessments and strengthening of national capacities to carry out these assessments, in order to acquire a profound knowledge and understanding of the challenges posed by corruption (scope, nature, causes and contributing factors) as well as of the weaknesses of the laws, institutions, and policies in any given country;
- Provision of support to Governments in raising awareness about the negative impact of corruption through targeted information campaigns and effective work with the media;
- Supporting elements of civil society in strengthening the demand for good governance through the International Anti-Corruption Day campaign, including raising awareness about the negative impact of corruption in daily life and encouraging a more active stand against corruption;

Programme. These anti-corruption advisors provide a broad range of policy and technical advice and day-to-day support for the implementation of the Convention, such as conducting gap assessments, assisting in establishing anti-corruption institutions and policies, providing training in investigation and prosecution of corruption offenses, providing legislative assistance and advising on asset recovery strategies.

C. Working Group on Prevention

At its third session, the Conference of the States Parties to the Convention decided to establish an open-ended intergovernmental working group to advise and assist it in the implementation of its mandate on the prevention of corruption. The Conference also decided that the working group should perform the following functions:

- Assist the Conference in developing and accumulating knowledge in the area of prevention of corruption;
- Facilitate the exchange of information and experience among States on preventive measures and practices;
- Facilitate the collection, dissemination and promotion of best practices in corruption prevention;
- Assist the Conference in encouraging cooperation among all stakeholders and sectors of society in order to prevent corruption.⁹

• Building and strengthening partnerships between the public and the private sector against corruption, and promoting, in this regard, the business community's engagement in the prevention of corruption by, inter alia, developing initiatives to promote and implement public procurement reform and identifying elements of optimal self-regulation in the private sector (<http://www.unodc.org/unodc/en/corruption/private-sector.html>).

⁹ See <http://www.unodc.org/unodc/en/treaties/CAC/working-group4.html>.

At its most recent meeting, held from 22 to 24 August 2011, the Working Group noted with appreciation that many States parties had shared before the meeting information on their initiatives and good practices regarding the key topics on the agenda, namely: (i) awareness-raising policies and practices with special reference to articles 5, 7, 12 and 13 of the Convention; and (ii) the public sector and prevention of corruption; codes of conduct (article 8 of the Convention) and public reporting (article 10 of the Convention). With regard to the latter issue,¹⁰ most States parties reported to have developed codes of conduct, equivalent public statements or conduct standards for their public officials to clarify what is expected, as well as the disciplinary consequences, if such standards were violated. Many States parties reported on systems and measures to increase transparency within their public administrations. Those measures guarantee the legal right of citizens to access information on public management and provide citizens with tools for such access. The tools commonly reported on are electronic online systems facilitating e-government, e-administration and e-procurement systems.

The Working Group requested States parties to continue to share with the secretariat updated information on initiatives and good practices related to Chapter II of the Convention.

The Working Group will at its next session, which will be held in August 2012, address, among others, the following topic: Conflicts of interest, reporting acts of corruption and asset declarations, particularly in the context of articles 7-9 of the Convention.

¹⁰ See background paper prepared by the Secretariat: CAC/COSP/WG.4/2011/3.

As decided by the Conference at its fourth session, the Working Group will then also discuss a multi-year workplan for the period up to 2015, when the second cycle of the Mechanism for the Review of Implementation of the Convention begins.

III. EFFECTIVE MEASURES TO PREVENT CORRUPTION AND TO RAISE AWARENESS

A. A Sector-Based Approach

Recognizing that the prevention and fight against corruption is a gradual process, the sectoral approach can help States to set priorities for the implementation of the Convention at the national level. The anti-corruption work in specific sectors that are of prime relevance to citizens, such as health care, education or water, provides relatively fast and concrete results, allowing citizens to feel the change directly and develop confidence in the broader anti-corruption agenda.

It is worth emphasizing here the importance of the criminal justice sector to public service delivery in health care, education and water, among other areas. Without a fair, transparent and professional justice system to protect rights and resolve disputes, anti-corruption efforts in other sectors are not sustainable in the long term.

B. Judicial Integrity and Capacity

The establishment of an independent and effective justice system that safeguards human rights, facilitates access to all and provides transparent and objective recourse is a core value held the world over. As a result, judicial and legal reform is consistently a priority on the agendas of countries regardless of their state of development.

Article 11 of the Convention requires each State party, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, to take measures to strengthen integrity and prevent opportunities for corruption among members of the judiciary. In addition, similar measures may be introduced and applied within the prosecution services where such entity operates in a posture of independence similar to that of the judicial service.

UNODC has provided technical assistance to the justice sectors in many countries to help strengthen integrity mechanisms. Moreover, in 2011, UNODC completed a Resource Guide on Strengthening Judicial Integrity and Capacity,¹¹ with the purpose to support and inform those who are tasked with reforming and strengthening the justice systems of their countries, as well as development partners, international organizations and other providers of technical assistance who provide support to this process¹². The guide intends to contribute to the existing literature by providing a guide to target the core areas identified by the expert group as priorities in justice sector reform. The guide touches on a broad set of issues ranging from judicial recruitment and selection practices, to the timeliness of decisions, to the openness and transparency of the process, to the accessibility of these systems for those seeking justice and the protection of their rights.

11 UNODC has also recently completed a handbook on police accountability, oversight and integrity, for use by policymakers and managers of police agencies. The handbook is available online at http://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/PoliceAccountability_Oversight_and_Integrity_10-57991_Ebook.pdf.

12 Work on the Resource Guide on Strengthening Judicial Integrity and Capacity began following the United Nations Economic and Social Council Resolution 23/2006, which endorsed the Bangalore Principles on Judicial Conduct and requested UNODC to convene an open-ended intergovernmental expert group, in cooperation with the Judicial Group on Strengthening Judicial Integrity and other international and regional judicial forums, to develop a technical guide on approaches to the provision of technical assistance aimed at strengthening judicial integrity and capacity.

The guide further offers recommendations, core ideas and case studies¹³ for consideration in the development and implementation of national justice sector action plans, strategies and reform programmes. One of the issues covered is the definition of performance indicators: While measuring the performance of justice systems, careful consideration must be given to the selection of appropriate indicators. In doing this, a look at past experiences, lessons and guidelines can be helpful. The guide gives an overview of sets of indicators which have been developed by both national and international organizations to evaluate judicial reform projects, or measure the performance of the justice systems. While some of them have been designed to carry out specific investigations, or to investigate specific justice services, others have been designed to be just reference tools, easily customizable and adaptable according to the needs. Examples provided include the indicators developed by the UNODC Field Office in Nigeria, when it conducted an integrity and capacity assessment of the justice sector in the Federal Capital Territory and in eight Nigerian States with the aim of producing a clear and coherent picture of the country's justice system conditions.¹⁴ In addition, UNODC's Criminal Justice Assessment Toolkit¹⁵ provides a standardized set of tools designed to enable agencies, government

13 One of the case studies covered in the Resource Guide on Strengthening Judicial Integrity and Capacity is the Centralized System for Selecting Court Support Personnel in France. The hiring and appointment of court personnel throughout France is overseen by the MOJ, which utilizes a uniform selection and appointment system. All court personnel positions are advertised nationally on a customized website, which includes position descriptions, education and experience requirements for candidates, and information on the applicable skills tests that are required. Potential applicants can then download a standardized application form and submit it to reserve their place in the next testing cycle.

14 http://www.unodc.org/documents/corruption/publications_nigeria_assessment.pdf. UNODC Project (FS/NIR/04/NIR/R81) on strengthening judicial integrity and capacity. The assessment has been designed to investigate seven justice system areas, and more in detail: 1. access to justice; 2. timeliness and quality of justice delivery; 3. independence, impartiality and fairness of the judiciary; 4. levels, locations, types and costs of corruption within the justice sector; 5. coordination and cooperation across the justice sector institutions; 6. the public's trust in the justice system; and 7. the functioning of the integrity safeguards.

15 <http://www.unodc.org/unodc/en/justice-and-prison-reform/Criminal-Justice-Toolkit.html?ref=menuaside>. The Criminal Justice Assessment Toolkit is designed to be a practical guide, organized as a dynamic set of documents that continue to meet assessment

officials engaged in criminal justice reform, as well as other organizations and individuals to conduct comprehensive assessments of criminal justice systems; to identify areas of technical assistance; to assist agencies in the design of interventions that integrate United Nations standards and norms on crime prevention and criminal justice; and to assist in training on these issues.

At the international level, the most comprehensive and well-known document on the topic of judicial integrity is the “*Bangalore Principles of Judicial Conduct*.”¹⁶ In 2000, UNODC, in collaboration with Transparency International, convened a first meeting for chief justices and senior judges from eight Asian and African states with the purpose of considering ways of strengthening judicial institutions and procedures in the participating states and beyond. Initially, the Bangalore Principles were developed, drawing from 24 different codes of judicial conduct as well as eight documents elaborated at the international level, prevalently on the concept of judicial independence. Subsequently, the document underwent extensive consultations involving chief justices and senior judges from over 75 Member States. The Bangalore Principles are articulated around six basic values: “independence,” “impartiality,” “integrity,” “propriety,” “equality,” and “competence and diligence.” A short definition of the meaning of each of those values for the judiciary is also provided, as well as a list of the expected behaviour on the part of the judges in application of each of the six basic values. The Bangalore Principles are explicitly addressed to the national judiciaries that do not as yet have codes

needs as they evolve. The Tools have been grouped according to four broad areas: Policing; Access to Justice; Custodial and Non-Custodial Measures; and Cross-Cutting Issues. The Tools are organized thematically, both to ensure ease of use and to assist the assessor in understanding the key issues confronting the system being assessed.

¹⁶http://www.unodc.org/pdf/corruption/corruption_judicial_res_e.pdf.

of judicial conduct, for the purpose of adoption and implementation. The behavioural implications of the values and expected judicial conduct which have been officially included in the Bangalore Principles have been further elaborated in an extended commentary¹⁷ and have provided the basis for the development of a training manual on judicial ethics.¹⁸ These materials might also be of assistance to the citizens and to those that might have an interest in the promotion of judicial ethics.

IV. PUBLIC-PRIVATE PARTNERSHIPS IN PREVENTING CORRUPTION

The private sector has a key role to play in enhancing integrity, accountability and transparency. The rapid development of rules of corporate governance around the world is prompting companies to focus on anti-corruption measures as part of their mechanisms to protect their reputations and interests of their shareholders. Internal checks and balances are increasingly being extended to include a range of ethics and integrity issues.

Article 12 of the UNCAC requires States parties to take measures to prevent corruption in the private sector, including through enhanced accounting and auditing standards. It also provides a menu of suggested measures to achieve these goals, including by promoting cooperation between the private sector and law enforcement agencies, promoting standards and procedures designed to safeguard the integrity of private entities (including codes of conduct and business integrity standards), promoting transparency among private entities, preventing conflicts of interest, and ensuring effective internal audit systems.

¹⁷ http://www.unodc.org/documents/corruption/publications_unodc_commentary-e.pdf.

¹⁸ http://www.unodc.org/documents/corruption/publications_unodc_judicial_training.pdf.

Over the years, a number of regional and international initiatives, standards and principles have been developed to provide guidance for companies on how to fight corruption in their business operations while upholding enhanced integrity standards. However, the vast majority of such cross-industry guidelines pre-date the adoption (in 2003) and entry into force (in 2005) of the UNCAC. Moreover, these anti-corruption initiatives, standards and principles leave a lot to be desired in terms of their internal coherence and consistency with UNCAC. The need to align existing business principles to the values of UNCAC was recognized in January 2008, when representatives of the business community came together in the margins of the Conference of the States Parties to the Convention and adopted the so called “Bali Business Declaration”. As the guardian of UNCAC, UNODC is well placed to also assist private sector stakeholders in strengthening their legal and regulatory regimes to fight corruption, and to provide technical assistance on implementation. UNODC has developed strong partnerships with a number of private sector initiatives, such as The World Economic Forum Partnering against Corruption Initiative (PACI), the International Chamber of Commerce and Transparency International, and is working closely with these partners to harmonize the competing cross-industry guidelines and bring them in line with the universal principles of UNCAC.

A study published by UNODC and PricewaterhouseCoopers in 2008, entitled Anti-Corruption Policies and Measures of the Fortune Global 500¹⁹, shows that all companies of the Fortune Global 500 have adopted internal compliance programmes, which include measures to encourage staff and managers to report cases of wrongdoing

¹⁹ This study can be found at <http://www.unodc.org/unodc/en/corruption/anti-corruption-policies-and-measures-of-the-fortune-global-500.html>.

that they become aware of. Almost all such companies also sanction retaliation against so-called whistleblowers. However, the type of reporting that such programmes encourage and protect remains an internal matter and varies therefore from company to company.

In the period 2010-2011, the United Nations Global Compact and UNODC together developed an e-learning tool for the private sector to enhance understanding of Principle 10 of the Global Compact, which states: “Business should work against corruption in any form, including bribery and extortion,”²⁰ and its underlying legal instrument, the United Nations Convention against Corruption, as it applies to actors operating in the business community. The e-learning tool consists of six short interactive learning modules developed for use by anyone who acts on behalf of a company. They are based on real-life scenarios designed to provide guidance on how to deal with potential risks of corruption that people working in business may face in their daily work. Issues covered include: (a) receiving gifts and hospitality; (b) gifts and hospitality towards others; (c) facilitation payments and corruption; (d) the use of intermediaries and lobbyists; (e) corruption and social investments; and (f) insider information. The e-learning tool is publicly accessible and free of charge.²¹

In the first half of 2011, UNODC, with the support of the Siemens Integrity Initiative, launched three anti-corruption projects aimed at promoting the private sector’s engagement in anti-corruption efforts. One of those technical assistance projects, entitled “Public-Private Partnership for Probity in Public Procurement”, aims to reduce

²⁰ There are ten principles in total, one of which relates to corruption. The full list can be found at <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html>.

²¹ This tool can be found at <http://thefightagainstcorruption.unodc.org> or <http://thefightagainstcorruption.unglobalcompact.org>.

vulnerabilities to corruption in public procurement systems and to bridge knowledge and communication gaps between public procurement administrations and the private sector. The project will promote States' implementation of article 9 of the Convention and support private actors' efforts to comply with Principle 10 of the United Nations Global Compact.

The second project, entitled "Incentives to Corporate Integrity and Cooperation in Accordance with the United Nations Convention against Corruption", is intended to foster cooperation between the private sector and government authorities, especially law enforcement authorities. It aims to encourage business to report internal instances of corruption and to promote States' implementation of articles 26 (Liability of legal persons), 32 (Protection of witnesses, experts and victims), 37 (Cooperation with law enforcement authorities) and 39 (Cooperation between national authorities and the private sector) of the United Nations Convention against Corruption and to facilitate private actors' compliance with the Tenth Principle of the UN Global Compact. These first two projects are being piloted in India and Mexico and also encompass the compilation and dissemination of good practices and lessons learned.

The third project, entitled the "Outreach and Communication Programme", seeks to enhance companies' knowledge of how the Convention can make a difference in their daily work both internally, and in their interaction with public counterparts, and to encourage the business community to turn their anti-corruption commitments into action by bringing their integrity programmes in line with the universal principles of the Convention. The project also seeks to support learning institutions which have come to realize that they do have a role to play in preparing the next generation of public and

business leaders to the challenge of making right and ethical decisions. This will be achieved by: (a) creating and disseminating a structured outreach and communication programme that combines a global perspective with local contexts, reaching out to private companies, particularly the UN Global Compact business participants; and (b) developing a comprehensive academic learning course on the UNCAC and its implication for public administrators and private operators to be embedded in curricula of business, law and public administration schools.

V. RAISING PUBLIC AWARENESS AND INVOLVEMENT BY SOCIETY AT LARGE

As already mentioned, one of the issues of focused attention during the second meeting of the intergovernmental open-ended Working Group on Prevention was awareness-raising policies and practices, acknowledging the importance of partnerships between the public sector, the private sector and civil society.

A background paper on awareness-raising policies and practices with special reference to articles 5, 7, 12 and 13 of the United Nations Convention against Corruption was presented by the Secretariat.²² The paper describes the tasks of specialized anti-corruption agencies established by States parties to disseminate information about anti-corruption efforts and to act as coordinators of such activities on the national and international levels. Institutional cooperation between the public and private sectors, either in the form of community councils or under the umbrella of anti-corruption agencies, was viewed as essential to raising

²² The paper can be found at <http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup4/2011-August-22-24/V1185011e.pdf>.

awareness. Reference was also made to the relevance of conferences organized by intergovernmental and regional organizations, and the usefulness of creating networks and platforms for collaboration between the private sector and governments.

Article 13 of the Convention requires States parties to take measures to promote the active participation of individuals and groups in the prevention of, and the fight against, corruption. Examples reflected in the above-mentioned background paper include anti-corruption advertisement campaigns launched through traditional marketing channels, such as television, radio, billboards and the Internet, as well as the creative use of other channels such as short message service (SMS) transmissions, airlines, stamps, religious gatherings, hotlines and electronic mail (e-mail) to reach society as a whole.

Many States parties to the Convention recognize the importance of focusing on youth and reported on the initiation of anti-corruption educational courses, summer and winter camps, integrity clubs and artistic and academic competitions and on measures taken to adapt university curricula or complement existing curricula with a course on anti-corruption.

Reference is to be made in this context to an initiative recently launched by the UNODC, in collaboration with a range of partner organizations and universities, to develop a comprehensive academic anti-corruption curriculum outline. This initiative involves a group of approximately 30 experts in the field of anti-corruption and higher education engaged in a consultative process aimed at developing an academic programme on anti-corruption for university students. The

backbone of the initiative is a comprehensive set of academic educational materials organized in modular form in a so-called ‘menu of courses’ (course topics). This structure is not intended to be a full-fledged curriculum per se, but rather a flexible compilation of teaching modules on different aspects of corruption, which can be taught separately or in sequence, and thus incorporated into existing curricula or syllabi as needed and as scope and teaching plans permit. The thematic outline or ‘menu’ will be annotated with a detailed bibliography and will ideally be complemented by case studies, taking into account the variety of legal systems and education models and traditions that exist, facilitating utmost adaptability to teaching styles across the globe. The idea is to make the material available as an open source tool online, accessible free of charge and open to amendments and further elaboration by teachers who use the material in order to keep it a living document. Pilot testing for the curricula is scheduled to begin in Spring 2012 with the completion and roll-out of the final tools scheduled to take place in Fall 2012.

Finally, another issue that deserves special attention is the role of the media in preventing corruption. This topic was discussed by the Working Group on Prevention at its first session from 13 to 15 December 2010, during which a background paper prepared by the Secretariat on best practices for promoting responsible and professional reporting on corruption for journalists was presented.²³ The Conference of the States Parties to the Convention at its fourth session in Marrakech took note of the efforts undertaken by the

²³ This paper can be found at <http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup4/2010-December-13-15/V1056937e.pdf>.

Secretariat to gather information on good practices on this matter, and requested the Secretariat to further collect and disseminate such information.²⁴

VI. EPILOGUE

The United Nations Convention against Corruption is a powerful manifestation of the collective political will of the international community to put in place a framework to successfully counter corruption. The Convention attaches great importance to the adoption and implementation of measures geared towards rendering criminal justice responses to corruption more efficient, both at the domestic and international levels. The Convention, however, also recognizes that “preventing is better than responding” and that a primary challenge for States parties is to put in place effective corruption prevention mechanisms that instill a culture of professional integrity in both the public and private sectors.

In conclusion, the words of Mr. Yuri Fedotov, UNODC’s Executive Director, can be recalled, in the statement, delivered on his behalf, at the closing of the fourth session of the Conference of ‘the States Parties²⁵: *“Yet, perhaps the defining feature of our journey from Doha to Marrakech has been the realisation that we cannot succeed in isolation. Others must join us, and we must all walk together if we are to combat corruption wherever it arises. [...] The reality is that we need governments, the private sector, parliamentarians, anti-corruption authorities, civil society organizations, young people and the media to cooperate in rejecting corruption at every level of society. [...] The Arab Spring has sparked rapid reforms and placed anti-corruption at the heart of the*

²⁴ Resolution 4/3, operative paragraph 20.

²⁵ <http://www.unodc.org/unodc/en/marrakechspeech28.10.11.html>

democratic agenda. As a result, it has become a symbol for the anti-corruption movement and we must heed the call it has issued. We must help individuals live in countries where prosecutions of instances of corruption are fair and where a citizen's daily interaction with the state and commerce are firmly anchored in professionalism, honesty and integrity. And we must provide strong political commitment at the international level. The Arab Spring, with its emphatic rejection of corruption, must last longer than a season, and become a model to promote integrity and transparency throughout the region and the rest of the world."

PREVENTING CORRUPTION ICAC'S STRATEGIES AND MEASURES

*Joseph Lee Yat-Sau**

INTRODUCTION

Since its inception in 1974, the Independent Commission Against Corruption (ICAC) of Hong Kong has been adopting a three-pronged strategy comprising law enforcement, prevention and education to combat corruption. In view of the ICAC's success, this strategy has been adopted by anti-corruption agencies around the world.

This paper takes a closer look at the ICAC's corruption prevention strategy, including its organisational setup to implement the strategy, ongoing and recent initiatives and measures to prevent corruption in Hong Kong, and some case studies.

I. THE ORGANISATION AND STRATEGY OF ICAC (WITH FOCUS ON PREVENTION)

A. The Three-pronged Strategy

1. The Three-pronged Strategy and Statutory Duties of the ICAC

Since its inception in 1974, the Independent Commission Against Corruption (ICAC) of Hong Kong has been adopting a three-pronged strategy comprising law enforcement, prevention and education (Figure 1) to combat corruption:

- (i) *Law enforcement* – investigate and prosecute corruption offences;

* Independent Commission against Corruption, Hong Kong Special Administrative Region of the People's Republic of China.

- (ii) *Prevention* – prevent corruption through securing the adopting of system safeguards and internal controls in organisations;
- (iii) *Education* – educate the community against corruption and enlist their support in fighting corruption.¹

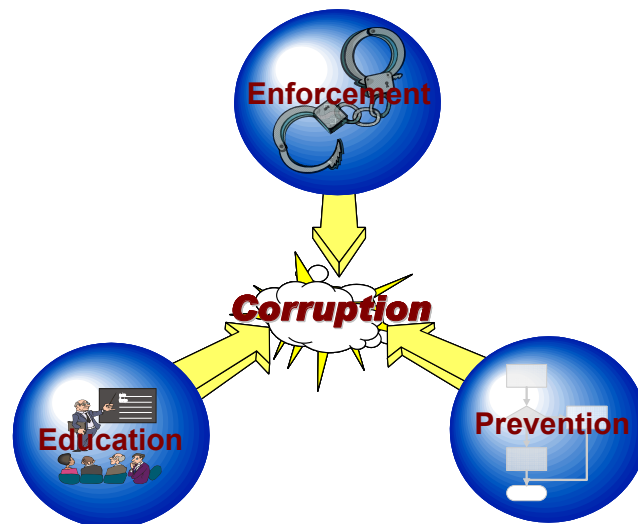


Figure 1 – ICAC’s Three-pronged Strategy

This three-pronged strategy is in fact built-in to the ICAC Ordinance (Cap. 204, Laws of Hong Kong), set out as the Duties of the Commissioner of the ICAC under Section 12 of the ordinance (Appendix A).

2. A Closer Look at How the Strategy Works

Today, the concept of the “fraud triangle”² (corruption can be regarded as a type of employee fraud) is widely adopted in the auditing and fraud prevention professions.

The concept suggests that three conditions are conducive to the occurrence of fraud:

- (i) *Incentive/Pressure*, leading to a motive to commit fraud;

¹ It is understood that some other jurisdictions regard education as part of prevention, but in the ICAC of Hong Kong the two are distinguished with the latter focusing on system controls.

² Statement on Auditing Standards No. 99: Consideration of Fraud in a Financial Statement Audit issued by the Auditing Standards Board of the American Institute of Certified Public Accountants (AICPA) in October 2002.

- (ii) *Opportunity* in the system or environment for fraud to be committed (e.g. lack of control);
- (iii) *Attitude/Rationalisation* of/by the perpetrator that makes/allows him/her to self-justify his/her commitment of the fraud.

A closer look at how the Three-pronged Strategy works shows that it reduces the three conditions in the “fraud triangle” (Figure 2).

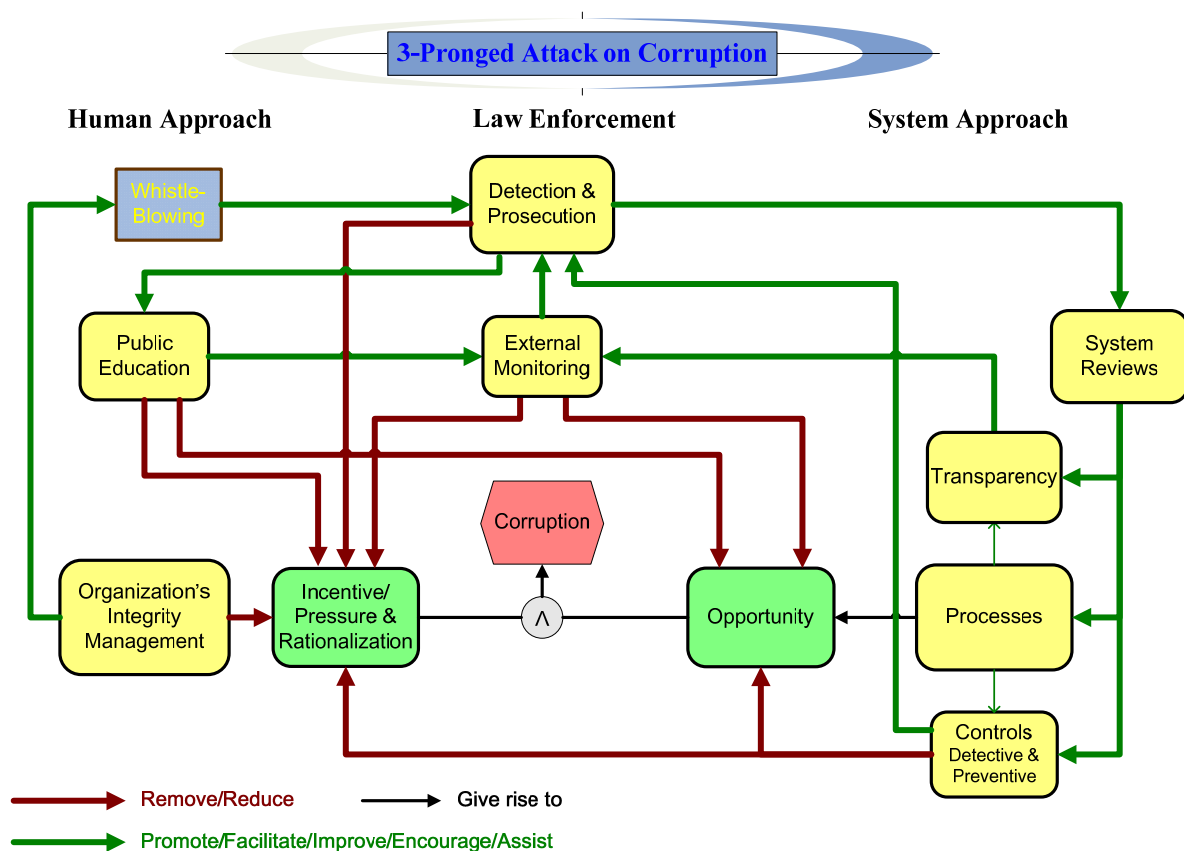


Figure 2. How the Three-pronged Strategy Works

Figure 3 provides a view of how the Three-pronged Strategy works to reduce the three conditions in the “fraud triangle” and enhances the counter-measures:

- (i) *System Approach* –

Through regular system reviews (or corruption prevention audits), corruption risks and system loopholes conducive to corrupt practices are identified, followed by

strengthening of controls and improvements to business processes. The controls/improvements remove or reduce opportunities for corruption in the system/environment. One type of control particularly highlighted is transparency, which facilitates external monitoring by customers, business partners, the public, etc. Internal detective controls and external monitoring facilitates the detection of corruption, leading to prosecution. Post-mortem of corruption that has occurred assists the system reviews to further enhance the controls if necessary.

(ii) *Human Approach* –

Public education against corruption as well as each organisation's own integrity management programme (Code of Conduct, integrity training, etc.) help to reduce employees' incentives to commit bribery, modify their attitudes and reduce their rationalisation of fraudulent behaviour. Public education also reduces the public's tolerance to corrupt behaviour and encourages them to report any corrupt behaviour observed, while an organisation's integrity management programme can encourage whistle-blowing. These facilitate the detection of corruption.

(iii) *Law Enforcement* –

Detection and prosecution provides a strong deterrent against corruption, helping to reduce incentives to commit bribery and modify attitude/rationalisation. Enforcement also serves a public education purpose, educating the public about what corruption is, the consequence of corrupt behaviour, and effectiveness of our law enforcement thereby encouraging people to report corruption. Analysis of the modes of corruption and system weaknesses in detected cases also helps us design more effective preventive measures.

B. Organisation of the ICAC

1. Independence

The ICAC's "independence" is one of its key success factors. Before the establishment of the ICAC in 1974, enforcement against corruption was the responsibility of an anti-bribery unit in then Royal Hong Kong Police Force, which proved to be ineffective as the Police Force was then one of the most corrupt government departments. It was decided that an independent anti-corruption agency had to be set up, reporting directly to the then Governor of Hong Kong, independent from any other government organisations and officials including the then Chief Secretary who was the head of the administration. This led to the formation of the ICAC, which now reports directly to the Chief Executive of the Hong Kong Special Administration Region (HKSAR).

2. Organisational Structure

The ICAC is headed by the Commissioner of ICAC. Its organisation is designed according to the Three-pronged Strategy, with one distinct Department responsible for each of the three approaches, plus an Administration Branch to deal with general administration:

- (i) Operations Department – responsible for the law enforcement strategy and duties set out in ICAC Ordinance Section 12 (a) to (c).
- (ii) Corruption Prevention Department (CPD) – responsible for the prevention strategy and duties set out in ICAC Ordinance Section 12 (d) to (f).
- (iii) Community Relations Department (CRD) – responsible for the law enforcement strategy and duties set out in ICAC Ordinance Section 12 (g) and (h).

3. The Operations Department

A simplified organisation chart of the Operations Department is at Appendix B. As this paper focuses on prevention, it will not go into further details of the organisation of Operations Department.

4. The Corruption Prevention Department

A simplified organisation chart of CPD is at Appendix C. The department is headed by the Director of Corruption Prevention (DCP) and is organised into two Divisions and a Centre for Anti-Corruption Studies (CACS). Each Division has a number of Groups each having a charter of responsibilities. Other than the Management Group (M Group), each Group is responsible for corruption prevention in a number of government departments and public bodies (duties under Section 12(d) and (f) of the ICAC Ordinance). Some of the Groups also have responsibility over one or more specialty areas in addition, e.g.:

- (i) Group C – civil service integrity policies and matters.
- (ii) Group E – corruption prevention in the construction industry and public works projects.
- (iii) Group F, also named Advisory Services Group (ASG) – corruption prevention in the private sector, including handling requests for advice from private sector entities (Section 12(e) of the ICAC Ordinance).

Also under CPD is the Centre of Anti-Corruption Studies (CACS) established in April 2009 to facilitate and conduct research and analytical studies on issues pertaining to the development of anti-corruption initiatives locally, regionally and internationally.

5. The Community Relations Department

A simplified organisation chart of CRD is at Appendix D. The department is headed by the Director of Community Relations (DCR) and is organised into two Divisions. Division 1 is comprised mainly of specialist units tasked to publicise anti-corruption messages through the mass media and territory-wide programmes. Division 2 mainly provides in-depth, face-to-face corruption prevention education

services to the public through a network of Regional Offices. The duties of the major units are:

- (iv) Regional Offices – reach out to the local communities to enlist support for ICAC’s work and receive corruption reports and answer enquiries about corruption.
- (v) Hong Kong Ethics Development Centre (EDC) – promotes business and professional ethics in the business sector and provides consultancy services on ethics programmes, including ethics training.
- (vi) Youth and Moral Education Office (YMEO) – formulates and implements strategies and programmes for preventive education for youths and students.
- (vii) Mass Communication Office (MCO) – makes use of media for publicising ICAC’s work and preventive education for the public, such as television and radio advertising campaigns, TV dramas and training videos.

C. Oversight of the Work of the ICAC

The work of the ICAC comes under the scrutiny of five independent committees comprised of responsible citizens drawn from different sectors of the community and appointed by the Chief Executive of the HKSAR. They oversee different aspects of ICAC’s work (Appendix E).

The Commissioner reports directly to the Chief Executive of the HKSAR on the work of the ICAC, and regularly attends meetings of the Executive Council and Legislative Council and their relevant committees (e.g. the Security Panel) to brief their members and answer questions on ICAC’s work.

II. EFFECTIVE WAYS TO PREVENT CORRUPTION IN HONG KONG (THE SYSTEM APPROACH)

A. Preventing Corruption in the Public Sector

1. Partnering Approach

In the prevention of corruption, the ICAC adopts a partnering approach with the government bureaus and departments (GBDs) and public bodies (PBs). The GBD/PBs are convinced to recognize that prevention of corruption and integrity management is part of good governance and hence they should assume ownership of such with the ICAC providing assistance. CPD has formed Corruption Prevention Groups with major GBD/PBs, chaired by their directorate officers. The Corruption Prevention Groups hold regular meetings to discuss and monitor collaboration to prevent corruption, including identification of areas requiring corruption prevention audits (see A.2) or corruption prevention advice (see A.3), and implementation of the Ethical Leadership Programme (see A.4).

2. Corruption Prevention Audits

The ICAC's duty to examine procedures and practices of GBD/PBs to identify risks of corruption and secure the revision of work methods to reduce the risks is done by CPD, through corruption prevention studies/audits of specific functions and processes (e.g. letting and administration of contracts, licensing) of the GBD/PBs. The study/audit subjects are selected based on inherent corruption risk, actual occurrence of corruption, importance to people's livelihoods, amount of public funds involved, etc. Reports on the findings and the recommendations, after endorsement by the Corruption Prevention Advisory Committee, are sent to the organisations' top management. CPD also monitors implementation of the agreed recommendations and provides follow-up assistance if necessary.

A corruption prevention study/audit normally involves the following:

- (i) Study of relevant laws and regulations and the organisation's relevant policies, procedures, guidelines, and relevant papers.
- (ii) Study of other information on the subject, such as media reports, Audit Reports, CPD's own records or past reports on the subject, reports of relevant past ICAC cases and/or briefing by investigators on relevant cases or trends.
- (iii) Interviews with employees of the organisation responsible for the function/operation under study.
- (iv) Examination of files and records of past cases relating to the function/operation under study.
- (v) Site observation of performance of the function/operation under study.
- (vi) Information available to the public or relevant stakeholders regarding the relevant policies, procedures and operations.
- (vii) Occasionally, if necessary, interviews with experts in the field.

Aspects and control measures examined during corruption prevention studies/audits and the recommended enhancements usually cover the following:

- (i) adequacy and clarity of policies, procedures and guidelines on integrity and conduct as well as performance of the function/ operation;
- (ii) clarity, enforceability, etc. of the relevant legislation and regulations;
- (iii) adequacy of segregation of duties, approval procedures and level of authorities, and other checks and balances;
- (iv) proper and adequate documentation for enhancing accountability;
- (v) openness and fairness, e.g. consistency in treatment of similar cases, equal opportunity for all eligible parties to participate;

- (vi) transparency, e.g. disclosure and publicity of application procedures, vetting criteria, processing time, reasons for rejection, etc.;
- (vii) simplicity and user-friendliness of the system and procedures, e.g. whether there are long waiting times or excessive barriers/procedures (which are conducive to bribery);
- (viii) adequacy and effectiveness of supervision and monitoring, e.g. conduct of adequate supervisory checks, availability of management and exception reports for senior management's review;
- (ix) independent checks and monitoring, e.g. by internal audit, independent non-executive directors;
- (x) existence and publicity of feedback/complaint channels;
- (xi) any other preventive and detective control measures applicable to the function/operation being examined;
- (xii) any existing practices that may be conducive to corruption, such as excessive discretion exercised by staff, deviation from policies or procedures, frequent overrides, lax enforcement or non-enforcement of any law or regulation, etc.

3. Corruption Prevention Advice

In addition to detailed corruption prevention audits, CPD provides quick and early/simultaneous corruption prevention advice to GBD/PBs in current initiatives/projects, such as formulation of new legislation (e.g. proposal for a new Charity Law in Hong Kong), policies and procedures (e.g. procedures for the Immigration Department's Automated Vehicle Clearance System), tendering of major contracts (design-and-build contract for the new Government Central Offices). For major projects of public concern (e.g. tendering of contract for the operation of the New Cruise Terminal at Kai Tak), CPD also sends an observer to sit on the tender

boards. The approach has proved to be effective in ensuring proper and corruption-free tendering processes in the projects.

In the event that corruption or other malpractice has occurred, CPD conducts a “post-mortem” analysis on the case. If system weakness is identified as a factor in the case, follow-up action will be taken with the GBD/PB concerned, such as review of the procedures, advice on enhanced controls, or if necessary a full-scale corruption prevention audit of the business function concerned. This does not include only prosecuted cases but also cases which have not resulted in prosecution due to lack of evidence, no criminal offence but only non-criminal misconduct involved, etc.

4. Capacity Building

Corruption cannot be prevented by the ICAC alone. Managers and supervisors in GBD/PBs play an important role in preventing corruption in their organisations by putting in place suitable controls and vigilantly exercising supervision and monitoring over their staff and day-to-day operations. CPD therefore also adopts a capacity building approach and, through training, raises their awareness and capacity in helping to prevent corruption in their GBD/PBs.

5. Preventing Corrupt Practice by Contractors or Partners

GBD/PBs frequently work with contractors or business partners in various ways, e.g. engaging a contractor to provide services to the GBD/PB, or engaging a contractor or partner (e.g. under a public-private partnership) to deliver public services to the public. It is necessary to prevent such contractors/partners from engaging in corrupt practices, including bribing the public officers, or their employees from accepting bribes in delivering the public/social service. Measures undertaken by the GBD/PBs include:

- (i) Anti-bribery clauses prohibiting tenderers/contractors/partners from offering

corrupt gifts to public officers and anti-collusion clauses in GBD/PBs' tendering documents and/or contracts.

- (ii) Probity clauses in GBD/PBs' contracts requiring the contractor/partner to adopt corruption prevention practices in performing the contract or function (e.g. prohibiting their employees from accepting advantages from third parties in relationship to their duties under the contract).
- (iii) Specifying procedures that the contractor is required to follow/perform for a control purpose (e.g. conduct of inspections, keeping of records, submission of reports/information certified by a person-in-charge).
- (iv) For certain types of government contract (e.g. works contracts), suspension of contractors convicted of bribery offences from bidding such contracts for a period of time.
- (v) Conduct of corruption prevention audits by CPD on the contractors/partners' procedures in performing the public function (e.g. private sector operated Car Testing Centres appointed by the Transport Department to conduct annual examination of private cars), or give corruption prevention advice to the contractors/partners (e.g. advising a works contractor suspended from bidding government contracts due to the occurrence of corruption on how to improve integrity management).

B. Preventing Corruption in the Business Sector

1. Corruption Prevention Advisory Service

The ICAC has a duty to advise any persons on ways to prevent corruption on request (Section 12(e) of the ICAC Ordinance). The service is free of charge and we pledge confidentiality on the requests and information received. The corruption prevention advisory service is promoted and given to private sector entities through

various channels including:

- (i) Advisory Services Hotline – A telephone hotline and mailbox is provided and publicised through various means (e.g. ICAC website) for members of the public to request corruption prevention advice or services. Requests may also be received by referral from CRD or other contacts.
- (ii) Collaboration with partners – CPD collaborates with partners such as trade associations and professional bodies to organise events/seminars for their members (see the following section on “Corruption Prevention Capacity Building”). Through such events or the partners’ newsletters or circulars, advice is given and additional, tailored service is promoted to their members.
- (iii) Victim companies – Following investigation of a private sector corruption case by the ICAC, if system weaknesses is noted, the case may be referred to the CPD for follow-up. Where considered appropriate, ASG will approach the victim company to offer corruption prevention advisory service.
- (iv) Organisations funded by GDB/PB – GDB/PBs fund a large number of organisations under various schemes to perform functions/services that achieve a desired social objective, e.g. NGOs, social enterprises, schools, residential building owners receiving government subsidies to repair their buildings. In view of the amount of public funds and the corruption risk involved, some schemes encourage the funded organisations to seek corruption prevention advice from CPD.

There are about 350 to 400 cases of advice/service provided to private sector entities each year.

2. Corruption Prevention Capacity Building

ICAC cannot prevent corruption in each and every private organisation. We

must enlist the support of senior executives, managers, supervisors and practitioners in the private sector to help prevent corruption in their own organisations. To achieve this, we need to raise their awareness to corruption risks and build up their capacity to prevent corruption. To do so, CPD again adopts a partnering strategy mainly through two approaches:

- (i) Trade (vertical) approach – collaborating with trade associations and/or trade regulators (e.g. Hong Kong Federation of Restaurants and Related Trades, Hong Kong Retail Management Association, Securities and Futures Commission) to carry out initiatives to enhance corruption prevention awareness and capacity of members/practitioners of their trades (see next paragraph). This covers preventing corruption in key business functions in a trade.
- (ii) Functional (horizontal) approach – collaborating with professional bodies/associations (e.g. Hong Kong Institute of Certified Public Accountants, Chartered Institute of Purchasing and Supply, Institute of Internal Auditors) to carry out initiatives to enhance corruption prevention awareness and capacity of members/practitioners of their profession (see next paragraph). This focuses on preventing corruption in a business function that is common to all/most trades.

The methods for corruption prevention capacity building employed include:

- (i) Publication of Corruption Prevention / Ethics Management Guides for reference by managers, practitioners, business operators of specific trades or professions.
- (ii) Development of corruption prevention training materials (e.g. training slides, videos, guides, and case studies) for use by CPD/CRD officers in providing corruption prevention training, or by other organisations' trainers who have been given train-the-trainer training or training guides.
- (iii) Conduct of corruption prevention seminars, workshops and continuous

professional education sessions for members of partners or managers/practitioners in individual organisations.

- (iv) Development of corruption prevention training courses/modules for use by educational institutions (e.g. universities, vocational training institutions) in degree, diploma or other courses of disciplines that relate to relatively more corruption-prone trades/professions (e.g. construction engineering, property management, purchasing and merchandising).

3. Corruption Prevention Audits

While prevention of corruption in the private sector is mainly through the provision of advisory services and capacity building, sometimes more in-depth corruption prevention studies/audits (as those for the public sector) may also be conducted for private sector entities with their Boards' support such as:

- (i) Major subvented NGOs/charities – in view of the considerable government subvention and public donations they receive, their procedures such as procurement and service delivery processes may be subjects of corruption prevention studies/reviews.
- (ii) Corporations fully or partially owned by the government or public bodies that are not public bodies – in view of their public ownership and the public interest involved, their relevant procedures may be subjects of corruption prevention studies/reviews.
- (iii) Private corporations – on request, and if considered worthwhile, corruption prevention reviews may be conducted on corruption-prone processes of a private corporation, but this is very uncommon.

III. EFFECTIVE WAYS TO PREVENT CORRUPTION IN HONG KONG (THE HUMAN APPROACH)

A. Public Education

1. Mass Communication

Mass media is an effective vehicle for publicising the work of the ICAC and enlisting the public's support in fighting corruption. Effective uses include:

- (i) Advertising campaigns comprising television and radio messages, complemented with posters mounted throughout the territory (Appendix F shows a few samples of ICAC posters).
- (ii) Bi-annual production and television-broadcasting of the "ICAC Investigators" drama series, each featuring five episodes on five successful ICAC cases in recent years.
- (iii) Use of the Internet to extend the reach of ICAC's messages, e.g. an "ICAC Channel" website to keep the public abreast of ICAC's latest events and activities, uploading of integrity issues onto popular social networking websites to stimulate discussion, and a youth website "iTeen Camp" targeting primary and junior secondary school students.
- (iv) Press releases on ICAC's corruption prevention work and newspaper articles on integrity issues are used to raise public awareness on corruption risks and enlist their support for ICAC's work.

2. Community Relation and Activities

To maintain a high level of ICAC's presence in the community and keep the fight against corruption on the public agenda, CRD officers attend meetings of various district consultative committees to expound on ICAC's work and gauge opinion leaders' views on anti-corruption programmes. Regular contacts are

maintained with district organisations, and district activities (e.g. workshops, roving exhibitions) conducted to reinforce the community's commitment to sustaining a probity culture. The ICAC Club was set up in 1997 to provide a channel for the public to partake in ICAC activities and demonstrate support for the anti-corruption cause, its about 1,200 members include professionals, district leaders, working youth, students, retirees, and housewives. An ICAC Club newsletter is published regularly to keep members informed of the latest developments.

B. Youth Education

It is important to educate children and youths on correct moral values and anti-corruption attitudes at an early stage. The major work in youth education in recent years is highlighted below.

1. Tertiary Education Institution (TEI) Students

- (i) ICAC Ambassador Programme – mobilizes university students to organise on-campus activities to promulgate anti-corruption and probity messages. In addition, the *i-League* was also established for the ICAC to maintain contact with former and current Ambassadors to maintain their continuous support in anti-corruption work.
- (ii) Personal Ethics Module for Tertiary Institutions – developed for adoption by TEIs for their students. Seven universities have agreed to include the module in their relevant programmes.

2. Secondary School Students

- (i) Interactive Drama – Professional drama troupes are hired to perform interactive dramas that illustrate the anti-corruption law and consequences of corruption to secondary school students. About 280 shows for some 55,000 secondary students are arranged annually.

- (ii) ICAC Ambassador Programme – About 1,100 students from 135 schools have been recruited as “ICAC Ambassadors” to disseminate integrity messages to their schoolmates through activities.
- (iii) Liberal Studies Teaching Package – A Liberal Studies (ICAC Investigators) Package was recently developed for senior secondary students, using two episodes of the “ICAC Investigators 2009” drama series and a variety of learning activities as teaching aids.

3. Primary School and Kindergarten Students

- (i) Senior Primary General Studies Teaching Packages – Our General Studies Moral Education Package, comprising audio-visual teaching aids and materials for activities, helps inculcate self-discipline and proper attitude towards material wealth among students.
- (ii) Gee-Dor-Dor Cartoon Series and Teaching Packages for Kindergartens and Primary Schools – Produced since 1999, the Gee-Dor-Dor Cartoon Series publicise moral values to children. Parent-child activities were also organised to enlist parents’ support in promoting positive values to young kids. An electronic book based on the cartoon series and other moral education stories was also produced for young kids.

C. Integrity Management in the Public Sector

1. Ethical Leadership Programme (ELP) for the Government Sector

While CRD has been providing integrity and anti-bribery briefings to government officers since its establishment, to further enhance probity culture and promote ethical leadership in the civil service, the ICAC and the Civil Service Bureau jointly launched the ELP in December 2006. Under the ELP, each GBD is requested to appoint a senior directorate officer as the organisation’s Ethics Officer, to be

responsible for developing and sustaining ethical culture in the GBD and assumes overall responsibility for all integrity management work. They have to submit to the Civil Service Bureau an annual return on the GBD's work under ELP. At present, there are some 150 Ethics Officers.

Periodic seminars on different topics concerning integrity, conduct and discipline are organised for the Ethics Officers and their assistants. A government intranet "Online Community for Ethics Officers" has been developed to facilitate communication and provide up-to-date information and reference materials related to integrity issues.

2. Integrity Training for Public Bodies

Apart from GDBs, CRD also provides integrity and anti-bribery training for staff of public bodies, which include public hospitals, public utilities companies, public transport companies, TEIs, etc.

D. Integrity Management in the Business Sector

1. Promotion of Business Ethics

To promote integrity and anti-corruption culture in the business sector, the ICAC launched a Business Ethics Campaign in 1994 jointly with the major chambers of commerce in Hong Kong. At the first conference, business leaders arrived at a consensus that long-term promotion of business ethics was of strategic importance to Hong Kong. In response, the ICAC set up the Hong Kong Ethics Development Centre (EDC) in 1995 to act as a focal point for promoting ethics in Hong Kong and advising the business sector on ethics and integrity management programmes.

EDC partners with related regulatory bodies, chambers of commerce, trade and professional associations in developing tailor-made ethics training modules and packages for specific trades and professions, and promotes the training modules and

other corruption prevention products to their members. Ethics and corruption prevention elements were also injected into the licensing and professional qualification requirements of the trades/professions and continuous professional education programmes. EDC also organises regular thematic corruption prevention seminars for small and medium enterprises.

2. Integrity Management of Contractors and Business Partners

On CPD's recommendation, it has become a standard practice for GDB/BPs to include probity clauses in their contracts with service providers, suppliers or other partners/operators requiring them to prohibit their staff from accepting advantages from third parties and to avoid/declare conflicts of interest in relation to their duties under the contract. They are also required to ensure the requirements are made known to the staff, e.g. through training.

In view of the higher corruption risk in public works projects, CPD has a standing arrangement with the Development Bureau to, on a project by project basis, give corruption prevention briefings to key staff of major works projects' consultants and contractors.

IV. CASE STUDIES

A. Public Sector

1. Corruption Prevention Audit – Enforcement of Driving-Offence Points System

In Hong Kong, driving-offence points are assigned to a driver for certain traffic offences (e.g. speeding). The Transport Department (TD) would summon a driver who has accumulated 15 or more offence points within a period of two years to appear in court, and apply for an order to disqualify him from holding and renewing a driving licence. Our study in 2008 revealed that, among other risks, many drivers who had accumulated over 15 offence points (over 100 offence points in extreme

cases) could still drive on the roads because the summonses had not been successfully served on them, mainly due to the inaccurate addresses reported by the drivers or because they avoided receiving the summonses. Apart from ineffective enforcement, this also gave rise to risk of collusion between the offending drivers and the police officers responsible for serving the summonses. TD had no legal power to serve summonses on an offending driver even when he approached TD to renew his driving licence, and also could not refuse his renewal request. CPD thus recommended legislative amendments to plug the enforcement and corruption loopholes. Subsequently, the law was amended to strengthen the powers of TD and the Police to facilitate more effective enforcement of the system.

2. Preventing Corruption in Public Infrastructure Projects

Readers may refer to Transparency International's Report titled "Hong Kong: The Airport Core Program and the Absence of Corruption"³ published in 1999 which provides a good and detailed case study.

In a more recent project involving a contract for the operation of a major public facility, CPD secured the government's agreement to include probity requirements in the agreement with the operator to ensure it adopts anti-corruption policies and measures in managing and operating the facility. CPD also assigned a representative to sit in the project's tender assessment panel as an observer to ensure fair and proper procedures were adopted.

3. Ethical Leadership Programme – Correctional Services Department

Right after the launching of the ELP, the Commissioner of the Correctional Services Department (CSD) set up a departmental Ethics Committee to strengthen ethical governance and integrity management in the department. The Ethics

³ <http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN013116.pdf>

Committee is chaired by the department's Ethics Officer who is the Deputy Commissioner, and meets quarterly. An Assistant Director of the ICAC sits on the Committee to give advice.

Among the first things the Committee did was to conduct research on potential integrity risks faced by frontline and supervisory staff. The issues identified were then featured in case studies in a lively training video used in integrity training sessions to facilitate discussion, raise awareness, and provide guidance on proper conduct. ICAC provided input during development of the video and training guide and conducted train-the-trainer workshops for CSD training officers. To enlist the support of senior staff in implementing the department's integrity management plan, the Ethics Officer personally conducted a seminar for all institution heads and superintendents.

CSD's implementation of ELP displayed strong commitment at the top to enhancing ethical culture. The programme plan was carefully thought out and vigorously implemented. Different levels of staff were involved and the progress was closely monitored by the Ethics Committee.

B. Business Sector

1. Corruption Prevention Advisory Service – Administration of Obstetric Services in Private Hospitals

For various reasons, Hong Kong has become a highly popular place for Hong Kong pregnant women in Mainland China to give birth. In both public and private hospitals, the supply of obstetric delivery service appointments was outstripped by demand, with many Mainland China customers willing to pay excessive fees to agents in order to secure an appointment. Apart from various social problems, the situation has given rise to significant risks of corruption for hospital staff, with private hospitals

more susceptible. CPD's Advisory Services Group, with the support of the Hong Kong Private Hospitals Association, quickly responded to the situation and conducted a study on the administration of obstetric delivery services in the private hospitals.

The study found that, as the risk was relatively new to the private hospitals, some did not have ready measures to prevent possible manipulation of the booking and allocation of obstetric delivery service appointment slots. Following the study, the Advisory Services Group produced a corruption prevention guide for reference by the private hospitals, and organised a seminar jointly with the Association to raise their awareness. The Group also provided follow-up, tailored advice to individual private hospitals.

2. Director's Ethics Training Programme

In the wake of local and overseas corporate failures in recent years which showed signs of malpractice in top management of corporations, EDC took the lead to spearhead a systematic training programme for company directors, "Ethics – The Core Value of Leadership" Training Programme in 2007, in collaboration with 12 partners including the Securities and Futures Commission and Hong Kong Exchanges and Clearing Limited, major chambers of commerce, and professional bodies. Work done included:

- (i) Directors' Forum in 2007 – Some 150 company directors, top and senior executives and their professional advisors attended the Forum, at which they probed into the ethical challenges they were facing and shared views on how to put ethical governance and leadership into practice.
- (ii) Conference on Corporate Governance in 2008 – Some 350 directors and senior executives of listed companies attended to examine the topical issues of ethical governance and share experience on good governance practices. At the

conference, CRD launched a “Toolkit on Directors’ Ethics” and a training video “Boardroom Agenda”, while CPD launched “A Corruption Prevention Guide for Listed Companies”.

- (iii) An ethics training module was incorporated in the accreditation training programme for company directors provided by the Hong Kong Institute of Directors.

V. CONCLUDING REMARKS

The three-pronged strategy has been an effective strategy for fighting corruption in Hong Kong, and is still an effective one for sustaining a clean government and business environment in Hong Kong. Building on the foundation, the ICAC is continuously improving its strategies and measures with new and enhanced initiatives to meet new challenges in the changing environment.

Nevertheless, it must be pointed out that the three-pronged strategy for combating corruption is only part of the “formula” in the fight against corruption. Fundamental success factors include a country’s or city’s institutions, and what is referred to by Transparency International as the “National Integrity System”. Hong Kong had in fact undergone major institutional improvements in the later part of the last century, along with the ICAC’s vigorous efforts in fighting corruption, to achieve its overall success in stamping down corruption. Any country or city committed to fighting corruption cannot rely only on a stand-alone corruption prevention strategy, but must make fundamental institutional improvements.

APPENDIX A

ICAC's Statutory Duties and Strategies

Duties of the Commissioner (ICAC Ordinance Section 12)	Corresponding Strategy
<p>(a) receive and consider complaints alleging corrupt practices and investigate such of those complaints as he considers practicable</p> <p>(b) investigate any alleged or suspected offence under the Prevention of Bribery Ordinance (Cap. 201, ICAC Ordinance (Cap. 204), etc.</p> <p>(c) investigate any conduct of a prescribed officer⁴ which in the opinion of the Commissioner is connected with or conducive to corrupt practices and to report thereon to the Chief Executive of the HKSAR</p>	Law Enforcement
<p>(d) examine the practices and procedures of government departments and public bodies⁵, 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</p> <p>(e) instruct, advise and assist any person⁶, on the latter's request, on ways in which corrupt practices may be eliminated by such person</p> <p>(f) advise heads of Government departments or public bodies of changes in practices or procedures</p>	Prevention

⁴ "Prescribed officer" is defined in the Prevention of Bribery Ordinance (Cap. 201, Laws of Hong Kong) to include, among others, any person holding an office of emolument, whether permanent or temporary, under the Government, any judicial officer and any ICAC officer.

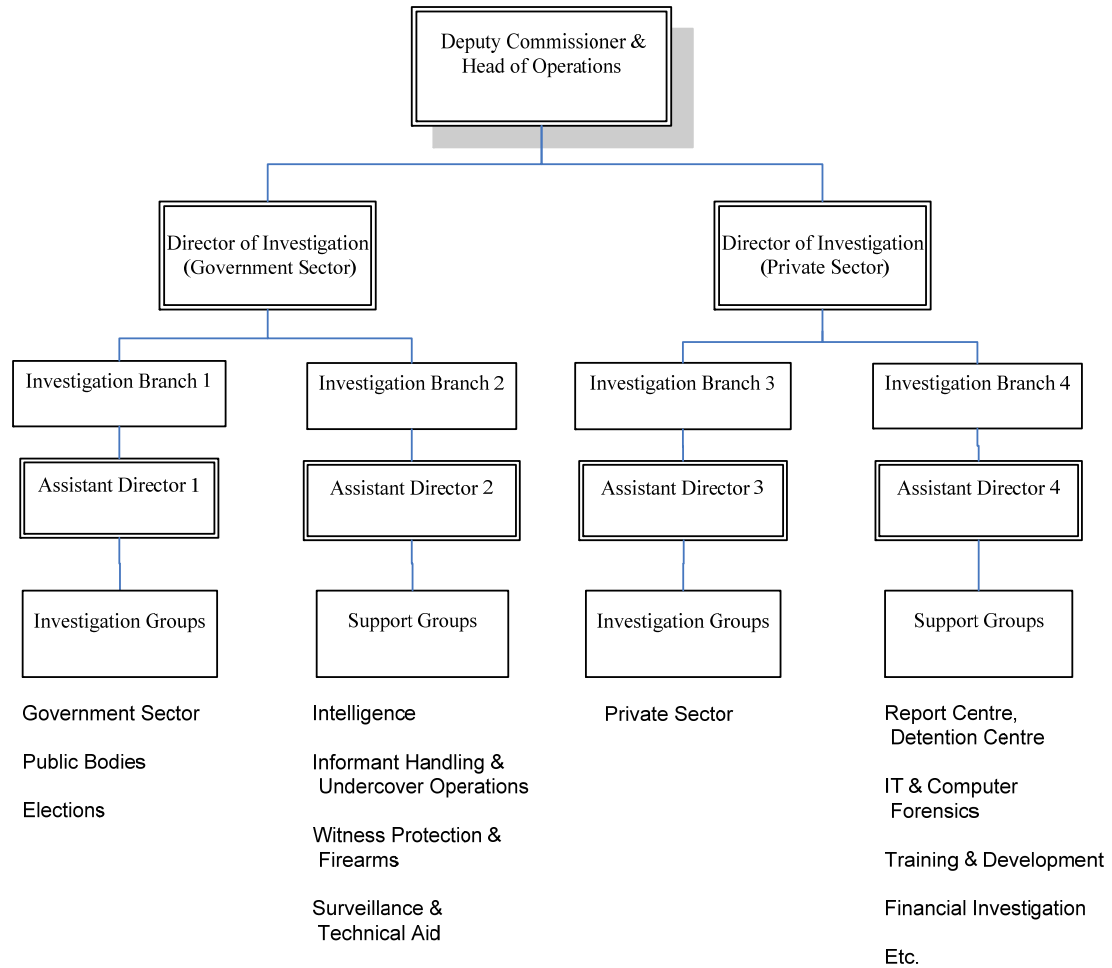
⁵ "Public body" is defined in the Prevention of Bribery Ordinance to include, among others, the Government, Legislative Council, Executive Council, etc. and any body listed in Schedule 1 to the Ordinance.

⁶ This covers any persons or entities in the private sector.

<p>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</p>	
<p>(g) educate the public against the evils of corruption</p> <p>(h) enlist and foster public support in combating corruption</p>	<p>Education</p>

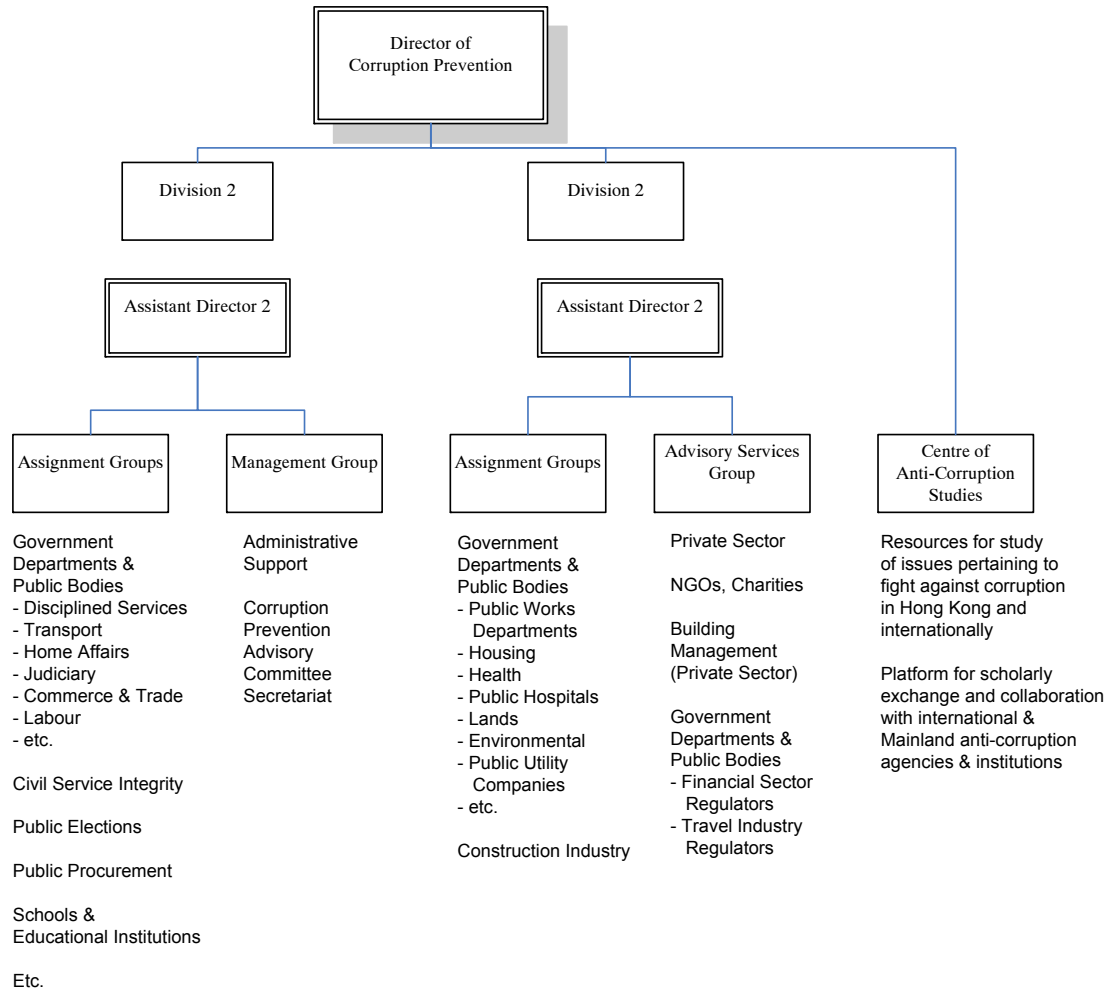
APPENDIX B

Operations Department



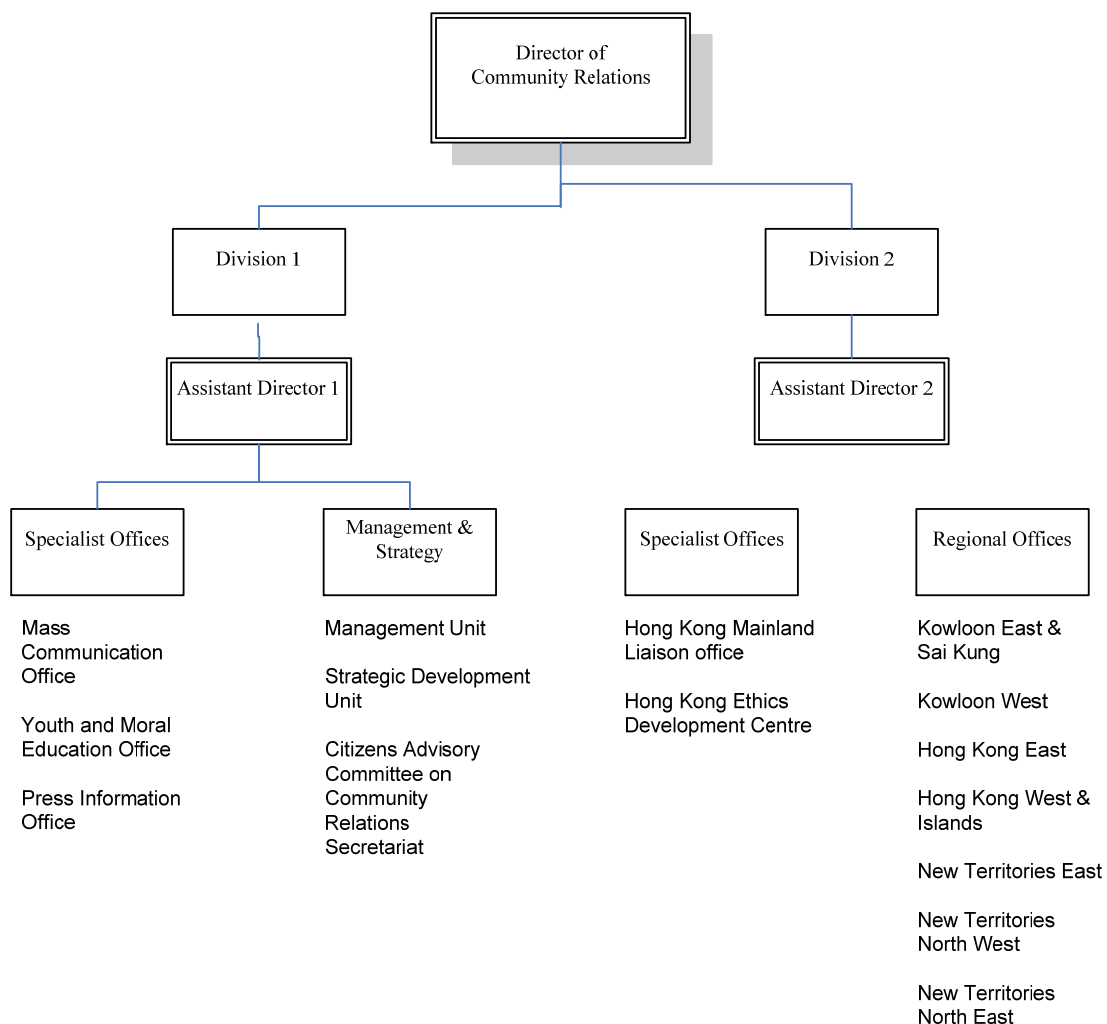
APPENDIX C

Corruption Prevention Department



APPENDIX D

Community Relations Department



APPENDIX E

ICAC Advisory Committees

1. The Advisory Committee on Corruption is the principal advisory body of ICAC and oversees all the Commission's activities and keeps its operational, staffing and administrative policies under review.
2. The Operations Review Committee, among other things, receives from the Commissioner information about all corruption complaints and reports on completed and prosecution cases, and advises on the follow up of cases not subject to prosecution or caution.
3. The Corruption Prevention Advisory Committee advises the Commissioner on the work of CPD, including considering and endorsing its corruption prevention study reports.
4. The Citizens Advisory Committee on Community Relations advises the Commissioner on the work of CRD and monitors public attitudes towards corruption in general.
5. The ICAC Complaints Committee oversees the handling of non-criminal complaints against ICAC officers.

The terms of reference of the Advisory Committee on Corruption, Operations Review Committee, Corruption Prevention Advisory Committee, and Citizens Advisory Committee on Community Relations as at 2010 can be found in the Report of ICAC Advisory Committees 2010⁷.

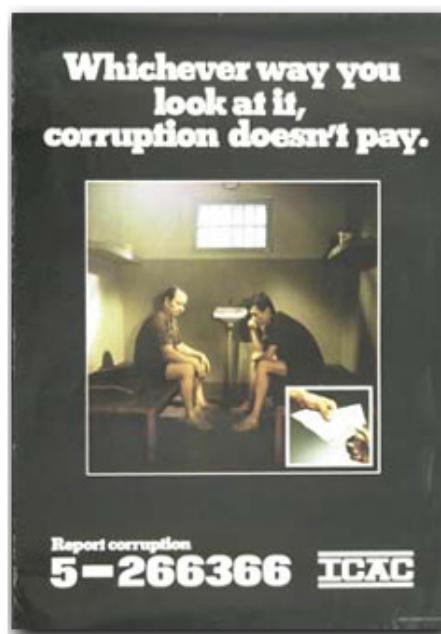
⁷ http://www.icac.org.hk/filemanager/en/Content_1020/2010.pdf

APPENDIX F

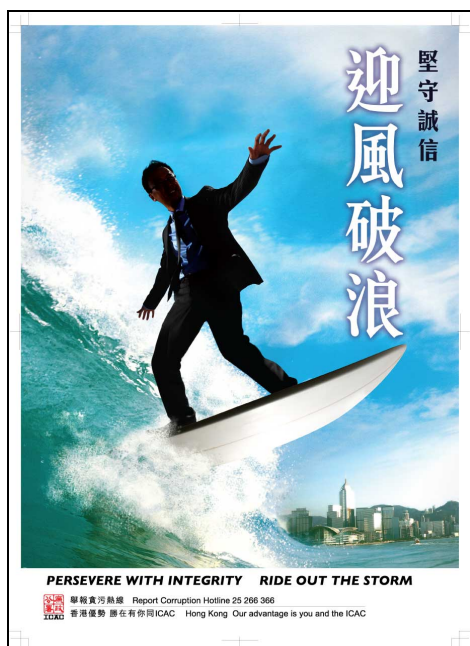
Samples of ICAC Posters



A Sample Poster in 1970s



A Sample Poster in 1980s



A Sample Poster in 2000s



A Sample Poster in 2010/11

JICA'S APPROACH TO GOOD GOVERNANCE AND ANTI-CORRUPTION

Chie Miyahara^{*}

This paper explains, firstly, JICA's role as the Japanese ODA implementing agency, then, secondly discusses our approach towards establishing good governance and promoting anti-corruption in our partner countries. Lastly, concrete project cases concerning anti-corruption are introduced.

A. JICA's Role

JICA assists and supports developing countries as the executing agency of Japanese ODA. In accordance with its vision of "Inclusive and Dynamic Development," JICA supports the resolution of issues of developing countries by using the most suitable tools of various assistance methods and a combined regional-, country-, and issue-oriented approach.

1. JICA's Vision, Mission and Strategy

There are many issues in the world that must be addressed not by individual countries but by the international community. In dealing with such issues, together with its Vision, JICA has defined four Missions to be achieved through four main Strategies. JICA's cooperative operations are implemented under this Vision and Mission.

(i) JICA's Vision

Inclusive and Dynamic Development

(ii) JICA's Mission

- (a) Addressing Global Agenda: includes climate change, water, food, energy, infectious diseases and financing.
- (b) Reducing Poverty through Equitable Growth: pursues sustained poverty reduction through inclusive and equitable growth
- (c) Improving Governance: strengthens policies, institutions, organizations and human resources as the underpinning of development.

^{*} Director, Administration and Financial / Financial Division, Governance Group, Industrial Development and Public Policy Department, Japan International Cooperation Agency (JICA).

- (d) Achieving Human Security: protects people from threats and building societies where they can live with dignity.

(iii) JICA's Strategies

- (a) Integrated Assistance: combines policy support, institution building, human capacity development, infrastructure development, etc. This also includes cross-border and cross-sector assistance.
- (b) Seamless Assistance: means speedy and continuous aid delivery from emergency relief to rehabilitation/reconstruction and peace-building.
- (c) Promoting Development Partnerships: between the public and private sectors, applying technologies and know-how.
- (d) Enhancing Research and Knowledge Sharing: shares JICA's abundant field experiences through research and leading discussions.

2. ODA and JICA – JICA's Assistant Schemes

Since joining the Colombo Plan in 1954, Japan has been providing financial and technical assistance to developing countries through ODA, aiming to contribute to the peace and development of the international community and thereby help ensure Japan's own security and prosperity.

JICA is in charge of administering all ODA such as technical cooperation, ODA loans and grant aid in an integrated manner, except contributions to international organizations. JICA, the world's largest bilateral aid agency, works in over 150 countries and regions and has some 100 overseas offices worldwide.

(i) Technical Cooperation

For human resources development and formulation of administrative systems of developing countries, technical cooperation involves the dispatch of experts, provision of necessary equipment and training of personnel from developing countries in Japan and other countries. Cooperation plans can be tailored to address a broad range of issues.

(ii) ODA Loans

ODA loans support developing countries above a certain income level by providing low-interest, long-term and concessional funds (in Japanese yen) to finance their

development efforts. ODA loans are used for large-scale infrastructure and other forms of development that required substantial funds.

(iii) Grant Aid

Grant aid is the provision of funds to developing countries which have low income levels, without the obligation of repayment. Grant aid is used for improving basic infrastructure such as schools, hospitals, water-supply facilities and roads, along with obtaining health and medical care, equipment and other requirements.

In addition to the above schemes, JICA is also responsible for disaster relief and cooperation through citizen participation.

3. JICA's Operational Flow for Providing Assistance

JICA implements effective and efficient support under the Japanese government's aid policy based on an unbiased, broad perspective that extends beyond assistance schemes such as technical cooperation, ODA loans and grant aid. In particular, JICA promptly conducts project formulation and implementation by undertaking preparatory surveys to investigate the content of assistance at project sites before receiving aid requests from partner countries.

JICA also conducts evaluation of the projects using the Plan-Do-Check-Act (PDCA) cycle for each scheme of technical cooperation, ODA loans and grant aid and employs the system to further improve operations and sufficiently achieve public accountability.

B. JICA's Approach to Good Governance

1. Basic Concept of Supporting Good Governance

In year 2004, with the primary objective of proposing a framework for governance-related assistance by systematically clarifying the concept of governance and streamlining JICA's contribution to this issue, JICA developed a report named "Governance Assistance of JICA – Toward Indigenous Development of Democratic Institutions, Administrative Functions and Legal Institutions in the Developing World," where we discussed: i) the definition of governance in JICA projects; ii) components of good governance; iii) proposed basic guidelines of governance assistance in JICA's projects; iv) proposed role of JICA's assistance in improving governance; and v) major issues in JICA's governance assistance. In the report, JICA defines governance as a concept encompassing not only government institutions, but also the mechanisms and systems which determine the

relationship among government, civil society and the private sector. More specifically, we interpret governance as follows:

The development and operation of all the institutions, including government organizations and systems, the synergetic relationship among government, civil society and the private sector, and the processes of decision making, in order to mobilize, allocate and manage the resources of the country efficiently and in a manner that reflects the will of the people, with the aim of realizing the stability and development of the country.

In accordance with the above-mentioned definition of “governance”, the basic guidelines of its governance assistance can be summarized as follows: “JICA considers it important that the government of the partner country promote improvement of governance and enhancement and consolidation of democratic institutions on its own initiative. In order to facilitate the endogenous processes without forcing a certain type of institutional reform from the outside, JICA assists the government of the partner country to select, develop and operate the necessary systems and institutions by providing information and engaging in dialogue. In other words, it adopts approaches such as “the provision of policy options” or “joint thinking.”

2. JICA’s Approach towards Good Governance

The role of JICA’s assistance in improving governance in developing countries can be summarized as the following three items, depending on the condition of the partner countries, such as the level of problem awareness and actions taken:

- (i) To provide options for developing new systems and mechanisms and to stimulate changes in the awareness of government organizations and the parties concerned;
- (ii) To assist the development of new institutions and mechanisms;
- (iii) To assist the development of detailed measures and methods and the necessary organizational reform and human resource development for putting the systems and mechanisms into operation.

Although the scale of the mechanisms and systems varies, the number of projects in iii) above is the largest among JICA’s projects.

When it comes to the concrete projects implemented by JICA aimed at governance, improvement in developing countries can be categorized into three major issues

(sub-categories): i) promoting the rule of law; ii) improving the public administration function; and iii) establishing democratic systems. The following is a summary of the major issues (sub-sectors) and the characteristics of JICA's current cooperation on those issues.

(i) Promoting the Rule of Law

The focus of assistance will be to facilitate the efforts of developing countries to develop legislation, aimed at moving towards a market economy or establishing the rule of law. Assistance for development of legal institutions will include not only assistance for the drafting and enactment of bills, but also for the development of various systems of law enforcement and their application (assistance for judiciary reform), and for human resource development in the legal profession.

(ii) Improving the Public Administration Function

Its focus will be to facilitate institutional development which is harmonized with the ownership and self-reliant efforts of the partner countries and existing socio-economic conditions, with emphasis on their conducting the processes on their own. "Improvement of the efficiency and effectiveness of administrative functions," "assistance for harmonizing decentralization," and "promotion of participation and improvement in transparency" will be the three important cooperation issues.

(iii) Establishing Democratic Systems

It is based on respect for ownership of the partner countries and focused on assisting democratic advancement towards enhanced basic freedoms and protection and promotion of human rights from long-term perspectives. The major cooperation issues are assistance for elections, assistance for the legislature and assistance to the police and criminal justice sectors.

C. JICA Approach to Anti-Corruption

Responding to the increased number of requests from our partner countries concerning anti-corruption measures, JICA studied and pulled together approaches to tackle corruption-related issues in 2010. As it was introduced above, JICA has conducted a study towards good governance in 2004, which also touched upon corruption-related issues. In the report, it was explained that: "Corruption is regarded as one of the values which good governance can tackle ... For the assistance in anti-corruption related sector, development of

anti-corruption system, strengthening oversight mechanisms, and thoroughness of transparency would be major intervention.”

Based on this initial idea, JICA has studied current international trends, assistance implemented by other donors, efforts done by governments as well as the private sector, and summarized our aim to combat corruption, four pillars to tackle this issue and our approaches for each pillar.

1. Aim:

Support establishment of anti-corruption systems and implementation of the systems, as part of good governance.

As described above, the definition of JICA’s assistance in governance is “the development and operation of all the institutions, including government organizations and systems, the synergetic relationship among government, civil society and the private sector, and the processes of decision making, in order to mobilize, allocate and manage the resources of the country efficiently and in a manner that reflects the will of the people, with the aim of realizing the stability and development of the country.” Therefore, the purpose of assistance in the anti-corruption sector is to *support establishment of a system and governing structure to prevent/deter corrupted actions.*

2. Four Pillars and Its Approach to Anti-Corruption

(i) Strengthen the Rule of Law and Institutional Development for Deterring Corruption

Prevention of corrupted actions by: i) developing legal and regulatory frameworks and their enforcement systems to detect and penalize corrupted acts; ii) establishing clear administrative and judicial procedures and improve the administrations; iii) building awareness of the civil society and improve access to the law; and iv) developing the legal system and institutions to promote fair and transparent political activities.

(ii) Enhance Efficiency, Transparency, and Accountability of Public Administration

Prevention of corrupted actions by: i) improving the capacity of public financial management; ii) reducing opportunities of corruption and improve transparency in revenue administration; iii) improving the systems of public procurement; and iv) promoting civil service management reform and ethics.

(iii) Strengthen National Checks and Balances Mechanism

Prevention of corrupted actions by: i) strengthening the function and capability of supreme audit institutions (SAI); ii) strengthening parliamentary oversight; iii) improving access to information and strengthen media; and iv) creating broader public participation.

(iv) Promote Fair and Healthy Competition in the Private Sector

Prevention of corrupted actions by: i) improving regulatory governance; ii) increasing the commitment of private enterprises to anti-corruption and promote their compliance with laws and regulations; and iii) creating a business environment to reduce the vulnerability to corruption.

D. Project Cases

1. Vietnam

(i) Holistic Approach

In Vietnam, as Japan's ODA loan relates to corruption, we have a holistic approach to combat corruption. However, each intervention is rather small, as our resource is limited. Some of the intervention does not necessarily address anti-corruption. We are implementing the following projects:

- (a) Improving transparency in public procurement
- (b) Strengthening supervisory function towards public administration
- (c) Supporting implementation of Vietnam's anti-corruption strategy
- (d) Technical Assistance for the Legal and Judicial System Reform
- (e) Capacity development of National Assembly of Vietnam

2. Tanzania

(i) Capacity Development Programme for Internal Audit (Sep. 2009 – August 2012)

This project falls in “Improvement of the capacity of public financial management” in our approach towards anti-corruption. The project purpose and expected outputs are as follows:

(a) Aim

The foundation of the technical guidance of internal audit of MDAs (Ministries,

Departments and Agencies) is established.

(b) Project Outputs

- (i) Training courses for internal audit are developed in accordance with skill levels.
- (ii) A user-friendly internal audit handbook is prepared.
- (iii) CIAU's (Central Internal Audit Units) staff and selected MDA internal auditors are trained as Champions.
- (iv) Training of MDAs' internal auditors by Champions is introduced.
- (v) Monitoring of other MDA internal audits and the handbook revision process are introduced.

3. China

(i) Training Program on Anti-Corruption in the Administrative Management Field and Administrative Supervision (2009 - 2011)

This project falls in "Improvement of public procurement" in our approach towards anti-corruption. The project purpose and training components are as follows:

(a) Aim

Develop capacity of inspection officers in charge of anti-corruption.

(b) Training Program

- (i) Human Resource Management
- (ii) Public Procurement/Tender for Public Works
- (iii) Public Information Disclosure
- (iv) Whistle-blowing

4. Uzbekistan

(i) Improvement of Administrative Procedures for the Development of Private Sector Activities (Apr. 2010 – Mar. 2012)

This project falls in "Develop legal and regulatory frameworks and their enforcement systems to detect and penalize corrupted acts" in our approach towards anti-corruption. The project purpose and expected outputs are as follows:

(a) Aim

Develop institutional capacity and structures in the the Ministry of Justice for implementing appropriate administrative procedures.

(b) Project Outputs

- (i) Administrative procedures under the Law on Guarantees of the Freedom of Entrepreneurship Activities (LGFEA) are made clear to officials and entrepreneurs.
- (ii) Model Rules concerning administrative procedures and Implementation Manual of the Model Rules are prepared for enhancing appropriate administrative procedures.
- (iii) Capacity of Ministry of Justice is strengthened to monitor implementation of rules and regulations concerning provisions of administrative procedures under LGFEA.

5. Honduras

(i) Development Capacity Building in the Western Region of Republic of Honduras (Sep. 2006 - Oct. 2010)

This project falls in “Create broader public participation” in our approach toward anti-corruption. The project purpose and expected outputs are as follows:

(a) Aim

Establish an appropriate model to socialize, formulate, execute, manage, operate and properly maintain the projects of consolidation of social infrastructure in the Higuito Inter-Municipal Council and member municipalities.

(b) Project Outputs

- (i) Improve formulation process of Municipal Development Plan and social infrastructure projects;
- (ii) Strengthen capacity of the functionaries of the Higuito Inter-Municipal Council and member municipalities, and of the communities;
- (iii) Diffuse the model to other areas.

6. Group Training

In addition to the projects introduced above, JICA implements some “group” training courses concerning anti-corruption. These training courses involve the transfer of Japanese specialized knowledge and technology. Training programs are implemented with the cooperation of Japan’s national and local governments, universities, private enterprises,

non-governmental organizations and other relevant parties. The training courses are as follows:

- (i) *Seminar on Government Audit Practices for ASOSAI (Asian Organization of Supreme Audit Institutions) Member Supreme Audit Institutions (supported by the Board of Audit)*
- (ii) *Seminar on Government Audit (supported by the Board of Audit)*
- (iii) *Seminar on National Government Administration for Senior Officials (supported by National Personnel Authority)*
- (iv) *Seminar on Public Personnel Administration for Middle Level Officials (supported by National Personnel Authority)*

COMPETITION AND RESTRICTIONS ON BUREAUCRAT-LED BID-RIGGING PRACTICES

*Fumio Noguchi**

Japan Fair Trade Commission (JFTC):

JFTC controls actions that will restrict inter-company competition.

Many cases: Administrative investigations

- Some malicious or serious cases: Compulsory investigation of criminal cases; Filing an accusation with Public Prosecutor's Office

Anticompetitive Acts

Cartel: e.g. Raising the price level in unison on the industry-wide scale

Bid-rigging: The winning bidder is designated in advance. Other firms cooperate so that the winning bidder will be awarded the contract.

Private monopolization: Controlling or excluding competitors

Unfair business practices

Inter-company Competition

Lowering prices

Developing technology

Innovations in corporate management styles

Fostering moral values: Company staff will not seek their personal interests in the company.

Edo Era: 1603–1868

The Tokugawa shogunate served as the central government, while various clans (local governments) ruled local areas.

Japan's Feudal System

The shogunate granted feudal lords their own territories, and the lords managed them. Japan had more than 200 clans at that time.

Feudal lords and their lieges needed to make their territories flourish in order for their offspring to prosper.

* Director General, Trade Practices Department, Japan Fair Trade Commission.

“Issho Kenmei”...“all over creation”

Direct meaning is “working hard to protect land”.

Clans served like a corporation where staff members share the same destiny.

Large-scale flood control projects, development of new rice fields, fostering of commerce and industry sectors: Competition among local governments

- Population increased threefold during the Edo era.
- Education spread (the three R’s: Reading, wRiting and aRithmetic)
- *Samurai* moral values are similar to corporate ethics.

Since the Meiji era

Accumulation during the Edo era served as a driving force for national development

Becoming a centralized nation

- Competitive local governments faded out.

However, *Samurai* moral values lingered on, serving as a mental backbone.

Bid-rigging

Competitors designate a prospective winning bidder prior to the public sector’s competitive bidding.

Corporations other than the prospective winning bidder will cooperate so that the prospective winning bidder will be awarded the contract.

- It looks like a competition on the surface, but it is not a competition in real terms: The successful bidder will enjoy high profits.

Collusive Bidding at the Initiative of Government Officials

The ordering party gets involved in designating prospective winning bidders.

- Staff members of the ordering party do not usually earn direct rewards for their involvement.
- Retirees of the ordering party will parachute into winning bidders or their related organizations.

Actions against Bid-Rigging

JFTC: Issues cease and desist orders, surcharge payment orders, or files criminal accusations in malicious or serious cases (criminal penalties will be imposed).

Ordering party: Seeks compensation for damages, demands payment of penalty, or

suspends the bidding qualifications.

Act for the Prevention of Collusive Bid-Rigging at the Initiative of Government Officials

Came into force in 2003.

This legislation prohibits the following acts:

- 1) Making bid participants engage in bid-rigging;
- 2) Expressing an intention on winning bidders;
- 3) Leaking confidential information on order placement; and
- 4) Aiding bid-rigging.

Improvement measures by ordering party:

- JFTC recognizes the ordering party's involvement
- JFTC demands the ordering party to take improvement measures
- The ordering party will conduct necessary investigations
- If the ordering party gets involved, it will take necessary improvement measures, such as improving its bidding systems.
- The ordering party will disclose to the general public investigation results as well as improvement measures and also report them to JFTC.
- Actions against staff members
Seeking compensation for damages, or taking disciplinary measures (dismissal/suspension from office, salary cut, etc.)

Criminal penalties (abetting bid-rigging or leaking secrets: Imprisonment with labour for a maximum of five years, or a maximum fine of ¥2.5 million, will be imposed): Independent of JFTC's investigation.

Past Cases

1. The order for construction work placed by Iwamizawa City (Hokkaido) (in 2003)

- 1) The officials of the city government selected a prospective winning bidder for each construction project and gave such information to the industry group.
 - 2) The officials of city government told the industry group about the estimated construction cost (much higher than the actual cost) for each project.
- In this way, the city hall made bid participants engage in bid-rigging.

In response to this case of bid-rigging, the city government decided to prepare instruction manuals, expand the general competitive bidding system, and voluntarily refrain from re-employment of the city government's retirees at related organizations. (The ordering parties took the same approach in subsequent cases.)

2. The order for construction work placed by Niigata City (Niigata Prefecture) (in 2004)

In response to a request from a prospective winning bidder (designated by bidding participants), the city government officials passed on its estimated project cost.

The Niigata District Public Prosecutor's Office prosecuted four city government officials for Obstruction of Public Auction. The Supreme Court has delivered the final and conclusive judgment, imposing imprisonment with labour for one year to one and a half years, with a suspended sentence of three years.

3. The order for upper portion bridge work placed by Japan Highway Public Corp. (in 2005)

1) Japan Highway Public Corp. (JHPC) received an allocation list of prospective winning bidders from JHPC retirees and approved such list.

2) In response to requests from JHPC retirees, JHPC placed multiple orders by splitting the entire project into several portions.

JHPC made bidding participants engage in bid-rigging in order to provide reemployment opportunities for JHPC retirees.

JFTC accused noncompliant enterprises as well as a vice president and an executive board member of violating the antitrust law. The Supreme Court delivered a conclusive judgment that imposed imprisonment with labour for two and half years with a suspended sentence of four years, and imprisonment with labour for two years with a suspended sentence of three years.

JHPC demanded two executive board members to pay compensation for damages of approximately ¥8.7 billion jointly and severally with the noncompliant enterprises.

4. The order for the water gate work placed by the Ministry of Land, Infrastructure, Transport and Tourism (in 2007)

The officials of the Ministry of Land, Infrastructure, Transport and Tourism (MLIT) informed a bid facilitator of their intended winning bidder so that bid-rigging would go smoothly.

MLIT demanded two former staff members to pay compensation for damages of approximately ¥800 million jointly and severally with the noncompliant enterprises and three MLIT retirees.

5. The order for civil engineering/building construction work placed by Defense Facilities Administration Agency (in 2007)

Based on the status, age, etc., of the Defense Facilities Administration Agency (DFAA) retirees at the time of their retirement, the officials of DFAA calculated the annual target of new orders acceptance for each construction firm where DFAA retirees have parachuted. Within such calculation result, DFAA selected prospective winning bidders for each construction project and provided such information to the industry stakeholders through DFAA retirees.

Then, DFAA was abolished and merged with the Ministry of Defense in September 2007.

6. The order for forest road survey design tasks placed by the Japan Green Resources Agency (in 2007)

The JGRA selected the prospective winning bidder on the basis of the number of former colleagues who had joined the bidding company, and the extent of the company's enthusiasm for the contract. After selecting the prospective winning bidder for each project, the JGRA informed the winning bidder that it had been chosen as such.

JFTC filed an accusation with the Prosecutor-General that the noncompliant enterprises and a former executive board member and a former manager violated the antitrust law. The Tokyo District Court delivered the conclusive judgment, imposing imprisonment with labour for two years, with a suspended sentence of four years, and imprisonment with labour for one and a half years, with a suspended sentence of three years.

7. The order for the sewage treatment facility's electric engineering work placed by Sapporo City (in 2008).

8. The order for vehicle management tasks placed by the Ministry of Land, Infrastructure, Transport and Tourism (in 2009).

9. The order for fixtures and furniture placed by the Japan Air Self-Defense Force (in 2010).

10. The order for civil engineering package work placed by Aomori City (in 2010).

11. The orders for civil engineering package work and pavement work placed by Ibaraki Prefecture (in 2011).




G20 Anti-Corruption

Toshifumi Ishida

International Safety and Security Cooperation Division
Ministry of Foreign Affairs of Japan

The views expressed in this presentation do not necessarily represent the views of the Government of Japan.

1



Outline of the presentation

I. Anti-Corruption:G8 and G20 related commitments

- Toronto Summit (June 2010)
- Seoul Summit (Nov 2010)
- Cannes Summit (Nov 2011)

ii. G20 Anti-Corruption Action Plan

- Implementation of the international legislative framework
- National measures to prevent and combat corruption
- International cooperation
- Public-Private cooperation

III. Japan's implementation of the Action Plan

2

I . Anti-Corruption from G8 to G20

-G7/ G8 discussed anti-corruption

In 2003 (**Evian**): the G8 expressed its continuing strong political will to engage in the fight against corruption and the mismanagement of public resources.

2004 (**Sea Island**), 2005 (**Gleneagles**), 2006 (**St. Petersburg**), 2007 (**Heiligendamm**)

2008 Hokkaido Toyako: Accountability Report: Implementation Review of G8 on Anti-Corruption Commitments

-G20-major trading nations:

have a special responsibility to prevent and tackle corruption, to establish legal and policy frameworks that promote a clean business environment (G20 Anti-Corruption Action Plan, Nov 2010)

3

Related commitments and activities

- **G20 Pittsburgh Summit (Sep 2009)**

- prevent illicit flows from developing countries

- **G20 Toronto Summit (June 2010)**

- Corruption threatens the integrity of markets, undermines fair competition, distorts resource allocation, destroys public trust and undermines the rule of law...

- coordinated work by the G20 required: **establishment of the G20 Anti-Corruption WG** to make comprehensive recommendations how G20 could continue to make practical and valuable contributions to international efforts to combat corruption and lead by example

- **G20 Anti-corruption WG was established**

- Co-chairs (Indonesia and France)

- G20 countries and related international organizations

- Meeting in Indonesia

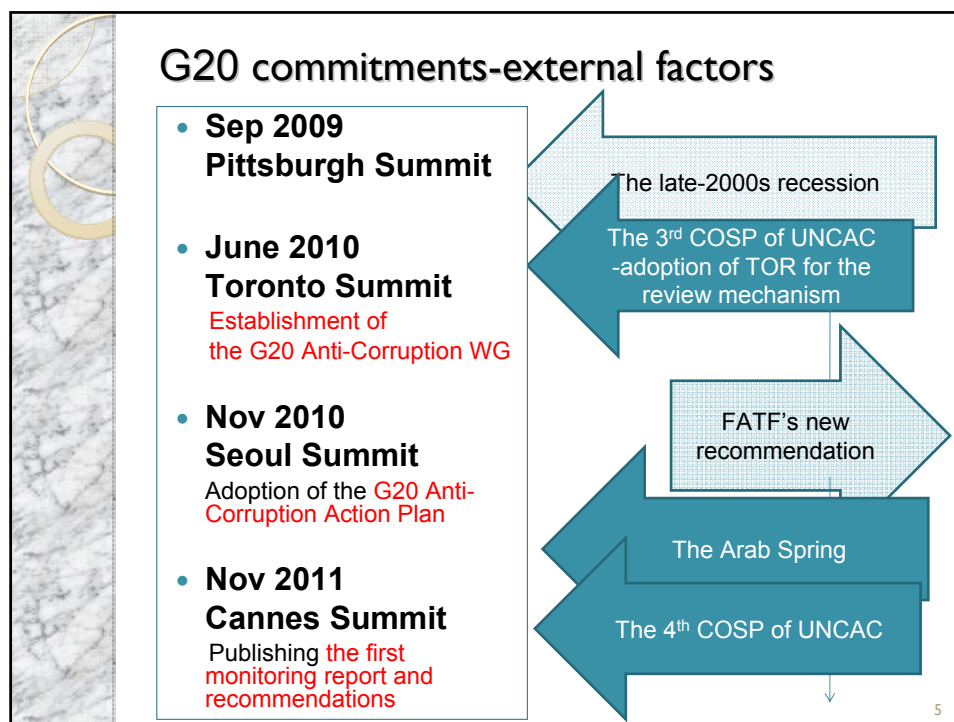
- **G20 Seoul Summit (Nov 2010)**

- Adoption of the **G20 Anti-Corruption Action Plan**

- **G20 Cannes Summit (Nov 2011)**

- Publishing the first monitoring report, incl. recommendations to leaders

4



II . Anti-Corruption Action Plan, Nov 2010

- **Implementation of the international legislative framework** (action points 1 & 2)
 - Ratification of the UNCAC as soon as possible
 - Conduct UNCAC review in an effective and thorough manner
 - Criminalization of bribery of foreign public officials
- **National measures to prevent and combat corruption** (action points 3, 7, 8 & 9)
 - Strengthening its effort to prevent and combat money laundering
 - Cooperation with the FATF
 - Enactment and implementation of whistleblower protection rules
 - Strengthening the anti-corruption bodies
 - Promoting integrity, transparency, accountability and the prevention of corruption

6

Anti-Corruption Action Plan, Nov 2010

International Cooperation (action points 4, 5 & 6)

- Denying entry of corrupt officials- consider a cooperative framework
- Promoting the use of UNCAC in extradition, mutual legal assistance and asset recovery. Encouraging the signing of related treaties
- Establishing clear and effective channels for mutual legal assistance and other forms of international cooperation, on corruption and asset recovery
- Transparency and high ethical standards in international organizations

Public-Private Partnership

- Strengthen partnership between the public-private sector.

7

Japan's implementation of the Action Plan

● **Implementation of the international legislative framework**

- Criminalization of bribery of foreign public officials

Amended the Unfair Competition Prevention Law (UCPL) in 1998



Has Concluded the OECD Convention on Bribery of Foreign Public Officials in International Business Transactions

Participates actively in the OECD Working Group on Bribery in International Business Transactions
- Phase 3 review has been undergone-

Challenge

- Conclusion of the UNCAC as soon as possible
Japan has signed but not yet concluded

8

Japan's implementation of the Action Plan

- **National measures to prevent and combat corruption**

- Strengthening its effort to prevent and combat money laundering



- Has strengthened its anti-money laundering legislation; The Act on Prevention of Transfer of Criminal Proceeds was amended in April 2011.

- **International cooperation**

- To encourage the signing of bilateral and multilateral treaties on extradition, mutual legal assistance and asset recovery



- Mutual legal assistance treaty/agreement with **EU** and **Russia** – both entered into force in early 2011.

9

G20 Cannes Summit

Communiqué- FINAL DECLARATION

Intensifying our Fight against Corruption

We have made significant progress in implementing the Action Plan

The First monitoring report by the WG was submitted

- An assessment of the collective progress made by the Working Group and the G20
- Significant individual country progress
- A set of recommendations for consideration by Leaders

10



Compliance Research Office



Fifth Regional Seminar on Good Governance 8th December 2011

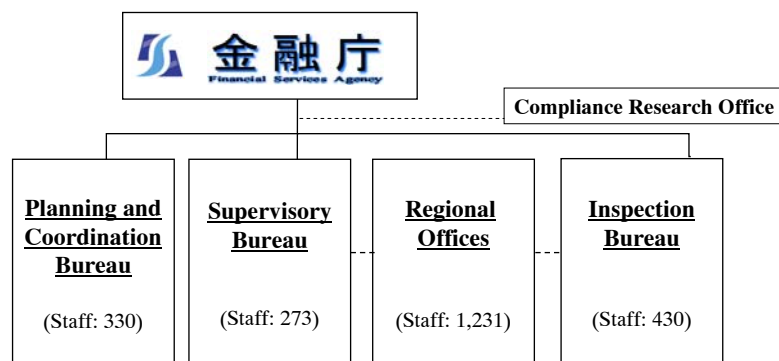
Hideshiro Karasawa
Financial Services Agency

(Views expressed in this presentation are those of author and do not necessarily reflect views of the FSA Japan.)

1



Organizational Structure of the FSA



2



Compliance Research Office

- Established: April 2006
- Based on the spirit of Whistleblower Protection Act
 - Article 1 (Purpose)

The Purpose of this Act is to protect Whistleblowers, to provide for nullity, etc. of dismissal of Whistleblower on the grounds of Whistleblowing and the measures that the business operator and Administrative Organ shall take concerning Whistleblowing, and to promote compliance with the laws and regulations concerning the protection of life, body, property.....

<http://www.cas.go.jp/jp/seisaku/hourei/data/WPA.pdf>

3



Contents

- Scope of business
 - Compliance with laws and regulations regarding the FSA's conduct (including acts of employees)
 - Whistleblowing to an Administrative Organ with the authority to impose Disposition or Recommendation, etc.;
- Organization

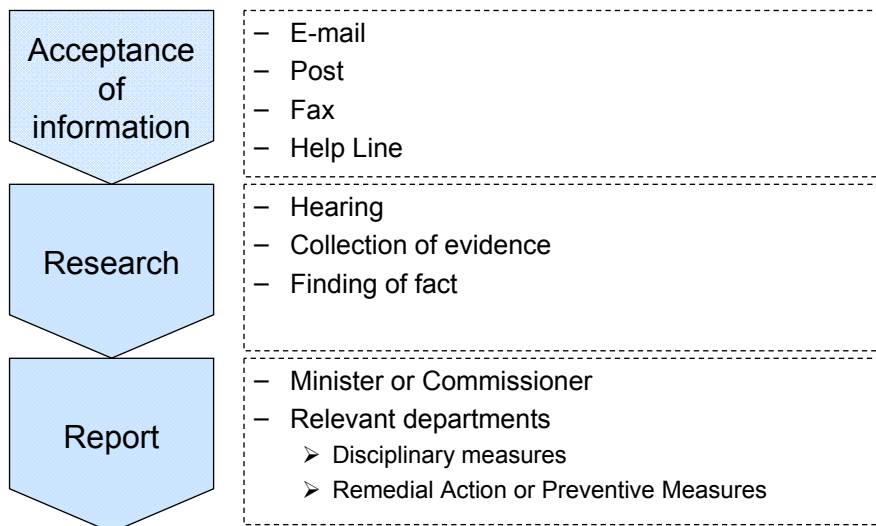
All members are lawyers

 - Chief (1)・・・Professor and attorney
 - Members (8)
 - Administrative Law judge (1)
 - Public prosecutor (1)
 - Attorney (6)

4



From Beginning to End...



5



Points

- Information
 - Variety of means to obtain information
- Independence
 - Organizations do not belong to any Bureaus
 - Composed of legal experts
- Confidentiality
 - Protection of personal information
 - Prevention of Conflict of Interest

6

Thank you very much!



www.fsa.go.jp
hideshiro.karasawa@fsa.go.jp





Contracting Procedures of the Japanese Government

《 Content 》

- ① Outline of the contracting scheme
- ② Programmes for fair public procurement

<For the Regional Seminar on Good Governance, the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI)>

Junichi Izumi
Legal Division, Budget Bureau, Ministry of Finance



① Outline of the Contracting Scheme (Basic act: Public Accounting Act)

How Does the Japanese Government Decide its Counterparty?

《 Competitive approaches 》

General competitive contracts

This type of contracting method is employed in principle.
The ordering party makes public announcement, decides a successful bidder through public bidding among the unspecified number of bidding participants, and enters into a contract with the successful bidder.

Designated competitive contracts

The ordering party decides successful bidder through bidding among competition participants designated by the ordering party, and enters into a contract with the successful bidder.

Auction sale

An unspecified number of competition participants are invited through public announcement and join competition each other orally or with their specific act.

《 Noncompetitive approach 》

Negotiated contracts

The ordering party decides its counterparty and enters into a contract with such counterparty, without employing the competitive bidding process.

Negotiated Contracts

Negotiated contract is employed in the following cases:

- ① Competition is not possible owing to the characteristics or purposes of the contract <Noncompetitive negotiated contract>
 - A contract is for a land lot at an unsubstitutable location (for example, a road site). Purchasing a land lot at a different location will not accomplish the intended purpose of the contract.
 - The counterparty has special know-how that is unsubstitutable with the other person's know-how, and the government will not accomplish the intended goal of civil services if it does not enter into a contract with the counterparty.
 - A museum intends to purchase a certain work by a certain artist.
 - The government intends to procure defense equipment manufactured under license.
- ② Competition is not desirable owing to urgent needs.
 - The government takes first-aid actions during disasters to protect a citizen's life and ensures safety of properties when a disaster occurs.
- ③ Competition will pose some negative impacts
 - The government sometimes needs to enter into an additional contract for ongoing construction projects if an unexpected circumstance occurs.


Negotiated contract may be employed in the following cases:

Estimated contract price stands at a small sum, etc.

(Example of small-sum negotiated contracts)	(Other example)
Construction or production: ¥2.5 million or less	Unsuccessful negotiated contracts without successful bidder
Acquisition of physical goods: ¥1.6 million or less	This type of contract is employed if competitive bidding or follow-up bidding does not yield successful bidder, or if successful bidder fails to enter into the contract.



② Programmes for Fair Public Procurement



Outline of Scandals

[Fractionated, small-sum negotiated contract scandal (cash registers)] July 2004

Social Insurance Agency only explained to certain providers the specifications of cash registers and the number of cash registers installed, and it entered into negotiated contracts. In addition, social insurance offices have split up the purchasing unit into small-lot orders of nine cash registers or less without justifiable reasons.

[Bridge bid-rigging scandal] May 2005

In the central government's construction projects of steel bridges, 47 companies that belong to the two bid-rigging societies (Society K and Society A) engaged in collusive bidding (by adjusting new order acceptance) and decided successful bidders and bid prices in advance on the basis of the past records so that successful bidders would always win new orders.

* These 47 companies belonging to the bid-rigging societies have successfully won most orders for construction works placed by regional development bureaus of Ministry of Land, Infrastructure, Transport and Tourism from FY2002 to FY2004.

It is revealed that Society K and Society A have adjusted the approach to be followed by their member firms for accepting new orders placed by Japan Highway Public Corp. Executive officers of Japan Highway Public Corp. were also involved in the adjustment process of new order acceptance.

[DFAA-led bid-rigging scandal] January 2006

As for competitive bidding for US Yokota Air Base, Defense Facilities Administration Agency (DFAA) decided successful bidders in advance so that a bidder that accepts parachutists from former Defense Agency on the advantageous conditions will win new orders for construction works on favorable conditions.

Appropriate Public Procurement (Outline of Scandal and Actions Taken (1))

[Fractionated, small-sum negotiated contract scandal (cash registers)]

July 2004



- Handling clerical duties on negotiated contracts
(Notice of Ministry of Finance to the head of ministries/agencies dated February 25, 2005)
 - Imposing stricter disclosure criteria on negotiated contracts
Except for small-sum contracts (¥1 million in the case of a consignment contract), the ordering party must disclose counterparties, contract prices, and justifiable reasons on the website.
- Handling clerical duties on negotiated contract-type consignment contracts
(Notice of Director General of the Budget Bureau to directors of Accounting Division of ministries/agencies dated February 25, 2005)
 - Prohibiting lump-sum re-consignment and introducing an approval scheme for re-consignment

Appropriate Public Procurement (Outline of Scandal And Actions Taken (2))

[Bridge bid-rigging scandal] May 2005



- Instruction of the Prime Minister (with regard to amendment to "Act on Elimination and Prevention of Involvement in Bid Rigging, etc.")

Outline of amendments to "Act on Elimination and Prevention of Involvement in Bid Rigging, etc."
 - Creating criminal sentences for ordering party's staff
 - Expanding the meaning of "involvement in bid rigging etc."
 - Expanding the scope of ordering parties subject to this Act
 - Requiring disclosure of survey results on damage compensations and reasons for disciplinary actions against staff workers, etc.
- Setting up "Liaison Conference of Related Ministries/Agencies on Improvement in Bid Contracts for Public Works" (December 2005)

Appropriate Public Procurement (Outline of Scandal And Actions Taken (3))

[DFAA-led bid-rigging scandal] January 2006



- Setting up "Liaison Conference of Related Ministries/Agencies on Appropriate Public Procurement Practices" (January 2006)
- Programs for appropriate public procurement practices
(The February 2006 decision of "Liaison Conference of Related Ministries/Agencies on Appropriate Public Procurement Practices")
 - Public works: Increasing general competitive bidding and expanding the overall evaluation bidding approach
 - Negotiated contracts: Conducting emergency inspections, and expanding information disclosure on negotiated contracts


Appropriate Negotiated Contracts with Public-interest Corporations, etc. (The June 2006 decision of "Liaison Conference of Related Ministries/Agencies on Appropriate Public Procurement Practices")

[Developing the Negotiated Contracts Review Plan]

- Re-examining negotiated contracts with public interest corporations, and shifting approximately 70% of the negotiated contracts (on the monetary value basis) to general competitive bidding

[Programs after developing the Plan]

- Re-examining negotiated contracts with contracting parties other than public interest corporations on the basis of the same concept and revising the Negotiated Contracts Review Plan in January 2007
- Further enhancing information disclosure
- Setting up procurement-related one-stop information service desks at each ministry/agency, etc.



Appropriate Public Procurement (1) (Notice of Finance Minister to the head of ministry/agency dated August 25, 2006)


1. Actions for appropriate bidding and contracting practices

[Competitive bidding]

- Setting up eligibility for participating in competitive bidding as necessary for fair and rational competitions.
- Pushing ahead by introducing the overall evaluation bidding approach-based general competitive bidding for public procurement practices for R&D, survey research, public relations services, etc.

[Negotiated contracts]

- Except for counterparties clearly specified in applicable laws, the negotiated contracts will be replaced with general competitive bidding.
- ⇒ Negotiated contracts for civil service assistance tasks, survey research, or leasing services will be replaced with general competitive bidding (including the overall evaluation bidding approach-type general competitive bidding)



Appropriate Public Procurement (2) (Notice of Finance Minister to the head of ministry/agency dated August 25, 2006)

2. Actions for appropriate re-consignment practices

- Prohibiting lump-sum re-consignment
- Requiring contracting officer's prior approval in the case of re-consignment
- Identifying compliance schemes, etc.

3. Disclosing information on contracts

- Disclosing information on competitive bidding as well and improving user-friendliness of the overall contracting information, including public works information

⇒ Except for small-sum contracts, a list of all contracts will be disclosed.

[Information with improved visibility]

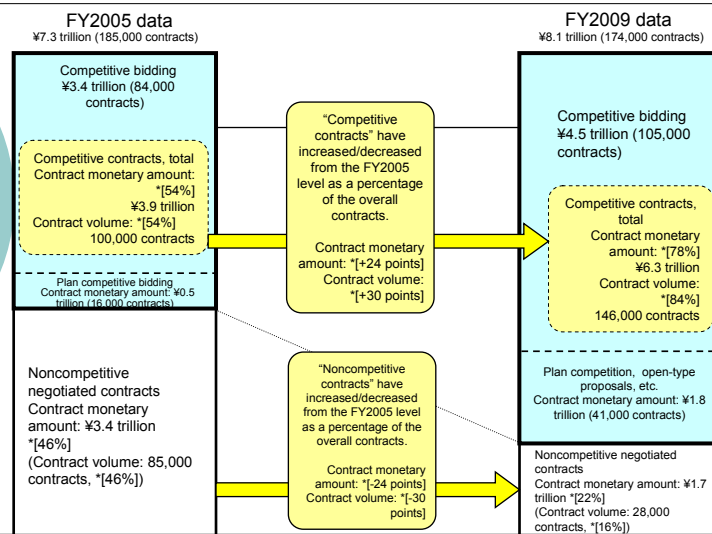
- Estimated contract prices - Successful bidding rate
- If the ordering party enters into a negotiated contract with a public interest corporation in its charge, the ordering party must disclose the number of central government's former regular civil servants serving for the public interest corporation as of the day of entering into such a contract.

Appropriate Public Procurement (3) (Notice of Finance Minister to the head of ministry/agency dated August 25, 2006)

4. Setting up procurement-related one-stop information service desks at each ministry/agency
5. Conducting internal audits
 - Putting emphasis on auditing negotiated contracts
 - Clearly identifying how internal audits are conducted, etc.
6. Preparing contract-related statistics
 - Preparing contract-related statistics every fiscal year (since FY2006)
 - Statistics on the number of contracts and contract prices
 - Statistics on negotiated contracts

Status of Competitive Contracting Practices in FY2009

- In FY2009, "noncompetitive negotiated contracts" have decreased since FY2005 as a percentage of the overall contracts by 24 points on the monetary value basis and by 30 points on the contract volume basis.



(Note 1) Data in parentheses with asterisk represent "competitive contracts" or "noncompetitive contracts" as a percentage of the overall contracts.
(Note 2) The total sum of indicated data may not be 100% in some cases because data are rounded off.

SYSTEM OF ETHICS OF PUBLIC SERVANTS IN JAPAN

*Yuji Takada**

I. THE ROLES OF THE NATIONAL PUBLIC SERVICE ETHICS BOARD

The National Personnel Authority is placed under the Cabinet Office of the Japanese government. Founded as a neutral and specialized third-party organization responsible for the personnel management of national public servants, the National Personnel Authority has the following functions: (a) to ensure fairness in personnel administration; (b) to compensate for the restrictions on basic labor rights; and (c) to act as a specialized agency for personnel administration.

The Ethics Board is set up under the National Personnel Authority as an institution specializing in the maintenance of ethics pertaining to the duties of national public servants.

II. SYSTEM OF ETHICS OF PUBLIC SERVANTS IN JAPAN

A. Assessment of Recent Achievements

1. Improvement in the ranking and score of CPI (Corruption Perceptions Index)

An NGO called Transparency International annually publishes CPI, which ranks countries by their perceived levels of corruption. Japan ranked 17th, scoring 7.8 points in the index in 2010 and ranked 14th, scoring 8 points in 2011 in the most recent survey. This is a significant improvement compared to the results in both ranking and score prior to the enactment of the National Public Service Ethics Law where Japan ranked 25th with the score of 5.8 points.

2. Decrease in the number of cases violating the Ethics Law

The number of violations had actually been on the rise until fiscal year 2008. Such increase was not necessarily because the level of awareness of ethics among public servants lowered. It was due to the fact that violations that had been overlooked started to come up to the surface because the rules and regulations stipulated in the Ethics Law became more widespread among the public officials and because the awareness of ethics among the private sector and the entire society saw an increase in recent years.

In the past couple of years, the number of cases in violation has decreased to around 20. This demonstrates that the public administration has become well versed in the stipulations in the Ethics Law, which has helped to raise the standard of ethics among public servants.

B. Structure of Duties of National Public Servants and Ethics System

The National Public Service Act specifies the duties that must be performed by all workers in the public sector. Based on the underlying premise that “every official, as a servant of all citizens, shall serve the public interest,” the law provides the various responsibilities of public servants such as their duty to obey the law and work orders, duty to refrain from taking

* Ethics Officer for Planning, Secretariat of the National Public Service Ethics Board.

labor dispute actions or any socially irresponsible actions, duty of confidentiality and the obligation to give undivided attention to duty.

The National Public Service Ethics Law is actually deeply connected to such duties of public servants.

Usually the term public service ethics is used in a broad sense referring to the general “behavior and attitude called for by a public servant.” However, the Ethics Law is positioned partly as a guideline that provides the minimum standards of the service rules that shall be followed by the officials. This is because its primary purpose is to prevent cozy ties between public servants and business entities by regulating donations and wining and dining by interested parties.

The underlying reason for this positioning is that when this law was enacted, there was a lot of discussion as to whether it was appropriate to create a law to regulate “ethics,” whose values are tied to emotions. There were concerns that such law could infringe the freedom of thought and conscience protected by the constitution. In addition, the primary focus of the law was to prevent bribery and other misconduct.

C. Background to the Enactment of the Ethics Law

The administration in the mid-90s was plagued by scandals by high government officials. One of the most scandalous cases was the arrest of a bureaucrat of the then Ministry of Health and Welfare on bribery charges. He was accused for accepting monetary compensation from the head of a social welfare corporation in exchange for favorable arrangements with regard to the grant of subsidy. A few other senior officials also received disciplinary punishment for repeatedly being treated in exchange for favors.

This scandal prompted the Administrative Vice-Ministers’ Conference in 1996 to reach an agreement to formulate the code of ethics for public officials and have each ministry and government office draw it up as an order or an internal rule.

However, shortly after this incident, another case of serious misconduct occurred in 1998. This time it was the financial scandal involving the Ministry of Finance. The head of the financial inspection department and others were arrested on charges of receiving unlawful corporate entertainment in exchange for favors such as informing of the inspection dates beforehand. More than 100 public officials were subject to punishment for receiving lavish wining and dining from financial institutions, etc.

The repeated scandals made it clear that it was not rational to have confidence in the self-cleansing mechanism of the bureaucrats. This triggered the movement to legally stipulate the code of ethics of public servants. The National Public Service Ethics Law was established on August 13, 1999 and was put into effect in April 2000. This law is distinctive in the sense that it is lawmaker-initiated legislation and that it won a unanimous vote among all political parties.

The development of the Ethics Law has involved such a scandalous and dishonorable course for government employees. We as public servants should always bear that in mind and continue to have a sense of crisis.

D. Framework of the System of Ethics of Public Servants

Within the Ethics Law and Ethics Regulation, there is the Code of Ethical Conduct, which stipulates the standards for proper behavior of public servants. There are two pillars that provide the basis for more specific guidelines: “Rules of Conduct” and “Rules of Reporting.”

The Ethics Board has been set up to implement such rules. Whoever is in the position equivalent to that of the administrative vice-minister assumes the role of Ethics Officer in each ministry and government office.

The Ethics Board is a collegial body consisting of four members including the President. The members either come from a legal, financial or academic circle or have worked in a labor organization. Within its organization, the Ethics Board has a Secretariat, which currently consists of 14 staff members.

The National Public Service Ethics Board has various authorities pertaining to the maintenance of ethics among national public service officials. The authorities and responsibilities include:

- Comprehensive planning and coordination of training programs for maintaining ethics of public officials; and
- Investigation of cases in violation of the Ethics Law, instructions on investigations in disciplinary proceedings and approval of disciplinary measures.

E. Code of Ethical Conduct

The Code of Ethical Conduct provides the guidelines for public servants to behave in an ethical manner.

The code is comprised of five points: (a) public servants shall remember that they are servants of all citizens and always engage in their duties with fairness; (b) public servants shall not abuse their duties and authorities for personal gain; (c) public servants shall not take any actions resulting in public suspicion or distrust; (d) public servants shall exert their utmost efforts in performing their duties; and (e) public servants shall always behave while bearing in mind that their actions, even while off duty, may influence the public trust.

F. Rules of Conduct

“Rules of Conduct” has two parts: “prohibited actions involving an interested party” and “other prohibited actions.”

Since the Ethics Law was formulated due to the scandals of public officials becoming too cozy with business entities with special interests, the actions prohibited in the regulations for ethics primarily apply to those considered inappropriate between public servants and interested parties.

Interested parties refer to parties that may directly benefit or be penalized through the public servants’ duties involving permission/authorization, on-site inspections and contracts.

To be specific, “prohibited actions involving an interested party” include the following:

- To receive gifts;
- To receive wining and dining; and
- To rent goods and receive services free of charge.

As an exception, “to receive widely distributed marketing materials” is not considered as a prohibited action.

“Other prohibited actions” include the following:

- To receive excessive wining and dining reasonably deemed inappropriate under socially accepted conventions; and
- To engage in an organized violating act such as section chief and other management-level staff letting the wrongdoings of his/her subordinate pass.

G. Rules of Reporting

The other pillar in the Ethics Law is the “Rules of Reporting.” There are three reporting systems:

- (a) reporting on the donations received from business entities and other parties;
- (b) reporting on the dealings in the stock market during the year; and
- (c) reporting on the income earned during the year.

All of these rules have been introduced in order to ensure the transparency regarding the officials’ contact with business entities and to check whether there was an act of receiving inappropriate donations or compensations from interested parties.

The Ethics Board reviews the copies of various reports submitted by the heads of each ministry and government office.

H. Investigations of Cases Suspected to be Violating the Ethics Law and Disciplinary Measures

Before the Ethics Law was in effect, the disciplinary measures were decided based on the discretion of each ministry and government office. There were many criticisms that the punishment was too light and that the public servants were extremely lenient on their fellow workers.

Therefore, the cases suspected to be in violation of the Ethics Law are thoroughly investigated and the subsequent disciplinary measures are strictly enforced.

To be more specific, the mechanism is set up so that the Ethics Board would be deeply involved in the process. For example, it is required to report the investigation results to the Ethics Board and to obtain the approval of the Board in determining the penalties.

I. Disciplinary Measures for Violating the Ethics Law

Any violations of the Ethics Law and Ethics Regulation are subject to disciplinary measures whose criteria are defined in the Rules of the National Personnel Authority (22-1).

III. EFFORTS TO ENFORCE THE RULES

Regulations similar to the Ethics Law exist outside of Japan. Then why is it that scandals and misconduct by public servants have shown a drastic decrease particularly in Japan?

The Ethics Board carries out various measures to enforce the existing rules.

A. Training and Educational Activities

More than a dozen of training workshops each year hosted by the Ethics Board are carried out in major cities all over Japan.

In addition, the Ethics Board places great emphasis on developing training materials, such as PowerPoint slides for explaining the system and DVDs for case studies, to fully support the ethics training workshops carried out by ministries and government offices. The DVDs for case studies in particular have received favorable reviews as specific cases are presented in an easy-to-understand dramatized form.

There are somewhere between 100,000 to 200,000 people a year who participate in the ethics training workshops held by ministries and government offices. This translates to one or two persons out of every three national public officials in regular government service receiving some sort of training pertaining to ethics every year.

In addition, the Ethics Board displays posters, distributes leaflets, organizes lectures and engages in various other activities particularly during the week between December 1 and 7, which is designated as Ethics Week to increase awareness of ethics among public servants.

Since emphasis is placed on the role of top officials, Ethics Officers are required to send out emails to all staff in their team to raise their consciousness towards ethics.

Furthermore, the Ethics Board actively engages in activities to educate those outside of the government by preparing a variety of brochures to improve the understanding of private businesses and other parties that deal with the public sector.

B. Responses after Misconduct Takes Place

It is not possible to undo what has already been done. Therefore, it is crucial to take steps to minimize the damage as much as possible after misconduct takes place.

If it takes too much time to determine the disciplinary measures, people may think that there is still something else that has not come to the surface. Also, if the punishment is too light, the organization's self-cleansing mechanism may be put to question.

On the basis of such facts, the Ethics Board strives to coordinate with ministries and government offices to promptly carry out investigations and strictly enforce disciplinary

measures.

C. Enhancing and Reinforcing the System to Maintain Ethics

One of the projects that the Ethics Board is currently focusing on is the establishment of an internal reporting system. Reports from the inside enable early detection and make it possible to take preemptive measures against suspicious cases, contributing to the prevention of misconduct. It is important to change the workers' mindset so they realize that reporting misconduct is vital for the sake of the organization and that it is their obligation to do so.

It is also essential to make sure that whoever informs of the misconduct does not suffer any consequences. The informer may experience inconvenience by just revealing his or her name, let alone end up feeling awkward in the organization. It is necessary to be considerate of the informer by keeping the identity unknown after the first contact if the name was revealed and also being open to anonymous reports.

Currently, all ministries and government offices have set up contacts for internal reporting. The issue at hand will be how to fully make use of the system so all workers do not feel hesitant to utilize it when needed.

IV. CURRENT ISSUES

Every year the Ethics Board conducts a questionnaire survey that targets the general public as well as public servants to examine the current state of ethics among public officials.

The results show that the public at large tends to be most critical of the ethical standards of national public servants while the public servants themselves are the least critical.

This demonstrates the fact that the consciousness level of public servants is not at the level that fulfills the standards required by the citizens, which is quite problematic.

V. FUTURE AGENDA

It has been over 10 years since the Ethics Law was put into effect. It can be said that the rules specified in the law to be followed by national public servants are becoming widely known and fairly well-established.

However, it is undeniable that there is a large discrepancy between the situation perceived by public servants and the reality seen through the eyes of the general public. Therefore, in order to address this issue, the main focus of future efforts is to be placed on the following three areas in the next 10 years.

A. Developing the Ethical Mindset of Public Servants

Merely providing the knowledge is not going to be sufficient from now on. It is becoming more and more important to help public servants develop their ethical mindset to one that encompasses the behavior, attitude and work ethics that are more appropriate for someone serving the public.

B. Constructing an Ethical Climate in the Organization

It is necessary to further enhance and reinforce the system to maintain ethics by promoting the use of the reporting system, building an operation control that inhibits misconduct and setting up an investigation system for when misconduct occurs.

C. Enforcing Strict Measures against Ethics Law Violation

It is essential to analyze the motive and cause of violating the Ethics Law in order to take proper measures to prevent the same thing from happening.

The Ethics Board will continue to actively address these issues to achieve the objective of the Ethics Law of securing the citizens' confidence in public servants.

The Ethics Board will work with other organizations to the utmost of its ability in further increasing the ethical standards of the Asia and Pacific region.

PARTICIPANTS' INDIVIDUAL PRESENTATIONS

Mr. Richard Anthony Donayre Fadullon & Mr. Medwin Sagutin Dizon, the Philippines

Mr. Kim Santepheap & Mr. Nuon Sothimon, Cambodia

Mr. Hoang Chi Kien & Mr. Tran Anh Tuan, Viet Nam

Mr. Mochammad Jasin Mashuri & Mr. Feri Wibisono, Indonesia

Ms. Vilaysinh Dainhansa & Mr. Phongsavanh Phommahaxay, Lao PDR

Mr. Ahmad Khusairi Yahaya & Mr. Azhar Bin Hamzah, Malaysia

Mr. San Win & Mr. Bo Maung, Myanmar

Ms. Srisanit Leelakriangsak Pinthip & Ms. Sutisa Sukchot, Thailand

PREVENTING CORRUPTION

EFFECTIVE ADMINISTRATIVE AND CRIMINAL JUSTICE MEASURES

Richard Fadullon^{*}

THE DEPARTMENT OF JUSTICE

The Department of Justice (DOJ) derives its mandate primarily from the Administrative Code of 1987 (Executive Order No 292). It carries out this mandate through the Department Proper and the Department's attached agencies under the direct control and supervision of the Secretary of Justice.

Under Executive Order No. 292, the Department of Justice is the government's principal law agency. As such, the Department serves as both the legal counsel and the government's prosecution arm and administers the government's criminal justice system in accordance with accepted processes. This consists of the investigation of crimes, the prosecution of offenders and administration of the correctional system; the implementation of laws on the admission and stay of aliens, citizenship, land titling system, the settlement of land problems involving small landowners and members of indigenous cultural communities; and the provision of free legal services to the indigent members of society.

ADMINISTRATION OF THE CRIMINAL JUSTICE SYSTEM

The Department of Justice investigates the commission of crimes and prosecutes offenders through the National Bureau of Investigation (NBI) and the National Prosecution Service (NPS),

^{*} Senior Deputy State Prosecutor, Department of Justice.

respectively. Likewise, the Department administers the probation and correction system of the country through the Bureau of Corrections (BUCOR), the Board of Pardons and Parole (BPP) and the Parole and Probation Administration (PPA). It will be noteworthy to mention that of all the departments of government, the Department of Justice has under it three (3) of the most vital components of the criminal justice system, namely: the Law Enforcement through the National Bureau of Investigation; the Prosecution and Defense through the National Prosecution Service and the Public Attorney's Office, respectively; and the Penitentiaries and Corrections through the Bureau of Corrections.

At present, the Department of Justice is headed by the Secretary of Justice, assisted by three (3) Undersecretaries and two (2) Assistant Secretaries. Attached to the Office of the Secretary of Justice are the following constituent units:

- Department Proper;
- Office of the Government Corporate Counsel;
- National Bureau of Investigation;
- Public Attorney's Office;
- Board of Pardons and Parole;
- Parole and Probation Administration;
- Bureau of Corrections; and the
- Land Registration Authority

III. THE NATIONAL PROSECUTION SERVICE (NPS)

UNDER THE OFFICE OF THE PROSECUTOR GENERAL

The National Prosecution Service assists the Secretary of Justice in the performance of the powers and functions of the Department relative to its role as the prosecution arm of the government, particularly in the investigation and prosecution of all criminal cases, except those under the exclusive jurisdiction of the Office of the Ombudsman. To date, there are about 1,700 public prosecutors spread in the fourteen (14) regions of the archipelago. This number though, still falls short of the 2,200 public prosecutors needed to effectively ensure the effective administration of justice in the country.

Nonetheless, in keeping with its mandate to investigate and prosecute cases of graft and corruption, and Joint Circular No. 95-001 between the Office of the Ombudsman and the Department of Justice, in 2010 alone, out of the reported 362 cases filed all over the country, 138 cases against erring government officials were filed in court and are currently pending trial, while 50 were dismissed by the prosecutor's office. The remaining 158 are still pending investigation.

The Department of Justice has likewise undertaken serious efforts to help deter corruption through the following measures:

1. The conduct of basic orientation for all new prosecutors in the various Regions of the country for the purpose, not only of honing their prosecutorial skills and knowledge of the law but more importantly inculcating the necessary values needed and required in government service.

2. The crafting of a Code of Conduct for the Prosecution Service. The creation of a manual which practically codified the various issuances of the Department of Justice, as well as the laws governing the conduct of public officials, with emphasis on the conduct that public prosecutors should adopt during the course of the inquest/preliminary investigation and in the trial proved to be very helpful in reminding public prosecutors not only of their role as public officials, but more importantly their responsibilities as such.
3. The creation of the Internal Affairs Units (IAUs) in the Department of Justice proper as well as in the various Regions of the country, tasked to conduct the investigation of complaints against prosecutors and personnel of the prosecution service. Cognizant of the principle that public office is a public trust and that all public officers and employees must, at all times, be accountable to the people, the Department of Justice deemed it imperative to create the Internal Affairs Units in the prosecution service to ensure the highest integrity and dignity of its officials and employees. Nonetheless, even prior to the constitution of the Internal Affairs Units, administrative sanctions have been meted out to erring prosecutors and employees, ranging from penalties reprimands, suspensions and removal from the service.
4. The creation of the Justice Sector Coordinating Council (JSCC) for the effective coordination and sharing of information from senior representatives from the judiciary, the Department of Justice, the Department of Interior and Local Government and other related attached agencies.

Moreover, in order to raise public awareness as to the thrust and mission of the Department of Justice in curtailing corruption and ensuring the strict implementation of justice, the

Department of Justice has taken steps to increase information drives with the help of tri-media (television, radio and newspaper).

THE OFFICE OF THE OMBUDSMAN

*Medwin Sagutin Dizon**

I. CONSTITUTIONAL MECHANISM

We Filipinos believe that public office is a public trust and therefore, public accountability is a must.

Bearing this in mind, Articles 12 and 13 of the 1987 Philippine Constitution envisioned the Office of the Ombudsman as the constitutional accountability authority in government with full powers to exercise extraordinary oversight and investigative authority over actions of all public officials and employees.

By constitutional mandate, the Philippine Congress passed into law, Republic Act 6770, otherwise known as “The Ombudsman Act of 1989” which gave the Office of the Ombudsman specific powers such as:

1. To investigate anomalies and inefficiency;
2. To prosecute cases before courts of law;
3. To conduct administrative adjudication;
4. To render public assistance; and
5. To prevent graft and corruption.

Popularly known as the government’s watchdog, the Office of the Ombudsman is safeguarded from political influence and interference by the provisions of the 1987 Philippine Constitution, to wit:

1. The appointment of the Ombudsman and her Deputies need no congressional confirmation and they possess the rank of chairman and members, respectively, of a Constitutional Commission;

* Director, Preliminary Investigation, Administrative Bureau-A, Office of the Ombudsman.

2. The Ombudsman and her deputies have fixed terms of Office during which their salaries cannot be diminished;
3. The Ombudsman is removable from Office only by impeachment; and
4. The Office of the Ombudsman has fiscal autonomy.

The Office of the Ombudsman has jurisdiction over officials and employees of the government or any of its subdivisions, agencies or instrumentalities, including members of the cabinet, local government officials, officials of government owned and controlled corporations, and private individuals who have acted in conspiracy with the foregoing officials.

Our Ombudsman, Conchita Carpio Morales, vows to pursue these ideals and declares an 8-point priority within her term for 2011 to 2018. Thus, The Ombudsman is set to:

1. Dispose of complaints and cases involving high ranking officials, those involving large sums of money, grand corruption cases and celebrated cases;
2. Attain zero backlog;
3. Improve survival rate of cases referred for further fact-finding;
4. Enforce monitoring of referred cases;
5. Improve responsiveness of public assistance;
6. Improve anti-corruption policy and programme coordination among sectors;
7. Rationalize the functional structure of the Office of the Ombudsman; and
8. Enhance transparency and credibility of the Office of the Ombudsman.

II. WAYS TO RAISE AWARENESS

Over the years, various projects and programmes were introduced, developed and implemented to prevent corruption. Examples are the following:

A. Strengthening of the Resident Ombudsmen

A Resident Ombudsman is a lawyer from the Office of the Ombudsman who is posted to hold office in different government agencies and offices including government owned and controlled corporations to enable the head of office to have a first hand and holistic perspective of the corruption problem, situation and inefficiency in its operation.

Resident Ombudsmen also render mediation services, give lectures as part of anti-corruption education and monitor submission of Statements of Assets, Liabilities, and Net Worth of government officials and employees.

B. Integrity Development Review or IDR

In 2004, the Office of the Ombudsman piloted the IDR with assistance from the United States Agency for International Development (USAID) to review the effectiveness of its own system against corruption.

The IDR consists of two major tools, namely:

- a. Corruption Resistance Review – where a survey of employees and review of relevant policies and procedures are made and assessed; and
- b. Corruption Vulnerability Assessment – where risks and problems are determined while controls and safeguards are evaluated.

At present, the IDR is exercised in almost all agencies of the government including the Philippine Judiciary.

C. Creation of Corruption Prevention Units (CPUs) and Junior Graftwatch Units (JGUs)

Corruption Prevention Units are civil society organizations that assist the Office of the Ombudsman (OMB for brevity) in detecting corruption in the bureaucracy. Thus, any bonafide non-partisan group from any sector with identifiable leadership and structure and with demonstrated capacity to promote the interest and assist the OMB in its crusade for a clean and honest government may become a CPU.

Junior Graftwatch Units serve as the OMB's youth arm in graft prevention and control. The JGUs are designed to awaken the consciousness of young citizens and instill honesty and efficiency to curb graft and corruption. JGUs are established in schools and communities.

D. Education

The Office of the Ombudsman continuously updates its officials and employees by holding Strategic Planning Seminars, Research Symposium, Teaching Exemplars, Ehem Aha Seminars, Orientation Lectures and Briefing, Research/Thesis Assistance Program and by encouraging attendance at local and international trainings and conferences.

E. Promotion

Programs and projects of the Office of the Ombudsman are best relayed to the public by way of multimedia such as;

- a. A radio program called “Magsumbong sa Ombudsman” aired every Wednesday from 10:00 to 11:00 a.m. over DZRB Radyo ng Bayan and its provincial stations nationwide;
- b. A television program called “Ombudsman: Kakampi Mo Laban sa Katiwalian” telecast over NB Channel 4 every Saturdays from 12:00 to 1:00 p.m.;
- c. Published in 2009 is the OMB Citizen’s Charter to serve as user guide on how to avail of the services of the OMB;
- d. Improved website, hotlines, E-mails and Text Messages lead to accessibility of the services and performance of the OMB nationwide;
- e. Publication and exhibits of anti-corruption materials helped in disseminating the mission and vision of the OMB in its fight against corruption. Held in big venues such as the Philippine International Convention Center (PICC), SM Mall of Asia, and the Asian Development Bank, the exhibit is aimed to raise awareness and to encourage the public to get involved in the OMB’s goal; and
- f. Celebration of International Anti-Corruption Day proved that the private and public sectors including international development partners joined hands in reacting and formulating solutions to the problem of graft and corruption.

III. IMPLEMENTATION

According to its 2010 Annual Report, the Office of the Ombudsman resolved a total of 8,963 cases for the year 2010. 4,968 (55%) of these cases were criminal cases, while 3,995 (45%) were administrative cases. Of the criminal cases, 19% resulted in the finding of probable cause against the respondents; the rest (81%) were dismissed for lack of evidence. On the other hand, of the administrative cases, 22%

resulted in a finding of guilt and imposition of administrative penalty; while the rest (78%) were dismissed.

In 2010, some 1,747 public officials and employees were criminally indicted in court for various offenses. Of this number, 427 (24%) were high ranking officials while 1,320 (76%) were low ranking officials. The year 2010 also recorded an increase in the number of criminal informations filed before the Sandiganbayan against high-ranking officials in government. A total of 281 informations were filed, up by almost 50% from last year's 189. The total amount involved in the criminal cases for prosecution before the anti-graft court is P129.3 million. Also in 2010, the Sandiganbayan rendered its decision in 121 cases which had undergone full-blown trial. Of this number, 40 cases resulted in conviction, and hence, registered a conviction rate of 33.1%. Consequently, a total of 67 officials accused of various offenses were convicted by the anti-graft court. Among them are seven mayors, a former administrator, SUC president, judges, provincial prosecutors, assistant secretary, and a PNP director general, among others.

Conversely, a total of 190 cases involving low-ranking officials and employees of the government were decided by the regular trial courts in the National Capital Region, Visayas, and Mindanao. Of this number, 95 or 50% resulted in conviction.

Finally, during the year 2010, 1,523 public officials and employees were meted administrative penalties. A total of 504 (33%) were dismissed from the service; 837 (55%) suspended; 117 (7.7%) reprimanded and 65 (4.3%) fined. Moreover, 107 government functionaries were placed under preventive suspension pending investigation while eight were merely admonished after the adjudication of their cases.

**MISSION OF THE MINISTRY OF JUSTICE TO
PREVENT AND COMBAT CORRUPTION IN
THE KINGDOM OF CAMBODIA**

*Santepheap Kim**

The Ministry of Justice is the judicial headquarters of the Royal Government of Cambodia and comprises criminal and civil sectors.

Corruption is a criminal offence in Cambodia. In principle, a crime cannot be considered an offence unless it is stipulated in the law. Based on its mission, the Ministry of Justice has contributed to preventing criminal offences, including corruption, through various mechanisms as follows.

I. BUILDING AND ORGANIZATION OF LAW

In order to ensure the prevention of corruption, the Ministry of Justice has organized and built some crucial laws as follows:

A. Penal Code

A new penal code of the Kingdom of Cambodia was adopted by the National Assembly on 12 October 2009 and by the Senate on 17 November 2009, and was promulgated on 30 November 2009. The Ministry of Justice has organized this Penal Code in order to respond to the actual situation of Cambodia, which requires a clear, complete and well-organized Penal Code to safely combat the new offences arising in society, and other modern crimes. The Penal Code is a legal article assembling all criminal provisions, classified into accurate structures to ensure consistency, smoothness and coherence. To enable this code to become an important legal tool it is not only convenient for court officials and other legal enforcement officials to use and understand in-depth, but also helps people to have a clear understanding of their own rights and limits. In particular, they may be aware of prohibited activities [for which people can be] convicted as criminal offences. In order to ensure the legal principles of the criminal law, the organization of this Penal Code has been compiled in detail with discussion from Cambodian legal experts and French technical experts to determine general policy and the types of each offence

* Ph.D. Deputy Director General of the Technical General Directorate, Ministry Justice, Kingdom of Cambodia.

comprehensively and specifically, in order to avoid any devastating activities from punishment on society.

This Penal Code also specifies various offences related to bribery and corruption.

These offences include:

- Bribery by employee
- Bribery of employee
- Bribery by governor
- Inappropriate bid
- Bribery committed by judge
- Bribery of judge
- Bribery of witness to provide fake testimony
- Bribery of witness
- Bribery of translator
- Bribery by businesspeople
- Bribery of businesspeople
- Offence of inactive influential trade
- Illegal exploitation of interests
- Intentional destruction and dishonest embezzlement
- Bribery
- Destruction and embezzlement
- Intimidation
- Destruction and embezzlement, etc.

B. Code of Criminal Procedure

The Code of Criminal Procedure was adopted on 7 June 2007 by the National Assembly, and on 24 July 2007 by the Senate. It was promulgated on 10 August 2007. The Code of Criminal Procedure is a key legal article and a key means for the criminal court. The Ministry of Justice has organized and compiled this Code of Criminal Procedure with the aim of ensuring the sustainability of the institution in accordance with the traditions and laws of the Kingdom of Cambodia and to provide the investigating judges with a major role in the stages of investigation and the finding of evidence. This Code clearly stipulates principles to ensure effectiveness in the search for offenders, accusation, trial and for respect of individual freedoms, for all criminal offences, including the offences of bribery and corruption.

C. Anti-Corruption Law

The Anti-Corruption Law was promulgated on 17 April 2010 and is now actively being enforced. The purpose of the organization of this law is to promote the effectiveness of all services, to strengthen governance and the rule of law in leading or governing the State as well as to maintain justice that is a necessary basis for the development of society and poverty reduction. This law aims to combat corruption by means of providing education, prevention and enforcement of the Anti-Corruption Law, as stipulated in the Penal Code and in this law.

The Ministry of Justice has shared numerous comments on the Anti-Corruption Law so this law is an effective means of ensuring the suppression of corruption in all forms, sectors and levels across the Kingdom of Cambodia.

II. EDUCATION AND DISSEMINATION OF LAW

In the current society of Cambodia, awareness of the rule of law ensures effectiveness in implementation. Most societies in the modern era face challenges in understanding and disseminating the law in order to lead, govern and ensure social security to establish safety and trust in the investment sector as well as in national and international trade operations.

In view of the necessity and importance of education and dissemination of law to ensure effectiveness in law enforcement and to raise awareness among people, as well as participation to prevent corruption in society, the Ministry of Justice, the headquarters of the Royal Government in this field, has organized, compiled and published the two codes – the Penal Code and the Civil Code – for distribution to legal professionals, courts and law enforcement officials to extensively implement it. Moreover, we have organized many training courses for law enforcement officials (Judicial Police, judges, prosecutors, clerks of the court and attorneys-at-law), to ensure a better understanding of what corruption is while fulfilling their roles and duties and so that they can clearly see the elements of corruption in order to ensure accurate investigations and search for evidence for the successful and fair conviction of offenders.

III. LEGAL ENFORCEMENT

To contribute to fighting corruption in Cambodian society, the Ministry has actively participated as a driving force to promote the accurate and fair implementation of the Anti-Corruption Law.

According to Article 29 of the Code of Criminal Procedure, the Minister of Justice is fully entitled to file a defamation complaint with the Prosecutor-General to the Appeal Court or Deputy Prosecutor to the Phnom Penh Court of First Instance over any offence that he has identified and could issue an injunction through written instruction to the Prosecutor-General or Prosecutor to indict or reach a conclusion as per the view of the minister. Therefore, whenever corruption occurs, regardless of any individual or form, the Minister of Justice deserves the right to sue for defamation or [issue an] injunction to the Prosecutor-General or Prosecutor to accuse that person in order to authorize the investigating judges to undertake investigation.

The Prosecution Institution at the Provincial/Municipal Courts of First Instance is the institution to ensure the State's public order; meaning that it acts in bringing a charge of the offence of corruption and reaching a conclusion for the courts to enforce the law. The offence of corruption is a special offence requiring institutions and the Judicial Police, in particular the anti-corruption unit, to enforce this law and to build up the case for forwarding it to the prosecution institution. Hence, if any sign of corruption has been identified, prosecutors are entitled to conduct their preliminary investigation and to reach conclusions about the case to be forwarded to the investigating judge for further inquiry. In case that a prosecutor finds that any ruling or order is inappropriate, he or she has the right to lodge an appeal to the Appeal Court. The Supreme Court is the final tribunal to examine and make a judgment on all corruption case files or criminal case files.

So far, we have actively enforced this Anti-Corruption Law regardless of any person, rank, complexion or race. Typically, a high-ranking official who has committed an act of corruption is subsequently convicted under the law and some other legal enforcement officials have also committed corruption. Thus, this reflects the real efforts and commitment of the Royal Government of Cambodia to fight against corruption.

PREVENTING CORRUPTION: EFFECTIVE ADMINISTRATIVE AND CRIMINAL JUSTICE MEASURES

Mr. Sothimon Nuon^{*}

I. OVERVIEW

Corruption is a complex social, political and economic phenomenon that affects all countries. Corruption undermines democratic institutions, slows economic development and contributes to governmental instability. Corruption takes place in all human societies and in all walks of life.

Cambodia is also experiencing this social phenomenon. The Royal Government of Cambodia does not turn a blind eye to this problem. The Royal Government is strongly committed to fighting corruption, formulating a separate anti-corruption law and empowering an independent anti-corruption mechanism.

II. BACKGROUND

The Royal Government of Cambodia has paid much attention to combating corruption since the UN organized general elections in 1993. In 1992, Cambodia adopted a criminal law act in which three articles were related to corruption (embezzlement, bribe taking and bribe giving). In 1999, an anti-corruption mechanism was first established in Cambodia. It was called the “*Unit Against Corrupt Practices*”. In 2006, the Unit was restructured and renamed the “*Anti-Corruption Unit*”.

On 17 April 2010, the first separate anti-corruption law was promulgated by the King.

The new law requires the establishment of an Anti-Corruption Institution. The Anti-Corruption Institution is composed of the National Anti-Corruption Council and the Anti-Corruption Unit (ACU). The Royal Government has been adopting a four-pronged approach: Education, Prevention, Law Enforcement, and International Cooperation.

^{*} *Legal, Complaint and International Affairs Dept., Anti-Corruption Unit (ACU), Cambodia.*

In its effort to combat corruption, the Royal Government adopted the *Governance Action Plan I* and *Governance Action Plan II*, focusing on multi-sectoral reforms for the sake of social development and justice. The Royal Government continues to view fighting corruption as a priority, as mentioned in its *Rectangular Strategy* where *Good Governance* is the core element and *fighting corruption* is in the first angle.

Samdech Techo Hun Sen, Prime Minister of Cambodia, stressed that “Fighting corruption is to make each individual not want to corrupt (education), can’t corrupt (prevention), and dare not corrupt (law enforcement).”

III. PREVENTING CORRUPTION: EFFECTIVE ADMINISTRATIVE AND CRIMINAL JUSTICE MEASURES

A. Effective Institution

The characteristics of the effective institution are as follows:

- The Anti-Corruption Institution is independent of other state institutions;
- Separate and sufficient budgets are available for work performance;
- It may request intervention and cooperation from armed force authority if necessary and is allowed to use guns in operations;
- The corruption-related complaint receiving mechanism and its management are speedy;
- Special investigation power (article 27 of the Anti-Corruption Law): in the case of a clear hint of corruption offences, the Anti-Corruption Unit can:
 - Check and put under observation bank accounts or other accounts which have the same function as bank accounts;
 - Check and order the provision or copy of authentic documents or individual documents, or all bank, financial and commercial documents.
 - Monitor, oversee, eavesdrop, record sound or take photos, and engage in phone tapping.

- Check documents and documents stored in the electronic data systems.
- Instead of public prosecutors, the President or officially assigned representative of the ACU has the duty to lead, coordinate and control the mission of those officials (judicial police officers) in the investigation of corruption offences, up to the point of arresting a suspect (article 25 of Anti-Corruption Law).

B. Education Measures

The Anti-Corruption Unit (ACU) focuses mainly on educative measures. So far the ACU has done a great deal of dissemination of anti-corruption law, produced several anti-corruption education centres, and organized several other anti-corruption events. These educational activities are done on a regular basis.

Our law and regulation dissemination is aimed at the public in general and government civil servants in particular. The other target subjects are those working at border gates, finance-related sectors, airports, ports, license issuing authorities, law enforcement agencies, etc. Today the ACU is planning to produce more education centres, and organize more student debates and other anti-corruption events (such as concerts and poetry contest for students).

People are now aware of the new law and anti-corruption institution, and are actively joining hands in the fight against corruption. Their participation is reflected through the submission of several complaints each day by the general public.

C. Preventive Measures

In addition to the Anti-Corruption Unit (ACU), the Royal Government of Cambodia also created other bodies and mechanisms that contribute to combating corruption, as follows:

- A National Audit Authority;
- The Ministry of National Assembly-Senate Relation and Inspection;
- The Inspectorate of the Ministry of Economy and Finance;

- Internal Audit Departments of state institutions; and
- Other mechanisms of the Legislative Body.

The priority of the ACU, among other things, is to strengthen preventive policies and measures in order to remove opportunities for corruption. Preventive measures, unlike law enforcement, are gentler and more effective. The preventive tools are as follows:

- The Anti-Corruption Law and Criminal Code;
- The Law on Statute of Civil Servants;
- A Code of Ethics for civil servants;
- Laws in other areas; and
- Other relevant regulations.

The ACU has established its own *Internal Investigation Section*. The Section is responsible for investigating cases related to corruption within the Unit. All staff members working in this Section work undercover and are not known to other staff members. They work independently and report directly to the President of the ACU.

The ACU has taken several measures in terms of preventing corruption. The new law requires all government employees with the rank of department director or higher to declare their assets and liabilities. So far all employees have already made their asset declarations to the ACU, including the Prime Minister, President of the National Assembly and President of the Senate. Focal points of anti-corruption officials at various state ministries and institutions have also been set up in order to facilitate asset declaration at their own agencies, and to help fight corruption therein.

Meanwhile, leaders of civil society are also obliged under the anti-corruption law to make their asset declaration. The ACU is considering requiring other officials ranking below director level who work in such vulnerable areas as the financial sector to declare their assets too.

The ACU has distributed many corruption-related complaint forms to civil servants and the general public throughout the country so as to facilitate their complaint submission. The form is

indeed a tool to encourage public participation in revealing all forms of corruption. As a result, now more and more complaints are being lodged with the ACU.

The ACU is also invited to take part in several government events, especially the government employee recruitment exam process with the aim of ensuring transparency and preventing opportunities for corruption. Recently, the ACU took part in the recruitment process of tax collecting officials for the General Department of Taxation and in inspecting the bidding process for illegal timber. The participation was welcomed by the public as a whole and has built more confidence in the government.

D. Effective Administration

The Anti-Corruption Unit (ACU) facilitates the public participation in the fight against corruption by creating an effective mechanism so as to encourage corruption-related complaint submission. The public can submit their complaints in person, drop their complaints in ACU boxes, through electronic forms, post offices nearby free of charge, or sent to the ACU by other agencies. Other forms of reporting complaints can also be done through our phone, fax, email, etc.

The ACU is redesigning corruption complaint forms to further facilitate the public reporting of corruption. This complaint form enables complainants to fill in all necessary information the ACU needs. Under the anti-corruption law article 31 stipulates that, “*all corruption cases lodged with the court shall be heard quickly.*”

The ACU is setting up a *complaint analysis center* in order to speed up the complaint process lodged by the public. This center is to review and study all complaints, and finally make suggestions to the President of ACU for decision before taking any action.

E. Criminal Justice Measures

So far, the Anti-Corruption Unit (ACU) has:

- Cracked down on corruption cases committed by very senior officials in the Anti-Drug Headquarters, provincial police commissariats, the prosecutor's office, a prison etc., and all were sent to court for prosecution;
- Disciplined around 30 tax officials for their bad performance;
- Cracked down on financial irregularities committed by officials in the Ministry of Social Affairs and provincial Departments of Social Affairs throughout the country, who embezzled individual benefits and from the state budget. The ACU has already disciplined those involved.
- Reduced opportunities for corruption and brought more people, regardless of status, to trial;
- Studied and investigated many corruption cases;
- Continued to investigate more people, especially government officials.

F. UNCAC Compliance

The United Nations Convention against Corruption (UNCAC) is the only legally binding, universal anti-corruption instrument. The Convention's far-reaching approach and the mandatory character of many of its provisions make it a unique tool for developing a comprehensive response to a global problem. The UNCAC covers five main areas: prevention, criminalization and law enforcement measures, international cooperation, asset recovery, and technical assistance and information exchange.

Cambodia has worked hand in hand with the international community to fight corruption. Thus far, Cambodia has:

- Been a member of ADB/OECD Anti-Corruption Initiatives for Asia and the Pacific since 2003;
- Been a State Party to the UNCAC since 2007;
- Been a party to South East Asia Parties Against Corruption (SEAPAC) since 2007, and
- Regularly attended meetings of the International Association of Anti-Corruption Authorities (IAACA).

With great success, Cambodia hosted the 6th SEAPAC annual meeting in November 2010, which was attended by 9 ASEAN members.

So far Cambodia has met many provisions of the UNCAC. Cambodia has adopted a separate anti-corruption law,¹ created an independent anti-corruption institution, established easy access in terms of corruption complaints to the public, and adopted the four-pronged approach, namely education, prevention, law enforcement and international cooperation, in combating corruption.

In terms of information exchange, the ACU has done a lot to share information with SEAPAC members, both in the field of administration work and corruption related cases. ACU staff received technical training from various countries, especially SEAPAC members.

Under the new anti-corruption law of Cambodia, all acts that were not criminalized as corruption offences are now criminalized. Zero tolerance measures are also strictly implemented. Offenders are prosecuted, regardless of their social status or political alignment.

Now Cambodia and Vietnam are working towards signing a *Bilateral Memorandum on Study Tour Exchange*, planned to be made once a year in order to learn from one another in terms of new knowledge and experience of combating corruption. Recently, 20 Cambodian anti-corruption youths made a study tour to Japan in order to exchange experiences with Japanese youths.

At the moment, the ACU is cooperating with one country to investigate a foreign corrupt offender coming into Cambodia, suspected of traversing or staying in Cambodia. The case is being strictly and closely followed by the ACU.

IV. CONCLUSION

Though Cambodia has enjoyed full peace for only a short time, the Royal Government of Cambodia, under the clear-sighted leadership of Prime Minister Samdech Techo Hun Sen, has made remarkable progress in all fields, especially in enhancing Cambodian prestige in the international arena.

¹ Fifty-five articles related to corruption offences, of which 40 articles stipulated in the Criminal Code.

Cambodian progress today cannot be alienated from international cooperation and the Royal Government's strong commitment in strengthening good governance and fighting corruption. Fighting corruption is a key to ensuring equitable division of social resources and to attracting foreign investment.

Cambodia continues to cooperate closely with the international community, especially SEAPAC members, to combat corruption. Despite many challenges, the ACU continues to work untiringly to promote integrity, transparency, accountability and prosperity in Cambodian society. The ACU is strongly committed to cooperating with the regional and international communities in order to share new experiences and knowledge, and to join hands in fighting corruption for a better world.

Thanks for your kind attention!

OVERVIEW OF THE TASKS AND FUNCTIONS OF THE VIETNAMESE PEOPLE’S PROCURACY IN PREVENTION OF AND FIGHT AGAINST CORRUPTION

*Chi Kien Hoang**

I. VIETNAMESE ANTI-CORRUPTION AGENCIES

The system of Vietnamese anticorruption agencies encompasses the Central Steering Committee for Directing Prevention and Anticorruption led by the Prime Minister, provincial and municipal steering committees for anticorruption which are under the direction of the Chairman of the People’s Committees of the respective provinces or municipalities, and specialized anticorruption units belonging to the organizations of the government inspectorate, public security and people’s procuracy.

II. THE PEOPLE’S PROCURACY

The people’s procuracy service in Vietnam was established in 1960. In accordance with the constitution, the institution of people’s procuracy is one of the four organs constituting the State Structure, organized as an independent hierarchy from the central to local levels, and functioning under the centralized management and control of Procurator General of the Supreme People’s Procuracy (SPP). The people’s procuracies perform their functions and tasks through: (i) exercising the right to prosecute and supervise the observance of the law in investigation and adjudication of criminal cases; (ii) supervising the observance of the law in the execution of judgments and decisions of the courts, and in the temporary detention, preventive detention, management and education of prisoners; and (iii) directly conducting investigation in some types of offences against judicial activities, committed by officials of judicial bodies. Under the Law on the Organization of the People’s Procuracy (2002), the Investigation Agency of SPP is the only investigating body within the procuracy sector. The Investigation Agency has authority to investigate some types of crimes of infringing upon judicial activities,

* Chief of Division of Research, Planning and General Matters, International Cooperation Department, Supreme People’s Procuracy of Vietnam.

crimes of infringing upon the legitimate activities of investigating, procuracy, adjudicating and judgment-executing agencies, and crimes that are provided in Articles 292-314, Chapter XXII (Crimes of infringing upon judicial activities) of the Penal Code 1999 (revised in 2009). Those types of crimes include making illegal decisions, applying corporal punishment, forcing evidence or testimony, falsifying case dossiers, etc. However, the authority of the Agency could be expanded to other types of crimes within Chapter XXI (Positions of authority crimes) of the Penal Code 1999 (revised in 2009), which include corruption crimes, in cases where the offenders are investigators, procurators, judges, or other judicial staff. The investigating bodies system within the public security (ordinary police and security police forces) sector is responsible for investigating the remaining types of crimes provided in the Penal Code.

Under Vietnam's Law on Mutual Legal Assistance 2007 and numerous mutual legal assistance treaties signed with other states, the SPP plays the role of a central authority in mutual legal assistance in criminal matters, with its duties to receive, transfer, monitor and speed up the implementation of requests for mutual legal assistance in criminal matters, and propose revisions, supplements and further improvement to the law on mutual legal assistance. Accordingly, the people's procuracy has been coordinating with relevant domestic and foreign authorities in investigating, prosecuting and trying criminals; particularly those who commit transnational organized crime, including corruption.

III. THE SPECIALIZED ANTI-CORRUPTION UNIT OF THE SPP

1. Specialized anti-corruption units within the people's procuracy sector

There are two units specializing in prosecution and supervision over investigation of corruption cases within people's procuracies for the time being. The former belongs to the SPP (i.e., at central level) and the latter belongs to the People's Procuracy of Hanoi City (i.e., at provincial level), whose personnel both are competent officials and procurators who meet the requirements of qualification and integrity for the job.

2. The functioning and powers of the specialized anti-corruption unit of the SPP

The Department of Public Prosecution and Supervision over the Investigation of Corruption Crime of SPP (hereinafter referred to as the Department) was established in 2006, and its performance must conform to the Law on the Organization of the People's Procuracy (2002) and the Regulations on Organization and Functioning of the Department (newly revised in 2011). In the mean time, officials and procurators of the Department are implementing their duties in accordance with the relevant provisions of the domestic laws, including the Penal Code 1999 (revised in 2009), Criminal Procedure Code 2003, the Anti-corruption Law 2005, Law on Mutual Legal Assistance 2007, etc., and international bilateral and multilateral treaties to which Vietnam is a party, that include, inter alia, the United Nations Convention against Corruption.

Additionally, the Department is also functioning in effective cooperation with relevant state agencies at the central level, such as the Office of Central Steering Committee for Directing Prevention and Anticorruption, Ministry of Public Security, Supreme People's Court, Government Inspectorate, and State Audit. Thereby, the Department's performance is in accordance with the coordinative regulation that is signed by those institutions on the prevention of and fight against corruption.¹ Also, the Department is responsible for drafting regular reports submitted to the Central Steering Committee for Directing Prevention and Anticorruption on the outcome of corruption cases with specific statistics on quarterly, half-yearly, and yearly bases within the whole system of people's procuracies.²

Under the Anti Corruption Law 2005, corrupt acts include:³

- (i) Embezzling properties;
- (ii) Taking bribes;
- (iii) Abusing positions of authority and/or powers to appropriate properties;

¹ The Coordinative Regulation No. 01/QCPH dated 15 January 2009.

² On the request of the Official Correspondence No. 16/CV-BCD dated 27 April 2007 of Central Steering Committee for Directing Prevention and Anticorruption.

³ Article 3 of the Anti-corruption Law.

- (iv) Taking advantage of positions of authority and/or powers while performing tasks or official duties for self-seeking benefit;
- (v) Abusing powers while performing tasks or official duties for self-seeking benefit;
- (vi) Taking advantage of positions of authority or powers to influence other persons for self-seeking benefit;
- (vii) Committing forgeries in work for self-seeking benefit;
- (viii) Giving bribes or bribe brokerage by a person in a position of authority and/or with power to settle affairs of agencies, organizations, units, or localities for self-seeking benefit;
- (ix) Taking advantage of positions of authority and/or powers to unlawfully use state properties for self-seeking benefit;
- (x) Harassment for self-seeking benefit;
- (xi) Failure to perform tasks or official duties for self-seeking benefit;
- (xii) Taking advantage of positions of authority and/or powers to cover up for law offenders for self-seeking benefit; illegally obstructing or intervening in examinations, inspections, auditing, investigations, prosecutions, adjudications, or court judgment enforcement for self-seeking benefit.

Meanwhile, in daily practice, the Department is authorized to handle criminal cases involving seven types of corruption crimes as provided in Articles 278 - 284, Section A, Chapter XXI (Positions of authority crimes of the Penal Code 1999) (revised in 2009), as follows: (i) embezzling properties (Article 278); (ii) receiving bribes (Article 279); (iii) abusing positions of authority and/or powers to appropriate properties (Article 280); (iv) taking advantage of positions of authority and/or powers while performing official duties (Article 281); (v) abusing powers while performing official duties (Article 282); (vi) taking advantage of positions of authority and/or powers to influence other persons for self-seeking benefit (Article 283); and (vii) committing forgeries in work (Article 284).

3. The annual reports of the Department

The annual work reports of the Department from 2008 to 2010 show that of the total number of corruption cases and defendants investigated for the above seven types of crime (i.e., 282 cases with 622 defendants in 2008, and 177 cases with 328 defendants in the first 10 months of 2010),⁴ embezzling properties was the most prevalent offence (i.e., 138 cases with 267 defendants and 88 cases with 157 defendants respectively) and the second largest number was the offence of taking advantage of positions of authority and/or powers while performing official duties (49 cases with 182 defendants and 36 cases with 78 defendants respectively).

Those annual reports also indicate that the total number of sophisticated and serious corruption cases and defendants handled by the Department itself remained stable, i.e., 32 cases with 315 defendants, 36 cases with 269 defendants, and 35 cases with 244 defendants in 2008, 2009 and 2010 respectively. In such corruption cases, there are several high profile cases that have been supervised and directed by the Central Steering Committee for Directing Prevention and Anticorruption. Some of them required mutual legal assistance from foreign competent authorities, and numerous defendants took advantage of the positions of Vice Minister, Director General of big state-owned enterprises, Senior Investigator, or Judge, etc., while performing official duties or receiving bribes. The corruption crimes have been committed in a wide range of public sectors, such as construction investment, trading, imports and exports, land use management, large state projects, etc.

V. CONCLUSION

It could be said that the handling of corruption cases by the people's procuracy sector in general and by the Department in particular in the past three years was in accordance with both of the national laws and relevant international conventions, which guarantee the effective investigations and prosecutions of crimes and ensure that justice is done and that the guilty shall not escape justice. The Department, functioning in close

⁴ The Annual Work Report of 2009 had not updated the statistics for the corruption cases and defendants that were initiated by the investigation agencies on the above seven types of crimes in 2009.

collaboration with relevant state agencies, has achieved significant results. However, those annual reports also reflected the fact that the number of corruption cases that had been detected, investigated, prosecuted and tried by the law enforcement agencies is still moderate in comparison to other types of crime in the same period. During the fact finding process of some complex corruption cases, the investigations still exceed the regulatory time frame.

In order to enhance the effectiveness of the people's procuracy service in handling corruption cases, the following major issues should be considered:

(i) Continuing to establish the units specializing in prosecution and supervision over investigation of corruption cases at the provincial people's procuracies, especially where more corruption acts have been committed, in order to set up a network within the procuracy sector to receive and deal with corruption crime reports or information effectively.

(ii) Enhancing the cooperation with the government inspectorates in handling alleged acts of corruption when they are detected and sending the files to the people's procuracy together with the request to initiate investigations. Thereby, the government inspectorates should be seen as one of the important channels within the executive branch which provide the procuracy with crime reports and information.

(iii) Considering a proposal to revise and supplement Articles 103, 104 and 126 of the Criminal Procedure Code 2003 by setting forth the powers of the procuracy to examine crime reports or information and initiate the investigations themselves, because the current Code lacks stipulations of investigation agencies' responsibilities in the case that they do not follow directions or instructions given by the procuracies.

(iv) Strengthening discussions with investigating agencies in order to draw lessons and experience from handling complex corruption cases to avoid undue and lengthy investigation processes.

(v) Raising the quality of issuing judicial requests to the heads of the institutions or organizations within administrative, economic, or social sectors, where corrupt acts have been committed, to take all necessary measures to prevent such violations in the future. This is one of the remaining powers since the procuracy has no longer had the power to supervise the operation of those institutions after 2002.

(vi) Improving facilities for specialized units of prosecution and supervision over investigation of corruption cases, especially applying IT in case files management within the procuracy sector. Although the information technology has been developed for a few years, the records system sometimes causes errors that limit its positive effects.

ANTI-CORRUPTION IN VIETNAM

*Tran Anh Tuan**

I. THE CENTRAL STEERING COMMITTEE FOR ANTI-CORRUPTION OF VIETNAM AND THE OFFICE OF THE CENTRAL STEERING COMMITTEE

In Vietnam, all agencies, organizations, units and citizens must be responsible for preventing and fighting corruption, including a number of key agencies: inspectorates, auditors, investigation agencies, procuracies and courts. To promote the role of these agencies, organizations, units and citizens in preventing and fighting corruption, on 28 August, 2006, the National Assembly Standing Committee decided to establish the Central Steering Committee for Anti-Corruption. The Central Steering Committee consists of 10 members, headed by the Prime Minister, with the Deputy Prime Minister as Vice Head of the Committee, one permanent member, in charge of operations, and other commissioners including the Inspector General, the Minister of Public Security, the Prosecutor General of Supreme People's Procuracy, the Chairman of the Supreme People's Court, the Minister of Information and Communication, the Deputy-Head of the Inspection Commission of the Central Communist Party of Vietnam, and the Vice Minister of Defense.

The Central Steering Committee has the responsibility to direct, coordinate, inspect and urge anti-corruption activities throughout the country, including directing and urging the inspection, auditing, investigation, prosecution and adjudication of serious and complex corruption cases, to ensure the handling of these cases comply with the provisions of law.

* *Deputy Director, Office of Central Steering Committee for Anti-corruption of Vietnam.*

The Central Steering Committee for Anti-Corruption has a consulting and assisting agency, which is the Office of the Central Steering Committee (the standing member of the Central Steering Committee also is Chief of the Office). The Office is equivalent to Ministerial level, composed of 95 members (to-date), and divided into eight departments.

II. THE ANTI-CORRUPTION LAW AND THE NATIONAL STRATEGY ON PREVENTING AND COMBATING CORRUPTION TOWARDS 2020

On 29 November 2005, the National Assembly of Vietnam issued the Anti-Corruption Law (LAC). To implement this law, the Government and the Central Steering Committee for Anti-Corruption have directed the authorities to conduct research and build the National Strategy for Anti-corruption. This task was assigned to the Government Inspectorate. The Office of Central Steering Committee for Anti-Corruption (OSCAC) is responsible for coordinating with the Government Inspectorate to build the strategy.

The strategy sets out five solutions:

- (i) To enhance openness and transparency in policy formulation and development and implementation of the law;
- (ii) To perfect the public service regimes, civil servants, improving the quality of official duties performance;
- (iii) To perfect the mechanism of economic management, building a fair and transparent business environment;
- (iv) To improve the efficiency and effectiveness of inspecting, monitoring, auditing, investigating, prosecuting and trial in the detection and handling of corruption;

- (v) To raise awareness and promote the role of society in anti-corruption.

III. THE UNITED NATIONS CONVENTION AGAINST CORRUPTION AND THE IMPLEMENTATION PLAN OF THE UNITED NATIONS CONVENTION AGAINST CORRUPTION OF VIETNAM

On 10 December 2003, Vietnam officially signed the UN Convention Against Corruption (hereinafter referred to as the Convention) at the Summit held in Merida, Mexico. After nearly six years of research and assessment on the conformity of the Vietnamese legal system, as well as difficulties, challenges and solutions in implementing the Convention, on 30 June 2009, the President of the Socialist Republic of Vietnam officially ratified the Convention by Decision No. 950/2009/QĐ-CTN. The Convention officially came into effect for Vietnam on 18 September 2009.

A. Law on Signing, Accession and Implementation of International Treaties of 2005 and the Law on Enactment of Legal Normative Documents of 2008

In order to actively implement the Convention, Vietnam officially issued an Implementation Plan of the United Nations Convention against Corruption (under Decision No. 445/QĐ-TTg, dated 7 April 2010 of the Prime Minister). This plan fully complies with regulations on the position and application of international treaties in Vietnam. The objectives, contents and roadmaps of this plan are synchronized with those of the National Strategy on Preventing and Combating Corruption towards 2020 of Vietnam; especially, it sets the specific tasks and roadmap for institutionalization and implementation of regulations and requirements of the Convention and serves as the basis for the implementation process.

According to the plan, the key tasks in implementing the Convention include:

(i) Continuing to propagate and disseminate legislation on the prevention of corruption and contents of the Convention. This measure will help raise the awareness of cadres, civil servants and other classes of people on anti-corruption laws and the Conventions.

(ii) Conducting research and making proposals on perfecting legal documents of Vietnam on measures to prevent corruption, including:

Strengthening the independence and performance of the anti-corruption agencies; perfecting the mechanism and rules on publicity, transparency and preventing corruption in public procurement;

Perfecting regulations in the financial and banking sectors to prevent money laundering;

Perfecting the mechanisms and policies for cadres, officials of anti-corruption agencies;

Perfecting regulations on remuneration of people who have made achievements in the prevention of corruption, as well as codes of conduct and ethics for staff, public officials;

Perfecting audit standards, increasing transparency in the financial and accounting sectors and transparency of assets and income of civil servants;

Building a system of criteria to evaluate and measure corruption and the effectiveness of anti-corruption work;

Making state-administrative-management work public and transparent;

Simplifying administrative procedures and ensuring periodical reports; and

Providing information on the situation of corruption and outcomes of anti-corruption work.

(iii) Supplementing corruption offences and law enforcement regulations, including: supplements to the Penal Code on the offences of offering bribes of foreign public officials and public servants of public international organizations;

Researching and proposing solutions for the criminalization of acts of corruption in the private sector for the offences of offering and taking bribes and embezzlement in the private sector, any illegal enrichment behaviour and criminal liability of legal persons;

Researching and proposing the concretization and perfection of the regulations on protection of witnesses, experts and victims and regulations on international cooperation in witness protection.

(iv) Completing mechanisms for international cooperation against corruption, including legal provisions on mutual legal assistance, extradition, transfer of sentenced persons, joint investigation and application of special investigation techniques;

Increasing the exchange of international and regional experiences on anti-corruption and Convention implementation.

(v) Perfecting the mechanism of recovery of corrupted assets, including research, proposals to supplement the implementation of civil parts in criminal judgments of foreign courts;

International cooperation on the recovery of corrupted assets;

Modifying and supplementing regulations on transparency of assets and income;

Researching and proposing measures to control the assets and incomes of cadres and public servants.

(vi) Enhancing working facilities and improving professional and corruption crimes investigation techniques for cadres in charge of anti-corruption work and strengthening international cooperation in training and retraining for anti-corruption specialized staff;

Building mechanisms to exchange information, documents, data for the prevention of corruption with other countries;

Conducting a general review and evaluation of the implementation of the legal documents on anti-corruption and conducting surveys and interviews in order to collect information, analyse, evaluate and propose measures to prevent corruption in the fields of state management.

Also in accordance with the Convention, the requirements of the Conference of the State Parties to the UNCAC as well as the existing laws of Vietnam, the Government of Vietnam assigned the Government Inspectorate as the national central authority in providing information on anti-corruption work to the international community and as the lead agency providing advice for the Government in the implementation of the Convention in Vietnam.

B. Inter-Sectoral Working Group to implement the Convention

Vietnam established the inter-sectoral working group to implement the Convention (on 11 March 2010 under Decision No. 434/QĐ-TTCT of the Government Inspector General) and a team of government experts to review the implementation of the Convention (on 2 June 2010 under Decision No. 776/QĐ-TTg of the Prime Minister).

Members of the UNCAC working group and review team are researchers, managers and practitioners representing different agencies related to the implementation of the Convention, such as the Ministry of Public Security, the Supreme People's Procuracy, the Ministry of Justice, the Ministry of Foreign Affairs, the Office of the Government, the Office of the Central Steering Committee on preventing and combating corruption and the Government Inspectorate. The heads of the working group and review team are the leaders of the Government Inspectorate.

IV. THE RESULTS OF ANTI-CORRUPTION WORK SINCE THE IMPLEMENTATION OF THE STRATEGY, UNCAC

In recent years, the State of Vietnam continues to show its political will and high determination in anti-corruption work. This is reflected through the enactment by the State of various anti-corruption proposals, policies and initiatives, including:

- (i) Simplification of administrative procedures (Proposal 30);
- (ii) Transparency of assets and income (Decree No. 37/2007/NĐ-CP, amended and supplemented by Decree No. 68/2011/NĐ-CP);
- (iii) Regular rotation of working positions of public servants in several sectors and branches (Decree No. 158/2007/NĐ-CP);
- (iv) The National Strategy on Preventing and Combating Corruption towards 2020 (Resolution 21/NQ-CP dated 12/5/2009);
- (v) Integration of anti-corruption contents into educational training programmes (Decision No. 137/2009/QĐ-TTg);
- (vi) UNCAC Implementation Plan (Decision No. 445/QĐ-TTg);

(vii) Launching of Anti-corruption Initiatives Program on an annual basis;

(viii) Holding an annual meeting to appraise individuals having significant achievements in anti-corruption;

(ix) Ratifying and beginning the implementation of the UNCAC, etc.

After nearly two years deploying the UNCAC implementation plan, at the time of review (June 2011), Vietnam has carried out synchronizing solutions to promote the implementation of the Convention in the following areas:

A. Perfection of Institutions

Regarding the perfection of institutions, Vietnam has:

- enacted a number of laws to improve public services and public officials' mechanisms and inspection work, such as the Public Servants Laws, Cadres Law, Inspection Law (amended and supplemented);
- issued a national action plan against money laundering and terrorism financing;
- is continuing to conduct research on a theoretical and practical basis for the criminalization of certain acts of corruption, as well as acts of taking and giving bribery in the private sector, and embezzling assets in the private sector;
- promulgated and launched, through its ministries, sectors and administrative levels, the implementation of codes of conduct by officials and public servants;
- issued regulations on remuneration of individuals with outstanding achievements in reporting and detecting acts of corruption;
- modified regulations on transparency of assets, income, etc.

- In particular, on 2 December 2009, the Prime Minister issued Decision No.137/2009/QĐ-TTg approving the Proposal to integrate anti-corruption contents into educational and training programmes. This is one of the important documents which shows the proper awareness of the Party and State in the fight against corruption, taking prevention as the core, promoting the work of education and training for public servants, students, pupils in preventing and combating corruption.

B. Implementation of Concrete Measures

Regarding implementation of concrete measures on prevention of corruption, Vietnam is:

- continuing to speed up inspection, examining, audit, investigation, supervision in order to proactively prevent and detect corruption;
- raising public awareness through the promotion of anti-corruption communication activities and promoting active participation of the public on the prevention and fight against corruption by improving the quality the bi-annual Anti-corruption Dialogues between the Government of Vietnam and the community of international donors and organizations, as well as the political-social-professional organizations;
- encouraging and supporting people to actively propose initiatives to fight against corruption through Anti-Corruption Initiative Vietnam (VACI) programme.

Through two years of implementation, the corruption situation is still complicated, but in some areas has been restrained. The number of detected corruption cases has shown a decreasing trend. For example: from 1 October 2010 until 31 July 2011, 183 cases/349 defendants were prosecuted for corruption (a decrease of 25% in cases and 13% in number of defendants compared to the same period in 2010).

V. DIFFICULTIES AND CHALLENGES IN IMPLEMENTING THE STRATEGY, UNCAC

A. The Strategy

The difficulties and challenges in implementing the strategy are the same as in fighting corruption. First, corruption happens in many fields and sectors. In addition, corruption also occurs within some agencies who have the function of preventing and combating corruption; therefore, the effectiveness of anti-corruption activities within these agencies is not high. As a result, the investigation and handling of some corruption cases have been prolonged and difficult.

B. The UNCAC

(i) Many regulations of Vietnamese laws and MLA treaties between Vietnam and other countries have not been adequate and synchronized. The process of negotiating, signing, amending, or supplementing MLA treaties between Vietnam and other countries, the process of researching, developing or amending existing laws to adapt the practical situation of Vietnam, and at the same time ensuring the synchronization with the provisions of other international treaties that Vietnam has concluded will require extensive experiences, time, labour, budget and synchronizing collaboration among relevant authorities of Vietnam.

(ii) Vietnamese infrastructure, as well as technical conditions and international experience in anti-corruption work, are still limited. Language barriers, lack of working skill in international environments; and limited access to distinctive political and legal regimes will be the obstacles and challenges for public servants of Vietnam when participating in international anti-corruption cooperation efforts.

(iii) Awareness of the Convention and the implementation of the Convention by certain public servants and citizens is, in general, inadequate due to limited dissemination and research about the Convention.

Currently, the Government and the Central Steering Committee have directed the Government Inspectorate in collaboration with OSCAC and concerned agencies and departments to conduct a review of the first stage of strategy implementation, and link it with reviewing the five-year implementation of the Anti-corruption Law in order to supplement and perfect the strategy's implementation plan to meet the requirements of Stage 2.

THE INDONESIAN CORRUPTION ERADICATION COMMISSION (KPK)

*Mochammad Jasin**

I. INSTITUTIONAL HISTORIES

The Indonesian Corruption Eradication Commission, or better known as KPK in Indonesia, was established in 2003. The impetus to create KPK was the economic crises during 1997, which subsequently also led to the downfall of President Soeharto. KPK was established to combat the extraordinary crime of corruption in Indonesia, which is rampant, systemic, and affecting the lives of practically everyone in the country. During the crises, there was a sense that drastic measures were needed to tackle corruption, which contributed to the country's difficulties.

Before the KPK was formed, dating back to the 1950s, six institutions have historically been established to combat corruption. However, the lives of these previous institutions were very short, mainly because they only focused on law enforcement. The KPK's much more solid track record owes much to its comprehensive contemplation of how systemic corruption had become – law enforcement alone would never have sufficed; the fight against corruption has to be accompanied by prevention efforts, supervision and coordination of all law enforcement institutions involved in processing corruption cases. And not less important is that it must include the participation of the public. All these concerns were provided for in Law No. 30 of 2002 on the Corruption Eradication

* Commissioner, Vice Chairman, Corruption Eradication Commission (KPK).

Commission, which sets out the KPK's authority, powers and duties of law enforcement in the aforementioned comprehensive manner.

In addition to the Law No. 30 of 2002, in conducting law enforcement operations the KPK follows the main Indonesian anti-corruption laws, namely Law No. 31 of 1999 as amended by Law No. 20 of 2001 on The Eradication of Corruption, Law No. 28 of 1999 on Corruption-Free State Governance, and Law No. 8 of 2010 on Combating Money Laundering Crime. KPK has power to handle money laundering crime as long as the predicate crime is corruption.

II. KPK AUTHORITIES AND FEATURES

According to the article 6 of Law number 30 year 2002, there are 5 categories of KPK's duties, authorities and obligations, as follows:

1. coordinate with institutions authorized to combat acts of corruption
2. supervise institutions authorized to combat acts of corruption
3. conduct preliminary investigations, investigations and prosecutions against acts of corruption
4. conduct corruption prevention activities, and
5. conduct monitoring of state governance

KPK is authorized to conduct pre-investigation, investigations, and prosecutions against corruption cases that:

1. involve law enforcers, state officials, and other individuals connected to corrupt acts perpetrated by law enforcer or state officials
2. have generated significant public concern; and/or
3. have lost the state at least IDR 1,000,000,000 (USD 100,000)

KPK has some unique features compared to other law enforcement agencies. KPK is led by 5 Commissioners, 2 Advisors, and 735 personnel. The five-person commissioners

serve as a collegial body, which introduces greater accountability. It is much harder to influence the decision of a five-person body than the decision of a single individual. The collegial character of KPK leadership also has the advantage of being able to spread the workload among five commissioners.

KPK is independent from the executive, legislative, judiciary and any other powers. Financially, KPK is audited by the Indonesian Supreme Audit Board (BPK) and should be responsible to the public. In doing the tasks, KPK has the authority to supervise and coordinate with the Attorney General Office as well as the National Police in handling corruption cases.

As mentioned earlier, KPK has the authority to investigate. This authority is broad because KPK can investigate any public official for corruption, including members of parliament, judges and even the military. Although KPK can investigate members of the military, it cannot prosecute members of the military. KPK has to date already succeeded in convicting several members of Parliament and officials in the Judiciary, as will be elaborated in the next session. KPK essentially has all the investigative powers of a law enforcement agency. It can conduct wiretaps on suspects, examine their bank account and tax records, as well as freeze their assets, issue hold orders and make arrests.

III. THE WORK OF KPK

A. Prevention of Corruption

The Deputy of Prevention also conducts anti-corruption coordinative efforts, including: (i) coordination with the Minister of Home Affairs to push for the realization

of the National Single Identification Number program, (ii) coordination with the internal monitoring units of all government institutions (iii) coordination with government institutions and State Owned Enterprises in stock taking all state assets under the unauthorized control of officials and former officials (the results of this particular coordinative effort being that several officials have returned assets voluntarily), (iv) coordinating with the State Ministry of State Owned Enterprises to obtain information on public officials who also act as Commissaries at State Owned Enterprises (with all the conflicts of interest that entails that sort of arrangement); (v) coordinating with State Ministry of Apparatus and Bureaucracy Reform to trigger the civil service reform.

The KPK also continues to improve the transparency of how public officials conduct their affairs by increasing the compliance of Wealth Reporting (LHKPN), as well as the effectiveness with which such reports are examined and confirmed. Other than this, the KPK's continuing dedication to monitor gratuity (the giving of gifts to public officials which sets a precedent to corruptive behaviour down the road, or given in the interest of maintaining corruptive relations) further supports the KPK's push for transparency in the interest of prevention.

Wealth Report Compliance

Year	Number of Mandated Reporters	Number of Reporters
2005	102,229	52,137
2006	116,669	65,448
2007	84,813	76,116
2008	110,892	95,359
2009	128,030	104,329
2010	144,557	118,340
2011*	180,831	146,803

*as of Oct.

Number of Gratuity Reports

2005	2006	2007	2008	2009	2010	2011*
50	326	249	266	335	393	1155

* as of Oct.

KPK realizes that corruption sometimes is triggered by bad systems. Regarding this matter, KPK also performs its monitoring authority that is to evaluate the administrative management systems of state and public institutions, to provide recommendations to these institutions, and to monitor the implementation of the recommendations. The systems/institutions that have been reviewed by KPK include: the land agency, import administration system, state budgeting, taxation, state treasury, management of migrant worker, court tax, immigration, penitentiary, and funding of political party.

The priority of which administration system to be reviewed is based on the amount of the budget under the administration system, the number prone to corruption system weaknesses, and the impact on the national economy and public service. Working closely with the relevant institutions, KPK is now monitoring the implementation of these institutions' action plans.

To support the efforts to eradicate corruption, some studies and surveys have been done to make the efforts more effective and efficient. These have included: surveys on public perception towards KPK, integrity surveys to assess the level of public services in some institutions and local governments, anti-corruption initiative assessment surveys, studies on good governance in local governments and disseminating the implementation

of its principle to other regions, studies on electronic public procurement, and studies on good corporate governance in some state owned and private companies which are listed on stock exchanges.

For longer-term purposes, being the creation of a new generation that rejects corruption, KPK has programs on anti-corruption education. This includes: campaigns in many forms in mass media, development of anti-corruption modules for school, anti-corruption education programs, recruitment of anti-corruption cadres, seminars, talk-show programs, and development of anti-corruption curricula for schools.

A. International Cooperation

The aforementioned Integrity Survey was also conducted after comprehensive cooperation and capacity building of the KPK's knowledge management of Integrity with South Korea's Anti-Corruption and Civil Rights Commission (ACRC). By using concepts of measuring and improving Integrity from the South Koreans, the KPK has initiated intense dialogue in improving the Integrity scores of the lowest scoring public institutions. Some other tools learned from ACRC include: anti-corruption initiatives assessment and corruption impact assessment.

The KPK has also learned much from its cooperation and correspondence with many fellow anti-corruption agencies in the South East Asian, East Asian and South Pacific regions, such as the Malaysian Badan Pencegah Rasuah (Malaysian Anti Corruption Commission - MACC); the Brunei Biro Mencegah Rasuah (BMR); the Thai National Counter Corruption Commission (NCCC); the Philippine Ombudsman; the Hong Kong

Independent Commission Against Corruption (ICAC); the New South Wales Independent Commission Against Corruption (ICAC); and the Singapore Corrupt Practices Investigation Bureau (CPIB). Cooperation ranges from law enforcement activities in anti-corruption, training activities, as well as dialogues in corruption prevention.

B. Repression of Corruption

1. Case Load

The KPK's case load in law enforcement activities as of Dec. 15, 2009 are as follows:

Year	Pre-Investigation	Investigation	Prosecution	Execution
2004	23	2	2	0
2005	29	19	17	4
2006	36	27	23	14
2007	70	24	19	23
2008	70	46	37	23
2009	68	37	34	37
2010	54	40	32	34
2011*	68	32	36	30
Total	418	227	200	165

*as of Oct.

KPK cases which have reached final decision are as follows:

Resolved	2004	2005	2006	2007	2008	2009	2010	2011	Total
District Court	0	3	5	9	9	20	21	19	86
Provincial Court	0	0	4	0	0	2	2	0	8
Supreme Court	0	2	8	14	14	15	11	11	75
Total	0	5	17	23	23	37	34	30	169

* as of Oct.

Among the corruption cases handled by the KPK from 2004 – 2009, involving some high ranking officials as follows:

- 45 members of Parliament
- 8 Ministers/Head of Ministerial level
- 8 Province Governors

- 1 Governor of central bank, 4 Deputy Governor
- 27 Mayors and Head of Regents/District
- 6 Commissioners of General Election; Judicial; Anti-monopoly Commission
- 3 Judges, 3 Prosecutors of the Attorney General's Office
- 3 Ambassadors and 4 General Counsel, including Former Chief of National Police
- Senior Prosecutor, KPK's investigator, many high ranking government official echelon I & II (Director General, Secretary General, Deputy, Director, etc.)
- High ranking CEOs involved in public corruption

2. Recovering Stolen Assets

One of the best indicators of the KPK's success in performing its repressive law enforcement activities is the return of stolen state assets. During its early days, the KPK was criticized for not being able to recover assets exceeding the cost of running the KPK. Recently, this figure has drastically been overturned. The figures are shown on the tables below:

	2005 (IDR)	2006 (IDR)	2007 (IDR)	2008 (IDR)	2009 (IDR)	2010 (IDR)	2011* (IDR)
State Funds Lodged to the Treasury	6.959.166.167	12.990.522.190	48.454.936.028	411.800.133.417	142.993.950.300	189.371.372.650	134.581.573.850

* as of Oct.

Regarding the process of taking over an indictment or a prosecution process by the KPK, it will be carried out by the KPK should some conditions prevail, for example: a report about an act of corruption has been ignored, the processing of the corruption case goes on for too long/delayed without a valid reason, the handling process is itself mired by corrupt acts, or the case has been hampered by executive, legislative, or judicial interference.

In addition to performing direct repressive law enforcement by processing cases for the anti-corruption courts, the KPK also performs coordination and supervision

operations involving law enforcement officers from the Police and the Attorney General's Office.

Coordination of law enforcement efforts is conducted by way of conducting meetings with the Attorney General's Office and the Police Headquarters. The results of such coordinating meetings include: (i) establishing a pattern for cooperative coordination and supervision in the area of investigations and prosecution in corruption cases, (ii) establishing mechanisms for the taking over of corruption cases by involved institutions, (iii) the establishment of coordination and supervision material that include the synchronization of corruption cases data that had been reported or transferred to the KPK, as well as establishing criteria for certain corruption cases that need to be supervised.

C. Synergy between Prevention and Repression

It has been learned from the previous anti-corruption agency that it is very important to concurrently conduct the prevention and repression approach towards corruption. Further, there should be a comprehensive approach of prevention and repression activities. The activities below are some examples.

As an independent agency that is fully responsible for corruption prevention efforts, the KPK is actively involved in triggering civil service reform at various pilot institutions in Indonesia. The Ministry of Finance is one institution which has implemented bureaucratic reform efforts. For certain service units under the Ministry of Finance such as the Tanjung Priok Customs General Services Office, such salary improvements were

substantial. Unfortunately, those salary improvements did not improve the performance nor the integrity of the personnel. Bribery is a common transgression, even when reform efforts were being conducted. The KPK, in cooperation with the Customs and Excise Office's Internal Compliance Division, performed raids at the Green Line (processing of documents from credible companies) and the Red Line (processing documents for dangerous goods) at the Office, as well as on the vehicles used by officers working there. The raid discovered evidence in the form of bribe money amounting to US\$ 50,000 in the timespan of several hours of operations. From the raids, it has been indicated that several officials at the Customs and Excise Office may be processed further by the legal system.

KPK has processed a case involving an official from Bank Indonesia. In respect of that, the KPK also assisted Bank Indonesia by intensifying preventive efforts by analysing Bank Indonesia internal rules that potentially create conflicts of interest. Internal rules that are analysed by the KPK in cooperation with Bank Indonesia include rules regarding legal protection for personnel and regarding work related travel.

IV. CHALLENGES

In recent years, corruptors' resistance has taken place in different forms. The attacks against anti-corruption activities were done through various methods and channels. For example, the general courts have not been giving much support as many corruptors are freed by their verdict. There are also some issues that have not been regulated regarding the efforts to eradicate corruption. For example: private to private sector corruption, and the draft Law of Criminal Procedure has not been passed. This law is important for the reason that at the moment KPK cannot have its own investigator and prosecutor. Its

investigator must come from the Police and the Attorney General's Office. In addition, in the level of government decree, topics like witness protection, lawful interception, and wealth reporting have not been settled.

The newly passed law of the Anti-Corruption Court also poses new challenges to KPK. The law requires that in some regions should be established Anti-Corruption Courts, compared to current existing condition with only one Anti-Corruption Court in Jakarta. This new condition would pose problems of technical coordination and supervision because KPK does not have branch offices in those regions.

Some challenges come from the internal side as well. Firstly, the KPK's human resources are relatively small compared to the 220 million total population and vast geographic conditions of Indonesia. Secondly, the current KPK office building is not really providing enough operational space for all of its personnel. The proposed budget for a new building has not been approved yet by the Parliament. Lastly, the KPK currently still has to borrow the detention house from the police.

TWO SIDES' MEASURES ON CORRUPTION ERADICATION: PREVENTION AND LAW ENFORCEMENT

Feri Wibisono, *prosecutor**

Introduction.

In the past 20 years, technological advancement and globalization have opened up vast opportunities for the perpetration of transnational corruption and crime. White collar crime rose significantly as a modus operandi and has become transnationally organized, facilitated by advances in information technology. As we understand that characteristics of business transactions and crime are always growing faster than the law, this poses a nightmare for law enforcement agencies in all countries.

According to a recent study on criminology, in numerous investigated cases state officials were found involved in corrupt practices relating to a broad variety of crimes. Corruption is no exception, and its links to international organized crime, drug trafficking and terrorism are plainly recognised. Those problems lead international society to pay attention to several conventions. The preamble of UNCAC stated that :

- *Concerned about **the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law,***
- *Concerned also about the **links between corruption and other forms of crime in particular organized crime and economic crime, including money-laundering,***
- *Concerned further about cases of corruption that involve vast quantities of assets, which may constitute a substantial proportion of the resources of States, and that threaten the political stability and sustainable development of those States,*
- *Convinced that **corruption is no longer a local matter but a transnational phenomenon that affects all societies and economies, making international cooperation to prevent and control it essential,***

* Head of Scanning Bureau, Attorney General's office

Also the preamble of the OECD Convention determined that bribery is a **widespread phenomenon in international business transactions**, including trade and investment, which raises serious moral and political concerns, undermines good governance and economic development, and distorts international competitive conditions. OECD Countries recognising that achieving progress in this field requires not only efforts on a national level but also multilateral co-operation, monitoring and follow-up.

Since 1998, Indonesia has made impressive strides in terms of institutional reform — the holding of direct and fair elections for the president, for provincial and local officials, and for national and local parliaments; strengthening the roles of these parliaments; removal of the military from government; decentralisation of power from Jakarta to local governments; and the setting up of an array of new institutions aimed at reducing corruption and political patronage — e.g. independent *General Elections Commission, Supreme Audit Agency, Anti-Corruption Commission, Anti-Corruption Court; and an Ombudsman's Office*.

As in other countries in political transition, the informal norms and practices of the past have tended to carry on into the present, including the tradition of offering gifts in return for services. It is no secret that Indonesia's history includes a long period where conflicts of interest were neglected and public duties, authorities and assets were used systematically for private gains. Recently low civil service and parliamentary salaries have also encouraged bribe-taking. These practices are aided by a general lack of effective-governance and supervisory systems. However, Indonesia has significantly improved its corruption control measures over the past few years. There have been hundreds of investigations per year by the Anti-Corruption Commission and other agencies.

During the last decade the fight against corruption has gained prominence worldwide and in Indonesia especially when the UN Convention Against Corruption (UNCAC) was opened for signature in Merida in 2003. Indonesia was part of the Convention. To mark this important commitment, in early 2006, the Indonesian House of Representatives ratified the Merida Convention or UNCAC. Considering present levels

of corruption, Indonesia feels the strong need to actively promote UNCAC.

International Cooperation

Corruption is no longer a local matter but also a transnational phenomenon that affects all societies and economies, making international cooperation to prevent and control it essential. A comprehensive and multidisciplinary approach is required to combat corruption effectively. The eradication of corruption is a responsibility of all states and they must cooperate with one another.

International conventions play a key role in addressing the worldwide and cross-border nature of corruption. When a suspect flees across a national border, law-enforcement bodies can be faced with immense difficulties. Because transnational crime thrives on differences in regulations among countries, the harmonisation of national legislation or effectiveness of international cooperation are of the utmost importance. International anti-corruption conventions are increasingly important in a world in which states and private actors have been increasingly interconnected through travel, communications and trade.

The UNCAC, Palermo Convention and OECD Convention deal with the same basic areas of cooperation in the course of investigations and other law-enforcement activities as previous instruments, including the extradition of offenders, mutual legal assistance and less-formal forms of cooperation. The following are some examples of such kinds of provisions concerning international cooperation on eradicating corruption as transnational organized crime:

UN Convention Against Corruption

Article 43 - International cooperation

1. States Parties shall cooperate in criminal matters in accordance with articles 44 to 50 of this Convention. Where appropriate and consistent with their domestic legal

system, States Parties shall consider assisting each other in investigations of and proceedings in civil and administrative matters relating to corruption.

2. In matters of international cooperation, whenever dual criminality is considered a requirement, it shall be deemed fulfilled irrespective of whether the laws of the requested State Party place the offence within the same category of offence or denominate the offence by the same terminology as the requesting State Party if the conduct underlying the offence for which assistance is sought is a criminal offence under the laws of both States Parties.

Article 48 - Law enforcement cooperation

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning.

(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;

(ii) The movement of proceeds of crime or property derived from the commission of such offences;

(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;

(c) To provide, where appropriate, necessary items or quantities of substances for

analytical or investigative purposes;

(d) To exchange, where appropriate information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;

*(e) To **facilitate effective coordination between their competent authorities**, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;*

*(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of **early identification of the offences** covered by this Convention.*

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.

UN Convention Against Transnational Organized Crime

Article 26 - Measures to enhance cooperation with law enforcement authorities

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in organized criminal groups:

*(a) To supply **information useful to competent authorities for investigative and***

evidentiary purposes on such matters as:

- (i) The identity, nature, composition, structure, location or activities of organized criminal groups;*
 - (ii) Links, including international links, with other organized criminal groups;*
 - (iii) Offences that organized criminal groups have committed or may commit;*
- (b) To **provide factual, concrete help** to competent authorities that may contribute to depriving organized criminal groups of their resources or of the proceeds of crime.*
- 2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention.*
- 3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention.*
- 4. Protection of such persons shall be as provided for in article 24 of this Convention.*
- 5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.*

Article 27 - Law enforcement cooperation

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. Each State Party shall, in particular, adopt effective measures:

- (a) To enhance and, where necessary, to establish **channels of communication** between their competent authorities, agencies and services in order to facilitate the secure and*

rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

- (b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:*
 - (i) The identify, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;*
 - (ii) The movement of proceeds of crime or property derived from the commission of such offences;*
 - (iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;*
- (c) To provide, when appropriate, necessary items or quantities of substances for analytical or investigative purposes;*
- (d) To **facilitate effective coordination** between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers.*
- (e) To exchange information with other States Parties on specific means and methods used by organized criminal groups, including, where applicable, routes and conveyances and the use of false identities, altered or false documents or other means of concealing their activities;*
- (f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.*

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the Parties may consider this Convention as the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements,

including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

3. States Parties shall endeavour to cooperate within their means to respond to transnational organized crime committed through the use of modern technology.

OECD Convention

- Article 9 - Mutual Legal Assistance

*1. Each Party shall, to the fullest extent possible under its laws and relevant treaties and arrangements, **provide prompt and effective legal assistance** to another Party **for the purpose of criminal investigations and proceedings** brought by a Party concerning offences within the scope of this Convention and for non-criminal proceedings within the scope of this Convention brought by a Party against a legal person. The requested Party shall inform the requesting Party, without delay, of any additional information or documents needed to support the request for assistance and, where requested, of the status and outcome of the request for assistance.*

- Recommendation no 7 of the Revised Recommendation of the Council on Combating Bribery in International Business Transactions of 23 May 1997

*i) consult and otherwise co-operate with appropriate authorities in other countries **in investigations and other legal proceedings** concerning specific cases of such bribery through such means as **sharing of information (spontaneously or upon request)**, provision of evidence and extradition;*

Monitoring of PEPs in the Indonesian Legal System

Corruption also occurs in the criminal justice chain, and then leads to the obstruction of investigation or criminal proceedings and the revealing and or selling of investigative information in order to help perpetrators to escape prosecution. It is obvious that this constitutes a serious security threat to the country, public trust and democracy.

Anti-corruption action in the field of prosecution should derive from the recognition of the massive scale of the crime, the international nature of business-criminal networks and the increasing trend towards reinvestment of proceeds of crime and money laundering. More sophisticated investigation techniques should be used on a regular basis, in order to detect and disrupt the whole transnational criminal networks rather than arresting only individual criminals, typically the final exploiters, or the “smaller fish.”

Effective Monitoring of Politically Exposed Persons who are entrusted with prominent public functions and potentially taking financial benefit from their position, is the principal effective measure to prevent and take evidence for corruption cases. The Financial Action Task Force (FATF) defines PEPs in the 2003 Revised Recommendations as:¹

Individuals who are or have been entrusted with prominent public functions in a foreign country, for example Heads of State or of government senior politicians, senior government, judicial or military officials, senior executives of state owned corporations important political party officials. Business relationships with family members or close associates of PEPs involve reputational risks similar to those with PEPs themselves. The definition is not intended to cover middle ranking or more junior individuals in the foregoing categories.

The UN Corruption Convention also deals with PEPs, stated:²

- (a) 'Public official shall mean: (i) any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority; (ii) any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party; (iii) any other person defined as a 'public official' in the domestic law of a State Party.

However, for the purpose of some specific measures contained in chapter II of this

¹ David Chaikin and Dr. Jason Sharman, *Draft of APG/FATF ANTI-CORRUPTION/AML/CFT RESEARCH PAPER*, 7 September 2007, p. 42

² Article 2 of UNCAC

Convention, 'public official' may mean any person who performs a public function or provides a public service as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party.

Indonesia has 33 provinces and 471 regencies / municipalities, then in legal terms Law number 28 of 1999 concerning *the Government Executives who are Clean and Free from Corruption, Collusion and Nepotism* stipulated both 'Government Executives' from central and local government agencies could be defined as *Politically Exposed Persons* as defined in international terms. Local Government Executives also potentially represent higher risks because they are either are in a position to exert undue influence on decisions regarding the conduct of business by private sector parties, or have access to state accounts and funds. *Government Executives* in Law number 28 of 1999 shall cover: ³

1. State Functionaries in the State Supreme Institutions;
2. State Functionaries in the State High Institutions;
3. Ministers;
4. Governors;
5. Judges;
6. Other State Functionaries under the Regulations and Legislation in force (e.g. *Ambassador, Vice-Governors, Regents or Mayors*);
7. Other Functionaries having strategic functions in relation to the Organizing of the State under the Regulations and Legislation in force (e.g. *Members of Director-board / Supervisory-board of the State / Local-Owned Enterprises, the Central Bank, State-owned Universities, Echelon 1 of the Civil Service or equal in the Military or National Police, Prosecutors, Investigators, Assistants of Judges, Chief and treasury officers of National / Local Projects*).

³ Article 2 of Law number 28 of 1999 concerning *the Government Executives who is Clean and Free from Corruption, Collusion and Nepotism*

And the Law number 28 of 1999 obliged high-ranking public officers to:

1. pronounce an oath or pledge according to his/her religion before being appointed his position;
2. be prepared for and accept any investigation of his/her assets before, during and after holding his/her position.
3. report and announce his/her assets before and after serving in his/her position;

and according to Law number 30 of 2002 concerning KPK regulated mechanisms of reporting and monitoring those obligations.

The Law on the Eradication of Corruption also contains a provision that can be used to prevent public officers from taking bribes. The Article is Article 38B that obligates a corrupter defendant to explain the sources of his/her assets that are not written in the indictment filed by the Public Prosecutor. If the defendant fails to show the lawful sources of these assets, the court should deem the assets as having come from corruption, so that the judge has every right to order the confiscation of the assets.

Strengthening measures to combat corruption

Eradication of corruption can be implemented through preventive measures and repressive actions. The Attorney General's Office, together with National Police and Indonesia's Corruption Eradication Commission (KPK) have every interest to raise awareness of anti-corruption concepts as well as to introduce good international anti-corruption practices. In the Indonesian legal system, corruption is declared an extraordinary crime. Therefore the effort to eradicate corruption must no longer be just acting against a criminal act, corruption must be prosecuted against by extraordinary means. Indonesia's strategy is cross-cutting through sectors and broadly targeting inappropriate behaviour in all segments of society, especially our public officials. Law

Enforcement is not only focusing efforts on punitive actions via legal enforcement mechanisms, but also on preventive measures in the form of improvement of legal systems, massive public campaigns and anti-corruption education. Implementation of those measures is through the following strategic steps:

First, improve the legal and judicial systems in Indonesia. Since 1999, a number of laws targeting corruption have been enacted.

Second, strengthen capacity building and build more effective institutions and anti-corruption bodies involving a wide-range of state auxiliary bodies.

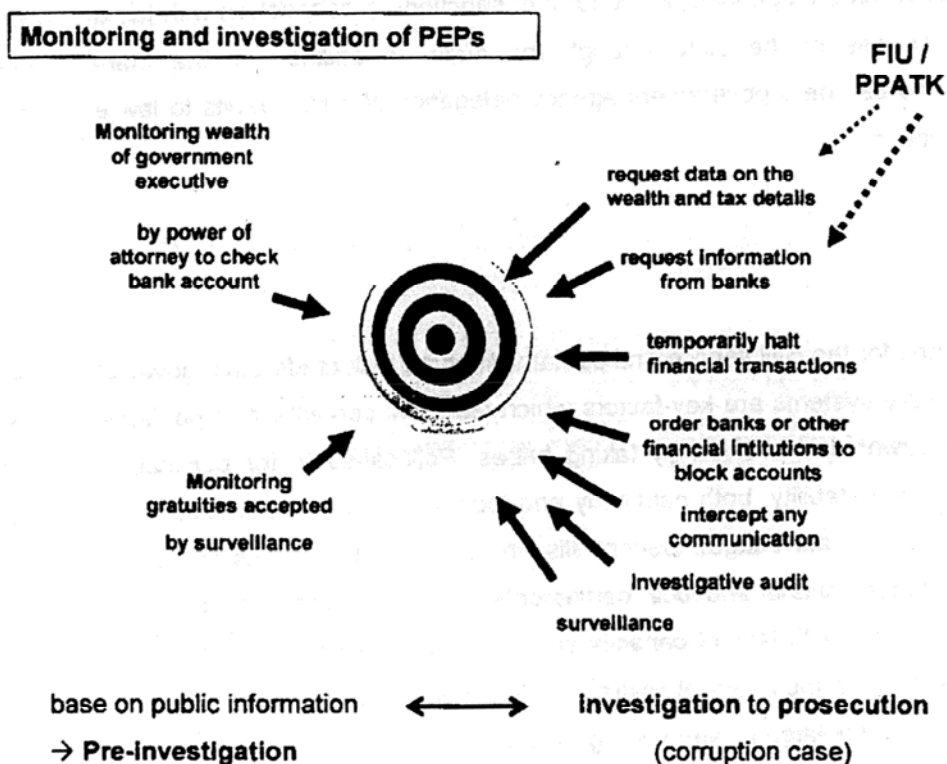
Third, manage public perceptions and expectations in combating corrupt practices to maintain wishes for a more rapid progress of corruption eradication.

Awareness of corrupt practices has increased and free media are constantly reporting on corruption or suspected corruption.

As a part of corruption prevention, Law Enforcement Agency has a duty to improve the accountability of public officials by requiring public officials to be transparent to the public in declaring their assets and by effective analysis of *Public Officials Wealth Reports*. According to the duties on monitoring of prominent public official, in performing the prevention tasks, KPK is authorized to conduct measures to monitor PEPs in order to conduct checks on reports on the wealth of government executives and gratuity.⁴ Within this report public officials are also obliged to give power of attorney to KPK with the authority to open and check their bank accounts at any time.

Mechanisms of analysis of *Public Officials' Wealth Reports* and investigations of corruption cases relating to the targets, can be described as follows:

⁴ Article 13 of Law number 30 of 2002 concerning KPK



Supervisory Role in Fighting Corruption

In the role of government oversight by authorities in the eradication of corruption, emphasis is placed on preventive measures, without ignoring the role of the repressive actions. Preventive actions are implemented through the government's internal controls through: performance audit, monitoring, evaluation, Review, consultation, dissemination and assistance (technical assistance). These activities make a recommendation to the leadership of government institutions and work units that are improving the internal control system (organization, planning, policies, and internal Review), improvement of methods and activities directly for corrections of irregularities encountered in the field. Follow-up on the recommendation of this oversight activity is an effective step to prevent criminal acts of corruption. Consultation activities, socialization and assistance aimed at improving the supervision capacity of the object in the performance of duties, particularly in matters relating to legislation and financial administration.

Repressive actions, implemented through the provision of recommendations to the leadership of government agencies, in the form of sanctions in connection with the discovery of corruption or loss of the state through the audit. In addition to the

management recommendations can be a government agency delegation of audit results to Jaw enforcers in case of corruption.

Conclusion

Low salaries for the civil service and parliament and a lack of effective governance and internal-supervisory systems are key-factors which lead civil servants and parliamentarians to abuse their power and position by taking bribes. Political costs for politically exposed persons, to maintain stability, both nationally and locally, in many cases also lead them to take money from the state budget. Decentralisation and direct elections for provincial and local officials, and for national and local parliaments during the recent transition period, has caused political figures with lack of capacity and educational backgrounds to be elected as governors, regents and members of parliament. Consequently they cannot manage state budgets properly as stipulated by various regulations.

The authority to monitor the bureaucracy by examining Public Officials' Wealth Reports helps the law enforcement agency with its duty to investigate corruption cases. Cooperation with the Financial Intelligence Unit and government oversight authorities aids in effective investigations.

Thank you.

**PREVENTING CORRUPTION:
EFFECTIVE ADMINISTRATION AND CRIMINAL JUSTICE MEASURES:
A LAO PERSPECTIVE**

*Vilaysinh DAINHANSA**

I. INTRODUCTION

As we are all aware, corruption is a very serious crime because it concerns government officials, some in high-ranking positions. Corruption results in serious social concern. It erodes the rule of law; undermines good governance; hampers economic growth; inhibits property reduction; impinges upon competitive and fair business conditions, and undermines democracy and human rights. Fighting and eliminating corruption is a very necessary, difficult and complex process. Fighting corruption requires determination and persistence from political leadership; support from citizens; and cooperation and support from the region, international community and international organizations.

Like other countries, the Lao PDR is experiencing the serious problem of some negative activities within the bureaucracy. While striving for economic excellence and rapid infrastructural development, we are not immune from corruption. Malpractice within Government offices, especially when poorly supervised and controlled, is a real concern for any government.

II. THE LEGAL FRAMEWORK TO FIGHT CORRUPTION

A. Laws

Recognizing the damage caused by corruption, the government has issued various decrees, orders, regulations, instructions and laws in order to prevent and eliminate malpractice within government offices. An important step was enacting the law on anti-corruption, dated 25 May 2005. This law had been applied as a basic legal instrument in connection with the penal law for effectively combating and preventing fraud and corruption in the country.

According to the Anti Corruption Law, “Corruption is the act of an official who opportunistically uses his position, powers, and duties to embezzle, swindle [or] receive bribes or any other act provided for in Article 10 of this law, [which act is committed] to benefit himself or his family, relatives, friends, clan, or group and causes damage to the interests of the State and society or to the rights and interests of citizens. The official stipulated in this law means leaders at all levels, administrative staff, technical staff, the staff of State enterprises, civil servants, soldiers, [and] police officers, including chiefs of villages and persons who are officially authorized and assigned to exercise any right or duty”.

The law in connection with Penal law also determined acts of corruption which can take the following forms:

* Prosecutor, Deputy of the Head Division, Office of the Supreme People's Prosecutor, Lao PDR.

1. Embezzlement of State property or collective property;
2. Swindling of State property or collective property;
3. Taking bribes;
4. Abuse of position, power, and duty to take State property, collective property or individual property;
5. Abuse of State property or collective property;
6. Excessive use of position, power, and duty to take State property, collective property or individual property;
7. Cheating or falsification relating to technical construction standards, designs, calculations, and others;
8. Deception in bidding or concessions;
9. Forging documents or using forged documents;
10. Disclosure of State secrets for personal benefit;
11. Holding back or delaying documents.

B. Other Legal Acts

The Prime Minister's Instruction No. 016/PM 31 August 1998 informs the ministers, provincial government and mayor of the Vientiane Municipality, that they must educate public servants and Lao citizens on more thrifty and cost-effective practices. The instruction included but was not exclusive to: saving time, saving money, saving labour and material.

The Decree No 95/PM 5 December 1995 and the instruction from the Ministry of Finance have been followed by civil servants when procuring items or services (i.e. construction maintenance or repairing services).

III. MEASURES FOR PREVENTION OF CORRUPTION

A. Disciplinary Measures

The Law on Anti Corruption clearly regulated measures for prevention of corruption. However, the implementation of this law has not been effective. The law coordination between the prosecutors' offices and the state inspection authority at the central and local level is very poor. Only a few minor cases of corruption reach the court. Many cases are solved using the disciplinary measures.

The following measures are stipulated in the law:

1. Role Model of Leaders, Art. 22 Law on Anti-Corruption

Government staff at all levels, especially the leaders, shall act as role models in the strict implementation of the laws and regulations, and shall lead in having transparent lifestyles and no corruption.

2. Duties of the State, Art. 23 Law on Anti-Corruption

In the prevention of corruption, the State has the following duties:

1. To educate [the public] to respect and strictly comply with the laws and regulations;
2. To improve governance mechanisms to ensure [that they are] good, effective and transparent;
3. To define and implement policies toward government staff at each level clearly

- and to ensure proper living conditions;
- 4. To strictly and immediately impose discipline and punishment on offenders charged with corruption;
- 5. To promote the public, mass media, and social organizations to participate in the prevention and countering of corruption according to regulations.

3. Obligations of other Organizations, Art. 24 Law on Anti-Corruption

Party Organizations, State organizations, the Lao Front for National Construction, mass organizations and social organizations, at all levels from central to local level, including State-owned enterprises, shall implement their assigned roles, rights, and duties completely, strictly, [and] immediately, shall provide evaluation and feedback to each other on the performance of functions by their government staff, shall conduct regular education campaigns, and shall coordinate with concerned sectors to prevent, counter and deal with corruption within the scope of their responsibilities.

4. Prohibitions for Persons who have Position, Power and Duty, Art. 25 Law on Anti-Corruption

It is prohibited for persons with position, power and duty to commit any of the following acts:

1. To receive money, material items, or other benefits from any individual or organization that relates to this functions which causes damage to the interest of the State and society, or the rights and interests of citizens;
2. To cause difficulty, hold back, delay, or interfere in dealing with any activities;
3. To open bank accounts outside the Lao PDR without informing the concerned authority;
4. To act as a consultant to private enterprises in relation to his decision-making power for personal benefit;
5. To act as a broker to individuals or organizations for personal benefit; for instance, by lobbying in legal proceedings, or for projects or quotas;
6. To use his position to borrow the money of any collective that is under his responsibility for other persons, or to provide any guarantee to other persons to borrow money from the bank;
7. To recruit, post, or appoint one's own wife, husband, children or close relative in leading positions in those functions under his responsibility that would create conditions for corruption, such as positions in organizational and control activities, finance and accounting, treasury function, warehouse keeping, procurement, and contracting;
8. To incorrectly possess or use any house or land belonging to the State or collectives in order to benefit himself or his family, relatives, groups, or clan;
9. To disclose any State or administrative secret;
10. To use money or property of the State or collective to organize parties, to use as gifts or to allocate to staff or other persons in contravention of laws and regulations;
11. To suppress, threaten, or obstruct any person who brings a claim, or provides feedback, including a person who provides negative information to concerned persons;
12. To refer to the reputation, position, power and duty of a higher authority or other person for personal benefit.

Any government official who infringes any of the above-mentioned prohibitions will be subject to re-education and disciplinary measures; and if the infringement constitutes an offence, the offender shall be punished as provided in the laws and shall pay compensation for the damage he has caused.

5. Property Declaration, Art. 265 Law on Anti-Corruption

Before or after receiving a position, power, or duty, the person who holds such position, power, or duty as provided in art. 8 of this act, must declare his or her own property and debts, and that of the person's husband or wife and children who are under his or her charge, accurately, faithfully, and honestly and must be accountable under the law for the contents of the declaration.

The government has issued detailed regulation on the declaration of property and debts.

Most of these above-mentioned measures are very important to combat corruption. However, asset declaration is a crucial foundation for the action of the Inspection Authority. As yet, such asset declaration has not yet been implemented in the Lao PDR, and the drafting process is underway.

B. Administrative Reform

The Government, with the support of various international organizations, has undertaken many reform initiatives aimed at restructuring the state apparatus; improving government mechanisms, working conditions and administrative procedures; and minimizing the steps involved in granting licenses. The introduction of new reform initiatives are helping to minimize administrative paper work. The reduction of the extensive paperwork trail or number of "doors people have to go through" is helping to minimize and eventually, eliminate, conditions in which corruption can exist. Another major area of reform is the introduction of new mechanisms, such as auditing and inspection, which demand more open and accountable work practices.

The aim of the aforementioned measures is to efficiently combat and eliminate corruption across the bureaucracy. During the process of reform, the government intends to build a bureaucracy of good and honest civil servants. New civil service recruits will be elected fairly through open examinations. Civil service managers will be elected and appointed through more open, equitable and democratic processes.

A major issue that currently exists in the government staff is poor salary, compensation and benefits for civil servants. To improve the overall administrative reform, the government intends to reform salaries and other compensation of civil servants to ensure that civil servants can maintain a decent standard of living.

In 2009, the Lao PDR ratified the convention and took a step forward in successfully fighting corruption.

Most importantly, people can access information about anti-corruption measures and efforts. All the State organizations have to put the opinion boxes in front of their offices or in public places to ensure that people who would like to report the illegal activities of any person or organization, can exercise their rights without any fear or report if they saw the Government officials do something unlawful

Very important is the hotline of the National Assembly during its plenary sessions. There are many callers and their names are protected and not disclosed to the public. There is a committee responsible for the inspection of the report. Then the concerned

minister or authorities have to explain or reply to the question or concerns.

Moreover, the Law on State Inspection (2007) has been adopted by the national assembly and is an instrument to allow the state inspection authority to successfully inspect and investigate corruption, including creating the rule on asset re-declaration.

The Central Committee of the Party (CCOP) has also issued a party resolution for all party members to avoid and not partake in corrupt or fraudulent activities. More recently, the political bureau of the Central Committee issued a regulation stipulating 14 prohibitions for high-ranking officials — outlining activities that they must not be involved in; defining their responsibilities; and specifying the accountability that falls under their political leadership.

In addition, in the regulations, the government has established an organization that is responsible for preventing corruption — the state inspection authority. This organization is responsible for fighting corruption in the bureaucracy; and ensuring transparency and fairness in the management of public resources, as well as prevention and investigation of corruption.

The government has established the State Audit Office, which is responsible for auditing the usage of state resources and public finances across the country. To help monitor corruption of state SOEs, the government has established the Office for Business Promotion and Implementation. Within the Ministry of Finance, the Department of Inspection of Finance operates and is responsible for internal auditing and monitoring the implementation of the state budget.

C. Awareness Raising

Important measures for prevention are raising the anti-corruption awareness of the government officials and the public as a whole; without the participation of the public, fighting corruption would not be successful. Anti-corruption awareness includes anti-corruption awareness at school, colleges and universities. The anti-corruption campaign for the public can be conducted through news agencies, and print and broadcast media. In addition, anti-corruption awareness includes seminars for government officials.

IV. MEASURES FOR COUNTERING AND DEALING WITH CORRUPTION

There are three types of measures to deal with corruption:

1. Educational Measures
2. Imposition of Disciplinary [Measures]
3. Case Proceedings

The use of measures to counter the corruption of any government staff who commits an offence [relating to corruption] is based on the severity of the offence. If it is a minor offence, there will be educational measures and imposition of disciplinary [measures]; if it is a serious offence, it will be subject to legal proceedings as provided under the laws.

A. Education Measures

If, through the inspection, a minor offence is found, and the offender honestly reports [the offence], and admits to the concerned organization that he or she committed

the offence and returns all assets that he or she took away, he or she will be subject to educational measures and a warning.

B. Imposition of Disciplinary [Measures]

Any government staff member who commits an offence [relating to corruption] which is not serious, but who does not willingly report or who escapes from the offence, shall be subject to the following disciplinary [measures]:

1. be criticized, and be admonished by the recording of a note in his or her biographical file;
2. be suspended from receiving any promotion, [raise in] salary level, or reward;
3. be removed from his or her position or be demoted;
4. be dismissed from office without receiving any emoluments.

The person who is subject to the imposition of disciplinary [measures] must return completely all of the property that was unlawfully taken.

C. Case Proceedings

If, after the inspection and investigation, there appears to be solid information and evidence, the counter-corruption organization shall make a summary of the inspection result, complete the file of the case and then send it to the public prosecutor to consider bringing a prosecution in court.

In the event that the public prosecutor fails[,] without reason[,] to prosecute the case in court within 30 days from the date of receiving the case file, the counter-corruption organization has the right to submit the file to the higher level of public prosecutor to consider and deal with the issue.

V. THE ORGANIZATIONS INVOLVED IN FIGHTING CORRUPTION

A. Party Control Committee (PCC)

As the Lao PDR has a one party system, all organizations are under the leadership of the Lao People's Revolutionary Party. The PCC was formerly the main inspection agency in Laos. It operates across all levels and branches of government, often with assistance of the State Inspection Authority. After the creation of the State Inspection Authority and State Audit Office the role of PCC changed its focus to the party's activities. However, some legal and regulatory provisions still provide this organization with a dominant role.

B. The State Inspection Authority (SIA)

The State Inspection Authority was established on 30 May 2001 by the decree of the Prime Minister, No. 98/pm but was replaced by the new decree No 10/PM. The principle functions of SIA are to prevent corruption and to undertake the investigation on corruption. The SIA inspects: the State's management; the ministries and equivalent organizations; the provinces; and capital city; state owned enterprises, and joint venture private and public enterprises to ensure that they are operating in accordance with the laws and regulations. This organization is attached to the Prime Minister's Office and reports directly to the Prime Minister.

C. State Audit Office (SAO)

The SAO was set up by the Prime Minister's Decree No 174MP (5 August 1998). This was considered a major step toward strengthening the supreme audit function in Lao PDR. The SAO is responsible for auditing the accounts and certifying the appropriateness of the accounts of the organizations under state administration, in addition to state owned enterprises, joint ventures and projects funded by the state budget or international grants and loans. This organization is also attached to the Prime Minister's Office and reports directly to the Prime Minister.

D. The Organ of the Supreme People's Prosecutor of the Lao PDR (OSPP)

The OSPP of the Lao PDR is a supervisory State Organ and is responsible for monitoring and inspecting the proper and uniform adherence to laws by all ministries, ministry-equivalent organizations, government organizations, the Lao Front for National Construction, mass organizations, social organizations, local administration enterprises, and citizens and for exercising the rights of prosecution.

E. The National Assembly

The National Assembly is theoretically a legislative body, and oversees the executive and judiciary organizations. The Commission on Economic and Financial Affairs oversees the preparation and implementation of the State budget. The National Assembly adopts, revises and oversees the implementation of the national annual budget.

VI. PROSECUTION OF CORRUPTION FROM 2009 - 2011

According to the report of the Criminal Department of the Office of the Supreme People's Prosecutor, there were the six following cases relating to corruption in 2009:

1. Three cases of embezzlement of state property or collective property;
2. A case of swindling of state property or collective property;
3. Forging documents and using fraudulent documents;
4. One case of bribery.

In 2010, there were 15 cases:

1. Two cases of embezzlement of state property or collective property;
2. Five cases of abuse of state power;
3. Eight cases of forging documents and using fraudulent documents.

In 2011, there were eight cases:

1. A case of embezzlement of state property or collective property;
2. Two cases of swindling of state property or collective property;
3. Three cases of abuse of state power;
4. Two cases of forging documents and using fraudulent documents.

The most important cases are the illegal logging or timber smuggling cases in 2011 and investigations in those cases are underway:

According to KPL news, tax officials confiscated 30 cubic metres of dalbergia wood, locally known as Mai Khayoung, valued at over 270,000 USD in Donesay area,

Pakading District, along the road No. 13, on 25 and 27 August 2011.



More than 840,000 cubic metres of kayoung were confiscated in Champassak in August 2011; the authorities arrested 106 people reportedly involved in illegal logging and the investigation is ongoing. Four of the arrested are identified as Vietnamese and another one as Chinese. Twenty-eight cars and six motorcycles used by the loggers were also confiscated.

Of the seized wood, over 526,000 cubic metres was confiscated in Pathoumphone District; 235,163 cubic metres in Mounlapamok district; 43,153 cubic metres in Paksong district and 38,346 cubic metres in Khong district.

The Provincial State Inspection Authority said that illegal logging and trafficking of endangered wood in Chmappsassack province has been widespread since 2010, especially in Laos-Cambodia border areas or areas between Sekong - Attapeua, and Attapeu – Champassack. Loggers are locals and foreigners.

Corruption is widespread in Laos' forestry sector, explaining why national laws are widely flouted. In 2010, a Government prosecutor admitted that the number of forestry officials charged with taking bribes was increasing, with payments being made to inspectors to allow cutting in excess of quotas. It has been estimated that 20 per cent of logging companies' total overhead in Laos is comprised of bribes to senior officials to secure quotas.





V. CONCLUSION

The Law on Anti-Corruption clearly regulated measures for prevention of corruption. However, the implementation of this Law is not effective. The coordination between the prosecutor's office and the State Inspection Authority at the central and local level is very poor. Only a few minor cases of corruption reach the Court. Many cases are solved using the disciplinary measures.

The Lao PDR has enough organizations involved in anti-corruption but coordination is still not sufficient. Currently, many of the organizations duplicate or overlap their work. Each organization is facing a limited budget and has very few staff to be able to perform the necessary tasks involved with stamping out corruption.

Although the Law is a major step forward, there is still poor implementation of the law. Fighting corruption is still complex and challenging and corruption remains difficult to detect. Fighting corruption requires, first of all, determination and persistence from the political leadership and participation from citizens. It is of great importance that civil servants involved are educated in a moral and ethical code of conduct.

Therefore, to fight corruption successfully, the following conditions are necessary:

1. Political commitment: political leaders must not partake in corruption activities and need to provide a good example to their future counterparts;
2. An effective anti-corruption strategy;
3. An efficient anti-corruption system: this includes a basic legal framework to prevent and punish those involved in corrupt activities;
4. A rule on asset declaration for persons of power, duty and position must be in place and must apply to such persons before and after they receive such position, power, or duty;
5. Anti-corruption awareness-raising must be continuous and must include government officials, prosecutors, judges, lawyers and the public. There is much to be done through the organization of seminars, workshops, newspapers, magazines and other possible and effective propaganda means;
6. Joint agreement on coordination between the Office of the Supreme People's Prosecutor and the State Inspection Agency and other organizations concerned must be in place to restructure, strengthen and better coordinate among those institutions involved with detecting, investigating and prosecuting corruption;
7. Governance and administrative reform across the country is to be continued to help promote transparency, accountability and eradicate all kinds of autocracy;
8. Civil servants need to be honest to their country and to the population and those people employed in the area of finance and accountancy needs to abide by the rules and regulations that pertain to finance;
9. Finally, to prevent corruption, public participation is necessary and all state activities need to be open and transparent.

EFFECTIVE MECHANISMS TO PREVENT CORRUPTION, INSTANCES OF SUCCESSFUL AND UNSUCCESSFUL IMPLEMENTATION OF ANTI-CORRUPTION PREVENTION MEASURES IN THE LAO PDR

*Phongsavanh Phommahaxay**

I. COUNTER-CORRUPTION ORGANIZATION

A. Status and Role

The counter-corruption organization is a State organization that has the role of preventing and countering corruption within the country by assigning the State Inspection Authority at the central level and state inspection authorities at provincial levels to implement [this task].

The counter-corruption organization is an investigation organization and performs its duties independently.

B. Organizational Structure

The organizational structure of the counter-corruption organization consists of:

1. [Counter-corruption organization] at central level;
2. [Counter-corruption organization] at provincial level.

❖ The counter-corruption organization at the central level has a status equal to a ministry. The head of such organization is appointed and removed by the same procedure as a member of the government. The counter-corruption organization at the provincial level has a status equal to a provincial division. The head of the counter-corruption organization at the provincial level is appointed or removed by the head of the counter-corruption organization at the central level, after coordination with the provincial governor and city mayor.

C. Rights and Duties of the Counter-Corruption Organization at Central Level

The counter-corruption organization at the central level has the following main rights and duties:

1. To conduct studies relating to the prevention and countering of corruption, and thereafter to submit to the government for consideration;
2. To direct and inspect the implementation of activities relating to the prevention and countering of corruption within the entire country;
3. To conduct activities to prevent and counter corruption among government staff within the entire country, especially government staff under the supervision and management of the central level and other government staff of organizations at the central level;
4. To conduct investigations into corruption by using measures that are defined in the law on criminal procedure;
5. [During the period] when the inspection has yet to be completed, to propose the temporary suspension [of a person under inspection] from his position or duty or [to propose that a person under inspection] not be removed, appointed, or have his job swapped;
6. To liaise, coordinate, and cooperate with concerned sectors at the central and local level to perform its rights and duties;

* Technical Staff of the Head Division, Government Inspection Authority, Lao PDR.

7. To consider, decide, and use measures against the inspected person as provided in the laws;
8. To summarize the results of activities for the prevention and countering of corruption, and then to periodically report to the Prime Minister and the National Assembly Standing Committee;
9. To exercise such other rights and perform such other duties as provided by laws and regulations.

II. THE ANTI-CORRUPTION INSPECTION DEPARTMENT

In 2007, the Anti-Corruption Inspection Department has established activities under the supervision leadership of the State Inspection Authority at the central level and has the status and role as follows:

A. Status and Role

The Anti-Corruption Inspection Department is a state organization, and a technical department of the State Inspection Authority at the central level and has a status equal to the office, departments, and state organization at the central level.

B. Organizational Structure

The organizational structure of the Anti-corruption Inspection Department consists of three Divisions as follows:

1. Inspection Anti-corruption Division
2. Investigation Division
3. Receiving Property Declaration and Property Inspection Division

C. Prevention and Countering of Corruption

1. Continue to study and propose that the Government acknowledge the legal acts implementing anti-corruption; the law of state inspection shall be studied concerning the asset-debt declaration of officials.
2. Establish the policy-line dissemination of party, state regulations, especially the law of anti-corruption and other law, which shall be related to officials, servants and all tribal people to be aware of damage and harm of anti-corruption, they shall be allowed to supply for the information and participated in the inspection of interception and anti-corruption.
3. Propose that the Government establish and improve the central anti-corruption agency and the local level to consolidate the organization, fully and efficiently recruiting the officials in each division as required, and improve the qualification level for the officials.
4. To stipulate the project plan, procession and technique to conduct the interception and anti-corruption activities completely, and assign the responsibility to the organization and the concerned officials to implement the said effective project plan.
5. Increasing the inspection as soon as the corruption phenomenon is discovered, and modify the law in response.

D. Conduct of Inspection

In 2010-2011 year, The Government Inspection Authority and Counter-Corruption Organization at the central level and provincial level have conducted the inspection 101 target. We can discover that much state property was damaged, and so on.

III. INSTANCES OF SUCCESSFUL IMPLEMENTATIONS OF ANTI-CORRUPTION PREVENTION MEASURES

By implementing responsibilities defined in the law and regulations, the Government Inspection Authority has contributed great efforts in preventing, countering and addressing the corruption practices as follows:

- Administrative organizations at all levels have propagated and educated their personnel and civil servants to grasp and understand the law, regulations and the Government's order, especially the law and anti-corruption, by various means such as organizing workshops or seminars at various levels in both central and local levels, and through the print and broadcasting media;
- Organizational restructuring, enhancing mandates and good governance mechanisms at the Ministries and some organizations;
- Improving the policy towards staff and civil servants in order to gradually improve living conditions such as salary systems, social welfare policy, and defining the uses of government administrative budget and other policies.

IV. THE PROVISIONAL PLAN ON THE ANTI-CORRUPTION ACTIVITIES OF THE GOVERNMENT INSPECTION AUTHORITY OF LAO PDR IN THE YEARS AHEAD

To enhance strong points and improve the weaknesses mentioned above, the Government Inspection Authority has a provisional plan on anti-corruption activities as follows:

1. Advocate and raise awareness of laws and relevant legislation related to activities on preventing and countering corruption by organizing seminars and widely disseminate the outcome through the media;
2. Strengthen public administration at all levels, deploy staff according to job description, determine a clear mandate, rights and duties; study and implement appropriate policy to ensure transparent performance;
3. Study how to improve the strength and comprehensiveness of the steering or supervision committee, supporting mechanisms and the mandate of the Anti-Corruption Organization at central and provincial levels;
4. Establish a strategic plan on countering corruption for 2011-2020 and a decree on declaration of property of civil servants;
5. Revise some laws and legislation to comply with the implementation of the International Convention;
6. Cooperate and share lessons on prevention and countering of corruption activities with regional and international friendly countries as well as international organizations.

WAR AGAINST PERCEPTION: THE ROLE OF SOCIAL MEDIA IN GAINING PUBLIC SUPPORT

*Ahmad Khusairi Yahaya**

“Social media can draw in lots of people quickly through network effects. Perhaps too quickly for most hierarchical security agencies. Research on the properties of networks demonstrated that they can be powerful tools for encouraging anti-social opinion and behavior. Social scientists at Syracuse University recently theorized that it would only take 10 percent of population distributed by social networks to the right places to radically alter public opinion and large scale behaviors.”

“The uprising of political revolution across North Africa managed to topple repressive regimes and demand political voice, much to the credit of the new social media. By utilizing YouTube, Face book, Twitter and other platforms to conveys images and first-hand reports of the events, protestors were able to connect in solidarity with supportive observers from around the world.”

Source: Reuters May 9, 2011

I. INTRODUCTION

Internet based social media has profoundly changed the way we engage with others in the private and public sphere. Social activists, political campaigners, Non-Governmental Organizations (NGOs), government and business communities increasingly make use of the connective power of these communication tools to mobilize support, produce knowledge, disseminate information, deliver services and engage with their stakeholders. Inspiring examples for innovation, use of social media tools for fighting corruption and fostering support from the public have emerged all over the world.

The uprising of political revolution across North Africa, which managed to topple repressive regimes and demand political voice, happened much to the credit of the new social media. By utilizing YouTube, Facebook, Twitter and other platforms to convey images and first-hand reports of the events, protestors were able to connect in solidarity with supportive observers from around the world. This is an example of how effective and powerful the social media are in shaping today's public opinion towards the government and its agencies.

Corruption has become a major issue and an important weapon to topple leaders and government. The negative perception created by the opposition towards leaders and existing government were disseminated through social media. The younger generation has become an important target group for them in order to shape antagonism and hatred against a government. A government will subsequently be labelled and perceived as corrupted and undemocratic.

War against corruption nowadays, has become more complicated when every action and policy introduced by any said agency is being politicized. Based on Malaysia's experience, corruption has become an important political agenda for the opposition to win the heart of voters, especially amongst the young voters between 21 to 40 years old. The practice of using

* Chief Senior Assistant Commission, Director of Policy, Research and Planning Division, Malaysian Anti-Corruption Commission (MACC).

corruption as political agenda has subsequently created a strong impact and it was afterward reflected in the outcome of the 12th General Election when five of the so called stronghold states of the Government Coalition Parties fell into the hands of the opposition.

Although, the Government of Malaysia has always regarded addressing the threat and problems of corruption since its independence in 1957 as its main agenda and an on-going commitment, but these efforts indeed were toned down by the negative perception generated by the oppositions. The Anti-Corruption Agency (ACA Malaysia), an enforcement agency established to fight corruption, was nevertheless perceived as a “toothless tiger” which is dependent, ineffective, biased and is one-sided particularly towards the ruling party.

The Government of Malaysia under the premiership of Dato’ Sri Mohd Najib Tun Abdul Razak, Prime Minister of Malaysia has unflaggingly performed numerous actions for the benefits of the country. One of the tremendous actions taken by the honourable Prime Minister is to transform the entire government’s machineries through the strategic actions plan namely the Government Transformation Programme (GTP).

Under the GTP, six key priority areas have been identified where challenges within each area have been divided into short-term priorities and long-term issues. These areas of development are known as the National Key Result Areas (NKRAs) as below:

- Reducing Crime
- Fighting Corruption
- Improving Student Outcomes
- Raising Living Standards of Low-Income Households
- Improving Rural Basic Infrastructure
- Improving Urban Public Transport

One of the main priorities under the National Key Result Areas is the systematic and concerted measures taken by the Government to fight corruption.

Getting to the root of the anti-corruption establishment, the Malaysian Anti-Corruption Commission or commonly known as the MACC has officially begun its operation on 1 January 2009 replacing the Anti-Corruption Agency (ACA) of Malaysia established in year 1967. The MACC is officially established through the enactment of the MACC Act 2009. The transformation of MACC creates a new dimension of anti-corruption efforts in Malaysia with the establishment of five independent committees as a check and balance mechanism to oversee the entire system of MACC including operation, prosecution, prevention, administration, etc. The members consisting of 42 persons who are appointed by the King and the Prime Minister of Malaysia include Members of Parliament from both the ruling and opposition parties, former Chief Justice, former Solicitor General, prominent lawyers, members of the NGOs, from the academia, former Auditor General and others who have rendered distinguished public service or have achieved distinction in their respective professions. The five (5) independent oversight bodies are:

- Anti-Corruption Advisory Board;
- Special Committee on Corruption;
- Complaints Committee;
- Operations Review Panel; and
- Consultation and Corruption Prevention Panel

Although the government had shown its strong political will in the fight against corruption, this does not hamper the other parties to generate stronger perception of war against the government through social media.

II. SOCIAL MEDIA: A NEW WEAPON OF WAR AGAINST PERCEPTION

“We are in the midst of a communications upheaval more significant than the introduction of the printing press. The change began in rarefied academic circles in the 1960s, gathered pace with the emergence of the World Wide Web in the 1990s, but exploded into its most decisive phase in 2004 with the arrival of Web 2.0. Web 2.0 is about opening up the internet to ordinary users, where they add and share their content. It signifies the transfer of control of the internet, and ultimately the platform for communication, from the few to many.”

Dr. Rob Brown, York University 2009

A. Facebook

- There are more than 600 million Facebook users as of January 2011;
- If it was a country, it would have been the third largest country in the world;
- Facebook monthly growth in 2011 is 3.5%;
- According to Social Media Today as of April 2010, it is estimated that 41.6% of the U.S. population has a Facebook account;
- 50% of active FB users log on to FB in any given day;
- An average user has 130 friends;
- People spend over 700 billion minutes per month on Facebook;
- Average users create 90 pieces of content each month;
- More than 30 billion pieces of content (web links, news, stories, blog posts, notes, photos etc) shared each month
- There are more than 200 million active users currently accessing FB through their mobile phones.

B. Twitter

- Since its creation, in March 2006, Twitter has gained popularity worldwide and is estimated to have 190 million users;
- Generates 650 million tweets a day;
- Handles over 800,000 search queries per day;
- It is sometimes described as the “SMS of the Internet”;
- The average number of tweets per hour is around 1.3 mins;
- At the current rate, Twitter will process almost 10 billion tweets in a single year;
- 93.6% of users have less than 100 followers, while 92.4% follow less than 100 people.

C. YouTube

- 3rd largest site on Internet;
- Number 1 largest video site on the web;
- 100 million visitors per month;
- 5 billion video streams every month;
- 15 hours of video uploaded every minute;
- With nearly 3.5 million people visiting the site every single day, the type of videos they watch and interact with, has a huge impact on the way they view the world;
- How can we forget the videos of January 25th Egypt Revolution in YouTube?

- Exceeds 2 billion views a day;
- 24 hours of video uploaded every minute;
- Every person spends 15 mins a day on YouTube;
- Localized in 23 countries across 24 different languages.

III. MACC'S STRATEGIC PLAN IN GAINING PUBLIC SUPPORT VIA SOCIAL MEDIA

The biggest challenge faced by the MACC in the year 2010 was to prevail in the eyes of the public as being independent, transparent and professional in its efforts to combat corruption. The MACC strategic campaign in enhancing its public support and to reverse the negative perception started intensively right from January 2010.

This is aligned with the MACC 2010 Aspiration that outlines *“strengthening confidence and enhance domestic and international perception on the effectiveness of the MACC in combating corruption based on the principles of independence, transparency and professionalism.”*

Social media such as Frenz of MACC, Facebook, Twitter, Blog, YouTube, etc. were developed and used consistently to disseminate information and answers (“our side of stories”) relating to any news or issues highlighted by the public. By providing such platform, members of the public could actively participate and obtain facts from discussion generated through the social media. This will slowly reverse the negative perception created by the parties bearing their own personal agendas.

A. Frenz of MACC

Frenz of MACC (FOMACC) is an in-house developed SMS Gateway system that acts as a communication tool to disseminate information to various people on educational and anti-corruption campaign materials. The system currently runs SMS messages and is in the progress stage of development to cater email groups as well. The system in the near future will be able to disseminate short messages to recipients’ mobile as well as full text articles to recipients’ email.

The FOMACC was officially launched on 23rd April 2010 by the Chief Commissioner of MACC. There are currently 2,000 registered recipients and it has the capability of running no less than 10,000 recipients. Recipients are segmented into groups such as MACC officers, Public Relations Officers of various departments, MACC retiree, Media Journalists, Media Editors, Head of Federal Government Departments, Head of State Government Departments, Government Officials, Bloggers, Higher Learning Institution’s Anti-Corruption Secretariat, Civil Society, the members of MACC Independent Oversight Bodies, Politicians and last but not the least is the Certified Integrity Officers Alumni. The recipients are considered as key communicators and they on receiving the messages could forward it to other unregistered recipients.

The system is being managed by an administrator, who composes the text messages in no more than 160 characters. The text message is typed in the field provided in the desk-top or Notebook of the administrator. The administrator then sends the text message to the SMS Server which manipulates the message in the back-end server (SMS Database) and returns the message back to the SMS Server which then relays the message to SMS Center at the

respective Telecommunication Companies (TELCO) through SMS Gateway. The SMS Center then sends the message to respective recipients or users.

At present FOMACC uses a modem which has 8 SIM card slots. The modem could be added on as the need arises. Thus, the sending of the SMS to users takes much shorter time. The messages sent from Keycomm server queues and are sent to SMS Center immediately, then to users. At the moment, Malaysia has 6 main Telcos namely TM, Celcom, Maxis, DIGI, UMobile, and iTune. All these telcos have their own respective SMS Centers.

FOMACC is used to send anti-corruption quotes, articles, issues, functions, campaigns, success stories, statistics, etc. Some of the messages sent thus far:

- i. Let's make a difference – fight corruption
By: Dato' Abu Kassim Mohamed, Chief Commissioner of MACC
- ii. Impersonation as MACC Officer and the demand of RM50,000 from mayor. Full report view at www.sprm.gov.my.
- iii. Two plead guilty on charges of impersonation as MACC officer to solicit corrupt payments. Sentenced to 1 day imprisonment and fined RM10,000 i/d 15 months imprisonment.
- iv. Fight against corruption: there shall not be consideration on political parties whether ruling or opposition, race, gender and sector – Tun Hamid, former Chief Justice of Malaysia.
- v. I will not walk through my mind with their feet – Mahatma Ghandi
- vi. Fight against giver campaign: Report any offer of bribe to MACC at 1-800-88-6000.
- vii. MACC and Government Inspectorate of Vietnam signed MoU to enhance cooperation to fight corruption.
- viii. Austrian ambassador to Malaysia, Andrea Wicke suggests cooperation between Malaysia Anti-Corruption Academy and similar academy in Austria.

FOMACC is an innovative tool in out-reach program to educate and deter any potential offender of corruption by constantly reminding registered and unregistered recipients of messages, the consequences of corruption. Likewise, messages sent to individuals who have been investigated for offences of corruption but not charged due to lack of evidence helps to prevent them from involving themselves in corrupt practices for fear that they are being watched. Hence, it becomes a prevention effort.

B. Facebook

Facebook is a very popular social network in the present days. It caters to the young and youth generations. It does attract a large number of fans and is fast becoming a new platform for interaction. It is a very effective mode of interactive communication and has a wide coverage.

As an enforcement entity, the MACC has to engage such social network in communicating and educating the public on the efforts of anti-corruption. It is another form of

out-reach tool in education and dissemination of information to deter individuals from corrupt practices. Hence, the MACC has developed and launched its very own facebook page on 24 July 2010. For viewing, one can visit the MACC's facebook at <http://www.facebook.com/pages/SPRM>.

At present the MACC Facebook is registered with a total of 5,155 fans. It is fast growing and tremendously gaining popularity especially amongst younger generation aged between 18 and 24. However, at the moment the dominant age group participating in discussions is between 25 and 35 which takes up about 43% of the total followers.

The social network hits between 100 and 150 active participation per issue or discussion. The MACC Facebook has a discussion board which periodically discusses matters on arrests, community education information, current issues, guidance on anti-corruption, offences and sentences on corruption, etc.

C. Other Media

The MACC has also developed and engaged in other communication mediums such as blog-site, twitter, YouTube, and flickr.

The MACC's official blog-spot can be viewed at <http://www.ourdifferentview.com>. This site has attracted more than 65,000 viewers and has many articles and information one can look for in countering new issues on the MACC and on corruption. Most of the articles in the site were written and posted by MACC's own officers. The site has also been linked by many other independent blog-spots.

The MACC also uses twitter to disseminate short and precise information on corruption and can be accessed by logging on into <http://twitter.com/odvmacc>.

The MACC has also developed and engaged YouTube to disseminate information. Speeches, recordings of presentations and views of the Chief Commissioner and other prominent figures on issues of corruption can be viewed through the <http://www.youtube.com/odvmacc>.

The MACC also uses Flickr to disseminate information on all of MACC's activities. It is no doubt another popular site to disseminate photographic messages to the public. The site can be viewed at <http://www.flickr.com/photos/ourdifferentview>.

IV. THE IMPACT OF USING SOCIAL MEDIA IN BUILDING POSITIVE PERCEPTION

The MACC and the issue of corruption had become important topics discussed almost everyday in both the mainstream and the blogs. Approximately 500 write-ups in the form of news, articles, and comments are posted every month with an average of 16 write-ups per day.

For the year of 2010, the MACC had appointed a Media Monitoring Consultant to monitor the entire media including the mainstream and social media. All the write-ups are further categorized into three categories which are Positive, Neutral and Negative.

The following are examples of each category:

A. Positive

- **PUTRAJAYA:** MACC - ACB Brunei cooperation in investigation resulted in 33 arrested for smuggling diesel to Brunei.
- **KUALA LUMPUR:** Director of a company convicted under the offence of offering RM3,000 to a civil servant. Sentenced to 8 years imprisonment and fined RM15,000.
- **PETALING JAYA:** Keretapi Tanah Melayu Bhd (KTMB) or Malayan Railways Limited is being investigated by the Malaysian Anti-Corruption Commission (MACC) for allegedly awarding a multi-million ringgit contract to an "under qualified" company. The MACC investigation director Datuk Mustafar Ali confirmed that a team of officers was sent to obtain whole lots of documents in connection with the allegation. He, however, declined further to comment when asked on investigations into the case.

B. Neutral

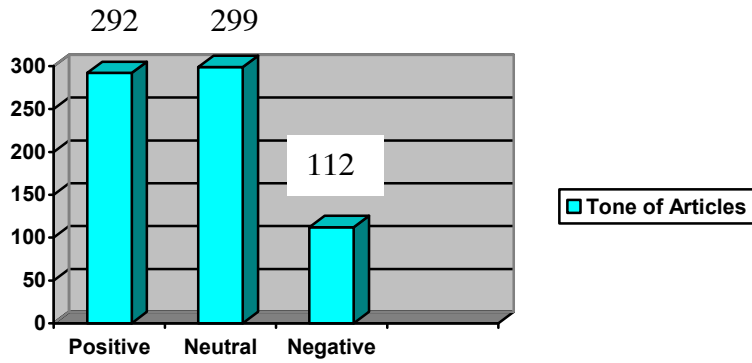
- **KUALA LUMPUR:** Austrian Ambassador to Malaysia, Andrea Wicke suggests cooperation between Malaysia Anti-Corruption Academy and similar academy in Austria.
- **PUTRAJAYA:** Dr Ponhip agrees to attend the TBH inquest and government of Malaysia assures her safety.
- **PETALING JAYA:** The government must give its full backing to the Malaysian Anti-Corruption Commission (MACC) if it wants graft to be stamped out. Apart from such a mandate, the commission must be accorded sufficient financial allocations and the right personnel to fulfil its role as the country's graft buster. These were among the recommendations by former MACC advisor Tan Sri Ramon Navaratnam, who said the commission was not being seen as a premier government agency.

C. Negative

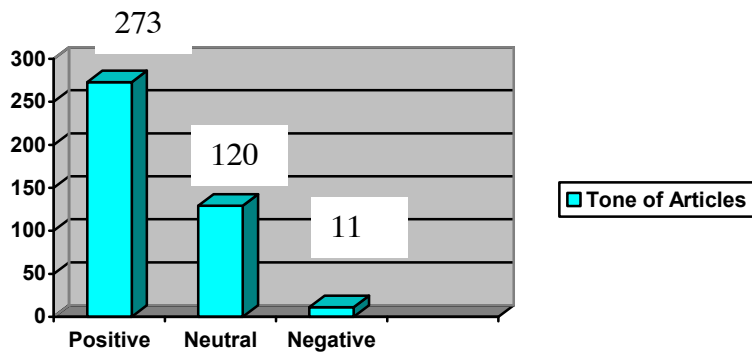
- **PUTRAJAYA:** The Malaysian Anti Corruption Commission yesterday issued an apology to the disabled community over a remark made by its head of prosecution Datuk Abdul Razak Musa during the Teoh Beng Hock inquest on Friday.
- **KUALA LUMPUR:** A former assistant superintendant of the Malaysian Anti-Corruption Commission (MACC) was sentenced to six months' jail by the High Court here after the court reverted a Sessions Court decision which had acquitted him for allegedly accepting a luxury watch from a 'middleman' linked to former Selangor state executive councillor Datuk Saidin Tamby in 1998
- **KUALA LUMPUR:** A senior Customs officer assisting in the investigation of a graft case fell to his death from the Malaysian Anti-Corruption Commission (MACC) building in Jalan Cochrane, this morning.

IV. RESULT ON MEDIA MONITORING

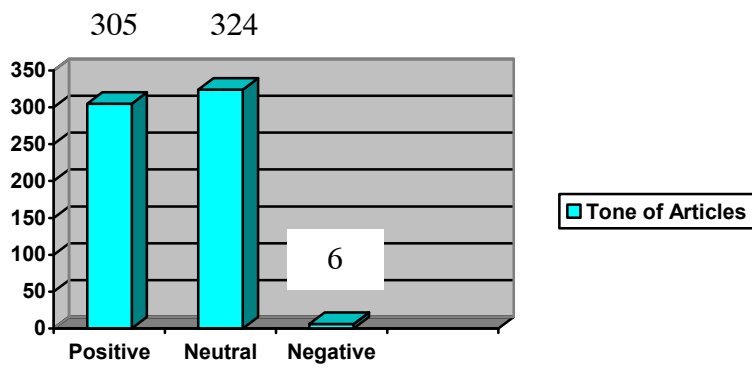
January 2010



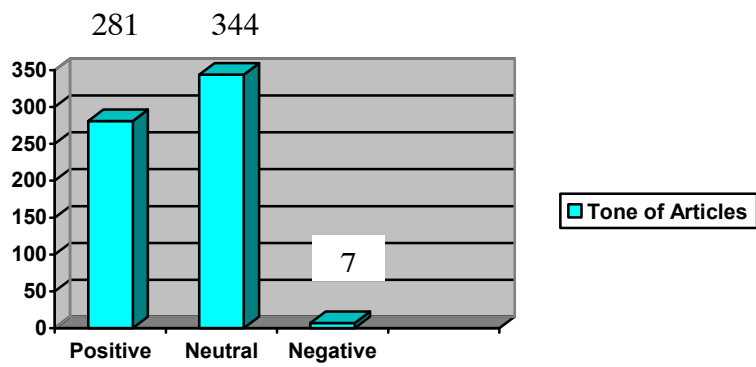
February 2010



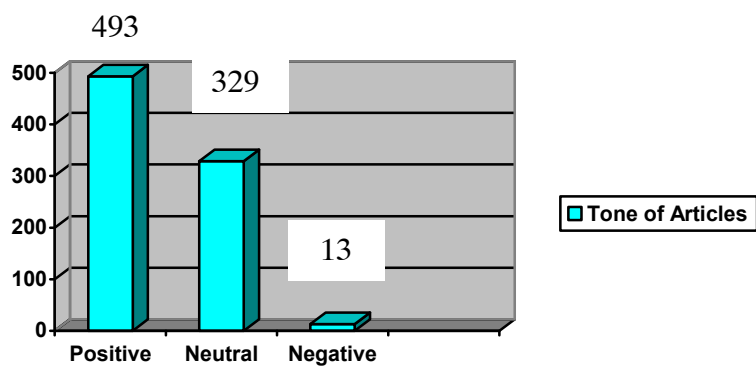
March 2010



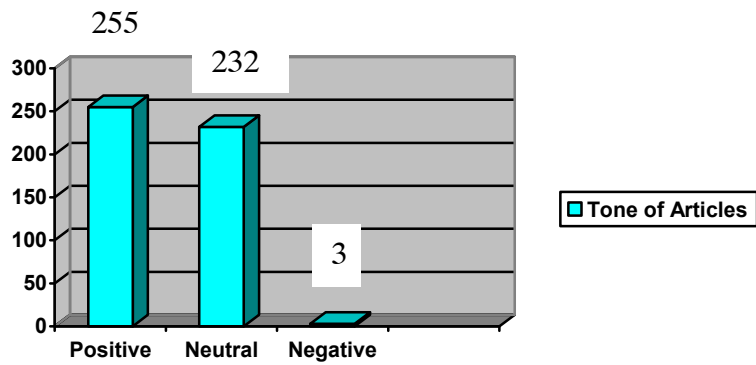
April 2010



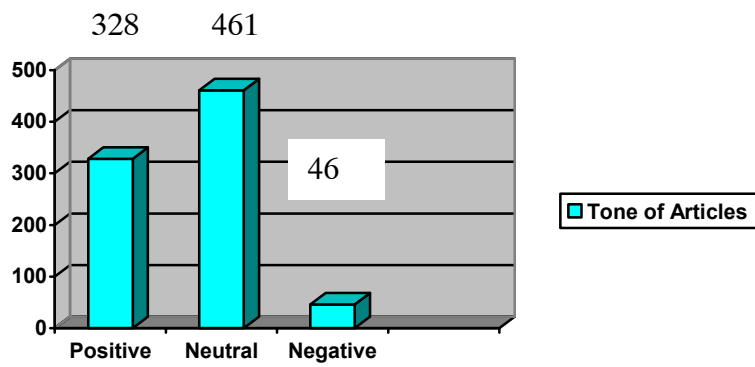
May 2010



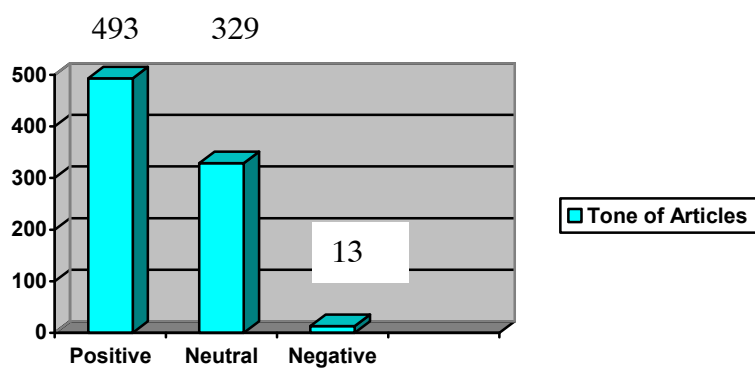
June 2010



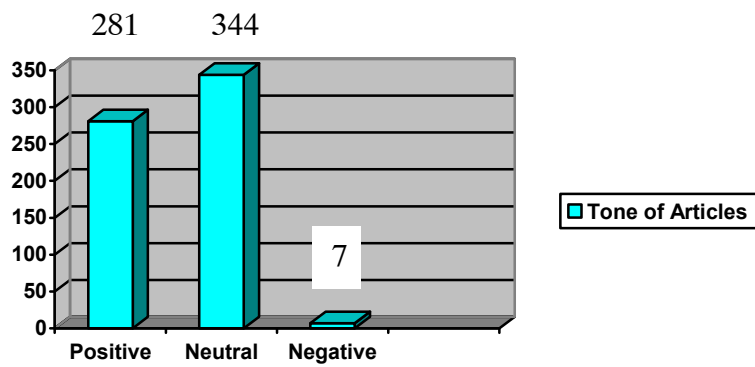
July 2010



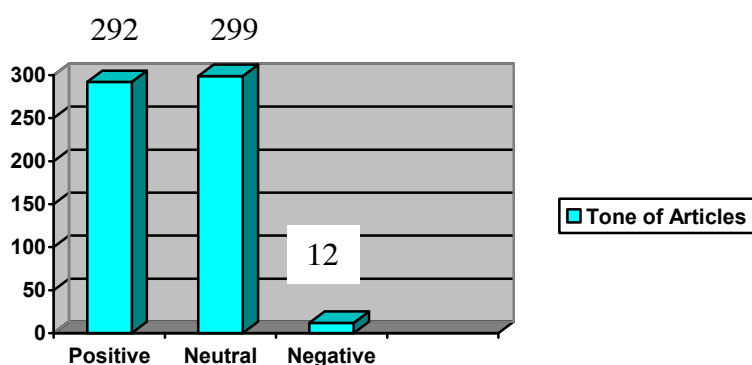
August 2010



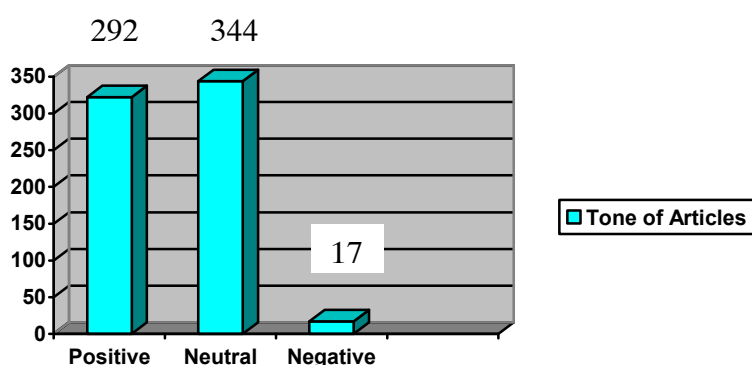
September 2010



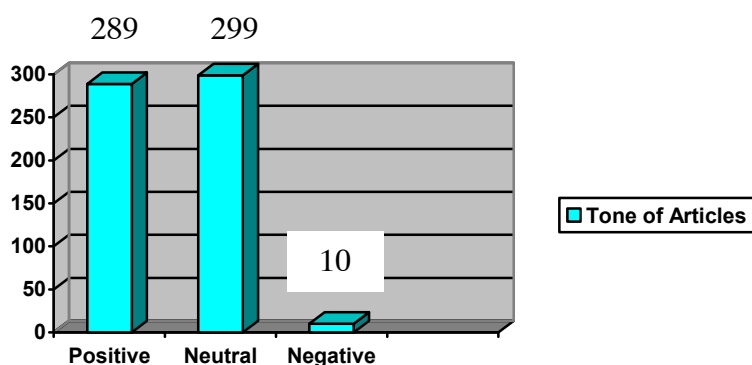
October 2010



November 2010



December 2010



The above results especially in reducing the negative write-ups on the MACC had shown an excellent progress. By using social media as a platform of providing fast and accurate responses to all issues related to the MACC, the MACC managed to reduce the negative write-ups in January 2010 from 112 write-ups to a minimum average of 15 negative reporting through out the year of 2010.

The MACC had identified advantages of using the social media for anti-corruption campaigns and platforms for building MACC's image and reputation as follows:

- Increasing social networking between the MACC and the targeted group;

- Developing public trust by providing accurate responses to any queries;
- Gathering information and feedback directly from the public;
- Free of charge;
- Forming support group;
- Reaching out to bloggers who have very high influence on the society especially the cyber community;
- A platform for voicing out opinion and ideas regarding issues relating to the commission;
- Speed of information flow; and
- Personal, engaging and involving.

VI. CONCLUSION

The responsibility of combating corruption in this era of technology has become more challenging and complex. The advancement of technology creates a huge platform for fast and accurate responses. It sometimes provides a huge opportunity for certain groups of people with evil intentions to disseminate lies and hatred information in order to weaken the image of enforcement agency such as the MACC. By weakening the credibility and reputation of so called “sensitive and important” agency, it will also reflect the negative image and credibility of the government. In order to win a war on corruption, the commission must also take into consideration the war against perception. Without public support and confidence, there is no way the commission can manage to achieve its vision and mission in creating a corruption-free society.

Eradicating Corruption: The Roles and Initiatives of Royal Malaysia Police

Mr. Azha

In the era of globalization, the scope of policing has widened and Royal Malaysia Police (RMP) needs a paradigm shift to meet the present and future challenges. While RMP is approaching 204 years old this year, this institution needs to reinvent and rebrand to stay continuously relevant. Currently (until 30th September 2011) the population of the RMP stands at 110,594 police personnel, with eight departments namely Management Department, Criminal Investigation Department, Commercial Crime Investigation Department, Narcotics Crime Investigation Department, Internal Security and Public Order Department, Special Branch Department, Counter Terrorism Department and Logistics Department.

A key challenge for RMP is to regain the good image that has been seriously undermined in the last decade due to mounting public perception of corruption and abuse of power, the result which came from the public inquiries conducted by a Royal Commission in 2004-2005 and submitted its first report on the 15th May 2005. As such, our 5th Prime Minister of Malaysia saw and stressed a few challenges for the RMP to confront, inter alia:

- a) To increase people's confidence in RMP through a change in police mindset and values, vigorous action against corruption and providing a more caring and humane service to the community.
- b) To enhance the effectiveness of work process through such measures as modernizing work procedures, restructuring organization and deployment, and reducing bureaucracy.

- c) To strengthen the accountability and the sense of responsibility of senior police officers for the performance of their respective departments and units as well as their subordinates by implementing measures such as leadership by example, instilling discipline and sensitivity towards the needs and morale of the staff.

A second Commission was set up in 2005 to investigate the standard operating procedures in relation to body searches after a video clip of a body search of a woman by the police was released by the media. This brought new issues such as the organizational ethics and accountability to the forefront. Studies conducted in 2008 found that the biggest challenge faced by RMP was the issue of integrity. This was based on the statistics that out of 6,355 disciplinary cases involving police officers between 2002-2008, 93.5% were on issues of integrity while only 6.5% were on competency.

According to research conducted in 2010 by Transparency International (Malaysia) on the Corruption Perception Index (CPI) and **Global Corruption Barometer (GCB)** based on the score of (1 – *not corrupt*, 5- *very corrupt*), the police force was perceived as the most corrupted institution by scoring 4.1 compared to other agencies. May I pick the statement of Tim Newburn (1999: 14) on the corruption issue that happened in the police force, “*what is corrupted is the ‘special trust’ invested in the occupation*”. Therefore, we (RMP) are taking a very serious view and going full strides forward on the strategies to drive change and evolve our police force according to our vision to become “**A leading enforcement agency of integrity, competent and committed in making the nation safe, peaceful and prosperous**”.

I. Malaysia's Government Transformation Programme (GTP) - National Key Result Areas (NKRAs)

In 2010, the Prime Minister of Malaysia marked the introduction and implementation of Malaysia's Government Transformation Programme (GTP) and a new chapter in our young nation's history. This bold and unprecedented programme was aimed to radically transform the way the Government worked so we could better serve the people. This entire programme is based on the premise of the government's commitment to "People First, Performance Now" under the 1Malaysia banner. There are six (6) pillars or National Key Result Areas (NKRAs) in the GTP based on the people's most pressing concerns. These are Reducing Crime, **Fighting Corruption**, Improving Student Outcomes, Raising Living Standards of Low-Income Households, Improving Rural Basic Infrastructure and Improving Urban Public Transport. With the implementation of the initiatives under the Fighting Corruption NKRA, the government has continued to demonstrate dedication towards eliminating corruption and graft in the nation.

The Fighting Corruption NKRA focuses on three key areas that are most prone to corruption, which are regulatory and enforcement agencies, government procurement and grand corruption. Under the Fighting Corruption NKRA for 'Regulatory and Enforcement Agencies', RMP is working together with the other four enforcement agencies — namely the Malaysia Anti Corruption Commission, Royal Malaysia Custom and Excise Department, Road Transport Department and Immigration Department — and subsequently came up with five initiatives on fighting corruption in the respective agencies;

- i. To Strengthen and Empower Compliance Units in Law Enforcement Agencies — RMP (Disciplinary Unit under Inspector General Police, Compliance and Monitoring Unit). This unit will emphasise enforcement

to eradicate corruption abuse of power and compliance of rules and regulations.

- ii. Rotation of Staff in “Hot Jobs” – This involves rotating enforcement personnel between jobs or workplace (in high-risk areas / jobs) to prevent them from developing close relationships with and collaborating with criminal syndicates / organisations and to strengthen good governance and values. A list of hot-jobs which have been identified in RMP are the Criminal Investigation Department — The Secret Societies / Gambling / Vice Unit, Intelligence Unit and the Police Traffic Department.
- iii. Reduce Bureaucracy / Institutionalise Control Mechanism e.g. **‘1 Reporting’ System** – With the integration of ‘Police Reporting System’ (PRS-for crime) and ‘Cars Accident Reporting System’ (CARS), everyone is able to lodge their car accident report in any police station which will benefit the people by providing more efficient and transparent system using the latest ICT Technology by RMP.
- iv. Reduce Discretion Through Automation – To reduce ‘direct contact’ / ‘human interaction’ between the people (client) and police officer which is considered as one of the initiatives to reduce opportunities for corruption. Through automation the police can increase the effectiveness of the ‘end result’ by reducing the time on the service given and service rendered will be more efficient, accurate and cannot be manipulated, e.g. Narcotics Information Management System (SPIN), a biometric system mechanism used by Narcotics Department, RMP to prevent data manipulation to those who are under the ‘Police Supervision Orders’ (OKP) under the Dangerous Drugs Act 1952. By using this system, a systematic database will be able to determine the number of registered OKPs compared to the manual

system which will increase effectiveness in monitoring them and prevent any malpractice by any police personnel on this issue.

- v. Whistleblower Protection Act (WPA) 2010 – to encourage our informers or officers to break the ‘blue code of silence’ against fellow officers who are involved in corrupt practices, criminal acts or other misconduct. Under this act, the public are also encouraged to inform the relevant authorities of any form of misused power/misconduct by police personnel. The Act also provides immunity to informers from civil or criminal charges.

Apart from the five initiatives above, the RMP also came forward with a few more additional initiatives, i.e. rewarding police officers when rejecting bribes. The rewards could be monetary or a letter of commendation. RMP has shown very impressive results with the highest statistics of 160 cases for the year 2009 until September 2011. The awareness among enforcement officers to reject bribes can be seen from the Malaysia Anti Corruption Commission’s statistics, i.e. from the total arrest of 944 bribe offenders in 2010. Arrests of those who gave bribes last year were 414 persons (43.8%) compared to only 108 in 2009, making it the highest number in history.

The quarterly publication of ‘Integrity Bulletin’ containing advice and measures taken in upholding integrity in the police force is another continuous campaign to eradicate corruption and abuse of power in the RMP. Initiating the Anti Corruption Poster is part of our campaign to promote and enhance the value of integrity among police personnel and the public. These additional initiatives will increase the public awareness and they will be more informed on the dangers of giving and receiving bribes. In order to stay relevant, RMP has little choice but to work hard on enhancing the integrity not only of its human capital but also in its work culture and policing procedures.

II. Inspector General Police Secretariat (Disciplinary Department) of Royal Malaysia Police

Since 1976, RMP had practiced a system of ‘check and balance’ in order to maintain a fair, transparent and full compliance with rules and regulations when carrying out their duties in uniform. This unit, then known as the Disciplinary Unit was permanently reformed as the Inspector General of Police (IGP) Secretariat (Disciplinary Department) by virtue of IGP Standing Orders KPN 87/8 dated 25th March 2004 and put in direct command of the Inspector General of Police with a specific role to discipline the Police Force which includes investigation of violations and subsequent action against defaulters.

The reformation of IGP Secretariat (Disciplinary Department) under direct orders from the Inspector General of Police shows that RMP gives priority to discipline and integrity in order to achieve its vision and mission. The objective of this secretariat is to strengthen police integrity towards a fair, efficient and effective police service.

III. The Role of Inspector General Police Secretariat (Disciplinary Department) of Royal Malaysia Police

This division is headed by the Deputy Head of the IGP Secretariat (Disciplinary Department) and has a wide framework supported by a strong team of legally qualified and experienced officers to ensure compliance with laws, procedures and best practices by the police personnel. This division consists of the following:

a) The Implementation and Enforcement Unit

To carry out inspection on all the police units to ensure compliance with rules and regulations and subsequent remedial action or disciplinary proceedings. Within

this unit is also the Operations cell which carries out special operations based on information of corruption, abuse of power or authority or any other dereliction of duty. This unit also works in tandem with the Narcotics Department in random testing of police officers for suspected drug abuse to deter officers from living unacceptable lifestyles, which will likely to lead to corruption, criminal behavior or unethical behavior as police personnel.

b) Inspection / Monitoring “Drugs and Disciplinary Control System”

This system, which has been in place since the 1980s for the rank and file personnel, has been extended to include senior officers up to Superintendent. This is a close control system whereby every officer is put in charge and supervises a few subordinates. Supervision in this respect is not limited to on-duty hours but encompassing off-duty hours including lifestyle, friends, family, property and drug abuse.

c) The Investigation Unit

This Unit is responsible for carrying out internal investigations which are based on two factors;

i. Complaints

Investigations are based on complaints made by the public or by police personnel themselves, either by letters, walk-ins, telephone, through the Government Public Complaints Bureau (BPA) or any other sources such as emails, faxes and texting.

ii. Internal Misconduct

Investigation based on internal misconduct and dereliction of duty.

All investigations are conducted without fear or favour.

Investigation is also carried out at the contingent/state level where the final action is determined either by the State Chief Police Officers. Cases of interest are investigated and dealt with at the Federal level, and final decisions are made by either the Deputy Inspector General or Inspector General Police.

d) The Intelligence Unit

This unit provides intelligence and technical support for the Operations and Investigations Unit.

e) Complaints Unit

The Complaints Unit's primary function is to attend to and receive complaints and information from the public or by police officers. All complaints and information are treated in strict confidence. All follow up actions are commenced without jeopardizing the identity of the complainant.

f) Declaration of Assets Unit

This Unit is solely responsible for the management, investigation and recording of declarations of assets of all Police Officers. Under the Public Officers (Conduct and Discipline) Regulations 1993, all civil servants are required to declare their assets (on joining the service, procurement, disposal and when otherwise required). RMP has made this process more stringent including by having a dedicated unit to monitor all asset declarations and conduct investigations. RMP officers must make

full disclosures when making declarations unlike other civil servants who only need to make a basic declaration.

RMP will continue to strengthen its efforts towards more serious and effective measures, with greater intensity and focus in driving out corrupt practices in the police force. Society's expectation of RMP is very high indeed. They not only want a competent police force but expect police officers to be of high integrity. Police actions will withstand scrutiny of the public if decisions are made with integrity, for the sake of peace and security alone and nothing else. Sir Robert Peel, the father of modern policing in England had said:

“The ability of the police to perform their duties is dependent upon public approval of police actions...”

No police organisation, regardless of its past glory or history, can claim success without the support, cooperation and understanding from members of the public and community. RMP still has much work to do in its fight against corruption to regain public confidence and trust. There is no “one size fits all solution”. We must change and keep on developing “new formula and medicine” to fight “corruption's disease” so as to change people's negative perception towards RMP. Though it is not an overnight job, we strongly believe with the Government's will, commitment and support in the form of a zero-tolerance policy towards corruption (political will), sharing and integrating the value of integrity among all my fellow officers, we are on the right track towards a clean, transparent, fair and trustworthy law enforcement agency for the people. Thank you.

ADMINISTRATIVE AND CRIMINAL JUSTICE MEASURES FOR PREVENTING CORRUPTION IN MYANMAR

San Win

Director of the Union Attorney General's Office,

The Republic of the Union of Myanmar

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 immoveable 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 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.

MYANMAR AND ANTICORRUPTION

Presented by Mr. Bo Maung

Deputy Director of The Bureau of Special Investigation

Ministry of Home Affairs

I. INTRODUCTION

These are the noble objectives of safeguarding the peace of the world: development, international cooperation and developing a harmonious society. Each and every nation of the world accepts and works to implement these objectives. Corruption is crime that hinders these above objectives and it spoils human character and destroys economies. Counter corruption is not only concerned with a country but also with the global community. Therefore, according to the 2003 United Nations Convention on Anti-corruption, intensive measures are taken vehemently to fight against corruption in every country. It is important to punish the offenders effectively and it is also important to take preventive measures against corruption.

II. EFFECTIVE MECHANISMS TO PREVENT CORRUPTION

A. UNCAC

Myanmar signed the United Nations Convention against Corruption on 2 December 2005. We believe that “Prevention is better than cure”; and we will present the preventive measures in three stages. In the first stage, we are implementing the following:

- (a) Enacting laws;
- (b) Organizing Special Enforcement Departments and assigning duties to take action on corruption;
- (c) Training and nurturing good public servants;
- (d) Supporting the welfare of public servants;
- (e) Encouraging cooperation of public and private groups and organizations;
- (f) Encouraging the cooperation of news media;
- (g) Technical and multi-level cooperation with the international community;

B. Most Important Laws

There are two main laws and some special laws (15 laws) in Myanmar which are instrumental in anti-corruption. The two main laws are the Penal Code (1861) and the Suppression of Corruption Act (1948).

C. Relevant Organizations

At present there is not a counter corruption commission, but the Bureau of Special Investigation and Myanmar Police Force under the Ministry of Home Affairs are taking charge of those duties. The Bureau of Special Investigation primarily takes the main duty. It investigates offences and upon completion of gathering of evidence, lodges requests at courts for taking legal proceedings against the alleged culprits. Respective Law Officers act as prosecution counsels and the respective Judicial Officers act as Judges. Pre-independence and post-independence, there was an uprising, internal insurgency, and people suffered distress and poverty and moral character was ruined, leading to corruption and bribery in the whole country. To control and abolish the worst conditions, an organization was formed: the Public Property Protection Police called P(4). After the Act of Special Investigation Department and Administrative Board was enacted in 1951, P(4) then became The Bureau of Special Investigation. The Union Auditor General is also assigned to inquire of budgets of State Departments, in accordance with present State Constitution.

D. The Union Civil Service Board and Civil Service Training Universities

In order to train and nurture good public servants, the Union Civil Service Board is organized in accordance with the Constitution. The board selects honest, hardworking, qualified and able staff and trains them at two Civil Service Training Universities in Myanmar. They are trained to have competency and efficiency necessary for government departments, with moral character and duty consciousness cultured individually or in a team.

E. Welfare for the public servant

For the welfare of the public servant, it is important to provide sufficient remuneration to keep moral attitudes and to perform their duties without corruption. They should be

provided with appropriate salary, rations and welfare allowances. The ethics of public servants depends on their well-being and proper balance. In Myanmar, public servants are provided an appropriate salary and sufficient rations. The social welfare of their families is taken care of by respective staff welfare committees.

F. Public and Private Cooperation

In the sector regarding the cooperation of public and private organizations, it is the noble, common custom of Myanmar to donate generously, always thinking of the good deeds of others. They offer cash and valuable things in gratitude. However, it is unfortunate that this noble tradition has been misused to fulfill their own needs by giving bribes for their own benefits. We have to educate the people to get their cooperation. We will let them understand that we are really fighting against corruption and welcome their willing cooperation and give them chances to express their views and opinions freely.

G. Media Cooperation

As regards the cooperation of news media, they stand as the fourth pillar of the nation and are reliable as a watch group. Actually, corruption is caused because of poverty, bad moral character and greed. The leaders of our country always give their patronage to seminars and workshops for the alleviation of poverty. There are national workshops and seminars for economic development and reform. Media groups take part in delivering the message to the public and they also express their point of view of the strong and weak points within their potential range of media or the ethics of media. This cooperation leads Myanmar to a good governance system and measures for anti-corruption campaigns.

H. International Cooperation

International cooperation is greatly needed to effectively suppress trans-border crimes. It is unfortunate to see corruption committed by using high technology and complicated methods in the world. If Myanmar is granted more international technology and more support than it has at present, we shall speed up the anti-corruption campaign.

III. EFFECTIVE WAY TO RAISE AWARENESS

To prevent corruption, there is an effective way to educate people. Corruption is like a contagious disease, easily communicable to all countries, and it badly spoils social and political systems, and later the whole state policy. Therefore, it is necessary for the public to be aware of the evils of corruption and to cooperate with state organizations, administrative organs and the judicial system to oppose and eliminate corruption. To do so, the public should be literate and educated to a high standard. The state constitution provides that literacy is a compulsory educational requirement and stipulates a basic level of education for all citizens. In Myanmar, the government implements social objectives in health and education, and the media reports the reality of the situation. At present, people can judge for themselves the good and evil of the performance of state government. Therefore, they can discuss their wishes and express their opinions through their respective representatives in the *Hluttaw* (Parliament and Congress), as the basis of the democratic system.

IV. INSTANCES OF SUCCESSFUL AND UNSUCCESSFUL IMPLEMENTATION OF PREVENTIVE ANTI-CORRUPTION MEASURES AND JUSTICE MEASURES

We have learnt prevention of corruption and studied the weaknesses and strengths in judicial power and assume that corruption itself is a contagious disease. In reality however, not everybody regards corruption as a social ill. Those who give bribes for their own benefits and those who betray their own duties and take bribes do their undertaking secretly and willingly. So it is difficult to find an eye-witness or collect evidence easily. With perseverance to overcome difficulty, necessary evidence is collected and a *prima facie* case can be lodged at court. There is urgent need for perseverance and patience from investigation teams and cooperation from the public and technological support. However, according to religious teaching, “there is no way to escape from the law” and “the offender has no place to hide”. Offenders shall be punished according to the law in due course.

A. Departmental Action

In Myanmar, there is a counter measure to take departmental action against alleged offenders even though evidence may be too weak to lodge a criminal complaint. In this

measure, responsible public servants shall certainly face dismissal, demotion, transfer and other departmental disciplinary action.

B. Information from the Public

Leaders of our country always call for the cooperation of the public in their speeches and via newspapers and magazines. For information about bribery and corruption, the people's cooperation is welcomed and they are invited to inform the authorities of corruption offences through phone, letters or in person to the Bureau of Special Investigation, the Myanmar Police Force, or General Administration Department. Their information is kept strictly confidential and the security of the informer is guaranteed. Real information is given by people in good faith, exposing many offenses and leading to action by the authorities. However, malicious, false information has also been given on occasion.

C. Watch Groups

We acknowledge that there are weaknesses to keeping watch groups to provide surveillance on the malicious staff and greedy businessmen who are enjoying unusual wealth or unusually increased assets without legal remuneration or profit. Therefore, those watch groups shall be extensively organized and cooperation is being extended. As Myanmar is a member of the UNCAC, laws are being amended appropriately. We are practicing transparency, keeping prestige in both public and private sectors.

V. CONCLUSION

In conclusion, there are many things left to do but we constantly endeavour with all of our might to establish good governance and clean government and it would be more advantageous if we were provided international assistance and technological support to secure more effective results.

Thank you.

EFFECTIVE MEASURES FOR COMBATING CORRUPTION

*Pinthip Leelakriangsak Srisanit**

I. INTRODUCTION

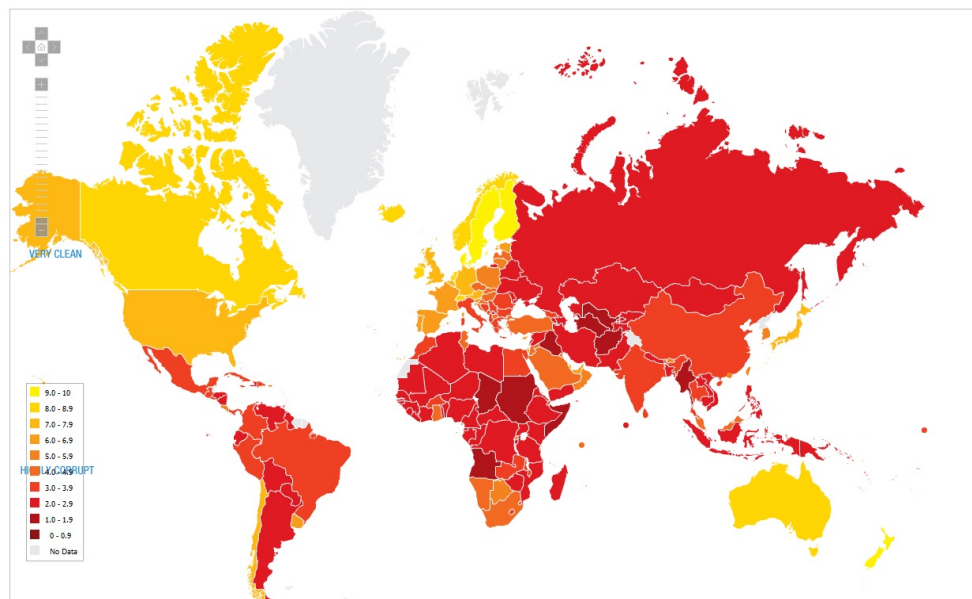
Corruption has been considered a major and widespread problem in many nations. Particularly, corruption causes huge damage to developing countries, such as Thailand, especially bribery and fraud in public procurement. All countries try to find effective measures to deal with corruption cases, including legislative and social measures.

The Corruption Perceptions Index (CPI) measures the perceived level of public sector corruption in 178 countries around the world. It is a tool that ranks each country in comparison to others. A higher CPI means lower corruption or cleaner public administration (a country with CPI of 8 is cleaner than one with a CPI of 4). Thailand's CPI in 2009 was 3.4 and in 2010 was 3.5. Thailand has improved its CPI score over the past years, though at 3.5 it remains troublingly low and indicative of a serious corruption problem in the public sector. Nevertheless, Thailand's corruption situation seems to be slightly above average in comparison with those of other ASEAN countries – e.g. Myanmar, Cambodia, Lao PDR, Philippines, and Indonesia – with their CPI 2010 scores ranging from 1.4 – 2.8.¹ Even though Thailand has fought corruption for many decades, in which various legislative and social strategies and measures, either preventive or suppressive, have been imposed to solve this problem, corruption in Thailand still persists and has become more sophisticated and difficult to address.

* Public Prosecutor, International Affairs Department of the Office of the Attorney General.

¹ http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results

CORRUPTION PERCEPTIONS INDEX 2010 RESULTS



II. LEGAL ASPECT

Thai legislators have enacted various laws and regulations to prevent and combat corruption. They are divided into two categories in connection with their nature – substantive law and procedural law.

A. Substantive Law

Regarding substantive law, there are two major types of laws in Thailand punishing acts of corruption: the Thai Penal Code and the Organic Act on Counter Corruption B.E. 2542 (1999).

The provisions of the Penal Code incriminating acts of corruption are contained in articles 147 to 157 and those that aggravate the punishment for specific conduct of officers are stipulated in articles 200 to 202. Article 147 punishes officers who commit embezzlement in their duties with imprisonment of 5 to 20 years or imprisonment for life and a fine of 2,000 to 40,000 Baht.² Also, articles 148 to article 150 punish officers conducting various types of bribery with imprisonment from 5 to 20 years or imprisonment of life or the death penalty.

² As of the end of October 2011, the exchange rate is about 31 Baht for 1 US Dollar.

Article 151 criminalizes a wrongful exercise of an officer's function which is damaging the State, and makes it punishable with a maximum term of imprisonment of life; meanwhile article 152 punishes officers who have a conflict of interest in their duties with maximum imprisonment of 10 years. In addition, articles 153 to 156 impose criminal sanctions, up to imprisonment for life, on corrupted officers whose duties concern accountancy functions. The general offence is prescribed in article 157 as misconduct in office punishable with a maximum term of imprisonment of 10 years. Moreover, aggravating circumstances are contained in articles 200 to 202 which aim to increase punishment for corruption committed by officers whose duties are concerned with criminal justice, such as the police, public prosecutors or judges.

In addition to imprisonment and fine, when officers obtain money from corruption, these benefits shall be considered as properties which shall be forfeited by the Court's judgment according to article 34 (1) of Thai Penal Code. The forfeiture of properties deters others from committing corruption.

The Organic Act on Counter Corruption BE. 2542 (1999) establishes an independent organization called the National Anti-Corruption Commission (NACC) to deal with corruption. The function of NACC will be explained in the topic of competent authorities, below. Apart from the Thai Penal Code, the Organic Act on Counter Corruption incriminates certain acts of corruption. For example, the conflict of interest prescribed in article 100 shall be punished with imprisonment not exceeding three years and fines not exceeding 60,000 Baht, or both. Bribery, criminalized in article 103, shall be punished in the same manner as conflicts of interest.

B. Procedural Law

In the sphere of procedural law, Thailand has five major laws dealing with procedure of corruption cases: the Thai Criminal Procedure Code, the Organic Act on Counter Corruption

B.E. 2542 (1999), the Anti-Money Laundering Act B.E. 2542 (1999), the Act of Mutual Legal Assistance in Criminal Matters B.E. 2535 (1992) and the Extradition Act B.E. 2551 (2008).

The Criminal Procedure Code is the principle Code which is applied to every criminal case, including corruption. Whenever specific Acts do not mention certain proceedings, these acts normally refer to the Criminal Procedure Code in order to apply general principles to such proceedings.

The Organic Act on Counter Corruption B.E. 2542 (1999), not only establishes the National Anti-Corruption Commission (NACC) in order to deal with corruption but it also gives it powers of initial investigation of corruption in Thailand.

In connection with the Anti-Money Laundering Act B.E. 2542 (1999), it is an additional measure combating corruption. Corruption is one of the predicate offences for the purpose of forfeiture of assets obtained from corruption. This act establishes the Anti-money Laundering Office (AMLO) having authority to temporarily restrain, seize or freeze the assets involved in corruption. This measure is categorized as a civil forfeiture system without requiring a conviction.

The Act of Mutual Legal Assistance in Criminal Matters B.E. 2535 (1992), being in line with the UN Model Law on Mutual Legal Assistance in Criminal Matters and international standards, provides a basic principle of international cooperation with other countries to proceed with criminal litigation from the beginning of investigation to the end of the court trial. Many types of assistance can be provided, such as locating persons, searching and seizing objects or documents as evidence, taking statements of witness and confiscating assets.

Under the Extradition Act B.E. 2551 (2008), Thailand is able to extradite a person to a requesting country, and also make a request to foreign countries to extradite a fugitive to

Thailand. At present, we now have bilateral treaties with 13 countries regarding mutual legal assistance and 14 countries in relation to extradition. However, the rule of reciprocity is applied in cases of nonexistence of a treaty between the requesting and the requested country for the purpose of providing the broadest possible cooperation. In addition, Thailand signed a Mutual Legal Assistance Treaty with ASEAN countries in 2006. The process is now pending review and adoption by the domestic legislation.

III. COMPETENT AUTHORITIES CONCERNED

Many government authorities have been set up for monitoring, preventing and efficiently suppressing corruption, including the National Anti-Corruption Commission (NACC), Office of Public Sector Anti-Corruption Commission (PACC), Office of the Attorney General (OAG), Ombudsman, Office of the Auditor General, Royal Thai Police, Anti-Money Laundering Office (AMLO), Department of Special Investigation (DSI) and Supreme Court's Criminal Division for Persons Holding Political Positions. These organizations have the mutual objectives of ensuring transparency, fairness, accountability and guaranteeing civil rights. This paper will, however, only focus on the roles and functions of some of these agencies, as follows.

A. National Anti-Corruption Commission (NACC)

To strengthen efforts in combating corruption, the 1997 Constitution and the Organic Act on Counter Corruption B.E. 2542 (1993) added checks and balances on the State by establishing the National Counter Corruption Commission (NCCC) as an independent agency. The NCCC has a number of duties and responsibilities both in prevention and suppression areas. This commission is responsible for inquiring into all kinds of corruption offences committed by all levels of government officials. As a consequence, the NCCC has encountered a caseload problem. The best way to solve this problem is to limit the NCCC's

exercise of its power only to corruption cases conducted by politicians and high ranking government officials. So, the 2007 Constitution changed the official title of the NCCC to the National Anti-Corruption Commission (NACC) and it has been invested with only three functions: (1) declaration and inspection of assets and liabilities, (2) prevention of corruption and (3) suppression of corruption.

The NACC is responsible for corruption cases against persons holding political positions, i.e. the Prime Minister, Ministers, Members of the Senate, Members of the House of Representatives, and high ranking government officers who are accused of being unusually wealthy, committing an offence of abuse of power and authority according to the Penal Code, or committing an offence of dishonesty in office or corruption according to other laws. The role of the NACC is to perform the initial investigation of corruption cases. After completion of an inquiry file, the NACC will forward the investigation file with adequate legal background to the government agency for which the accused works to start the disciplinary action if the disciplinary offence is well-founded. Otherwise, if the NACC found grounds for a criminal offence, it would refer the inquiry file to the Office of the Attorney General for further criminal prosecution.

B. Office of Public Sector Anti-Corruption Commission (PACC)

Due to the caseload of the NCCC, the 2007 Constitution established the NACC and Office of Public Sector Anti-Corruption Commission (PACC) to deal with corruption cases. The PACC is the newest investigation authority under the Ministry of Justice.³ This office is responsible for the corruption cases conducted by lower-ranking government officials. After completion of inquiry files, the case shall be referred to the agency concerned in the same process as the NACC as mentioned above. However, the PACC has not yet begun executing

³ http://www.pacc.go.th/index.php?mod=about_profile

its full functions, pending the drafting of regulations; meanwhile the NACC temporarily handles its cases.

C. Office of the Attorney General (OAG)

According to the current Constitution, the Office of the Attorney General (OAG) is an independent organization. The OAG is authorized to suppress corruption in both private and public sectors. Therefore, the Office of Attorney General plays an important role in deciding whether to prosecute all of the corruption cases in Thailand.

After conclusion of an inquiry file by the NACC, if a corruption offence is found, the case shall be submitted to the Attorney General for further criminal prosecution. Then, if there is sufficient evidence for the prosecution's charge of corruption, the Attorney General shall prosecute the accused before the Supreme Court's Criminal Division for Persons Holding Political Positions in a case where the accused is a politician or to another competent court in a case where the accused is a State official. On the other hand, in case of insufficient evidence, the OAG and the NACC shall set up a joint working committee to collect further evidence necessary for the Attorney General. After receiving such further evidence, the Attorney General will make a prosecution order. However, if the joint working committee fails to reach the point, the NACC by itself has the power to file the case with the competent court or ask a private lawyer to do so.⁴

In addition, the Attorney General acts as the central authority of international cooperation in criminal matters in the areas of mutual legal assistance and extradition, as mentioned above in part II above.

D. Supreme Court's Criminal Division for Persons Holding Political Positions

There are five specialized courts in Thailand: the Labor Court, the Tax Court, the Central Intellectual Property and International Trade Court, the Bankruptcy Court and the

⁴ The Organic Act on Counter Corruption 1999, Section 97.

Juvenile and Family Court. At present, there is no permanent specialized court for corruption cases. However, the Supreme Court's Criminal Division for Persons Holding Political Positions has been established since 1999 by the 1997 Constitution and Article 8 of the Organic Act on Criminal Procedure for Persons Holding Political Positions B.E. 2542 (1999) for the mission of fair and speedy trial of corruption offences committed by politicians.⁵

This specialized division of the Supreme Court has power and duties to try and adjudicate cases against persons holding political positions who have been accused of becoming unusually wealthy, committing an offence of malfeasance in office according to the Penal Code, committing an offence of dishonesty in office or corruption according to other laws. This court consists of nine Judges of the Supreme Court who are selected by a plenary session of the Supreme Court on a case-by-case basis. The trial in this specialized division Court is founded upon an inquisitorial system.⁶ The orders and decisions will be final and disclosed. Nonetheless, the decision can be appealed to a plenary session of the Supreme Court, but only if there is fresh evidence in the case.⁷

Statistics indicated that few cases were submitted and disposed by this specialized division of the Supreme Court: one case in 2001, two cases in 2002, one case in 2003, one case in 2004, two cases in 2007, 20 cases in 2008, nine cases in 2009⁸ and 10 cases in 2010.⁹

IV. PERSPECTIVE ON COMBATING CORRUPTION

As I have already mentioned in part II, the magnitude of punishment of corruption offences, according to the Thai Penal Code and others, is currently at the highest level, i.e. the death penalty and life imprisonment, yet it nevertheless seems that the number of corruption cases in Thailand has not declined.

⁵ <http://www.supremecourt.or.th/webportal/maincode/index.php?lang=en&base=24>

⁶ *Ibid.*

⁷ Constitution of the Kingdom of Thailand 2007, Article 278.

⁸ <http://www.supremecourt.or.th/webportal/maincode/index.php?lang=en&base=24>

⁹ <http://www.supremecourt.or.th/file/criminal/new%201.pdf>

In order to solve this problem, two alternative solutions are proposed for further consideration. Firstly, we increase the magnitude of punishment to deter the government officer from committing corruption. Secondly, we increase the probability of prosecution of corruptors for the same reason. Both of these solutions could discourage the corruptors but the further question is which one is suitable for Thailand?

Becker's Economic Model of Crime¹⁰ offers that we should raise an offender's costs and limit an offender's benefits in order to reduce an offender's incentive for engaging in a criminal act. Becker's model is relevant to Cost-Benefit analysis, which is generally accepted by current core Economists. He further suggests that an offender's costs consist of the combination of the Magnitude of Punishment and the Probability of Punishment. If we raise the Magnitude of Punishment, such as increasing of periods of imprisonment, an offender's cost would consequently be raised. It would be the same if we raise the Probability of Punishment by strengthening police units or using modern technology in criminal investigation. In accordance with Becker's recommendation, increasing the Magnitude of Punishment would less affect government budgets. On the other hand, the government wastes its budget by investing in law enforcement sectors (including investigators, public prosecutors and criminal courts) to increase the probability of punishment. Therefore, Becker prefers increasing the Magnitude of Punishment because it is more economical, compared to the other solution.

To combat corruption in Thailand, I believe that increasing the probability of punishment is more suitable for the following three reasons:

Firstly, according to Article 149 of Thailand's Penal Code, we have already increased, since 1959, the magnitude of punishment to the highest level (death penalty) which would be applied for those who were found guilty of bribery (although the amount of fine is still out of

¹⁰ Gary S. Becker, "Crime and Punishment: An Economic Approach", in *Essays in the Economics of Crime and Punishment*, 1974 at www.nber.org/chapters/c3625.pdf

date and too low). However, it is obvious that such measures could not effectively eradicate the extent of corruption in Thailand. Therefore, the probability of prosecution of corruptors should be increased to reduce corruption.

Secondly, on the aspect of evidence, corruption leaves few traces for detectives to investigate. This situation would have a dilutive effect: the severity of capital punishment would be diluted in the eyes of corruptors because of a lack of evidence.

Finally, corruption is categorized as a “victimless crime” from which only the State suffers. Consequently, nobody files complaints to the police when there is corruption. Offenders are not intimidated by capital punishment because they are certain that their wrongs have not been noticed by others. However, in order to facilitate reporting of corruption and broaden the perceptions of concerned authorities, Thai law has already introduced an effective process in which citizens can directly report corruption to NACC or PACC to start the process, as I mentioned above.

For these three reasons, I propose a reinforcement of all law enforcement units to be the best solution for combating corruption in Thailand. Although the government must invest a gross budget in every law enforcement unit, enlarging or adding organizations, using modern investigative methods as well as effective international cooperation, the outcome of such investment would be more profitable for the country. Since corruption poses a serious harm to society, a high investment in combating corruption would absolutely not be wasteful.

V. CONCLUSION

Corruption is not restricted to a particular country or a region, but it appears to be a global problem. It is a serious transnational phenomenon which significantly undermines economic and social development. In addition to law enforcement agencies combating corruption by using various sanctions, social networks or solidarity of the people could effectively strengthen anti-corruption measures by giving information to the justice agencies. Finally, the education of children could be a sustainable measure in which the government should invest. The academic curriculum should be integrated with moral values of citizens as well as anti-corruption measures for children who will become the government officers of the future.

THAILAND'S EFFORTS IN PREVENTION OF CORRUPTION

Sutisa Skchot

Public Prosecutor

International Affairs Department

Office of the Attorney General

Thailand

Corruption is an international problem which can be found in almost every country. It obstructs countries' progress in many ways. Every country has focused on the problem and tried to solve and prevent it. We can see the problem-solving methods attempted both domestically and internationally, such as the United Nations Convention against Corruption 2003 (UNCAC) and the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD). All these attempts are to build up cooperation in elimination of corruption. However, the most important thing in elimination of corruption is "prevention". According to the concept of "prevention", Thailand has issued many measures to build strong barriers to corruption. An overview of the measures follows.

I. LEGAL MEASURES

The principal law dealing with prevention of corruption is the Organic Act on Counter Corruption, B.E. 2542 (1999), which was enacted in order to authorize the National Counter Corruption Commission (N.C.C. Commission) to inspect assets and liabilities of persons holding political positions and other state officials, and to investigate and prosecute persons holding political positions and state officials in the allegation of unusual wealth or malfeasance in office. This Act is one of the measures against corruption. Moreover, the Act also provides measures to counter corruption, such as inspection of assets and liabilities and imposition.

A. Inspection Assets and Liabilities

The Act provides that persons holding political positions and state officials shall submit the accounts showing particulars of their assets and liabilities and those of their spouses and children who have not yet become *sui juris* to the N.C.C. Commission upon taking and vacating office. It is separated as follows:

1. Declaration of an Account Showing Particulars of Assets and Liabilities of Persons Holding Political Positions

The Act prescribes that the person holding a political position shall submit the account of assets and liabilities, in Thailand and abroad, and those which are not in possession of the declarant, his or her spouse and his or her children who have not become *sui juris*, to the N.C.C. Commission on each occasion of taking or vacating office, and also as from the date of the expiration of one year after the vacation of office. All the accounts of assets and liabilities shall be provided in accordance with the form prescribed by law, together with supporting documents evidencing the actual existence of such assets and liabilities, as well as a copy of the declarant's personal income tax return for the previous fiscal year. The declarant shall certify the accuracy of the account and copies of the submitted documents by affixing his or her signature on every page thereof. In case any person holding a political position intentionally fails to submit an account showing particulars of assets and liabilities and supporting documents to the N.C.C. Commission or intentionally submits such account and supporting documents with false statements being included therein or fails to disclose facts which should have been disclosed, such person shall vacate Office.

All accounts of assets and liabilities shall be disclosed to the public. In cases where the inspection report reveals an unusual change of property, the N.C.C. Commission shall request the person holding the political position to explain the acquisition of such property before the N.C.C. Commission passes a resolution that such person has an unusual increase of property.

2. Declaration of an Account Showing Particulars of Assets and Liabilities of State Officials

The Act provides that the persons holding certain positions — President of the Supreme Court of Justice, President of the Constitutional Court, President of the Supreme Administrative Court, Attorney General, Election Commissioner, Ombudsman, Judge of the Constitutional Court, Member of the State Audit Commission, Vice President of the Supreme Court of Justice, Vice President of the Supreme Administrative Court, Chief of the Military Judicial Office, Judge of the Supreme Court of Justice, Judge of the Supreme Administrative Court, Deputy Attorney General and persons holding high-ranking positions — have the duty to submit to the N.C.C. Commission, every three years and five years while being in office and upon vacating office, an account showing the particulars of their assets and liabilities.

The general procedure of declaration of an account showing particulars of assets and liabilities of state officials is the same as a declaration by persons holding political positions. But the differences between declaration of state officials and persons holding political positions are the duration of declaration submitting and length of disbarment from office. For the state official who is inspected and found corrupt, he or she is disbarred from the position as a state official for five years as of the day of vacation of position. But for a corrupt person holding a political position, such a restriction is not prescribed by law.

The declaration of account provided by the Act benefits the prevention of corruption because the declaration process requires such persons to declare their assets, liabilities, changes of assets as well as income tax payments. So it causes difficulty in making up the account. This process benefits the inspection of corruption as well. Moreover, the Act prescribes that the account of assets and liabilities shall be disclosed to the public. The people and private sector can be involved in the inspection. Normally the persons holding political positions and the state officials holding high-ranking positions are in the limelight; therefore, when they declare their account, the people can also inspect them.

Declaration of accounts by state officials and persons holding political positions cannot totally eliminate corruption but at least it can obstruct and inspect corruption. Sometimes persons holding political positions are removed from office or they are particularly scrutinized and known by the public.

B. Penalty Measures

Laws concerning the prevention and suppression of corruption in Thailand prescribe the penalties as criminal offences, which are imprisonment, fine and forfeiture of property to the State. Forfeiture as a penalty for corruption has a broader meaning than a criminal penalty. It includes seizure of business and any activities that occurred by such corruption to become the property of the State. The disciplinary penalties are discharge of any positions and loss of all political rights and positions.

In a concrete way, the penalties will be a measure to impress upon offenders the consequences of engaging in corruption.

II. CODE OF ETHICS

From the Constitution of Thailand B.E. 2540 (1997) to the Constitution of Thailand B.E. 2550 (2007), the exploitation of bureaucracy and politics are also recognized (the difference of ethics and conflict of interest). The Constitution designates the Government to establish the Code of Ethics for those who hold positions in politics by separating principles from conflict of interest, which is the authority of the Office of the National Anti-Corruption Commission. However, Ethics is an issue that each organization has to address individually. According to the Constitution of Thailand B.E. 2550, Ethics are considered a substantial principle. The disciplinary penalty is designated to control offenders and those who do not act according to the Code of Ethics.

The Code of Ethics consists of two principles: the principle of ethics and the principle of self-discipline. Each organization shall enforce the Code of Ethics by themselves, for example: the Rules of Prime Minister's Office concerning Code of Ethics of Politicians B.E. 2551; the Rules of Bangkok Metropolis concerning Code of Ethics of Politicians in the Administrative Department of Bangkok B.E. 2551; the Regulations concerning Code of Ethics of Members of the House of Representatives and Commissioner B.E.2553; the Code of Ethics of Judicial Officials; and the Code of Ethics of Public Prosecutors.

Therefore, the Codes of Ethics can be considered to be a model of self-discipline which is an ideology to sustain and protect the citizens' and State's interests to the highest level. Codes of Ethics, on the other hand, are an effort to develop politicians and officials who reject corruption.

III. CONSCIOUSNESS AND PARTICIPATION

Other than measures according to law and Codes of Ethics that are well formed, Thailand also recognizes the significance of citizens' participation in preventing and suppressing corruption. Most corrupt acts cannot be done by only government officials. Some are related to the people, particularly at the level of government officials who work closely with the people. Therefore, educating citizens in ethics and consciousness is exceptionally essential. Governmental units and the private sectors are aware of the significance of this issue. Consequently, a number of attempts have been made to inculcate in the public a rejection of corruption, such as raising the public's consciousness.

Public consciousness is to encourage people's consciousness on land ownership, and public ownership of the land. Therefore, they are encouraged to look after the public interest and prevent anyone who will seize that for his or her own benefit. At present, people's organizations are awakened to monitoring the working of state officials, politicians and the government, but these are relatively few compared with the entire population. Many people do not think that corruption is a serious problem. They also do not feel that the public interests shall be protected by them. The result of corruption cannot be obviously identified because it does not affect people immediately, unlike health, education or social welfare issues, etc. which people can see and feel concretely. So, the Thai people must change their attitude to the corruption problem. They should understand that the corrupt official gains money from tax paid by all the people. People have to realize that every time corruption occurs, the people suffer the most.

Children have to be educated about public consciousness in preventing and protecting corruption, and must grow with a sense of honesty in order to be a valuable adult for society. Instilling the concrete principle of moral and anti-corruption awareness requires action by leaders or local organization and other related organizations¹.

At present, many agencies in Thailand are launching campaigns against corruption. Public information and appeal campaigns, educating and encouraging people to participate in preventing corruption, are implemented via various channels: brochures, posters, television advertisements, radio spots, and an animated anti-corruption character. The animated character represents a person in Chorsa-Aad village, who talks to other people in the village and expresses his opinion on anti-corruption. The aim of the animation is to educate children and adults about corruption and to encourage them to fight against it. A radio documentary "Ethics and Business" has been launched to educate children about their proper duties as honest citizens. Moreover, the government agencies and private sector organize activities in which children can participate and

¹ Special interview for New Year Present essay, Mr. Prechar Lertkamolmas "encourage people's consciousness on nationalism to eliminate corruption".

express their attitudes about their society, and also corruption in their society, such as an annual speech contest with different angles on the theme of anti-corruption.

Moreover, government agencies try to eliminate corruption from within by a campaign called “Immaculate State Official”. They publicize their Codes of Ethics, encourage officials to prevent corruption in their agencies, and hold conferences and seminars on the issue of prevention of corruption, etc.

The Office of the National Anti-Corruption Commission (NACC) is directly liable for prevention and suppression of corruption and has undertaken a number of projects and activities to stimulate the consciousness of society to realize the importance of prevention and suppression on narcotics. The activities include giving legal education, hearing complaints and coordinating with other units. These activities have been implemented continuously; for example, for the past 11 years, a pamphlet has been distributed every three months. This pamphlet gives information on different angles of the NACC’s operations and special articles from experts to stimulate thoughts about corruption and individual development.

The NACC’s website, www.nacc.go.th, was established to provide information on law, sentences for corruption offences, and the plans, projects, and duties of the NACC. Through this channel, people can access information and news as well as contact the NACC.

An international conference organized by the NACC, the International Conference on Counter Corruption, was held from 10 to 13 November 2010 at the Queen Sirikit Convention Center.

Domestic contests include the Best Anti-Corruption Local Agency, and a speech contest for children, etc.

Not all corruption in Thailand has been totally eliminated. But we hope that the NACC, governmental agencies, private sector and the public will succeed in controlling corruption even though it will not disappear completely.

DISCUSSIONS AND CHAIR'S STATEMENT

PANEL DISCUSSION SUMMARY

To reflect the multidisciplinary nature of the fight against corruption, the panel was composed of advisers from various public agencies in Japan, namely, Mr. Junichi Izumi, of the Ministry of Finance; Mr. Hideshiro Karasawa, of the Financial Services Agency; and Mr. Yuji Takada, of the National Public Service Ethics Board; as well the Visiting Experts. The Panel was chaired by Mr. Haruhiko Ukawa, Deputy Director of UNAFEI.

Each of the advisers gave a brief description of his respective agency's anti-corruption efforts, and explained the challenges facing each agency. As Mr. Ukawa advised, each agency could be the focus in its own right of an anti-corruption seminar, but presented as a whole, and reflecting the theme of the Fifth Good Governance Seminar, their various systems demonstrated the need for a multi-faceted approach to the fight against corruption. The advisers discussed the legislation governing their agencies and activities.

Mr. Takada made the point that penetrating legislation and efficient systems will lead to a higher rate of detection and prosecution of corruption, not necessarily a decrease in acts of corruption. Meanwhile, the cultivation of ethics in public officials is a long-term process.

Following the presentations, the floor was opened for a Q&A session.

Participants questioned what kinds of specific conduct would breach the **public service ethics legislation** of Japan, and if the legislation extended to spouses and children of officials. Mr. Takada explained that the legislation prohibits special treatment and collusive relationships of any kind, which would cover familial and personal relationships. He added that legislating for strictly merit-based appointment only made illegal any promotion or transfer based on collusive relationships. The Expert from Hong Kong stated that despite the great success of the ICAC in controlling corruption, the SAR has no ethics board, and that such a body would be beneficial.

Participants also enquired of the **relationship between the regulatory agencies and the police** – the advisers responded that they are obliged to inform the police of any information indicating a violation of the law.

The participants and Experts also discussed **public procurement**, and specifically,

e-procurement. The Expert from UNODC stated that many cases that come to international attention relate to e-procurement. Mr. Takada noted that bad systems can cause bad morals, and said that e-procurement has been partially introduced in Japan to increase transparency and had been particularly effective at town and prefectural levels.

In response to an enquiry from a Cambodian participant, the panellists explained that both systemic and personal weaknesses can lead to **bid-rigging**. The panel noted that when bid-rigging was eliminated from certain industries though improved procurement systems, the exchequer experienced savings of up to 30 per cent. This huge reduction in cost demonstrates the great profits to be made by those willing to take advantage of weak systems.

The participants enquired of the Hong Kong Expert how **private sector corruption** could be criminalized and controlled. The Expert responded that, as well as being bad for business, bribery in the private sector contributes to the rise of inferior products, as high-quality goods and services do not need bribes to prosper in the market. That private sector corruption can increase the supply of unsafe products to the public is valid grounds on which to criminalize it. The UNODC Expert described the involvement of the private sector in anti-corruption efforts as ‘very significant’.

In response to a question regarding **mandatory provisions of the UNCAC**, the Expert from UNODC explained that her office’s philosophy as guardian of the UNCAC is to be a support to States Parties in implementing the Convention, not to wield a “stick” in forcing its implementation. She also explained the implementation review process.

The Expert from Hong Kong also explained ICAC’s role in **reviewing legislation** – it is undertaken strictly from a prevention of corruption viewpoint. ICAC will also carry out a review of government agencies’ reports, at their request, and in confidence.

The panellists also addressed the vital issue of **public support for anti-corruption efforts**. The Hong Kong Expert explained that public demand led to the creation of an anti-corruption system in Hong Kong, and is needed to maintain same.

He concluded by emphasizing that **both prevention and effective enforcement** are vital to the anti-corruption fight. One without the other is pointless.

CHAIR'S SUMMARY

1. The Fifth Regional Seminar on Good Governance for Southeast Asian Countries, hosted by the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI), was held at the Main Conference Room in the Ministry of Justice of Japan, in Tokyo from 7 to 9 December 2011.
2. Officials and experts from the following countries and organizations attended the seminar:

Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, The Philippines, Thailand, Vietnam, the Independent Commission Against Corruption of Hong Kong (ICAC), the United Nations Office on Drugs and Crime (UNODC), the Financial Services Agency Government of Japan, the Japan Fair Trade Commission, the Japan International Cooperation Agency (JICA), the Ministry of Finance of Japan, the Ministry of Foreign Affairs of Japan, and the National Personnel Authority of Japan.
3. Mr. Tatsuya Sakuma, Director of UNAFEI, made an opening speech, expressing his gratitude to the above countries and organizations for their participation.
4. Mr. Haruhiko Ukawa, Deputy Director of UNAFEI, provided an overview on combating corruption, emphasized the importance of both prevention and enforcement, and introduced the various objectives of the seminar.
5. In the presentations by visiting experts, UNODC gave a comprehensive presentation on the universal legal framework of preventing corruption, in particular the UN prevention measures, Chapter II of the UN Convention against Corruption. The presentation also elaborated on the implementation of the UNCAC and the importance of international legal cooperation. UNODC pointed out the importance of partnerships between the public and private sectors and awareness-raising of society at large to prevent corruption. ICAC explained its strategy, in particular prevention of corruption, to keep the Hong Kong SAR clean. ICAC emphasized the three-pronged interactive strategy: law enforcement, prevention, and education. The presentation showed effective ways to prevent corruption through different aspects: the system approach and the human approach.

6. In the individual presentations, the participants outlined their respective countries' various efforts in preventing and fighting corruption. Each organization from each country expressed its commitment to prevent or fight corruption through domestic legislation, administrative systems, and enforcement. A general consensus also existed on the need for strengthening of prevention of corruption, according to the respective countries' backgrounds.
7. Advisers invited from organizations of Japan presented preventive efforts undertaken by their respective organizations. The Japanese Fair Trade Commission and Ministry of Finance explained how to ensure objectivity and competition in public procurement and how to prevent corruption. The National Personnel Authority and Financial Services Agency of Japan showed how to ensure staff integrity.
8. A delegate from the Japan International Cooperation Agency explained her agency's approach to the linked concepts of good governance and anti-corruption efforts in development assistance work. A delegate from the Ministry of Foreign Affairs of Japan gave a presentation on the G20 anti-Corruption Action Plan, which recognizes the importance of building upon the existing mechanisms of the UNCAC and the OECD Convention.
9. During the Meeting, the participants shared and identified the following views and challenges:
 - The importance of early ratification and full implementation of the UNCAC.
 - The importance of strategies that can limit opportunities for corruption by promoting the efficiency, transparency, and accountability of governmental businesses.
 - The necessity of prompt punishment of those who commit corruption to deter people from corrupt acts and to show the governments' strong will to fight corruption.
 - Anti-corruption efforts require a whole governmental and multidisciplinary approach that consists of prevention and enforcement. The prevention of corruption and enforcement are part of the effort to eradicate corruption.

- Learning from other countries' experiences and looking into emerging good practices are useful to better prevent and fight corruption.

Tokyo, 9 December 2011

VISITING EXPERTS, PARTICIPANTS AND ORGANIZERS

Visiting Experts

- 1) Mr. Joseph Lee Yat-Sau (Hong Kong)
Principal Corruption Prevention Officer of the Corruption Prevention Department
Independent Commission Against Corruption (ICAC)
- 2) Ms. Jo Dedeyne-Amann (Austria)
Chief
Implementation Support Section, Corruption and Economic Crime Branch
Division for Treaty Affairs
United Nations Office on Drugs and Crime (UNODC)

Overseas Participants

Cambodia

- 1) Mr. Kim Santepheap
Deputy General Director
Technical General Department
Ministry of Justice
- 2) Mr. Nuon Sothimon
Director of Legal Affairs
Complaints and International Cooperation Department
The President of the ACU (Anti-Corruption Unit)

Indonesia

- 3) Mr. Mochammad Jasin Mashuri
Commissioner, Vice Chairman
Corruption Eradication Commission (KPK)
- 4) Mr. Feri Wibisono
Head of Scanning Bureau
Attorney General's Office

Lao P.D.R.

- 5) Ms. Vilaysinh Dainhansa

Prosecutor, Deputy of the Head Division
Office of the Supreme People's Prosecutor

- 6) Mr. Phongsavanh Phommahaxay
Technical staff of investigation division
Government Inspection Authority

Malaysia

- 7) Mr. Ahmad Khusairi Yahaya
Chief Senior Assistant Commission
Director of Policy, Research and Planning Division
Malaysian Anti-Corruption Commission (MACC)

- 8) Mr. Azhar Bin Hamzah
Assistant Chief Secretariat to Inspector General of Police (Discipline)
Royal Malaysia Police

Myanmar

- 9) Mr. San Win
Director
Union Attorney General's Office

- 10) Mr. Bo Maung
Deputy Director
Bureau of Special Investigation
Ministry of Home Affairs

Philippines

- 11) Mr. Richard Anthony Donayre Fadullon
Senior Deputy State Prosecutor
Department of Justice

- 12) Mr. Medwin Sagutin Dizon
Director
Preliminary Investigation
Administrative Bureau-A

Office of the Ombudsman

Thailand

13) Ms. Srisanit Leelakriangsak Pinthip
Public Prosecutor
International Affairs Department
Office of the Attorney General

14) Ms. Sutisa Sukchot
Public Prosecutor
International Affairs Department
Office of the Attorney General

Viet Nam

15) Mr. Hoang Chi Kien
Chief of Division
Division of Research, Planning and General Matters
International Cooperation Department
Supreme People's Procuracy of Vietnam

16) Mr. Tran Anh Tuan
Deputy Director Research - General Affair - International Relation Department
Office of Central Steering Committee for Anti- Corruption

Observer

Indonesia

Mr. Bey Arifianto Widodo
Research & System Assessment Specialist
Indonesian Anti Corruption Agency

Adviser (Japan)

1) Ms. Chie Miyahara
Director,
Administration and Financial / Financial Division
Governance Group, Industrial Development and Public Policy Department
Japan International Cooperation Agency (JICA)

- 2) Mr. Fumio Noguchi
Director General
Trade Practices Department
General Secretariat, Japan Fair Trade Commission
- 3) Mr. Toshifumi Ishida
International Safety and Security Cooperation Division
Ministry of Foreign Affairs of Japan
- 4) Mr. Hideshiro Karasawa
Deputy Director
Inspection Bureau, Planning & Research Bureau
Financial Services Agency
- 5) Mr. Junichi Izumi
Director for Legal Affairs, Director of the Public Sector Accounts Office
Legal Division, Budget Bureau
Ministry of Finance
- 6) Mr. Yuji Takada
Ethics Officer for Planning
National Public Service Ethics Board
National Personnel Authority

Organizers

- 1) Mr. Tatsuya Sakuma
Director
UNAFEI
- 2) Mr. Haruhiko Ukawa
Deputy Director
UNAFEI
- 3) Ms. Kumiko Izumi
Professor

UNAFEI

4) Mr. Fumihiko Yanaka

Professor

UNAFEI

5) Ms. Grace Lord

Linguistic Adviser

UNAFEI

SEMINAR SCHEDULE

7 December	Opening Ceremony Opening Address by Mr. Tatsuya Sakuma, Director, UNAFEI Address by The Honourable Mr. Katsuyuki Nishikawa, Vice Minister of Justice, Japan Address His Excellency Mr. Tamotsu Shimotsuka, Ambassador in charge of International Cooperation for Countering Terrorism and International Organized Crime, Ministry of Foreign Affairs, Japan
	Introduction Introductory Remarks by Mr. Haruhiko Ukawa, Deputy Director of UNAFEI Individual Presentations (Philippines) Individual Presentations (Cambodia) Individual Presentations (Viet Nam)
	VE Presentation, UNODC
	Individual Presentations, Indonesia Individual Presentations, Lao PDR Individual Presentations, Malaysia
	VE Presentation, ICAC, Hong Kong
	Individual Presentations, Myanmar Individual Presentations, Thailand
8 December	Presentation by Adviser (JICA, Japan) Adviser's Presentation (Japan Fair Trade Commission, Japan) Adviser's Presentation (Ministry of Foreign Affairs of Japan)
	Panel Discussion
	Discussion
	Discussion
9 December	Discussion
	Adoption of the Chairman's Statement
	Closing Ceremony Address by Mr. Tatsuya Sakuma, Director, UNAFEI

APPENDIX

PHOTOGRAPHS

- *Commemorative Photograph*
- *Opening Address by Director Sakuma*
- *Address by Vice Minister of Justice Nishikawa*
- *Presentation by Ms. Jo Dedeyne-Amann, UNODC*
- *Presentation by Mr. Joseph Lee Yat-Sau, ICAC*
- *Discussion Session*

(Co-chaired by Ms. Jo Dedeyne-Amann, Mr. Joseph Lee Yat-Sau, and Mr. Ukawa)

UNAFEI



Commemorative Photograph



Opening Address by Director Sakuma



Address by Vice Minister of Justice Nishikawa



Presentation by Ms. Jo Dedeyne-Amann, UNODC



Presentation by Mr. Joseph Lee Yat-Sau, ICAC



Discussion Session

(Co-chaired by Ms. Jo Dedeyne-Amann, Mr. Joseph Lee Yat-Sau, and Mr. Ukawa)