

DEVELOPMENT OF THE ANTI-CORRUPTION MECHANISM IN MYANMAR

*Ngwe Zaw Aung**

I. INTRODUCTION

Corruption is a complex social, political and economic phenomenon that affects all countries. Corruption undermines democratic institutions, slows economic development and contributes to governmental instability. Corruption attacks the foundation of democratic institutions and the rule of law.

II. HISTORICAL BACKGROUND

Myanmar promulgated a number of laws to fight against corruption. Before independence, firstly the Civil Supplies Theft Prevention Committee was formed in 1947 for preventing theft and corruption when the government supplies the public. Later the Public Property Protection Committee and the Public Property Protection Police were assigned to do investigation for such crimes. After that the Myanmar Penal Code (1861) was promulgated to take action against bribery and corruption. In 1948, the Suppression of Corruption Act was enacted and in 1951, the Bureau of Special Investigation Act was enacted and the Special Investigation Administrative Board was formed under the supervision of the Prime Minister. The Special Investigation Administrative Board was dissolved in 1963 and since then, the Bureau of Special Investigation has been formed under the Ministry of Home Affairs.

III. DEVELOPMENT OF LEGAL FRAMEWORK

The United Nations Convention against Corruption (UNCAC) is the only legally binding universal anti-corruption instrument in the World. Myanmar signed this UNCAC Convention in 2005 and ratified it in 2012. The Myanmar Government drafted the new Anti-Corruption Law to be in line with international standards and norms. With the aim to draft a law to be in line with international standards as prescribed in UNCAC, the Department of Special Investigation initially drafted the anti-corruption bill in 2005 and submitted to the Office of the Union Attorney-General through the Ministry of Home Affairs for legal Advice. The Anti-bribery Bill drafted by Hluttaw's Bill Committee was submitted to the Hluttaw and publicized in the daily newspapers. After the Anti-bribery Law was discussed thoroughly at the Pyidaungsu Hluttaw, the Anti-Corruption Law was enacted on 7-8-2013 as Pyidaungsu Hluttaw Law No. 23/2013 in line with UNCAC convention. It was signed by the President on 17-9-2013. This Law came into force on 17 September 2013. After the promulgation of Anti-Corruption Law, 2013, the Suppression of Corruption Act was repealed. In order to eliminate bribery, the Action-Committee against Bribery was also formed under the President Office Order 9/2013 dated 8 January 2013. The committee

* Deputy Director, Legal Advice Department, Union Attorney General's Office, Myanmar.

had received many complaints and handed them over to the Ministry of Home Affairs for investigation.

The Anti-Money Laundering Law also was enacted on 14 March 2014 in line with international standards including recommendations of the Financial Action Task Force (FATF) and the old one, namely the Control of Money Laundering Law enacted in 2002, was repealed. Section 5 of the Anti-Money Laundering Law provided 9 predicate offences including trading to get illicit profit by a person. Moreover, by exercising the power conferred by sub-section (b) of section 69 of the Anti-Money Laundering Law, the Anti-Money Laundering Central Board listed another 14 predicate offences including bribery and corruption. According to the Anti-Money Laundering Law, every organization including banks and financial institutions shall report Suspicious Transaction Reports (STR) to the Financial Intelligence Unit (FIU).

In accordance with the Anti-Corruption Law 2013, the Anti-corruption Commission was formed in 2014 with 15 members including the chairman and the secretary. The Anti-Corruption Rules were provided in 2015. According to Transparency International's Corruption Perception Index (CPI), Myanmar ranked 180th in 2011, but in 2015, Myanmar's rank became 147th. But now in 2017 according to the 2016 CPI Index, Myanmar's rank is 136th. Since the government is endeavouring to develop domestic businesses and also inviting foreign investments for the development of the national economy, it is also needed for further improvement of the CPI ranking.

IV. MECHANISM OF ANTI-CORRUPTION

The Anti-Corruption Law covers 11 Chapters and 73 Articles. According to the Anti-Corruption Law, corruption means the misuse of one's post by the competent authority to act or to avoid the lawful act or to give the legal right to someone or to prohibit the legal right incorrectly, or giving, accepting, obtaining, attempting to obtain, propose, promise or discuss by any means corruption from the relevant person for him, or any other person, or organization directly or indirectly.¹ The Law also provided that the definition of corruption means accepting consideration or appropriate value for the purpose of corruption without paying or giving the currencies, properties, presents, service fees, entertainment, or other illegal benefits.

The aggrieved person due to the corruption may send information and complaints to the Commission or Office of the Commission or working committee, working group, Preliminary Scrutiny Board and any Investigation Board formed by this Law or any relevant Government department, organization in accordance with the stipulations in respect of corruption or any competent authority that is enriched by corruption.² The Office of the Commission, working committee, working group, Preliminary Scrutiny Board and Investigation Board or any Government department, organization which obtained the information or complaint needs to submit to the Commission as soon as possible in accordance with the stipulations for enabling to give the necessary guidance to carry out effectively in respect of the said information or complaint.³ According to the Law, a political post person or authorized person or other person who committed the corruption offence shall be punished with imprisonment. According to the report of

¹ Section 3(a) of the Anti-Corruption Law, 2013.

² Section 44 of the Anti-Corruption Law, 2013.

³ Section 45, Ibid.

investigation or other credible information, the Commission shall instruct the Head of corruption, to the High Court of the Region or the State⁴ and to sue any other person except the Competent Authority who commits the corruption, to the relevant Court.⁵

The Commission requires that the report be sent, which is a matter of deciding to take action upon the accused person, to the President, respective Hluttaw Speaker, the complainant and also to the Union Government Office so that it can continue to take action against the accused person under the arrangement of the Union Attorney-General's Office.⁶ The Commission also needs to inform the Head of the Service Personnel if action should be taken against the accused person only by the Civil Services Regulations according to the investigation.⁷ The Commission may carry out the investigation upon the accused person who has given up his position during the investigation so as to continue to take legal action, action under the Civil Services Regulations or to seize the respective currencies and properties by the State.⁸

At this juncture, according to the Anti-Corruption Law, Anti-Corruption Rule and Union Attorney General Law, the Union Attorney General's Office has to tender legal advice for the cases and filing and also appear before the court on behalf of the Government for taking legal action against the accused person.

V. THE STATUS OF TAKING ACTION ON THE COMPLAINTS

The commission received 4,135 complaints during the period from 10-3-2014 to 30-9-2017. Among those cases, under investigation are 55 cases and transferring to the relevant States and Regions are also 1,025 cases. There are 3,042 cases filed, and 13 are under scrutiny. Some cases have been taken action by civil service regulation.

VI. THE CHALLENGE AND SOLUTION

Although the Government has taken measures to combat and prevent corruption, corruption exists and some responsible officials disregard the dignity of the State and their reputation by breaking the law. Thus, corruption becomes widened as a culture in the society. Corruption includes abuse of authority, bribery and willful misconduct; therefore, it is of interest to the general public. It has main effects on administration and human rights and also deteriorates the economy, politics and moral ethics. Moreover, it can be an issue of concern by becoming widespread internationally. As the global economy is rapidly developing nowadays, corruption has grown in different characteristics as organized crime and also transnationally, as with the asset recovery process mentioned in chapter 5 of the UNCAC convention.

Thus, corruption is committed not only within one country but also in connection with other countries; anti-corruption cannot be done by a single country alone. Thus, Myanmar would be required to promote cooperation for fighting against corruption with other countries and

⁴ Section 18(a), Ibid.

⁵ Section 18(b), Ibid.

⁶ Section 30(a), Ibid.

⁷ Section 30(b), Ibid.

⁸ Section 31, Ibid.

international organizations as well. The legal instruments are many, but it is the nations and the people that use them to combat these crimes. Political will of nations and the people is necessary, for it is in cooperation that achievements can be made through which that success will be attained for the benefit of humanity.