

COMBATING CORRUPTION THROUGH EFFECTIVE CRIMINAL JUSTICE AUTHORITIES

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I. INTRODUCTION

Freedom from corruption is the *sine qua non* for building a clean government and for good governance, and it is also connected with foreign investments and the image of our country. Corruption erodes justice and the rule of law, hampering the sustainable development of a nation. It undermines democratic institutions. It also results in the loss of State property. Widespread corruption in a country could result in poverty. Corruption usually links with other forms of crime, particularly organized crime involving money laundering and vast quantities of assets. Corruption cases involve not only government officials but also private individuals and corporations. Nowadays, corruption spreads out beyond the borders of a country. As no country in the world is free from corruption, all countries need to cooperate and coordinate in combating corruption.

II. ANTI-CORRUPTION LAW

Myanmar signed the United Nations Convention against Corruption (UNCAC) in 2005 and ratified the convention in 2012. In accordance with the UNCAC convention, the Pyidaungsu Hluttaw enacted the Anti-Corruption Law on 7 August 2013. It was signed by the President on 17 September 2013, and the law came into force on 17 September 2013. It has 11 Chapters and 73 sections. This law has been amended four times up to now for the requirements of our country. The Anti-Corruption Rules were also issued in 2015.

The objectives of this law are: (a) to carry out anti-corruption as a national responsibility; (b) to be of benefit to clean government and good governance; (c) to enhance dignity and accountability in public governance; (d) to protect state-owned property, rights and interests of the community and citizens due to corruption; (e) to take action effectively against persons who commit corruption; (f) to create more transparency in the rule of law and governance sector, and to develop the economy and domestic and foreign investments.

Under this law, the offences are stipulated as cognizable offences. The members of the Commission, Preliminary Scrutiny Board, Investigation Board, and inspectors have the powers and exemptions of police officers in performing their functions and duties under this law. In implementing the provisions of this law, the members of the Commission, Preliminary Scrutiny Board, Investigation Board, working group, inspectors, staff of the Office of the Commission, and any person serving on behalf of the Commission, Preliminary Scrutiny Board, or

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Investigation Board who performed their duties in good faith shall not be subject to civil action or criminal action or any other offence. Notwithstanding any other existing law in respect of corruption or enrichment by corruption, action shall only be taken under this law.

III. LAWS RELATING TO PREVENTING AND COMBATING CORRUPTION

Corruption is present in every field, in any form and manner. Therefore, Myanmar has enacted various laws regarding corruption as follows:

- (a) The Penal Code
- (b) The Narcotic Drugs and Psychotropic Substances Law, 1993
- (c) The Mutual Legal Assistance Law, 2004
- (d) The Anti-Money Laundering Law, 2014
- (e) The Anti-Trafficking in Persons Law, 2004
- (f) The Extradition Law, 2017

IV. ROLE OF THE ANTI-CORRUPTION COMMISSION

In accordance with the Anti-Corruption Law, 2013, the President formed the Anti-Corruption Commission with 12 members including the Chairman and Secretary, with the approval of the Pyidaundsu Hluttaw on 23 November 2017, and the investigation officers from the Bureau of Special Investigation (BSI) were attached to the Commission to investigate corruption offences. The Chairman of the Commission is stipulated as a Union Minister, and the Secretary and members of the Commission are stipulated as Deputy Union Ministers.

The main functions and duties of the Commission are: (a) forming the Preliminary Scrutiny Board and the Investigation Board; (b) investigating corruption in respect of complaints to the Preliminary Scrutiny Board and the Investigation Board; (c) submitting the report of corruption to the President, the Speaker of the Pyidaungsu Hluttaw, Pyithu Hluttaw or Amyotha Hluttaw; (d) accepting complaints and rejecting complaints if found that they are false, and taking action against false complainants; (e) assigning the Investigation Board and Inspectors to enter, inspect and search any place or building, and seizing evidence in respect of corruption; (f) cooperating with international organizations, regional organizations and foreign countries in combating corruption.

The main powers of the Commission are: (a) directing to seize any currency and property derived from enrichment by corruption, or corruption as exhibits; (b) issuing orders prohibiting the alteration, transfer, concealment, disguise, conversion, or transformation of currency and property during the investigation period; (c) when it is found that currency or property of any competent authority has been obtained by enrichment by corruption according to the submission of the Preliminary Scrutiny Board, issuing confiscation orders of the currency or property; (d) designating any notorious news of corruption as information. (“Notorious news” means the news credibly believed by the Commission that any person is possibly involved in corruption.)

The Commission forms Preliminary Scrutiny Boards with the appropriate persons on a case-by-case basis for the purpose of scrutinizing corruption cases to determine whether there is

credible evidence that the currency or property was obtained by enrichment by corruption, either according to the report of investigation or other information.

According to the report of findings submitted by the Preliminary Scrutiny Board, the said currencies and properties are:

- (a) obtained by corruption if clearly proved, in which case the Commission shall order the confiscation of the said currency and property;
- (b) obtained by legal means if clearly proved by the competent authority, in which case the Commission shall return the currency and property to the suspect.

The Commission forms Investigation Boards led by any member of the Commission with appropriate citizens. When receiving information from the President or relevant Hluttaw Speaker, complaints from aggrieved persons, or notorious news reports regarding corruption, the Commission instructs the Investigation Board to investigate the matter. The Investigation Board shall submit the report of investigation to the Chairman of the Commission.

V. DISCRETION OF LAW ENFORCEMENT BODIES

The Union Attorney General's Office (UAGO), Anti-Corruption Commission (ACC), Bureau of Special Investigation (BSI) and other relevant law enforcement bodies exercise a wide range of discretion in carrying out their duties. The ACC seeks legal advice from the UAGO with regard to the prosecution of corruption cases and then files the cases in the competent court for trial. And when the case is brought to the court, the law officers appear on behalf of the State as public prosecutors and file necessary appeals or revisions with the higher court if the judgment or order of the court is not in conformity with the law.

VI. STATISTICS AND INFORMATION

The Anti-Corruption Commission received 6,703 complaints from 24 November 2017 to 30 September 2018. Among them, there were 34 corruption offences. There were 1,216 complaints related to executive issues, 1,119 related to land administration issues, 1,005 related to judiciary issues, 2,845 related to departments and personal affairs issues, 11 revoked complaints, and 473 general complaints.

VII. PROSECUTION

According to the report of investigation by the Investigation Board or other credible information, the Commission shall:

- (a) instruct the Head of the Investigation Board or Inspector General to sue any competent authority that commits corruption in the High Court of the Region or State;
- (b) instruct the Head of the Investigation Board or Inspector General to sue any other person, except the competent authority, who commits corruption in the relevant Court.

In prosecuting any offence under this law, the Investigation Board or inspector shall obtain:

- (a) prior sanction issued by the Commission with the approval of the Union Government if the accused is a person who has a political post;
- (b) prior sanction in accordance with the existing law if the accused is a Hluttaw representative;
- (c) prior sanction issued by the Commission if the accused is not a person who has a political post or a Hluttaw representative.

VIII. OFFENCES AND PUNISHMENTS

Any person who possesses a political post and commits corruption shall, on conviction, be punished with imprisonment for a term not exceeding 15 years and shall also be liable to fine. Any other competent authority, except a person who possesses a political post, who commits corruption shall, on conviction, be punished with imprisonment for a term not exceeding 10 years and shall also be liable to fine. Any other person, except a person who possesses a political post or a competent authority, who commits corruption shall, on conviction, be punished with imprisonment for a term not exceeding 7 years and shall also be liable to fine. Whoever instigates, attempts to commit, conspires to commit, manages or abets any offence under this law shall be punished with the prescribed penalty for such offence.

IX. PREVENTIVE MEASURES AGAINST CORRUPTION IN MYANMAR

In order to prevent corruption, administrative actions are also effective in addition to the judicial measures against corruption. The Fundamental Rules and Supplementary Rules prescribe that a government servant shall not accept directly or indirectly, on his or her own or on behalf of any person, nor permit any member of his or her family to accept any gift, gratuity or reward. The anti-corruption plan has been designed by the government, and arrangements have been made by the respective departments and organizations. Monthly meetings have been held in every office of the departments and organizations to keep warning government servants regarding the anti-corruption plan of the government. A public servant who has been accused of a criminal offence including corruption may be removed, suspended or reassigned depending on the nature and seriousness of the outcome of the criminal investigation or prosecution. (88 judicial officials and 50 employees from the Immigration and Population Department have been punished under the Civil Service Law.)

The Union Government has established a four-year (2018-2021) strategic plan for anti-corruption reforms and initiatives to reduce the erosion of State funds and bring bribery and corruption under control. The government's plans are now in place to implement the strategic plan for anti-corruption and bribery. Regarding the private sector, the Myanmar Investment Commission issued the Anti-Corruption Code of Ethics for companies and corporate bodies on 3 August 2018. According to Transparency International's Corruption Perception Index (CPI), Myanmar was ranked 147th in 2015. In 2017, Myanmar was ranked 136th.

X. INTERNATIONAL COOPERATION

Myanmar is a member of the Asia-Pacific Group on Anti-Money Laundering and the Interagency Network on Asset Recovery in Asia and the Pacific. Cash up to 10,000 US Dollars can be brought into Myanmar, and beyond that it needs to be declared at a customs checkpoint. Myanmar has signed an MoU on Cooperation for Preventing and Combating Corruption with South East Asia Parties against Corruption (SEA-PAC) and the ASEAN Mutual Legal Assistance in Criminal Matters Treaty (AMLAT).

In the Pate-Chin-Myaung Police Station, Narcotic Case FIR No. 2/2012, the Northern Mandalay Drug Enforcement Force arrested Aung Ko Latt with 171,000 methamphetamine tablets and took action against him and the owner of the drugs, Mar Du Lar, who lived in Kyal Gong, China under the Narcotic Drugs and Psychotropic Substances Law. According to Myanmar's request to Thailand for arresting and extraditing Shwe Nu, Thailand arrested and extradited him to Myanmar.

XI. CORRUPTION CASES

A. Criminal Miscellaneous Case No. 7/2015 of the Bago Division High Court

The offender U Shwe, who was a Deputy District Judge from Taungoo District Court, was discovered to have accepted a bribe from a client through a bank. The Investigation Board examined the bank records and determined that it was true. He was prosecuted under section 56 of the Anti-Corruption Law and section 512 of the Criminal Procedure Code because he absconded. The Bago Region High Court took action against him with a proclamation and attachment of property in the Criminal Miscellaneous Case No. 7/2015.

B. Criminal Case No. 161/2017 of Zabuthiri Township Court (U Soe Thant vs. Khin Maung Nyo, Section 57 of the Anti-Corruption Law)

The Commission found that the accused Khin Maung Nyo, who is a police second lieutenant, took a bribe in the amount of 690,000 kyats from U Thet Htun Aung for his officer in charge of the police station and used his post for corruption. Then, U Soe Thant prosecuted Khin Maung Nyo in court on behalf of the Commission. The court took action against him under section 57 of the Anti-Corruption Law. In that case, some witnesses gave statements before the commencement of the trial. According to the statements of witnesses in court, the judge decided that Khin Maung Nyo committed corruption and sentenced him to two years' imprisonment.

C. Criminal Case No. 5/2018 of the Yangon Region High Court (U Moe Naing vs. Chit Ko Ko) and Criminal Case No. 6/2018 of the Yangon Region High Court (U Moe Naing vs. Thit Thit Khin and five other persons)

These cases arose from the same corrupt acts. They are unique cases because there were no complaints. These cases occurred based on notorious news reports in journals and the media. On 3 August 2018, the Anti-Corruption Commission issued an announcement regarding the Yangon Eastern District Court criminal case no. 34/2018 under the Criminal Law, section 302 with complainant U Thant Zin Oo and three accused including Than Tun Aung at Tha Gyi on the manslaughter of actor Aung Ye Htway. The announcement said the Yangon Eastern District

Court had permitted the case to be withdrawn on 25 July 2018, causing news to spread in journals and the media of the possible involvement of corruption in the case being withdrawn. The Anti-Corruption Commission held a meeting on 2 August 2018 to discuss the matter where all Commission members came to a unanimous decision to consider the case as notorious and to inform the Commission and confirm the case as a notorious case. The Commission formed the Investigation Board to investigate the case. On 13 September, the Anti-Corruption Commission opened the First Information Report on the Yangon Region Advocate General, Deputy District Judge from the Yangon Eastern District Court, Yangon Region Law Officer, Yangon Eastern District Law Officer, Yangon Eastern District Deputy Law Officer and Police Lieutenant of Thuwunna Police Station at Thuwunna Police Station. The Anti-Corruption Commission said they took bribes from U Khin Maung Lay, father of the suspect Than Htut Aung, in return for having the case dismissed against the three suspects of killing Aung Ye Htwe, a comedian popular on Facebook, on New Year's Eve last year. On 25 September, the prosecutor filed against Chit Ko Ko under section 56 of the Anti-Corruption Law at the Yangon Region High Court, and Thit Thit Khin and five other persons under section 55/56 of the Anti- Corruption Law at the Yangon Region High Court.

XII. CHALLENGES AND SOLUTIONS

Although the Government has taken measures to combat and prevent corruption, corruption exists everywhere. One of the reasons is the country is poor and salaries are low. Thus, corruption is widespread among public servants, and corruption has spread as a part of Myanmar's culture in the society. Corruption can be eradicated only when the integrity of people is raised. It cannot be done solely by the Anti-Corruption Commission or a single responsible organization. All people need to cooperate and coordinate in combating corruption. Cooperation and education are playing key parts in fighting corruption.

XIII. CONCLUSION

Myanmar is making its best effort to combat corruption and is implementing various forms of preventive measures against corruption, not only by criminal justice measures but also administrative measures. The Commission is making many systematic modes, such as giving educative lessons, improving morality and taking preventive measures across the country. Moreover, Myanmar is always combating corruption in accordance with the objectives set forth not only in domestic law but also in international instruments which Myanmar has ratified. Thus, Myanmar is one of the countries actively engaging in the fight against corruption.