SECOND REGIONAL SEMINAR ON GOOD GOVERNANCE FOR SOUTHEAST ASIAN COUNTRIES

CORRUPTION CONTROL IN PUBLIC PROCUREMENT

Co-hosted by UNAFEI, the Office of the Attorney General of Thailand, and the UNODC Regional Centre for East Asia and the Pacific

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FOREWORD

It is my great pleasure and privilege to present this report of the Second Regional Seminar on Good Governance for Southeast Asian Countries which was held in Bangkok from 23 to 25 July 2008. This was our second opportunity to hold a Good Governance Seminar in Bangkok and we were thankful for the chance to meet again with our friends and counterparts in Thailand's fascinating capital city.

The main theme of the Seminar was "Corruption Control in Public Procurement" and it was attended by criminal justice practitioners from Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, and Thailand. UNAFEI, the Office of the Attorney General of Thailand and the UNODC Regional Centre for East Asia and the Pacific held this Seminar to deepen understanding of situations facing the respective countries in regard to corruption in public procurement, and to assist them in strengthening their rule of law, judicial systems and legal infrastructure.

Corruption in public procurement, which affects countries across the globe, has enormous negative consequences. It diverts public funds into unnecessary, unsuitable, uneconomic or even dangerous projects. The expenditure involved in public procurement, the high degree of discretion afforded to public officials in executing such programmes, and the involvement of many private sector entities in the process all contribute to its susceptibility to corruption.

The United Nations endeavours to promote the eradication of corruption in all its forms and one of its most significant achievements in this regard is the United Nations Convention against Corruption (UNCAC). UNAFEI, as a UN Crime Prevention and Criminal Justice Programme Network Institute, reflects the concern of the United Nations that the UNCAC and other guidelines be used as effective frameworks for controlling corruption, including that in public procurement. UNAFEI regularly focuses its training courses and seminars on the issue of corruption and the benefits of implementing the UNCAC and other international standards.

In addition to the United Nations' efforts, the countries of Southeast Asia themselves, at the Tenth Summit of ASEAN in 2004, adopted the Vientiane Action Programme, declaring that Member States should "Establish programmes for mutual support and assistance among ASEAN member countries in the development of a strategy for strengthening the rule of law, judiciary systems and legal infrastructure, effective and efficient civil services, and good governance in the public and private sector". The respective countries are making efforts to follow the Action Programme and this Seminar was a precious opportunity for them to further their work on this vital issue by exchanging information and experiences on the efforts of their respective governments to combat corruption in public procurement.

The three-day Seminar concluded with the adoption of the final recommendations, the quality of which reflect the hard work, dedication and enthusiasm of the participants. It is my sincere wish that work of this Seminar will not only contribute to the development of human resources who will promote the advancement of sound criminal justice administration in Southeast Asian countries but will also contribute to their mutual understanding and friendship.

Finally, on behalf of UNAFEI, I would like to express my deepest appreciation to the Office of the Attorney General of Thailand, especially the International Affairs Department, and the UNODC Regional Centre for East Asia and the Pacific for their unwavering support and commitment to the realization of this Seminar.

Keiichi Aizawa
Director, UNAFEI

23 November 2008

SEMINAR SCHEDULE

23 July	**Opening Session** **Opening Remarks** by Mr. Keiichi Aizawa, Director, UNAFEI **Opening Remarks** by Mr. Keisuke Senta, Senior Legal Adviser, UNODC Regional Centre for East Asia and the Pacific **Special Address** by His Excellency Mr. Hideaki Kobayashi, Ambassador of Japan to Thailand **Opening Address** by Mr. Chulasingh Vasantasingh, Deputy Attorney General, Office of the Attorney General of Thailand
	Presentation Session I **Introductory Remarks** by Mr. Takeshi Seto, Deputy Director, UNAFEI **Presentation** by Mr. Chulasingh Vasantasingh, Deputy Attorney General, Office of the Attorney General of Thailand **Presentation** by Mr. Keisuke Senta, Senior Legal Expert, UNODC Regional Centre for East Asia and the Pacific
	Presentation Session II **Individual Presentation** by Ms. Philippe Nil, Director, Education and Dissemination Department, Ministry of Justice, Cambodia **Individual Presentation** by Mr. Mochammad Jasin, Commissioner, Corruption Eradication Commission (KPK), Indonesia **Individual Presentation** by Mr. Keomorakoth Sidlakone, Director, Division of Treaties and International Co-operation, Supreme People's Prosecutor's Office, Laos **Individual Presentation** by Mr. Anthony Kevin Morais, Deputy Public Prosecutor, Legal and Prosecution Department, Anti-Corruption Agency, Malaysia **Individual Presentation** by Ms. Phyu Mar Wai, Assistant Divisional Law Officer, Yangon Divisional Law Office, Office of the Attorney General, Myanmar **Individual Presentation** by Ms. Deana Penaflorida Perez, Senior State Prosecutor, National Prosecution Service, Department of Justice, the Philippines **Individual Presentation** by Ms. Roline M. Ginez-Jabalde, Graft Investigation and Prosecution Officer II, Office of the Ombudsman, the Philippines
24 July	**Presentation Session III** **Presentation** by Visiting Expert, Mr. Johan Vlogaert, Head, Unit A.4, External Aid, European Anti-Fraud Office (OLAF), European Commission **Presentation** by Visiting Expert, Mr. Brian D. Miller, Inspector General, Office of the Inspector General, US General Services Administration, USA
	Discussion Session I *1. Recent instances and characteristics of corruption in public procurement in the respective countries* *2. Effective legal frameworks and practical measures to detect corruption in public procurement*
	Discussion Session II *3. Multi-disciplinary investigation: co-operation with non-judicial experts and/or authorities* *4. International co-operation: formal and informal*

25 July	**Discussion and Adoption of the Recommendations**
	Closing Ceremony **Closing Remarks** by Mr. Keiichi Aizawa, Director, UNAFEI **Closing Remarks** by Mr. Keisuke Senta, Senior Legal Adviser, UNODC Regional Centre for East Asia and the Pacific **Closing Address** by the Honourable Mr. Chaikasem Nitisiri, Attorney General of Thailand

LIST OF PARTICIPANTS, VISITING EXPERTS & ORGANIZERS

A. Particpants

Ms. Philippe Nil	Director Education and Dissemination Department Ministry of Justice Cambodia
Mr. Mochammad Jasin	Commissioner Corruption Eradication Commission (KPK) Indonesia
Mr. Budi Agung Nugroho	Investigator Corruption Eradication Commission (KPK) Indonesia
Mr. Darmawel Aswal	Legal Attaché Embassy of Indonesia, Bangkok Indonesia
Mr. Keomorakoth Sidlakone	Director Division of Treaties & International Cooperation Supreme People's Prosecutor's Office Laos
Mr. Anthony Kevin Morais	Deputy Public Prosecutor Legal and Prosecution Department Anti-Corruption Agency Malaysia
Ms. Phyu Mar Wai	Assistant Divisional Law Officer Yangon Divisional Law Office Office of the Attorney General Myanmar
Ms. Deana Penaflorida Perez	Senior State Prosecutor National Prosecution Service Department of Justice Philippines
Ms. Roline M. Ginez-Jabalde	Graft Investigation and Prosecution Officer II Office of the Ombudsman Philippines
Mr. Sirisak Tiyapan	Director General International Affairs Department Office of the Attorney General Thailand

Ms. Piyaphant Udomsilpa	Deputy Director General Department of Legal Counsel Office of the Attorney General Thailand
Mr. Nattachak Pattamasingh	Deputy Director General Department of Legal Counsel Office of the Attorney General Thailand
Ms. Premrat Wijaranayarn	Judge Office of the Judiciary Office of Judicial and Legal Affairs Thailand
Ms. Jongdee Maidee	Chief of Internal Audit Office of the Ombudsman Thailand
Mr. Raksa Gecha Chaechai	Director of Ombudsman Studies Center Office of the Ombudsman Thailand
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Mr. Prapot Klaisuban	Judge Central Administrative Court Thailand

Ms. Pongsook Veraarchakul	System Analyst Officer Comptroller General Department Thailand

B. Visiting Experts

Mr. Johan Vlogaert	Head Unit A. 4, External Aid European Anti-Fraud Office (OLAF) European Commission
Mr. Brian D. Miller	Inspector General Office of the Inspector General U.S. General Services Administration USA

C. Organizers

UNAFEI

Mr. Keiichi Aizawa	Director
Mr. Takeshi Seto	Deputy Director
Mr. Shintaro Naito	Professor
Mr. Etsuya Iwakami	Senior Officer
Mr. Ikuo Kosaka	Officer
Ms. Grace Lord	Linguistic Adviser

Office of the Attorney General of Thailand

Mr. Chaikasem Nitisiri	Attorney General
Mr. Chulasingh Vasantasingh	Deputy Attorney General
Mr. Thaworn Phanichaphan	Deputy Attorney General
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Mr. Jumpon Phansumrit	Expert Public Prosecutor
Mr. Sarun Tirapat	Expert Public Prosecutor
Mr. Vipon Kititasnasorchai	Provincial Chief Public Prosecutor
Mr. Torsak Buranaruangroj	Provincial Chief Public Prosecutor
Mr. Sanchai Krungkanjana	Provincial Chief Public Prosecutor
Ms. Thitiporn Kamolsuk	Public Prosecutor
Ms. Santanee Ditsayabut	Public Prosecutor
Ms. Sunisa Sathapornsermsuk	Public Prosecutor
Ms. Suparasi N. Rangsunvigit	Public Prosecutor
Mr. Sopon Kasempiboonchai	Public Prosecutor
Mr. Prawin Kitikoraart	Divisional Public Prosecutor
Ms. Pinthip L. Srisanit	Divisional Public Prosecutor
Ms. Vorayanee Vudthithornnatirak	Divisional Public Prosecutor

UNODC

Mr. Keisuke Senta	Senior Legal Expert in Terrorism Prevention UNODC Terrorism Prevention Branch UNODC Regional Centre for East Asia and the Pacific

RAPPORTEUR'S REPORT

&

FINAL RECOMMENDATIONS

July 23: **A. Opening Session**

B. Presentation Session I

C. Presentation Session II

July 24: **D. Presentation Session III**

E. Discussion Session I

1. *Recent instances and characteristics of corruption in public procurement in the respective countries.*
2. *Effective legal frameworks and practical measures to detect corruption in public procurement.*

F. Discussion Session II

3. *Multi-disciplinary investigation: co-operation with non-judicial experts and/or authorities.*
4. *International co-operation: formal and informal.*

July 25: **G. Discussion and Adoption of the Recommendations**

H. Closing Ceremony

Final Recommendations

OPENING CEREMONY, PRESENTATION SESSION I AND PRESENTATION SESSION II OF 23 JULY

A. Opening Ceremony

1. Opening Addresses

The Second Regional Seminar on Good Governance for Southeast Asian Countries, focusing on "Corruption Control in Public Procurement", commenced on 23 July 2008 in Bangkok, Thailand. After the arrival of the distinguished guests and participants, the Seminar began with opening remarks by Mr. Keiichi Aizawa, Director of UNAFEI, who expressed his deepest appreciation to the Office of the Attorney General of Thailand and the UNODC Regional Centre for East Asia and the Pacific for their enormous contribution and support in organizing the Seminar.

The following address was by Mr. Keisuke Senta on behalf of Mr. Gary Lewis, Regional Representative, UNODC Regional Centre for East Asia and the Pacific. Mr Senta recalled the words of the then UN Secretary General, Mr. Kofi Annan, at the adoption of the United Nations Convention against Corruption in 2003, when he said that "Corruption is a key element in economic under-performance, and a major obstacle to poverty alleviation and development."

The Seminar was next addressed by His Excellency Mr. Hideaki Kobayashi, Ambassador of Japan to Thailand. His Excellency Mr. Kobayashi noted that through his work as a Deputy Secretary General of the Secretariat of the Fair Trade Commission in his home country he was dismayed to see that although each year the Commission discovered, and imposed penalties on, a large number of bid-rigging cases related to public procurement, the number of incidents did not seem to be decreasing. This experience led him to wonder if there were any more effective means to prevent the recurrence of bid-rigging. He expressed his hope that the Seminar would lead to the introduction of such laws and regulations to combat corruption in public procurement in each country, in addition to strengthening a useful network of experts and facilitating co-operation on the issue in transnational cases.

Next, the Seminar was privileged to hear an opening address by Mr. Chulasingh Vasantasingh, Deputy Attorney General of Thailand, who extended, on behalf of Mr. Chaikasem Nitisri, the Attorney General of Thailand, a warm welcome to all of the overseas participants and his best wishes for the success of the Seminar. Mr. Chulasingh noted that corruption in public procurement is seen as a link to the misuse of power by top level officials and urged participants to find ways to make the process fair and accountable.

2. Election of Chairperson of the Seminar

Mr. Takeshi Seto, Deputy Director of UNAFEI and General Editor of the Seminar, proposed that Mr. Sirisak Tiyapan, Director General of the International Affairs Department of the Office of the Attorney General of Thailand be elected Chairperson of the Seminar, and this was enthusiastically endorsed by all participants. The opening session concluded with a group photo of organizers, participants, and visiting experts.

B. Presentation Session I

Three papers were presented in this session. The first was an introductory explanation by Mr. Takeshi Seto, Deputy Director of UNAFEI. The second presentation was made by Mr. Chulasingh Vasantasingh, Deputy Attorney General of Thailand. Mr. Chulasingh's paper was entitled "Corruption Control in Public Procurement". The final presentation for this session was made by Mr. Keisuke Senta of the UNODC Regional Centre in Bangkok. Mr. Senta presented a paper entitled "Corruption Control in Public Procurement: Measures under the United Nations Convention against Corruption and Possible Co-Operation with UNODC".

Mr. Seto noted that as economic globalization advances and efforts continue to provide assistance to developing countries, the adverse effects of corruption in public procurement have become international concerns. In recognition of these conditions, and from the viewpoint of seeking transparent procedures in public procurement, the United Nations Commission on International Trade Law (UNCITRAL) adopted the Model Law on Procurement of Goods, Construction and Services in 1994. In addition, from the criminal justice perspective, the United Nations adopted in 2003 the United Nations Convention against Corruption (UNCAC). Despite these developments however, almost all countries, including Japan, still face legal and practical challenges in overcoming corruption in public procurement, and this is the reason for holding this Regional Seminar.

Regarding the objectives of the Seminar, Mr. Seto firstly explained that in order to facilitate discussion and to seek solutions, it is important to understand the characteristics of corruption in public procurement.

Secondly, Mr. Seto said that the issue of detection of corruption must be approached on a dual basis: with effective legal frameworks and with practical investigative measures. While investigation was not the focus of the Seminar's work, Mr. Seto pointed out that it is valuable for investigators to understand that there are many types of corruption in public procurement and that investigators can charge the perpetrators with many types of crimes based on the variety of corruption uncovered. Also, considering the complexity and specialties of content as well as the procedures of public procurement, it is appropriate and reasonable for investigative organizations to seek co-operation with other relevant administrative organizations and professionals to share and utilize their respective information and expertise.

Thirdly, Mr. Seto explained that although there is no doubt that international co-operation is important, in order to for it to be effective, international harmonization in criminalization and co-operation procedures is indispensable. Included in this is the necessity for continuous and close networking among authorities responsible for this matter in each respective country.

Finally, Mr. Seto outlined the methodology to be employed during the Seminar: individual presentations from participants to create a cross-national picture of corruption; lectures from experts of the EU, USA and UNODC to acquire knowledge of the latest developments at the regional, national and international levels, including investigation techniques and best practices; and discussion sessions, in which participants and visiting experts are expected to exchange views based on the information obtained through personal experience, presentations and lectures by participants and experts, and so forth. Mr. Seto also explained in detail the discussion topics of the Seminar.

Mr. Chulasingh outlined the Thai legal framework on public procurement, which consists mainly of the Regulation of the Office of the Prime Minister on Procurement 1992 (ROPMP) and its subsequent amendments in line with the model law on public procurement of the UN Commission on International Trade Law (UNCITRAL). It guarantees the basic principles of proper procedures to ensure fairness, prudence, transparency and accountability. The Committee in Charge of Procurement (CCP), established under the ROPMP, interprets the ROPMP, makes recommendations concerning its enforcement and amendment, grants exemptions from the ROPMP to procuring agencies, and hears complaints. The ROPMP requires the use of model contracts and tender documents to strengthen the transparency of the procedures. The procuring agency must publish the prequalification criteria and method of selection, and inform the CCP.

Mr. Chulasingh explained that the publication of procurement opportunities increases participation and consequently reduces the risk of collusion or failure of tendering. In Thailand, all agencies must advertise their procurements on the government's central procurement website and relevant agencies' websites and the name of the winning bidder is announced on the website of the procuring agency. The reasons for the decision are available upon request. If none of the received bids meets the requirements, the tender is reopened.

To ensure the integrity of procurement agency personnel, Thailand has passed extensive codes of conduct for public officials, including staff of procuring entities, and the ROPMP, as well as other legislative acts, addresses conflicts of interest, specifically those involving procurement.

Mr. Chulasingh mentioned the great importance of sufficient sanctions. The ROPMP contains

penal provisions for willful violations or negligence. The Penal Code prohibits the bribery of officials, including bribery through intermediaries. Additional penal and administrative sanctions for accepting or soliciting bribes can be found in a number of other laws.

Auditing further enhances the integrity of the procurement system, and the risk of later detection can deter corruption in procurement. In Thailand, the Materials Inspection and Acceptance Committee inspects the fulfillment of a procurement contract and verifies the quality and quantity of the procured goods or services. The Auditor General audits the legality and value of procurements. The audit report is provided to the National Assembly, the Senate, the Council of Ministers, and the audited agency. It is also publicly available.

Given the long duration of procurement procedures, and the difficulties involved in detecting fraud and corruption, documents must be retained long enough to allow a review of the procurement system. Mr. Chulasingh noted that in Thailand, the procuring agency must keep a register of all bids and a record of the decisions for at least ten years, and that the Office of the Auditor General has access to the documents.

Mr. Chulasingh also mentioned other important tools in the fight against corruption, including freezing, seizure and forfeiture of assets; and international co-operation, namely extradition and mutual legal assistance. He emphasized that no matter how comprehensive a country's legal framework may be, if the laws are not enforced by people of integrity then the law is of no avail.

Mr. Senta described the relevant provisions in the UNCAC which can be used against corruption in public procurement, with special emphasis on its detection and investigation. He also gave a brief overview of the activities of relevant United Nations bodies, as well as other international entities, and a short introduction of the technical assistance activities provided by the United Nations Office on Drugs and Crime (UNODC).

Mr. Senta stated that one of the most important provisions of the UNCAC on public procurement is its Article 9, entitled "Public procurement and management of public finances." He noted that many organizations, including the UNODC, have also prepared publications containing model laws or provisions, codes of conduct or other suggestions to help in making the systems and measures prescribed in the UNCAC truly workable.

Like Mr. Chulasingh, Mr. Senta stated that effective sanctions, including penal sanctions, constitute strong incentives both for public officials and private sector employees to refrain from corrupt activities, and said that corruption should be made a high risk crime. This requires the criminalization of the many actions constituting corruption. Besides criminalization, Mr. Senta drew attention to UNCAC provisions on the matters of freezing, confiscation and asset recovery; measures to ensure efficient investigation; and international co-operation.

Regarding the anti-corruption activities of other international bodies and agencies, Mr. Senta noted the work of the International Group for Anti-Corruption Coordination (IGAC); the United Nations Commission on International Trade Law (UNCITRAL) and its Model Law on Procurement of Goods, Construction and Services; the Procurement Task Force of the Office of Internal Oversight Services of the United Nations (OIOS), which was established in January 2006 to address fraud and corruption in the procurement function in the United Nations; and the World Bank and Transparency International, among others.

Mr. Senta concluded by mentioning the UNODC's "Menu of Services" publication which describes the legal, analytical and technical capabilities the Office can offer, and invited questions over the course of the Seminar on UNODC's technical assistance activities which could be used to address the issue of corruption in public procurement.

C. Presentation Session II

Seven papers from the representatives of the participating countries were presented in this session. The first presentation was made by Ms. Philippe Nil of Cambodia. Ms. Philippe is the Director of the Education and Dissemination Department of the Ministry of Justice of Cambodia. Her paper was entitled

"Corruption Control in Public Procurement". The second presentation was delivered by Mr. Mochammad Jasin, Commissioner of the Corruption Eradication Commission (KPK) of Indonesia. Mr. Jasin presented a paper entitled "The Indonesian Experience in Addressing Corruption in Public Procurement". Following Mr. Jasin's presentation, the Seminar was addressed by Mr. Keomorakoth Sidlakone, Director, Division of Treaties and International Co-operation, Supreme People's Prosecutor's Office, Laos. Mr. Keomorakoth's paper was entitled "Measures for Prevention of Corruptors and the Role of Anti-Corruption Authorities in the Lao PDR". Mr. Anthony Kevin Morais made the fourth presentation of this session, with his paper "Corruption Control in Public Procurement." Mr. Morais is a Deputy Public Prosecutor of the Legal and Prosecution Department of the Anti-Corruption Agency of Malaysia.

Following a short recess, Ms. Phyu Mar Wai, Assistant Divisional Law Officer, Office of the Attorney General of the Union of Myanmar, made a presentation of her paper, entitled "Corruption Control in Public Procurement in Myanmar". Ms. Phyu's presentation was followed by that of Ms. Deana Penaflorida Perez, Senior State Prosecutor, National Prosecution Service of the Philippines. Ms. Perez's paper was entitled "Government Procurement Reforms in the Philippines". The final presentation of this session was delivered by Ms. Roline M. Ginez-Jabalde, Graft Investigation and Prosecution Officer II, Office of the Ombudsman, the Philippines. Ms. Ginez-Jabalde presented her paper, entitled "The Current Status of Public Procurement in the Philippines".

Ms. Philippe opened her presentation by stating that anti-corruption activity was one of the five areas of reform to which the Royal Government of Cambodia is committed in its efforts to ensure good governance. She noted that a World Bank survey of 2004 stated that firms operating in Cambodia believe corruption to be the biggest barrier to their success. Ms. Philippe said that the government's priority in fighting corruption in general is to revise the draft of the Anti-Corruption Law and submit it to parliament for approval as soon as possible. It will also endeavour to build the capacity of the relevant institutions to effectively manage and enforce the approved Anti-Corruption Law.

Regarding the legal and institutional framework for public procurement, Ms. Philippe noted that it is composed of various decrees, sub-decrees, and guidelines that do not cover all relevant aspects of public procurement. To remedy this situation, Cambodia plans to pass a comprehensive procurement law. Until then, some guidance is provided to procurement personnel in manuals on standard operating procedures.

Cambodian procurement methods and procedures provide for various procurement methods: competitive bidding, domestic canvassing, direct shopping, and direct contracting. The selection of the applicable method depends on the value of the acquired goods or services; competitive bidding is mandatory for the purchase of goods, services or works worth more than US$12,500. Ms. Philippe noted that pre-bid conferences which have the merit of clarifying requirements, in particular for more complex purchases, are not mandatory in Cambodia. This increases the risk of tender failure in complex projects, which leads to single-source procurement, a method particularly vulnerable to corruption.

On the matter of safeguarding and enforcing integrity Ms. Philippe stated that Cambodia has not passed comprehensive codes of conduct, and existing regulations that contain provisions on conflict of interest are not fully enforced. There are administrative and penal sanctions available to enforce integrity in the procurement process, but the National Auditing Authority, which is entrusted with the task of audit of procurement procedure, reportedly lacks the resources needed to fulfill this role satisfactorily.

In closing, Ms. Philippe said that to create a way forward, Cambodia is encouraged to swiftly pursue its plans to pass comprehensive procurement legislation and to adopt a code of conduct for procurement personnel to clarify the obligations of the staff involved and provide a basis for the enforcement of proper conduct. Cambodia is invited as well to set up a review mechanism for procurement decisions. Ms. Philippe included in her paper six concrete recommendations for the Cambodian authorities to consider.

Mr. Jasin addressed the Indonesian background and regulatory framework on corruption, citing the percentage of the State Budget spent on the procurement of goods and services and a number of surveys (by organizations such as CPAR, the World Bank, the Asia Development Bank, and the

Government of Indonesia) which place the incidence of corruption in public procurement at between ten and fifty percent of all activity.

Mr. Jasin then turned his attention specifically to public procurement. Noting that there is an important new piece of legislation, Perpres No. 106/2007, awaiting implementation, Mr. Jasin stated that it is imperative that developments in law continually consider the ability of corrupt actors in the public procurement sector to adapt to, and exploit, regulatory advancements. Mr. Jasin outlined how each stage of the public procurement process is open to corruptive activities, from procurement planning to the delivery of the procured goods or services.

Mr. Jasin then moved on to outline ongoing developments in addressing corruption in public procurement, citing two main streams in the fight against this problem. The first is the formation of the Public Goods and Services Procurement Policy Agency (*Lembaga Kebijakan Pengadaan Barang dan Jasa Pemerintah* or LKPP), which is heralded by the President's signature on Perpres No. 106/2007. The second stream involves developments in how information technology is used in public procurement; this is known as e-procurement.

The LKPP will be a non-departmental agency that will answer directly to the President, but will be co-ordinated by the Ministry of National Planning and Development (thus it will enjoy relative independence compared with most other government bodies). Its authority is limited to procurement from funds flowing from the State Budget. Mr. Jasin explained that if Perpres No. 106/2007 is passed by parliament it will go a long way in creating a central, non-fragmented authority responsible for ensuring that anti-corruption policies are working in the procurement sector. The LKPP will also contain a strong IT aspect, as one Deputy will be dedicated to the development of e-procurement; in fact, one of the essential targets of the LKPP is to bring e-procurement into universal use in the area of public procurement. Mr. Jasin cautioned however, that State Owned Enterprises (SOEs), as well as highly important bodies such as the Indonesian Central Bank (Bank Indonesia), will still conduct public procurement projects outside of the supervision of this public procurement watchdog. The Indonesian parliament will need to consider this matter very carefully, if and when Perpres No. 106/2007 is passed; the public procurement sector will need to be fully confident in the independent procurement mechanisms of SOEs. He further noted that this is a politically sensitive issue.

Mr. Jasin said that although development of Indonesia's national e-procurement system (NEPS) is still in its very early stages, preliminary results have been very promising. Several pilot projects have seen e-procurement systems installed in local governments. For example, results the city of Surabaya (in East Java) have given cause for optimism; Mr. Jasin stated that an independent study commissioned in 2007 by the KPK found significant positive impacts in Surabaya.

Mr. Keomorakoth opened by explaining that in Laos corruption arises in the areas of finance (i.e. tax collection), land management, business licensing, import and export trade (i.e. vehicles), forestry (i.e. illegal exporting of timber), state owned enterprises and banking, and he further stated that government officials are involved in much of this corruption. Noting that the economy has been developing steadily, that foreign relations have greatly improved, that there has been an increase in domestic and foreign investment, and that the GDP has increased by 7%, Mr. Keomorakoth stated that nevertheless, in the transition from a centrally planned economy, characterized by a severe lack of laws, to an open market economy, the country has become a breeding ground for corruption. However, since becoming a signatory of the United Nations Convention against Corruption in Mexico in 2003, the Lao Government has undertaken more efforts to improve the country's situation, and many serious cases of corruption have been discovered and punished, primarily in the area of tax collection, wood extraction and import of vehicles.

In explaining the Lao government's measures for the prevention of corruption Mr. Keomorakoth hailed as an important step forward the enactment of the Law on Anti-corruption (2005). This law is a basic legal instrument for combating and preventing fraud and corruption. The Law on State Inspection (2007) is newly adopted by the National Assembly and allows the State Inspection Authority to inspect and investigate corruption. It also creates a rule on asset declaration. He outlined some of the major features of the Law on Anti-corruption.

However, Mr. Keomorakoth stated that the law is not effectively implemented and that co-ordination between the prosecutors' offices and the State Inspection Authority at the central and local levels is not effective. Few cases of corruption reach a courtroom, and those that do are relatively minor. Many cases are disposed by using disciplinary measures. Mr. Keomorakoth stressed the need to keep the public informed and involved in the fight against corruption. The speaker gave details of three cases of corruption prosecuted under the new law in 2007 and 2008 and also outlined the institutions involved in the prevention and combating of corruption: the Party Control Committee (PCC); the State Inspection Authority (SIA); the State Audit Office (SAO); the Organ of the People's Prosecutors of the Lao PDR; and the National Assembly. Mr. Keomorakoth said that while there is a sufficient number and range of anti-corruption bodies, co-ordination among them must improve.

Mr. Keomorakoth concluded with nine concrete recommendations to strengthen the anti-corruption efforts of the Lao People's Democratic Republic.

Mr. Morais spoke on the matter of corruption in public procurement from his experience and point of view as a public prosecutor. Mr. Morais outlined very comprehensively how corruption can occur at the pre-contract and post-contract stages of the procurement process before addressing the issue of corruption in cross-border procurement.

Following a detailed outline of the vulnerabilities of public procurement to corruption, Mr. Morais then moved on to discussing how the problem could be tackled, firstly stating that enacting specific legislation on corruption in public procurement is vital, as is criminalizing the bribery of foreign public officials. Further necessary measures would include enacting legislation on the criminal liability of corporate entities, preferably in line with international conventions on the issue; enacting legislation or devising codes of conduct on the post-retirement employment of former public officials of influence; and legislative protection for whistleblowers and immunity for witnesses who testify in corruption trials. Mr. Morais outlined Malaysian provisions on the latter two measures which are contained in the Anti-corruption Act of 1997. While these measures are comprehensive, Mr. Morais noted that world-class law-making is not the final answer to corruption; effective enforcement is equally important and such enforcement requires an independent and dynamic investigating Anti-Corruption Agency, and the support and help of the free media and an informed civil society.

In conclusion, Mr. Morais noted that for there to be any effect on the situation of corruption as it stands there must be a co-ordinated effort form all persons present, who must persevere if they should encounter resistance from those who are benefitting from the status quo.

Ms. Phyu began by noting that the legal system of Myanmar is a unique system whereby the principles of common law are implanted into the vehicle of codified laws or statute laws which are promulgated by the legislature. Ms. Phyu outlined the powers and duties of the Attorney General of Myanmar and the features and principles of the Myanmar legal system.

The speaker then moved on to explain Myanmar's laws on corruption and international crime, including the Suppression of Corruption Act which was enacted in 1948 and in its Section 3 places the burden of proof on a public official who is found to have property out of all proportion to his or her official income and status.

Ms. Phyu included in her presentation a sample tender of the kind used in public procurement in Myanmar. She explained that tenders are usually advertized in newspapers so that the public is aware of the procurement and the agencies which seek it.

Ms. Phyu further explained that while the police are primarily responsible for the investigation of all crimes, including corruption, Myanmar law allows for the Law Officers (who serve the function of public prosecutors, to advise the police force in the investigation of cases, which helps to ensure that corruption investigations and subsequent prosecutions run smoothly and effectively.

Ms. Perez opened her presentation by noting that prior to the passage of Republic Act (RA) 9184 or the Government Procurement Reform Act in 2003, the Philippines was losing billions of pesos annually to corruption in the government procurement system and that the Philippine procurement system

was outdated.

Ms. Perez then explained in detail the Philippine Government Procurement Reform Act 2003, an extensive piece of legislation which applies to three types of procurement: infrastructure projects, goods, and consulting services, regardless of source of funds, whether local or foreign, in all branches of the government. The Act observes the principles of transparency, competitiveness, streamlined procurement processes, accountability and public monitoring and it covers the entire public procurement process. Ms. Perez also outlined prohibited acts under the law, for both public officers and private individuals, and detailed the penalties with which such acts are punished.

Ms. Perez noted however that since the Act was promulgated cases of corruption have continued to come to light. She outlined recent cases relative to public procurement to illustrate the kind of situations which arise, including the North Rail rehabilitation project, the Macapagal Highway, and the Ninoy Aquino International Airport Terminal 3.

Following this outline of recent cases, Ms. Perez then moved on to speak of investigating corruption in procurement. She outlined the various kinds of evidence which are used in corruption investigations, such as testimonial, physical, analytical and documentary evidence.

Ms. Perez explained that the government continues working for more reforms and that there are a number of bills pending in the legislature proposing amendments to R.A. 9184. Further efforts include the designation by the Office of the Ombudsman in 2006 of resident ombudsmen to handle reports of fraud pertaining to procurement activities of government agencies. A Procurement Transparency Group was also created in 2007 by virtue of the Executive Order No. 662-A to evaluate and monitor procurement activities of government agencies, while another undertaking is the Construction Sector Transparency Initiative which aims to supplement existing country initiatives to improve transparency and accountability in the procurement of infrastructure projects by disclosing basic information about the projects.

Concluding, Ms. Perez stated that an approximate 414 million pesos have been recorded in savings by the use of the government electronic procurement system from 2001 to 2006. In the 2006-2007 Survey of Enterprises on Corruption conducted by the Social Weather Survey, a leading survey group, a majority of the owners and managers of big businesses noted that the law on procurement has helped reduce corruption in procurement transactions. The same survey likewise indicates that the number of companies which give bribes to win public contracts has decreased from 52 percent in 2004 to 46 percent in the period covered by the survey, and that these successes should encourage further efforts in the fight against corruption.

Ms. Ginez-Jabalde gave a very comprehensive overview of the legal and institutional framework relating to corruption in public procurement in the Philippines, including the Republic Act No. 9184, also known as the Government Procurement Reform Act, outlining its scope and key features. Ms. Ginez-Jabalde mentioned the establishment of the Government Procurement Policy Board (GPPB), and the Philippine Government Electronic Procurement System (Phil-GEPS) which serves as the primary source of information on government procurement.

Outlining procurement methods and procedures, Ms. Ginez-Jabalde explained that the Act designates competitive bidding as the standard procurement method but that exceptions are permitted under the conditions enumerated in law. Procuring entities are required to publish tender openings twice in nationwide media to attract the greatest possible number of tenders, and to follow various other measures to ensure transparency, such as provisions regulating the opening of bids and the evaluation of tenders.

Ms. Ginez-Jabalde explained that ensuring the proper conduct of buyers and suppliers is another fundamental element of efforts to curb corruption in public procurement and that the Philippines, through the Office of the Ombudsman and with the participation of its partner agencies, has initiated the drafting of the Tripartite Code of Conduct in Public Procurement. This Code is intended to cover the three sectors involved in public procurement: the procurement officials; the manufacturers, suppliers, distributors, contractors and consultants who will be the prospective bidders; and the members of the civil society organizations who will act as Bids and Awards Committee (BAC) observers.

Ms. Ginez-Jabalde also outlined the Philippines' approach to involving civil society in the fight against corruption. Civil society organizations are permitted to monitor all stages of the procurement process, and Ms. Ginez-Jabalde gave examples of some projects in which NGOs and local community groups are involved in monitoring the implementation of government works, and a government agency-civil society partnership effort to improve the outcome of procurement projects. She also outlined the complaints procedure which is handled by the Office of the Ombudsman.

Ms. Ginez-Jabalde carefully outlined the penal and economic sanctions in place for perpetrators of corruption. There are penalties for both corporations and individuals, and Ms. Ginez-Jabalde explained the extensive provisions relating to administrative liability. She also gave an overview of the efforts to harmonize the anti-corruption efforts of the government and the Development Partners.

In concluding, Ms. Ginez-Jabalde put forth a series of recommendations to improve the public procurement process in the Philippines, and urged that support be given to civil society organizations to ensure their continued participation as observers in the conduct of procurement proceedings and monitors in contract implementation and delivery of goods.

PRESENTATION SESSION III, DISCUSSION SESSION I AND DISCUSSION SESSION II OF 24 JULY

D. Presentation Session III

The third presentation session was devoted to the addresses of the Visiting Experts to the Seminar. The first paper was delivered by Mr. Johan Vlogaert, Head of Unit A.4, External Aid, European Anti-Fraud Office (OLAF), European Commission. Mr. Vlogaert's paper was entitled "Fighting Fraud and Corruption: How the European Union Protects Its Public Funds".

Following a short recess, Mr. Brian D. Miller, Inspector General, United States General Services Administration and Vice-Chair of the National Procurement Fraud Task Force, delivered his presentation, entitled "Protecting United States Taxpayer Dollars".

Mr. Vlogaert explained that OLAF is the result of a corruption scandal involving the European Commission in 1999, whereby a French Commissioner was alleged to have displayed favouritism, and financial aid given to development projects was abused. OLAF was established to protect the financial interest of the EU and to fight fraud and corruption. It is fully independent; it cannot be dictated to by the government of any Member State. OLAF conducts internal and external investigations. Internal investigations can be carried out on any EU agency or body or any Member of the European Parliament (MEP), and "economic operators" such as charities. These investigations are administrative only and have a nine month time limit. OLAF can speak directly to a prosecution office or police service in any Member State and seek their co-operation in investigating. A prosecutor or judge from each Member state is attached to OLAF to advise and guide in investigating. Third party internships are also available, Mr. Vlogaert explained. OLAF does not impose sanctions, only recommendations. It can however ensure that financial aid is withheld if an entity refuses to co-operate with an investigation.

Mr. Vlogaert outlined various kinds of investigations in which OLAF is involved, and explained the legal basis for OLAF's operations, including the very important regulation 2185/1996 and financing agreements with partner countries. Mr. Vlogaert also explained the sources of information which can trigger an OLAF investigation, and listed its partner agencies, including external audit companies. If OLAF is investigating a case of corruption in a development project involving multiple donors, it seeks the co-operation of all donors in order to ensure that all files and documentation can be accessed and examined, using an array of high-tech investigative tools. Such tools include the Contraffic red-flag system, satellite photography, and the TR-AID programme, which combats double financing of projects. Mr. Vlogaert gave an example of how satellite photography was used to prove that a refugee camp receiving sufficient aid for 170,000 people actually held a maximum of only 90,000 people.

On the subject of external aid (development and humanitarian aid), Mr. Vlogaert stated that this element of OLAF's work is growing rapidly. He outlined the various types of allegations OLAF investigates in aid-receiving countries. He explained that looking for local partnerships is vital in conducting investigations in recipient countries due to language difficulties and a lack of familiarity with local practice. OLAF provides technical assistance with local investigations in return for co-operation from local and national authorities. As aid to the Arab world increases, similar projects will be undertaken there too. Mr. Vlogaert also explained how funds are disbursed and on what legal basis.

Before concluding, Mr. Vlogaert presented the extensive list of red flags which OLAF looks out for at each stage of the procurement process. The list was compiled from practical experience in day-to-day casework and is sent to teams around the world. It is a valuable tool and guide for anti-corruption professionals in the field of public procurement.

Mr. Miller began by saying that while corruption poses a serious problem in almost all countries, compared to other crimes, it is much more easily deterred by criminal prosecution. Prosecution is the ultimate method of deterring corruption.

Mr. Miller then gave a detailed overview of his agency, the National Procurement Fraud Task Force

(hereafter "Task Force") and its founding legislation and activities. Like OLAF, the Task Force was also born of corruption scandals and is completely independent. It has a member of staff who reports directly to the president of the country. Mr. Miller outlined the activities of Inspectors General, and focused particularly on their auditing duties, giving examples of cases where auditing of procurement projects has exposed over-pricing and paying for defective equipment at the taxpayer's expense. Mr. Miller outlined the powers and tools of the Task Force, including arrest, search of premises and subpoena, which are very effective in its work. Also, Mr. Miller explained that the task force often works with federal prosecutors.

Mr. Miller cited the case of the former Chief of Staff of his own agency who took a golf trip with Jack Abramoff, a lobbyist who is now serving time in prison for influencing members of Congress. The Chief of Staff lied about the cost of the trip to his own agents and to the FBI. He was convicted in federal court for obstruction of justice and providing false statements but a retrial is pending. Mr. Miller emphasized that that the act of covering up or lying about the value of goods received is what often leads to an investigation. A participant asked if investigating a senior official for a relatively minor offence was more harmful than beneficial in terms of morale and public trust in the system. Mr. Miller explained that his agency believes that all staff members must be held accountable and that deceit and abuse of position must not be countenanced in any form. He stated that if officials are permitted to lie with impunity during investigations it will have serious implications for the integrity and effectiveness of the system.

Mr. Miller moved on to the working methods of the Task Force. It includes a number of national agencies which co-operate and marshal all resources against procurement fraud. The goals of the Task Force include strengthening co-operation among various investigators (to avoid overlapping of investigations), and removing obstacles in investigating companies. Private companies are encouraged to self-police and volunteer information to the authorities. Congress has helped by passing a law requiring companies to report crimes and over-payments. The very existence of the Task Force shines a light on corruption fraud and acts as a deterrent, as well as focusing the government's attention on the issue. The Task Force also aims to improve recovery of losses and civil penalties, which Mr. Miller emphasized is a good way to fight the problem.

Following an outline of the comprehensive accomplishments of the Task Force, Mr. Miller then explained the Working Committees, which include members of other law enforcement agencies and private sector representatives. An example of such a Working Committee is the Grant Fraud Committee which investigates federally funded research projects to endure that there is no overlap of funding and that the projects are genuine. Another example is the Information Sharing Committee which attempts to protect the government from contracting with individuals or companies with ties to fraudulent behaviour.

Finally, Mr. Miller conceded that politics can be a problematic factor for corruption investigators, which is why independence is so vital. He mentioned that the Task Force receives strong support from the legislative branch. As an example, he told the Seminar of legislation which compels individuals to provide testimony and highlighted the unique US system of grand juries, which is an extremely powerful tool in investigating corruption. A legislative White Paper is being drafted seeking more tools to aid investigators in their work. He also highlighted the usefulness of freezing and seizure of assets, which are available to investigators in many of the participating countries.

E. Discussion Session I

Topic 1*: Recent instances and characteristics of corruption in public procurement in the respective countries*

Both discussion sessions were chaired by Mr. Sirisak Tiyapan, Director General of the International Affairs Department, Office of the Attorney General of Thailand.

On the issue of **characteristics** of corruption in public procurement, Mr. Morais raised the involvement of the executive. Mr. Vlogaert expanded on that remark and stated that there is a difference between corruption perpetrated by lower-ranking officials for survival and corruption perpetrated by **wealthy and powerful individuals, abusing taxpayers' money and aid funds**. He further stated that the real problem is bribery of officials by companies. The Chair then summarized that two characteristics might be the status of the persons involved and the large amounts of money which change hands. He also

noted that corruption in public procurement can have greater detrimental effects than other forms of corruption. Mr. Aizawa added that corruption related to public procurement involves **private sector specialists** of various kinds (engineering, accounting, etc). Criminal investigators should therefore enhance their contact and co-ordination with the private sector.

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Mr. Miller cautioned that although they sometimes overlap, there should be a distinction drawn between corruption (bribery and kickbacks) and procurement fraud (which might involve public officials). He explained that **public officials can also be defrauded** by corrupt corporations in procurement projects. The Chair agreed that defining the terms of corruption in public corruption is very important. Mr. Morais said that he feels no distinction should be drawn between forms of corruption and that there should be no mitigation for corruption involving lesser amounts of money. The Chair pointed out that in Thailand, any action undertaken for personal gain is considered an act of corruption.

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Ms. Ginez-Rabalde said that in the Philippines, it is **difficult to pin down high-ranking officials and politicians** in procurement corruption because they rarely get directly involved.

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Topic 2*: Effective legal frameworks and practical measures to detect corruption in public procurement*

The participants next discussed **effective legal frameworks**. The Chair mentioned that the existing Thai Penal Code has not proved sufficient in fighting corruption committed by government officials. He emphasized that obtaining sufficient information on which to base an investigation is difficult. An official from the National Counter Corruption Commission (NCCC) of Thailand agreed and said that governmental corruption is well-planned and therefore a special legal framework is required to combat it.

A participant from the Thai Anti-Money Laundering Office (AMLO) suggested that a **reporting system** is beneficial and that an **AMLO office** with the power to investigate banks, car registrations, etc. is a very important tool in fighting corruption in public procurement.

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Mr. Jumpon mentioned three incidences of corruption in Thailand involving international contractors. He stated that nobody knew of the cases except the high-ranking officials involved. He said that because Thailand does not have any legislation criminalizing the bribery of a public official by a foreign entity, the Thai authorities did not have a basis for investigation. Mr. Jumpon advised that all countries should legislate to **criminalize bribery of their public officials which originates outside of their national borders**. He also stressed that Thai officials currently have few ways to detect corruption with an international element, particularly when the counterpart countries do not or cannot offer help. He urged that any new legal framework should provide for **methods of detection** of corruption.

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Mr. Senta reminded the participants that the **UNCAC provides a comprehensive legal framework** to combat corruption in public procurement and if it is ratified, States Parties are required to criminalize a number of corruption offences. It also helps in giving and receiving mutual legal assistance, etc. Mr. Vlogaert commended Mr. Senta's contribution and mentioned that **whistleblower protection** is also important and helpful in this struggle. Mr. Morais was of the opinion that countries may have in their own legislation a sufficient basis for fighting corruption and do not necessarily have to import the templates of other countries.

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A Thai participant pointed out that in the course of corporate mergers or takeovers, and in the exercise of due diligence, a company may discover corruption in a desired takeover entity, and therefore **corporate law** should not be overlooked as an additional framework within which to investigate and combat corruption.

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In discussing **practical measures** against corruption in public procurement, a Thai participant asserted that prevention of corruption is more effective than detection and that the **UNCAC** contains models of preventive measures. He advocated a 'rule-based approach', which should be as clearly detailed as possible.

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Participants discussed such measures as e-procurement, educating children in matters of integrity and ethics, and ensuring whistleblower protection, which itself requires public awareness of the criminality of abuse of taxpayers' monies. Mr. Nugroho advised that if a standard national price is set for various goods and services, it assists anti-corruption bodies when auditing or investigating procurement projects. Mr. Naito stated that **a red flag system** is an important practical measure against corruption, and that all personnel involved in combating corruption should be aware of the indications of corrupt activity.

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Mr. Pattamasingh added that each time an election takes place and new politicians take power, the high-ranking members of government boards and bodies change, including those responsible for public procurement. He said that the **selection system** for posts of responsibility on government boards must be improved to ensure that there is less political influence on who is selected.

F. Discussion Session II

Topic 3*: Multi-disciplinary investigation: co-operation with non-judicial experts and/or authorities*

The participants first addressed the matter of **multi-disciplinary investigation**. Mr. Keomorakoth cautioned that Southeast Asian countries may be negatively affected by corruption in China and India, and that the ASEAN countries should co-operate in protecting themselves and each other from such effects. He urged the participants to learn from the experiences of the EU and the USA, as outlined by the visiting experts, in fighting corruption.

Mr. Nugroho mentioned that the Indonesian anti-corruption body, the KPK, supervises parliamentary budgeting, and the Chair highlighted this as an example of co-operation among different agencies. He mentioned that there is such co-operation in Thailand, in the investigation of unusual wealth.

Ms. Ginez-Rabalde outlined multi-disciplinary practice in the Philippines whereby prosecutors co-operate with tax authorities and land registry authorities, etc. in ascertaining the wealth and assets of public officials.

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In discussing **co-operation with non-judicial experts**, a participant from Thailand noted that public procurement involves specific technical issues pertaining to construction, engineering, technology, etc. Lawyers cannot easily identify fraud or corruption in such matters, and must rely on technical experts for evaluations and analysis. To that end, she suggested that ad hoc teams of various professionals (legal,

scientific, engineering, accounting, etc.) could be established to investigate corruption cases. She further noted that the **independence and impartiality** of such experts must be assured.

Mr. Pattamasingh cited his experience in selecting experts to assist in investigating corruption and said that selecting a standby pool of qualified people in advance of any investigation is one way to ensure impartiality.

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A participant from Thailand floated the idea of **regular contact with visiting experts** who could inform practitioners of recent advances in law and investigation. The Office of the Attorney General of Thailand has a programme allowing visiting experts to spend year at the OAG to impart such knowledge to its staff. Mr. Naito commended this idea for both private sector experts and public sector experts. He held up the example of the National Procurement Fraud Task Force in the USA which comprises many government specialists from a very wide range of professional backgrounds. Mr. Vlogaert raised the issue of the costs of using such private sector experts, and asked the participants to consider that fact that the international element of many procurement projects may mean that an expert can be impartial in one country, but might have interests in the contract of a company in another country. Mr. Miller reminded the participants that the National Procurement Fraud Task Force relies on **government specialists** as much as possible. He also mentioned that it might be a good idea to introduce a **'requirement to disclose'** rule for contractors whereby they disclose to the investigative authorities any organizational or other ties to a supplier or construction company etc., which would compromise their impartiality.

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Topic 4*: International co-operation: formal and informal*

The participants next discussed **international co-operation**. On the subject of formal international co-operation, Mr. Aizawa had, in an earlier session, already spoken of the vital assistance supplied by the US authorities through international co-operation in the 1974 investigation and subsequent prosecution of the former Japanese Prime Minister, Kakuei Tanaka, for his involvement in the Lockheed bribery scandal, in which he abused his discretion in the procurement of national aircraft and received a bribe. Mr. Aizawa suggested that a valuable lesson from that case is the value of an independent prosecution service with a powerful investigative mandate and the value of international co-operation.

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Mr. Jumpon raised instances of unsuccessful co-operation and invited participants to suggest solutions. He mentioned some difficulties in seeking co-operation from certain countries which have strict requirements regarding the submission of documents to defendants, and which are often used by corrupt officials to stash the proceeds of their crimes, particularly since Switzerland has abandoned its previously held banking secrecy laws. Mr. Jumpon therefore urged participants to consider whether or not the **conclusion of MLA treaties** would avoid such problems. The Chair reminded participants that in the absence of a treaty, compliance with a request is at the discretion of the requested country.

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Mr. Vlogaert mentioned an initiative in Europe whereby there was a discussion at the political level regarding the varying levels of assistance offered by financial institutions. The discussions produced a series of **recommendations**, which helped somewhat. He noted however that there are no easy solutions.

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The Chair raised the issue of **double criminality** in crimes of corruption in public procurement.

Mr. Miller was of the opinion that such issues are a diplomatic problem. Mr. Senta reminded participants that such issues have an impact on combating transnational organized crime and terrorism. While informal co-operation is easier to conduct, he reminded participants that measures such as extradition and freezing of assets cannot be conducted informally. Where judges are involved, **judicial independence** from the will of the head of government must be respected. International conventions or treaties and a good domestic legislative framework regarding extradition, etc. are vital.

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Regarding informal international co-operation, Mr. Jasin stated that the Indonesian KPK co-operates with similar agencies in Hong Kong, Singapore, Malaysia and Australia, making use of advances in **IT and conferencing**. He said that where a country has not ratified the UNCAC, international co-operation is more difficult.

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A participant from the Thai OAG recommended informal but regular international meetings for investigators and prosecutors to establish working relationships, as well as a **permanent joint committee** of representatives from the agencies of different countries.

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Mr. Vlogaert asked that the **international donor community** be included in international co-operation and said that bodies such as OLAF would also be very happy to assist in such efforts. International donors hold an International Investigators' Conference with the United Nations, World Bank and development banks and so on and have information which could be helpful to prosecutors and investigators in many countries.

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Ms. Ditsayabut stated that investigators and prosecutors should share information without being requested. She cited the UNCAC, which encourages such **pro-active co-operation**. She also urged countries not to regard corruption in public procurement a political offence, as otherwise it will be very difficult to secure international co-operation on the issue.

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A representative of the Royal Thai Police urged that the police also be included in formal and informal international co-operation initiatives to share information.

Mr. Jumpon stated that an **organization for Southeast Asia similar to Eurojust** in the EU would be of great benefit to criminal justice officials in the Southeast Asian countries.

ADOPTION OF THE RECOMMENDATIONS AND CLOSING CEREMONY OF 25 JULY

G. Adoption of the Recommendations

This session was chaired by Mr. Sirisak Tiyapan, Director General of the International Affairs Department of the Office of the Attorney General of Thailand. The General Editor was Mr. Takeshi Seto, Deputy Director of UNAFEI. The rapporteur was Ms. Grace Lord, Linguistic Adviser of UNAFEI. Participants debated and finalized the recommendations of each of the discussion sessions of the Seminar and adopted seventeen Recommendations of the Seminar. The Recommendations are listed overleaf.

H. Closing Ceremony

The Guest of Honour at the Closing Ceremony was the Honourable Mr. Chaikasem Nitisiri, Attorney General of Thailand. The Closing Ceremony was first addressed by Mr. Keiichi Aizawa, Director of UNAFEI, who expressed his thanks to the co-organizers, the Office of the Attorney General of Thailand and the UNODC Regional Centre in Bangkok. Director Aizawa took this opportunity to announce that UNAFEI is planning, on the basis of the success of the First and Second Regional Seminars, to organize another Regional Seminar on Good Governance to be held in the Philippines in December 2009. The topic to be addressed will be determined in due course by the co-organizers, taking into account the pressing challenges faced by the countries of the Southeast Asian region. He expressed a wish to see as many as possible of the current participants at this third event. Mr. Aizawa concluded by thanking the participants for their hard work and expressed his sincere wish that they would disseminate and utilize the knowledge gained at the Seminar for the benefit of good governance in this region.

Next to speak was Mr. Keisuke Senta, Senior Legal Expert, UNODC Regional Centre for East Asia and the Pacific. Mr. Senta spoke on behalf of Mr. Gary Lewis, Regional Representative of the United Nations Office on Drugs and Crime, Regional Centre for East Asia and the Pacific. Mr. Senta commended the work of the Seminar and noted that corruption in public procurement is a battleground for corruption fighters. He encouraged the participants to proceed on the basis of what they had achieved at the Seminar and further exhorted them to avail themselves of the many assistance programmes offered by the UNODC in the development and maintenance of good governance. He welcomed UNAFEI's announcement of the planned Third Regional Seminar and also expressed his thanks to UNAFEI and the Office of the Attorney General of Thailand for their help in co-organizing the Seminar.

Following Mr. Senta's address, the primary closing address of the Seminar was delivered by the Honourable Mr. Chaikasem Nitisiri, Attorney General of Thailand. The Attorney General commended the participants for their hard work over the course of the Seminar and praised the comprehensive recommendations produced by their efforts. He stated that the constructive discussions of the Seminar would help to further develop best practices among the ASEAN nations, and would also strengthen the established criminal justice network in the region. Ultimately, he said, this will allow practitioners and officials of the Southeast Asian nations to pursue their goal of a corruption-free zone in the public procurement process.

The Honourable Mr. Chaikasem also expressed his thanks to the co-hosts, UNAFEI and the UNODC Regional Centre in Bangkok, and to all of the organizing staff, for their hard work in preparation of, and throughout, the Seminar.

FINAL RECOMMENDATIONS

We hereby acknowledge the following points.

Preamble - Recognition of Current Situation:

Corruption in public procurement, which is a global phenomenon affecting countries at all stages of development, has tremendous negative effects, leading to projects which not only exploit taxpayers' money or donated funds, but which may also pose a danger to the health and safety of users. Public procurement is particularly susceptible to corruption because of the vast sums of money governments spend on such programmes, the relatively high degree of discretion public officials and politicians typically have in such matters in comparison with other areas of public expenditure and the difficulty in detecting and investigating such cases.

Specific examples of corruption in public procurement may be as varied as the procurements and individuals involved. Generally, corruption in public procurement may involve complicated procedures and detailed planning; technical complexities; numerous persons; and at times an international dimension. These characteristics should be duly considered in detecting, preventing and deterring corruption in public procurement.

Because of the complexities of corruption in public procurement, comprehensive preventive measures are necessary. Clear regulations and transparent procedures in public procurement, including e-procurement, establishment of procurement boards, and education and public awareness of corruption in public procurement are examples of effective preventive measures. Despite these preventive measures, corruption in public procurement still persists. Although we have to seek to employ a holistic approach in combating this kind of corruption, in this Seminar we focused on the issues related to suppression, especially significant issues concerning detection and investigation at domestic and international levels.

We hereby adopt by consensus the following Recommendations:

Recommendations:

1. Becoming a party to the United Nations Convention against Corruption should be duly considered in order to utilize it as an effective tool for combating corruption in public procurement;
2. Criminal justice authorities should be independent, free of political and improper influence in detection, investigation, prosecution and trial of corruption in public procurement;
3. In order to detect the proceeds of corruption, criminal justice authorities and officials should pay attention to suspicious transactions reported to their Financial Intelligence Units;
4. Considering the international dimension of corruption in public procurement, criminalization of bribery of foreign public officials and officials of public international organizations should be considered by the respective countries;
5. In international procurement cases, criminal justice authorities should pay attention to information from outside their own jurisdictions, recognizing that such cases can be unveiled in outside jurisdictions;
6. The role of the mass media and civil society's participation in combating corruption in public procurement should be enhanced;
7. Whistleblower legislation and a witness protection programme should be adopted, as useful legal measures to detect corruption in public procurement;
8. Appropriate measures to facilitate the voluntary disclosure by anyone concerned of information relevant to corruption in public procurement, such as leniency programmes and immunity, should be considered;
9. Obstruction of investigation of corruption in public procurement should be criminalized;
10. Criminal justice authorities and officials should be vigilant and cognizant of indications of corruption

(red flags), e.g. strict limitation of qualification of vendors, solicitation of the same vendors, use of *ex-post facto* contracts and submission of fewer than normal numbers of bids, in order to effectively identify offences related to corruption in public procurement;

11. In the investigation and prosecution of any case related to public procurement, competent authorities should be aware of all relevant offences, e.g. kickbacks, bribery, money laundering, tax evasion, accounting crime, fraud, collusion, political financing, conflict of interest and other offences;
12. National networks such as task forces and joint committees of criminal justice authorities and procurement offices, tax authorities, auditing authorities, competition authorities and other related agencies should be introduced in order to enhance the chances of uncovering corruption in public procurement and obtaining relevant evidence;
13. Criminal justice authorities should establish co-operative relationships with entities in the private sector, in particular, professionals such as certified accountants, tax accountants and construction engineers, whose expertise is of help in detecting and proving corruption in public procurement, with due attention paid to their integrity and credibility;
14. Criminal justice authorities should strengthen and utilize to the greatest extent possible legal measures such as mutual legal assistance and extradition in order to effectively gather evidence and apprehend fugitives outside their territorial jurisdiction and prosecute them;
15. Criminal justice authorities should enhance co-operation with international organizations and utilize informal channels with their counterparts in other jurisdictions, in order to facilitate active information exchange;
16. Possibilities to establish a permanent regional agency or mechanism for facilitating international co-operation should be explored; and
17. Participation in international fora, such as this Regional Seminar on Good Governance, to share the experiences and good practices of other jurisdictions, should be encouraged and attendees should disseminate the knowledge gained to their respective jurisdictions in their own capacities.

OPENING SESSION

Address by
Mr. Keiichi Aizawa
Director, UNAFEI

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Address by
Mr. Keisuke Senta
Senior Legal Adviser,
UNODC Regional Centre for East Asia and the Pacific

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Special Address by
His Excellency Mr. Hideaki Kobayashi
Ambassador of Japan to Thailand

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Opening Address by
Mr. Chulasingh Vasantasingh
Deputy Attorney General
Office of the Attorney General of Thailand

OPENING REMARKS

Mr. Keiichi Aizawa
Director, UNAFEI

His Excellency Mr. Chulasingh Vasantasingh, Deputy Attorney General of Thailand, His Excellency Mr. Hideaki Kobayashi, Ambassador of Japan, honourable guests, distinguished participants, ladies and gentlemen,

It is a great pleasure and privilege for me to have organized the Second Regional Seminar on Good Governance for Southeast Asian Countries, in collaboration with the Office of the Attorney General of Thailand and the United Nations Office on Drugs and Crime (UNODC) Regional Centre for East Asia and the Pacific. On behalf of UNAFEI, I would like to extend my heartfelt welcome to all of the honourable guests and the distinguished participants who come to join this significant forum.

The topic to be discussed at the Seminar is "Corruption Control in Public Procurement".

Public procurement is one of the most vulnerable areas to corruption in almost all parts of the world. This is partly because public procurement often involves large-scale economic activities, such as enormous infrastructure construction projects and continuing government purchases, and thus provides lucrative business opportunities for private business entities. At the same time, public procurement may afford wrongful opportunities for government officials to abuse their discretionary powers for unlawful personal advantages.

Taking into account the serious negative impact of this global phenomenon, the international community has made efforts to address it effectively. One of the most recent and outstanding responses made by the United Nations was the adoption of the United Nations Convention against Corruption (UNCAC) in 2003. Article 9 of UNCAC emphasizes the need for the States Parties to take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, which are effective in preventing corruption. UNCAC further provides various legal measures which can be used as effective enforcement tools in combating corruption. Prior to the adoption of UNCAC, the United Nations Commission on International Trade Law (UNCITRAL) adopted the Model Law on Procurement of Goods, Construction and Services in 1994.

Other international bodies, such as the Organization for Economic Cooperation and Development (OECD), the Asia Development Bank (ADB) and the World Bank, also have addressed this issue respectively or jointly by, *inter alia*, adopting an international legal instrument on combating bribery of foreign public officials, by conducting thematic review to curb corruption in public procurement, and by convening a global forum on governance.

As a United Nations affiliated institute in the field of crime prevention and criminal justice based in Japan, UNAFEI wishes to contribute to the Southeast Asian countries in their efforts to strengthen their fight against corruption in public procurement, by holding this meeting. As indicated in the general information of this Seminar prepared by UNAFEI, we would like to focus on the issues concerning detection and investigation into corruption in public procurement at both domestic and international levels in this Seminar. This is because the detection of acts of corruption and the subsequent investigation thereof is one of the most vital elements of successful law enforcement in corruption cases. Although there are a number of other elements to be considered in addressing this global phenomenon, effective law enforcement plays the essential role in preventing and deterring the crime of corruption. This belief comes from our experience that effective law enforcement is the best way to prevent crime.

The purpose of this Seminar is to familiarize ourselves with the current situation of this global issue as it occurs in this region, and broaden our knowledge of corruption control in the context of public procurement. Deepening our mutual understanding of the current situation in the participating countries, as well as gaining information on good practices in the detection and investigation of crimes of corruption in public procurement, would contribute significantly to enhancing the overall response to our common challenges.

I would like to take this opportunity to express my deepest appreciation, on behalf of UNAFEI, to the Office of the Attorney General of Thailand and the UNODC Regional Centre for East Asia and the Pacific for their tremendous contribution and support in organizing this Seminar. I would also like to thank the Government of Japan for making a major financial contribution to convene this conference, in its capacity as the host country of UNAFEI.

In closing, ladies and gentlemen, I look forward to seeing this Seminar provide a useful forum for bringing together expertise and knowledge in the field of our common endeavour, and generating workable solutions which will contribute to the further promotion of good governance in this region.

Thank you very much for your attention.

OPENING REMARKS

Mr. Keisuke Senta on behalf of Mr. Gary Lewis,
Regional Representative
UNODC Regional Centre for East Asia and the Pacific

His Excellency Mr. Hideaki Kobayashi, Ambassador of Japan; Honourable Mr. Chulasingh Vasantasingh, Deputy Attorney General of Thailand; Honourable Mr. Keiichi Aizawa, Director of UNAFEI; Distinguished experts and participants; Ladies and Gentlemen,

It is indeed an honour and pleasure for me to address, on behalf of Mr. Gary Lewis, the Regional Representative of UNODC for East Asia and the Pacific, the opening of the Regional Seminar on Good Governance for Southeast Asian Countries, with the theme of "Corruption Control in Public Procurement."

Mr. Lewis, who assumed the responsibility of the Regional Representative as of 1 July, asked me to convey his best wishes for the success of this Seminar, as well as his readiness to support the activities of the Member States in the fight against corruption. He also expressed his regrets for not being present here, due to commitments which had been made previously.

UNODC has been co-operating with UNAFEI and Thai authorities for a number of years in various areas in crime prevention and criminal justice, and we look forward to enhancing the co-operation further more in the years to come.

I wish to thank you all for your presence today, experienced senior criminal justice officials who are actively involved in corruption control. You hold critical positions in your respective countries to assist top decision makers to take firm and concrete actions in the fight against corruption.

This Regional Seminar on Good Governance for Southeast Asian Countries provides a unique opportunity for the ASEAN countries, UNAFEI, and UNODC to explore opportunities towards the development of human resources to promote and strengthen the rule of law, judicial system, and legal infrastructure and good governance in the public and private sectors.

At the first Regional Seminar organized last December with the co-operation of UNAFEI, the Office of the Attorney General of Thailand and UNODC, we dealt with the issue of corruption control in the judiciary and prosecutorial authorities, one of the top priority areas in the fight against corruption. This year, we will address an area which is equally important: corruption in public procurement.

When the *United Nations Convention against Corruption* was adopted in 2003, the UN Secretary-General stated that corruption

"… is found in all countries - big and small, rich and poor - but it is in the developing world that its effects are most destructive. Corruption hurts the poor disproportionately - by diverting funds intended for development, undermining a government's ability to provide basic services, feeding inequality and injustice, and discouraging foreign investment and aid. Corruption is a key element in economic under-performance, and a major obstacle to poverty alleviation and development."

The United Nations Convention against Corruption is a landmark achievement responding to these concerns. This global Convention reflects the increased political will of States to counter corruption more effectively.

As you will see in the course of this Seminar, the Convention addresses the issue of public procurement by various preventive measures stipulated in its Article 9. In addition to Article 9, many other provisions in the Convention could be utilized to prevent, control and punish corrupt activities related to public procurement.

However, all these mechanisms and frameworks would remain documents unless concrete actions are taken to implement its provisions and to enforce relevant laws.

As part of UNODC's initiatives, we have assisted several countries, including those in the region, in the development of anti-corruption strategies, supporting prevention measures and the establishment and institution-building of anti-corruption bodies. The activities reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability. We offer practical widely-agreed standards for investigators, prosecutors and judges; best practices for prevention of corruption; and promote a common global effort against corruption.

Corruption control in public procurement needs to be addressed from various fronts, ranging from: preventive mechanisms; criminalization; effective law enforcement and prosecution; control and confiscation of proceeds of crime; asset recovery; international co-operation; witness protection; measures against money-laundering, and so on. UNODC has developed various tools and services which are at the disposal of Member States endeavouring to achieve concrete results in these areas.

The UNODC Regional Centre for East Asia and the Pacific, together with colleagues at our headquarters, looks forward to future co-operation with all the countries and agencies represented here, through the development of concrete programmes and projects in this field.

I wish to reiterate our appreciation to UNAFEI and the Office of the Attorney General for the preparation of the Seminar, to the visiting experts for coming to Bangkok, and to the Government of Japan for financial support.

I wish you fruitful deliberations in the next three days and look forward to discussing with you to elaborate effective and concrete action against corruption in public procurement, including possible technical assistance co-operation between you and the UNODC Regional Centre.

Thank you for your attention.

SPECIAL ADDRESS

His Excellency Mr. Hideaki Kobayashi
Ambassador of Japan to Thailand

His Excellency, Mr. Chulasingh Vasantasingh, Deputy Attorney General of the Office of the Attorney General; Mr. Keiichi Aizawa, Director of the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders; Mr. Keisuke Senta, Senior Legal Expert, the United Nations Office of Drugs and Crime; Distinguished participants; Ladies and gentlemen,

I am delighted to say a few words on behalf of the Government of Japan at the beginning of the Second Regional Seminar on Good Governance for Southeast Asian Countries on the topic of Corruption Control in Public Procurement.

First of all, I would like to welcome Mr. Aizawa and other staff members from UNAFEI, the participants from countries in the Southeast Asian region, and visiting experts. I would also like to express my sincere appreciation to the staff members of UNAFEI, the Office of the Attorney General, and the UNODC Regional Centre for their great efforts in organizing this Seminar.

In the Southeast Asian region, many large scale infrastructure projects, such as railways, highways, airports and electric power plants, are being carried out and this trend is expected to continue.

These kinds of infrastructure projects are certainly beneficial for the welfare of a large number of people. On the other hand, the risk that public procurement processes may be subject to possible corruption can not and should not be ignored. In order to prevent and detect corruption in public procurement, including cases related to large scale infrastructure projects, most countries have been making great efforts to enact clearly defined and more effective laws and regulations and have implemented measures to increase transparency and also to raise awareness. Our country is no exception. Japan also has to continue our efforts to counter corruption because we still witness serious cases including the most recent one where a high ranking official of the Japanese central government was arrested for alleged bid-rigging on a river improvement project.

I worked for the Secretariat of the Fair Trade Commission as a Deputy Secretary General for two years in the 1990s. I was dismayed to see that although each year the Commission discovered, and imposed penalties on, a large number of bid-rigging cases related to public procurement, the number of incidents did not seem to be decreasing. This led me to wonder if there were any more effective means to prevent the recurrence of bid-rigging. Are measures such as stricter penalties or a leniency policy for informers a solution?

In this Seminar, participants will be able to share their experiences and learn about measures against corruption from participating countries. I am confident that this exercise will lead to the introduction of more effective laws and regulations to combat corruption in public procurement in each country and a useful networking of experts including people from the private sector. Close co-operation among us in transnational cases will also be enhanced, I believe, through the exchanges among the participants at this seminar.

I should like to conclude by extending my sincere wishes for the success of this Seminar. I am convinced that the success of this Seminar will generate further co-operation in this important field.

Thank you very much.

OPENING ADDRESS

Mr. Chulasingh Vasantasingh
Deputy Attorney General of Thailand

Excellencies, Mr. Kobayashi, Ambassador of Japan, Distinguished Experts and Participants, Ladies and Gentlemen,

It is an honour and a pleasure to welcome you to this Regional Seminar on Corruption Control in Public Procurement. I would like to begin by expressing my sincere appreciation to our co-hosts; UNAFEI, UNODC, and for their great initiative, invaluable contribution, continual support, as well as hard work, which has made this important event possible, my colleagues from the Office of the Attorney General of Thailand. I would also like to thank you all for attending, especially those of you who have travelled a great distance to be here. I hope you will enjoy our hospitality and the dynamics of this Seminar, as well as the visitor friendly atmosphere of Bangkok, during the period of your stay.

The theme of this Seminar is of tremendous importance and carries high expectations. Corruption in public procurement can be considered corruption on a grand scale involving politicians, government officials and the private sector, conspiring to siphon money off the government budgets. It is also seen as a link to the misuse of power by top level officials. The leakage of public funds caused by corruption affects the government's ability to provide basic services to its citizens. It also increases the burden on taxpayers, and reduces the quality of work done for the project.

While Asia is a region striving for recognition of economic and social achievements, the persistent problem of corruption is a major impediment in accomplishing this goal. How can prosperity flourish if taxpayers and investors lose their confidence in public institutions? Honesty and integrity in government and in business are essential for encouraging sustainable economic growth, and social and political development.

It is a challenge for us here as delegates from Southeast Asian nations to work together to eradicate the evil culture of corruption in public service and to find ways to ensure the procurement process be fair and transparent.

I hope this Seminar will provide a forum for everyone here to exchange experiences and knowledge which can be used to fight against corruption in your respective countries. In addition to being given the honourable opportunity to deliver the opening remarks, I am also privileged, as a first speaker at this Seminar, to be able to deliver my presentation on the background of the procurement process in Thailand. As such, I look forward to actively exchanging dialogue with you during the session.

I wish you fruitful deliberation during the course of the next three days. With our collaborative efforts, I am confident that this Seminar will achieve the desired objectives.

I am honoured to declare this Seminar opened.

Thank you very much.

PRESENTATION SESSION I

Introductory Remarks by
Mr. Takeshi Seto
Deputy Director, UNAFEI

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Presentation by
Mr. Chulasingh Vasantasingh
Deputy Attorney General
Office of the Attorney General of Thailand

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Presentation by
Mr. Keisuke Senta
Senior Legal Expert
UNODC Regional Centre for East Asia and the Pacific

Please note that the following papers have not been edited for publication.
The opinions expressed therein are those of the authors, and
do not necessarily reflect the position of the departments or agencies they represent.

INTRODUCTORY REMARKS

Takeshi SETO
Deputy Director of UNAFEI

First of all, I would like to thank all of you for coming to this Seminar. As Deputy Director of UNAFEI, I will do my best to make this Seminar successful and productive. In order to facilitate our work this week, I would like to deliver some introductory remarks outlining what topics we hope to address during the Seminar.

I. INTRODUCTION

A government must undertake a huge amount of work to realize its policies effectively and efficiently. However, since it is impossible for a government to complete all necessary work by itself and might in fact be a possible waste of resources, it is inevitable that certain projects will be led by non-governmental, private sector organizations. Such projects are arranged through contracts for business, if this results the reduction of cost, while maintaining the necessary standards of quality. For these reasons we have a public procurement system; typical projects which are completed using this system are the construction of hydraulic power plants, high-speed railway networks and high standard road bridges.

Public works contracts are often big business in every country. From large-scale infrastructure projects to continuous equipment purchases, each government, including that of Japan, spends a tremendous amount of money on the acquisition of goods and projects and the provision of public services. Since most budget resources come from the taxes imposed on citizens or from financial assistance from donor countries or international organizations, expenditure should be as prudent, economical and effective as possible. The purpose of establishing an effective public procurement system is to gain high quality but low cost services through contracts with private or non-governmental organizations. Therefore, the rules and procedures of public procurement should be carefully established, leading to transparent and proper processes and ensuring free and fair competition. Violation of such regulations must be strictly prohibited and in general, criminalized.

As to Japan, the Japanese Public Account Law stipulates that contracts should be concluded through, in general, a bidding system. This is in order to maintain fair competition for contracts and to make proceedings transparent. In order to maintain the effectiveness of this bidding system, Japan criminalized improper activities in the bidding procedure in its Penal Code as well as in the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (hereafter referred to as the "Anti-Monopoly Act"). The Penal Code stipulates punishment in cases where a bid is impaired by means of fraudulence or force, or where persons collude for the purpose of preventing the fair determination of a price or acquiring a wrongful gain in bidding. The penalty for this offence is imprisonment not exceeding two years or a fine of not more than 2.5 million yen. The Anti-Monopoly Act stipulates punishment in cases where an enterprise (a non-government entity or company) which operates a commercial, industrial, financial or any other business, effects private monopolization or unreasonable restraint of trade. The penalty for this offence is imprisonment not exceeding three years or a fine of not more than 5 million yen.

Although we enacted laws and rules which stipulate comprehensive and well-regulated systems in public procurement and violations of those laws and rules are criminalized, the system has not necessarily been functioning. There are many cases where the public procurement system has been ignored and the possibilities for ineffective or incompetent practices in public procurement have also created and provided a multitude of opportunities for corruption. Firstly, as I have already pointed out, public procurement implies transactions of huge amounts of money, meaning that it is extremely attractive for contract

applicants. Secondly, a certain degree of discretion can be involved in public procurement procedures because of difficulty in standardizing the elements of decision-making. In most cases, this discretion is exercised by high ranking public officials and politicians. In addition, the weak accountability of public officials and procedures with little or no transparency also create possibilities for corruption.

As stated in the General Information brochure of this Second Regional Seminar, corruption in public procurement has tremendous negative effects is found in not only developing countries but also developed countries. It is said that corruption increases costs by 20 to 25 percent. The plague of corruption leads not only to an unnecessary increase in the national budget but impairs the distribution of public wealth. Corruption also sometimes deteriorates the quality of services provided to citizens, which may endanger the recipients of such services where they relate to public health and safety. Accordingly, there are insufficient resources for people who require assistance and sound development cannot be accomplished.

I would like to introduce some examples of corruption in public procurement from Japan, where we must also tackle this problem.

A. Case 1

Major construction companies were routinely involved bid-rigging, "Dango" in Japanese, in the western part of Japan in 2004. While Wakayama Prefecture was seeking to engage construction companies, via the bidding procedure, to complete three tunnel projects, a group of construction companies decided to get all three contracts by rigging their bids. The group gave more than 100 million Japanese yen, or one million dollars, to a fixer, who was very close to the Governor of Wakayama Prefecture. The fixer gave 10 million Japanese yen, or 100,000 dollars, to the Governor, asking him to order his subordinate, who was responsible for deciding the winner of bidding, to name a certain company the winner of the bidding process, based on the suggestion of the fixer. A prosecutor of the Osaka District Public Prosecutors Office arrested the Governor and he was indicted for acceptance of bribery and being an accomplice to Dango, or bid-rigging, under the Penal Code. The Governor was sentenced to three years' imprisonment, suspended, and was ordered to pay a fine of 10 million Japanese yen.

The involvement of a procurement entity, such as governmental ministries and agencies, in bid-rigging is one of its characteristics: collusive bidding at the initiative of government agencies. It means that public officials at such an entity are corrupt. In addition, there are some cases where a procurement entity is systematically and proactively involved in these offences in order for the officials of the entity to be assured of job opportunities at bid riggers after their retirement.

B. Case 2

In 2006, human waste treatment facility constructors and others were accused of jointly determining the winning bidders to ensure that they would receive orders for construction and renewal of human waste treatment facilities placed by municipal governments and other parties. Prosecutors at the Osaka District Public Prosecutors Office indicted these companies and their officials with Dango, bid-rigging under the Anti-Monopoly Act. After additional investigation, prosecutors also uncovered that two of these officials promised bribes of 110 million Japanese yen, or 1.1 million dollars, to a member of the City Council upon his request and gave 10 million Japanese yen, or 100,000 dollars, to him, because the contract had to be approved by the City Council.

The member of city council was sentenced to imprisonment for one year and eight months and was ordered to pay 5 million Japanese yen for aggravated acceptance of a bribe at the court of first instance.

During the investigation of this case, a transfer of a huge amount of money from the one of the construction companies to the fixer of Case 1 was uncovered, and was the breakthrough necessary.

In addition to these cases, the former Vice-Minister of the Japanese Ministry of Defence was arrested for bribery in November last year. He received favours which amount more than 25 million Japanese yen, or 250,000 dollars, from a senior official of an arms trading company and was indicted for

acceptance of a bribe of 12 million Japanese yen, or 120,000 dollars. In his trial, the former Vice-Minister admitted that he gave favourable treatment to the arms company in public procurement.

In a situation of advancing economic globalization and making continuous efforts to assist developing countries, the adverse effects of corruption in public procurement are not limited to within national boundaries and have become international concerns. Firstly, an open market policy in public procurement widens the possibilities for business entities to gain contracts through public procurement in foreign countries. Elimination of corruption in public procurement is indispensable for business entities around the globe to seek fair and free competition. Secondly, for donors who give financial assistance to foreign countries, since corruption in public procurement hinders the sound development of recipient countries and even endangers national stability, its eradication is the one of their most urgent challenges.

Under these recognitions, the United Nations Commission on International Trade Law (UNCITRAL) adopted the Model Law on Procurement of Goods, Construction and Services in 1994 from the viewpoint of seeking transparent procedures in public procurement. In addition, from the criminal justice perspective, the United Nations adopted in 2003 the United Nations Convention against Corruption (UNCAC). Article 9, paragraph 1 of the Convention provides "Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption." A further effort which involves the criminal justice system and to which we should refer is the 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. This Convention focuses on international business activities.

Despite these international developments, we have to say that almost all countries still face many legal and practical challenges in overcoming corruption in public procurement. For this reason we are holding this Regional Seminar.

II. HOW SHOULD WE TACKLE THIS ISSUE?

We recognize that there will never be one single solution which can establish transparent, fair and corruption-free public procurement. Various efforts are necessary to come close to achieving this end. However, since all participants gathered here are criminal justice practitioners and officials of relevant organizations from Southeast Asian countries, and the criminal justice response is one of the key tools to tackle this issue, we would like to focus our discussions on how criminal justice can and should respond to corruption in public procurement. In order to facilitate our discussion and to seek solutions, it is important to understand the characteristics of corruption in public procurement. Examples of such characteristics include a lengthy and complicated process, expertise in assessing and evaluating the targeted project and contract, and the involvement of many persons in the procedure. The persons may include contractors, their employees, subsidiaries or associated companies; intermediaries acting on behalf of contractors; public procurement officials; high ranking public officials and politicians. Of course, the characteristics I have listed here are not exhaustive. I would like to hear more characteristics from you, and we should also bear in mind that persons who are involved in corruption in public procurement are sometimes highly educated and are sophisticated in their commission of their crime; they collude very secretly and try to ensure that no evidence remains.

What we should do as the first step is to detect corruption effectively. We will approach on this issue from two sides.

One is the legal framework approach by which the investigative authorities can gather useful and credible information from wider society as a trigger for investigation. In this connection, we may consider provision of favourable or protective treatment to persons who report corruption cases to investigation authorities or other relevant organizations.

The other approach is to take practical measures by which investigators upgrade their investigative

skills and knowledge. For example, it is said that there are typical indications which show the possibility of corruption in public procurement. Each investigator should be committed to finding such indications and to commence investigation.

At this Seminar, we are not going to focus on investigative skills and measures in general as a topic. But for your reference, I will mention some points in this regards. Firstly, it is valuable for investigators to understand that there are many types of corruption in public procurement and that there are many types of crimes we can charge based on the variety of corruption. Based on this, they may unveil more effectively the overall facts of corruption and apply the most suitable crime and penalty to it. In addition, certain types of investigative measures, such as electronic surveillance and undercover operators, can be useful, while considering the characteristics of secrecy of corruption in public procurement.

Secondly, considering the complexity and specialties of the content as well as the procedures of public procurement, it is appropriate and reasonable for investigative organizations to seek co-operation with other relevant administrative organizations to share and utilize their respective information and expertise. The establishment of national networks of public and private sector bodies will strengthen their investigative powers to uncover and clarify the whole picture of corruption.

In addition, it is useful to seek co-operation with professionals in the private sector, such as certified accounts and construction experts, for conducting investigations and assessing evidence effectively and properly.

The third point is to remember the international dimension. Since globalization has affected all countries in all aspects, and financial assistance by donor countries and organizations has been increasing, transnational corruption in public procurement has become a more serious problem than ever before in both developed and developing countries. We should take the characteristics of these cross-border crimes into account while combating corruption. There is no doubt that international co-operation is important. However, in order to such co-operation to be effective, international harmonization in criminalization and proceedings for co-operation is indispensable. In addition, legal and formal actions are not sufficient to ensure international co-operation, because lack of mutual understanding and flexible contact makes the process time-consuming and, in some cases, produces insufficient results. Therefore, continuous and close networking among authorities responsible for this matter in the respective countries is indispensable and such networks can be established practically and informally through telephone or e-mail contact.

III. METHODOLOGY

The purpose of the Seminar is not only to empower human resources but also to deepen our mutual understanding of the current situations which the respective countries face in regard to corruption in public procurement, and to search for the best practices to improve our situations.

In order to accomplish this aim, we have divided our activities into three.

Firstly, we have individual presentations from participants. Under this agenda, we will recognize the current systems and practices, and possible measures to improve them, in the respective countries, which will give us a cross-national perspective.

Secondly, we will have lectures from experts of the EU, the USA and the UNODC. We will gain an understanding of the latest developments at the international, regional and national levels, including investigative techniques and best practices.

Lastly, we will have discussion sessions, in which we shall further examine the following subtopics. The participants and visiting experts are expected to exchange views based on the information obtained through your personal experience, presentations and lectures by participants and experts, and so forth.

I will give you guidelines on what issues are expected to be discussed. These are actually indicated in the Explanation of Discussion Topics which has been circulated to all of you.

A. Explanation of Discussion Topics

1. Recent instances and characteristics of corruption in public procurement in the respective countries: As a first step to discussion, we would like to establish a common understanding of the current situation and difficulties, regarding corruption in public procurement, which each country is now facing.

1.1. Recent instances: "Recent instances" means concrete cases of corruption related to public procurement. Each participant is requested to explain recent instances and legal and/or practical measures taken by the criminal justice system in individual cases. Each participant is also requested to mention any statistics related to corruption in public procurement, if any, in their respective countries.

As to Japan, we do not have statistics on corruption in public procurement. However, the statistics related to public procurement are as follows.

Number of prosecuted persons

	Obstruction of public auction, including bid-rigging, under the Penal Code	Offence under the Anti-Monopoly Act
2001	269	–
2002	217	–
2003	128	13
2004	176	–
2005	130	71
2006	129	33

The number of offences under the Penal Code includes obstruction of public auction with fraudulent or forcible measures. Bid rigging cases are calculated at 28 and 30 in 2001 and 2002 respectively. However, we do not have specific numbers available after those years. But we can say at least one tenth of offences under the Penal Code may be bid rigging cases.

Similarly, offences under the Anti-Monopoly Act include offences other than bid rigging.

Characteristics: As I have already pointed out, there are some characteristics of corruption in public procurement which may pose difficulty in detection, investigation and prosecution. There may also be some differences among countries. Therefore, each participant is requested to explain such characteristics in your respective countries.

2. Effective legal frameworks and practical measures to detect corruption in public procurement: Much of the difficulty in detecting corruption in public procurement stems from the fact that not only is there no clear victim, but also that the perpetrators are a collusive and closed group who protect each other's interests for their mutual benefit and, therefore, maintain a veil of secrecy.

2.1. Effective legal frameworks: Each participant is requested to introduce legal mechanisms, such as whistle-blower protection, leniency programmes and witness protection, for obtaining information of corruption in public procurement in your respective country.

As to Japan, the comprehensive Whistleblower Protection Act was enacted in 2004. The Act provides civil remedies to protect employees who come forward in the public interest from dismissal or mistreatment, provided that certain requirements are met. The act covers whistleblowing on crimes or violations concerning laws and ordinances related to human life, health, and property, which include the Penal Code and the Anti-Monopoly Act. As a result, employees who bring such crimes to the attention of the authorities will be protected against termination of their employment or other retaliation by their employers. In addition, the Anti-Monopoly Act introduced in 2005 a leniency programme in order to facilitate the voluntary reporting of violations by companies who have violated the Act. In general, if a company violates the Act, the Japan Fair Trade Commission (hereinafter referred as the "JFTC"), which was established to monitor and control unfair competition in business under the Anti-Monopoly Act, can

impose surcharges on the company as an administrative sanction. However, if companies which violated the Act submit reports and materials regarding the fact of their violations before the commencement of investigations by the JFTC, the first company to do so will be completely exempted from the surcharge. The second company is entitled to a 50 percent reduction of the surcharge; the third one gets a 30 percent reduction. Under this condition, if enterprises violate the Act but would like to avoid financial damage by the imposition of surcharge, they will try to report their illegal conduct to the JFTC as early as possible. Accordingly, violation of the Act tends to be unveiled more easily than ever and, through transfer of this information to the prosecution service, it can be used effectively for criminal investigation of other companies.

2.2. Practical measures: As to practical measures, I would like to take up, as an example, red flag mechanisms, by which we recognize the close relation between certain types of phenomena and possible corruption in public procurement, and we detect possible corruption by carefully checking for these phenomena in public procurement. If criminal justice authorities or officials are familiar with these indications, they may more effectively identify offences related to corruption in public procurement. Each participant is requested to mention such practical measures which help detection of corruption in public procurement.

3. Multi-disciplinary investigation: co-operation with non-judicial experts and/or authorities: Under this agenda, co-operation with non-judicial experts and/or authorities will be discussed as measures to increase the possibilities of uncovering the facts and obtaining relevant evidence of corruption in public procurement.

3.1. Co-operation with competent administrative authorities: Competent administrative authorities, such as auditing inspectors, tax authorities, competition authorities and other relevant agencies, are likely to be the first bodies to notice indications of corruption in public procurement in most corruption cases. Therefore, each participant is requested to explain the possibility of establishing or strengthening national networks with these authorities in his or her country.

As for a Japanese example, since investigative power is attributed not only to police force but also to the prosecution service, co-operation and co-ordination among these two organizations are indispensable for successful investigation. However, in the field of corruption in public procurement, the JFTC also plays an important role, because, as I said before, the JFTC was established for monitoring and controlling unfair competition in business and it was given administrative investigative power to that end. And since the expertise given to the JFTC is an effectual tool to uncover violations of the Anti-Monopoly Act, co-operation and co-ordination between investigative authorities and the JFTC is vital for successful investigation. The legal framework, whereby the JFTC has an obligation to file a criminal accusation to the Prosecutor-General if it finds offences under the Act, and that an accusation by the JFTC is a prerequisite for prosecution of certain types of crimes, including bid rigging, under the Act, reflects the importance of the JFTC in investigation and prosecution of such cases. In addition to this system, there is close co-operation and co-ordination in practice. For example, before the JFTC files a criminal accusation in a concrete case to the Prosecutor-General, the JFTC and the prosecutors' office gather and exchange views on the sufficiency of evidence and whether the interpretation and application of the Act is appropriate. Through this meeting, personnel on both sides can have a common understanding of the case. At the same time, in order to facilitate informal consultation between the organizations and to include criminal investigative viewpoints and skills in investigation conducted by the JFTC, a couple of public prosecutors and their assistant officials are transferred to the JFTC periodically. After a chain of bid rigging incidents around Japan, in 2005 the JFTC gained the authority to conduct compulsory measures for its investigations. Accordingly, the effectiveness of close co-operation between these two organizations increased to combat crimes relating to public procurement.

3.2. Co-operation with the private sector: Not only administrative authorities but also private sector professionals such as certified accountants, tax accountants and construction experts have relevant expertise in the investigation of corruption in public procurement. In fact, these professionals can give investigative authorities technical advice on gathering and analysing evidence, as well as on questioning of witnesses or suspects. Each participant is requested to mention co-operation with the private sector in his or her country.

4. International co-operation: Legal frameworks such as mutual legal assistance and extradition could be effective tools for the investigation of corruption cases related to public procurement. In addition, informal channels between criminal justice authorities and their counterparts in other jurisdictions could also be of assistance in making international co-operation successful.

4.1. Formal channels such as mutual legal assistance: There may be many examples of successful and unsuccessful cases of mutual legal assistance and extradition. These cases may be very instructive. Therefore, each participant is requested to give a brief explanation of such examples.

Informal channels: Each participant is requested to mention how informal channels could be used in order to overcome problems.

At the end of the Seminar, participants are expected to reflect the results of discussion, including individual presentations and lectures by experts, in the recommendations.

IV. CONCLUSION

These are the introductory remarks. I do hope that you have a clear understanding of our goals for this week. Activities at the seminar will be compiled into a report which will be published by UNAFEI.

I hope that with your active participation, we can produce a worthwhile publication. I thank you very much for your attention.

CORRUPTION CONTROL IN PUBLIC PROCUREMENT

Chulasingh Vasantasingh[*]

Corruption in public procurement is a vital issue disturbing the general public. It long and severely affects my beloved motherland. Although, all successive governments of Thailand seriously attempt to extinguish this kind of corruption, we have not yet completely eradicated it.

As we have already known that contracting is the main way a government operates and public money is spent. In this sense, contracts are the vehicles for implementing public policy. A significant portion of annual budget goes to procurement or contracts for goods and services. Preventing and controlling corruption in procurement is, therefore, a determining factor in policy and project efficiency.

I. WHAT IS PUBLIC PROCUREMENT?

A tender in public procurement is an event whereby a government entity contracts with private sector enterprise to furnish good or provide a particular service for a fee subject to legal terms and conditions contained in a contract. The public procurement is, therefore, one of the key areas where the public sector and the private sector interact financially and this result in being a prime candidate for corrupt activity, cronyism, and favoritism as well as outright bribery.

II. HOW CORRUPTION OPERATES IN PUBLIC PROCUREMENT?

Although public procurement processes are fairly complex and can be implemented differently in various jurisdictions, the three main phases of the public procurement process are;

1. Procurement planning and budgeting;
2. Procurement solicitation;
3. Contract award and performance.

Corruption can arise in various forms in each of these separate phases of the procurement process.

In the procurement planning and budgeting phase, the government entity needs to determine what good or service it would like to buy (the requirement) and how much it would like to spend (the budget). In both of these cases, there are opportunities for corruption. In determining the requirement, reports could be prepared that falsely report damaged equipment in order to create an excess supply that could be used for corrupt purposes. The procurement requirements could also be written to favor a particular supplier or contractor. Budgets could be set artificially high so that excess allocations can be stolen or diverted. In addition, programmatic budgets could be devised in such a way that there are overlapping budgetary allocations among separate organizations or departments that could likewise be applied in a corrupt manner.

In the procurement solicitation phase, the main tasks are compiling the request for proposals or tender documents and conducting the evaluation. The evaluation criteria in the request for proposals or tender documents could be drafted to favor a particular supplier or service provider or likewise could be drafted to emphasize weaknesses of a particular competitor. The evaluation criteria could be drafted in a

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subjective way or even not clearly stated in tender documents, leaving room for manipulation and biased assessments and having no grounds to justify the decision. Later during the evaluation of the proposals or tenders, the evaluation criteria could be misapplied or otherwise further defined or amended after proposal or tender receipt. During this phase it is also possible that advance information could be provided to a particular favored supplier or contractor. Other techniques such as failing to solicit proposals or tenders from the competitors of a favored supplier, wrongfully restricting the tender pool, soliciting offerors known to be inferior to a favored supplier, simply mis-addressing tender documents, accepting late proposals or rejecting legitimate proposals are techniques that can be utilized to corrupt the procurement process.

Corruption opportunities also abound at the contract award and performance phase of the procurement process. For example, an offeror could propose an unrealistically low offer in the hopes that after the contract is awarded procurement officials will allow amendments to increase costs. Likewise, a firm could offer exceptionally high caliber products or less qualified personnel to meet a particular requirement and then upon contract award substitute inferior products or personnel. It is also possible to corruptly require sub-contractual relationships with favored suppliers. Furthermore, after the evaluation is complete, it is possible to award a contract that materially differs from the terms of the solicitation in terms of specifications, quantity, or delivery schedule. Oversight and reporting requirements may also be minimized and in some cases cost overruns can be corruptly explained away or falsely justified. Finally, supporting documentation could be intentionally lost or destroyed making detection and prosecution of corruption offenses difficult.

III. WHAT HAS BEEN DONE BY THAILAND?

Our constitution includes key provisions on a number of vital processes designed to increase oversight of exercise of state power and to keep the government authorities in check. A number of constitutionally mandated independent organizations or agencies have been established to deal specifically with pressing issue of corruption including corruption in public procurement.

Many competent organizations are mandated to prevent and suppress corruption, including corruption in public procurement, such as, the National Counter Corruption Commission (NCCC), The Prevention and Suppression in Corruption in Public Sector Commission (PSCPC), the Anti-Money Laundering Office (AMLO), the Royal Thai Police, the Department of Special Investigation (DSI), the Office of the Auditor General, the Office of the Attorney General, the Supreme Court's Criminal Division for Person Holding Political Position. Each organization is the important tool to control public procurement corruption.

There are many measures for prevention of corruption in public procurement. I, however, shall highlight some major steps and measures that have been taken by the Thai Government.

A. Legal and Institutional Framework

A clear and comprehensive regulatory framework for the conduct of public procurement is a fundamental prerequisite for curbing corruption in public contracting. It is the basis for the development and application of equal practice, for transparency and fairness, and for meaningful review and control mechanisms. In the absence of a sound regulatory framework, any form of manipulation and corruption may occur and remedies for such practices may be difficult to implement. In Thailand, the main legislation concerning public procurement is the Regulation of the Office of the Prime Minister on Procurement 1992 and its amendment (ROPMP). This ROPMP has been revised to be in line with the model law on public procurement of the UN Commission on International Trade Law (UNCITRAL). It guarantees the basic principles of proper procedures which are to ensure the fairness, prudence, transparency and accountability.

This Regulation, however, does not apply to state-owned enterprises or local government agencies. Procurement by local government agencies is governed by the Regulations of the Ministry of Interior on Procurement of Provincial Administration, while state-owned enterprises set their own procurement regulations. However, the procurement rules applied by local government agencies and state-owned enterprises are based on the same key principles as stipulated in the ROPMP. Also relevant are the Act on Offences Relating to the Submission of Bids or Tender Offers to Government Agencies, which imposes sanctions for criminal offenses to ensure fair bidding; circulars of the council of the Cabinet; and standards laid down by the State Audit Commission.

To foster the development of uniform procurement practice and policies, Thailand has established a central procurement authority, called the "Office of Procurement Management" (OPM), in the Comptroller General's Department (CGD) within the Ministry of Finance. This office does not undertake procurement itself but rather supervise the individual procuring entities, monitor compliance with the regulatory framework, set and harmonize policies, and recommend reforms. In addition, the Committee in Charge of Procurement (CCP), established under the ROPMP, interprets the ROPMP, makes recommendations concerning its enforcement and amendment, grants exemptions from the ROPMP to procuring agencies, and hears complaints.

B. Procurement Methods and Procedures

Transparency and fairness are essential preconditions for containing corruption in public procurement. Transparency renders abuse difficult and increases the likelihood of detection. Also, as bidders must trust in the fairness of the process to participate in a tender, the perception of transparency is crucial in attracting the largest possible number of tenderers and increasing competition. Ample participation also protects against bribery, favoritism, nepotism, and collusion.

A transparent and fair procurement process requires legislative and administrative measures in four dimensions: transparency of the proceedings, protection against corruption-induced manipulation of the procurement method, fair prequalification procedures, and transparent and fair selection of the winning tenderer.

Transparency requires, first of all, clearly defined procurement parameters such as conditions of participation, eligibility of suppliers, timelines, requirements, technical specifications for the procured goods or services, criteria for the rejection of a bid or the disqualification of a supplier, criteria for the evaluation of offers, contract terms and transparent and fair evaluation of all proposals and selection of the winning tenderer. Opaque dimensions create opportunities for corruption-induced manipulation. Thus, all these objective criteria must be clearly defined and stated beforehand. Second, information about the procurement procedures and their regulatory framework must be available to all potential suppliers in understandable terms. Third, transparency requires easy access by potential bidders to information explaining the procurement procedures, which must be comprehensive. The publication of a clearly defined legal framework enhances the transparency of procurement and thus reduces the risk of corruption.

Thailand's laws, regulations, and policy guidelines on public procurement are published in the Royal Gazette. They are also posted on the Web sites of the Ministry of Finance, the State Legal Council, and the Ministry of Interior. The method of procurement depends on several factors, including the value of the contract, the nature of the goods or services, and the urgency of the procurement. Since 2005, procurement over THB2 million (USD50, 000) has had to be conducted through an electronic auction. The ROPMP requires the use of model contracts and tender documents to strengthen the transparency of the procedures. The procuring agency must publish the prequalification criteria and method of selection, and inform the CCP.

The publication of procurement opportunities increases participation and consequently reduces the risk of collusion or failure of tendering. In Thailand, all agencies must advertise their procurements on the Government's central procurement Web site and relevant agencies' Web sites. In addition, they must notify other public agencies such as the Mass Communication Authority of Thailand, the Broadcasting Authority, and the Office of the Auditor General of Thailand, as well as newspaper offices. The minimum

period allowed for submitting a tender is 21 days.

Clear definition of the criteria and procedure for bid selection is also important in reducing corruption. The ROPMP provides general selection criteria, namely, price, bidder's qualifications, and quality. However, it provides, in particular, that the bidder must profess to such particular service mentioned in the tendered proposal. For specific procurements, the procurement personnel of an agency involved must prepare a proposal to be approved by the head of the agency. Selection committees are tasked with the evaluation and selection of offers. The name of the winning bidder is announced on the Web site of the procuring agency. The reasons for the decision are available upon request. Thailand uses model documents. If none of the received bids meets the requirements, the tender is reopened.

C. Curbing Corruption by Safeguarding and Enforcing Integrity

To ensure the integrity of procurement agency personnel, Thailand has passed extensive codes of conduct for public officials, including staff of procuring entities. The ROPMP addresses conflicts of interest, specifically those involving procurement. The Organic Act on Counter Corruption 1999 contains additional conflict-of-interest provisions. The Royal Decree on Good Governance in State Administration 2003, the Civil Service Act 1992, and the Civil Service Ethic Standards apply to civil servants generally. The National Counter Corruption Commission (NCCC) has also issued a "notification" concerning the acceptance of gifts. To strengthen the effect of these documents, specific agencies may train their procurement personnel in integrity issues. If civil servants are offered bribes or other inducements by a supplier, they must report the matter to the head of the procuring agency or the NCCC.

In addition to measures specifically aimed at ensuring the integrity of procuring entities, measures targeting corporate integrity are needed to reduce the risk of corrupt practice in public procurement. In this regard, tender documents in Thailand may require bidders to declare that they have no conflict of interest.

Effective sanctions constitute strong incentives for both bidders and public servants to maintain their integrity in the procurement process. Such sanctions are usually provided in penal and administrative law. In Thailand, a number of sanctions may be applied to corrupt procurement officials. The ROPMP contains penal provisions for willful violations or negligence. The Penal Code prohibits the bribery of officials, including bribery done through intermediaries. Additional penal and administrative sanctions for accepting or soliciting bribes can be found in a number of laws such as the Civil Service Act 1992 and the Act on Offences Relating to the Submission of Bids or Tender Offers to Government Agencies. Several of these offenses are punishable by a fine and imprisonment of five years to life. Similar sanctions are available against corrupt bidders. If a complaint is proven before a contract is completed, the bidding is reopened. Otherwise, the bidder will be liable for the economic damage suffered by the procuring entity.

Sound procedures and honest staff, while essential, are not sufficient to contain corruption in public procurement. Effective and swift review of major procurement decisions in response to complaints from aggrieved bidders is just as important in a procurement system that is well protected against corruption. Thorough control of the procurement process and its outcome by auditors, supervisory bodies, and the public must complement this review, to prevent and uncover corruption and collusion. Procurements in Thailand are subject to administrative and judicial review. A complainant may bring a case to the CCP, the NCCC, or the Office of the Auditor General of Thailand. Further appeals to the judicial or administrative court are available.

Auditing can further enhance the integrity of the procurement system, and the risk of later detection can deter corruption in procurement. In Thailand, the Materials Inspection and Acceptance Committee inspects the fulfillment of a procurement contract and verifies the quality and quantity of the procured goods or services. The Auditor General audits the legality and value of procurements. The audit report is provided to the National Assembly, the Senate, the Council of Ministers, and the audited agency. It is also publicly available.

Given the long duration of procurement for large projects, especially public infrastructure, and the difficulties involved in detecting fraud and corruption, documents must be retained long enough to allow

a review of the procurement system. For each procurement in Thailand, the procuring agency must keep a register of all bids and a record of the decisions for at least 10 years. The Office of the Auditor General has access to the documents.

Another influential suppression measure is freezing, seizure and forfeiture of assets. Some people said we should hit the bad guys where they hurt most. In this matter, I totally agree. The abuse of power offense and acceptance of bribe by state official offense are stipulated as predicate offenses under the Anti-Money Laundering Act 1999. It enables the Transaction Committee under this Act to ban on transaction where there is a ground for suspicious related to the aforementioned offenses by temporary restraining or seizing assets for the period of not more than 90 days, and once the AMLO has gathered all necessary convincing evidence that the asset relating to the offenses, the Secretary-General of the AMLO shall submit the case to the Office of the Attorney General for consideration in filing a request seeking a court order to forfeit such assets to the state.

Furthermore, due to the facts that corruption in public procurement becoming increasingly sophisticated in practice and expands throughout all regions, it calls for international cooperation against this kind of corruption, namely extradition and mutual legal assistance. Under the Mutual Legal Assistance in Criminal Matters Act 1992 and the Extradition Act 2007, the Attorney General is the Central Authority in considering request for cooperation. According to both act, even if there is no treaty between Thailand and the country requesting the cooperation, the cooperation could be accomplished under the reciprocity basis. At present day, Thailand has approximately bilateral 20 treaties relating to the mentioned cooperation.

Apart from such many treaties that Thailand has signed, Thailand is also a party to the United Nations Convention against Corruption which establishes a number of fundamental principles for state parties to carry out. Thailand has now promulgated a number of laws in line with the key principles of the said Conventions as an example as follows:

(1) Preventive measures against corruption – The UN Convention against Corruption sets the basic principle that state parties should establish an agency mandated to scrutinize corruptions in public sector. Currently, Thailand has already set up a number of independent agencies such as the NCCC and the Supreme Court's Criminal Division for Persons Holding Political Positions. Furthermore, the UN Convention against Corruption, Article 8, also calls for state parties to take an effort to establish a code of ethics for state officials. Public officials of Thailand, namely police, public prosecutors, judges and administrative officers are to comply with their code of ethics or code of conduct and the rules and regulations of their respective agencies and breach of which are result in both disciplinary actions and criminal prosecutions.

(2) Criminalization of corruption – Under Thai laws, offering or paying bribes to state officials and state officials misappropriating state assets is criminalize under the Criminal Code and the Act on Offenses relating to Price Proposal to Public Agencies, 1999.

(3) Freezing, seizure and forfeiture of assets involved in corruption – According to Thai laws, the Anti-Money Laundering Act, B.E.1999 calls for an establishment of AMLO, while the Organic Act on Counter Corruption, 1999 calls for the establishment of the NCCC and prescribes criteria in details on special measures fro the freezing, seizure and forfeiture of assets involved in corrupt practices. These measures are deemed fully in line with the principle set out in Article 31 of the said UN Convention.

(4) Extradition and mutual legal assistance – The Extradition Act, 2007 and the Act on Mutual Assistance in Criminal Matters, 1992 are also corresponding to the principles in Article 46 of the aforementioned UN Convention.

IV. CONCLUSION

Although no public procurement system will likely ever be fully free of all corruption, a system that promotes transparency, efficiency, economy, fairness and accountability will be a system where corrupt activities will be more difficult to conceal and will be easier to punish administratively and criminally. Adequate training of procurement officers, the establishment of multidisciplinary and multi-party evaluation committees, rotation principles for procurement officials and the establishment of accountability and report procedures, are keys in fighting corruption. The development of codes of conduct for staff is also extremely important. These are but a few ideas as to how to address and control corruption in the context of public procurement. And in so doing, the public sector shall likely acquire high quality goods and services at a cost or price deemed to be fair and reasonable.

CORRUPTION CONTROL IN PUBLIC PROCUREMENT: MEASURES UNDER THE UNITED NATIONS CONVENTION AGAINST CORRUPTION AND POSSIBLE CO-OPERATION WITH UNODC

Keisuke Senta[1]

I. PREFACE

"The field of public procurement has been a battleground for corruption fighters. It is in public procurement that most of the 'grand corruption' occurs with much of the damage visibly inflicted upon the development process in poorer countries and countries in transition."[2] And our experience also shows us that this evil practice is rampant in developed countries as well.

Everyone in this room knows that corruption in public procurement is also a challenge in his/her own country, and in this region. It was against this backdrop that the member countries of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific decided to dedicate the Initiative's first thematic review to curbing corruption in public procurement, in July 2004.[3] It was also due to the concern of the international community on this issue that the United Nations Convention against Corruption (UNCAC), adopted on 31 October 2003, addressed the issue of public procurement specifically in its Article 9.

This presentation tries to describe the relevant provisions in UNCAC which could be used against corruption in public procurement, with special emphasis on its detection and investigation, since that is the main theme of this Seminar. After that, I will go on to make a brief overview of the activities of relevant United Nations bodies, as well as other international entities. And before conclusion, I would like to make a short introduction of the technical assistance activities by the United Nations Office on Drugs and Crime (UNODC).

II. UNCAC'S RESPONSE TO CORRUPTION IN PUBLIC PROCUREMENT

A. Introduction

In its resolution 58/4 of 31 October 2003, the General Assembly adopted the United Nations Convention against Corruption, and the Convention entered into force on 14 December 2005. The Convention offers a comprehensive set of measures that can be taken by the Member States, international organizations, private sector, as well as the United Nations. The Convention has detailed provisions on: preventive measures; criminalization and law enforcement; international cooperation; asset recovery; technical assistance and information exchange; and also mechanisms for its implementation.

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1 United Nations Office on Drugs and Crime Regional Centre for East Asia and the Pacific. The views expressed in the present paper are those of the author and do not necessarily reflect the views of the United Nations Secretariat.
2 The Global Programme Against Corruption, UN Anti-Corruption Toolkit, United Nations Office on Drugs and Crime, page 268.
3 Curbing Corruption in Public Procurement in Asia and the Pacific, Progress and Challenges in 25 Countries, Asian Development Bank/ Organization for Economic Co-operation and Development.

B. Prevention

As you are well aware, one of the most important provisions of UNCAC on public procurement is its Article 9 entitled "Public procurement and management of public finances." This Article requires the States to "take necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, *inter alia*, in preventing corruption." The systems should address various issues, including: the public distribution of information relating to procurement procedures and contracts; the establishment of conditions for participation; the use of objective and predetermined criteria for public procurement decisions; an effective system of domestic review, including an effective system of appeal; and measures to regulate matters regarding personnel responsible for procurement.

These measures represent the most basic elements which should be adopted to prevent corruption in public procurement. However, in order to make them truly effective and workable, you need a set of much more detailed regulations, be it law, ordinance, recommendations or codes of conducts. Many organizations, including UNODC, have prepared publications containing model laws or provisions, codes of conducts or other suggestions.

C. Detection and Investigation of Corruption in Public Procurement

I know very well that a lot more should be said on each element contained in Article 9 of the Convention. However, since this Seminar's main focus is more on detection and investigation of corruption in public procurement, I would like to move on to the parts of the Convention which are related to criminal justice aspect.

Effective sanctions, including penal sanctions, constitute strong incentives both for public officials and employees of private sectors to refrain from corrupt activities. Corruption should be made high risk crime. In order to achieve effective criminal sanction regime, states should be equipped with a comprehensive set of offences in their laws to capture various aspects of corrupt activities (criminalization), as well as measures to control the illicit proceeds of such activities. In addition, law enforcement officials and prosecutors should have at their disposal various investigative "weapons" to detect and investigate corruption offences, which also include international cooperation in criminal matters.

1. Criminalization

There are many ways to achieve illicit goals in public procurement process. Although prosecutors and investigators in many countries tended to focus on the second phase of the process, namely, selection of suppliers, the other two phases, namely planning and budgeting phase (first phase) and contract administration phase (third phase) "are increasingly exposed to corruption."[4]

In order to effectively address the corruption in these phases, states should have in their criminal legislation different kinds of offences covering four major forms of activities: corrupt practice; fraudulent practice; collusive practice; and coercive practice.5 In addition to these "core" offences, other types of offences could also be utilized to enforce effective prevention of corruption in public procurement.

(i)" Core" Offences

In almost all of the corruption cases in public procurement, some kind of benefits are provided to officials responsible for public procurement, in order to obtain contracts on the part of suppliers. Thus

4 Transparency International Handbook, "Curbing Corruption in Public Procurement", 2007, and cited at page 15, "United Nations Convention against Corruption: implementing procurement-related aspects," Conference Room Paper submitted by the United Nations Commission on International Trade Law to the Second session of the Conference of the States Parties to the United Nations Convention against Corruption (CAC/COSP/2008/CRP.2).

5 Ibid. (CAC/COSP/2008/CRP.2) page 4.

the offence of active and passive bribery constitutes one of the basic tools for law enforcement officials and prosecutors, and that is why bribery of national public officials comes at the head of Chapter III of UNCAC, entitled "Criminalization and law enforcement" (Article 15). All countries have in their criminal code the offence of bribery, but it is of the utmost importance that the offence is defined in broad terms to capture every type of offering, including promise, every type of solicitation or acceptance, every type of undue advantage, and every type of public officials.[6]

However, in many cases, bribes are not handed directly between the official and the supplier concerned, and in some cases it is difficult to prove that offering of an advantage to the third party actually constitutes bribery. ADB/OECD expressed their concern that "bribery through intermediaries is of particular concern, as it is most often not covered by the offense of bribery."[7] In addition to the broad definition of bribery to capture the interaction involving intermediaries, states should consider establishing as criminal offences the offering etc. of an undue advantage in order that the person abuse his/her real or supposed influence with a view to obtaining from the state an undue advantage, the so-called "trading in influence" offence, stipulated in Article 18 of UNCAC.

Article 16 of UNCAC provides for the punishment of bribery of foreign public officials and officials of public international organizations.[8] This offence is of particular importance since public procurement is not limited to domestic enterprises of the country concerned, but open also to foreign companies. We see many cases where managers or employees of big enterprises offering bribes to a foreign official to obtain very lucrative contract. This issue, especially in relation to the active bribery of foreign public officials, has been rigorously addressed under the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and its monitoring mechanisms through the work of OECD Anti-Bribery Working Group. Within the UN framework, Conference of the States Parties (COSP) to the UNCAC considered the issue of bribery of officials of public international organization and encouraged states to criminalize the offences contained in article 16, UNCAC.[9] COSP also recommended that an open-ended workshop of practitioners and experts should be held before the end of 2008, with the main purpose of the workshop being to exchange best practices and to address the technical issues related to this subject, in particular cooperation between public international organizations and States parties, and exchange of information on ongoing investigations and jurisdiction.[10]

UNCAC has also established other offences that could be utilized to punish the corrupt activities which frequently appear in unlawful maneuvering of public procurement, such as abuse of functions (Article 19) and embezzlement (Article 17 and Article 22). Money-laundering or laundering of proceeds of crime (Article 23) is another very important offence since corrupt officials certainly need to conceal the illicit property or disguise its true nature. Fraud, collusion or bid rigging and tax evasion, although not explicitly mentioned in UNCAC, are offences which are often found in improper public procurement.

(ii) Other offences

In addition to these "core" offences, there are other offences aimed at ensuring effective prevention of corruption, or to alleviate the burden of prosecutors to prove the criminal case beyond the reasonable doubt, which is sometimes very difficult even in a simple corruption case.

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6 For the definition of public officials, see UNCAC Article 2 (a) and "Legislative Guide for the Implementation of the United Nations Convention against Corruption", page10.

7 Curbing Corruption in Public Procurement in Asia and the Pacific Progress and Challenges in 25 Countries, Asian Development Bank/ Organization for Economic Co-operation and Development, page 22.

8 Paragraph 1 of Article 16 requires states to criminalize active bribery of foreign public officials or an official of a public international organization. Paragraph 2 requires states *to consider* criminalizing passive bribery.

9 Resolution 1/7 "Consideration of bribery of officials of public international organizations" adopted at the first session of COSP and contained in its report CAC/COSP/2006/12 page 8.

10 Resolution 2/5 "Consideration of the issue of bribery of officials of public international organizations", adopted at the second session of COSP and contained in its report CAC/COSP/2008/15 page 10..

In public procurement involving huge amount of money, it is companies who try to obtain undue advantage, rather than individuals seeking their own profit. It is therefore essential to introduce measures to dissuade companies to rely on corrupt measures, and punishing their employees alone does not constitute effective deterrence. Thus Article 26 of UNCAC requires States to adopt measures to establish the liability of legal persons for participation in the offences established in accordance with the Convention.

There are many other measures to prevent corruption in public procurement, such as development and application of codes or standards of conduct for public officials, and requiring public officials to make declarations regarding, inter alia, their outside activities, employment, investments and assets (Article 8), ensuring correct accounting and auditing under a proper system (Article 9 paragraph 2), and the preservation of the integrity of accounting books, records, financial statements or other documents (Article 9 paragraph 3). In order to make these preventive measures truly effective, sanctions, including criminal sanctions, should be imposed to the grave and/or intentional violation of obligations under these measures.

Measures against illicit enrichment, found in Article 20, UNCAC, could be an effective tool to dissuade corrupt public officials from seeking undue advantage. This would alleviate the burden of law enforcement officials and prosecutors in collecting evidence and proving the illicit origin of the increased asset of a public official, in order to either convict the official or to confiscate his/her assets.

2. Freezing, Confiscation and Asset Recovery

As we saw just now, depriving the proceeds of corruption is one of the most important measures in controlling corrupt activities. Accordingly, States should take measures to enable the identification, tracing, freezing or seizure of proceeds of crime, as well as to enable confiscation of such proceeds (Article 31). States should be able to afford international cooperation in these areas (Article 46 paragraph 3 subparagraph j, Article 55). States should also adopt such legislative and other measures to enable its competent authorities to return confiscated property to another State party, in accordance with the provisions of UNCAC (Chapter V). This asset recovery regime is considered to be the most innovative measures adopted by UNCAC.

3. Measures to Ensure Effective Investigation

Having various offences and measures to freeze and confiscate proceeds of crime in criminal legislation is not enough. Law should be enforced, and offenders should actually be brought to justice and proceeds should be confiscated in reality. That means States should be equipped with skilled and competent investigators and prosecutors, who should be equipped with various tools to effectively investigate and prosecute corruption cases. At the very base, States should have a good criminal justice system, with honest judiciary, prosecution and law enforcement with integrity (Article 11). This was the very issue which the first UNAFEI Seminar last December addressed.

In addition to usual skills and techniques to investigate and prosecute criminal cases, law enforcement officials and prosecutors should have sufficient knowledge in analyzing accounting books, financial records and other complicated documents relating to public procurement, which often involves large scale projects. They should have enough powers to obtain these records, without the obstacle of bank secrecy (Article 40). The States should also establish regulatory and supervisory regime to deter and detect all forms of money-laundering, using as a guideline relevant initiatives of regional, interregional and multilateral organizations against money-laundering (Article 14). This includes the establishment of a financial intelligence unit (FIU) to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering. In addition, measures should be taken to preserve the integrity of relevant documents and records relating to public procurement and commercial and financial transaction (Article 9 paragraph 3, Article 12 paragraph 3).

Moreover, Article 50 of UNCAC urges States to take measures to allow for the use of special investigative techniques, such as controlled delivery, electronic or other forms of surveillance and undercover operations, where appropriate.

The Convention also includes various measures that could be used for the effective detection and investigation of corruption cases, such as protection of witnesses, experts and victims (Article 32), measures to encourage persons who participate or who have participated in the commission of an offence to cooperate with law enforcement authorities (Article 37), specialized authorities for combating corruption through law enforcement (Article 36), and cooperation between national authorities (Article 38).

In its Article 39, the Convention also stipulates that States shall take measures to encourage cooperation between national investigating and prosecuting authorities and entities of the private sector. One of the possibilities of enhancing this cooperation in specific way is to include a clause in standard contract forms which clearly states that vendors, their subsidiaries, agents, intermediaries, and principals are required to meaningfully cooperate with the eventual investigation of relevant authorities.

The Procurement Task Force of the Office of Internal Oversight Services of the United Nations (OIOS), established in January 2006 to address fraud and corruption in the procurement function in the United Nations, emphasized in its report to the General Assembly that the Task Force observed that "vendors engaged in delay, refusal and strategic maneuvering when asked to cooperate with the Task Force."[11] Accordingly, OIOS recommended that "the United Nations General Conditions of Contract and vendor registration forms should be amended to make absolutely clear that vendors, their subsidiaries, agents, intermediaries, and principals are required to meaningfully cooperate with the investigation of OIOS,[12] and this recommendation was approved by the Secretary-General and he stated in his comments to the above mentioned report that a new article would be included in the revised version of the UN General Conditions of Contract.[13]

While this kind of provision in a contract is essential for the Task Force which, by its nature as a section of an international organization, does not have any power to resort to coercive investigative measures, it is also useful for national investigating authorities, which are able to resort to such measures as search and seizure, production order and subpoena. For example, prosecutors might be able to request a vendor, under the terms of the contract and possible sanctions prescribed in it, to produce documents or records which are kept in the vendor's headquarters or branch offices in other countries, or to have its employee travel to the country to answer to the questions of prosecutors. This would provide much more effective ways to obtain evidence from overseas than resorting to formal mutual legal assistance requests to foreign governments.

4. International Co-operation

However, sometimes it is necessary to resort to a formal, or informal, process between states to obtain information, evidence or witnesses related to corruption cases. And a provision in a contract will not in any way substitute the extradition procedure, and that is why Chapter IV of UNCAC contains detailed provisions on international cooperation, including extradition (Article 44), transfer of sentenced persons (Article 45), mutual legal assistance (Article 46), transfer of criminal proceedings (Article 47), law enforcement cooperation (Article 48), joint investigations (Article 49) and special investigative techniques (Article 50).

11 Report of the Office of Internal Oversight Services on the activities of the Procurement Task Force for the 18-month period ended 30 June 2007, A/62/272, paragraph 13.
12 Ibid. paragraph 14.
13 A/62/272/Add.1, paragraph 17.

Each of these measures involves quite complicated and technical issues, and could be a theme of a whole three day workshop. Thus all I can do here is just to emphasize its importance. I can also say that the issue of international cooperation also has many issues in common with investigation and prosecution of drug trafficking offences,[14] transnational organized crime[15] and terrorist offences.[16]

III. ACTIVITIES OF THE UNITED NATIONS AND OTHER ORGANIZATIONS AGAINST CORRUPTION IN PUBLIC PROCUREMENT

Here, I would like to make a brief introduction of various activities conducted by different sections of the United Nations, as well as other international organizations or entities. The technical assistance activities of UNODC will be dealt with separately afterwards.

A. IGAC (International Group for Anti-Corruption Coordination)

The International Group for Anti-Corruption Coordination, an initiative which originally aimed at enhancing collaboration and coordination of anti-corruption efforts within the UN, was launched by Ms. Louise Fréchette, United Nations Deputy Secretary-General. IGAC convened its first meeting under the auspices of UNODC in February 2002, and has been meeting regularly ever since.[17] At its Ninth meeting in 2006, twenty organizations active internationally in anti-corruption policy, enforcement and advocacy were present, which are not limited to agencies within UN.[18]

The Eighth meeting of IGAC, under the theme of "Building Preventive Anti-Corruption Capacities," considered the issue of reducing opportunities for corruption in public procurement,[19] and it was suggested that combating corruption at local government level should be one of the possible themes of the Tenth meeting.[20] This theme could be an interesting topic, since corruption in public procurement does not occur only at national level, but also, or in greater degree, at local levels.

B. UNCITRAL (United Nations Commission On International Trade Law)

The United Nations Commission on International Trade Law (UNCITRAL), established by the General Assembly in 1966, is mandated to "further the progressive harmonization and unification of the law of international trade", and "has since come to be the core legal body of the United Nations system in the field of international trade law."[21]

In 1994, UNCITRAL issued a "Model Law on Procurement of Goods, Construction and Services." This Model Law, together with accompanying Guide to Enactment,[22] presents one of the best models[23] that legislative drafters can rely on to update their domestic legislation. UNCITRAL is now in the

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14 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, Articles 6-8.
15 United Nations Convention against Transnational Organized Crime, Articles 16 to 21, 27 and 28.
16 There are 16 international counter terrorism instruments (conventions, protocols, amendment) and as of 1 July 2008, 13 conventions and protocols are in force. Almost all of these instruments have provisions concerning mutual legal assistance and extradition. For the brief description of these instruments, see http://www.un.org/terrorism/instruments.shtml
17 Report of the Ninth Meeting of the International Group of Anti-Corruption Coordination (IGAC), paragraph 1. Reports of the past IGAC can be found at http://www.igac.net
18 Ibid. Annex 2.
19 Report of the Eighth Meeting of IGAC, paragraph 16.
20 Report of the Ninth Meeting, op.cit. paragraph 24.
21 http://www.uncitral.org/uncitral/en/about/origin.html
22 Text of the Model Law, as well as the Guide to Enactment, are available at http://www.uncitral.org/uncitral/en/uncitral_texts/procurement_infrastructure_/1994Model.html
23 For other examples on procurement legislative texts, see UNCITRAL Conference Room Paper (CAC/COSP/2008/CRP.2), op.cit. footnote18.

process of revising the Model Law.[24]

C. Procurement Task Force

As I touched upon at the part on measures to ensure effective investigation (II.3.c above), the Procurement Task Force of the Office of Internal Oversight Services of the United Nations (OIOS) was established in January 2006 to address fraud and corruption in the procurement function in the United Nations.[25] This Task Force is not a body to discuss policy or develop recommendations, but is a team of experts to conduct actual investigation into the alleged wrongdoings of UN officials, both at Headquarters and in the various peacekeeping missions. During the 18-month period ending 30 June 2007, the Task Force had received and accepted 319 procurement-related cases from the Investigation Division of OIOS for investigation.[26] During the same period, the Task Force completed 63 investigations and issued 22 reports. The investigation of the Task Force sometimes concluded that the staff member concerned be cleared of allegations, and in other cases the Task Force recommended that the Organization should address the issue of accountability for staff members for breaches of Staff Regulations and Rules or deficiencies in their management responsibilities.[27] One staff member, former procurement official, was found to be involved in an elaborate scheme and his case was referred for criminal prosecution by a Member State, and eventually convicted by the court of that country.[28]

As you can see here, the United Nations is also making serious efforts to prevent and sanction corrupt activities of its own staff members in public procurement.

D. ADB/OECD and the World Bank

International Development agencies have become increasingly concerned about the negative effect of corruption which detriment all the efforts towards social, economic and cultural development. For example, the World Bank, Asian Development Bank (ADB) and Organization of Economic Cooperation and Development (OECD) are all very active in addressing the issue of corruption.[29]

E. Non Governmental Organizations (NGO)

There are many Non Governmental Organizations active in corruption prevention. At the Second session of the Conference of the States Parties of UNCAC, about 40 NGOs were represented as observers.[30]

Transparency International, an NGO with consultative status with the Economic and Social Council, developed a tool called "Integrity Pact," which "consists of a process that includes an agreement between a government or a government department (at the federal, national or local level) and all bidders for a public contract." The Pact contains "rights and obligations to the effect that neither side will: pay, offer, demand or accept bribes; collude with competitors to obtain the contract; or engage in such abuses while carrying out the contract." The Pact, also introducing "a monitoring system that provides for independent oversight and accountability,"[31] could be a good example of the provisions which States may wish to include in their standard contract for public procurement.

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24 Ibid. paragraph 11.
25 Report of OIOS (A/62/272) op.cit. "Summary"
26 Ibid. paragraph 5
27 Ibid. paragraph 8.
28 Ibid. paragraph 19.
29 For activities by ADB/OECD, see footnote 3. For activities by the World Bank, "Improving Development Outcomes, Annual Integrity Report, World Bank Group, Fiscal Year 2007.
30 Report of the Second session, op.cit. paragraphs 21 and 23.
31 See website of Transparency International, http://www.transparency.org/global_priorities/public_contracting'integrity_pacts

V. UNODC'S TECHNICAL ASSISTANCE ACTIVITIES

"The United Nations Office on Drugs and Crime (UNODC) seeks to achieve security and justice for all by helping States and their peoples to guard against serious threats posed by drugs, crime and terrorism. The Office's work is guided by mandates and driven by the needs of United Nations Member States. UNODC's goals and areas of work have been defined in a Strategy for the period 2008-2011 which provides an overarching framework for the Office's operational activities."[32] This is an excerpt from UNODC publication, "Menu of Services" which describes the legal, analytical and technical capabilities the Office can offer. This Menu has been developed to enable Member States to more effectively draw on UNODC's expertise and choose those areas where they require more assistance.

The Menu is divided into three sectors: 1. Rule of Law; 2. Trend Analysis and Forensics; and 3. Health and Development. Most of the issues related to corruption control in public procurement, which I touched upon in this brief presentation, could be covered by the first section on Rule of Law, more specifically by its two sub-sections: Governance; and Justice.

I have asked to distribute this Menu of Services to all of you. I do not go into the details of this Menu but simply invite you to have a look at it, including the tools we have developed. During the course of the coming three days I am ready to answer to any questions you might have on UNODC's technical assistance activities which could be designed and developed among us to address the issue of corruption in public procurement, one of the biggest challenges for the international community, for the region and for each country.

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PRESENTATION SESSION II

Individual Presentation by Ms. Philippe Nil
Director, Education and Dissemination Department
Ministry of Justice
Cambodia

Individual Presentation by Mr. Mochammad Jasin
Commissioner, Corruption Eradication Commission (KPK)
Indonesia

Individual Presentation by Mr. Keomorakoth Sidlakone
Director, Division of Treaties and International Co-operation
Supreme People's Prosecutor's Office
Laos

Individual Presentation by Mr. Anthony Kevin Morais
Deputy Public Prosecutor, Legal and Prosecution Division
Anti-Corruption Agency
Malaysia

Individual Presentation by Ms. Phyu Mar Wai
Assistant Divisional Law Officer, Yangon Divisional Law Office
Office of the Attorney General
Myanmar

Individual Presentation by Ms. Deana Penaflorida Perez
Senior State Prosecutor, National Prosecution Service
Department of Justice
Philippines

Inidividual Presentation by Ms. Roline M. Ginez-Jabalde
Graft Investigation and Prosecution Officer II
Office of the Ombudsman
Philippines

Please note that the following papers have not been edited for publication.
The opinions expressed therein are those of the authors, and
do not necessarily reflect the position of the departments or agencies they represent.

CORRUPTION CONTROL IN PUBLIC PROCUREMENT

Philippe Nil[*]

I. INTRODUCTION

Good Governance is the most important pre-condition to achieve sustainable economic development with equity and social justice. Achieving good governance will require the achieve participation and commitment of all segments of society, enhanced information sharing, accountability, transparency, equality, inclusiveness, and the rule of law. The Royal Government of Cambodia had a strong commitment to reinforce state and good governance by reform areas: (i) Anti-corruption, (ii) Legal and Judicial reforms,(iii) Civil service reform covering decentralization and de-concentration, and (iv) Reform of the armed forces, especially demobilization (Royal Government,2004).

II. CORRUPTION IN CAMBODIA

According to the surveys found that weak governance may be losing the government revenue both through evasion of taxes and customs duties and through diversion of resources from their intended destination. Both enterprises and households stated that they were willing to pay more for good governance. Foreign enterprises may be deterred from further investment or even coming to Cambodia.

According to a recent (August 2004) World Bank report, only limited progress has been made in Anti-corruption activities. The researchers found that the firms in Cambodia believed corruption to be their leading constraint. The World Bank survey found that:

- Eighty percent of the private sector sample in Cambodia found it necessary to pay bribes,
- It was estimated that unofficial payments amounted to the equivalent of 5.2 percent of sales revenue,
- Businesses have a strongly negative view of public sector integrity, with the judiciary and customs viewed most negatively.

The World Bank report observes that ‘as Cambodia moves to towards a highly competitive free trade environment, the incremental cost of bureaucracy and corruption may outweigh the competitiveness of Cambodian labour’.

III. FIGHTING CORRUPTION IN CAMBODIA

The government in Cambodia is getting serious about corruption. In the GAP the prevalence of corruption and damage that it was inflicting on national development were acknowledged. The GAP also asserted that institutions to fight against corruption were being established. More recently, the Prime

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Minister (2004) identified that combating corruption was one of the most important areas for action in the pursuit of good governance. The strategy would include:

- Attacking the roots of corruption
- Ensuring adequate tools and resources for job
- Enacting necessary laws and regulations and making sure they were implemented
- Adopting an anti-corruption law
- Creating an independent body to fight corruption
- Promoting effectiveness, transparency and accountability in the management of public finances, especially through audit processes and public procurement

Reference was made to need to implement the GAP, a comprehensive document in which many 'actions to enhance governance' have significance for the fight against corruption. These are items which are not specifically anti-corruption but in fact have a considerable effect in reducing corruption.

For example:

- Enhancing the integrity of the judiciary
- Meeting private sector's needs for the arbitration of commercial disputes
- Enhancing productivity and motivation in government organizations
- Reinforcing transparency and participation in government organizations
- Streamlining Customs control
- Developing a modern Customs administration
- Strengthening tax administration
- Ensuring integrity of budget process

The anti-corruption actions to enhance governance are:

(i). Short-term action (one year)

- Prepare and adopt an enforceable code of ethics for judges, in full consultation with donors, NGOs, and civil society
- Prepare and adopt an enforceable code of ethics for public officials (excluding judges) and elected officials, in full consultation with donors, NGOs and civil society
- Prepare and submit to the National Assembly and Senate an anti-corruption legislation that reflects a broad-based about its scope and modalities
- Operationalize the National Authority
- Review arrangements for enforcing the sub-degree on public procurement, prepare measures to improve the situation and start implementation

(ii). Medium-term actions (two-three years)

- Prepare and submit to the National Assembly legislation reaffirming the right of freedom of the press and of information with provisions guaranteeing conditions stated above
- Re-evaluate the existing legal framework governing public procurement and introduce legislation to promote efficiency, transparency and accountability, while curbing abuse in its public procurement process
- Develop and implement a public and media awareness program on corruption and consequences of corruption
- Investigate ways and means to generalize publication of fees for basic public service and educate the public about penalties for corrupt activities
- Examine feasibility of asset declaration for high –level public and elected officials and their close relatives, and electoral campaign finance reform to enhance transparency

In addition, as stated in the Rectangular Strategy, the key push of the Royal Government of Cambodia's strategy to fight corruption is to take concrete actions that attack the roots of corruption. The

implementation of the anti-corruption strategy will be supported with enough tools and resources to prevent and to substantially crack down on corrupt entities. Implementation is crucial because laws, regulations and codes of conduct are not sufficient to successfully fight corruption. Indeed, there must be efforts and mechanisms to strengthen the effectiveness of law enforcement.

To combat corruption the Royal Government will continue to pursue a holistic, participative, gradual and sustainable approach to address the root cause of corruptions. Although progress has been made in some areas, in others the RGC efforts faced many challenges. In fighting corruption, the Royal Government of Cambodia will promote the implementation of the Anti-corruption Law and, as soon as possible, create an independent body to fight corruption. The Royal Government will also promote effectiveness, transparency and accountability in the management of public finances, especially through the strengthening of audit processes and public procurement. The Royal Government shall also promote the implementation of the multi- and cross-sector governance reforms, especially those guided by the Governance Action Plan, which has been developed with broad participation from various government ministries and institutions, civil society and development partners.

The priorities of the Royal Government to combat corruption are:

- Revise the draft of the Anti-Corruption Law and submit to Parliament for its approval as soon as possible.
- Build capacity of the concerned institutions to effectively manage and enforce the approved Anti-corruption Law.
- Streamline the delivery of public services to contain opportunities for corrupt practices particularly in areas related to trade, commerce and investment.
- Establish a Citizen's Bureau as a check and balance mechanism to contain corrupt practices.
- Develop and enforce codes of ethics for the public sector.
- Improve transparency of public tenders and contract award procedures.
- Continue to strengthen Public Financial Management.
- Participate in international for a dedicated to fighting corruption.

IV. LEGAL AND INSTITUTIONAL FRAMEWORK FOR PUBLIC PROCUREMENT

Cambodia's regulatory framework for public procurement is composed of various decrees, sub-decrees, and guidelines that do not, however, cover all relevant aspects of public procurement. To remedy this situation, Cambodia plans to pass a comprehensive procurement law. Until then, some guidance is provided to procurement personnel in manuals on standard operating procedures. The existing procurement regulations apply to procurement at all state levels and to public enterprises. They assign bodies responsible for procurement and define certain procurement methods. Certain phases of the procurement process that is particularly vulnerable to corrupt practices, such as procurement planning and implementation monitoring.

Cambodia has established a decentralized procurement system. The procurement process is conducted by prequalification, evaluation, and awards committees established within the procuring entities. Politically or environmentally sensitive purchases worth more than KHR1.3billion (about USD325, 000) require approval by the Ministry of Economics and Finance.

V. PROCUREMENT METHODS AND PROCEDURE

The procurement regulations provide for various procurement methods: competitive bidding, domestic canvassing, direct shopping, and direct contracting. The selection of the applicable method depends on the value of the acquired goods or services; competitive bidding is mandatory for the purchase of goods, services or works worth more than USD12,500. Urgent need or procurement after natural disasters, however, justifies resorting to noncompetitive procurement methods such as international shopping or direct contracting; in these cases, direct contracting is permitted regardless of the value of the contract. No explicit mechanism exists to prevent the arbitrary creation of situations justifying direct contracting to create opportunities for corruption. The ample participation of qualified bidders is a prerequisite for curbing corruption in the tendering phase. Wide publication of tender opportunities is a prime condition for attracting broad participation. In Cambodia, procurement through competitive bidding must be advertised publicly. In addition, only those bidders registered with the department for public procurement are permitted to participate in the tendering, and at the provincial level certain prequalification procedures exist. Pre-bid conferences that have merits in clarifying the requirements, in particular for more complex purchases, are not mandatory in Cambodia. This increases the risk of tender failure in complex projects, which leads to single-source procurement, a method particularly vulnerable to corruption. Regulations on bid opening stipulate that bids have to be opened at the time and place stated in the tender documents. The bids have to be opened no later than one hour after the close of tendering. Such a delay between the closing time and the opening of the bids entails the risk of manipulation of bids.

VI. SAFEGURDING AND ENFORCING INTEGRITY

The various regulations in place result in diverse procedures that render transparent and effective management of the procurement process for both bidders and procuring agencies difficult. Lack of training of procurement personnel and equipment for the efficient and reliable handling of procurement processes adds to this difficulty. The integrity of bidders and staff handling procurement procedures for the procuring agencies also limits corruption in public procurement. Codes of conduct help define rules that staff have to respect. So far, Cambodia has not passed comprehensive codes of conduct, and existing regulations that contain provisions on conflict of interest are not fully enforced. However, the winning bidder has to explicitly declare that no bribes have been paid to procurement personnel or any competing bidder.

Administrative and penal sanctions are available to enforce integrity in the procurement process. Mechanisms that are aimed at preventing and prosecuting attempts of corruption from the bidders' side are in place to detect corruption. Procurement personnel are required to report attempts of corruption by suppliers. Improper conduct of individuals or entities in the procurement process can entail debarment from government contracts either temporarily or indefinitely. Review and complaint procedures are essential preconditions for preventing and detecting malpractices and for bolstering trust in the procurement system. In Cambodia, complaints that arise from the procurement procedures are handled at the administrative level. A review mechanism has been established, entrusting the National Auditing Authority with the Audit of procurement procedure, however, this body reportedly lacks the resources needed to fulfill this role satisfactorily. A further obstacle to meaningful review of procurement decisions and procedures is the obstacle of regulations on documentation.

VII. A WAY FORWARD

Since Cambodia has no clear-cut and comprehensive legal framework for public procurement, it lacks a crucial basis for effectively curbing corruption in this field. To remedy this situation, Cambodia is encouraged to swiftly pursue its plans to pass comprehensive procurement legislation. In this context, it is recommended that the principles, structures, and responsibilities of procurement procedures be enacted at the level of a law and more detailed procedural provisions be passed in decrees. Cambodia is also urged to adopt a code of conduct for procurement personnel to clarify the obligations of the staff involved and provide a basis for the enforcement of proper conduct. Cambodia is invited as well to set up a review mechanism for procurement decisions, this mechanism should include the duty to keep and store records for a meaningful period of time to provide a basis for an effective review of procurement decisions. Cambodia is further encouraged to strengthen the capacities and resources of the auditing authority. Cambodia is invited to take the necessary steps to provide extensive training to staff involved in procurement procedures to ensure the thorough implementation of the framework.

VIII. CONCLUSION

Corruption is widely viewed as a major problem in Cambodia. Surveys of citizens and businesses and research by NGOs and donors have consistently pointed to corruption as a constraint on equitable development. Not only does it retard economic growth but it introduces inefficiency into the operations of government and economy. Additionally there is the moral dimension which sees corruption as an evil.

RECOMMENDATIONS

The public procurement frameworks have made important progress in developing safeguards against corruption in public procurement. Some countries have recently enacted regulatory frameworks to curb corruption. However, adjustments and reforms could help strengthen the safeguards.

(1) Comprehensive legislation for public procurement is a central precondition of clear, transparent, and fair public procurement. To strengthen trust in the fairness of public procurement, public procurement legislation should be unambiguous and reliable over time, core regulations should be passed as parliamentary laws for this purpose.

(2) Certain steps in procurement, such as needs assessment, definition of technical specifications, and contract execution, are particularly vulnerable to corruption as they often involve a high degree of discretionary decision making. Also, control and oversight in these stages are particularly difficult to achieve.

(3) Standardized, clear, and concise procedures and easily accessible, comprehensive documentation contribute in important ways to transparency in public procurement.

(4) Particular attention should be paid to emergency procurement or exemptions that apply when tendering fails.

(5) Safeguarding the integrity of individuals involved in public procurement, i.e., the staff of procuring entities and employees of suppliers, is a central means of preventing corruption in public procurement.

(6) Sanctioning legal persons is often considered particularly dissuasive, particularly in areas such as procurement, where companies rather than individuals try to gain undue advantage through corruption. Some countries have therefore introduced the possibility of temporarily

or permanently debarring from public procurement a company found guilty of corruption. As debarment mechanisms can be abused, however, countries that practice debarment are encouraged to ensure that the conditions for applying debarment are precisely and explicitly defined.

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THE INDONESIAN EXPERIENCE IN ADDRESSING CORRUPTION IN PUBLIC PROCUREMENT

Mochammad Jasin[*]

I. INTRODUCTION: BACKGROUND AND REGULATORY FRAMEWORK

A. Focusing on the Public Procurement Sector is Necessary

In Indonesia, it is acknowledged that public procurement is a significant focus of corrupt activity. In the interest of seriously addressing such activity, it is important that we establish a sense of scale of the amount of state funds exposed to corrupt activity, if we do not improve governance. Our 2007 State Budget of Rp. 763 trillion dedicated Rp. 240 trillion for the procurement of goods and services. - that is more than 30%. Anti-corruption law enforcers as well as civil society observers have been concerned with the resulting responsibility falling upon parties in public procurement processes to conduct proceedings with integrity.

Such concerns, unfortunately, are warranted – surveys performed by separate and independent institutions (including CPAR, the World Bank, the Asia Development Bank, as well as the Government of Indonesia) estimate the incidence of corruption in public procurement to be anywhere from 10% to 50%. In 2007 then, the highest estimate of corruption would have been about Rp. 120 trillion (equivalent to US$ 12 million), or more than 15% of the total 2007 Budget, *just* from the public procurement sector. The argument that public procurement accounts to a disturbingly high percentage of total corruption involving public officials in Indonesia is corroborated by several public institutions: The Corruption Eradication Commission (*Komisi Pemberantasan Korupsi* – KPK) stated that corruption cases involving public procurement amounts to 77% of its case load; the State Audit Board (*Badan Pemeriksaan Keuangan* – BPK) cites a range of 20 to 50%; the Audit and Development Supervising Agency (*Badan Pengawasan Keuangan dan Pengembangan* – BPKP) cites a range of 10 to 30%; while the National Development Planning Board (*Badan Perencanaan Pembangunan Nasional* – Bappenas) cites a range of 20 to 60%. Across the board then, as far as institutions and agencies tasked to monitor corruption in the public sector are concerned, it is empirically established that the procurement sector is mired by chronic corruption, more so than any other individual sector of public services.

Given the disturbing frequency of corrupt activity in public procurement, and with regard to the significant portions of funding dedicated each year by the State Budget in that sector, it is critical that problems inherent in the current systems be identified so that solutions can be planned and implemented. Corrupt activities, as well as efforts to eradicate them, do not exist in a vacuum. The massive reform movement which exploded after the Asian economic crisis has delivered mixed results; there is an ideological war currently being waged in Indonesia, on whether Indonesia as a country is truly capable of eradicating the culture of corruption, which became ingrained and habitual during the Suharto era. Civil servants in government institutions and agencies find themselves in awkward positions – they embrace good governance principles and regulations inspired by them, at the same time testing and finding loop holes in such regulations they could still exploit to further commit corrupt activities, whether because of need or greed. Thus, in the area of cleaning up the public procurement sector, as with any other sector, the question is not simply ‘how can we improve our system by regulatory means’, it is also ‘how do we attune incentives so that the regulation will not be perverted’.

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B. The Law on Public Procurement: Dynamic, Vast, and Complex

The central piece of legislation for public procurement for the last few years has been in the form of a Presidential Decree, specifically, *Keputusan Presiden* (Keppres) No. 80 of 2003 on Guidelines for Public Procurement. It is pertinent to note here that prior to this Keppres, there was no one legal document that sets down the rules of public procurement. Instead, the issue of public procurement was addressed by no less than 16 different Presidential Decrees that deal mainly with rules on the procedures and processes of public expenditure. As a central guideline, this Keppres has, in reality, been used in concert with other pieces of legislation that are incidental to, and/or consequential of, how public procurement practices have shaped the landscape: such as the Law on Monopoly Practices and Unhealthy Business Competition (UU No. 5/99); the Law on Construction Services (UU No. 18/99); the Law on Financial Parity Between Central and Local Governments (UU No. 25/99); Laws against corrupt practices (Laws No. 28/99 and No. 31/99); the Law on *Yayasan* (UU No. 16/01 on Trust-type Organizations called *'Yayasan'*). Public sector economic actors in Indonesia are also beholden to certain international rules on foreign loan agreements and grants that involve the procurement of goods and services.

Last year, Presidential Regulation (*'Perpres'*) No. 106 of 2007 was signed by the President – this Perpres signals a major near-future shift in how public procurement will be conducted in Indonesia, as it is the legal basis for the formation of the Public Goods and Services Procurement Policy Agency (*Lembaga Kebijakan Pengadaan Barang dan Jasa Pemerintah* – LKPP). The LKPP will be a non-departmental agency that will answer directly to the President, but coordinated by the Ministry of National Planning and Development (thus it will enjoy relative independency compared with most other government bodies). Its authority is limited to procurement from funds flowing from the State Budget. The main tasks of the LKPP shall include the following: (i) to devise and construct tender strategies; (ii) to monitor and evaluate tenders performed at various central and local government levels; (iii) to set down new tender rules (including the introduction of Information Technology in procurement, ie. e-Proc), which will be in the form of actual Laws (*Undang-Undang* – UU); (iv) to provide opinions, recommendations and corrections in legal matters to tender committees; (v) use its discretion, after prior analysis, to halt an ongoing tender process or to cancel tender results if these actions are deemed necessary. In this comprehensive manner, Perpres No. 106/2007 is thus slated replace Keppres No. 80/2003 as the central piece of legislation for public procurement.

Laid out in such a fashion, Indonesian legislation on public procurement almost seems to operate under a principle of efficiency through redundancy. However, it is clearly disturbing that regardless of this network of regulation being set in place (most of which date back to the mid-late 90s) to monitor public procurement, Indonesia still arrived at the above stated coruption figures for 2007. The Indonesian public has grown very accustomed to the premise that developments in legislation are continually being made, but that the slow emergence of positive change in their daily lives is the result of poor enforcement of law, which is an unfortunate defining characteristic of Indonesia's reform era.

The amount of legislative instruments made avalaible to regulate public procurement, as well as the very significant portion of the State Budget that is dedicated to public procurement annually, informs us very bluntly that the landscape of public procurement is incredibly vast, complex, and dynamic - characteristics that can contribute to making enforcement even more difficult. The Government of Indonesia has exhibited concern over this state of affairs, leading to a public sector reform effort that has accomplished activities of mapping and analysis in the specific area of public procurement. The product of that analysis is a series of publications released by a cooperation between the Ministry of Civil Service Reforms (MenPAN), the Not-for-profit Organization Indonesia Procurement Watch (IPW), and the KORMONEV Team (*Tim Koordinasi, Monitoring dan Evaluasi Pelaksanaan Instruksi Presiden Nomor 5 Tahun 2004 tentang Percepatan Pemberantasan Korupsi* - a Presidential regulation-based multi-departmental anti-corruption watchdog team that includes the Corruption Eradication Commission) ; these publications were meant to be used as toolkits by stakeholders. We will draw a significant amount of information from these toolkits for the purposes of this paper – this identification of problems in the

intersection of regulation and actual practice will constitute the first main area of our discussions. The second area will focus on how well regulatory advancements, especially the formation of the LKPP and the use of e-Proc, can be used to solve governance issues, with a focus on enforcement.

II. IDENTIFYING AND ADDRESSING PROBLEM AREAS

A. Incentives for, and Opportunities to Commit, Corruption at Specific Steps during the Procurement Process

One toolkit publication released by the MenPAN, IPW, and the KORMONEV cooperation identifies fifteen specific steps in the procurement process, focusing on perverse incentive mechanisms that can arise during such steps that give rise to corrupt activities. This anti-corruption toolkit is titled 'Fifteen Steps in Public Goods and Services Procurement'. It is important that we showcase these identified issues, even in light of the expectation that Perpres No. 106/2007 will significantly change the public procurement landscape by introducing the LKPP – this is because the main trend in corruptive activities is the manipulation of prevailing regulation; thus future legislation by parliament of the LKPP will need to take into account how perverse incentives arise even in the most carefully crafted legislation, by incorporating these study results. In other words, it it imperative that developments in law continually consider the ability of corrupt actors in the public procurement sector to adapt to, and exploit, regulatory advancements.

1. Procurement Planning

During this phase, a Procurement Plan is prepared; the plan ensures a detailed description of all relevant factors in the planned procurement process, including the targets, scope of activities, human resources, time, quality, costs, and the benefits to the government that are expected from the procurement process. The Procurement Plan is a central document from which all activities in a certain procurement process shall flow. The toolkit identifies the Procurement Planning process as the original source of all corrupt activities conducted during subsequent phases. The following corrupt activities during this phase are pin-pointed: (i) budget inflation; (ii) collusive skewing of technical criterias and specifications to favour certain products and bids; (iii) 'grouping'/'packaging' of activities into 'project packages' (*paket proyek*), skewed to favour certain entities with corrupt connections to government entities (when packages are given out to various certain entities), or more established, but still collusive, entities (when packages are combined into one large set of activities – thus impossible for less established entities to accomplish).

2. Formation of the Tender Committee

The integrity of tender committees is crucial to clean procurement. The toolkit identifies that this phase is often infiltrated by colluders to ensure that selected committee members are either incompetent in the area or already in their employ, to ensure that the bid goes their way. The toolkit further identifies that the symptoms that indicate that a committee has been infiltrated by collusives are: (i) un-transparency: the committee would perform its duties in a very closed-off fashion, which includes ignoring or impeding efforts by parties in gaining information about the tendering process; (ii) low integrity: the committee would exhibit low-integrity characteristics such as low objectivity, dishonesty, working to the letter of the law instead of its spirit, un-professional behaviour, and irresponsibility; (iii) favouritism: the committee would perform its duties and make decisions with a definite skew that distinctively favours certain bids; (iv) lack of independence: the committee would make their decisions only after consulting their superiors, or even briber-makers. Unfortunately, the toolkit does not suggest, let alone comprehensively set out, methods by which the characteristics listed above could be objectively detected – nevertheless, it is clear that the message here is that when tender committees are formed, parties involved in the process must ensure that all the issues listed above are rigorously addressed according to Keppres No. 80/2003.

3. Vendor Pre-qualification

The pre-qualification phase is intended to filter and refine the roster of vendors for the benefit of the public entity involved. At the same time, the pre-qualification allows a venue by which a broader segment of potential bidders could judge for themselves the pros and cons of acting as a vendor for a particular public procurement project, without having to commit themselves too strongly. The toolkit identifies that the filtering process is abused by collusives, specifically by an outright exploitation of the document-based filtering system, where bribery and fraudulent documentation runs rampant.

4. Writing of the Tender Documents

The function of Tender Documents (*Dokumen Pelelangan*) is to communicate to vendors the contractual and technical specifications of a particular procurement project in a complete (but concise) and easy to understand manner. The toolkit identifies that collusives abuse the current procurement rules by skewing these documents, specifically by: (i) skewing the technical specifications to favour certain vendors; (ii) skewing the vendor evaluation criteria to favour certain vendors; (iii) deliberately breaching of the provisions on how to write Tender Documents to favour certain vendors; (iv) using accidental mistakes made in to writing Tender Documents, which were due to incompetence of the writer.

5. Tender Announcements

The toolkit found that this phase in procurement processes is also rife with collusive behaviour – this is primarily because the Tender Announcement process is intended to attract as many vendors as possible to increase the chances of the government entity involved to find a vendor that is most suitable for its purposes, in terms of cost, efficiency, Good Corporate Governance, etc. A collusive would obviously attempt to manipulate this phase, simply because both parties have already made their deal, and are uninterested in seriously attracting vendors of good-will. In fact, the toolkit found that such collusives would be interested in minimizing the chances of vendors of good-will becoming involved in a tender announcement process, usually by: (i) announcing the tender through very obscure and limited media, thus artificially limiting interest in the tender process – this can also be done by limiting the time period of the tender announcement; (ii) witholding crucial information in tender announcements, thus reducing the chances that vendors of good-will who do come will have no chance of winning the bid.

6. Distribution of the Tender Documents

Collusives would also be interested in limiting access to, as well as full use of, tender documents that are by law required to be distributed to vendors free of charge. As we briefly discussed in point 4, tender documents are used by vendors to inform themselves of the administrative, contractual, and technical aspects of a tender process. The toolkit found that collusives would protect their interests by: (i) distributing incomplete tender documents to vendors of good-will, in order to ensure their failure in winning the bid; (ii) allow the tender documents to be ‘collected’ over an artificially shortened period of time to reduce the chances of good-will vendors receiving them – collusives also release very obscure information on the locations where such documents can be ‘collected’ in order to achieve this.

7. Setting the Owner’s Estimated Value - HPS

The toolkit found that collusives would manipulate the Owner’s Estimated Value (the estimated cost of the procurement: *Harga Perkiraan Sendiri* - HPS) in order to favour their collusion against the bids of good-will vendors. Article 13 of Keppres No. 80 of 2003 provides that the HPS be estimated by the tender committee, and ultimately set by the end-user – the Keppres further specifies that the value is not secret and can be openly communicated. In manipulating how the HPS is used, the following methods are found to be conducted by collusives: (i) restrict access of the HPS document by vendors of good-will; (ii) inflation of the HPS to match the bid of the collusive vendor, the mark-up value would then be kept by the collusive government entity – the toolkit notes that collusives would often manipulate unit prices to arrive at their inflated value.

8. Pre-conference Vendors' Meeting (*Aanwijzing*)

The Pre-conference Vendor's Meeting, or *Aanwijzing* is intended to conform the perceptions of the end-user with those of the vendors. The toolkit discovered that collusives tend to manipulate this phase to favour collusive vendors by: (i) distributing overly complicated tender documents with the intention of confusing good-will vendors; (ii) limited questions and answers sessions; (iii) the collusive committee would deliberately and controversially deviate the explanations of good-will vendors from those of the collusive.

9. Delivery of Offer Documents by Vendors

During this phase, the vendors deliver their offer documents. Article 18 of Keppres No. 80/2003 specifies that such offer documents shall include information concerning administrative and technical information, as well as the offer price (the offer price may be delivered separately from the other information). The toolkit identifies that collusives will try to manipulate this phase to their benefit by: (i) relocating the delivery point, thus reducing the chances that good-will vendors will get their offers in on time; (ii) allowing collusive vendors to turn in their offer documents at a later point in time; (iii) allowing collusive vendors to turn in dummy offers under the name of other (good-will) vendors – the collusive committee would then reject the good-will vendor's offer based on a provision that states that each vendor is only allowed to make one offer.

10. Evaluation of Offers

During this phase, the committee evaluates the administrative, technical, and price aspects of each vendor's offer using any of the methods outlined in article 19 of Keppres No. 80/2003. The toolkit identifies that collusives will try to influence the winner of the bid by: (i) using flawed evaluation criteria to benefit collusive vendors; (ii) manipulation of the collusive vendor's offer documents to match the evaluation criteria by the collusive evaluation committee; (iii) evaluation is performed at a remote and secluded location, where evaluation is then persistently performed in a very untransparent manner; (iv) collusives can also operate with multiple collusive vendors – each would wait for its 'turn' to win tenders (*tender arisan*) – thus the appearance of a proper tender is projected.

11. Pre-Award Meeting

During this phase, the name of the prospective tender winner (the best scorer of the previous evaluations phase) is made public, and a 'grace period' is extended to invite challenges from losing vendors. Article 27 of Keppres No. 80/2003 provides the details of how such challenges can be made. The toolkit found that collusives will manipulate the spirit of the challenges rule by: (i) limiting the extent to which the name of the prospective tender winner is made public, thus reducing the possibility of a losing vendor from finding out who the prospective winner was and to then levy a challenge to the decision; (ii) the collusive vendor might bribe the collusive committee to skip this phase altogether, and announce that vendor as winner; (iii) a collusive might make announcements that do not convey correct information to the public – essentially, the whole procurement process from start to finish may have been conducted for the benefit of multiple collusive vendors (*tender arisan*).

12. Challenges (*Sanggahan*)

As stated above, article 27 of Keppres No. 80/2003 acts to encourage legitimate challenges (*sanggahan*) to procurement processes, especially in cases where a vendor of good-will or other stakeholder in public procurement suspects that a certain procurement process involves corrupt activities. The toolkit found that, in spite of the rules, collusives will try to avoid challenges by: (i) simply ignoring some challenges (a breach of Keppres No. 80/2003); (ii) the pool of challenges made may be peppered with artificial challenges by collusive vendors and other collusive actors – this allows the collusive committee and/or end user to claim that the challenges made were 'immaterial' to the core procurement processes, and thus could be ignored.

13. Awarding of the Contract

After challenges are processed and none is found to merit action, the end-user public institution is obligated to take the following actions: (1) produce a minutes of meeting signed by all committee members, which will serve as the basis for the awarding document; (2) a complete record of all challenges made, as well as all the responses to those challenges, which is required as supporting documents for the awarding document; (3) a 'side letter' signed during the pre-award meeting by both the committee and the prospective winner , which is also required as a supporting document. The toolkit found that the following are the most common abuses: (i) the existence of legitimate challenges would be erased from the awards records; (ii) the corruptive committee and end-user public entity withold awarding the contract to the prospective winner, pending bribe payments; (iii) the collusive awards the contract anyway, despite unresolved, legitimate, challenges; (iv) incomplete, questionable and unreliable award documents are released.

14. Signing of the Contract

After a contract winner is announced, the parties must write up the contract, the contents of which must be confirmed by the vendor and the end-user public entity. Finally, the contract must be signed by both parties. Articles 29, 30, 31 and 32 set out the provisions regulating this process. The toolkit identified how collusives operate during this phase: (i) there is a risk that vendors who are less competent in financial management and/or planning are coerced to pay bribes when they are unable to agree on a contract with the end-user public entity; (ii) collusives tend to cover up the contract signing phase to avoid the event, as well as documents, being made public – the toolkit identifies that this tends to occur when the contract involved overlaps with other collusive contracts; (iii) the toolkit further identifies that contracts signed by collusives tend to be illegitimate – they lack the required supporting documents.

15. Delivery of Goods or Services

The toolkit identified the following common problems that occur during this phase: (i) the collusive vendor would provide less in terms of volume of the contractually agreed goods and services – this is so that the collusive end-user can then claim that the corrupted funds had been used in the procurement; (ii) a collusive might attempt to corrupt the procurement process by decreasing the quality of works than is provided for in the contractual technical specifications – the toolkit noted that the resulting lower quality work often will not be detected until much later; (iii) the toolkit further identified that 'Contract Change Order' procedures (very loosely regulated in article 34 of Keppres No. 80/2003) are often used as a tool of camouflaging corrupt activities by collusives.

Based on the information it contains, the MenPAN, IPW and KORMONEV toolkit is useful in informgin industry players across the public-private divide of the dangers present in specific phases of the public procurement process. Ultimately, the toolkit suggests that the prevailing regulations centered on Keppres No. 80/2003 are being exploited by collusives – therefore, such regulations must be amended to take into account of this exploitation. This would only be dealing with half the issue, however, because as the rules get more comprehensive, they tend to become more difficult to enforce, especially since success in anti-corruption legislation hinges so much on the level of ability and commitment of all stakeholders. Even if new rules take into consideration the main problems in the old ones (mainly a lack of overall transparency), collusives will still operate around them if public and private sector actors lack commitment. This is a similar assessment to one produced by ADB/OECD Anti-Corruption Initiative for Asia and the Pacific in 2006 on the Indonesian public procurement sector; though that assessment focused much more on the need for Indonesia to develop a central public procurement authority that operates in a clear, streamlined and comprehensive manner.

B. Ongoing Developments in Addressing Corruption in Public Procurement

As a result of the apparent failure of Keppres No. 80/2003 to coherently serve as a central piece of legislation, there are currently two main streams for improvements in the public procurement system. The

first stream seems to directly answer the ADB/OECD Initiative's call for a central public procurement authority (based on parliament-passed Law) – the formation of the LKPP, heralded by the President's signature on Perpres No. 106/2007. The second stream involves developments of Information Technology use in public procurement, e-Procurement, or simply e-Proc.

1. The LKPP – A Super-Powered Public Procurement Body?

The Public Goods and Services Procurement Policy Agency, or the LKPP, is designed to directly resolve the fragmented nature of the Indonesian public procurement sector. Currently, Keppres No. 80/2003 provides guidelines that are somewhat flexible (different methods are contemplated during the many phases of procurement) – so in terms of the application on Keppres No. 80/2003, public procurement is conducted by government bodies in a largely framented manner, a problem which is made worse by the low level of comprehension of how to use Keppres 80/2003. Drafters of Perpres No. 106/2007 on the formation of the LKPP clearly sought to end this fragmentation – article 2 of the Perpres provides that the LKPP shall be the only government body tasked with the development and design of public procurement policies; however, the Perpres qualifies this by requiring the LKPP to work closely with many other departments in performing the aforementioned tasks.

If Perpres No. 106/2007 is passed by parliament as an actual Law as planned, then this will go a long way into creating a central, non-fragmented authority that will be responsible in ensuring that anti-corruption policies are working in the procurement sector. There is also a strong Information Technology aspect in the Perpres, as one Deputy is dedicated to the development of e-Procurement – in fact, one of the essential targets of the LKPP is to bring e-Procurement into universal use in the area of public procurement.

It must be noted, however, that like Keppres No. 80/2003, Perpres No. 106/2007 only deals with public procurement funded by the State Budget (for both central governments – APBN, and local governments – APBD); this means that State Owned Enterprises (in central and local governments – BUMN and BUMDs), as well as highly important bodies such as the Indonesian central bank (Bank Indonesia), will stil conduct public procurement outside of this super public procurement watchdog. This is because, philosophically speaking, such entities conduct their procurement with funding not from the state budget, but from their own coffers. Sub-article 3 (e) of the Perpres provides that the LKPP can provide 'technical guidance, advocation and legal assistance', which are much more indirect ways of influencing a public entity's procurement processes, but it is unclear whether the sub-article extends to SOEs.

Over the last decade or so, the atmosphere of reformation Indonesia has generated a strong push for SOEs to become more competitive and accountable; this push grew out of an overwhelming perception of mismanagement and corruption of public assets by the SOEs. Since then, SOEs have adopted more and more private sector values and philosophies, reasoning that a more corporate structure, as well as a more realistic market-based outlook on their roles in the national economy, would drive reforms. More recently, this outlook has absorbed Good Corporate Governance principles as well; a good example of this is how Bank Indonesia keeps a tight regulatory control of banks operating under it – the rigorous monitoring of how GCG-infused rules are being implemented have helped the Indonesian financial sector score quite high in recent GCG studies (it is important to note that these rules operate internally in the banks, and have been observed to perform less well when external entities are involved – Indonesian banks are still notorious for colluding with public officials in terms of the management of public funds by the banks).

This background helps to explain the consistent level of resistance, coming from government entities who do not fund their procurement processes from the state budget, against a central government authority that regulates those processes, such as the LKPP which will be formed under Perpres No. 106/2007. These entities make a double-pronged argument: firstly, they claim that their internal

procurement rules have already taken into account market-based economic sensibilities, as well as good corporate governance principles; and secondly, they argue that a central authority would only perform duties already done by the entities' independent auditors. Essentially, they resist having a central authority regulate their procurement processes because that will at best replace an already efficient and clean system; at worst, such intervention would create unneccessary complexities.

The Indonesian parliament will need to take the aforementioned issue extremely seriously, if and when Perpres No. 106/2007 is passed into actual Law; this is because the public procurement sector will need to be 100% confident of the independent procurement mechanisms of SOEs if it intends to leave such mechanisms outside the reach of LKPP regulation. The issue is a politically sensitive one, in part because SOEs are proud of their current level of autonomy and involvement in the market, and therefore view LKPP control of procurement policies and procedures as a punitive measure more appropriate for lesser performing, purely public, counterparts. Their pride, it must be emphasized, is not without justification: SOEs are generally much more tightly regulated by their own internal rules than purely public institutions – despite a persistent aura of public mistrust in SOEs, especially the energy/extractive industries sector. In fact, results of the KPK's study of GCG practices by SOEs indicates strong implementation of GCG principles.

2. Should SOEs Remain Outside the LKPP's Jurisdiction?

The KPK's GCG study sought to measure the extent to which private companies and SOEs implemented the principles of independence, accountability, fairness, transparency, and responsibility, within their internal regulation. The study then looked at how well each entity operated within those GCG rules, and their compliance, conformance, and performance levels were also measured. Finally, the study looked at specific issues in each entity: how they deal with conflict of interest situations, how they prevent corrupt activities from happening, as well as their commitment to full disclosure in the interest of transparency and freedom of information to stakeholders. 65 respondents were involved in this study, and they range from private corporations to SOEs, listed and non-listed entities, and financial and non-financial sector respondents. An important note: the biggest limitation of this study was that data was primarily collected using questionnaires 'self-administered' by respondents; thus, study consultants could not completely vouch for the validity of that self-administered data. This is because the lack of monitoring could have allowed the managements of respondent entities to direct and condition the responses of their employees – in a similar fashion, managements could have censured certain employees from becoming respondents.

Aside from the above caveat, on average the respondents generally did well. SOEs fared less higher marks than private companies, and central government SOEs did better than local government ones. In terms of specific GCG aspects, the study reported the following findings: (i) implementation of the principle of responsibility by boards was still weak, as manifested in the lack of empowerment of functional board of commissioners' committees; and (ii) boards are still weak in their compliance to GCG rules, while employees are still weak in terms of their conformance. Most interesting, however are two of the main points raised by the study in its conclusion: firstly, that the area of procurement is still rife with potential for corrupt activities – this is true across the board for all types of respondents. Secondly, the study espouses the use of significant corporatization, for instance by empowering board of commissioners' functions, in achieving GCG targets – this means that SOEs (especially publicly listed ones) are generally in the right track in adopting free-market formats. These points support the SOEs' arguments that they are capable of keeping track of procurement issues internally without being directed by a central authority such as the LKPP. Worth noting also is the strong policy incentive for the government to not interfere too much into the increasingly market-influenced SOEs, and thus ensure that they remain independent with regards to the LKPP, in respect of market stability.

If the essence of using the LKPP is to gradually shift e-Procurement into universal use in the area of public procurement, then if SOEs are capable of joining a national single window e-Procurement

system on their own, the LKPP's lack of jurisdiction over them should be immaterial. The government has tools to accomplish this through the corporate structure of SOEs, in which the government remains a major stakeholders. Specifically, through the Boards of Commissioners of each SOE, the government can encourage directors and internal monitoring systems to shift towards universal use of e-Procurement systems.

3. Developments in e-Procurement: Learning from the Surabaya Experience

Although development of Indonesia's national e-Procurement system (*NEPS*) is still in its very early stages, the results have been very promising. There are several few pilot projects where e-Procurement systems have been installed in local governments. For example, the developments to the e-Procurement system in the local government of the city of Surabaya (in East Java) has given cause for optimism – an independent study commissioned in 2007 by the KPK found significant positive impacts in Surabaya. Firstly, the study found that the e-Procurement system has reduced opportunities for corrupt behaviour; the study identified that this was achieved by: (i) increased transparency in the e-Procurement processes; (ii) increased quality of administrative processes; (iii) development of IT-mediated security of bidding information/data; (iv) minimization of face-to-face interactions between parties; (v) development of IT-mediated comprehensive procurement sector database; (vi) optimization of e-Procurement processes to save time; (vii) development of IT-mediated monitoring by the general public; (viii) increased accuracy in determining the credibility of vendors. Secondly, the study found that the Surabaya e-Procurement system has introduced a more level playing field in terms of competition between larger and smaller companies. Specifically, this more transparent system allowed small to medium companies to exploit their advantages, such as smaller operational and overhead costs.

The study revealed that since the start of the e-Procurement system, from 2004 up until 2006, smaller companies won the majority of tenders (up to 90% on average) compared to larger companies. This trend is also present when we consider the total value of procurement contracts that have been performed by smaller companies – up to 66% on average between 2004 and 2006. Thirdly, the e-Procurement system also made real savings in the portions of the Surabaya city State Budgets (APBN – central government budget and APBD – local government budget) according to the KPK study. By reducing opportunities to engage in corrupt activity, as well as by optimizing it's procurement processes, the Surabaya city government made savings of up to 13 to 24 % of its Owner's Estimated Value. Finally, perhaps the most important result of the Surabaya city government's development of its e-Procurement system is that it has witnessed a marked increase in public trust and support in the way procurement processes are now being conducted in the city of Surabaya: the city of Surabaya government was given GCG-themed awards by mass media organizations in recognition of the success of the system.

National implementation of e-Procurement will be a very intensive venture at the outset, and though the success of pilot projects like Surabaya have been very encouraging, the Government of Indonesia is now seriously preparing the large-scale shift. During a seminar on procurement held in November 2007 in Denpasar, the BAPPENAS presented the National Electronics Procurement Services (NEPS) design plan. The presentation explained that the single, electronic, national window for public procurement will comprise, on the operational level, of services modules (e-Tendering, e-Selection, e-Reverse Auction, and e-Purchasing), that are supported by: (i) an agency management system; (ii) a vendor management system; and (iii) an e-Catalogue that serves as a database for prices. The NEPS will be accessible to multiple buyers and vendors through respective web portals; these buyers and sellers will be continually monitored, and information from such monitoring shall then be processed in the agency and vendor management systems. The aforementioned monitoring system will be performed by an inter-ministerial team at the LKPP; results of these monitoring activities will determine the outcome of registrations, qualifications, performance evaluations (which may lead to a disbarment penalty), and classifications of agencies and vendors. Thus, IT-mediated transparency and monitoring by the central authority LKPP will be very integral to the proper administration of the NEPS.

MEASURES FOR PREVENTION OF CORRUPTION AND ROLE OF ANTI-CORRUPTION AUTHORITIES IN THE LAO PDR

Keomorakoth Sidlakone[*]

- Excellencies,

- Mr. Chairman,
- Distinguished Delegates and Guests,
- Ladies and Gentlemen

It is my great honor and pleasure to make my presentation today. On behalf of the Government of the Lao People's Democratic Republic I would like to express to the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI), the Office of the Attorney General of Thailand (OAG) and the United Nations Office on Drugs and Crime (UNODC) Regional Centre for East Asia and the Pacific for inviting the Lao delegation to attend this Seminar and for your warm hospitality.

Ladies and Gentlemen,

The topic I am going to present is: "Measures for Prevention of Corruption and Role of Anti-Corruption Authorities in the Lao PDR. "

I. INTRODUCTION

We are aware that corruption is a widespread phenomenon across the world, in both developed and developing countries. The Government of the Lao People's Democratic Republic has attached great importance to the prevention and combating the corruption, considering it social event that holds back not only development of the society but also causes the tremendous damage to the whole country. Corruption results in serious and social concern, it erodes the rule of law, undermines good governance, hampers economic growth, inhabits property reduction, impinges upon competitive and fair business conditions, and, undermines democracy and human rights. Fighting and eliminating corruption is very important but 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.

The trend of globalization and the open policy of economic integration mean that corruption has developed rapidly across the world. Although the level and types of corruption differ between countries, there are many similarities. We all need to work together- international cooperation and coordination is necessary in stamping out worldwide epidemic of corruption.

Like other countries in the world, Lao PDR is experiencing the serious problem of some negative activities within the bureaucracy. While striving for economic excellence and rapid infrastructure development, we are not immune from corruption. Malpractice within government offices, especially when poorly supervised and controlled, is a real concerned for any corruption.

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In Lao PDR corruption arises in the areas of finance (i.e. tax collection), land management, business licensing, import and export trade (i.e. vehicles), forestry (i.e. illegal exporting of timber), state owned enterprises and banking. Government officials are involved in much of this corruption. In this connection, the Lao Government has undertaken many actions, taking strict measures to prevent corruption within bureaucracy. Two of the priority key measures taken are: issuing roles and orders (i.e. the law on anti-corruption in 2005) and the public administration reform).

II. THE OVERALL ANTI-CORRUPTION STRATEGY OF LAO PDR

Over recent years the implementation of new policies has reached great achievements, the economy has developed steadily; foreign relations have greatly improved: there has been an increase in domestic and foreign investment, and the GDP has increased by 7%. Under Lao PDR's comprehensive reform, the society has stabilized and striving to reach the national goals: "rich people, a strong nation, and an equal and civilized society". We are now in a position where we can reduce unnecessary public expenditure, improve government service delivery to citizens and improve the living conditions of the population. However, achieving our national goals remains difficult. There are still many obstacles to overcome. Laos has just entered the free market economy, from a traditional centrally planned economy (which is characterized by a severe lack of laws). The country has become a breeding ground for corruption. The Government understands that corruption poses a major threat to Lao PDR's poverty reduction plan and the nation's development. Corruption has caused major loses of state properties and created a general disrespect from the public towards the Government.

Recognizing the damage caused by corruption, the Government has issued various degrees, orders, regulations, instructions and law in order to prevent and eliminate malpractice within Government offices. An important step forward was enacting the law on anti-corruption dated 25 May 2005. This law has been applied as a basic legal instrument for combating and preventing fraud and corruption.

Law on State Inspection (2007) is newly adopted by the National Assembly and is an instrument for the implementation of the activities of State Inspection Authority to successfully carry out the inspection and investigation of corruption, including the creating rule on asset declaration.

The Central Committee of the Party has also issued a party resolution for all party members to avoid and not take part in corrupt or fraudulent activities. More recently the Politic Bureau of 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.

For the rest of civil service a newly established set of civil service regulations, clearly defined certain practices to combat corruption. For example, Article 32 states that civil servants can not take part in any business activities that represent a conflict of interest (i.e. a civil servant's member running a business in the sector under the civil servants management).

In addition to these regulations, the Government has established an organization that is responsible for preventing corruption-The State Inspection Authority. This organization is responsible for fighting corruption. The Government has established the State Audit Office which is responsible for auditing the usage of state resources and public services across the country. To help monitor corruption of states SOEs, the Government has established the Office for Business Promotion and Improvement. 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.

The Prime Minister's Instruction No. 016/PM (31 August 1998) informed the Ministers and the Governors of the Province 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 labor and material.

The Decree No. 95/PM (5th December 1995) and the instruction from Minister of Finance has to be followed by civil servants when procuring items or services (i.e. construction maintenance or repairing services).

With the support of various international organizations the Government 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 paperwork. The reduction of extensive paperwork is helping minimize and eventually, eliminate condition 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 fore-mentioned measures is to combat and eliminate corruption in across the bureaucracy efficiently. During the process of reform, the Government intends to build the society which has a plenty of good and honest civil servants. So, new civil service recruits will be selected fairly through open examination. Civil service managers will be elected and appointed through more open, equitable and democratic processes.

A major issue that currently exists is the low salary, compensation and benefits for civil servants. To improve the overall administrative reform the Government intends to reform salaries and compensation of civil servants to ensure that they can maintain a decent standard of living.

Since becoming a signatory of the United Nations Convention against Corruption in Mexico 2003, the Lao Government has undertaken more efforts to improve the country's situation. The document compiled after the Convention has been translated and disseminated amongst civil servants to create awareness and understanding of the Convention. In conjunction with this, the Lao Government has amended the domestic legal system to enable more international and regional integration. In the near future, the Government will submit the Convention to the National Assembly for ratification and disseminate the proposal to the donor community to gain support for ratification and implementation of this important Convention.

By strengthening the institutions and improving coordination amongst those organizations involved in monitoring corruption, the State Inspection Authority for Investigation, the People's Prosecutor's Offices for prosecution and Audit Office will be in a better position to discover and sanction corrupt people, and return public assets back to the State and Lao PDR citizens.

So far, the State Inspection Authority and other involved organizations have recorded great success in their duties and responsibilities to combat corruption. Many serious cases of corruption have been discovered and sanctioned, primarily in the area of tax collection, wood extraction and import of vehicles. Those public servants involved have been sanctioned/prosecuted accordingly.

III. MEASURES FOR PREVENTION OF CORRUPTION

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 offices and the State

inspection authority at the central and local level is not effectively carried out. Only few and small cases of corruption reach the court. Many cases are solved by using the disciplinary measures.

The Law on Anti-Corruption stipulates how the leaders and Government officials in the State machinery, civil servants with high positions behave themselves in the society in order to set a good example and how the obligations of other organizations are bound to carry out strictly under the law.

Article 23 on Anti-corruption mentions that Government staffs at all levels, especially leaders, shall act as role models in the strict implementation of the laws and regulations, set a good example and transparent lifestyle in the society with no corruption. Moreover, the State has its duties to educate the public to respect and strictly comply with the laws and regulations; to improve Governance mechanisms to ensure that they are good, effective and transparent; to define and implement policies toward Government staff at each level clearly and to ensure proper living conditions; to strictly impose discipline and punishment on offenders charged with corruption and to promote the public, mass media, and social organizations to participate in the prevention and countering of corruption according to regulations.

An article 24 stipulates that all Anti-Corruption Party Organizations, State Organizations, 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.

Besides, 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 function which causes damage to the interests 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 account outside the Lao PDR without informing the concerned Authority;
4. To use his position to borrow 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;
5. To recruit, post, or appoint one's own wife, husband, children, or close relatives in leading positions in those functions under his responsibility that would create good conditions for corruption, such as positions in organizational and control activities, finance and accounting, treasury function, warehouse keeping, procurement, and contracting;
6. To possess or use incorrectly any house or land belonging to the State or collectives in order to benefit himself or his family, relatives, groups, or clan;
7. To leak out or disclose, any State or administrative secret;

Any Government official who infringes any of the above-mentioned prohibitions will be subject to re-education and disciplinary measure. If the infringement constitutes an offence, the offender shall be punished as provided in the laws and shall pay compensation for damage he has caused.

Most of the said measures for the prevention of the corruption are the anti-corruption awareness of the Government officials and the public as a whole. In fact, without the participation of the public the fight against corruption would not be successful. The anti-corruption awareness includes the education on anti-corruption at school, colleges and universities. The anti-corruption campaign for the public can be conducted by using the news agencies, newspapers and radio stations.

IV. THE PROSECUTION OF CORRUPTION IN 2007 - 2008

Based on the Law on Anti-Corruption and the order of the leadership at different levels, the State Inspection Authorities at different levels have undertaken the investigation of the following targets:

1. According to the Order of the Prime Minister on the Management and Business of Wood No. 30, 31/PM, an investigation has taken place and found that some organizations and officials have misused the power and function more than that the laws allowed and issued permission for cutting trees 61, 184.92 cubic meters and for exporting woods 5,263.381 cubic meters without the permission from Government. It violated the Order of the Prime Minister and pre-regulation. There were also found that woods with total amount of 21,973.664 cubic meters were illegally cut and smuggled. As a result, 19,087.393 cubic meters of wood were confiscated.
2. The Inspection Authorities of the Ministries and provinces have also carried out Investigation and found that some officials have involved in corruption, swindle and embezzle State revenues.
3. It was discovered that some officials misused the power to issue the Identification Card (ID) for the Foreigners and renew the Labor ID without the consultation with the State Employment Agency.

After conducting deliberate and scrupulous investigation of the above cases at the central and local level the corruption was found, offenders were arrested and prosecuted. Based on the information from the State Inspection Agencies there were 25 persons charged of corruption and they were sentenced. Other 25 persons were on trial under the investigation.

V. THE INSTITUTIONS INVOLVED IN THE PREVENTION AND COMBATING OF CORRUPTION

The main aim of the institutions involved in preventing and combating corruption is to increasingly strengthen the effectiveness of financial law and regulation; and improve State management through monitoring and controlling process. In the long run the Government believes these organizations will help Government revenue and improve internal auditing processes. The Government has indicated its commitment to strengthen its policies, regulations and practices in order to improve integrity within the Government, this includes: ensuring the rule of law, improving the efficiency, effectiveness, accountability of the public service, and ensuring accountability of the management of foreign aid.

Today the main organizations in charge of auditing, inspection, monitoring, investigating and prosecuting corruption activities in Laos are, as follows:

The Party Control Committee (PCC), the State Inspection Authority (SIA), the State Audit Office (SAO), the Department of Finance Inspection, the Ministry of Finance and the Offices of the People's Prosecutor at the central and local level and National Assembly. The Department of Inspection exists in various ministries and party control, at the provincial and district levels. In the central level the National Assembly supervises and monitors the executive and judiciary organizations. The Office for Business Promotion supervises State owned enterprises and joint ventures.

1. Party Control Committee (PCC)

As Lao PDR has one party system where all organizations are under the leadership of the Lao People's Revolutionary Party. The PCC was the formerly main 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 (SIA), and State Audit Office (SAO) the role of PCC changed its focus onto the party's activities. However, some legal and regulatory provisions provide this organization with a dominant role.

2. The State Inspection Authority (SIA)

The State Inspection Authority was established on 30 May 2001 by the Decree of the Prime Minister. The principal functions of SIA are to prevent corruption and undertake the investigation on Corruption. The SIA inspects the State's management, ministries, Provinces and Capital City, State owned enterprises and joint ventures private and public enterprises- to ensure that they are operating in accordance with the laws and regulations. The SIA is attached to the Prime Minister Office and reports directly to the Prime Minister.

3. State Audit Office (SAO)

SAO was set up by the Prime Minister's Decree in August 1998. This was considered a major step towards 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. The State Audit Office is also attached to the Prime Minister Office and reports directly to the Prime Minister.

4. The Organ of the People's Prosecutors of the Lao PDR

The Organ of the People's Prosecutors of the Lao PDR is a Supervisory State Organ and responsible for monitoring the proper and uniform adherence to laws by all ministries, ministries-equivalent organizations, Governmental organizations, Lao Front for National Construction, mass organization, social organizations, local enterprises and citizens and for exercising the rights of prosecution.

5. The National Assembly

The National Assembly is a legislative body and oversees the executive and judiciary organizations. The Commission on Economic ad 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.

Lao PDR has enough organization's involved in anti-corruption but the coordination is still not sufficient.

VI. RECOMMENDATIONS

Although the law is a major step forward, there is still a poor implementation of the law. Fighting against corruption is still a very complicated and difficult task, challenging to detect, and it requires, first of all, determination and persistence of the political leadership and participation from all citizens in the whole country. It is of great important that civil servants involved are educated in a moral and ethical code of conduct.

Therefore, to fight against corruption successfully, following conditions are necessary:

1. Political Commitment: Political leaders must not take part in corrupt activities and need to provide a good example to their future counterparts.
2. An effective anti-corruption.
3. An efficient anti-corruption system: this includes a basic legal framework to prevent and

punish those involved in corrupt activities.

4. Rule on Assets declaration for persons who have power, duty and position.
5. Anti-Corruption Awareness for all must be raised that include Government officials, prosecutors, judges, newspapers, magazines and of lawyers and the public must be done in any forms through the organization of Seminars, workshops, putting news in the newspapers, magazines and using other possible and effective propaganda means.
6. Joint Agreement on Coordination between the Supreme People's Prosecutor and the State Inspection Agency and other organizations concerned must be in place to restructuring, strengthening ad better coordinating among those institutions involved with detecting, investigating and prosecuting those who involved in the corruption.
7. Governance and Administrative reform across the country is to be continued to help promote transparency, accountability and eradicate all kind 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.

Ladies and Gentlemen,

On the auspicious occasion, once again, on behalf of the Lao Government and on my own behalf, I would like to take this opportunity to express my sincere thanks and deepest appreciation to the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI), the Office of the Attorney General of Thailand (OAG) and the United Nations Office on Drugs and Crime (UNODC) Regional Centre for East Asia and the Pacific for your warm hospitality extended to me. I wish the Seminar a great success.

Thank you for your attention.

CORRUPTION CONTROL IN PUBLIC PROCUREMENT

Anthony Kevin Morais[*]

Corruption in government cannot be talked about without immediately thinking of bribes paid or received for the award of goods, works or services. Only a few activities create an appetite or offer more opportunities for corruption than public sector procurement because of the large scale of government's business. Public procurement plays a major role in the world's economic activities. Studies have shown that government procurement of goods and services to between 15-25 percent of gross domestic product (GDP) for developed countries and that it could be more for developing countries. In absolute terms, this means the expenditure of trillions of money every year. Given the extent and complexity of public procurement, there is every reason why government procurement is a hotly debated topic, since there is great temptation for the players to manipulate the processes for their own private benefit. Issues that are commonly cited during these debates, is the issue of accountability, lack of efficiency or transparency in the awarding of contracts, shoddy delivery systems and generally poor post-performance of the contracts awarded.

No country in this region has been spared its share of negative publicity of structural problems *inter alia*, in government schools, flyovers and hospitals built. Suspicions abound on the causes for this. Finger pointing is often on the decision makers involved in the awarding of the contracts, with subtle hints of nepotism, cronyism or sometimes depending on the country's record on freedom of the press, outright corruption in the awarding of contracts.

When lives are at stake or lost due to structural defects or when taxpayer monies are misused as a result of procurement, then the issue of procurement becomes not merely a national but equally an international concern. Needless to say, most of us have read or heard that this form of corruption has often led to dismissal of senior officials and even to the collapse of governments. Regrettably however, corruption in public procurement is more hyped and talked about, than acted upon.

UNAFEI's attempt today to address this is issue of corruption in public procurement is indeed, laudable. It joins the ranks of other international organizations like the ABD/OECD Anti-Corruption Initiative for Asia and the Pacific, World Trade Organization and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions that have undertaken similar measures to address corruption in public procurement. These lead agencies, including UNAFEI, must realize that corruption in itself is pernicious, but corruption in public contracting is perhaps most damaging to public welfare. Within the ABD/OECD Anti-Corruption Initiative for Asia and the Pacific for instance, by endorsing the Anti-Corruption Action Plan, the initiative's member countries and economies have committed to establish 'appropriate and transparent procedures for public procurement that promote fair competition and deter corrupt activity', as defined under the Anti-Corruption Action Plan's first pillar.

Corruption in procurement is sometimes thought to be a phenomenon found only in countries with weak governments and poorly paid staff. However, we have come to realize that that this is not entirely true. The most developed countries have amply demonstrated too, that corrupt procurement practices have become an integral part of the way in which government businesses is conducted. Further, to some of us who are under the illusion that corrupt procurement practice is in the exclusive domain of the government who controls the purse strings, this again is a misconception. We know of instances the entire corrupt practice has been initiated by the suppliers of the goods or services. But, as judges in my country

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would often say when describing corrupt events, '*where there is a willing taker, there is equally an ever willing giver'*. It takes two to tango!

Any part of reform in the procurement must begin on the premise that bribery and corruption need not be a necessary part of doing business. In order to appreciate how best to deal with corruption in procurement, it is imperative that one first knows how corruption is practiced in procurement practices. My remit today, is to give you a snapshot, of the forms and manner of corruptions in the public procurement that I have encountered as a prosecutor. Most of it may ring a bell to some of you, whilst others may be peculiar to a certain country only.

From a prosecutor's point of view, corruption in procurement practices can occur in the following manner,

A. Pre-Contract Corruption

- Tailor specifications to favor particular suppliers who in turn would ensure that a kickback is received. In this context, all too often, there may be breaches in the confidentiality of the bids in order for the supplier to know and quote the preferred prices, in order to be selected. Thereafter, on securing the contract, prices may be adjusted up on grounds of changes in specifications or increases in materials used.
- Restrict information about contracting opportunities or if and when done, it is done in an obscure fashion in the hope that no one sees it. 'Cooperative' bidders of course, get information first hand.
- Awarding of contracts to suppliers who are directly or indirectly linked to an influential member of the panel who plays a pivotal role for the selection and appointment of suppliers. Even though, the views of all the panel members must be sought and approved, all too often, this influential member may exert a certain amount of pressure on the selection process. More often than not, associates, proxies or family members of the influential panelist, may hold positions in the company that has been awarded the contract. Here, we have found that securing employment for members of the family or obtaining shares in the supplier company concerned may be a quid pro quo, for awarding the contract.
- Claim 'urgency' as a ground to award the contract to a single contractor without having to go through the process of opening the tender process and allowing competitive pricing. This is called direct negotiations and is often open to abuse. Justifying direct negotiations on claims that do not exist, we find is usually a way cover -up corruption.
- Disqualify certain suppliers through deliberate and improper pre-qualification procedures.
- Colluding with suppliers to mark up prices or colluding with suppliers in order to fix bidding prices in order to ensure that only certain bidders will secure the contract. This would entail a breach of confidential information that is an essential requirement of government procurement.
- Promoting discriminatory technical standards and not ensuring that the technical specifications are complied with. Here too, all to often, we find that monies have been exchanged in order to ensure that one 'shuts an eye' to technical flaws in the when the contract has already commenced.
- Evaluation and comparison stage. Carried out responsibly, this should be an objective analysis of how each bid responds to the requirements of the bidding documents, and a determination of which one is the best offer. If the intention is to steer the award to a favored bidder, the evaluation process offers almost unlimited opportunities; evaluators can invent entirely new criteria for deciding what is 'best' and then apply the criteria subjectively to get the right 'results'. They are often aided in this process by issuing bidding documents that are deliberately vague and obscure about what requirements must be met and how the selection decisions will be made.
- Acceptance of gifts: this takes various forms and ranges from lunches, games of golf, air tickets, providing entertainment or paid exotic holidays. These expensive trinkets create a sense of obligation on the part of the government official responsible for awarding or overseeing the contract awarded. The risk here is that out of this obligation the government official concerned may decide

to award the contract, or compromise on professionalism when the contract is awarded to the supplier concerned.

These gifts do not necessarily stop at the higher positioned officials. All too often, the subordinates will also have to be 'humored'. This again is with the tacit approval of the superiors to ensure that everyone's cooperation is secured in the award or execution of the contract. Such unhealthy practices lead to a 'culture' within the department concerned that perpetuates indefinitely, despite changes in the management.

- An area of crucial concern is the practice of corporations offering post-official employment to public servants with whom they had official dealings prior to the officials' retirement. We find here, that there are insufficient rules or regulations governing such post- employment. The danger here is that promises of post-retirement employment by unscrupulous suppliers may be used as an inducement to gain procurement contracts while the government official is in power.

Another danger is that the said government official may on leaving public service bring with him, confidential information about procurement offers or strategies of the said department that may serve as an unfair advantage to the post-retirement employer, who may tailor his requests to comply with the current needs of the department. Other legitimate competitors may be severely disadvantaged by this information and eventually the public interest will not be best served.

The use of proxies or nominee companies of the government official or politicians to bid and secure contracts is a common phenomenon. In the course of prosecution, we have discovered that the officials or politicians concerned are solely responsible for the running of the said competing company. Such is their shameless audacity! Information secured from their respective positions or influence and a fair amount of influence peddling is then used to secure the said bid. Once again, legitimate companies, who pass muster, are deprived of the opportunity to partake in the exercise. Public interest is compromised here.

Corruptly procuring withdrawal of a tender- Here, the corrupt practice lies in offering any person who has made a tender any gratification, as an inducement or reward for his withdrawing the tender or who solicits or accepts gratification as an inducement for his withdrawing a tender made by him for such a contract.

B. Post Contract Corruption

One must realize that the buck does not end with the award of the contract. From our observations, the most costly and serious forms of corruption occur after the award of the contract, during the performance phase. It is here that we find that the government, as purchasers of the contract may:

- Fail to enforce quality or quantity standards in the contract by suppliers who are in turn, aided and abetted by government officials. Here, suppliers who may have bribed in order to get the award may embark on cost-cutting measures to recoup their losses. Substitution of inferior material with that originally agreed upon is commonly practiced here. Once again, this practice is made possible by the active cooperation or complicity of other parties, government officials included.
- Appointment of sub-contractors to execute the contract, not originally provided for in the main contract. These sub-contractors tend to be of inferior quality, are invariably are unsupervised by the main contractors.
- Professional Management Committees that are set up by the government and are supposed to act as custodians of the government to oversee and verify quality and standard certificates tend to work hand in hand with unscrupulous suppliers when it comes to verifying standards and works done. This gives rise to shoddy performances of the contract, where invariably, the health and safety of the public is jeopardized.
- The diversion of goods and services for resale or for private use.
- Falsification of invoices for purpose of payments by suppliers who are invariably abetted by government officials.

C. Cross-Border Procurement

This is an area that is seldom discussed when dealing with corrupt practices in the procurement processes. This is because it involves foreign dealings, complex documentation, language, differing laws and multiple foreign and local agencies. In international procurement, the greatest single cover for corruption is the 'commission' paid to local agents tasked with securing the contract from the government, on behalf of the foreign company. The agent is given sufficient commission/funds and enough latitude to secure the contract, without the foreign company knowing how and whom the monies are to be paid to.

This process enables the local agents to keep for themselves whatever is left from the 'commissions' that they were paid for in order to secure the contract, once all 'illegal disbursements' have been made.

Invariably, the foreign company keeps a safe-distance from the shenanigans that are going on locally between the agent and the government officials responsible for the awarding of the contracts. Hence, they then able to feign disbelief or dismay should the corrupt acts of the agent come to surface.

What we have come to realize, is that in certain jurisdictions these so called 'commissions' are factored into the accounting process of the said foreign companies with tax write-offs being offered domestically for such output! Eventually the monies expended for securing this contract will be borne by the consumers and tax -payers of the beneficiary country.

Having attempted to give you an overview of the possible transgressions committed in the course of the procurement process, the question know is from a prosecution viewpoint, how does one combat this growing phenomenon.

Legislation that cuts a swathe through all forms of corruption, including, as some countries have done, enacting specific legislation on corruption in public procurement, is vital. Similarly, enacting laws that make it an offence under domestic laws to bribe foreign public officials in order to gain or maintain business, whether done domestically or abroad is imperative. There should also be legislation to criminalize acts of foreign public officials who commit such acts in other jurisdictions.

Corporate liability of companies engaged in corrupt practices should also be considered. Here, national laws should be aligned with international conventions that provide for the imposition of criminal liability for corporations involved in such practices.

Legislation or Codes of Practice should also be introduced on the post-retirement employment of a certain class of persons in the public sector that held positions of influence while in public office.

Informants are crucial in order to allow early detection of such crimes. Invariably, these informants would be persons who are employed in the said government agencies or with the suppliers involved in the procurement process. Here, persons who come forward to report corrupt practices must be able to do so, without fear. In this respect, countries should move towards providing protection to such individuals, by enacting laws that protect whistleblowers from any form of recrimination. In Malaysia, such a provision is provided for under section 53(1) of the Anti-Corruption Act 1997. It reads as follows:

> **53. Protection of informers and information**
>
> (1) Subject to subsection (2), where any complaint made by an offer of the Agency states that the complaint is made in consequence of information received by the officer making the complaint, the information referred to in the complaint and the identity of the person from whom such information is received shall be secret between the officer who made the complaint and the person who gave the information, and everything contained in such

information, the identity of the person who gave the information and all other circumstances relating to the information, including the place where it was given, shall not be disclosed or be ordered or required to be disclosed in any civil, criminal or other proceedings in any court, tribunal or other authority.

Immunity should also be given to persons who are willing to testify about such malpractices against the certain officials whether in the public sector or as suppliers, but who have engaged in similar activities in the past. In this context, perhaps a leaf should be taken out of the Anti-Corruption Act of Malaysia that provides so under s44 of the Act. The section reads as follows:

44. Evidence of Accomplice and Agent Provocateur

(1) Notwithstanding any written law or rule of law to the contrary, in any proceedings against any person for an offence under this Act -

(a) no witness shall be regarded as an accomplice by reason only of such witness having –

(i) accepted, received, obtained, solicited, agreed to accept or receive, or attempted to obtain any gratification from any person;

(ii) given, promised, offered or agreed to give any gratification; or

(iii) been in any manner concerned in the commission of such offence or having knowledge of the commission of the offence;

But, having world-class laws is not the solution! Indeed, laws should only complement other reforms, but they are not the key part of the answer. In this respect, apart from sound laws, there must be effective enforcement of the laws, for there to be an impact.

This is where an independent and dynamic investigating Anti-Corruption Agency is imperative-in order to ensure that these miscreants, whether politicians, highly placed government officials, government officers, or suppliers whether domestic or foreign, are brought to book for abusing or corrupting the procurement process of a country. Interference from any quarters should not be condoned.

Having said this, one must bear in mind, that there are limitations to how much the Anti-Corruption Agency can do. Here, a lot can be achieved if there is an active involvement of the media and monitoring by the civil society in procurement exercises, in order to act as vigilantes of the process.

On the media, one must be aware that the most powerful tool to expose the wrongs or flaws of any system is through public exposure. Herein lies the importance of an effective and responsible media. A responsible media can play a critical in creating public awareness on the shenanigans related to the procurement process and generate support for public reaction. When the public is feed with a diet of how procurement figures were exaggerated, what gifts were exchanged, monies passed, post- retirement employments secured and personalities or their proxies that were involved in the awarding of the contract, it is hard to imagine that the public will not demand some form of accountability, whether in the form of institutional reform or in the prosecution of the individuals involved.

But, for the media or civil society to perform effectively, they should be allowed to have.

- Free and unlimited access to all relevant government documents relating to the procurement process.
- Be able to raise issues and complaints first with the authorities and be free to go public, only when no corrective action is taken within a reasonable period of time.
- Openness of certain procurement processes on the web to allow the public free access to that information.

Beyond the legal framework, there are other aspects in public procurement that must be finessed.

My fellow speakers will take you through what those aspects that need to be addressed.

I leave you with this conclusion. It should be noted that nothing that I have said in the last 20 minutes is sufficient in itself to curb corruption in the procurement completely, let alone overnight. There ought to be a coordinated effort on all fronts, for there to be any effect. In this respect, anti-corruption laws and enforcement of it have to be strengthened and publicized, transparent, sound and proven procedures for procurement should be adopted, competence and expertise of persons involved in procurements processes should be enhanced and if everyone knows that the government is serious about enforcing honest and fair practice, corruption can be curbed in the procurement process.

Hopefully, by the end of this session, we may be able to take home some measures, however small, to address this form of corruption. This is no mean feat as in some instances it may involve some of us introducing new policies within respective governments that may not be palatable to certain factions of the administration so used to manipulating and reaping the illicit gains from the procurement processes.

Corrupt procurement is not inevitable. It can be cleaned up, and when it is, the public is the greatest beneficiary.

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CORRUPTION CONTROL ON PUBLIC PROCUREMENT IN MYANMAR

Phyu Mar Wai[*]

I. INTRODUCTION

Corruption is a crime that has come into existence in the communities since time immemorial. Due to its peculiar characteristics, this crime has existed for so long in societies throughout the ages. In recent times, due to the advancement of information and communications technology and globalization, it has grown to the extent that no country can combat it single-handedly. The reason is that commission is made in one country, proceeds transferred to another country, and that culprit absconds to next country involving countries so that countries are required to assist one another in the fight against this vicious crime.

The answer to address such crimes can be made initially through cooperation and coordination among government departments of requested State and requesting State to prevent criminals escaping justice. Under certain terms worked out by relevant States requested country assists in the process for litigation. It is essential that Courts be empowered to try the cases of such nature in accord with the laws of the land. One challenge that a country faces in tackling such issue is that the legal system of States are not the same. One country may practice the Common Law legal system while the other or others may adopt Civil Law or Anglo-American legal system. A new formula is thus required to thrash out the challenges.

II. LEGAL SYSTEM OF MYANMAR

The legal system of Myanmar is a unique system that is partly belongs to the English Common Law legal family. However, it is not a replica of the Common Law system but it is a unique combination of Common Law and Civil Law legal systems. It uses the principles of Common Law and implants them into the vehicle of codified laws or statute laws which are promulgated by legislature and gives the force of law of the land.

A. The Role of the Office of the Attorney General

The Office of the Attorney General of the Union of Myanmar plays a vital role in running the machinery of justice in the Union of Myanmar. Its role not only has deep historical roots, but is a strong, substantial and solid machine that is geared to stand as a pillar of justice in the country.

At present, the Attorney-General, three Deputy Attorneys General and the Director General are appointed by the State Peace and Development Council under the Attorney General Law, 2001.

Under the new law 2001, the Attorney General is empowered with legislative drafting, legal translation and updating laws and amendments. He is also invested with power to render legal advice to

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the relevant Government departments and organizations as to whether or not the State should be a party to international conventions and regional agreements and also on matters related to bilateral or multilateral treaties, memorandum of understanding, memorandum of agreements, local and foreign investment instruments and other instruments. He is also the Chief Prosecutor in criminal cases and to prosecute or defend the claims of civil nature where the Government is involved.

The promulgation of the law gives the Attorney-General the right to create various offices. The Head Office is called the Office of the Attorney General. This Office is the Head Office of all State/ Divisional law offices, District law offices and Township law offices in the Union of Myanmar. The Head of the Office is the Director General and he is also the Head of Service appointed by the State Peace and Development Council. There are four special departments, namely, Laws Scrutiny and Drafting Department and Legal Opinion Department, Prosecution Department and Administration Department which are created to be under the direct control of the Office of the Attorney General. Besides controlling these four departments, the Office of the Attorney General acts as the Head Office of all legal and administration matters of all law offices in Myanmar. It also serves as a legal focal point for ASEAN legal activities in Myanmar.

B. The Judicial System

Myanmar judicial system is a unique system based on history and traditions. In the days of Myanmar kings, "Yazathat", the ordinance of the monarch, was issued for application in the administration of justice in criminal cases. Another category in the administration of justice in the area of civil law was "Dhammathat" which were treatises authored by scholars and learned monks of Buddhist religious orders. Another component in the domain of judiciary was "Phyat-htom" which was somewhat similar to case-law or ruling in the English Common Law legal system.

The judicial system has been regulated under a law entitled the Judiciary Law, 2000, in which the Judicial Principles are prescribed.

The highlights are as follows:

- administering justice independently according to law;
- protecting and safeguarding the interests of the people and aiding in the restoration of law and order, and regional peace and tranquility;
- educating the people to understand and abide by the law and cultivating in the people the habit of abiding by the law;
- working within the framework of law for the settlement of cases;
- dispensing justice in the open Court unless otherwise prohibited by law;
- guaranteeing in all cases the right of defense and the right of appeal under the law; and
- aiming at reforming moral character in meting out punishment to offenders.

Under the Judiciary Law, 2000, the following Courts are established in the Union of Myanmar:

- The Supreme Court;
- The State or Divisional Courts;
- The District Courts; and
- The Township Courts.

Under the said Law, the Supreme Court can be constituted with one Chief Justice, three Deputy Chief Justices and from a minimum of seven Judges to a maximum of twelve Judges. The Supreme Court is the highest Court of appeal and exercises both appellate, revision and original powers. It is the only Court in Myanmar which can try the maritime cases in its original jurisdiction.

In trying making decisions in criminal cases, Judges at all levels have strictly complied with the provisions of the Code of Criminal Procedure and the Law of Evidence. There are also special laws which were enacted from time to time. Generally, special laws prescribe the offences and punishments which are not included in the Penal Code and special rules of procedure which are not included in the Code of Criminal Procedure.

III. LEGISLATION ON THE AREA OF CORRUPTION

To have proper perspective of legislation and jurisdiction in Myanmar in connection with corruption, including corruption in public procurement, it is required to go further.

In the domestic arena, the Union of Myanmar promulgated a number of legislation against corruption. Taking into account of the two kinds of legislation in Myanmar domestic laws, namely, General Law and Special Law, Myanmar's legislation combines these two in the fight against this vicious crime. In the area of enforcement, the relevant agencies are instrumental to implement the aims and objects of the relevant laws.

In connection with the legislation in the area of corruption, Myanmar laws constitute two kinds, namely, the old and the new. Under the provisions of the Penal Code, the offence of bribery and corruption can be punished with a maximum of seven years imprisonment. A special law, namely, the Suppression of Corruption Act was adopted in 1948 with provisions related to those in the Penal Code and the Code of Criminal Procedure. The remaining laws cover the respective areas prescribing offences and penalties related thereto.

The following laws provide provisions related to corruption and relevant penalties:-

- Penal Code;
- Suppression of Corruption Act;
- Myanmar Official Secrets Act;
- Public Property Protection Act;
- Defense Services Act;
- Protection of Public Properties Law;
- Central Bank of Myanmar Law;
- Financial Institutions of Myanmar Law;
- Saving Banks Law;
- Fire Brigades Law;
- Myanmar Marine Fisheries Law;
- Narcotic Drugs and Psychotropic Substances Law;
- Forest Law;
- Myanmar Police Force Maintenance of Discipline Law;
- Special Investigation Department Law;
- Control of Money Laundering Law; and
- Anti-Trafficking in Persons Law.

Taking into consideration of the above laws, one can say that Myanmar has legislation to combat corruption in different areas. In the Penal Code, sections 161 to 165 covers a list of offences committed by or related to public servants.

The offences and abetments are summarized as follows:

- public servant taking gratification in respect of an official act;
- taking gratification in order, by corrupt or illegal means, to influence public servant;
- taking gratification for exercise of personal influence with public servant;
- provisions of penalties for abetment by public servant of offences defined in section 162 or 163.

Another law, namely, "The Suppression of Corruption Act" was enacted in 1948 with a view to provide protection to the citizens from corrupt service personnel. Section 3 of the Act provides that if it is proved that the accused has had a large sum of money or properties out of all proportion to his official position or status, and if the accused could not prove how he comes to have or how he has had such money or property lawfully, the Court may presume the accused guilty of corruption. In section 4 (1) different kinds of offences concerning misconduct of a public servant in discharging his duties are defined and penalties for such offences are provided in section 4 (2). The provisions are as follows:

"4(1) A public servant is said to commit the offence of criminal misconduct in the discharge of his duties:

(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person, any gratification (other than legal remuneration) as a motive or reward, within the contemplation of section 161 of the Penal Code; or

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for an inadequate consideration from any person whom he knows to have been or to be, or to be likely to be, concerned in any proceeding before him or likely to be before him, or business transacted or about to be transacted by him, or from any person having any connection with the official functions either of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested or related to the person so concerned; or

(c) if he by corrupt or illegal means or by abuse of his office as a public servant obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(d) if he commits any fraud to the detriment of public interest or commits in respect of public properly entrusted to him, either an act of misappropriation or of misconduct.

(2) Any public servant who commits criminal misconduct in the discharge of his duty shall be punished with imprisonment for a term which may extend to seven years and all the gains found to have been derived by the accused, by the commission of that offence shall be liable to be forfeited to the State".

Another law entitled "The Control of Money Laundering Law" was a law adopted in line with the United Nations Convention against Transnational Organized Crime of which section 25 provides as follows:

"Any member of the Investigation Body who commits any of the following acts or omissions in investigating money laundering offence shall, on conviction, be punished with imprisonment for a term which may extend from a minimum of 3 years to a maximum of 7 years and may also be liable to a fine;

(a) demanding or accepting money or property either for himself or for any other person as a gratification;

(b) substitution of an offender with any other person so that action cannot be taken against him or misprision of an offender without taking action against him;

(c) concealment, obliteration, conversion, transfer in any manner or disguising of money and property obtained by illegal means so that action may not be taken against them".

Another law worthy of mentioning here due to its transnational nature is "The Anti-Trafficking in Persons Law" section 30 of which provides as follows:

"Any public official who demands or accepts money and property as gratification either for himself or for another person in carrying out investigation, prosecution and adjudication in respect of any offence under this law shall, on conviction, be punished with imprisonment for a term which may extend from a minimum of 3 years to a maximum of 7 years and may also be liable to a fine".

The above provisions are the ones that are practically exercised in the area of corruption by government servants, including corruption in public procurement.

IV. PRACTICE IN PUBLIC PROCUREMENT

Regarding public procurement in Myanmar, "tender system" is practiced. Usually, it is advertised

in the daily newspapers so that the public is aware of the procurement. The specifics are given in the advertisement such as descriptions, including the name of the government agency and the items that will be purchased, the quantity of the items, tender closing date, tender documents that are required and other details. The following is the sample of "Invitation to Tender" advertised in dailies by the government ministries and departments:

MYANMAR IVANHOE COPPER COMPANY LIMITED
(TENDER NOTICE)

Tender, IFB No. BHDS-08 (Blast Hole Drilling Service)
Hire of Blast Hole Drill Rigs to the MICCL mining operation. All rigs should be capable of drilling at least 102mm diameter holes of depth between 6 and 14 meters vertical and or inclined, mechanically suitable and equipped to perform work on 2 x10 hours shifts per day (20 hours per day in total) for seven (7) days a week. Preference will be given to large diameter rotary drill rigs or down-the-hole hammer drill rigs.
Closing Date & Time: 27th June 2008 at 12:00 noon.
Tender documents are available at the following address and queries can be made between 10 am and 4 pm at MICCL Yangon office before the tender closing date.
Myanmar Ivanhoe Copper Company Limited
70 (1) Bo Chein Street, Pyay Road, Hlaing Township, Yangon, Myanmar
(Tel: (95) 1-514194 to 7/ Fax: (95) 1 514208; Email: miccl@miccl.com.mm)

V. DETECTION AND INVESTIGATION

Coming to the main topic of the Seminar: "Corruption Control in Public Procurement", which is one of the most important issues to be addressed in this region, it is required to explore means and ways to strengthen rule of law, judicial systems and legal infrastructure, promotion of an effective and efficient civil service, and good governance in public and private sectors. It is understood the fact that the overall objective of this Seminar is the improvement of detection and investigation of corruption in public procurement in participating countries including Myanmar.

In respect of detection and investigation of criminal offences, including corruption, Myanmar has sound legal framework and practice to be followed by the government agencies. As mentioned earlier, the Office of the Attorney General is regulated under a law entitled "The Attorney General Law, 2001". Section 9 of the law empowers the Law Officers who are Public Prosecutors to tender legal advice to government departments and organizations including the police force and other prosecuting bodies. This provision of the above law gives the government attorneys authority to frame the case at the investigation stage for enabling to set up the case properly. The Law Officers are delegated with power to appear at the Court for criminal offences, including the offence of bribery and corruption. Law Officers are government attorneys appointed to perform the functions of the Public Prosecutors. Other line government agencies in the prosecution of criminals are the police force and the Supreme Court and its different levels of subordinate Courts.

In the process of detection and investigation, Myanmar Police Force is mainly responsible to handle all kinds of criminal offences, including corruption. However, as mentioned earlier, the Law Officers are authorized to tender pre-trial legal advice before submitting the case to the Court for trial.

VI. CONCLUSION

The theme of the Seminar "Corruption in Public Procurement" is an issue rampant in South-East Asian countries which should be eradicated through cooperation and coordination of relevant parties. Union of Myanmar, on her part, has actively participated at home and abroad in accord with the objectives set forth in domestic laws both in letters and spirit and also in line with the provisions enshrined in international instruments similar to other countries the world over. It is required to continue to combat this crime that justice will not only be done but appears to have been done in the suppression of the crime of corruption.

GOVERNMENT PROCUREMENT REFORMS IN THE PHILIPPINES

Deana P. Perez[*]

I. INTRODUCTION

Government procurement has been identified by experts as one of the areas where corruption is most prevalent. Corruption in procurement results in inefficient public spending and low quality of public goods and services. Corruption also affects the private sector which produces goods and services as it increases costs of production and reduces competitiveness. In the long term, corruption in procurement distresses economies and exacerbates the quality of life of the people.

Prior to the passage of *Republic Act (RA) 9184 or the Government Procurement Reform Act in 2003*, the Philippines was losing billions of pesos annually to corruption in the government procurement system. The procurement system in the Philippines was outdated. There was a multiplicity of fragmented and uncoordinated laws, rules and regulations were being implemented, resulting to vulnerabilities to corruption. Thus, Republic Act No. 9184 or the Government Procurement Reform Act of 2003 was enacted to give more meaning to the policy of the State to promote the ideals of good governance.

II. THE PHILIPPINE GOVERNMENT PROCUREMENT REFORM ACT

A. The Principles, Scope and Application of the Law

The Philippine Government Procurement Reform Act and its Implementing Rules and Regulations issued at the latter part of 2003 observe the principles of transparency, competitiveness, streamlined procurement processes, accountability and public monitoring. It applies to three procurement types namely infrastructure projects, goods and consulting services regardless of source of funds, whether local or foreign, in all branches of the government in all its branches, departments, agencies, subdivisions and instrumentalities including government owned and or controlled corporations and local government units. It covers the entire public procurement process that may be divided into several stages. The preparatory stage involves the planning of government expenditures. The law mandates that all procurement should be within the approved budget of the procuring entity and in accordance with its annual procurement plan. The selection stage starts with the elaboration of the tender data, proceeds to the procurement method and selection of the most appropriate supplier and ends with the signing of the contract with the winning bidder. There are different levels of approving authority or signing limits of government officials in procurement. Department secretaries can sign contracts of up to 50 million pesos except the secretary of public works who has a signing limit of 100 million pesos. Contracts exceeding these limits go to the Office of the President for review and approval. The implementation or execution of the contract and the take over of the contract and its usage follow. Then payment is made only after the contractor has presented the necessary documents to the accounting unit of the procuring entity including the purchase order, sales invoice, delivery receipt, report of completion and acceptance and inspection report. The last stage which is control of the administrative performance is conducted through audits.

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B. Public Bidding and Exemptions

The law prescribes a standardized procedure for public bidding, prescribed to the bids and awards committee of all procurement entities, that may summarized as follows:

1. Pre-procurement conference is held to assess the availability of funds and review all the necessary documents.
2. In line with the principles of transparency and competitiveness, an invitation to bid shall be advertised by posting in the premises of the procuring entity, in newspapers of general circulation, the government electronic procurement system and the website of the procuring entity.
3. At least one pre-bid conference shall be conducted for each procurement for contracts over one million pesos.
4. To conduct the eligibility check, the bids and awards committee determines the qualifications of prospective bidders based on the eligibility requirements. The eligibility requirements shall provide for a fair and equal access to all prospective bidders.
5. In the submission and receipt of bids, the technical and financial components of the bid are submitted separately, though simultaneously. The envelopes containing the bid must not be opened before the designated date and time. A bidder may modify or withdraw his bid only before the deadline for receipt of bids.
6. Bid Security serves as a guarantee that the winning bidder shall enter into a contract with the procuring entity.
7. The bids and awards committee shall publicly open and all bids at a time, place and date specified in the bidding documents. It shall also check documents and rate bids as passed or failed.
8. During the bid evaluation, the lowest calculated bid is determined for procurement of goods and services, while it is the highest rated bid for consulting services.
9. The post qualification is the stage where the bidder with the lowest calculated bid or the highest rated bid undergoes verification and validation whether he or she has passed the requirements and conditions in the bidding documents. If qualified, the bid shall be considered the lowest calculated responsive bid or the highest rated responsive bid.
10. Upon recommendation of the bids and awards committee, the lowest calculated responsive bid or the highest rated responsive bid will be awarded the contract by the head of the procuring entity who shall likewise issue the notice to proceed.
11. Prior to the signing of the contract, the winning bidder shall, as a measure of guarantee for the faithful performance and compliance of his obligations, be required to post a performance security.

While public bidding is the preferred mode of public procurement, there are alternative methods provided by law, in order to promote economy and efficiency and provided that the most advantageous price for the government is obtained. These alternative methods are:

1. Limited source bidding or selective bidding involves direct invitation to bid from a set of pre-selected suppliers or consultants with known experience and proven capability. This method may be resorted only to in highly specialized types of goods and services obtainable from a limited number of source or to procurement of major plant components where it is advantageous to limit bidding to maintain quality and performance of the plant.
2. Direct contracting or the single source procurement does not require elaborate bidding documents except for a price quotation or pro forma invoice with the condition of the sale. This is allowed in procurement of goods of proprietary nature such as patents, trade secrets and copyrights. It also applies when the procurement of critical components from a specific manufacturer or distributor is a condition to hold a contractor to guarantee its project performance.
3. Repeat order involves a direct procurement of goods from the previous winning bidder, when there is a need to replenish goods procured under a contract previously awarded through competitive bidding. The following conditions must be present: the price must be

equal or lower than the original contract; does not result in splitting of requisitions or orders, within six months from notice to proceed in the original contract and the repeat order must not exceed twenty five percent of the quantity in the original contract.

4. Shopping is a method whereby the procuring entity simply requests the submission of price quotation for readily available off the shelf goods or ordinary regular equipment. Procurement in an unforeseen contingency requiring immediate purchase for not more than 50,000 pesos or for ordinary office supplies involving the amount not exceeding P250, 000.00 can be done through shopping,
5. Negotiated procurement can be resorted to only in extraordinary circumstances such as: a) when there are two failed biddings; b) when there is imminent danger to life or property during a state of calamity or where immediate action is necessary to prevent loss of life or damage to property; c) in cases of take over of a contract terminated for causes provided in the contract; d) where the subject contract is adjacent to an ongoing infrastructure project and; e) in purchases of goods from another government agency.

C. Bids and Awards Committee

Each procuring entity must establish a Bids and Awards Committee for its procurement. The committee shall have at least five (5) members, but not more than seven (7) members. It shall be chaired by at least a third ranking permanent official of the procuring entity, other than its head. The members shall be designated by the Head of Procuring Entity. However, in no case shall the approving authority be a member of the committee.

The bids and awards committee shall have the following functions: advertise and/or post the invitation to bid, conduct pre-procurement and pre-bid conferences, determine the eligibility of prospective bidders, receive bids, conduct the evaluation of bids, undertake post-qualification proceedings, recommend award of contracts to the head of the procuring entity or his duly authorized representative. In the event the head of the procuring entity shall disapprove such recommendation, such disapproval shall be based only on valid, reasonable and justifiable grounds to be expressed in writing. The committee shall also recommend the imposition of administrative sanctions and alternative modes of procurement if necessary and perform such other related functions, including the creation of a technical working group from a pool of technical, financial and/or legal experts to assist in the procurement process

D. Other Salient Provisions of the Law

RA 9184 requires the use of generic procurement manual, standard bidding documents and tendering forms. It prohibits the participation in the bidding of relatives of members of the bids and awards committee and the head of the procuring entity, up to the third civil degree by consanguinity or affinity. The law provides that information and communications technology shall be utilized in procurement via the government electronic procurement system. There shall be a single electronic portal to serve as the primary source of information on all government procurement. All government requirements from goods, consulting services to civil works must be centrally published in the said electronic system

The law created the Government Procurement Policy Board. It is headed by the Secretary of Budget and Management as chairperson and the Director General of the National Economic and Development Authority as alternate chair, with the Secretaries of Public Highways, Finance, Science and Technology, Health, Trade and Industry, Education, Defense, Energy, Interior and Local Government, and a representative from the private sector as members. The Board has the following general duties and responsibilities:

1) protection of the national interest in all matters affecting public procurement and effectuate broad procurement reforms in government;
2) formulation, review and amendment of procurement laws, rules and regulations;
3) evaluation of the effectiveness of the government's procurement reform program;

4) ensuring compliance by all procuring entities with the government's procurement reform program;
5) professionalizing the government procurement practitioners through training programs and the establishment of a procurement course;
6) the development and updating of the procurement manual and standard bidding documents; and
7) supervision and management of the government electronic procurement system

III. PROHIBITED ACTS UNDER THE LAW

A. For Public Officers

It is prohibited for public officers to:

1. Open any sealed bid including but not limited to bids that may have been submitted through the electronic system and any and all documents required to be sealed or divulging their contents, prior to the appointed time for the public opening of bids or other documents.
2. Delaying, without justifiable cause, the screening for eligibility, opening of bids, evaluation and post evaluation of bids, and awarding of contracts beyond the prescribed periods of action.
3. Unduly influencing or exerting undue pressure on any member of the bids and awards committee any officer or employee of the procuring entity to take a particular action which favors, or tends to favor a particular bidder.
4. Splitting of contracts which exceed procedural purchase limits and competitive bidding.
5. When the head of the agency abuses the exercise of his power to reject any or all bids with manifest preference to any bidder who is closely related to him

B. Private Individuals

Private individuals, as well as public officers who conspire with them are liable for the following acts:

1.) When two or more bidders agree and submit different bids as if they were bonafide, when they knew that one or more of them was so much higher than the other that it could not be honestly accepted and that the contract will surely be awarded to the pre-arranged lowest bid.
2.) When a bidder maliciously submits different bids through two or more persons, corporations, partnerships or any other business entity in which he has interest to create the appearance of competition that does not in fact exist as to be adjudged as the winning bidder.
3.) When two or more bidders enter into an agreement which calls upon one to refrain from bidding for procurement contracts, or which calls for withdrawal of bids already submitted, or which are otherwise intended to secure an undue advantage to any one of them.
4.) When a bidder, by himself or in connivance with others, employ schemes which tend to restrain the natural rivalry of the parties or operates to stifle or suppress competition and thus produce a result disadvantageous to the public.

Further, private individuals and any public officer conspiring with them shall also be punished if they commit any of the following acts:

1. Submit eligibility requirements of whatever kind and nature that contain false information or falsified documents calculated to influence the outcome of the eligibility screening process or conceal such information in the eligibility requirements when the information will lead to a declaration of ineligibility from participating from participating in public bidding.
2. Submit bidding documents of whatever kind and nature that contain false information or fal-

sified documents or conceal such information in the bidding documents.

3. Participate in a public bidding using the name of another or allow another to use one's name for the purpose of participating in a public bidding.
4. Withdraw a bid, after it shall have qualified as the lowest calculated bid/highest rated bid, or refuse to accept an award, without just cause or for the purpose of forcing the procuring entity to award the contract to another bidder. This shall include the non-submission within the prescribed time, or delaying the submission of requirements such as, but not limited to, performance security, preparatory to the final award of the contract.

C. Penalties

Those who are found in violation of the law will be sentenced to imprisonment of not less than six years and one day but not more than fifteen years .The public officer shall also suffer disqualification from public office. This

is without prejudice to prosecution under RA 3019 or the Anti-Graft and Corrupt Practices Act. Administrative sanctions or civil liability for forfeiture in favor of the government or payment of damages may also be imposed. Private individuals shall be permanently disqualified from transacting business with the government.

When the bidder is a juridical entity, criminal liability and the accessory penalties shall be imposed on its directors, officers or employees who actually commit any of the foregoing acts.

IV. RECENT CASES RELATIVE TO PUBLIC PROCUREMENT

Even after the passage of the procurement reform law, procurement anomalies have been reported in the form of bribery, rigged and negotiated bidding and "ghost" deliveries of supplies. In reports by the Philippine Center for Investigative Journalism (PCIJ), corruption in the procurement of guns, military airplanes, textbooks and supplementary educational materials, medicines and hospital supplies and infrastructure projects, have been exposed.

Based on the legislative inquiry conducted by the Philippine Senate Committee on Agriculture, the 728 million peso agriculture fund was intended for the procurement of fertilizers and farm equipment. The farm inputs and equipment however were overpriced. A big part of the fund also was found to have been distributed to selected local government units and people's organizations or non-government organizations that have links with legislators and local officials. The Office of the Ombudsman in June 2008 completed its preliminary investigation and recommended that criminal charges be filed against a former Undersecretary of Agriculture.

Another example of public procurement irregularity is the purchase of overpriced lampposts installed along the routes of delegates to the Association of Southeast Asian Nations meeting when the Philippines hosted it last year in Metro Cebu. The imported lampposts were reported to have cost 224,000 pesos each. But investigation reveals that each post costs only 83,000 pesos including materials needed for the installation, power, and cost of installation.

The goal of the national broadband network project was to establish a seamless connectivity of landline, cellular and internet services in all government offices nationwide. It was aimed at reducing communication costs incurred by government agencies. It was alleged however that the awarding of the contract to a foreign telecommunications company was facilitated by a high-ranking official of the Commission on Elections who was found to have ties with the winning company. The entire project cost was pegged at 329 million dollars which was supposed to cover equipment, engineering and management services, and training. The legislative inquiry on the issue found that the project is grossly overpriced because the original tender of the winning company was only 262 million dollars. The President, following the expose on the anomalous contract, cancelled the project. The Office of the Ombudsman is

currently conducting an investigation on the issue.

Contractors working on the Centennial Exposition project were made to “donate” to one of the political parties during the 1998 presidential elections. Another questionable transaction is the awarding of overpriced power contracts to preferred independent power producers. The 470 million dollar power plant project was alleged to have been awarded to a foreign company after brokering was done by government officials. Other recent overpriced public projects include the North Rail rehabilitation project, the Macapagal Highway, and the Ninoy Aquino International Airport Terminal 3.

V. INVESTIGATING CORRUPTION IN PROCUREMENT

In public procurement, private individuals or firms give bribes to public officials to be qualified as bidders, to convince public officials to formulate favorable specifications, to get inside information from public officials, to be selected as the winning contractor or upon winning the contract, to skimp on quality or inflate prices.

Bribes may include money, travel, meals, entertainment, gifts, favors, discounts or anything of value. In return, public officials get into procedural lapses, violations or revisions of rules, conflict-of-interest situations, or lapses in codes of conduct. The offer is usually made to government officials who exercise discretionary powers- those who request the allocation, those in the procurement committee who accept delivery or monitor projects and those who release the payment. Investigators of fraud in procurement examine whether these public officials have shown bias in favor of a particular bidder or succumbed to pressures exerted on them. Members of the bids and awards committee, especially the chairman and the secretary must be scrutinized. Investigators also look into conflict of interest situations, relationship of the officials who are involved in procurement to winning contractors and unexplained wealth of public officials and their family members. Bribes are paid not only to public officials but also to their spouses, parents, children, relatives or friends.

In building up cases of corruption in procurement, testimonial evidence is difficult to obtain because it comes from people who have some involvement in the procurement process. But there are other types of evidence that investigators gather to uncover fraud in procurement. Physical evidence is obtained by direct examination and observation of properties events, people. Analytical evidence includes computations, comparisons, separation of information into components. Documentary evidence may consist of contracts, accounting records, invoices, receipts, and management information and performance. The expertise of investigators, accountants, financial analysts, lawyers and others is necessary in investigating fraud in procurement.

The Commission on Audit has a checklist used in scrutinizing infrastructure projects. In addition to inspection, auditors also collect the following documents especially location maps, programs of work, voucher, contracts, accomplishment reports, picture of the site, paid checks, bid documents.

There can be corruption in all stages of the procurement process beginning with budget preparation. Budgets of local government units lean heavily on infrastructure projects and neglect other areas of development because of kickbacks offered to local officials by construction firms. Some public officials commit technical malversation or use money for purposes other than what it was intended for. To circumvent the limitation for the signing authority relative to the amount of the contract, some public officers split contracts or payments. Requirements on advertising and invitations to bid are breached. Some bidders rig public biddings by forming dummy companies that join in all the bids of the procuring entity. Others are in collusion to force the failure of bidding or take turns at winning contracts. Blacklisted erring firms form new companies and just move their operations to another government agency. The rule against advance payments is not observed and payments are made even if suppliers fail to submit required documents

VI. WORKING FOR MORE REFORMS

As provided for by R.A. 9184, the professionalization of procurement practitioners in the government is also one of the priorities towards establishing a sound procurement system in the Philippines. As of December 2005, the Government Procurement Policy Board has initiated roll-out trainings on R.A. 9184 and the use of the Philippine bidding documents to 60 percent of national government agencies and government-owned and controlled corporations and to 83 percent of local government units. The generic procurement manual has likewise been pilot-tested in several agencies. Since the enhancement of the electronic procurement system, government agencies registered has increased from 5,091 at the end of 2006 to 6,947 in 2008 or 84 percent of national government agencies, 92 percent of state colleges and universities, 51 percent of the government owned or controlled corporations and 5.5 percent of the local government units. Registered suppliers also increased from 16, 851 in 2006 to 29,330 in 2008. Through the government electronic procurement system, currently hosted by the Procurement Service of the Department of Budget and Management, 76,213 procurement opportunities have been processed while current opportunities stand at 6,383. Moreover, tripartite code of conduct has also been drafted for procurement officials, bids and awards committee observers and suppliers/contractors.

Several bills are currently pending in the Congress of the Philippines proposing amendments to R. A. 9184. One bill specifically provides for the coverage of procurement funds by foreign loans under the Official Development Assistance Act or R.A. 8182, as amended. Another intends to strengthen transparency by posting the criteria, ratings and calculations of bids used by the bids and awards committee in the procuring agency's website or that of the Government Procurement Policy Board. Finally, a bill aims to lessen the discretion of the procuring agency in the consideration of computed and responsive bid submissions.

The Office of the Ombudsman in 2006 designated resident ombudsmen to handle reports of fraud pertaining to procurement activities of government agencies. In partnership with the Procurement Watch, Inc., the Ombudsman developed the Observers' Feedback and Complaint Handling Mechanism to provide observers of the bids and awards committee guidelines in the submission of observation reports to the resident ombudsman in each agency.

A Procurement Transparency Group was also created in 2007 by virtue of the Executive Order No. 662-A to evaluate and monitor procurement activities of government agencies. Another undertaking is the Construction Sector Transparency Initiative which aims to supplement existing country initiatives to improve transparency and accountability in the procurement of infrastructure projects by disclosing basic information about the project.

VII. CONCLUSION

An approximate 414 million pesos has been recorded as savings earned from the use of the government electronic procurement system in five years from 2001 to 2006. In the 2006-2007 Survey of Enterprises on Corruption conducted by the Social Weather Survey, a leading survey group, majority of the owners and managers of big businesses noted that the law on procurement has helped reduce corruption in procurement transactions. The same survey likewise indicates that most or almost all companies which give bribes to win public contracts has decreased from 52 percent in 2004 to 46 percent in the period covered by the survey. This modest success should impel the officials involved in the procurement process, the private sector and procurement practitioners as well as the citizens to watch more closely and carefully what the government buys.

CURRENT STATUS OF PUBLIC PROCUREMENT IN THE PHILIPPINES

Roline M. Ginez-Jabalde[*]

I. INTRODUCTION

Prior to the passage of the Government Procurement Reform Act (R.A.9184) in 2003, public procurement in the Philippines is governed by various Executive Orders, Administrative Orders and Implementing Rules and Regulations which do not supersede each other or do not repeal existing/ previous rules which renders the procurement system ambiguous. With the enactment of the new procurement law and the issuance of the implementing rules and regulations, an omnibus law on public procurement was born which consolidates, organize the existing documents, and give real legal basis to public procurement.

A. Legal and Institutional Framework

Republic Act No.9184 also known as the Government Procurement Reform Act was enacted to eliminate or at least minimize corruption in procurement. It was signed into law on 10 January 2003 and became effective on 26 January 2003. On 18 September of the same year, the Implementing Rules and Regulations for domestic funded contracts (IRR-A) was signed and became effective on 08 October 2003. Foreign assisted projects (FAPs) are covered by Sections 4 and 43 of the law. This law, along with the implementing rules and regulations, standardizes public procurement conducted in all government entities. It applies to national government agencies (NGAs), state universities and colleges (SUCs), government owned and controlled corporations (GOCCs), government financial institutions (GFIs) and local government units (LGUs).

B. The Procurement Law

The Procurement Law covers the procurement of:

a. Infrastructure Projects
b. Goods, Supplies, Materials and Related Services
c. Consulting Services
d. Mixed Procurement, the nature of procurement shall be determined by the primary purpose of the contract.

C. Scope of Procurement Law

In the Philippines, the scope of procurement regulations covers the entire procurement cycle from procurement planning to project implementation and delivery. Each procuring entity shall judiciously prepare, maintain and update an Annual Procurement Plan (APP) for all its procurement. It shall be approved by the head of the procuring entity or the second ranking official. No procurement shall be undertaken unless in accordance with the APP. The procurement itself, from needs assessment to implementation, is conducted by the individual government departments, offices, or agencies.

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D. Establishment of the Government Procurement Policy Board (GPPB)

The procurement act also established the Government Procurement Policy Board (GPPB). This central body defines policies, implementing regulations, and standard documents; produces guidelines and manuals; and oversees the training conducted by procuring agencies. The GPPB shall under the administrative supervision of the Department of Budget and Management for general oversight and for budgeting purposes.

E. Key Features of the Government Procurement Reform Act

1. Removal of pre-qualification and strengthening of post-qualification
2. Use of the Approved Budget for the Contract (ABC) as the ceiling for bid price
3. Use of transparent, objective and non-discretionary criteria
4. Use of Generic Procurement Manuals and Philippine Bidding Documents
5. Use of Lowest Calculated and Responsive Bid for Infrastructure Projects, and Goods and Related Services, Highest Rated and Responsive Bid for Consulting Services.
6. Increased transparency in the procurement process
7. Professionalization of procurement officials
8. Inclusion of Penal and Civil Liabilities

F. Philippine Government Electronic Procurement System (Phil-GEPS)

The Philippine Government Electronic Procurement System shall serve as the primary source of information on government procurement.

All procuring entities shall:

- Utilize the G-EPS for the procurement of common-use supplies
- Post all procurement opportunities and results in the G-EPS website

Features of the G-EPS

The G-EPS includes the following features:

1. The Electronic Bulletin Board

   The G-EPS shall have a centralized electronic bulletin board for posting of procurement opportunities, notices, awards and reasons for award. Procurement entities shall post the Invitation to Apply for Eligibility and to Bid (IAEB) in the electronic bulletin board.
2. Registry of Manufacturers, Suppliers, Contractors, Distributors and Consultants
3. Electronic Catalogue
4. Virtual Store
5. Electronic Payment
6. Electronic Bid Submission

G. Certificate of Phil-GEPS registration now required as part of the legal documents

Certificate of Phil-GEPS registration is now required as one of the legal documents to be submitted by a prospective bidder for purposes of eligibility checking.

H. Bids and Awards Committee (BAC)

Bids and awards committees are established within each procuring entity to conduct the procurement proceedings. The procuring entity shall establish a single BAC for its procurement. However, the Head of the Procuring Entity may create separate BACs where the number and complexity of the procurement so warrant. The Head of the Procuring Entity can not be the Chairman or a member of the BAC. The Bids and Awards Committee shall have at least five (5) members but not more than seven (7). The members of the BAC shall have a fixed term of one (1) year, renewable at the discretion of the

Head of the Procuring Entity. Majority of members including BAC chairman and/or Vice Chairman constitute a quorum.

I. Procurement Methods and Procedures

The Philippines' procurement act designates competitive bidding as the standard procurement method. Exceptions are permitted under the conditions enumerated in the law and stipulated in more detail in Rule XVI of the Implementing Rules and Regulations. Alternative methods of procurement maybe resorted subject to the prior approval of the head of the procuring entity or his authorized representative and whenever justified by the conditions also provided in the law. These alternative methods are the following: Limited Source Bidding, Direct Contracting, Repeat Order, Shopping and Negotiated Procurement.

J. Announcement of Tender Opportunities

Procuring entities are required to publish tender openings twice in nationwide media to attract the greatest possible number of tenders, thereby helping to avoid collusion and failure of tenders. The Internet is also widely used for announcing tender opportunities, and the Government is expanding this instrument with the aim of enhancing transparency. It is now mandatory under the law that procuring agencies must continuously post procurement opportunities in their website and in the website of the procuring entity's service provider and in the electronic bulletin board of the Philippine Government Electronic Procurement System (Phil-GEPS). Further mechanisms to ensure transparency comprise the development of standard bidding and contract documents to the extent practical. Each procuring entity shall prepare its own bidding documents following the standard forms and manuals prescribed by the Government Procurement Policy Board (GPPB). The use of these documents is compulsory.

K. Bid Opening

To ensure the transparency of the bid opening – a crucial moment in the tendering procedure that allows bidders to verify whether bids have been altered or destroyed- it has to take place in public at a predefined place, date and time. These are specified in the Invitation to Apply for Eligibility and to Bid and the bidding documents. The bidders or their duly authorized representatives may attend the opening of bids. The minutes of the bid opening shall be made available to the public upon written request and payment of a specified fee to recover cost of materials. The law does not require bid opening right after the submission period, a requirement that is generally considered a safeguard against fraudulent alterations of bids during the time between the deadline for submission and the opening of bids.

L. Evaluation of Tenders

As regards the evaluation of tenders, the procurement law prescribes the selection of the eligible bidder that has submitted the lowest calculated responsive bid for the goods and civil works or the highest rated responsive bid for consultancy services.

M. Required Contents of Procurement or Bidding Documents

The procurement regulations in the Philippines describe in detail the required contents of procurement or bidding documents. Further mechanisms to ensure transparency comprise the development of standard bidding and contract documents to the extent practical. The Government Procurement Policy Board (GPPB) prepared Generic Procurement Manuals, Philippine Bidding Documents, Public Bidding Checklists and Sample Forms for the use of the various procuring entities. Each procuring entity shall prepare its own bidding documents following the standard forms and manuals prescribed by the Government Procurement Policy Board (GPPB). The use of these documents is

compulsory. Some of the high procuring entities like the Department of Public Works and Highways (DPWH), Department of Health (DOH), Department of Environment and Natural Resources (DENR) and the Department of National Defense (DND) have already adopted their own customized Procurement Manual. These procurement manuals are easily accessible to the public on the internet.

N. Safeguarding and Enforcing Integrity

Ensuring the proper conduct of buyers and suppliers is another fundamental element of efforts to curb corruption in public procurement. Proper conduct can be fostered through preventive institutional mechanisms, clear rules on conduct, and sanctions for corrupt behavior.

The Philippines through the Office of the Ombudsman with the participation of its partner agencies has initiated the drafting of the Tripartite Code of Conduct in Public Procurement. This specific code of conduct has taken into consideration the particular corruption risks in the field of public procurement. This is intended to cover the three sectors involved in public procurement namely: the procurement officials, the manufacturers, suppliers, distributors, contractors and consultants who will be the prospective bidders and the members of the civil society organizations who will act as Bids and Awards Committee (BAC) observers. This is the reason why it is called tripartite code of conduct in public procurement. This specific code addresses issues such as conflict of interest and the acceptance of gifts by public officials in the exercise of their duties. However, this code is still subject to the approval of the Government Procurement Policy Board (GPPB). For the meantime that this code is not yet in effect, the general law which is the Code of Conduct and Ethical Standards for Public Officials and Employees (Republic Act 6713) is applicable to procurement personnel only. The suppliers and contractors are governed by their respective Code of Conduct and the BAC observers on the other hand have their own Code of Ethics and Standard of Conduct.

Under the Procurement Law, there is a provision requiring the bidders to make a disclosure of relations. All bids shall be accompanied by a sworn affidavit of the bidder that he or any officer of their corporation is not related to the Head of the Procuring Entity by consanguinity or affinity up to the third (3rd) civil degree. This applies to the Chairman and Members of the Bids and Awards Committee, BAC Secretariat, and Members of the Technical Working Group.

Further, civil society organizations are permitted to monitor all stages of the procurement process. The BAC shall invite in all stages of the procurement process, in addition to the representative of the Commission on Audit (COA) at least two (2) observers to sit in its proceedings composed of: At least one (1) shall come from a duly recognized private group in a sector or discipline relevant to the procurement at hand, for example: a) For infrastructure projects- (i) National Constructors Associations duly recognized by the Construction Industry Authority of the Philippines (CIAP), such as , but not limited: The Philippine Constructors Association, Inc. (PCA); and The National Constructors Association of the Philippines, Inc. (NACAP) b) For goods- A specific relevant chamber-member of the Philippine Chamber of Commerce and Industry (PCCI) c) For consulting services- (i) A project related professional organization accredited or duly recognized by the Professional Regulation Commission (PRC) or the Supreme Court (SC) such as, but not limited to: The Philippine Institute Of Civil Engineers (PICE) 2. The other observer shall come from a non-government organization (NGO). The observers shall come from an organization duly registered with the Securities and Exchange Commission (SEC). Observers must be informed at least two days before the stages of procurement to which observers shall be invited. The absence of observers will not nullify the BAC proceedings, provided that they have been duly invited in writing. BAC observers are required to prepare a report either jointly of separately indicating their observations made on the bidding activity conducted. The report shall assess the extent of the BAC's compliance with the provisions of the Implementing Rules and Regulations and areas of improvement in the BAC proceedings.

The Philippines is already involving the civil society organizations in the monitoring of project implementation and delivery of goods. At the Department of Education, the Ateneo School of

Government G-Watch together with the Boy Scouts and Girl Scouts of the Philippines had participated in the "Text Book Count". The Concerned Citizens of Abra for Good Government (CAGG), a non-government organization based in northern Philippines has long been engaged in the monitoring of project implementation in civil works. At the Department of Public Works and Highways (DPWH), the government agency engaged in the procurement of infrastructure projects such as roads and bridges is taking steps to form an effective partnership among stakeholders in the national roads sector. This partnership is called *Bantay Lansangan*, Inc. (Road watch, Inc.) The objective is to provide for the dynamic partnership of all road stakeholders – government, private in the undertaking, review, analysis, monitor, advocacy of reforms in the road sector that leads to improved national road management and greater user satisfaction. The partnership will increase transparency and information and monitor DPWH performance in national road services. It is expected to reduce transaction costs for road construction and maintenance, improve response maintenance, increase road uses satisfaction, and improve public perception of DPWH. The DPWH called on various road stakeholders to operationalize *Bantay Lansangan* as a viable potent force for optimum efficiency in public works (roads) projects.

O. Complaint Procedure

Irregularities and corruption may also be detected in the course of complaint procedures. Such procedures, which may also help bolster bidders' trust in the fairness of the procedures, exist in the administrative level and, if administrative remedies do not suffice or remain fruitless, through the judiciary. A non-refundable protest fee, amounting to 1% of the contract value, must be paid to trigger the administrative review procedure.

Aside from complaints by aggrieved bidders, which may lead to the detection of corruption in the procurement process, procuring entities are subject to audit. In addition, observers from civil society organizations are encouraged to develop and submit their own monitoring reports. The Office of the Ombudsman in collaboration with Procurement Watch, Inc. with support provided by the Asia Foundation and the United States Agency for International Development drafted and issued the Operational Guidelines on Handling Feedback and Complaints Submitted by Bids and Awards Committee (BAC) Observers. This is now embodied in Office Order No. 66 of the Office of the Ombudsman duly published in the Official Gazette. The BAC Observer's Report maybe filed with the Office of the Resident Ombudsman assigned in the procuring agency or directly with the Office of the Ombudsman. The Office of the Ombudsman will evaluate the reports to determine whether an individual procuring entity did abide by the rules. If not, then the Office of the Ombudsman may initiate the filing of criminal or administrative complaints or both against the officials involved in the procurement or against the officials and the bidders when there is a conspiracy involved to undermine the integrity of procurement proceedings.

P. Ensuring Integrity through Dissuasive Sanctions

The Philippine procurement law provides penal and economic sanctions as the main instruments to safeguard and enforce integrity. The law itself establishes penal sanctions for procurement-specific corruption, in addition to offenses established by the generally applicable penal law. These offenses cover public officials as well as suppliers' staff. Civil liability is linked to conviction for these acts.

Effective sanctions constitute strong incentives for both bidders and public servants to maintain their integrity in the procurement process. Such sanctions are usually provided in penal or administrative law. In addition, civil liability for damages can serve as economic sanctions against dishonest acts of bidders. In the Philippines, our Procurement Law provides for the following sanctions:

1. Criminal Liability

Without prejudice to the provisions of R.A. 3019, as amended (Anti-Graft and Corrupt Practices Act) and other penal laws, procurement officials who commit any of the following acts shall suffer the penalty of not less than six (6) years and one (1) day but not more that fifteen (15) years: example –

opening any sealed bid or divulging its contents before bid opening; splitting of contracts which exceed procedural purchase limits to avoid competitive bidding; abuse of authority of the head of the procuring entity of his power to reject any and all bids; delaying, without justifiable cause, the screening for eligibility, opening of bids, evaluation and post evaluation of bids, and awarding of contracts beyond the prescribed period.

Q. Private Individuals (Manufacturers, Suppliers Distributors, Contractors and Consultants)

Private individuals who commit any of the following acts and who conspire with any public officer shall also suffer the penalty of not less than six (6) years and one (1) day but not more than fifteen (15) years: Example of these acts are – when two or more bidders agree not to submit bids or withdraw those already submitted to secure advantage to any of them; when a bidder submits different bids through two or more persons, corporations, partnerships or any other business entity in which he has an interest to create the appearance of competition that does not in fact exist so as to be adjudged as the winning bidder.

R. Civil Liability in Case of Conviction

A conviction under the Procurement Law or R.A. 3019 as amended shall carry with it civil liability which may consist of restitution for the damage done or the forfeiture in favor of the government of any unwarranted benefit derived from the act or acts in question or both at the discretion of the courts.

S. Administrative Liability

Prospective bidders who will commit any of the following acts shall be subject to administrative liability:

1. Submission of eligibility requirements and/or bids containing false information or falsified documents;
2. Allowing the use of one's name, or using the name of another for purposes of public bidding;
3. Withdrawal of bid, or refusal to accept an award or enter into a contract without justifiable cause;
4. Refusal or failure to post the required performance security;
5. Termination of the contract due to the default of the bidder;
6. All other acts that tend to defeat the purpose of the competitive bidding such as an eligible contractor not buying bid documents, and contractors habitually withdrawing from bidding or submitting letters of non-participation for at least three (3) times within a year, except for valid reasons.

Administrative Penalties:

First Offense – One Year Suspension
Second Offense – Two Years Suspension
Third Offense – Disqualification to participate in any public bidding or what is termed as blacklisting

In addition to the penalty of suspension, the Bid Security or the Performance Security posted by the concerned bidder or prospective bidder shall also be forfeited.

The Government Procurement Policy Board (GPPB) issued Resolution No. 09-2004, dated 20 August 2004 providing for the Uniform Guidelines for Blacklisting of Manufacturers, Suppliers, Distributors, Contractors and Consultants.

Under these Guidelines, the Prohibition on Blacklisted Persons/Entities to Participate in the Bidding of Government Projects/Contracts is extended to the following:

1. A person/entity that is blacklisted shall not be allowed to participate in the bidding of all

government projects during the period of disqualification unless it is delisted.

2. A joint venture or consortium which is blacklisted or which has blacklisted member/s and/or partner as well as person/entity who is a member of a blacklisted joint venture or consortium are, likewise, not allowed to participate in any government procurement during the period of disqualification.
3. In the case of corporations, a single stockholder, together with his/her relatives up to the third civil degree of consanguinity or affinity, and their assignees, holding at least twenty percent (20 %) of the shares therein, its chairman and president, shall be blacklisted after they have been determined to hold the same controlling interest in a previously blacklisted corporation or in two corporations which have been blacklisted; the corporations of which they are part shall also be blacklisted.

T. Harmonization of the Rules and Procedures of the Development Partners and the Government of the Philippines

Over the years, a number of efforts had been done towards the harmonization of the rules and procedures of the Development Partners and the Government of the Philippines. This brought the issuance of the following documents: Philippine Bidding Documents (PBDs); Generic Procurement Manuals (GPMs); and Local Government Procurement Manuals. All of which contain harmonized provisions or relevant references or both to the rules of Asian Development Bank (ADB), Japan Bank of International Cooperation (JBIC), and the World Bank. Recent developments have spurred anew the fervor in taking harmonization to the next level- that of developing a single document providing rules and procedures for the procurement of foreign funded projects, the Implementing Rules and Regulations Part B of R.A. 9184 (IRR-B). The First Implementing Rules and Regulations-B Committee Meeting was held on June 3, 2008. The Committee likewise identified the following issues and concerns which can be included in the IRR- B: 1. terms to be defined: loan and grant; 2. policy of competitive bidding even for tied loans; 3. bringing IRR-A and IRR-B together; 4. harmonize the documentary requirement for bidding in order to foster competition (lessen the number of documentary requirements during bidding); 5. revisit the bid security and performance security requirements, reference to brand names, joint venture submissions, arbitration, no object process, warranty; 6) imposition of/defining timelines for foreign assisted projects; and 7) commitment fees. By November-December of this year, the Committee is expected to work on the finalization and presentation of the final draft of the Implementing Rules and Regulations-B.

II. RECOMMENDATIONS TO IMPROVE PUBLIC PROCUREMENT IN THE PHILIPPINES

1. Conduct capacity build up among members of the civil society organizations and provide them with funding support to sustain their participation as observers in the various bidding stages. At present, their participation is based only on the spirit of volunteerism, that is the reason why their active participation can not be sustained. There are only few BAC Observers invited who actually attend the BAC proceedings and a fewer percentage of BAC Observers' reports are generated from them.
2. The present procurement law provides that the absence of BAC Observers during the procurement proceedings will not nullify the proceedings. To insure transparency in public procurement, we recommend for the amendment of the law and make the presence of BAC observers as compulsory requirement, without the presence of the BAC observers, the proceedings are nullified.
3. Fast track the drafting of the IRR-B and its implementation for the foreign assisted projects;

4. Develop a framework and guidelines for Congressional insertions and the Countryside Development Fund (CDF) of members of the Congress.
5. For the Government Procurement Policy Board (GPPB) to fast track the review and approval of the Tripartite Code of Conduct in Public Procurement and its strict implementation once approved.
6. Actively pursue the enactment of a whistleblower protection system which would facilitate the detection of corruption in public procurement.
7. Enforce processing lead-time through the application of sanctions and monitor the process through procurement audits.

III. CONCLUSION

The Philippines' framework for public procurement contains a number of comprehensive mechanisms that help curb corruption in public procurement. However, problems continue to beset the area of public procurement. Strict enforcement of the processing lead- time through the application of sanctions should be observed. There must be monitoring of the processes through independent procurement auditors. Support should be given to the members of the civil society organizations to ensure their continued participation as observers in the conduct of procurement proceedings and monitors in contract implementation and delivery of goods. Finally, we enjoin the legislature to enact a whistleblower system which would facilitate the detection of corruption in public procurement.

PRESENTATION SESSION III

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Please note that the following papers have not been edited for publication.
The opinions expressed therein are those of the authors, and
do not necessarily reflect the position of the departments or agencies they represent.

FIGHTING FRAUD AND CORRUPTION: HOW THE EUROPEAN UNION PROTECTS ITS PUBLIC FUNDS

Johan Vlogaert[*]

I. INTRODUCTION

The Millennium Development Goals that have been agreed among the world's leading development institutions set very ambitious targets and challenges for the international donor community, to be achieved by the year 2015. The European Union, as one of the key players in the field of external aid, is actively participating in this unprecedented effort to meet the needs of the world's poorest peoples by stimulating, supporting and financing numerous development projects. This constantly growing development effort, which aims to distribute the development funds coherently, transparently and in the most effective way, aggravates at the same time the risk of fraud and irregularities, since in parallel the number of payments of development aid is also steadily rising.

The European Anti-Fraud Office, OLAF, was created with the aim of helping the European institutions fight fraud and financial irregularities, which also occur with funds paid out as development assistance. At the same time, one of its major tasks is to ensure that the contributions made by the Member States in the framework of the European Union's development assistance are properly spent. OLAF plays an active role in the field of administrative investigations, and in performing its investigations it cooperates with the Member States concerned. Moreover, in the field of external aid, it requests the assistance of and seeks to enhance its cooperation with multiple actors, including the international donors, auditors, international investigative bodies and authorities of the states benefiting from the EU's external aid.

Aware of the complexity of development assistance policies and based on its operational experience, OLAF acknowledges the problems resulting from different legal systems in the beneficiary countries and the difficulties generated by insufficient collaboration between the investigative services of the countries concerned. Last but not least, OLAF emphasises the urgent need for enhanced cooperation between the donor institutions, in order to exchange data, share know-how (i.e. regarding observed and discovered modus operandi) and put strong emphasis on training and mutual, joint cooperation.

This article will present OLAF's overall structure, legal bases, competencies and operational network, and will also give an insight into day-to-day investigative activities. Given that our team performs investigations in the external aid field we will try to present an outline of its activities and challenges in the field of development and humanitarian aid as well as to indicate the problems that OLAF is currently facing in investigations in this area.

We hope that this article will make a modest contribution to the task in hand and serve as an invitation to cooperate with the European Union departments in the fight against fraud in the field of development and humanitarian aid.

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II. OLAF'S MISSION

From the moment of its creation on 1 June 1999, OLAF was given a hybrid status. It is formally part of the European Commission, enabling it to exercise Commission powers, but it enjoys budgetary and administrative autonomy, designed to make it operationally independent. Its mission is to protect the financial and other interests of the Community against fraud and irregular conduct liable to result in administrative or criminal proceedings. To that end, the Office exercises in complete independence the powers of investigation conferred on the Commission by Community legislation. It conducts administrative investigations.

EU Regulation 1073/99 provides that OLAF is to exercise the powers conferred on the Commission in order to step up the fight against fraud, corruption and any other illegal activities detrimental to the Communities' financial interests. This remit covers all Community revenues and expenditures. It includes the general budget, budgets administered by the Communities or on their behalf and certain funds not covered by the budget, administered by the Community agencies for their own account. It also extends to all measures affecting or liable to affect the Communities' assets. Finally, it covers other, non-financial interests.[1]

A. OLAF's Powers and Tasks

OLAF's core activity is performing administrative investigations; it conducts internal and external administrative investigations, as defined in Article 2 of Regulation 1073/99. It may also perform its coordination and assistance tasks by conducting criminal assistance cases, coordination cases, and monitoring cases. Moreover, OLAF assigns priority to developing effective cooperation with the Member States, making them more aware of their responsibilities and encouraging them to develop their own controls for combating fraud. It offers them assistance in conducting investigations by providing them with information gathered at Community level and coordinates the operational activities of the national authorities in transnational cases. It maintains direct contact with national judicial, law-enforcement and administrative authorities. OLAF has established the Anti-Fraud Information System (AFIS), a secure network for corresponding with the Member States and providing mutual assistance. Coordination is also facilitated by the Advisory Committee for the Coordination of Fraud Prevention (COCOLAF). Regarding intelligence, OLAF provides support at both Member State and Community level. It provides assistance with respect to specific operations and strategic analysis and risk assessment in order to target resources at the area of greatest risk.[2]

In addition, OLAF has started entering into what are referred to as "cooperation agreements" with other international investigation services, such as the Integrity Department of the World Bank, but also with authorities in non-EU countries that have responsibility for controlling/monitoring/auditing/investigating financial crime and incoming donor funds.

1. Staffing of OLAF

The Director-General of OLAF exercises the functions of appointing authority (AIPN) under the Staff Regulations of officials of the European Communities, and of the authority authorised to conclude contracts of employment under the conditions of employment of other servants. OLAF staff comprises Commission employees who are subject to the Staff Regulations and other general rules applicable to Commission staff. In mid-2007, there were approximately 420 persons employed at OLAF, of whom nearly 120 were employed as investigators working in diverse fields of EU expenditure.

1 OLAF Manual, p. 13.
2 OLAF Manual, p. 16.

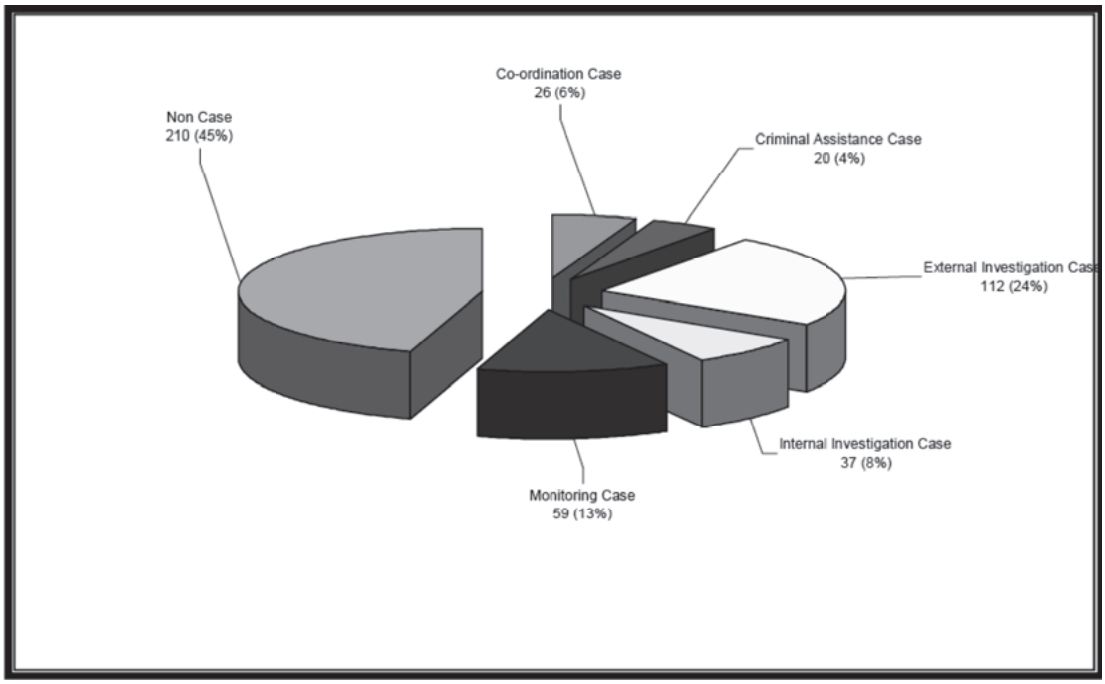
OLAF is divided into four Directorates: Directorates A and B perform operational and investigative activities, Directorate C is charged with intelligence and follow-up of OLAF investigations (disciplinary, financial, judicial and administrative), and Directorate D incorporates conceptualisation of the policy work, preparation of anti-fraud legislation and provision of logistical support to other units of OLAF. Many of the investigators and other OLAF employees are former prosecutors, judges, police investigative officers, tax inspectors, auditors or representatives of other anti-fraud investigative or supervisory organisations from the Member States. Contrary to other Commission DGs, where usually permanent officials are in the majority, many OLAF colleagues work on a temporary basis: as temporary agents, contract staff or seconded national experts. This situation is due to the very specific tasks performed by the investigators and the qualifications required, which cannot be easily found among regular EC staff. Nevertheless, a trend can currently be observed whereby the investigative experience of OLAF colleagues is being retained in house, and simultaneously the number of the permanent OLAF staff is steadily growing.

B. Types of OLAF Cases and Fields of Investigations and Operations in which OLAF is Active

As already explained above, OLAF undertakes investigations when it discovers that the financial interests of the EU are endangered. OLAF classifies its cases under four administrative categories: internal investigations, external investigations, coordination cases and criminal assistance cases. If the recommendation is not to open a case, the matter should be classified in one of three categories: monitoring cases, non-cases, and prima facie non-cases.[3]

As shown below (Fig. 1), much of the information received by OLAF is classed within the category of non-cases (45%), whereas decisions to open, for instance, an external investigation account for 24% of the decisions undertaken.

Figure 1: Decisions taken in 2006[4]



1. Internal Investigations

Internal investigations are administrative investigations within the Community bodies for the pur-

3 OLAF Manual, p. 75.
4 OLAF Seventh Activity Report, http://ec.europa.eu/anti_fraud/reports/olaf/2006/summary_en.pdf.

pose of detecting fraud, corruption or any other illegal activity affecting the financial interests of the European Communities. Additionally, internal investigations cover serious matters relating to the discharge of professional duties that constitute a dereliction of the obligations of officials and other servants, members of the institutions and bodies, heads of offices and agencies, or members of staff, liable to result in disciplinary or criminal proceedings. (Individuals who work inside Community bodies but are not subject to the Staff Regulations, such as temporary agency staff, cannot be the subject of an internal investigation.) Units A1 and A2 are in charge of internal investigations. In addition, Unit A2 has a special assignment to deal with most cases related to financing by the European Investment Bank (EIB).

2. External Investigations

External investigations are administrative investigations outside the Community bodies for the purpose of detecting fraud or other irregular conduct by natural or legal persons. They may be carried out under either horizontal or sectoral legislation. Such cases are classified as external investigations where OLAF provides most of the investigative input.

There are various ways in which OLAF can undertake its anti-fraud activities. As it cannot carry out preventive checks on EU-funded projects on its own initiative, OLAF has to start looking into a matter in response to information or allegations indicating the possible existence of a serious irregularity or fraud.

This kind of information can be received by OLAF in various ways: it can for example reach OLAF in the form of a letter or an e-mail from a concerned citizen or anonymous informant. Sometimes it can come from a whistleblower working in one of the EU institutions or agencies. It can furthermore be information discovered by the media, or simply any information picked up by OLAF in the course of its duties. It should be stressed that information indicating serious irregularities in the field of external aid is often discovered primarily by other Commission bodies, i.e. EuropeAid (AIDCO) or an EU Delegation in the country concerned, which manages the project and maintains contact with the beneficiary. In such cases EuropeAid or the EU Delegation forwards information once it becomes aware of the irregularities during the implementation of the project (for example serious irregularities or mismanagement that come to light thanks to the audits performed). Apart from audit results, there are other symptoms indicating that there is a serious problem with the funding disbursed. The EU as a contracting authority can also encounter problems with communication and interim or final reports which should prove that the activity financed by the EU has taken place. Cases of NGOs that fail to submit any data or report after having received funding, by simply “vanishing into thin air”, are also referred to OLAF. It is worth mentioning that there is also a special telephone number in every EU Member State, called the “OLAF Freephone”, which allows EU citizens to report fraud to the Commission departments.

Once an allegation is received by OLAF, the information is registered and then forwarded to the competent investigation unit. The Head of Unit appoints one or two evaluators who are from then on responsible for evaluating and presenting an assessment of the initial information. During the assessment phase, which initially lasts two months (but can be extended if necessary), the evaluators undertake various activities, one of the most important of which is checking whether EU finances are concerned. Subsequently, they communicate with the source of the information in order to verify the facts and obtain any clarifications that are needed and at the same time request the files concerning the projects in question from the EU bodies managing and supervising them (AIDCO, ECHO, EU Delegations). In some specific cases, the evaluator also contacts the OLAF Intelligence Unit in order to request background, supplementary information and data analysis from the operational intelligence analysts.

Once the evaluator has gathered all the necessary information related to the allegation and project in question, he proceeds to draft the initial assessment. In this internal OLAF document the evaluator describes the allegation, assesses its importance and financial impact, gauges the reliability of the source, and puts forward a proposal as to whether or not an investigation should be opened. Where opening of an investigation is proposed, the evaluator also presents a workplan setting out the steps to be taken in the

future investigation, the legal bases applicable, and suggestions for the staffing of the investigation team.

The assessment of the initial information is discussed and appraised by the OLAF Board, which makes recommendations to the Director, who decides whether or not to open an external investigation.

(i) Types of external investigation

The Directorates for Investigations and Operations (Directorates A and B) are responsible for carrying out investigations and other operational tasks at OLAF. They are headed by Directors, who, in addition to their standard managerial roles, also chair the weekly meetings of the Executive Board. The Directorates are organised according to a flexible arrangement in which the teams (within the EU institutions referred to as "units") are in charge of specific areas of investigative and operational activity. Within the team structure, Heads of Unit (HoUs) are responsible for ensuring the quality and effectiveness of work carried out under their authority by teams or individuals. A Head of Unit may also carry out other activities, or manage such activities, if empowered to do so by senior management. Heads of Unit may appoint Heads of Operations to assist them in their operational work and represent them as required. While they may at times be required to carry out some managerial tasks, Heads of Operations are essentially investigators and continue to handle their own casework.

The main role of investigators is to conduct investigations and other operational activities on behalf of OLAF and under the responsibility of the Heads of Unit. Investigators carry out the work provided for in the case workplan in accordance with the applicable rules and regulations, including the receipt and assessment of information, investigation activities, contacts at appropriate level with relevant authorities and the preparation of notes and reports. They also make recommendations as to follow-up, lessons learned and fraud-proofing.

An overview of the investigative and operational units, broken down by the field of activities related to the part of the EU budget concerned by their investigations, is presented below.

(a) Direct expenditure

Unit A.3 is responsible for investigations and operational activities in relation to direct expenditure and external Phare and Tacis aid (enlargement cases and financial aid to the former Soviet republics). The activity of the Unit is divided approximately equally between these two areas.

Cases in the external Phare and Tacis aid sector are allocated on the basis of specified geographic areas. This is designed to ensure that expertise is developed in the specific geographic area, a consistent approach is taken, contacts and information flow are facilitated and working priorities and investigation strategies are established.

(b) External aid

Unit A.4 is responsible for investigations and operational activities in relation to external aid except Phare and Tacis. Its activities include investigations relating to EU humanitarian and development aid to non-EU countries (Asia, including the Middle East, Africa, Latin America, the Pacific). Such aid may fall prey to complex and well organised financial fraud, facilitated by the large number of public and other institutional donors, the lack of coordination in their planning, monitoring and auditing activities, and complexity in their accounting and reporting. The investigators working in this unit possess extensive knowledge in the field of external aid funds and development financial mechanisms, as well as a good command of several languages; moreover, they spend approximately 60 days per year performing missions and on-the-spot checks in the countries concerned. Since the aim of this article is to present the activities of OLAF in the field of external aid, these matters will be discussed in detail in point 3.

(c) Structural funds

OLAF's Unit B.4 is responsible for investigations and operational activities in relation to "structural actions", for which management is shared with the national authorities in Member States. The Funds concerned are:

- the European Regional Development Fund (ERDF);
- the European Social Fund (ESF);
- the Financial Instrument for Fisheries Guidance (FIFG);
- the Guidance Section of the European Agricultural Guidance and Guarantee Fund (EAGGF — Guidance);
- the Cohesion Fund.

The main responsibilities for managing and monitoring structural funds expenditures remain with the Member States. When allegations of serious irregularities or fraud are brought to OLAF's knowledge, the Office may, after careful assessment, decide to intervene. Unit B.4 works closely with the Commission departments performing checks on the systems established by the Member States to comply with the principles of sound financial management (DG REGIO, DG EMPL, DG AGRI, DG FISH), as well as with the management and supervisory authorities in the Member States.

(d) Agriculture

Unit B.1 is responsible for investigations and operational activities in relation to:

- application of the agricultural legislation and all activity in the framework of the common organisation of agricultural markets with implications for the EU budget (agricultural trade as well as agricultural aid and subsidies). Agricultural trade cases concern import activities (related to the payment of customs duties) and/or export operations (involving customs activities and financial responsibility in the area of export refunds);
- the application of customs legislation concerning specified products;
- food aid for non-EU countries;
- application of the Washington Convention (CITES);
- public and animal health matters.

(e) Customs

Units B.2 and B.3 are responsible for investigations and operational activities, undertaken in coordination with partners in the Member States and non-EU countries, to combat fraud in the areas of customs, cigarettes, VAT, alcoholic beverages, mineral oils and the diversion of precursor chemicals. The customs investigations shared by the two units tackle fraud relating to:

- customs and precursors: all types of customs fraud related to industrial products, textile products and fish, including smuggling, false declaration of goods or value, false declaration of origin, and evasion of anti-dumping duties. These units are also responsible for combating attempts to obtain illegal supplies of precursor chemicals;
- cigarettes and alcohol: smuggling, diversion and counterfeiting of these products;
- VAT and mineral oils: international VAT carousel fraud and other intra-Community VAT fraud. Units B.2 and B.3 also provide assistance in combating the smuggling, misdescription and diversion of mineral oils.

Where the OLAF Board decides not to open either an external or an internal investigation, it can be decided to deal with the matter in one of the following ways:

3. Co-ordination Cases

Coordination cases are cases that could be the subject of an external investigation, but where OLAF's role is to contribute to investigations being carried out by another national or Community body by, among other things, facilitating the gathering and exchange of information and ensuring operational synergy among the relevant national and Community departments; the main investigative input is provided by other authorities. OLAF's role includes facilitating contacts and encouraging the responsible authorities to work together.

4. Criminal Assistance Cases

Criminal assistance cases are cases within the legal competence of OLAF in which the competent authorities of a Member State, candidate country or non-EU country carry out a criminal investigation and request OLAF's assistance or OLAF offers its assistance.

5. Monitoring Cases, Non-Cases and Prima Facie Non-Cases

(i) Monitoring cases

These are cases where OLAF would be competent to conduct an external investigation, but in which a Member State or other authority is in a better position to do so (and is usually already doing so). Monitoring cases are passed directly to the authority deemed competent to handle them. No OLAF investigation resources are required, but, as the interests of the EU are at stake, OLAF will follow up the case, via the appropriate follow-up unit.

(ii) Non-cases

A matter is classified as a non-case where there is no need for OLAF to take any investigation, coordination, assistance or monitoring action. Non-cases result from assessments that conclude that EU interests appear not to be at risk from irregular activity, or other relevant factors indicate that no case should be opened. This would occur, for example, if only one Member State is concerned, and is already dealing with a matter in a satisfactory manner or where an irregularity observed does not have any impact on the finances of the EU. This process may result in the transmission to Member States of information about possible offences not related to the protection of EU interests.

(iii) Prima facie non-cases

This is where information is received which clearly and unequivocally does not fall within the competence of OLAF, and the responsible Head of Unit proposes not to refer the information for assessment.[5]

6. Sanctioning and Recommendations Resulting from OLAF Actions

OLAF has no powers to impose sanctions. At the closure of an investigation, and even in the course of an investigation, OLAF can make recommendations, based on its findings, to those authorities that have the necessary powers to impose sanctions. These recommendations may be of a financial nature (e.g. a recommendation to recover funds), administrative (i.e. a recommendation to improve contractual provisions or legislation, a recommendation to change and improve distribution of the funds or a suggestion as to how to improve overall control and effectiveness), disciplinary (i.e. a recommendation to the competent EU body that a disciplinary procedure be launched against a staff member), or judicial (e.g. a recommendation to transmit the relevant facts to a judicial/law-enforcement service in a Member State or non-EU country with a view to launching criminal proceedings against individuals or companies).

5 OLAF Manual, p. 75.

C. OLAF and External Aid Investigations

1. Introduction: Importance of EU Development and Humanitarian Aid

By providing almost 10 billion euros worth of aid each year, the EC is one of the most important players in the field of development and humanitarian aid. Moreover, Europe has expressed a strong commitment to increase and strengthen its involvement in the years ahead.

Whereas in the past aid was often project-based, the future will see a move towards targeted and non-targeted budget assistance for the countries concerned.

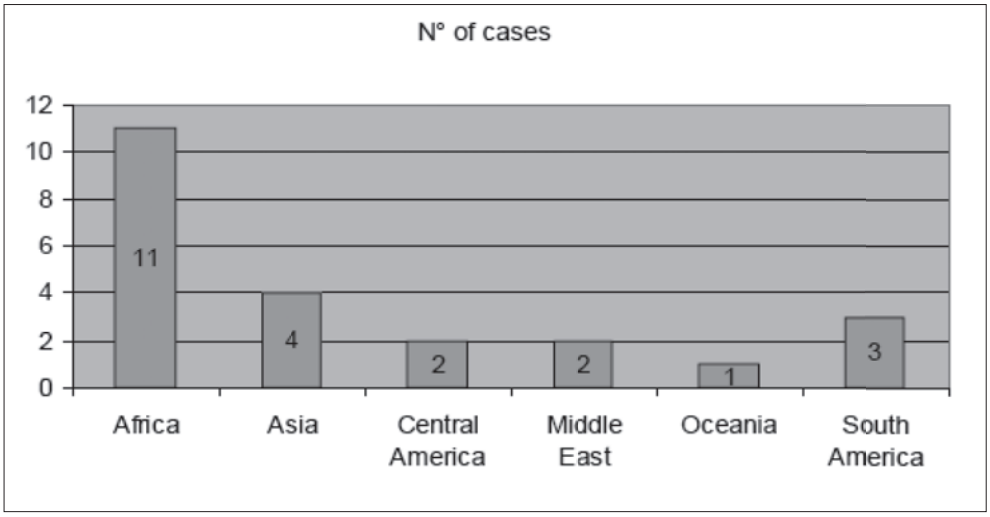
The aid is channelled via a variety of financial instruments, including the financing of charities, associations and NGOs, financing via other international donors like the UN or the World Bank, or as budget aid: directly to the country concerned.

While at the beginning of 2000 only a very few cases were reported to OLAF, we currently have a case-load of some 58 ongoing investigations and 46 initial assessments of information, covering all developing regions and countries receiving aid funds from the EU.

In view of this situation, OLAF is reinforcing its contacts with the EU bodies concerned, especially EuropeAid, but also with the monitoring bodies of other major donors. These may be agencies in Member States, non-EU countries, or other international institutions.

It is indeed our belief, based on experience, that only by working together will we be able to tackle major fraud in this area. To be an investigator in the field of development and humanitarian aid requires substantial financial investigative training and experience. Such an investigator also needs to have intuitive, communication and diplomatic skills allowing him/her to discuss very sensitive issues and to facilitate discussions at technical but very often at the highest political level too. Colleagues boasting these qualities are welcome to join us.

Figure 2: External aid cases opened in 2006 by geographic region[6]



6 Source: OLAF Seventh Activity Report, http://ec.europa.eu/anti_fraud/reports/olaf/2006/report_en.pdf.

2. Types of Financing Mechanisms

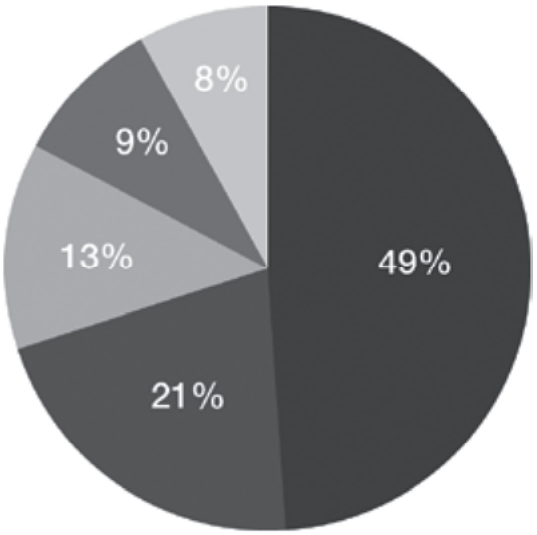
(i) European Development Fund (EDF)

The European Development Fund (EDF), created by the Treaty of Rome in 1957, is the main instrument providing Community aid for development cooperation in the ACP (African, Caribbean and Pacific) States and Overseas Countries and Territories (OCT). The EDF is currently not under the Community's general budget. Funded by the Member States, it is subject to its own financial rules and is managed by a specific committee. It consists of several instruments, including grants, risk capital and loans to the private sector. The ninth EDF has been allocated 13.5 billion euros for the period 2000-2007, and for the period 2008-2013 the aid granted to ACP States and OCTs will continue to be funded by the EDF.

Most of the current caseload of OLAF's Unit A.4 relates to projects and bodies financed by the EDF, with a strong emphasis on ACP countries.

Figure 3: How much does each region get from the EU?

The EU, including Member States' individual disbursements, contributes approximately €30 billion per year in external assistance. This accounts for over half of global development aid. In 2005, external assistance amounted to €10.4 billion. Of this, EuropeAid managed €7.5 billion. The geographic breakdown of the aid managed by EuropeAid is as follows:[7]



- Africa, Caribbean and Pacific: €3 660 million
- Mediterranean and Middle East: €1 080 million
- Asia: €830 million
- Eastern Europe, Central Asia and Caucasus: €520 million
- Latin America: €330 million

Horizontal programmes: €1 090 million

(ii) Neighbourhood policy and MEDA, ALA and other financing instruments

The MEDA programme is the principal financial instrument of the European Union for the implementation of the Euro-Mediterranean Partnership. The programme is conducted by DG EuropeAid and

7 http://www.eib.org/about/the-eib,-the-eus-financing-institution.htm.

offers technical and financial support measures to accompany the reform of economic and social structures in the Mediterranean partner countries.

Examples of projects financed by MEDA are: structural adjustment programmes in Morocco, Tunisia and Jordan; Syrian-Europe Business Centre; the social fund for employment creation in Egypt; rehabilitation of the public administration in Lebanon; rural development in Morocco.

Currently OLAF cases cover most of this region, including Syria, Lebanon, the Palestinian Territories, Israel, Tunisia, Algeria and Morocco.

(iii) European Investment Bank (EIB)

The European Investment Bank, the financing institution of the European Union, was created by the Treaty of Rome. The members of EIB are the Member States of the European Union, which have all subscribed to the Bank's capital. The EIB enjoys its own legal personality and financial autonomy within the Community system. The EIB's mission is to further the objectives of the European Union by providing long-term finance for specific capital projects in keeping with strict banking practice. As an institution of the EU, the EIB continuously adapts its activities to developments in Community policies. As a Bank, it works in close collaboration with the banking community both when borrowing on the capital markets and when financing capital projects. The EIB grants loans mainly from the proceeds of its borrowings, which, together with "own funds" (paid-in capital and reserves), constitute its "own resources". Outside the European Union, EIB financing operations are conducted principally from the Bank's own resources but also, under mandate, from the Union or Member States' budgetary resources.[8]

3. Legal Basis for OLAF's Operations and Investigations in the Field of External Aid

OLAF must always have a legal basis for opening an investigation. Community law empowers OLAF to conduct investigations and establishes its investigative powers. OLAF undertakes administrative investigations, rather than audits. Audits are checks on the regularity and sound application of the relevant legislative provisions with the objective of detecting any administrative malfunctioning or irregularities; in contrast, administrative investigations consist of more detailed inquiries with the objective of discovering facts or irregular behaviour liable to give rise to administrative or criminal proceedings against individuals or companies, and the recovery of money evaded or unduly obtained. Anomalies detected during a routine check or audit can give rise to the need for an investigation to be conducted by OLAF.

European Parliament and Council Regulation (EC) No **1073/1999** and Council Regulation (Euratom) No **1074/1999** confer on OLAF powers to perform internal investigations, as well as all of the Commission's powers to carry out external investigations. They require OLAF to conduct investigations with full respect for human rights and fundamental freedoms, including the principle of fairness, the rights of persons involved to express their views on the facts concerning them, and the principle that conclusions of an investigation may be based solely on elements that have evidential value. The Regulations stipulate that OLAF must exercise the powers of the Commission in order to step up the fight against fraud, corruption and any other illegal activities detrimental to the Communities' financial interests.

Other legislation applies, such as Council Regulation (Euratom, EC) No **2185/96**, which empowers the Commission to conduct on-the-spot external investigations on the premises of economic operators (commercial companies, charities, associations, NGOs, etc.) that may have been involved in, or concerned by, an irregularity, when "there are reasons to think that irregularities have been committed" and when (1) the presumed irregularities involve economic operators acting in several Member States, (2) the situation in the Member State requires such a check to be strengthened in a case, or (3) a Member State so requests.

8 http://www.eib.org/about/the-eib,-the-eus-financing-institution.htm.

As far as expenditure in the field of external aid is concerned, the EC's rights to carry out checks are regulated by the financial agreements signed with the government of the country concerned. In the framework of these agreements the National Authorising Officer (NAO) manages further distribution of the EU funds, which are part of the broader legal framework (ACP multilateral agreements, e.g. Lomé Convention). These provisions allowing OLAF checks are additionally described as part of the contract between the EC and the beneficiary. The abovementioned agreements and contracts provide for OLAF investigations and for the right of access to all files connected with the EU funding. Moreover, the beneficiary consents to keep documents available for EU verifications, for a certain period depending on the provisions of the contract (i.e. up to 5 years from the end-date of the activity).

4. OLAF's Investigative Action: On-The-Spot Checks, Interviews, Analysis, Satellite Imaging, etc.

Once an external investigation is opened, a team of investigators is assigned to the case. The following investigative steps can be undertaken:

(a) Broad intelligence analysis
With help of OLAF intelligence analysts, checks can be performed in various databases, both internal to the EU institutions and external ones. OLAF has access to all Commission data with regard to financing and contracts. Currently OLAF is successfully using and further developing a search tool based on Commission sources and databases, which is constantly being improved and updated by the EC's Joint Research Centre (JRC) in Ispra. This useful tool allows us also to obtain information on other possible donors (from the open sources) that could have financially supported the same project. This method has already enabled us several times to uncover situations of double financing of projects by different donors.

(b) Verifications with the donor agencies
Apart from the abovementioned method, if double financing is suspected OLAF contacts other donor agencies, foundations or governments and proposes that they cross-check information on financing disbursed for the activities of the beneficiary in question in order to determine whether a particular donor has financed an activity similar to or the same as the EU.

(c) Satellite imaging
Again thanks to cooperation with the JRC, investigators are able, when circumstances so require, to use satellite images, something which is especially useful when for example a number of direct beneficiaries need to be assessed (i.e. within the area of humanitarian aid) and the investigators want to scrutinise and examine the data provided to the EC.

(d) Cooperation with investigative bodies in Member States and non-EU countries
Whenever possible OLAF seeks the cooperation of investigative bodies in the country concerned. This is especially vital and crucial in countries where civilisation, cultural and linguistic barriers might seriously hamper the investigative process. Familiarity with and understanding of the local realities as well as knowledge of local criminal law prove to be indispensable assets on which OLAF can rely while cooperating with the authorities of the country concerned. In cases of parallel ongoing investigations in several countries, coordination of the investigative activities is often proposed, providing information for the law-enforcement agency/prosecutor body which is investigating the entity in question.

(e) Cooperation with auditors and additional audits
When an audit precedes the investigation, additional analysis and collaboration with the auditor who performed the audit is usually sought. Joint analysis of the findings by the investigators and auditors increases the effectiveness of the investigation as such. Additional or forensic audits can be also requested and they can be financed from OLAF's budget. When the

OLAF investigation concludes that certain tenders were forged by using false bids, the auditors will be tasked to look into all contracts (often numbering several hundred) in order to check for the existence of fraud. In the framework of their investigation OLAF investigators can accompany the auditors while they perform their duties; such joint actions prove extremely effective thanks to the combined experience of the auditors and investigators.

(f) On-the-spot checks
According to Regulation 2185/96 on OLAF's powers in the field of on-the-spot checks, OLAF investigators in cooperation with the authorities of the Member State can perform checks in the premises of the beneficiary or economic operator receiving EU funds. Such checks prove to be a very effective investigative tool since they can allow the investigators to seize documents and hard disks and analyse paper and electronic data and other information related to the case involving the EU funds.

(g) Other direct investigative activities
These include interviews with different persons involved: informants, persons concerned, witnesses and any other person in possession of information or knowledge relevant to the case under investigation. Moreover, on the basis of the verification of the invoices and other financial documentation, visits to the companies which issued them can be carried out by the investigator in order to verify their reliability and validity.

It has to be stressed that OLAF's coercive powers, especially in non-EU countries, are fairly limited and cannot be compared to those enjoyed by the mainstream investigative bodies in the Member States. However, the fact that any lack of cooperation with OLAF investigations may eventually lead to freezing of EC financing and possibly recovery of funds prompts a rather high level of access and cooperation. Furthermore, as an administrative investigating body, OLAF is not bound by unwieldy mutual legal assistance arrangements, but can speak directly to government representatives and private partners. This facilitates and speeds up considerably OLAF's operations on the spot.

5. OLAF's Operational Networks

Not being bound by sometimes cumbersome arrangements for cooperation with law-enforcement bodies and judicial authorities, OLAF manages to build its own networks in the law-enforcement community in general.

The basic text creating OLAF provides for the possibility of direct contact with law-enforcement and justice officials, and OLAF therefore works on a daily basis closely with prosecution offices, investigating judges, police and customs bodies both in Member States and in non-EU countries.

Development agencies and foreign ministries in some Member States have identified, together with OLAF, the need for a joint rethink of what we do, what we can do better if we work together and how to find long-term solutions to problems. An informal group of interested partners will meet for the first time in autumn 2007 to launch a brainstorming exercise. OLAF has entered into cooperation agreements with Interpol, Europol and Eurojust and is a full member of the European Judicial Network (EJN).

What is less widely known is that, for several years now, there has been closer cooperation between what are called "international investigators". Investigative services of the UN, the World Bank, the EIB, the regional development banks and OLAF meet on a regular basis to improve cooperation both in the sharing of information and with regard to the creation of Joint Investigation Teams. OLAF recently took part in such a joint team with investigators from the UNDP in an African country and the experience was successful. An annual conference of international investigators looks into common subjects and potential solutions. Staff are exchanged between OLAF and the UN and World Bank. OLAF provides the permanent secretariat for this cooperation.

Looking at the challenges ahead, OLAF has started, in close cooperation with EuropeAid and the EIB, to build its own network of partners in Africa. With the cooperation of the Inspectorate General of Finance of Morocco, a meeting of attorney generals, presidents of Courts of Auditors, state inspectors and finance inspectors, as well as specialised anti-fraud bodies of 27 southern Mediterranean and sub-Sahara countries, took place for the first time in May 2007 in Morocco. These authorities have competence at national level for verifying, monitoring, auditing and investigating incoming donor money. This will be the start of a strong partnership between national administrative, law-enforcement and judicial bodies and OLAF. Networks of inspectors, such as the Association of State Inspections (FIGE), which currently represents 10 African nations, as well as individual countries, will very soon enter into cooperation agreements with EuropeAid and OLAF, providing each other with the required mutual assistance in order to achieve successful optimisation of public spending in those countries. OLAF and EuropeAid are committed to continue this effort, already in spring 2008, with the other African nations. Subsequently, similar partnerships will be proposed to the countries of Latin America and Asia benefiting from EU development aid.

It is worth mentioning that several prosecution offices in Latin America have already signed or asked to sign similar agreements with OLAF. Together with the anti-corruption prosecutors of Argentina, in November 2007 OLAF will host a regional conference for prosecutors.

6. Problems and Solutions

(i) Multiple modus operandi: double funding and need for enhanced donor co-operation

There are some typical modus operandi encountered by OLAF investigators in certain cases in the field of external, development and humanitarian aid that display the features and characteristics of organised fraud. One of the biggest problems that make this fraud possible is the shortcomings in and sometimes total absence of coordination of grant award procedures, auditing, monitoring, evaluation and early warning systems between the different, global and international donor organisations. The abundance of different projects, programmes and beneficiaries combined with the large number of different legal environments and financial systems makes it a very challenging task to coordinate and supervise the donation and spending of the funds. Moreover, the fact that the same projects obtain financing from multiple sources creates a risk of abuse. Unfortunately, there are no standardised, universal and commonly approved ways of reporting or any stable verification systems that would prevent the donor organisations from over-funding the same activity.

OLAF will therefore engage actively in looking for long-term solutions with the aim of improving the exchange of information, enhancing coordination and adopting joint approaches to tackle all the problems.

(ii) On-the-spot checks in non-EU countries: need for administrative cooperation with the countries receiving EU aid

One of the key problems that emerge when investigating fraud in non-EU countries (especially countries in more distant regions such as Africa) is the fact that the European Commission, and OLAF in particular, are not very well known. This might cause difficulties for performing on-the-spot checks. The EU inspectors perform the checks at the premises of the beneficiaries according to the contractual provisions and the clauses included in the financial agreements. However, as experience has shown in the past, these checks are not fully effective unless performed in close cooperation with the authorities of the beneficiary country. In order to overcome this problem it is necessary to establish a network of operational relations (the current cooperation in investigations and controls with the Moroccan authorities serves as a perfect example). This process is currently ongoing and considerable results have already been achieved so far, mainly thanks to the three international conferences devoted to fraud involving aid funds held in recent years.

(iii) Administrative issues

OLAF A.4, as a unit dealing with investigations into external aid funds, is situated at the centre of very complex institutional environment. Interacting on a daily basis with several EU bodies (AIDCO, ECHO, Delegations, RELEX, Cabinets), the authorities of Member States and non-member countries, beneficiaries of development aid, donor agencies, diplomatic representations and other investigative bodies, OLAF is well placed to coordinate its administrative investigations. Alas, the fact that there are so many actors involved often risks causing considerable delays that would slow down the pace of the investigation. To that end, it should be stressed that the OLAF team dealing with external aid handles an impressive amount of investigative work (58 active investigations and 46 evaluations). These figures are even more remarkable when it is borne in mind that this team's investigative activities (including missions and on-the-spot checks) cover Africa, South America, Oceania, Asia and the Middle East. In order to improve this situation certain measures concerning staffing have already been implemented.

Another important issue is the need for OLAF to explain and provide information on its activities and competences to other colleagues within the European institutions in order to ensure proper and effective cooperation in the framework of investigations already at internal level. This is why OLAF also actively participates in training for other EU officials dealing with external aid and colleagues posted to EU Delegations in the countries receiving EU development aid.

D. Conclusions

Development and humanitarian aid investigations currently receive a great deal of attention. A lot still needs to be achieved, starting with better communication and joint cooperation among all actors (not only investigators). This collaboration, as well as mutual trust, openness and understanding, are important pre-conditions for success.

Based on its operational experience, OLAF will endeavour to help colleagues in this process to build a true partnership. The fact that within the relatively short period of its existence OLAF has managed to lay the foundations for broad international cooperation in the fight against fraud involving aid funds is a promising development.

Future developments will include cooperation agreements, as well as technical support for our partners. This technical support may take the form of better training or provision of the necessary tools and conditions to help our partners pursue their investigations and act in accordance with their mandate. Last but not least, we will work closely with our colleagues in the planning and contracting units in order to transform our operational experience into better fraud-proofing of aid.

OLAF is at all times open to any kind of mutual collaboration. OLAF colleagues at all levels are committed to enlarging and strengthening their network of operational partners and contacts. We hope that this article will serve as an incentive for prospective partners to set up the basis for our future cooperation.

USEFUL LITERATURE

A considerable amount of material used in the above article was based on the OLAF Manual: the set of internal rules of the European Anti-Fraud Office (OLAF) which govern its investigations and operations. An electronic version of the OLAF Manual is available free of charge on the EU Bookshop website (http://bookshop.europa.eu).

Additional information regarding OLAF, its foundation, structure and competences can be found on OLAF's website: http://ec.europa.eu/anti_fraud/index_en.html.

Readers who are particularly interested in OLAF's current activities and its achievements are referred to OLAF's Seventh Activity Report covering the year 2006: http://ec.europa.eu/anti_fraud/reports/olaf/2006/report_en.pdf.

VICE CHAIR BRIAN D. MILLER'S SUMMARY OF NATIONAL PROCUREMENT FRAUD TASK FORCE ACTIVITIES

Brian D. Miller[*]

I. TASK FORCE SUMMARY AND MISSION STATEMENT

A. Background

In October 2006, the Office of the Deputy Attorney General announced a new national procurement fraud initiative established by the Justice Department's Criminal Division to promote the early detection, prevention, and prosecution of procurement and grant fraud associated with increased contracting activity for national security and other government programs. In partnership with U.S. Attorneys' Offices, the Justice Department's Civil, Antitrust, Environmental and Natural Resources, National Security, and Tax Divisions, and other federal law enforcement agencies, the Department formed the National Procurement Fraud Task Force, chaired by the Assistant Attorney General of the Criminal Division, to intensify the government's detection efforts and to continue prosecuting those who defraud taxpayers. Brian Miller, the Inspector General (IG) for GSA, is the Vice-Chair of the Task Force. The Executive Director of the Task Force is Steve A. Linick, who spearheaded a procurement fraud task force in the Eastern District of Virginia and is now a Deputy Chief in the Department's Criminal Division, Fraud Section.

In designing the Task Force, the Department recognized that the key to a renewed and sustained effort against procurement fraud is an energized and empowered IG community working in tandem with the FBI and federal prosecutors. Among others, the federal agencies participating in the Task Force include the FBI and the Offices of Inspectors General for multiple agencies including DOD, CIA, SIGIR, NASA, GSA, DOJ, DHS, DOE, NSF, VA, NRC, SBA, SSA, USPS, ODNI, NRO, NGA, DOS, DOT, Treasury, HUD, Interior, and USDA. In addition, defense-related investigative agencies, DCIS, NCIS, Army CID, USAF-OSI, are full participants. The Task Force is focusing resources at all levels of government to increase criminal enforcement in areas of procurement fraud to have the most substantial impact. These areas include defective pricing or other irregularities in the pricing and formation of contracts, product substitution, misuse of classified and procurement sensitive information, false claims, grant fraud, labor mischarging, bid rigging, false testing, false statements, accounting fraud, fraud involving foreign military sales, ethics and conflict of interest violations, and public corruption associated with procurement fraud. The Task Force has established the following objectives relating to procurement fraud:

1. Increase coordination and strengthen partnerships among all Inspectors General (IGs), law enforcement, and the Department of Justice to fight procurement fraud more effectively;
2. Assess existing government-wide efforts to combat procurement fraud and work with audit staff and contracting staff both inside and outside of government to detect and report fraud;
3. Increase and accelerate civil and criminal prosecutions and administrative actions to recover ill-gotten gains resulting from procurement fraud;
4. Educate and inform the public about procurement fraud;
5. Identify and remove barriers to preventing, detecting, and prosecuting procurement fraud; and
6. Encourage greater private sector participation in the prevention and detection of procurement fraud.

[*] Inspector General, Office of the Inspector General, US General Services Administration, USA.

B. Summary of Accomplishments

The Task Force, now in its second year of operation, has effectively bolstered the investigation of fraud, waste, and abuse in federal contracts by making significant progress towards the objectives outlined above. The Task Force's working committees have identified and removed barriers to preventing, deterring, and prosecuting procurement fraud. The Task Force has increased coordination with the entire law enforcement community, including the FBI, IGs, and defense-related agencies. The Task Force's working committees have met regularly and, as discussed in this report, have made significant progress toward meeting their goals.

The Task Force itself already has held six full meetings where over 125 representatives from more than 30 agencies have attended. Overall, there is now more effective resource allocation in procurement fraud investigations, which has resulted in the acceleration of investigations and prosecutions.The Task Force has taken a coordinated and unified approach to combating procurement fraud related to the wars in Iraq and Afghanistan as well as 3 reconstruction efforts in those countries. Additionally, DOJ components are working to build more effective partnerships to prosecute cases.

Task Force efforts have resulted in significant accomplishments, including those highlighted below:

- The Task Force has created eight working committees, which consist of representatives from multiple agencies, to address common issues such as training, legislation, intelligence, information sharing, private sector outreach, suspension and debarment, grant fraud, and international procurement fraud;
- The Task Force has significantly increased training for OIG agents, auditors, and prosecutors regarding the investigation and prosecution of procurement fraud cases.
- The Task Force has established a public website, http://www.usdoj.gov/ criminal/npftf that identifies more than 350 procurement fraud cases filed since the creation of the Task Force. The website has also assisted suspension and debarment officials by listing press releases related to recent procurement and grant fraud cases in a single location.
- The Task Force has proposed modifications to the Federal Acquisition Regulation (FAR) which could significantly improve the government efforts to reduce fraud in government contracts. Specifically, the Task Force has proposed modifications to the FAR, which would require that contractors notify the government whenever they become aware of a material contract overpayment or fraud, rather than wait for the contract overpayment or fraud to be discovered by the government. Legislation has recently been enacted requiring that this proposed FAR provision become a final rule by December 30, 2008. More recently, the Task Force has proposed modifications to the FAR that would address conflicts of interest associated with service contract employees.
- To date, the Department of Justice has charged over 50 individuals and companies for contract fraud associated with the wars and rebuilding efforts in Afghanistan and Iraq.
- The Task Force has formed numerous regional working groups, chaired by U.S. Attorneys, to implement the Task Force's goals regionally by working with their local federal law enforcement counterparts to bring about timely and effective procurement fraud prosecutions.

II. ACCOMPLISHMENTS OF THE TASK FORCE

A. Prosecution and Enforcement

Since the announcement of the Task Force in October 2006, the Task Force has been tracking over 350 civil and criminal procurement fraud cases involving over 500 defendants. Approximately 45 U.S. Attorneys' Offices are involved in prosecuting these cases, which cover the gamut of procurement fraud

including false claims, grant fraud, false statements, bid rigging, kickbacks, bribery, false testing, defective pricing, and product substitution, among others. These cases also involve procurement fraud related to the wars and rebuilding efforts in Iraq and Afghanistan, which DOJ has devoted significant prosecutorial and investigative resources to. DOJ has been working with Army CID, DCIS, FBI, and SIGIR, IRS-CI, other IGs, and traditional law enforcement partners to investigate and prosecute GWOT cases. DOJ has already developed a track record of success in this area. Information about all of the cases summarized below is available on the Task Force's website in the Press Room.

1. Case Highlights:

(i) United States v. Modern Continental (District of Massachusetts)

On June 20, 2008, Modern Continental Corporation ("MCC"), the largest construction contractor on the Central Artery/Tunnel project, was charged by an information because it made false statements in connection with its execution of construction documents certifying the quality of the work it performed on certain contracts, it submitted false time and materials slips on contracts, and committed wire fraud. MCC knowingly executed documents falsely stating that structures were built in accordance with contract documents and procedures. On September 15, 2004, a defect in a wall panel caused the wall to blowout, resulting in extensive traffic delays and the discovery of numerous defects in the walls built by MCC. On July 10, 2006, a ceiling module installed by MCC in the portal area of the I-90 Connector tunnel, installed with epoxy anchors, collapsed and killed a motorist passing through the tunnel. After the collapse, a tunnel inspection revealed a systemic failure of the epoxy anchors throughout the tunnel. In both instances, MCC was aware at, or near, the time it constructed the walls and the installed the tunnel ceiling that it was not adhering to the contract documents and procedures.

(ii) United States v. Freire (Antitrust Division)

On May 30, 2008, Wilson Freire, a former Government Contracts Manager at Peck & Hale LLC pled guilty to one charge of bid rigging and one charge of soliciting and accepting kickbacks in connection with Peck & Hale's sub-contracts with DOD. Freire played a role in two separate conspiracies, one to rig bids on U.S. Navy contracts for metal sling hoist assemblies and another 5 to accept kickbacks from vendors and subcontractors. This case is the eighth to arise from a series of ongoing investigations dealing with the metal sling industry. In March 2008, Peck & Hale pled guilty to two counts of bid rigging. Freire is the third Peck & Hale employee to plead guilty to bid-rigging charges in the past year. In April 2008, Ransom Soper, a former sales employee, pled guilty to one count of bid rigging and one count of conspiracy to commit wire fraud. In July 2007, Robert Fischetti, a former sales director, pled guilty to two counts of bid rigging and soliciting and accepting a kickback from a sub-contractor.

(iii) United States v. McFarland (District of Arizona)

On April 25, 2008, Ernest Robert McFarland pled guilty to six counts of making false statements in a scheme to fraudulently obtain funds via federal construction contracts. McFarland, owner and president of Pacific General Inc. (PGI), had been charged with conspiracy, false claims, and false statements, and he admitted that he fraudulently obtained $348,652.99 by falsely certifying that PGI was paying its subcontractors for work on projects funded by federal construction contracts in the Grand Canyon National Park between November 2003 and January 2004. This case was investigated by DOI OIG and the FBI.

(iv) United States v. Terry (Northern District of Georgia)

On April 23, 2008, four individuals were indicted for engaging in a defense procurement fraud scheme against the United States. Two of the defendants were civilian employees who worked for the Army. The other two defendants worked for Global Engineering and Construction, Inc. (Global). The indictment alleges that beginning in 1995, the defendants secretly agreed to corruptly facilitate and assist Global in securing medical facility construction contracts. The two Global employees made cash

payments to the Army employees in exchange for confidential and sensitive procurement information, which gave Global a competitive advantage in the bidding process. As a result, the government awarded Global multi-year, multi-million dollar construction contracts. At least one of the contracts was valued at over $12,000,000. The case is being investigated by Army CID and DCAA.

(v) United States v. Gupta and KAM Eng'g (Northern District of Illinois)

On April 21, 2008, Kamleshwar Gupta and KAM Engineering, Inc. (KEI), the engineering firm he founded and owns, were indicted for allegedly submitting false invoices and financial information regarding overhead expenses and the number of hours worked by KEI employees on contracts for the Illinois Department of Transportation (IDOT). According to the indictment, during a span of nine years, Gupta and KEI fraudulently altered KEI's timekeeping records by directing a bookkeeper to move hours among different KEI jobs and contracts. The altered hours reported to IDOT fraudulently increased the amount of money that KEI billed to and collected from IDOT. Contrary to regulations applicable to IDOT contracts, Gupta and KEI caused employees to keep timesheets in pencil, rather than in ink, to facilitate fraudulent alterations of the employees' timesheets. The indictment also seeks forfeiture of more than $16 million in proceeds of the alleged fraud scheme. The case is being investigated by DOT OIG and the FBI.

(vi) United States v. Crabtree (Central District of California)

On April 21, 2008, a guilty plea was obtained from a former employee of Northrop Grumman, Michael Crabtree, (Crabtree) and his wife, Susan Crabtree, for their participation in a scheme causing Northrop Grumman to pay $2.5 million for materials that were never delivered. Crabtree worked at Northrop Grumman's plant from August 2004 to August of 2007, and he was responsible for ordering material and supplies for various DOD programs. Crabtree, with assistance from his wife, ordered $2.5 million of composite materials from a company called Advanced West. Crabtree caused Northrop Grumman to pay for the materials, and the proceeds of the fictitious sales went to Crabtree and his wife. No materials were ever delivered to Northrop Grumman. Crabtree tricked Northrop Grumman personnel into believing the materials had been delivered by claiming that he personally received them. The fraudulent expenses incurred by Northrop Grumman were passed onto the United States. The case is being investigated by the DCIS, IRS CI and the FBI.

(vii) United States v. Feola (Middle District of Pennsylvania)

On April 16, 2008, Richard Feola, a former civilian Information Technology Specialist at Tobyhanna Army Depot, pled guilty to charges that he accepted illegal payments from a foreign defense contractor, and in exchange, engaged in unlawful money laundering activities. Feola prepared computer equipment bid specifications and prepared specifications seeking the purchase of computer equipment from Thruput LTD, a computer equipment supply company owned by Michael Clery in Bristol, England. As a result, the Army awarded eight contracts totaling $308,595 to Thruput between July 2000 and August 2005. After the first two Army contracts were awarded, Clery wired $5,957 from a bank account in England to an account Feola controlled in the United States. Over the course of the next six years, Clery wired additional funds totaling $83,332 to Feola. The case is being investigated by Army CID and DOD IG.

(viii) United States v. Castaldo (Southern District of New York)

On April 1, 2008, James Castaldo, a supervisor for the City of Mount Vernon Department of Public Works ("DPW"), was arrested and charged for allegedly accepting bribes from waste haulers in return for allowing the haulers to overbill the City of Mount Vernon by at least $1.25 million for debris removed from a municipal storage yard. An indictment was unsealed on March 19, 2008, that charged a Westchester waste-hauling company, A & D Carting, for defrauding the City of Mount Vernon by submitting tickets and invoices claiming that far more waste had been carted away from the yard than had actually been removed. Castaldo, who retired in 2005, accepted bribes from A & D Carting. The case is being investigated by the FBI.

(ix) United States v. Johnson (Northern District of Alabama)

On March 31, 2008, Roy Johnson pled guilty to charges of conspiracy to commit bribery, conspiracy to commit money laundering, and witness tampering. Johnson's information also contained a forfeiture count wherein the United States sought and Johnson agreed to forfeit more than $18 million dollars comprising the proceeds of the criminal activity of Johnson and his co-conspirators. Johnson was Chancellor of the Alabama Department of Postsecondary Education from 2002 until 2006. As Chancellor, Johnson was responsible for the operation of over twenty five community and technical colleges across the state of Alabama. While serving in that position, Johnson engaged in a series of bribery/kickback schemes with contractors who sought work with the Department and its subordinate institutions. The contractors gave Johnson money and services in exchange for Johnson's help getting State contracts. Johnson and his co-conspirators hid these crimes by using false invoices, fraudulent loans, and fictitious entities to move money from the State of Alabama to Johnson and his family members. Johnson also engaged in witness tampering in an attempt to thwart the investigation of his crimes by the federal grand jury in Birmingham, Alabama. Since pleading guilty in December 2007, Johnson has been cooperating with authorities in the continued investigation of corruption related to the Alabama Department of Post Secondary Education. The case is being investigated by the FBI and IRS CI.

(x) United States v. National Air Cargo (Western District of New York)

On March 26, 2008, National Air Cargo (NAC) agreed to pay the United States $28 million to settle both criminal and civil allegations that it defrauded DOD. The global settlement resolved allegations that NAC submitted fraudulent claims for payment to DOD for the shipment of freight. Assisting in the case was DOJ's Civil Division, DCIS, Army CID, Air Force OSI, and the FBI.

(xi) United States v. Shumay (Northern District of Ohio)

On October 18, 2007, Thomas Shumay and George Shumay each were charged in criminal information with one count of conspiracy to commit mail fraud and making false statements. The sole count of the information alleges that between 1997 and May 2003, the Shumays served as high level managers and supervisors at All Tools, Inc. (All Tools), which directly contracted with the United States Air Force (USAF) and subcontracted with other corporations to build landing gear components that were to be used in USAF aircraft including the F-18. During the same time period, the Shumays manufactured military landing gear parts using unapproved and improper techniques and procedures, created documentation that falsely represented that approved and proper techniques were used in the manufacturing and testing of the landing gear parts, and shipped those parts using interstate commercial carriers. The Shumays have pled guilty and are awaiting sentencing.

2. Prosecution of Cases Involving the Global War on Terror (GWOT)

DOJ has established a coordinated and unified approach to combat procurement fraud, including fraud relating to the wars in Iraq and Afghanistan and reconstruction efforts in those countries. DOJ has devoted an array of resources and expertise to this important mission. The Fraud Section, the Public Integrity Section, the Asset Forfeiture and Money Laundering Section, and the Office of International Affairs of the Criminal Division; the Civil Division's Fraud Section; and the Antitrust Division are each involved in the fight against procurement fraud, and each contributes its resources and unique expertise. The Fraud Section, which has well-established relationships with many IGs, has prosecuted numerous procurement fraud cases in the past and leads the effort to combat fraud. The Public Integrity Section also has longstanding relationships with the IG community and participates in investigations that involve corruption by government or military officials, as many procurement fraud cases do. The Asset Forfeiture and Money Laundering Section leads the effort to recover taxpayer dollars stolen through procurement fraud by assisting in the swift and comprehensive use of seizure warrants and forfeiture remedies.

Procurement fraud cases, especially those involving the wars in Iraq and Afghanistan, tend to be very complex and resource intensive. The cases often involve extraterritorial conduct as well as domestic conduct, requiring coordination between appropriate law enforcement agencies. In order to improve

coordination and information sharing, the Task Force has established a Joint Operations Center (JOC) based in Washington, D.C. The JOC currently serves as the nerve center for the collection and sharing of intelligence regarding corruption and fraud relating to funding for the Global War on Terror (GWOT). The JOC coordinates intelligence gathering and provides analytic and logistical support for agencies involved in combating contractor fraud related to GWOT. As a result of this concentration of efforts, DOJ has significantly increased the number of prosecutions relating to contract fraud associated with GWOT. Task Force and JOC member agencies have implemented extensive counter measures to prevent money laundering and to prevent the repatriation of illicit proceeds from the Middle East. This has generated more leads, more prosecutions, increased deterrence and discouraged corruption.

In addition, USAOs such as the LOGCAP Working Group in the Central District of Illinois, have brought numerous criminal and civil procurement fraud cases and are drawing upon their extensive experience to prosecute procurement fraud schemes that are high-profile and sophisticated.

To date, the Department has charged over 50 individuals criminally for public corruption and government fraud relating to the GWOT, which includes matters involving Iraq, Kuwait, and Afghanistan. Some of these cases are highlighted below:

- On July 7, 2008, the U.S Attorney's Office for the Southern District of New York unsealed the guilty plea of United States Army Chief Warrant Officer Joseph Crenshaw ("Crenshaw") 9 and the indictment of Harith Al-Jabawi ("Al-Jabawi"). Crenshaw, who was charged in a criminal complaint, participated in a scheme to steal fuel from Camp Liberty in Baghdad, Iraq. Crenshaw was arrested after law enforcement authorities learned he accepted cash to assist Al-Jabawi in obtaining fuel from a military depot even though Al-Jabawi was not entitled to the fuel. Al-Jabawi paid several thousand dollars in exchange for fraudulently obtaining fuel.

- On June 24, 2008, in the Northern District of Texas, U.S. Army Major John Cockerham and his wife Melissa Cockerham, pled guilty to charges of conspiracy to defraud the United States and to commit bribery, conspiracy to obstruct justice, and money laundering conspiracy. The scheme ran from late June 2004 through late December 2005, while Major Cockerham was deployed to Camp Arifjan, Kuwait, serving as a contracting officer responsible for soliciting and reviewing bids for DOD contracts in support of operations in the Middle East, including Operation Iraqi Freedom. The contracts were for various products and services to DOD, including bottled water destined for soldiers serving in Kuwait and Iraq. All three defendants accepted millions of dollars in bribe payments on Major Cockerham's behalf, in return for his awarding contracts to corrupt contractors. Cash bribes paid to the defendants totaled approximately $9.6 million.

- On June 19, 2008, in the Southern District of Florida, AEY, Efraim Diveroli ("Diveroli"), David Packouz ("Packouz"), Alexander Posrizki ("Posrizki") and Ralph Merrill ("Merrill") were indicted on charges of conspiracy to commit fraud and making false statements. Diveroli is owner and president of AEY, a U.S. government contractor that received $298 million from the U.S. government to supply munitions to the Afghanistan army. Diveroli, Packouz, Posrizki and Merrill supplied to the Afghan army substandard Chinese ammunition made over forty years ago but falsely represented that the arms originated from Albania. AEY, Diveroli, Packouz, Posrizki and Merrill are all awaiting trial.

- On June 10, 2008, in the United States District Court for the District of Columbia, a former army colonel, Levonda J. Selph ("Selph"), pled guilty for her participation in a bribery scheme. Selph accepted fraudulent bids from a co-conspirator contracting firm and assisted that firm in winning the contract award. In return for these actions, Selph accepted a vacation to Thailand and $4,000 in cash. For her participation in these schemes, Selph entered into a plea agreement to plead guilty to a two count information charging her with conspiracy and bribery, serve a jail sentence to be de-

termined by the court, and pay $9,000 restitution to DOD.

- On April 11, 2008, in the Eastern District of Virginia, Wallace Ward, a fuel technician for Kellogg, Brown and Root (“KBR”), was sentenced to 26 months incarceration, 3 years supervised release and restitution payment of $216,000 for participating in a conspiracy to divert fuel intended for Bagram Airfield to the black market of Afghanistan. On February 7, 2008, James Sellman, another KBR fuel technician, pled guilty in the Eastern District of 10 Virginia to conspiracy to defraud and accept bribes for diverting fuel. The scheme in 2006 involved the theft of over $2 million in lost fuel.

- On April 9, 2008, in the District of Maryland, Matthew Bittenbender pled guilty to conspiracy, wire fraud, and stealing trade secrets. Bittenbender was a former senior contract fuel manager at Maryland-based Avcard, a company that provides fuel and fuel services to commercial and government aircraft. Bittenbender is charged with taking confidential bid data and other proprietary information related to DOD fuel supply contracts from Avcard, and selling that information to competitors, co-conspirators, Christopher Cartwright (“Cartwright”), Paul Wilkinson (“Wilkinson”), FERAS and Aerocontrol. In return, Bittenbender is alleged to have received cash payments and a percentage of the profit earned on the resulting DOD fuel supply contracts. Cartwright, Wilkinson, FERAS and Aerocontrol are alleged to have subsequently used that illegally obtained information to bid against Avcard at every location where the companies were bidding head-to-head, thereby subverting DOD's competitive bidding procedures for fuel supply contracts. Cartwright, Wilkinson, and affiliated companies have been indicted and are awaiting trial.

- On January 24, 2008, in the United States District Court for the Eastern District of Kentucky, a former government contractor, Ali N. Jabak, and his wife, Liberty A. Jabak, were indicted for conspiracy, wire fraud, money laundering, and forfeiture stemming from the theft of $595,000 from the 15th Finance Battalion of the United States Army, based in Baghdad, Iraq, in connection with a contract to build concrete barriers to protect American troops.

- On January 23, 2008, in the Western District of Oklahoma, Elie Samir Chidiac ("Chidiac") and Raman International Inc. ("Raman") were indicted on conspiracy charges in connection with bribes paid between May 2006 and March 2007 to a contracting officer at Camp Victory in Iraq. Chidiac is the former Iraq site manager for Raman, a military contractor based near Houston, Texas. Raman and Chidiac allegedly paid bribes to induce a DOD contracting officer to steer contracts to Raman. Chidiac is also charged with participating in a second scheme whereby the same contracting officer altered contracting documents to allow him to fraudulently obtain payment, which he split with the contracting officer, for work that neither Raman nor he performed. A preliminary audit indicates the contracting officer received over $400,000 from Chidiac.

- On November 20, 2007, in the District of Columbia, Terry Hall, a civilian contractor from Georgia was indicted by a federal grand jury for allegedly soliciting bribes while working at Camp Arifjan, an Army base in Kuwait. Hall operated companies that had contracts with the U.S. military in Kuwait, including Freedom Consulting and Catering Co., U.S. Eagles Services Corp., and Total Government Allegiance. The indictment charges that Hall’s companies received more than $20 million worth of military contracts for providing, among other things, bottled water to the U.S. military in Kuwait.

- On October 19, 2007, John Allen Rivard, a former major in the U.S. Army Reserve was sentenced in federal court in Austin, Texas, to 120 months in prison and three years of supervised release for conspiracy, bribery, and money laundering in connection with his accepting bribes for his fraudulent awarding and administration of U.S. Government contracts in Balad, Iraq. Rivard pled guilty to receiving over $220,000 in bribe payments, as well as to laundering illegal proceeds. A $1 mil-

lion preliminary order of forfeiture and order to pay a $5,000 fine was also issued.

- During August 2007, in the Southern District of New York, United States Army Captain Austin Key ("Key") was charged in a criminal complaint for accepting a $50,000 bribe to steer military contracts in Iraq. The arrest was made after law enforcement authorities recorded conversations and witnessed a money exchange between Key and a confidential informant. Key pleaded guilty to several counts of bribery.

- On July 24, 2007, in the United States District Court for the Southern District of Texas, the owner of American Grocers LLC, Samir M. Itani, a subcontractor to DOD, was indicted for conspiracy and false claims, stemming from the submission of millions of dollars in fabricated trucking fees associated with the company's contract to provide food product to military personnel in Iraq.

The LOGCAP Working Group, which operates out of the USAO in the Central District of Illinois, has also filed criminal charges against nine individuals for bribery and kickbacks associated with Iraq reconstruction efforts and military operations in Kuwait. LOGCAP III is a ten-year competitive contract awarded to Kellog, Brown, and Root (KBR) in December 2001, and incorporates task orders issued by the U.S. Army to support Operation Iraqi Freedom. The cases relating to the LOGCAP contract involve bribery in the issuance of task orders and include, but are not limited to, the following:

- On June 6, 2008, in the United States District Court for the Central District of Illinois, a former employee of Kellogg, Brown & Root, Anthony J. Martin, was sentenced to one year in prison and ordered to pay $200,504.85. Martin was sentenced in connection with his participation in a kickback scheme with the managing partner of a Kuwaiti company giving Martin a payment of $170 per item supplied to the United States under the government contracts that Martin helped procure.

- On July 20, 2007, Kevin Smoot, who worked for Eagle Global Logistics ("EGL") as Managing Director of EGL Houston's Freight Forwarding Station, pled guilty to making a false statement and providing a kickback. On December 18, 2007, Smoot was sentenced to 14 months imprisonment and ordered to pay restitution in the amount of $17,964.00.

- On February 9, 2007, Peleti Peleti Jr. pled guilty to bribery. Peleti formerly served as the Army's Theatre Food Service Advisor for Kuwait, Iraq, and Afghanistan. Peleti was 12 Figure 1 - Pretoria, South Africa, USAID Procurement and Grant Fraud Training. sentenced to 28 months in prison and fined $57,500 and forfeiture of items, including watches and souvenirs purchased with bribe monies.

- On December 1, 2006, Stephen Seamans, was sentenced to 12 months and one day in prison and ordered to pay $380,130 in restitution. Seamans was formerly a subcontracts manager for KBR, who pled guilty to one count of major fraud against the United States and one count of conspiracy to commit money laundering.

- On December 1, 2006, Shabbir Khan was sentenced to 51 months in prison and ordered to pay a $10,000 fine and $133,860 in restitution. Khan, formerly Director of Operations, Kuwait and Iraq, for KBR subcontractor Tamimi Global Co., Ltd., was indicted on multiple counts of wire fraud, witness tampering, and conspiracy to commit witness-tampering, conspiracy to commit money laundering, and making false statements.

B. Training and Initiatives

1. Training for Prosecutors, Agents, Auditors and Contracting Personnel

The Task Force has worked with several agencies to develop specialized training for prosecutors, agents, auditors, and contracting personnel on the detection, investigation and prosecution of procurement fraud cases. For example:

- The Task Force and USAID OIG have developed fraud detection and prevention training for contracting and grant personnel based overseas. By joining forces and integrating its message, the Task Force has provided a strong message of deterrence. This training already has been offered in Pretoria, South Africa, and Maputo, Mozambique to USAID personnel and non-government organizations (NGOs).

- Brian Miller, GSA IG and Vice-Chair of the Task Force, hosted the Forensic Auditing Forum, which took place in Washington, DC on January 23 and 24, 2008. The Forum focused on forensic auditing and its application as a tool to promote comprehensive reviews of agency operations to generate fraud leads. Over two hundred government officials from 30 different agencies attended the forum. Following from the interest shown in this first successful effort, additional forums on specialized topics are currently being planned.

- In June 2007, the Task Force offered the first procurement fraud training program for prosecutors at the National Advocacy Center in Columbia, South Carolina. The goal of this training program is to provide prosecutors with the tools they need to investigate and prosecute those who undermine the federal procurement process. The second annual procurement fraud training course was held June 4-6, 2008.

- The Task Force has worked with the Federal Law Enforcement Training Center (FLETC) to design and provide approximately 20 weeks of new procurement fraud instruction offered periodically at multiple locations throughout the country. The curriculum offerings include:

    - Interviewing for Auditors (three days; offered twice per year);
    - Suspension and Debarment (three days; offered three times per year);
    - Financial Forensics Training Program (two weeks; offered six times per year);
    - Basic Procurement Fraud (eight and one half days; offered twice per year); and
    - Product Substitution (four and one half days; offered twice per year).

- The Task Force, along with David C. Williams, Inspector General for the U.S. Postal Service, and Chair of the Training Committee will be co-hosting a national procurement fraud conference in Richmond, Virginia from September 9 - 11, 2008. The course is geared toward prosecutors, agents and auditors. The program will offer a broad array of topics around the theme: “Effective Programs & Strategies in Combating Procurement Fraud.”

2. Support for Potential FAR Changes

(i) FAR Proposal Requiring Disclosure of Overpayments

In May of 2007, in a letter to the Office of Federal Procurement Policy, the Task Force proposed a modification to the Federal Acquisition Regulation (FAR), which would require, among other things, that contractors notify the government whenever they became aware of a material overpayment or fraud relating to the award or performance of a contract or subcontract. Shortly thereafter, on November 14, 2007, the Civilian Agency Acquisition Council and the Defense Acquisition Regulation Council (the “FAR Council”) published a proposed rule substantially

incorporating the Task Force's requested changes to the FAR. The proposed rule, however, as published by the FAR Council, added two exemptions, one for government contracts performed entirely overseas and another for commercial contracts.

On April 15, 2008, on behalf of the Task Force and DOJ, Deputy Assistant Attorney General Barry Sabin, testified about these proposed exemptions before the House of Representatives Committee on Oversight and Government Reform's Subcommittee on Government Management, Organization and Procurement (the "House Committee"). Brian Miller, IG at GSA and Vice Chair of the Task Force, provided written testimony supporting the removal of the proposed exemptions. At the same time, the House Committee had proposed legislation, the "Close the Contractor Fraud Loophole Act," that would remove these exemptions and require that the FAR be modified in accordance with the original Task Force proposal requiring mandatory disclosure of fraud and overpayments associated with the award of all subcontract or contracts, including those performed overseas and those for commercial items. This legislation passed the House in April 2008. In June 2008, the Senate approved the legislation as part of the Supplemental Appropriations Act of 2008, and the President signed the measure on June 30, 2008. The legislation requires the final FAR rule to become effective within six months after enactment of the legislation.

Recently, the Task Force has established a subcommittee that will work on policies for implementation of the new Rule when it becomes effective. This subcommittee, which will be led by NRO IG Eric Feldman, will address various issues such as, when DOJ should become involved in reviewing disclosures, whether there should be time limits in which DOJ and the IGs must complete such a review, what constitutes a valid disclosure, and how to deal with incomplete or ineffective disclosures.

(ii) FAR Proposal Addressing Service Contractor Employees

In July 2008, the Task Force submitted letters commenting on the March 26, 2008 Advanced Notice of Proposed Rulemaking, FAR Case 2007-017, in which the FAR Council requested public comment on the need for regulation that would address personal conflicts on the part of service contractor employees. In the course of its investigations, the Task Force has observed a dramatic increase in contractor employees performing a wide variety of federal government work. Unlike their federal counterparts, however, service contractor employees are not subject to most federal ethics requirements, nor are they subject to any direct discipline by the government. Moreover, while the FAR Council addresses organizational conflicts of interest, it is silent on conflicts of interest associated with service contract employees. As a result, the integrity of the government's interests may be substantially compromised.

Accordingly, in its letter, the Task Force asked the FAR Councils to publish a FAR rule that would require, among other things, service contractors to certify annually that they have: 1) trained their employees on the relevant responsibilities and restrictions to which they are subject while performing government work; and (2) collected from their employees the financial information necessary to identify and to screen out employees with personal conflicts of interest. The Task Force recommended that both training and the financial conflicts review be completed before a contractor assigns employees to perform work for the government under a service contract.

(iii) FAR Case 2006-007

On November 23, 2007, the FAR Council published a Final Rule, requiring that contractors with contracts over $5 million have a "written code of business ethics and conduct" and an"ethics compliance training program" for its employees. In a May 23, 2007, letter to the FAR Council, the Task Force filed comments supporting this mandatory compliance program when it was proposed as a rule. The effective date of the new FAR provision was December 24, 2007.

3. IG Initiatives, Speeches and Training

To further the mission of the Task Force, many IGs continue to reach out to the public and private sectors through presentations, sponsored conferences, and training initiatives. For example, Eric Feldman, the IG at NRO, has recently made presentations in support of the Committee's strategic plan to several NRO contractors, and was the luncheon speaker at a recent meeting of the National Defense Industrial Association. The NRO IG has actively participated in intelligence community (IC) and IG community activities such as the NRO Industry Day and the Los Angeles Area Procurement Fraud Working Group. The NRO IG was instrumental in establishing the newly formed California chapter of the Association of Inspectors General, which will be hosting its first National Association Conference in the Los Angeles area this fall. Additionally, the NRO IG and the Task Force Private Sector Outreach Committee sent letters dated June 13 and 18, 2008, respectively, in support of the proposed FAR amendment requiring mandatory fraud reporting by contractors.

The NRO IG also sponsored the 3rd Annual Corporate Business Ethics and Compliance Officers Conference held in Redondo Beach, California in March 2008. The conference focused on fraud-related issues in U.S. government-funded contracts and collaborative efforts between the government and corporations to detect and investigate procurement fraud. Over 120 ethics officers, general counsels, contract officers (from several major defense contractors), 16 investigators, auditors, inspectors, and acquisition professionals from the federal IG community, attended the conference.

In addition, the NRO IG has focused attention on improving the ability of the NRO workforce to identify the "red flags" of procurement fraud through training to various NRO components, "Messages from the IG," and professional certifications. Beginning in October 2007, the IG offered a "Case Studies" course targeted to the NRO acquisition workforce. Additionally, NRO IG investigators provided over 26 customized "Procurement Fraud" training sessions to contracting officers, polygraphers, contracting officer technical representatives, and Defense Contract Audit Agency employees.

The Vice Chair, Brian Miller, and Executive Director, Steve Linick, of the Task Force have recently presented Task Force concepts and goals to a variety of audiences including: the American Bar Association, AGA, Board of Contract Appeals Judges Association, Coalition for Government Procurement, Construction Superconference, Information Technology Association of America, Northern Virginia Technology Council, PCIE Legislation Committee, PCIE/ECIE Training Conference, and the Second Regional Seminar on Good Governance for Southeast Asian Countries, *Corruption Control in Public Procurement.*

In April of 2008, the DOD Procurement Fraud Working Group sponsored its annual procurement fraud training conference in Daytona Beach, Florida, for criminal investigators, auditors and inspectors as well as representatives from DOJ and US Attorney's offices. Former Deputy Attorney General James Comey, was the keynote speaker.

In May of 2008, the EPA and OMB sponsored a Suspension and Debarment conference honoring twenty five years since the agency-wide system began. The conference was held in South Carolina and featured a series of workshops on current issues confronting suspension and debarment officials. Greg Friedman, IG at DOE, and Brian Miller, IG at GSA, spoke at this conference.

Finally, on July 28-31, 2008, DOT OIG is sponsoring the fifth biennial National Fraud Awareness Conference in Chicago, Illinois. The goals of the conference are to sharpen awareness of fraud schemes, share best practices, and strengthen working relationships.

Task Force members also have participated in outreach activities to assist private sector participation in the detection of procurement and grant fraud. This outreach is described in more detail on page 23 of this report.

C. Task Force Working Committees

In order to accomplish the objectives of the Task Force, working committees have been created to address particular issues relating to procurement fraud. Each committee is chaired by an IG with the exception of the International Committee which is chaired by an Assistant Director of the FBI. These working committees include the following:

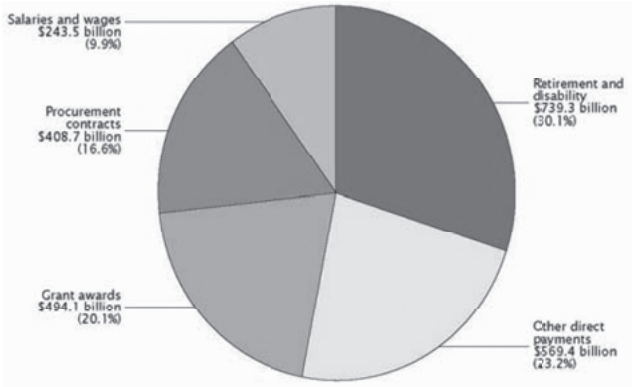
1. Steering Committee

When the formation of the Task Force was announced, a steering committee was formed to: (1) ensure coordination of Task Force activities across the IG, law enforcement, and prosecution communities and to promote the public communication of goals and achievements; (2) facilitate and serve as support for the Task Force working committees and regional working groups; and (3) serve as the principal vehicle for keeping the Assistant Attorney General and the Deputy Attorney General apprised of progress, problems, and opportunities to promote the initiative. The Steering Committee, chaired by Steve Linick, the Executive Director of the Task Force, and by Brian Miller, IG for GSA, meets on a bi-monthly basis.

2. Grant Fraud Committee

Glenn Fine, IG for DOJ, is chairing the Grant Fraud Committee of the Task Force, which also includes representatives from the Department of Justice and other PCIE and ECIE OIGs. Figure 2 - Task Force Executive Director, Steve Linick, Deputy Chief, Fraud Section, Criminal Division and Vice Chair, Brian Miller, GSA Inspector General at the April 12, 2007 Task Force Meeting 18 The Grant Fraud Committee continues to focus on three key areas: (1) examining information sharing on cases and issues related to grant fraud; (2) coordinating efforts to provide training to auditors, agents, and prosecutors on detecting, investigating, and prosecuting grant fraud; and (3) conducting outreach to agency program managers and grantees regarding the prevention, detection, and investigation of grant fraud.

Figure 1 - Federal Government Expenditure, Amounts and Percentages by Major Object Category: Fiscal Year 2006



Source: U.S. Census Bureau, Consolidated Federal Funds Report for Fiscal Year 2006

In the area of training, the grant Fraud Committee worked closely with the Training Committee and FLETC to develop a week-long Grant Fraud Investigation Training Program. The pilot session was held in St. Augustine, Florida from May 19, 2008 through May 23, 2008, with over 20 agents and auditors from 9 different agencies in attendance. FLETC plans to hold the next training session in Washington, D.C. in August 2008.

The Grant Fraud Committee also is supporting the National Science Foundation Office of the Inspector General as it prepares to host its Seventh Annual Grant Fraud Workshop in the Fall of 2008.

The Grant Fraud Committee also is preparing a white paper, which should be completed in the near future which will identify best practices in agency program grant management. The Grant Fraud Committee also continues to work closely with the Legislative Committee of the Task Force to ensure that grant fraud issues are included in any legislative proposals advanced by the Task Force.

Finally, the OIGs involved with the Grant Fraud Committee are reporting successful prosecutions of grant fraud cases. The case described below exemplifies the type of cases that Grant Fraud Committee members are actively pursuing and encouraging other OIGs to pursue: Figure 3 - Federal Government Expenditure, Amounts and Percentages by Major Object Category: Fiscal Year 2006 Source: U.S. Census Bureau, Consolidated Federal Funds Report for Fiscal Year 2006 19

- On May 2, 2008, James Hayes, the former Mayor of Fairbanks, Alaska, and his wife, Murilda Hayes, were sentenced in the District of Alaska to charges stemming from their convictions for theft of government grant funds. James Hayes was sentenced to 5 ½ years incarceration and ordered to pay restitution of $314,000, pursuant to his conviction by a jury to 16 counts of theft of government funds, conspiracy, money laundering, and submitting false tax returns. Murilda Hayes was sentenced to 3 years incarceration and ordered to pay restitution of $447,000, pursuant to her guilty plea to charges of money laundering and theft of federal funds. An investigation by the DOJ OIG, the HUD OIG, the FBI and the IRS developed evidence that James and Murilda Hayes had misappropriated federal grant funds from the DOJ and HUD designated to operate a tutoring and mentoring organization called Love Social Services Center. They used the funds instead to purchase a flat screen television and other items for their personal use and to partially fund the building of their church.

3. Information Sharing Committee

The Information Sharing Committee is chaired by Brian Miller, IG for GSA and Vice-Chair of the Task Force. The Committee's mission is to improve the federal government's ability to detect, prevent and prosecute procurement fraud through improved collection, analysis and sharing of data.

To date, a principal accomplishment of the Information Sharing Committee has been to develop and maintain a website http://www.usdoj.gov/criminal/npftf/ devoted to providing the most up-to-date bulletins and facts about the status of procurement fraud cases and initiatives. The website contains the following key categories of information: Figure 4 - National Procurement Fraud Task Force Website Homepage

(i) NPFTF Overview

Provides details on the background for the establishment of the NPFTF and a series of FAQ's designed to assist the user in obtaining a clear description of the Task Force operations and objectives.

(ii) NPFTF Press Room

Provides a detailed listing of all notices to the press from DOJ, U.S. Attorneys, IG offices, and other agencies and law enforcement organizations regarding cases initiated and disposed. In addition, the Press Room provides links to all speeches and testimony associated with the operations of the Task Force. Finally, the Press Room provides a very useful set of links to a wide variety of media articles on procurement fraud.

Over 360 press releases are housed in the Press Room. Agency suspension and debarment

officials have reported that they have been better able to perform their duties now that there is a centralized location for this information. From January to May of 2008, the website has been a resource to over 8,000 users as measured by page views.

(iii) NPFTF Resource Center

Provides a set of links to courses and training opportunities to support procurement fraud audits and investigations. In addition, the Resource Center identifies new training needs as they develop and promotes the design and formulation of courses for addressing these gaps in the current training curricula available.

(iv) NPFTF Federal Acquisition Regulations (FAR) Information Center

Provides a comprehensive collection of all Federal Register notices seeking to amend FAR regulations and practices and the comments provided to these proposed changes. In addition, relevant speeches and testimony as well as media and scholarly articles relating to FAR modifications are also provided.

(v) NPFTF Fraud Reporting Directories

Provides links to 36 major fraud reporting hotlines and reporting procedures across the Federal government from AID to the U.S. Postal Service. This component of the website assembles in one convenient location a portal for the public, contractor and grant employees, and Federal employees to report concerns they may have about fraud for further investigation by relevant agencies.

(vi) NPFTF Contact Center

Provides a comprehensive listing of all national and regional participants in the NPFTF as well as chairpersons of all NPFTF committees. Listings of upcoming events and meetings can also be found at this location on the website.

4. Intelligence Committee

The Intelligence Committee (IC), chaired by Ned Maguire, IG for ODNI, and Peter Usowski, IG for NGA, was formed, among other things, to improve communications among OIGs operating in the intelligence community and identify and remove impediments faced by investigators and prosecutors in pursuing procurement fraud cases involving classified information. The intelligence community includes agencies such as the CIA, NRO, ODNI, and NSA, among others. Cases involving the intelligence community are unique in that they can be challenging to investigate and prosecute when relevant evidence is classified and, therefore, difficult to access and use at trial. To date, the IC has consulted with investigators and federal prosecutors who have experience with cases involving classified information. The IC also has held discussions with officials from various Offices of General Counsels within the intelligence community that are tasked with classifying agency information. The IC's goal is to produce a handbook that will assist investigators, prosecutors, and others in effectively investigating and prosecuting these cases in the future. This is the first time that the intelligence community has examined these issues in any formal way.

5. International Committee

The International Committee chaired by Kenneth Kaiser, Assistant Director of the FBI, functions as an advisory forum for investigative and intelligence agencies involved in combating procurement fraud and public corruption overseas. The International Committee has met periodically since its inception.

A number of law enforcement agencies participating on the International Committee are members of the International Contract Corruption Task Force (ICCTF), which the International Committee supports and advises. The ICCTF was established in June 2006 as an information-sharing task force consisting of

the following charter agencies: FBI, Army CID Major Procurement Fraud Unit, DOD IG, DCIS, DOS-OIG, USAID-OIG and SIGIR. The mission of the ICCTF is that of a joint agency task force that coordinates and supports the deployment of criminal investigative and intelligence assets to detect and investigate corruption and contract fraud related to GWOT. The ICCTF member agencies currently have special agents deployed to Iraq, Afghanistan, and Kuwait in support of this joint mission. This task force is led by a Board of Governors derived from senior agency representatives who oversee the GWOT fraud and corruption program.

Procurement fraud cases, especially those involving the wars in Iraq and Afghanistan are usually very complex and resource intensive. The cases often involve extraterritorial conduct as well as domestic conduct, requiring coordination between appropriate law enforcement agencies. In order to improve coordination and information sharing, the ICCTF through the International Committee has established a Joint Operations Center (JOC) based in Washington, D.C. Representatives from each agency work in tandem to de-conflict investigative matters, share intelligence, and provide analytical and logistical support to agents and investigations in the U.S. and overseas regarding corruption and fraud relating to funding for GWOT. The JOC has provided support for over 272 ICCTF cases and has responded to over 160 requests for assistance from Task Force members.

6. Legislation Committee

The Legislation Committee, which is chaired by Brian Miller, IG for GSA, and Richard Skinner, IG for DHS, has considered a wide array of potential legislative and regulatory reforms that are described in more detail in the Committee's White Paper. Committee members include representatives from the DOJ Civil, Criminal, and Antitrust Divisions, OIGs, and agency procurement officials.

The Committee's White paper, entitled “Procurement Fraud: Legislative and Regulatory Reform Proposals,” was distributed to NPFTF members and member agencies on June 9, 2008. Members may choose to promote any or all recommended proposals through both legislative and administrative vehicles.

The report essentially provides three key areas for reform:

(i) Improving Ethics and Internal Control Among Contractors
The report urges greater use of codified procedures for conduct among contractors for both employees and subcontractors. These reforms are aimed at making explicit the expectations for contractors to provide processes for implementing and monitoring internal control systems and for ensuring the adequacy of those processes for employee reporting of abuses.

(ii) Improving the Prosecution and Adjudication of Procurement Fraud Defendants
The report encourages enhanced quantitative measurement of taxpayer loss in the application of sentencing guidelines and expanded subpoena authority and case resolution authority, within enumerated thresholds, for IG offices. In addition, the report proposes greater use of IG staff in support of case litigation.

(iii) Improving the Government's Ability to Prevent and Detect Procurement Fraud
The report provides a wide variety of other proposals to help agencies to better identify instances of fraud and encourages greater self-reporting by contractors of overpayments and conflicts of interest. In addition, the report urges improvements in background checks and performance reviews so as to ensure the accuracy of debarment and suspension databases.

The Committee is also considering a number of other reform proposals including issues relating to access to records needed for audits, the implementation of the provisions of the Procurement Integrity

Act, expanded duration of false claims, and new ways to potentially link enhanced funding for investigations and audits to the magnitude of recoveries in procurement fraud cases.

7. Private Sector Outreach

The Task Force's Private Sector Outreach Committee, chaired by Eric Feldman, IG for the NRO, and Eric Thorson, IG for the SBA, continues to enlist private sector participation in the prevention and detection of procurement fraud by encouraging early disclosure of fraudulent activity on government contracts to the OIG.

In October, the Task Force approved a Private Sector Outreach briefing for use by all Task Force members, which not only includes a description of the Task Force strategic framework, but also includes a summary of the proposed FAR ruling. As the private sector becomes more aware of the proposed FAR amendment, the Committee Co-Chairs anticipate that the requests for the Private Sector Outreach Committee briefings will continue to increase. Some IGs have used the "Outreach" briefings as milestone events to institute a regular dialogue with the ethics and compliance officials of companies with which they do business.

Since the last Task Force Progress Report was published, members of the Task Force and the Private Sector Committee have made presentations to corporate officers/business ethics compliance organizations such as Northrop Grumman Corporation Senior Leadership, Policy Council and Business Ethics Sector Leads. The Task Force has addressed corporate counsels and professional organizations, namely, the Federal Bar Association's Annual Symposium (North Alabama Chapter), the American Bar Association Suspension and Debarment Committee, the National Contract Management Association (Los Angeles Chapter), the National Defense Industrial Association, Pricewaterhouse Coopers, LLP and public interest groups such as Taxpayers Against Fraud, Washington, D.C. Chapter.

8. Suspension and Debarment Committee

At its last meeting, the Task Force formed a Suspension and Debarment Committee to examine ways that the administrative process can be more effectively deployed to assist in the government's efforts to combat fraud and corruption in federal contracting. Richard Moore, the IG for TVA agreed to chair the effort, which will begin by identifying the various ways agencies currently handle suspension and debarment matters and the resources allocated to this important function. The Task Force has found some agencies have a very active suspension and debarment program, while others only employ suspension and debarment when DOJ obtains a conviction. The Suspension and Debarment Committee also will explore, with selected IGs, how they can be a more active participant in the process within their respective agencies. Finally, the Suspension and Debarment Committee will work closely with OMB's Interagency Suspension and Debarment Committee's project to publish a white paper describing best practices for suspension and debarment coordination with DOJ and the IGs.

9. Training Committee

The Training Committee, chaired by David Williams, USPS IG, seeks to make available the most effective procurement fraud training to auditors, investigators, prosecutors, and procurement specialists.

In March 2007, the Federal Law Enforcement Training Center (FLETC) and the Training Committee distributed a needs assessment questionnaire to Task Force members to collect information necessary to design a new Basic Procurement Fraud Investigation Training Program. The questionnaire made it easy for Task Force members, including representatives from the USAOs and law enforcement agencies, to identify their training needs and inform FLETC staff about particular issues and lesson areas that should be covered in the course.

This outreach paved the way for an intensive three-day planning session that was hosted by the Training Committee and FLETC in late April 2007 with a smaller working group (17 individuals) to develop ideas for the future course. This group consisted of representatives from DOJ, DCAA, DCMA, DCIS, DHS, Army-CID, NCIS and USAF-OSI, along with members of various OIGs including the NRO, USPS, and others. After reviewing the needs assessment questionnaire, the group concluded that a two-week program (eight and one half days) would be the most effective basic training option for criminal investigators, non-criminal investigators, auditors and analysts involved in procurement fraud investigations. In total, the training committee has worked with the Task Force to design and offer approximately 20 weeks of procurement fraud instruction as described on page 13 of this report.

The Training Committee has developed a procurement fraud training "Resource Center" on the Task Force website. The Resource Center assists auditors, agents, acquisition specialists and prosecutors in identifying accredited U.S. government procurement fraud training courses and manuals, and provides them with links to other procurement fraud related websites and computer based training on procurement fraud. Figure 5 -Regional Procurement Fraud Coordinator Map

D. Regional Working Groups

The Task Force has also formed numerous regional working groups to ensure that the Task Force encourages the investigation and prosecution of procurement and grant fraud nationwide. To date, there are 36 United States Attorney Offices that are involved in the Task Force's regional working groups. Contact information for the coordinators of these groups is listed on the Task Force website.

Figure 2 -Regional Procurement Fraud Coordinator Map

The regional working groups, which are chaired by U.S. Attorneys, have implemented the Task Force's goals regionally by working with their local federal law enforcement counterparts to bring about timely and effective procurement fraud prosecutions. These groups are facilitating the exchange of information among participant agencies and assisting them in developing new strategies to prevent,

detect, investigate, and prosecute procurement fraud. Many of the groups meet routinely and have offered training on issues such as jury strategies when prosecuting procurement fraud cases, corporate criminal liability, and data mining, among others.

Regional Coordinators are working together to develop resources to assist in the prosecution of procurement fraud crimes. In addition, some of the working groups have reported an increase in civil and criminal procurement and grant fraud referrals since the formation of their groups and are rotating meetings among participant agencies. Coordinators are currently engaged in an effort to develop an expert witness directory containing individuals with expertise in subjects relevant to procurement fraud prosecution.

E. Congressional Briefings and Testimony

Congress has expressed keen interest in the Task Force's progress and its members have provided briefings on the status of the Task Force to congressional staff on multiple occasions. Members of the Task Force also have testified before Congress regarding the status of Task Force initiatives and the Department's efforts to combat procurement fraud. Specifically:

- On April 15, 2008, Barry Sabin, a Deputy Assistant Attorney General in the Criminal Division, testified before the House Oversight and Government Reform Committee's Subcommittee on Government Management, Organization and Procurement, regarding the FAR proposal to require contractors to disclose fraud. Brian Miller, IG at GSA and Vice Chair of the Task Force, provided written testimony supporting the "Close the Contractor Fraud Loophole Act," and the removal of the proposed exemptions in the FAR proposal.

- On June 19, 2007, Barry Sabin, a Deputy Assistant Attorney General in the Criminal Division, Stuart Bowen, the Special IG for Iraq Reconstruction, and Thomas Gimble, the Principal Deputy IG for DOD, testified before the House Judiciary Committee's Subcommittee on Crime, Terrorism, and Homeland Security, regarding procurement fraud and the War Profiteering Prevention Act, which is currently pending in Congress. On March 19, 2007, these panelists also testified before the Senate Judiciary Committee on the same topics. On both occasions, the panelists provided a comprehensive report on the work of the Task Force.

III. CONCLUSION

The Task Force has encouraged an unprecedented level of collaboration and coordination at all levels of government to combat procurement fraud. There is an increase in joint investigations and prosecutions of civil and criminal procurement fraud cases among the various components of the Department of Justice. Similarly, IGs are pooling their resources to achieve better results in these cases. Additionally, all of the working committees enjoy high-level leadership and include energetic representatives from a wide spectrum of agencies. The Task Force is continuing its strong record of accomplishment this past year, and we look forward to continuing to improve upon this success. In the months to come, we intend to draw upon the creativity and expertise of our membership to develop new areas where the Task Force can make a dynamic difference and continue to serve as a driving force to combat procurement fraud.

CLOSING CEREMONY

Address by
Mr. Keiichi Aizawa
Director, UNAFEI

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Address by
Mr. Keisuke Senta
Senior Legal Adviser
UNODC Regional Centre for East Asia and the Pacific

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Closing Remarks by
The Honourable Mr. Chaikasem Nitisiri
Attorney General of Thailand

CLOSING REMARKS

Mr. Keiichi Aizawa
Director, UNAFEI

His Excellency Mr. Chaikasem Nitisiri, Attorney General of Thailand, honourable guests, distinguished participants, ladies and gentlemen,

First and foremost, on the occasion of the closing session, I would like to express my sincere appreciation, on behalf of UNAFEI, to the co-organizers of this Second Regional Seminar, namely, the Office of the Attorney General of Thailand and the UNODC Regional Centre for East Asia and the Pacific, for their enormous contribution in convening this significant meeting. Without their expertise, professionalism and tireless efforts, this Seminar could not have been such a success. I would also like to extend my heartfelt gratitude to the Office of the Attorney General of Thailand and its staff for their warmest hospitality shown to us during the entire period of this Seminar.

To all of the participants gathered here, I would like to commend you for your dedication and enthusiasm during the course of this Seminar. Without your individual contributions we could not have produced such a satisfactory outcome. I appreciate that you spent valuable time away from your offices to contribute to the success of this Seminar.

Ladies and gentlemen,

This Seminar was indeed an exceptional opportunity for all of us, the criminal justice practitioners and policy makers who are actively fighting corruption, to get together and discuss our common issue of concern; corruption control in public procurement. Owing to the very well prepared and informative presentations given by the participants, we now have a broader perspective from which to evaluate and analyse the current situation of corruption in public procurement in the context of Southeast Asian countries. We also gained an understanding of the major causes of this phenomenon, as well as information about some beneficial practices employed by our international colleagues. Furthermore, with the great contribution given by the many speakers, we have been apprised of useful international methods of addressing this issue.

On the basis of the all above, we could agree upon the most practice-oriented recommendations as the final document of this Seminar. As an organizer of this Seminar, I genuinely hope that this recommendation will prove to be a practical and realistic step in our common endeavour.

Ladies and gentlemen,

As a further step forward in strengthening good governance in this region, and on the basis of the great success of this Seminar and the previous one which took place here in Bangkok, UNAFEI is now planning to hold a third Regional Seminar on Good Governance for Southeast Asian Countries in Manila, the Philippines, in December 2009, subject to the endorsement of UNAFEI's annual budget for that year by the financial authorities of Japan. The next Seminar would be held in a similar format to this meeting and its predecessor, in kind collaboration with the National Prosecution Service, Department of Justice of the Philippines. UNAFEI will discuss this issue with the UNODC Regional Centre for East Asia and the Pacific at a later stage.

The topic of discussion at the third Seminar will be determined in due course by the co-organizers, taking into account the pressing challenges faced by the countries in this region. I hope to see as many of you as possible again in Manila next year.

Thank you very much for your attention.

CLOSING REMARKS

Mr. Keisuke Senta on behalf of Mr. Gary Lewis
Regional Representative
UNODC Regional Centre for East Asia and the Pacific

Honourable Mr. Chaikasem Nitisiri, Attorney General of Thailand,
Honourable Mr. Keiichi Aizawa, Director of UNAFEI,
Distinguished Participants and Visiting Experts, Ladies and Gentlemen,

It is for me a great honour and privilege to address the closing ceremony of the Regional Seminar on Good Governance for Southeast Asian Countries, on behalf of Mr. Gary Lewis, Regional Representative of the United Nations Office on Drugs and Crime, Regional Centre for East Asia and the Pacific.

Distinguished Participants,

It is essential to ensure that corruption is under strict control, if not totally eliminated, with a view to realizing a society with good governance. And as I quoted from UNODC's publication in my presentation, "the field of public procurement has been a battleground for corruption fighters. It is in public procurement that most of the 'grand corruption' occurs with much of the damage visibly inflicted upon the development process in poorer countries and countries in transition."

For the past three days, you discussed how to address this important issue, and agreed upon a set of recommendations which contain many effective measures to be considered by the relevant agencies and authorities in your countries. I would like to emphasize that this is not the end of this exercise. All of us should proceed, on the basis of what we achieved today, to further our goals toward the realization of corruption-free society in this region.

In my presentation, I have made a brief introduction of UNODC's technical assistance activities aimed at realizing the rule of law, which includes governance, justice and security, and distributed our Menu of Services. I would like to invite you to have a look at a set of services available from UNODC, and come back and talk with us on possible future activities.

Mr. Gary Lewis, the Regional Representative, asked me to assure you that the UNODC Regional Centre in Bangkok is always ready to be involved in this process, and looks forward to continuing working with you and your colleagues.

Before closing, let me express, on behalf of UNODC Regional Centre, my deep appreciation to UNAFEI, the Office of the Attorney General of Thailand and visiting experts for their contribution to this important Seminar.

Finally, I wish you all a safe journey home.

Thank you.

CLOSING ADDRESS

Mr. Chaikasem Nitisiri
Attorney General of Thailand

Excellencies, Distinguished Experts and Participants, Ladies and Gentlemen,

Last December, I came here to close the First Regional Seminar on "Corruption Control in the Judiciary and Prosecutorial Authorities", which was co-hosted by UNAFEI, UNODC and the Office of the Attorney General of Thailand. It feels as if it were only yesterday, especially seeing so many familiar faces. Our first Seminar successfully brought together experts and participants from many countries to share their valuable views and experiences, which led to many positive recommendations.

In this Seminar the primary focus was on "Corruption Control in Public Procurement", which concerns many aspects of our daily working lives as public service workers. Although we come from various backgrounds, cultures and different branches of the legal profession, such as judges, public prosecutors, police officers, government lawyers, and other legal practitioners, we are brought together by this special event. Here we are given the opportunity to share views and experiences in this area of mutual concern.

I have been informed by the Seminar organizers that this Seminar has run smoothly and reached a successful conclusion. The international experts brought with them extremely useful information and the participants actively participated and contributed in making valuable recommendations.

I believe that not only will our constructive discussions help to further develop best practices among our ASEAN nations, but that this Seminar will also strengthen the established criminal justice network. Ultimately this allows us to pursue our goal of a corruption-free zone in the public procurement process.

On behalf of the Thai host, the Office of the Attorney General of Thailand, we would like to thank all experts and participants for their valuable contribution, resulting in the success of this Seminar. Special appreciation is also extended to our co-hosts, the UNODC and UNAFEI, for their exemplary organizational skills.

Even though we must say goodbye or 'sa-yo-na-ra', I truly believe that many long lasting friendships have been forged here. Lastly, I wish all foreign guests; the experts, participants and UNAFEI faculties and staff, a safe trip back home.

Thank you very much.