

CONTEMPORARY MEASURES FOR EFFECTIVE INTERNATIONAL COOPERATION

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I. INTRODUCTION

Corruption may be defined as the abuse of public position for personal gain or for the benefit of an individual or group to whom one owes allegiance. Corruption is a paradigm of the destructive side of human nature. Corruption is a form of dishonest or unethical conduct by a person entrusted with a position of authority, often to acquire personal benefit. Corruption may include many activities including bribery and embezzlement, though it may also involve practices that are legal in many countries. Corruption is a two-ways process, involving members of both the public and private sectors, or a “giver” and a “taker”, who are engaged in illegal, illegitimate and unethical action. Corruption poses a serious problem and affects each and every one of us. Corruption is no longer a local matter. To prevent, to control and to eradicate corruption is a responsibility of all of us. International cooperation is very important to combat corruption.

II. SITUATION OF COMBATING CORRUPTION IN MYANMAR

A. Period of 1948-2010

Since Myanmar had gained independence on 4 January 1948, the Prevention of Corruption Act was enacted in that year. Since regaining her own sovereignty, Myanmar has fought against corruption, even before the United Nations Convention Against Corruption entered into force.

B. Period of 2010-2016

Myanmar’s political and economic system changed variously from 1948 to 2010. Throughout this period, the Government governed predominantly under two state constitutions: the 1947 Constitution of the Union of Myanmar and the 1974 Constitution of the Socialist Republic of Myanmar. In 2008, the new constitution of the Republic of the Union of Myanmar entered into force based on the will of the people.

The first democratic Government governed from 1 April 2011 to March 2016. That previous Government (2011-2016) established the Anti-Corruption Action Committee, which was led by the vice president. They had taken action upon 362 persons, 69 persons were transferred from their posts, 18 persons were retired under the Section 53 of *The Civil Service Law* and one person who breached the *Prevention of Corruption Act of 1948* was convicted. That is, the Anti-Corruption Action Committee took action against 450 persons in total.

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In February 2013, the Committee formed *the Assessment Group capacity of people services*. This Group established *the Complaint Mechanism* to see whether there was a smooth process for addressing the people's concerns. Moreover, it was composed of the Delivery Unit, which is led by deputy ministers to fulfil the people's requirements.

Working with the UNDP, the Committee also observed activities of public servants in the education and health sectors to ensure that they were serving the people and to identify any abuses of public position for personal gain or for the benefit of any individual or group. They observed the state of governance throughout the whole country. Another function of the Committee was conducting educational talks among the various ministries from 12 December 2014 to 29 February 2015.

C. In 2016

On 1 April 2016, the democratically elected government which had been led by President Mr. Htin Kyaw and Daw Aung San Suu Kyi, the chairperson of the National League for Democracy Party which won the election by a landslide, brandishing the slogan "Time to change", was handed over the duties of governing. The new government is promoting the eradication of corruption in the short term between the civil servants and the people and government by the rule of law. There was an announcement by the President's Office of a new directive on the reception of gifts by all government departments as part of the effort to eliminate the practice of corruption and bribery. The Anti-Corruption directive set the limit for a single gift at K 25,000 (about 25US\$), with a maximum of K 100,000 (about 100US\$) as yearly gifts from organizations or individuals. That announcement aims to prevent corruption among government servants.

The government of Myanmar promotes anti-corruption by conducting public awareness and educational activities. These activities have started recently, and they take priority during Myanmar's New Year Festival as well as the water festival usually held in April. New Year's gifts are traditionally given in Myanmar. A large media company invited high-ranking cabinet officials to its Myanmar New Year *Thingyan* water festival pavilion, adding that a personal assistant to a very important person was among the dignitaries. A New Year's gift was presented to the personal assistant, without the officer knowing it contained K 5 million (US\$ 4,237) in cash. No action was taken against the company, even though the value of the gift exceeded the limit. The government considered this to be the first incident of bribery during the grace period. The government's best policy to root out corruption and bribery is "not to give" and "not to take" bribes. The K 5 million in cash was handed over to the Ministry of Social Welfare, Relief and Resettlement to be used in its effort to build water facilities in water-scarce areas. The President's Office has called for active public participation in the fight against corruption and bribery.

III. A MEMBER OF UNCAC

Myanmar signed the United Nations Convention Against Corruption (UNCAC) on 2 December 2005 and ratified it on 20 December 2012. After ratifying UNCAC, Myanmar respects the rights and duties of the signatories of that Convention. At first, the Union Attorney General's Office had responded to the implementation of UNCAC until the Anti-Corruption Commission was formed.

IV. PROMULGATION OF THE ANTI-CORRUPTION LAW IN 2013

The democratic Government of Myanmar promulgated the Anti-Corruption Law on August 2013, repealing the Prevention of Corruption Act of 1948. This law complies with UNCAC and is appropriate for Myanmar's political, social and economic situation. Accordingly, Myanmar can declare that combating corruption is a national responsibility.

The Objectives of the Anti-Corruption Law are as follows:¹

1. to carry out the anti-bribery policy as a national responsibility;
2. to benefit from clean government and good governance;
3. to enhance dignity and accountability in public governance;
4. to protect state-owned property, humanity and rights and interests of the citizens that are harmed by bribery;
5. to take action effectively against persons who commit bribery;
6. to be more transparent in the rule of law and governance sector and to develop the economy and domestic and foreign investment.

V. FORMATION OF THE ANTI-CORRUPTION COMMISSION, DUTIES AND POWERS ²

In February 2014, the President of Myanmar appointed the Anti-Corruption Commission, which is composed of one Chairperson and one Secretary among the fifteen members with the approval of the Parliament to combat corrupt acts under the said law. The Commission is responsible to the President of the Union.³

The Commission enquires into bribery and illicit enrichment of suspects and investigates them. For enquiry and investigation, the Commission forms the investigation board, which is led by any member of the Commission, by selecting appropriate citizens. The Commission also forms the Preliminary Scrutiny board by selecting appropriate persons on a case-by-case basis.⁴

When the commission receives information from the President of the Union and two Speakers of Parliament and complaints by aggrieved persons, it directs the Investigation Board to question the suspect about his actions and the illicit enrichment. But at first instance, the suspect has the right to explain his actions and to contest the allegations. If the suspect can provide strong evidence on his behalf, he will be excused. In doing so, the practice of conducting investigations of suspects under the new law is said to be good at protecting human rights and ensuring the rights of the suspect.

VI. INVESTIGATION

The Commission may form investigation bodies, which are led by any member of the Commission, by selecting appropriate citizens and may assign their functions and duties. If necessary, the investigation board has the right of search and seizure of the relevant currency and property related to the matter of investigation of the relevant banks and financial

¹ The Anti-Corruption Law, section 4.

² The Anti-Corruption Law, chapter III.

³ The Anti-Corruption Law, section 7(b).

⁴ The Anti-Corruption Law, section 16(a).

institutions, the right of inspecting and copying relevant financial records, and issuing orders to the responsible persons from the banks and financial institutions that authorize the search and seizure.

The Commission may conduct the investigation or order that the investigation be conducted in respect of the following matters, taking action in accordance with the law:⁵

- assigning the duty to investigate and submit by the President;
- Assigning the duty to investigate and submit in respect of submitting the proposal according to law by the Parliament representatives to take action against any person who possess a political post under sub-section (b) of section 43 by the relevant parliament Speaker;
- To take action against an offender who commits bribery according to law, the aggrieved person;
 - complaining to the Commission;
 - complaining to any working committee, working group, Preliminary Scrutiny Board and Investigation Board formed by this Law;
 - transferring such complaint to any relevant governmental department or governmental organization.

The investigation body shall determine a period and inform the accused person to explain or submit evidence relating to the change in carrying out the investigation. The investigation board shall submit the report of investigated findings to the chairman of the commission after the investigation.

VII. PROSECUTION

According to the report of investigation or other credible information, the commission shall instruct the head of the investigation board or the Inspector General to sue any governmental agency or official who commits bribery. The suit is filed in the High Court of the Region or the High Court of the State. Any other person except the governmental agency or official who commits bribery is sued in the relevant court.

VIII. PREVENTION

The Rule of Law is essential and fundamental for the prevention of crimes that consist of the corruption offences and can produce Good Governance. This can be done with the cooperation of three pillars of justice mainly the Prosecution Body, the Union Attorney General's Office and its subordinate offices and the Courts. The Prosecuting Body collects the facts or investigates the case, the Union Attorney General's Office prosecutes the case to determine whether the accused is guilty or not and the court gives a deterrent, effective judgement.

Our Departmental Head warned against and prohibited all officials from taking any gifts or demanding any offer of corruption. Our offices declare on notice boards that people can

⁵ The Anti-Corruption Law, section 21.

complain any time to the head of the office. If we receive any complaints, we will form an inquiry board urgently and take action promptly.

IX. CHALLENGES

The first challenge in investigation is that while some facts are collected by the Investigation Board, some accused are absconding. It is difficult to file cases in court. Our new law complies with UNCAC, and it is good at safeguarding human rights and ensuring the rights of the suspect. We are considering to address the issue of suspects who abscond by promulgation of related rules and amendments of the law. The second challenge in prosecution is the absence or disappearance of important witnesses before the court or fraudulent statements by witnesses during depositions.

X. INTERNATIONAL COOPERATION

A. Mutual Legal Assistance in Criminal Matters Law

Myanmar promulgated the Mutual Legal Assistance in Criminal Matters Law in 2004 to be in line with international standards. This law was drafted with the help of the UNODC and was approved by the Financial Action Task Force (FATF). FATF comprises 36 member states and its headquarters is in Paris, France. Myanmar ratified the ASEAN Mutual Legal Assistance Treaties (AMLAT) in 2004 and also checked whether our law is in conformity with the AMLAT or not. Every letter of the treaties and the spirit of the treaties are in conformity with the law.

B. Participating in International Conferences

The Myanmar delegation of the Anti-Corruption Commission attended the 8th Asia-Pacific Anti-Corruption Conference in Cambodia from 2-3 September 2014 and the Regional Seminar on Reduction of External Corruption in the ASEAN Social Community in Cambodia from 2-3 October 2014. The chairperson of the Commission attended the 10th SEA-PAC meeting in Malaysia from 1-3 December 2014.

C. Holding Regional Meetings as the Host Country

Myanmar held the ASEAN Integrity Community-The Regional Meeting on an ASEAN Framework for Collaboration on Accountable Governance and Anti-Corruption in Myanmar from 16-17 December 2014. It was sponsored by Transparency International (TI) and 53 participants from among international and internal departmental officials and non-government organizations attended. The regional Seminar's objectives were to lay down the framework for collaboration on accountable governance and anti-corruption within the ASEAN Integrity Community.

Myanmar also became a member of SEA-PAC in December and a member of the ASEAN Integrity Community-AIC. Previously, Myanmar's corruption status was 172 on the global CPI index of Transparency International (TI). Myanmar suffered the most corruption among all nations. At the beginning of 2014, Myanmar was one of the 45 members of the Extractive Industries Transparency Initiative-EITI as well as the 3rd member of ASEAN. Nowadays Myanmar's corruption status ranks 156th.

D. Review Mechanism of UNCAC

As a member of UNCAC, Myanmar has the obligation to comply with UNCAC. We have to implement the review mechanism based on the resolution of (3/1) in 2009. There are two review cycles: the first cycle is from 2010 to 2015, and the second cycle is from 2016 to 2020. The first cycle, *Criminalization & Law Enforcement*, was completed. Now *International Cooperation* is also being implemented.

The second cycle, *Preventive Measures and Asset Recovery*, is an ongoing process. We are cooperating with the UNODC as a part of the Review Mechanism. Myanmar will be under review by Thailand and Burundi, and Myanmar is reviewing the state of Cambodia with Togo.

E. Taking Action upon Receiving Complaints

The Commission's work started on 10 March 2014 and received 2,108 complaints till 31 May 2016. We took action upon eight complaints under the Anti-Corruption Law, section 56/57. The accused, who were not government officials but possessed political posts, committed bribery. The eight complaints were taken action upon under the Civil Servants Regulations by the Anti-Corruption Law section 30(b). In these cases, the Heads of the Service Personnel were informed to take action against the accused only under The Civil Services Regulations according to the investigation. The remaining 482 complaints were transferred to concerned ministries, and they replied on how to take action. 1,680 complaints were recorded, but they do not concern the Commission.

F. A Sample Case in Myanmar

A Township Judge who was involved in a criminal corruption case was sentenced by the High Court of Region with imprisonment for a term of 10 years with labour. The case arose due to information from the representative of the Homalin constituency. When the Anti-Corruption Commission receives a complaint, it forms an investigation board including one member of the Commission to investigate the offence. During investigation and prosecution, the prosecuting body and the Union Attorney General's Office need to cooperate. It is a best practice that the prosecuting body and the UAGO work cooperatively, and then the commission requests the UAGO to give legal advice to obtain a binding judgement against the accused.

XI. CONCLUSION

This paper has presented best practices for suppression of corruption and contemporary measures for effective international cooperation. The government alone cannot apply best practices without the active participation of the public as well as international cooperation. When the rule of law is in place, we have "Good Governance and Clean Government". It needs Public Private Partnership. To achieve this, the public must be "Good People, Clean People". Myanmar has come a long way in its legal system since belonging to the English common law family. The judge is responsible for the judiciary, the law officer for tendering legal advice and prosecuting the case before the court and the prosecuting body such as the Myanmar Police Force and the Bureau of Special Investigation for efficient evidence collection and investigation. Cooperation among these three institutions is necessary as a step in both law and practice in enhancing the fight against corruption. Although Myanmar faces many challenges, Myanmar is trying its best to overcome any challenges with the rule of law.