PROPOSALS TO THAILAND'S POLICY-MAKERS: TOWARDS MORE EFFECTIVE CORRUPTION CONTROL

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I. INTRODUCTION

Thai people are now increasingly conscious of the negative effects of corruption which have weakened Thai society for so long. According to surveys by Transparency International from 1995 to 2006, Thailand has long been considered one of the most corrupt nations.[1] Moreover, the 2000 national survey found that Thailand's household heads rank corruption in the public sector as the third most serious national problem, following the poor economy and cost-of-living and closely followed by drugs.[2] This information obviously determines the severity of the problem and the urgent need for some corrective measures.

Contemporary Thailand has fought corruption for more than three decades. During those times, many strategies, either preventive or suppressive, were tried but failed. Do Thai people have to realize that corruption is always a parasite on society and learn to live with this heinous thing peacefully? As one of Thailand's criminal justice practitioners, I have to answer "no" to the former question. Corruption is a man-made problem; therefore, it must be solved by a man-made solution.[3]

Experiences from countries which have succeeded in eradicating corruption show that successful anti-corruption strategy should be enforcement-led, which relies more or less on the effectiveness of the criminal justice system. After taking a short break from my workload as a trial judge and spending time reviewing papers and reports from the previous courses on corruption control in criminal justice which addressed effective corruption control in other countries, such as Hong Kong, Singapore and the USA, and studying the text and legislative guide for the implementation of the United Nations Convention against Corruption (UNCAC), I have discovered that the substantive and procedural criminal law of Thailand have a lot of ground to cover in order to tackle corruption effectively.

The objective of this paper is to ask Thailand's policy-makers to re-examine the legal system in some aspects of substantive and procedural criminal law. I am confident that after re-examining these aspects thoroughly, Thailand's criminal law system will be transformed into enforcement–friendly laws that give the practitioner the necessary teeth and cutting edge in corruption control.

The following questions in sections II to VIII represent seven features of law that need to be re-examined, which are:

A. Investigating Authority
B. Competent Court
C. Suitable Amount of Penalty

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[1] http://www.transparency-thailand.org

[2] Pasuk Phongpaichit *et. al.*, Corruption in the Public Sector in Thailand: Perceptions and Experience of Households, Chulalongkorn University, Bangkok, August 2000, p.7.

[3] Transparency International Thailand Newsletter, May 2000, p.1.

D. Mitigation for Guilty Plea
E. Statute of Limitations
F. Right to Remain Silent
G. Burden of Proof and Standard of Proof.

II. SHOULD THE NATIONAL COUNTER CORRUPTION COMMISSION (NCCC) HAVE THE POWER TO INVESTIGATE ALL CORRUPTION CASES?

From a political standpoint, the establishment of a specialized agency sends a signal that the government takes anti-corruption efforts seriously. However, dedicated anti-corruption institutions are more likely to be established where corruption is, or is perceived to be, so widespread that existing institutions cannot be adapted to develop and implement the necessary reforms.

Prior to 1975, Thailand's anti-corruption activities fell under police jurisdiction. Although the law provided for heavy punishment if officials were convicted (see table in part IV of this paper), loopholes made detecting and prosecuting corruption difficult, and regulations hampered police investigations. To strengthen the effort to combat corruption, the Counter Corruption Commission (CCC) was established in 1975 to be an anti-corruption agency of the government under the Office of the Prime Minister. Its activities were divided into three areas: suppression (complaint investigation), prevention and public relations, but it also had limited effectiveness.

Established by the 1997 Constitution (the so-called "People's Constitution") and the Organic Act on Counter Corruption, B.E. 2542 (1993) as the constitutional body which is separate from the executive and reports directly to the National Assembly, the National Counter Corruption Commission (NCCC) has been charged with functions in three areas:

1. The declaration and inspection of assets and liability.
2. Corruption prevention.
3. Corruption suppression.

In the corruption suppression area specifically, the NCCC has a lot of duties and responsibilities to inquire into corruption cases and any other offences which are as follows:

a) removal from office
b) criminal proceedings for persons holding political positions and other government officials
c) disciplinary proceedings
d) inquiry into unusual wealth
e) inquiry according to the Offence Relating to the Bid to the Government Agencies Act 1999
f) monitor the distribution of partnership and shares of Ministers.[4]

The NCCC has very broad duties in inquiring into all kinds of corruption offences committed by every level of government official. As a result, the NCCC has a severe caseload problem. In 2003, about 2,000 corruption cases were submitted but only 1,200 cases were inquired into fully and disposed; certainly some were cases submitted in previous years, leaving about 6,000 cases pending for the next year.[5] This problem derives from the NCCC organizing law: the Organic Act on Counter Corruption (OACC) especially Section 45 which states that in conducting factual inquiries, the NCCC may appoint an inquiry sub–committee which shall consist of one member of the commission and competent officials. With nine commissioners and a thousand cases pending for inquiry, it is an impossible mission.

Thai academics suggested the amendment of Section 45 by removing the requirement that an inquiry sub-committee shall consist of one member of the commission.[6] This will directly reduce the caseload of

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[4] http://www.nccc.thaigov.net/nccc/en/duty.php
[5] NCCC Annual Report, 2003.
[6] Thaweekiat Meenakanit *et al.*, Measures to Prevent and Suppress Corruption, in Resource Material of the Second National Symposium of Justice Administration, Ministry of Justice of Thailand, September 2004, pp.270, 273.

each commissioner and hopefully speed up the inquiry process. Alternatively, some researchers recommended the amendment of Section 19 (3) of the OACC, which mandated NCCC powers and duties to inquire into whether a state official (not person holding a political position) has become unusually wealthy or has committed an offence of corruption, by adding a clause stating that the NCCC does not have to investigate the case from the outset but can mainly rely on the investigation file prepared by the agency of the alleged official.[7]

While the above two recommendations were based on an assumption that the NCCC should have the monopoly duties in investigating corruption cases, the third one called for a radical change. Some researchers claimed that due to problems of ineffectiveness and the caseload of the NCCC, and the fact that since the establishment of NCCC the government no longer has any effective organs to serve its policy to fight against corruption, the executive branch of the government should have its own investigative authority while the NCCC should exercise its power only in the case of corruption conducted by politicians and high-ranking government officers.[8]

To make the best choice, firstly, the policy-makers must remind themselves that the NCCC has been established as an independent organization, free from a chain of command of the executive branch, because of the failure of the past anti-corruption body, which was under the mandate of the Prime Minister's Office. Secondly, if centralized corruption control policy is an ultimate goal, setting up a parallel investigating authority will cause more harm than good. Lastly, it is easier to appeal to the legislators for the amendment of only one or two sections of the current law than enacting a new law and amending the current law simultaneously.[9]

III. SHOULD THAILAND ESTABLISH SPECIALIZED COURTS TO TRY CORRUPTION OFFENCES?

The establishment of specialized courts is to ensure that specific or technical problems will be solved by an appropriate judge, therefore, a judge of the specialized courts is appointed from judges who possess competent knowledge of the specific matters. There are four specialized courts in Thailand: the Labour Court, the Tax Court, the Intellectual Property and International Trade Court, and the Bankruptcy Court. As of today, there is no permanent specialized court for all corruption cases.[10]

Unlike Thailand, Indonesia, Pakistan and Sri Lanka have specific courts to deal with corruption cases. The advantage in this is that the presiding judge will devote more time to corruption cases and through consistent practice, gain the experience necessary to speed up trials, as well as conduct efficient proceedings.[11]

Even though Thailand has no corruption court of general jurisdiction, the Supreme Court's Criminal Division for Persons Holding Political Positions (hereinafter "special division") has been established since 15 September 1999 by provision of the 1997 Constitution and the Organic Act on Criminal Procedure for Persons Holding Political Position B.E. 2542 (1999) for the purpose of expeditious and fair trial of corruption offences committed by politicians.

The special division of the Supreme Court has the power and duty to try and adjudicate a case against

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[7] Committee for the Constitutional Amendment, Guidelines for the Amendment of the Constitution Concerning the National Counter Corruption Commission, November 2006, pp.56-59.

[8] Pongpat Riengkraue, The Establishment of the Executive Anti-Corruption Body, research proposal submitted to the Office of Justice Affairs, Ministry of Justice, 2005.

[9] According to Section 250 of the 2007 Constitution, which entered into force 23 August 2007, the NCCC has duties to investigate only corruption offences conducted by politicians and high ranking government officials. However, a new investigative authority for lower ranking officials has not yet been established.

[10] The Supreme Court of Thailand, 2004, p.12.

[11] Report of the Course: Current Problems in Responding to the Corrupt Activities of Public Officials at the Investigation and Trial Stages and Solutions for Them, in Resource Material Series No.56, UNAFEI, pp.549-550, 560.

persons holding a political position having 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, including a principal, an instigator or a supporter of such offence.

The quorum of the special division of the Supreme Court consists of nine Justices of the Supreme Court who hold a position of not lower than Justice of the Supreme Court, and are elected by a plenary session of the Supreme Court Justices on a case by case basis. A judgment will be made by a majority of votes, provided that each Justice constituting the quorum will prepare a written opinion and make oral statements to the meeting before making a decision. Orders and decisions of the Supreme Court's Criminal Division for Holders of Political Positions will be disclosed and final.[12] However, if there is fresh evidence material to the case that would likely lead to the acquittal of the alleged offenders, they can appeal to the plenary session of the Supreme Court.[13]

While the procedures of the general criminal court are spelled out in the Criminal Procedure Code, the procedures for criminal proceedings in the special division are stated in the 1999 Organic Act and Rules on Criminal Procedure for Persons Holding Political Position B.E. 2543 (2000), which are different from ordinary criminal proceedings in some aspects. For example, for the proceeding in the special division, data recorded in or processed by computer is admissible as evidence[14] and the court may permit the hearing of a witness outside the court conducted by means of video-conference,[15] although these procedures have not yet been endorsed by the Criminal Procedure Code. The most important features of criminal proceedings in the special division of the Supreme Court is that the trial is founded upon an inquisitorial system, rather than an accusatorial one, by which the court must mainly rely on the inquiry file of the NCCC; however, the quorum of justices may conduct an investigation in order to obtain additional facts or evidence as it thinks proper.[16]

The Supreme Court's special division is not a specialized court in principle, even though it has a special criminal proceeding. Justices of the division are chosen from all Justices of the Supreme Court on a case by case basis; therefore, experience in trying and adjudicating corruption cases is not required. Undoubtedly, all Justices of the Supreme Court have at least thirty years' experience on the bench; however, not all Justices have experience in corruption cases. Moreover, while conducting criminal trials in the division, the Justices still have responsibility to try other kinds of cases.

From 1999 to 2006, only four cases were submitted and disposed by the special division. This figure raises an issue of efficiency for the establishment of the division. It is about time for the policy-makers to re-examine the structure of this division, in order to enhance both effectiveness and efficiency. The division should be restructured to be a genuine specialized court for corruption cases which must consist of Justices appointed from among the Justices of the Supreme Court who possesses competent knowledge of corruption control measures in order to create expertise and consistent practice.

Statistics indicate that there were about 400 to 600 corruption cases submitted to the courts of justice each year,[17] therefore it will be impossible for the special division to try all of those cases even if it has competent judges. The solution to this problem may be the establishment of a permanent special division in the courts of appeal consisting of competent appellate judges and being charged with the duty to try and adjudicate corruption offences committed by state officials who do not hold a political position. The decisions of this new division can be appealed to the special division of the Supreme Court. As a result, the current special division will perform its duties both as the court of first instance for corruption offences committed by politicians and the court of appellate jurisdiction for offences of corruption conducted by other state officials.

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[12] *Supra* note 10, pp.14-15.
[13] Constitution of the Kingdom of Thailand 2007, Section 278 paragraph 3.
[14] Rules on Criminal Procedure for Persons Holding Political Positions B.E. 2543 (2000), Rule 13.
[15] *Supra* note, Rule 20.
[16] *Supra* note 10, pp.18-19.
[17] Annual Judicial Statistics, Thailand, from 1993 to 2005.

IV. ARE THE PENALTIES FOR CORRUPTION OFFENCES TOO LENIENT TO DETER CORRUPTORS?

Traditionally, it has been believed that punishment as a social institution (or penalty) has changed in relationship to the prevailing beliefs about humankind in general and about criminals in particular. For example, the eighteenth-century classical schools of criminology, founded on the utilitarian beliefs of free will and the capacity for rational thought, viewed crime as the outcome of citizens concluding that the benefits of committing a crime outweigh the risks of significant punishment. The consequence of such criminological thinking called for the imposing of sanctions of sufficient severity to deter real and potential offenders.[18]

Rational Choice Theories of Crime, which have been the foundation of crime control policy in many countries for three decades, shared a view of humans as the "rational man", like the classical school of criminology. According to this prevailing theory, the fear of future suffering is enough to deter the rational, free-acting citizen from engaging in criminality.[19]

Deterrence, therefore, is economic analysis *par excellence* since it focuses on the behaviour of individuals as rational actors. It treats the offender as a rational economic actor influenced by the pricing system of punishments. Punishment will act to deter the person sentenced (individual or specific deterrence), so that the person will desist from offending through fear of repetition of the penalty in future, and in addition, the punishment will deter other like-minded people (general deterrence).[20]

Aiming at controlling corruption through deterrence, Section 30 of the UNCAC requires that States Parties make the commission of an offence established in accordance with the convention liable to sanctions that take into account the gravity of that offence.[21] Moreover, paragraph 5 of the same section also requires States Parties to take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of offences established in accordance with the Convention.

Persons who commit corruption offences in the Thai public sector are liable for the punishments outlined in the following table.[22]

Law, Section	Behaviour	Object/Funds	Punishment (prison; fine)
PC[23] 143	Trading in Influence	Property or Other Benefit	Up to 5 Years; Up to 10,000 baht[24]
PC 144	Give, Offer, Agree to give	Property or Other Benefit	Up to 5 Years; Up to 10,000 baht
PC 147	Misappropriates	Anything	5 Years to 20 Years or life; 2,000 to 40,000 baht
PC 148	Misuses power	Property or any other benefit	5 Years to 20 Years or life or death (lethal injection); 2,000 to 40,000 baht
PC 149	Demand, Accepts	Bribe	5 Years to 20 Years or life or death; 2,000 to 40,000 baht
PC 150	Demand, Accepts (before being appointed)	Bribe	5 Years to 20 Years or life; 2,000 to 40,000 baht

[18] Gregg Barak, Integrating Criminologies, Allyn & Bacon: MA, 1998, p.74.
[19] Ibid, pp.189-192.
[20] Martin Wasik, Emmins on Sentencings, Blackstone Press: London, 2001, p.46.
[21] Thailand signed the UNCAC on 9 December 2003 but has not yet ratified it.
[22] Revised and updated from table printed in Report of the Course: Current Situation of and Recent Trends in the Corrupt Activities of Public Officials, and Criminal Legislation against Corruption, Resource Material Series No.56, UNAFEI, p.545.
[23] Penal Code.
[24] As of 1 October 2007, the exchange rate is about thirty-four baht for one US dollar.

PC152, 153	Embezzles	Any kind of benefit	1 Year to 10 Years; 2,000 to 40,000 baht
PC 154 to 156	Misuses of power in collecting taxes and fees or auditing		5 Years to 20 Years or life; 2,000 to 40,000 baht
PC 157	Misuses power		1 Year to 10 Years ; 2,000 to 40,000 baht
PC 167	Give, Offer, Agree to give (to judicial officer)		Up to 7 Years; Up to 14,000 baht
PC 200	Misuses power (in judicial office)		1) 6 Months to 7 Years; 1,000 to 14,000 baht 2) life or 1 Year to 20 Years; 2,000 to 40,000 baht
PC 201	Demand, Accepts (in judicial office)	Bribe	5 Years to death; 2,000 to 40,000 baht
PC 202	Demand, Accepts (in judicial office) (before being appointed)	Bribe	5 Years to death; 2,000 to 40,000 baht
SBSA[25] 10	Misuses power to approve or consider a bid		1 Year to 10 Years; 20,000 to 200,000 baht
SBSA 11	Misuses power to prevent fair bid competition		5 Years to 20 Years or life; 100,000 to 400,000 baht
SBSA 12	Same behaviour as sec. 10, 11 committed by a political position holder		7 Years to 20 Years or life; 140,000 to 400,000 baht
NCCC Law 100	Conflict of Interest		Up to 3 Years; Up to 60,000 baht

Comparatively, in Singapore, a country which has been considered to have a sufficiently deterrent punishment, a single charge attracts a maximum fine of $100,000 or an imprisonment term not exceeding five years, or both. For offences involving government contracts or those involving bribery of a Member of Parliament, the maximum jail term is extended to seven years, although the maximum fine remains at $100,000. A penalty equal to the amount of bribe shall also be imposed.[26]

Obviously, the sentence of imprisonment prescribed by Thailand's Penal Code takes into account the seriousness of the offences of corruption and should be considered a sufficiently deterrent punishment. However, in practice, the court seldom imposes a fine on corruption offenders due to the provision of Section 20 of the Penal Code which states that for an offence liable for the punishment of both imprisonment and fine, if it thinks fit, the courts can impose only imprisonment. This can reduce the deterrent effect of the existing provisions. Moreover, even in the case that the courts impose a fine for a corruption offence in the penal code, the amount of the fine, revised in 1959, is too low. The government should consider amending laws concerning fines for corruption offences in order to maintain the deterrent effect of current provisions.

Given that the court is unlikely to want to pass the maximum sentence, the next question is: what level of sentence would properly reflect the seriousness of the offence? It is of great importance for the court to

[25] Act on Offences Relating to the Submission of Bids to State Agencies B.E.2542 (1999).
[26] Chua Cher Yak, Corruption Control: More than just structures, systems and process alone, Visiting Expert's Paper, Resource Material Series No.65, UNAFEI, p.234.

gauge the seriousness of one offence in relation to another, and to distinguish between each offence. This is a demanding task for the court, but it is central to the sentencing decision.[27]

Due to the fact that judges have different backgrounds and experiences, they can pass different sentences for offences of a similar nature and offenders of similar characteristics. In order to create a uniform sentencing practice, Thailand should formulate and promulgate sentencing guidelines.[28]

While the court is responsible for fixing the length of the custodial sentence and for announcing that term in open court, the actual period to be served by the offender is affected by the operation of early release arrangements and, in some cases, by subsequent decisions made by a parole board.[29] As a result, the deterrent effect of a custodial sentence carefully estimated by the court will be reduced by the discretionary power of the executive branch. This problem in Thailand is worsened by severe overcrowding, a situation that welcomes the administrative power of correctional officers to allow earlier release of prisoners. This, consequently, widens the gap between custodial time served by the offender and sentenced term of imprisonment pronounced by the court.[30]

In order to maintain the deterrent effect of the punishment calculated carefully by the courts, Thailand's policy makers should promptly promote alternative measures to custodial sentences to solve the problem of prison overcrowding, and it should consider adopting the British model of early release[31] which is subject to the good behaviour of offenders when in custody. Offenders who receive custodial sentences know at the time of their sentencing, pending good behaviour, what their actual release date will be. Mixing all factors together, hopefully, prison time served and time pronounced will be roughly equal.

The final remark is that deterrence is difficult to measure. Is the fine and prison sentence a deterrent to bribery? The answer depends upon the personalities of those involved, the amount of money of the bribe, and the likelihood of detection and conviction. It very likely deters some and does not deter others. So the question is whether increased efforts at detection and prosecution, accompanied by increased penalties, will have a greater deterrent effect than current penalties, and whether the increased costs associated with these efforts will be justified.[32]

V. SHOULD A GUILTY PLEA FROM A CORRUPTION OFFENDER LEAD TO A DISCOUNTED PENALTY?

There are matters of mitigation personal to the offender which it is appropriate to take account. The most important and most frequently relied upon matter in mitigation is the offender's guilty plea. The reason why the courts grant a substantial discount on sentence for a guilty plea, in the majority of cases, is that defendants who plead guilty help to shorten trials, reduce court backlogs and save the costs of legal aid. Moreover, a decision to plead guilty will indicate the offender's regret for the offence.[33]

In Thailand, according to Section 78 of the Penal Code, a timely guilty plea may attract a penalty discount of up to one-half and in practice the courts consistently discount one-half of the punishment for a timely guilty plea for all offenders. Aiming to enhance the deterrent effect of punishment in corruption offences, the Thai government approved the Penal Code Amendment Bill, which has amended Section 78 in order to diminish the power of the court in discounting sentence for a guilty plea from up to one-half to only up to one-fifth in corruption offences.

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[27] *Supra* note 20, p.54.
[28] There are sentencing guidelines for judges in each of the nine regions around the country. However, these guidelines are not uniform and mandatory. Moreover, they are not disclosed to the public.
[29] *Supra* note 20, p.150.
[30] Research conducted in the past indicated that if the time imposed by the court was life imprisonment, the time served was about 12 years.
[31] *Supra* note 20, pp.150-157.
[32] Anthony Didrick Castberg, Current Problems in the Fight against Corruption and Some Possible Solutions: US Perspective, Resource Material Series NO.56, UNAFEI, p.407.
[33] *Supra* note 20, pp.66, 75.

Obviously, the upcoming amendment of the Penal Code will allow the courts to impose a longer jail term on corruption offenders, but as I discussed before, time served by offenders in Thailand is a lot shorter than time pronounced by the court. As long as prison overcrowding is an overwhelming problem and laws concerning early release and parole are not yet revised, diminishing the power of the court to discount sentences can, at its best, increase only minimally the deterrent effect of the punishment. In contrast to this uncertain minimal advantage, diminishing the court's power only in relation to corruption offences will inevitably raise an issue of discrimination.

VI. IS THE CURRENT STATUTE OF LIMITATIONS FOR CORRUPTION OFFENCES LONG ENOUGH TO BRING ALL CORRUPTORS TO JUSTICE?

The length of the period of limitation for corruption offences in Thailand ranges from between one to twenty years depending on the gravity of the offence; the majority of corruption offences carry a statute of limitations of twenty years calculated from the day an offence is committed. According to the Penal Code and the Criminal Procedure Code, prosecution and punishment for an act shall be barred when the period of limitation has elapsed.

In practice, investigation and prosecution of corruption in Thailand often begin after the retirement or the removal from office of government corruptors. Therefore, questions have been asked in Thailand's academic and political arena as to whether the period of limitation set by the current law is long enough to bring corruptors to justice. Some practitioners and politicians have called for the abolishment of the time limit for the prosecution of corruption offences. Alternatively, the government has drafted the penal code amendment law to extend the time limit for corruption to thirty years but maintain the same method in calculating the time.

In my opinion, extending the time period for corruption offences without changing the penalty for those offences can be considered a betrayal of the generally accepted principle that time limitation for an offence should depend on the seriousness of the offence. The suitable option for Thailand should be revision of the method of calculation so that time limit will not begin to run until the commission of the offence becomes known to the investigative authorities. While maintaining the current length of time, which depends on and reflects the seriousness of each offence, changing the calculation method can truly extend the time permitted for investigation and prosecution.

VII. SHOULD SUSPECTS OF CORRUPTION OFFENCES ENJOY THE RIGHT TO REMAIN SILENT?

Thailand has followed the old British system of allowing suspects to exercise their right to remain silent when questioned by investigators. However, when the case comes to court, the offender will have had ample time to concoct a story, which does not allow the prosecution sufficient time to verify its truthfulness. In the end, it defeats the objective of the criminal justice system of enabling full facts to be presented to the court so as to arrive at a fair decision.

Undoubtedly, the right of silence must be respected by the criminal justice system because it is a fundamental human right that no person shall be compelled in any criminal case to be a witness against himself, however, in establishing a better balanced system, the accused must be warned before invoking the right to remain silent that adverse inferences may be drawn against him or her from his or her failure to mention certain facts.

If Thailand wants to break the secrecy of crimes like corruption, it should follow the new British system which has been used for more than a decade and has provided that adverse inferences may be drawn against the accused in certain circumstances from his or her failure to mention certain facts. In adopting this model, a revised version of the caution should also be promulgated to strike a better balance between the human rights of suspects and the public interest in the investigation of crimes, which provides for the suspect to be told as follows:

"You do not have to say anything. But it may harm your defence if you do not mention when questioned something that you later rely on in court. Anything you do say may be given in evidence."

VIII. IS IT POSSIBLE TO SHIFT THE BURDEN OF PROOF AND REVISE A STANDARD OF PROOF IN CORRUPTION LITIGATION?

In criminal cases, there is a perception that an individual defendant is pitted against the weight of the State in the form of the prosecution. Since the individual's liberty and/or life are at stake, the law adopts a protective and paternalistic approach. The rules on the legal burden and standard of proof are such that the prosecution had the onus of proving guilt beyond reasonable doubt, and the defendant is very rarely put to proof.

Thailand also adopted this standard for general criminal cases, including corruption cases, as indicated in Section 227 paragraph 2 of the Criminal Procedure Code that where any reasonable doubt exists as to whether or not the accused has committed the offence, the benefit of doubt shall be given to him or her. However, a criminal trial in the special division of the Supreme Court for politicians is based on an inquisitorial system by which the court mainly relies on the investigation report of the NCCC and may conduct an investigation as the quorum think proper, therefore, the division does not confront the burden and standard of proof problems.

In my opinion, using civil proceeding to address problems of proof in corruption offences also has at least two disadvantages. Firstly, we may not ask for mutual legal assistance in civil proceedings. Secondly, civil sanctions may not deter corrupt officials as sufficiently as criminal punishment. Bearing in mind these disadvantages and realizing that experiences in some countries show that the offence of illicit enrichment is less difficult to prove than other corruption offences, Thailand should consider criminalizing illicit enrichment.

IX. CONCLUSION

Effective corruption control requires not only effective laws and seriousness in law enforcement but also co-operation from and co-ordination among the public sector, the private sector and the people. Therefore, while contemplating the weaknesses in anti-corruption legislation which this paper suggested, Thailand's policy-makers also have to formulate other preventive measures, such as how to reform the management system and the remuneration payment of the government, how to deprive the corruption opportunities, how to educate people to know the wickedness of corruption and seek co-operation from them.

Being aware that corruption in Thailand is a never-ending problem, it is, therefore, all the more necessary that all sectors of Thai society do not relent in their efforts and determination to coalesce and work towards the common goal. As I mentioned before, corruption is a man-made problem, and it is with high hopes and belief that I write that there exists a man-made solution for curing this cancerous growth in Thai society.

APPENDIX I
LIST OF THAILAND'S ANTI-CORRUPTION LEGISLATION

I. LAW ON CORRUPTION OFFENCES OF THE PUBLIC OFFICIALS AND PROCEEDINGS

1. Penal Code; passive/active bribery, embezzlement, misappropriation, abuse of power, trading in influence
2. Act on Offences Relating to the Submission of Bids to State Agencies B.E.2542 (1999)
3. Organic Act on Counter Corruption B.E. 2542 (1999); conflict of interest offences, corruption cases criminal proceeding and unusual wealth inquiry proceeding, assets and liabilities declaration
4. Organic Act on Criminal Procedure for Persons Holding Political Position B.E. 2542 (1999) ; criminal proceeding and unusual wealth inquiry proceeding for politicians
5. Criminal Procedure Code; criminal proceeding for public officials

II. LAW ON CORRUPTION OFFENCES IN THE PRIVATE SECTOR

1. Penal Code; embezzlement, breach of trust, fraud
2. Act on Trade Competition B.E. 2542 (1999); anti-monopoly law, liability of managing directors and managing partners
3. Act on Offences Relating to Registered Partnerships, Limited Partnerships, Private Companies, Associations and Foundations B.E.2499 (1956); fraud, breach of trust by managing directors or managing partners
4. Act on Securities and Securities Exchange Market B.E.2535 (1992); fraud, embezzlement, breach of trust of directors or managing directors of public companies

III. LAW ON CORRUPTION-RELATED OFFENCES

1. Taxation code; tax evasion
2. Money Laundering Control Act B.E. 2542 (1999); corruptions offences are predicate offence for money laundering offences, civil forfeiture proceeding
3. Witness Protection Act B.E. 2546; witness protection measures, obstruction of justice offences: intimidating or doing any harm to witnesses (not offences in themselves but being aggravating factors)

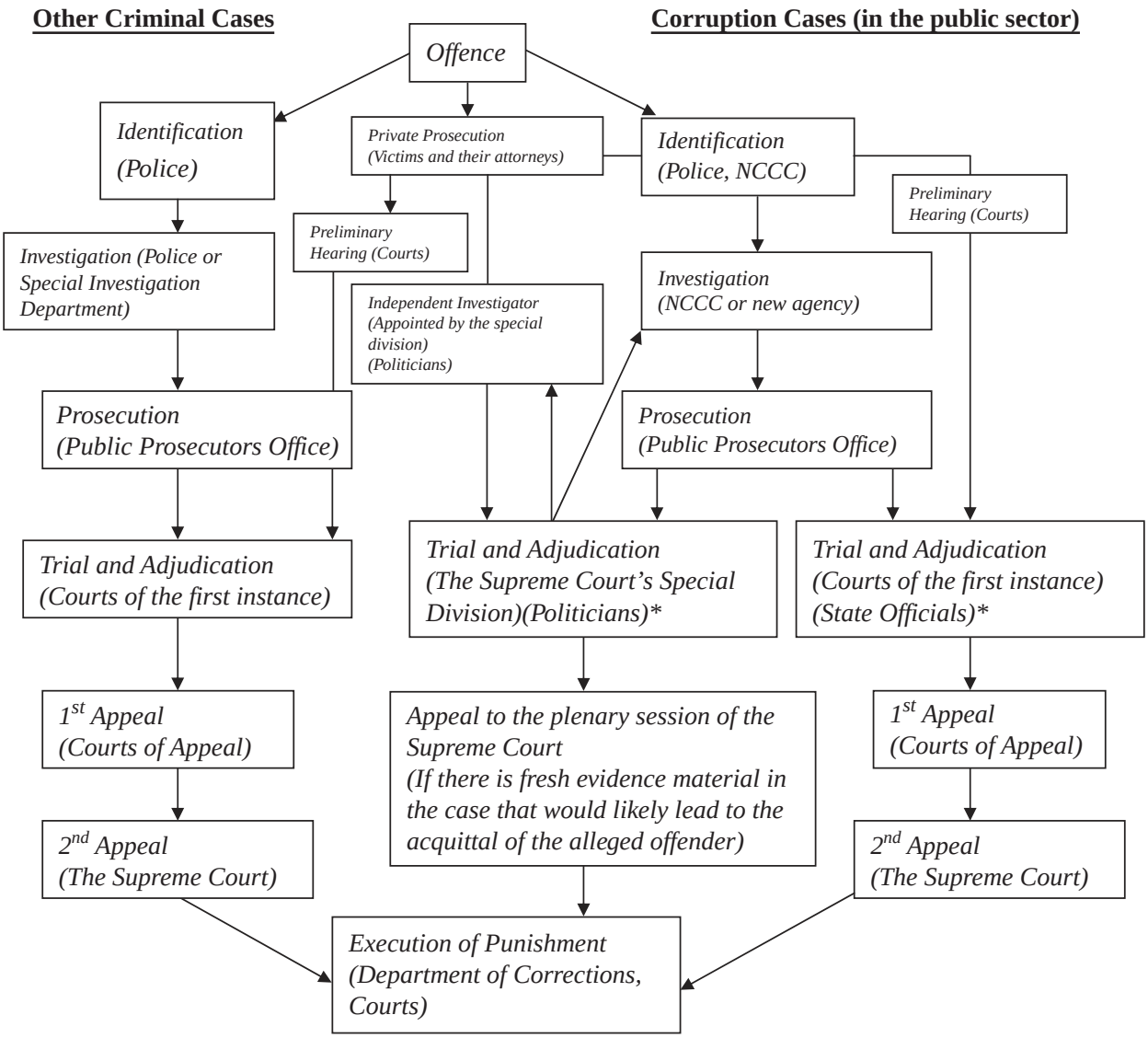
IV. LAW ON INTERNATIONAL CO-OPERATION

1. Extradition Act B.E. 2472 (1929) and many Bilateral Extradition Acts
2. Act on Mutual Legal Assistance in Criminal Matters B.E.2535 (1992)

V. OTHER LAWS ON PREVENTIVE MEASURES

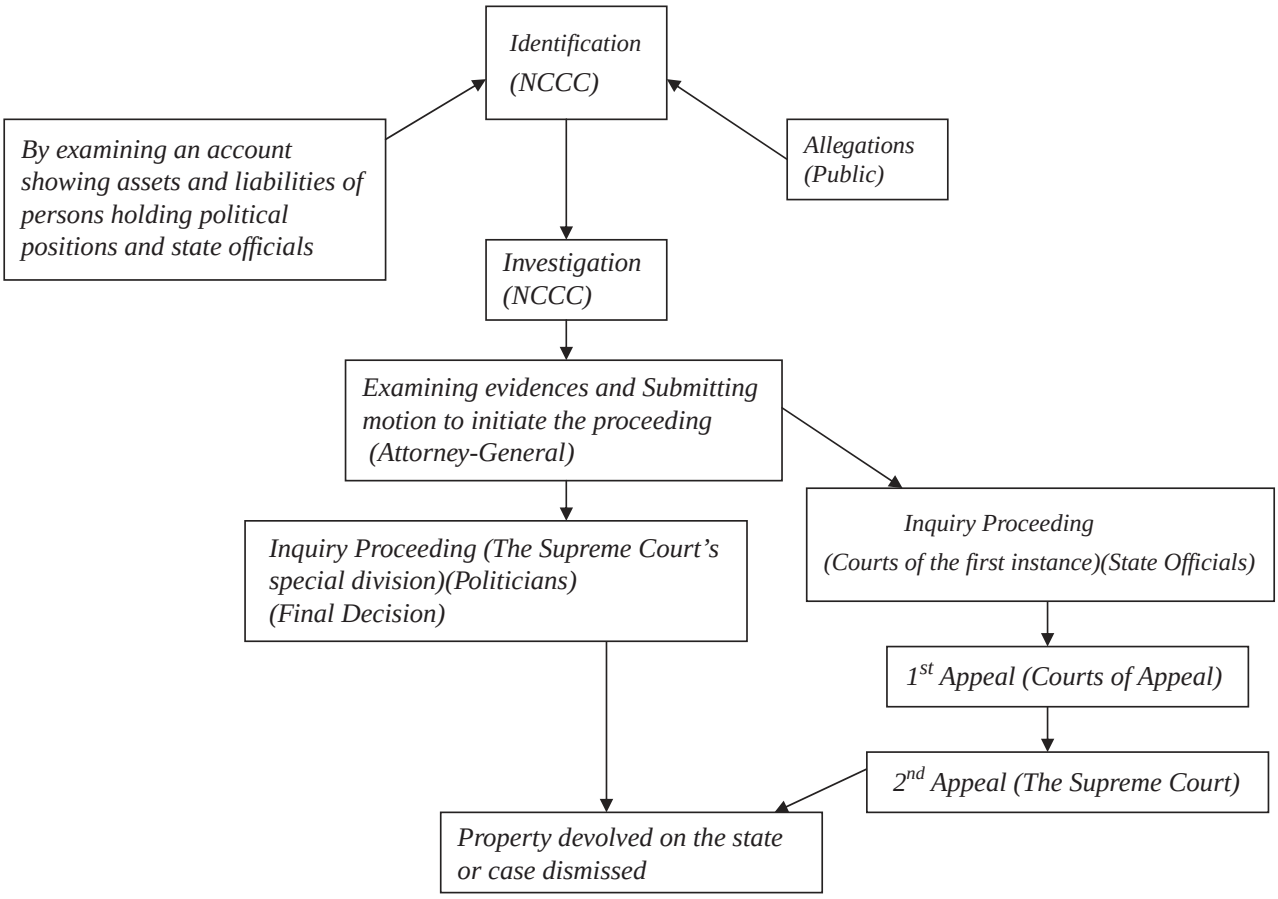
1. The 2007 Constitution; Provisions related to public officials' code of conduct
2. Organic Act on Political Parties B.E. 2550 (2007); control mechanism of political parties' funding, spending and donations
3. Organic Act on Ombudsmen B.E. 2542 (1999); monitoring state officials' exercise of power, check and balance
4. Act on Management of Partnership Stakes and Shares of Ministers Act B.E.2543 (2000); prevention of conflict of interest
5. Official Information Act B.E. 2540 (1997); people's rights to access public information, disclosure of public information

APPENDIX II: Flow Charts of Criminal Justice Proceedings of Thailand (including corruption cases)



* Including any lay person who is a principal, instigator or supporter of that offence.

APPENDIX III: Flow Charts of Unusual Wealth[34] Inquiry Proceeding of Thailand (Non-Criminal Proceeding)[35]



[34] Unusual wealth means having an unusually large quantity of assets, having an unusual increase in assets, having an unusual decrease of liabilities or having illegitimate acquisition of assets as a consequence of the performance of duties or the exercise of power in office or in the course of duty.

[35] For the unusual wealth inquiry proceeding, the accused have to prove that assets considered disproportionate to their income were not obtained through corrupt practices, otherwise proved, those assets will be considered as corruptly acquired property and will be devolved on the State.