

# COMBATING CORRUPTION THROUGH EFFECTIVE CRIMINAL JUSTICE PRACTICES

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## I. INTRODUCTION

Myanmar became an independent sovereign state on 4 January 1948, and systematic corruption has occurred since that time. There were frequent losses of state properties due to bribery, corruption and economic malpractice in Myanmar. To prevent such losses the public property protection police, or P4, consisting of 30 members was formed on 23 December 1947. In 1951, the Bureau of Special Investigation was founded under the Special Investigation Administrative Board and Bureau of Special Investigation Act, 1951 with its strength of 315 members. The Bureau investigates corruption according to the Suppression of Corruption Act, 1948. The new Anti-Corruption Law was enacted on 7 August 2013 according to international standards and norms. The Anti-Corruption Commission was formed on 25 February 2014, and investigation officers from the Bureau of Special Investigation were transferred and have being seconded to that commission to investigate corruption offences.

## II LEGAL SYSTEM OF MYANMAR

Myanmar practices dualism with regard to obligations of international conventions and cannot directly apply international law as Myanmar domestic law. The State Peace and Development Council made efforts to adopt a multi-party democratic system and market-oriented economic system with a significant programme of reforms instituted in late 1988. Multi-party democracy elections were held in 2015 and convening of parliaments with elected representatives followed in 2016. The new government announced that it would create clean government, good governance and make political, economic and social reforms.

Under the Anti-Corruption Law, Section 3(b), gratification includes the currencies, properties, presents, service fees, entertainment and other illegal benefits accepted or given without consideration or appropriate cost for the purpose of corruption. Bribery of public officials is made a criminal offence under the Penal Code Section 161-165, but the Anti-Corruption Law has superseded the Penal Code because of its more specialized nature. The Penal Code applies subsidiarity for offences not covered by the Anti-Corruption Law. The definition of corruption in section 3(a) includes both active and passive bribery. Sections 55, 56 and 57 impose penalties that vary with the position of the offender (imprisonment of up to 15 years for persons in political positions and fines).

Myanmar has not made illicit enrichment a criminal offence, but enrichment by corruption under Section 3(c) is a ground for confiscation. Myanmar will consider making bribery in the private sector a criminal offence.

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### III. FINANCIAL INTELLIGENCE UNIT

The Financial Intelligence Unit was established in January 2004 under the Central Control Board on Money Laundering according to the Control of Money Laundering Rules. In 2014, the Control of Money Laundering Law was repealed, and a new Anti-Money Laundering Law was enacted in order to be in line with international standards and norms including the recommendations of the Financial Action Task Force (FATF). According to this new law, the Anti-Money Laundering Central Board (AMLCB) formed the Financial Intelligence Unit on 28 August 2014 as the central agency to receive, request and analyse reports and disseminate financial intelligence. The AMLCB assigned the Anti Financial Crime Division to perform the FIU's function in 2016. Legal action was taken in all of the cases according to the Criminal Procedure Code, Evidence Law and Penal Code.

The FIU issues reporting forms, provides financial intelligence, compiles, maintains and disseminates information, cooperates and exchanges information with other domestic organizations, provides awareness, training assistance to government departments, requests information from reporting organizations, cooperates with domestic and foreign organizations and enters into agreements with counterparties. The Financial Intelligence Unit has the right to manage independently the funds received according to financial year in accordance with the existing financial rules and regulations. The FIU shall establish an electronic reporting system and a computerized system in order to perform its tasks.

All designated reporting organizations including banks and financial institutions have to report on suspicious transactions and any transaction above 10,000 US Dollars to the FIU. The FIU, law enforcement agencies, banking and supervisory authorities need to coordinate and cooperate nationally and internationally.

Statistical data on the Anti-Money Laundering Law are as follows:

Year	Cases				Remarks
	Investigations	Open Files	Prosecutions	Convictions	
2014 to 2017	27	10	7	-	5 cases closed, 12 cases under investigation

Section 5(j) of the Control of Money Laundering Law defines the list of predicate offences consistently with the FATF's recommendations that cover a wide range of serious offences including bribery and corruption. Moreover, criminal liability of legal persons is established in Sections 43-49 of this law. Statistical data on confiscations under the Anti-Money Laundering Law are as follows:

Under Freeze	Under Court Trial	Confiscation
USD 31.34 millions	11.94 million	USD 0.6 million

#### **IV. DISCRETION OF THE LAW ENFORCEMENT BODIES**

The Attorney General's Office (AGO), the Anti-Corruption Commission (ACC), the Bureau of Special Investigation (BSI) and other relevant law enforcement bodies exercise a wide range of discretion in carrying out their duties. Myanmar follows a system of discretionary prosecution. The ACC seeks legal advice from the AGO with regard to the prosecution of corruption cases and then files the cases in court for trial. According to Schedule II of the Code of Criminal Procedure, if the offence is punishable by death, transportation or imprisonment for 3 years and upwards, but less than 7 years, it is not bailable. There are only very limited possibilities for early release or parole. Under Rule 177 of the Civil Service Personnel Rules, 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 investigation. A public official can be subject to disciplinary procedures regardless of the outcome of a criminal investigation or prosecution. The Union Judiciary Law states that the reintegration of offenders into society is one of the primary principles of the administration of justice in Myanmar. Under Section 13 of the Anti-Corruption Law, the members of the commission shall submit asset declarations to the president of the Union upon assignment of duty. Under the Anti-Corruption Law Section 51-54 and Anti-Money Laundering Law Section 52, it is possible to identify, trace, freeze, seize and confiscate all proceeds derived from an offence or their monetary equivalent.

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

The offender U Shwe, who was a Deputy District Judge from Taungoo District Court, was discovered to have taken a bribe from a client through a bank. The investigation body examined the bank records and found out it was true. He was prosecuted under Section 56 of the Anti-Corruption Law and Section 512 of the Criminal Procedure Code. The Bago Region High Court took action against the offender by proclamation and attachment of property in Criminal Miscellaneous Case no. 7/2015.

Myanmar does not have a formal witness protection programme, but the powers of the Commission include providing necessary protection to persons providing evidence of corruption offences (section 17(I) of the Anti-Corruption Law). Such measures include keeping the identity of persons providing information or assistance confidential (Anti-Corruption Rule 62).

Procedures are available to use video technology and remote testimony to facilitate the testimony of witnesses and experts. There are no agreements presently in place between Myanmar and other States for the relocation of witnesses. Victims can be considered to be witnesses on a case-by-case basis subject to relevant protection measures and procedures. Section 493 of the Criminal Procedure Code allows the victim to instruct a "pleader" to act in court on his behalf. There is no legislation in Myanmar to address the protection of whistle-blowers in the private sector.

Pursuant to the Anti-Corruption Law, Myanmar established the Anti-Corruption Commission as the primary, but not exclusive, body for the investigation of Convention offences. In addition, this investigative capacity is supplemented by other specialized law enforcement agencies and oversight institutions, including the Bureau of Special Investigation and the Myanmar Police Force. The Criminal Procedure Code, section 337

permits the judge to conditionally pardon an offender who fully cooperates and provides a form of immunity from further prosecution or punishment. Cooperating offenders are considered witnesses under Myanmar Law and subject to applicable protection measures. Although Myanmar cannot extradite its nationals, Myanmar, as a general rule, prosecutes nationals in cases where there is no extradition.

## V. INTERNATIONAL CORRUPTION

The Anti-Corruption Law, Rule 59 speaks about coordination with other relevant stakeholders. The Union Civil Service Board cooperates with the UNDP to promote transparency and accountability in the civil service, build the capacity of civil servants and to promote a merit-based civil service system. The Public Finance Management Act is currently being developed with assistance from the World Bank. Relevant laws for the private sector—the Company Act, the Consumer Protection Law, the Competition Law, the Investment Law, the Arbitration Law, the Privatization Law and the Chambers of Commerce Law—are currently being developed in Myanmar.

The FIU has signed MOUs for information exchanges with 13 different countries. Myanmar is also a member of the Asia-Pacific Group on Anti-Money Laundering (APG) and the Asset Recovery Inter-Agency Network for Asia Pacific (ARIN-AP). The Mutual Legal Assistance Law 2004 is for recovery of property through international cooperation in confiscation. The Mutual Legal Assistance Law contains Form A and Form B for countries to file with the Competent Authority and request assistance, and national authorities will provide assistance. According to the MLA Law Section 10, Myanmar needs to have a bilateral agreement with a country to act on a confiscation order. If there is no bilateral agreement, the request shall be submitted to the Central Authority via diplomatic channels. The seized or confiscated property shall be administered by the bilateral agreement, and if there is no bilateral agreement, it shall be vested in Myanmar under Section 26 of the MLA Law. The Competent Authority on MLA has power to issue orders to freeze, seize and confiscate. The Anti-Corruption Commission has power to confiscate assets concerning the corruption case. Concerning special cooperation, information is provided timely to requesting countries. In the course of an investigation, information is shared with requesting countries or with countries to ask them to obtain information for the on-going investigation.

Regarding the extradition system of Myanmar, it is necessary to amend the system as Myanmar enacted the Burma Extradition Act in 1904, but it is no longer used or in line with current practice. With the cooperation of the UNODC, the Law Drafting Committee drafted the bill including 7 chapters, 42 sections, 1 schedule and 2 forms. The extradition law enacted as Pyidaungsu Hluttaw Law No. 16, 2017 after submitting to Pyidaungsu Hluttaw and Amyothar Hluttaw on 21 July 2017. Both national and foreign citizens who commit any offence which could be sentenced to two years' imprisonment and above could be extradited. The corruption offences and money laundering offences are listed as extraditable and could not be refused as political-nature offences.

### A. Mayangone Township Police Station Narcotics Case FIR No.2/2005

According to the information exchange between the Central Committee for Drug Abuse Control (CCDAC) and the China National Narcotic Control Committee (NNCC), drugs (“Ice”) weighing 102.05 kilos were seized from Shak Chan (a) Archan’s house in Mayangone Township on 24 May 2005. The Mayangone Township Police took action against him under Section 15/19(a)/20(a)/21 of the Narcotic Drugs and Psychotropic

Substances Law (1993). According to Myanmar's request to China for arresting and extraditing Kyan Shak Hwar (male), China arrested and extradited him to Myanmar on 1 July 2005.

**B. The Pate-Chin-Myaung Police Station, Narcotic Case FIR No. 2/2012**

On 1 August 2012, the Northern Mandalay Drug Enforcement Force arrested Aung Ko Latt (male) with 171,000 Methamphetamine tablets found in his car at Wet Won village, Pyin Oo Lwin Township. The Pate-Chin-Myaung Police took action against Aung Ko Latt and the owner of the drugs, Mar Du Lar, who lived in Kyal Gong, China, under Section 15/19(a)/20(a)/21 of the Narcotic Drugs and Psychotropic Substances Law (1993). According to Myanmar's request to Thailand for arresting and extraditing Shwe Nu (male), Thailand arrested and extradited him to Myanmar on 26 June 2013.

**C. Mutual Assistance in Criminal Matters Law (2004)**

Myanmar signed the Treaty on Mutual Legal Assistance in Criminal Matters with India on 27 July 2010 for cooperation and mutual assistance in criminal matters. Myanmar also signed a Memorandum of Understanding on Cooperation for Preventing and Combating Corruption with the South East Asia Parties against Corruption (SEA-PAC) members on 14 November 2013 and the ASEAN Mutual Legal Assistance in Criminal Matters Treaty (AMLAT) on 17 January 2006.

**D. Providing Mutual Legal Assistance to China**

The Chinese government made a request to send an accused, Sai Aung Myat, who was in police custody in Kyaing Tong Township under Section 15 and Section 19(a) of the Narcotic and Psychotropic Substances Law as a main witness in a murder case, drug trafficking, kidnapping and robbery of a Chinese government-owned ship. At the first Session (1/ 2002) of the Central Authority formed under the Mutual Assistance in Criminal Matters Law, the Authority decided to send Sai Aung Myat temporarily to testify at the Chinese Court under the MOU on 28 August 2012. Sai Aung Myat testified at the Kuming Court, and the offenders, Sai Naw Khan and two others who committed murder, drug trafficking, kidnapping and ship robbery, were sentenced to death on 6 September 2012. China transferred Sai Aung Myat back to Myanmar.

**E. Case Study 1**

Someone has complained to the Anti-Corruption Commission that a high-ranking official has taken a bribe from a company and gave it to his son. The investigators from the Commission searched his son's house and interviewed his son. After that, the official resigned and the commission made a press release and announced that the official was innocent. According to the Anti-Corruption Law Section 20(d), the preliminary scrutiny and investigation shall be kept secret.

**F. Case Study 2**

A businessman from Yangon gave funds to a terrorist group in Rakhine State. He did not give the money himself, but two persons transferred the money from the bank and later they absconded to another country. The person who accepted the money from Rakhine State also absconded to another country.

The Rakhine State's police arrested the two persons from the terrorist group, and they gave statements that the businessman had given them the funds to attack police stations and to pay for medical treatment at the hospital. The businessman was also arrested and

prosecuted. There was no strong evidence that the businessman transferred the money, so the judge acquitted him. The businessman gave the money, but he was released.

The challenges are that the Supreme Court of the Union will issue a writ of certiorari, but the judge cannot solve the problem because the evidence is not strong. The businessmen also have good relationships with higher authorities who will apply pressure.