SIXTEENTH REGIONAL SEMINAR ON GOOD GOVERNANCE FOR SOUTHEAST ASIAN COUNTRIES

Hosted by UNAFEI
With the support of the Government of Japan
14-16 December 2022, Tokyo, Japan

UNAFEI

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FOREWORD

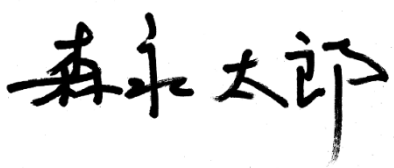
It is my great pleasure and privilege to present this report of the Sixteenth Regional Seminar on Good Governance for Southeast Asian Countries, which was held in Tokyo, Japan, from 14-16 December 2022. The Good Governance Seminar was held in an in-person format for the first time in three years.

The main theme of the Seminar was *New and Emerging Forms of Corruption and the Effective Countermeasures*. The Seminar was attended by two visiting experts – one from the Independent Commission Against Corruption (ICAC), Hong Kong, China, and one from the United Nations Office on Drugs and Crime (UNODC) – and 17 criminal justice practitioners from the countries of Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, the Philippines, Singapore, Thailand, Viet Nam and Timor-Leste.

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. As with other regions in the world, the fight against corruption in Southeast Asian countries has taken on an international dimension. The main theme of the Sixteenth Seminar focused on providing updates on the latest corruption trends and effective countermeasures across Southeast Asia.

The Seminar addressed the importance of the widest measure of cooperation and assistance in order to effectively counter the new and emerging forms of corruption such as Covid-19 corruption, corruption in sport, and the use of digital assets and electronic transfers in corruption. The participants exchanged knowledge, experiences, effective strategies and best practices, and the Chair's Summary, published in this report, details the key conclusions and recommendations of the Seminar. In addition, the Seminar enabled the participants to develop personal and professional contacts between anti-corruption authorities and investigators in Southeast Asia.

It is a pleasure to publish this Report of the Seminar as part of UNAFEI's mission, entrusted to it by the United Nations, to widely disseminate meaningful information on criminal justice policy.



MORINAGA Taro
Director, UNAFEI
August 2023

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Mr. MORINAGA Taro
Director of UNAFEI

OPENING REMARKS

MORINAGA Taro[*]

Distinguished participants,

It is truly my great pleasure to welcome you all to Tokyo, to UNAFEI and to this 16th Good Governance Seminar for Southeast Asian Countries. What makes this seminar so special is that we somehow managed to do it in an in-person form for the first time in almost three years, during which period we had to resort to the online system because of Covid-19. Our hearts are filled with joy, I can tell you.

All of the UNAFEI training courses and seminars such as this one are designed so that the participants are able, and are indeed encouraged, to not only listen to the Japanese and foreign experts, but to share information with each other, teach each other and learn from each other, and thereby build up a stable network among each other. This forms the core part of our seminars from which not only you but UNAFEI members also learn a lot. So, I expect that each of you will actively attend the sessions and enjoy lively conversations in and outside the programme, carry a lot of takeaways home and make good friends. Since we are all in the same or similar category of professions, such acquaintances and friendships will last for a long time and will surely benefit your private and professional lives.

It is indeed a short stay for you, and, unfortunately, Covid is still lingering, so I must regrettably remind you about the restrictions and ask you to take utmost care of yourselves; but still, please enjoy your stay here in Japan as much as possible.

Thank you.

[*] Director, United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI).

CHAIR'S SUMMARY

SIXTEENTH REGIONAL SEMINAR ON GOOD GOVERNANCE FOR SOUTHEAST ASIAN COUNTRIES
Tokyo, Japan
14 – 16 December 2022

OPENING CEREMONY

1. MR. MORINAGA TARO, Director of the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI), welcomed the participants to the Sixteenth Regional Seminar on Good Governance for Southeast Asian Countries, co-hosted by the Ministry of Justice of Japan (MOJ) and UNAFEI. Officials and experts from the following jurisdictions attended the seminar: Brunei, Cambodia, Hong Kong, Indonesia, Japan, Lao PDR, Malaysia, Philippines, Singapore, Thailand, Timor-Leste and Viet Nam. The seminar was chaired by UNAFEI PROFESSOR KUBO HIROSHI.

VISITING EXPERTS' LECTURE

2. MR. FUJIWARA DAISUKE, National Police Agency (NPA), Japan, delivered his lecture on the theme of *Investigation of Corruption Cases by the Japanese Police.* After providing an overview of the parallel structure of the national and prefectural police organizations, it was noted that Japan secures political neutrality in policing through its use of public safety commissions to oversee police policies and practices. Corruption cases are handled by the Japanese Police through its Second Investigation Division, which is primarily responsible for detecting structural injustices in political, administrative and economic matters. Corruption crimes are difficult to detect because they typically have no direct victims and little evidence, and the suspects often have high social status. Corruption investigations by the Japanese Police typically occur in four steps: information collection (review and confirmation of reports of corruption), covert investigation, overt investigation (interrogation and other compulsory steps) and clearance. Two actual corruption cases were introduced. The first involved bribery to obtain a public contract for waste disposal, and the second involved systemic corruption in city government. In the second case, which involved bid rigging and bribery to secure construction projects in connection with organized crime groups, the investigation stalled based on a lack of evidence. The case was ultimately cracked when a subcontractor was blackmailed but reported the crime to the police, which enabled the police to make an arrest. Accordingly, public trust and cooperation with the police are important to facilitate corruption investigations.

3. MR. Andrew Cheung, Principal Investigator, Operations Department, Independent Commission Against Corruption (ICAC), Hong Kong, China, delivered his lecture on the theme of New and Emerging Forms of Corruption and the Effective Countermeasures. In the 1960s and '70s, corruption was rampant in Hong Kong. Founded in 1974, the ICAC was established as an independent anti-corruption body tasked with rooting out corruption in a wholistic manner by employing a three-pronged anti-corruption strategy: enforcement, prevention and education. Its legislative mandate enables it to pursue both public- and private-sector corruption. The ICAC began by targeting corruption in the public sector, but private-

sector corruption cases have exceeded public-sector cases since 1988. The ICAC's mandate exceeds corruption cases (bribery etc.) and extends to crimes such as dishonesty offences, serious and organized crime, and other cases connected with or facilitated by corruption. A case study was introduced that demonstrated how private-sector corruption in the banking industry (bribes paid by secretarial firms to bankers) facilitated the opening of accounts on behalf of people residing outside of Hong Kong without proper due diligence procedures. To strengthen its ability to investigate corruption, the ICAC developed a number of technological resources with adoption of artificial intelligence in some of them. The Operations Department Information System (OPSIS) is a centralized database that stores investigative information, and the Records Digitalization System (RDS) stores and analyses voluminous records such as bank transactions. These databases assist investigators in drawing links between parties that may otherwise be undetectable. In future, law enforcement agencies should utilize artificial intelligence and corruption-crime forecasting to assist investigative work. To combat transnational corruption, mutual legal assistance and other forms of international cooperation are necessary tools, and MOUs were also introduced as a measure to enhance information-sharing among domestic investigative and regulatory agencies, enable joint investigations, and promote training and capacity-building of relevant personnel.

4. MR. Giovanni Gallo, United Nations Office on Drugs and Crime, presented on the topic of new and emerging forms of corruption and responses. Since 2005, the United Nations Convention against Corruption has been the only global legally binding instrument to prevent and combat corruption domestically, facilitate international cooperation and the recovery of stolen assets. The Implementation Review Mechanism (IRM) of the Convention, adopted by the Conference of the States Parties (CoSP) in 2009, has evidenced significant implementation efforts, good implementing practices but also gaps and technical assistance needs. The CoSP at its 8th session (2019) adopted a number of resolutions also related to new and emerging manifestations of corruption and action to counter them, such as safeguarding sport from corruption, the measurement of corruption, the effectiveness of anti-corruption measures, the impact of corruption on crimes that affect the environment (wildlife and forest crime), and collaboration between supreme audit institutions and anti-corruption bodies. In June 2021, the United Nations General Assembly held its first-ever special session against corruption. In the ensuing political declaration, Member States reiterated the centrality of UNCAC and its IRM while recognizing anti-corruption as an enabler for the 2030 Agenda for Sustainable Development and advancing a forward-looking anti-corruption agenda and framework. At its 9th session (2021) the CoSP emphasized, among other issues, the importance of strengthening regional approaches to anti-corruption efforts to address common forms of corruption, as well as promoting education, awareness-raising and training to address the root causes of corruption. Accordingly, anti-corruption practitioners can look to the resolutions and other activities of the CoSP for information on new and emerging forms of corruption and new and innovative approaches to address them.

COUNTRY PRESENTATIONS

5. BRUNEI DARUSSALAM: The Anti-Corruption Bureau (ACB) investigates corruption by reviewing official corruption complaints, conducting proactive detection through the Special Intelligence Services Division and the use of technology to gather intelligence and conduct forensic analysis. Corruption trends include the use of electronic platforms and hawala transactions. ACB investigators sometimes struggle to understand the complex technology. In response, the ACB is seeking to strengthen and introduce new approaches (including using

social media) in conducting intelligence work and improving detection using bank accounts and digital records. Moreover, it is important to promote domestic interagency and international cooperation and to cooperate with financial institutions and financial intelligence units (FIUs) to gather intelligence on suspicious transaction reports (STRs). Upon completion of its investigation, the ACB refers cases to the Attorney General's Chambers (AGC) for prosecution. The AGC applies the principles of prosecutorial discretion, fairness and public interest in reaching its prosecution decisions, and it functions as an independent body that reviews and supervises the work of investigative bodies. The AGC has successfully prosecuted serious and high-profile corruption cases. Like the ACB, the AGC has had to deal with the challenge of obtaining testimony from witnesses in other countries.

6. CAMBODIA: Since 2010, the Anti-Corruption Unit (ACU) has exercised exclusive power to investigate corruption and other related offences. Unlike the Cambodian police, the ACU is authorized to conduct arrests and wiretapping without obtaining permission from prosecutors. Emerging forms of corruption in Cambodia include abuse of power (an act by public servants or citizens in the exercise of his or her duty such as to hinder law enforcement in order to take any illegal advantage) and misappropriation of public funds (demanding or receiving any sum known not to be due). Cambodia has changed from paper-based to computer-based services and recordkeeping to reduce opportunities for committing corruption. As recognized by UNCAC, prevention and education are important components of Cambodia's anti-corruption strategy, and MOUs have been signed with 1,000 companies and more than 30 private higher learning institutions. Two cases were introduced – a bribery case in connection with a construction permit and a drug trafficking case. These cases underscored the importance of confiscation of illicit proceeds and property, including cars, boats, mobile phones, etc., as an effective means of suppressing and deterring corruption.

7. INDONESIA: Covid-19 corruption has been a significant new and emerging form of corruption in Indonesia. Social assistance programmes became targets for corruption, through which persons in positions of authority appointed friends and unvetted businesses in order to control the distribution of goods and services intended for the public. Another emerging form of corruption in Indonesia is stock market corruption. Under Indonesian law, any unlawful act resulting in state financial loss is deemed a corruption offence, which includes stock market offences resulting in state losses. These cases are complex and can involve many parties. One massive case included brokers, investment managers, the Indonesia Stock Market, the Financial Service Authority, nominees and more than 100 companies and 200 bank accounts. Complex cases require forensic analysis of electronic evidence, including electronic interception technology, and the parties are often high profile and involve evidence from other countries. Proposed countermeasures include sentencing offenders with the maximum penalty, confiscation of proceeds of crime, implementation of corruption impact assessments, and international cooperation in asset recovery.

8. LAO PDR: The State Inspection Authority (SIA) was established in 1982 and is an independent authority that reports directly to the Prime Minister. In 2021, the SIAA became a national independent organization (in line with Article 6, 36 of UNCAC) which is directly responsible to the President of the State. The Law on Criminal Procedure, the Law on State Inspection 2017 and the Law on Anti-Corruption 2012 cover both the public and private sectors, and prohibit corruption by persons with certain positions, powers and duties, as well as other actions that constitute corruption. Lao PDR is implementing asset declarations for public officials and is working to implement its national anti-corruption strategy, which aims to promote education and public awareness; researching, improving and creating legislation on prevention and anti-

corruption; improving the state management mechanism; and increasing technical support for anti-corruption staff. Currently, as well as performing usual duties, including reviewing complaints, disseminating laws, monitoring state investment projects and others, the SIAA conducts inspection and investigation at the national and local levels by establishing special task forces to inspect and investigate corruption cases. Lao PDR faces the challenge of political corruption within the party-state organization and suffers from unfocused laws and incomplete anti-corruption regulations. The implementation of anti-corruption measures and asset recovery continues to face challenges.

9. MALAYSIA: In 2020, lockdown orders were implemented in response to the global Covid-19 pandemic, and the government authorized the payment of hiring incentives and subsidies to promote employment during the pandemic. The hiring incentive paid money to companies that permanently employed people below the age of 40 years old, among other criteria. However, some employers misused the incentives by submitting false claims of employment. Personal information was harvested from social media platforms such as Facebook or WhatsApp, but the potential workers were never actually recruited. In another case, the CEO of a government-linked company manipulated the government grant process, which was aimed at training employees during the Covid-19 pandemic, to obtain an unwarranted 30 per cent commission. The CEO personally invested the commission into an unrelated company in which he held a 50 per cent interest. Combating corruption requires top-level commitment, corruption risk assessments of politically exposed persons, implementation of effective control measures, systematic review, monitoring and enforcement; training and awareness-raising.

10. PHILIPPINES: In March 2020, a public health emergency in response to the Covid-19 pandemic was declared in the Philippines. Subsequent legislation authorized the President to redirect funds to respond to Covid-19 and authorized economic stimulus programmes to provide support for social services and health care. Numerous schemes were hatched to take advantage of these funds, resulting in price gouging for personal protective equipment (PPE), questionable contracts, conflicts of interest, fraud and waste in procurement processes, selective distribution of assistance, etc. Thus, the Covid-19 pandemic created new and grander opportunities for corruption. Another short-lived scheme was the illegal sale of vaccines and vaccination slots. These schemes generally took place online, adding a new dynamic for law enforcement authorities to address. Time was perhaps the greatest challenge faced by investigators, given that lives were at stake and the ability to verify and investigate aid programmes was limited. Investigations are time consuming and require witness affidavits and confirmation of ineligibility for benefits. Also, Typhoon Odette legitimately destroyed some records, but it was used as an excuse for the failure to present others. To respond to these many challenges, investigative authorities should, among others, pursue timely investigations, strengthen internal review mechanisms, and promote public awareness and participation in the fight against corruption.

11. SINGAPORE: The Prevention of Corruption Act is Singapore's primary legal framework against corruption, coupled with the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (CDSA). The Attorney-General's Chambers serves as the Central Authority for MLA and extradition, and the Crime Division is primarily involved in countering corruption. As an international financial hub, Singapore has had significant experience in countering financial crime. Concerns over match-fixing, illegal gambling and connections with organized crime are well-known issues in physical sports, like football (soccer), but Singapore has recently experienced match-fixing in international e-sports competitions (online competitive computer- or console-based gaming). In addition to strict

enforcement, Singapore has recognized the need to engage in education and public-awareness campaigns directed at youth. Moreover, Singapore created an online anti-corruption game called *Corruzione* to promote youth awareness. During the Covid-19 pandemic, Singapore has observed individuals attempting to bribe police officers to avoid mask rules and bribing nurses to certify vaccination compliance. While there are currently no reported cases of corruption involving cryptocurrency and non-fungible tokens (NFTs), courts recently had to consider whether NFTs bear proprietary rights, i.e., whether they have sufficiently unique characteristics that would enable a court to protect the assets as property. Investigators and prosecutors also undergo regular training to upskill themselves in blockchain technology.

12. THAILAND: Policy corruption is a new and emerging form of corruption in Thailand. Unlike typical corruption cases, which can be classified as passive corruption, policy corruption is active corruption committed by a political group to achieve political benefits. It also involves very complex schemes perpetrated by high-level administrators that benefit those high-level interests who claim the policy is in the national interest, amend existing law and policy, and result in unreasonable benefits to the few at the expense of the many. Policy corruption schemes were introduced that involved the Ministry of Public Health, where a high-level official in the ministry was paid a bribe to remove price ceilings on pharmaceutical drugs, which increased the price of these drugs by 300 per cent. To counter these corrupt practices, Thailand requires political parties to conduct a Political Corruption Risk Indicator (PRI), which identifies the origins of the new policy scheme, and formally connects the policy to a particular party, and requires the party to conduct a corruption risk assessment for the purpose of helping the people decide which political party to vote for. In the past, many corruption schemes were domestic, meaning that the assets remained in Thailand subject to its jurisdiction. Recently, however, even policy corruption has involved transferring assets to neighbouring countries. Accordingly, MLA is of great importance in recent corruption cases. The Office of the Attorney General (OAG) serves as Thailand's Central Authority, and a case was introduced demonstrating successful prosecution of the defendants in the United States. The American bribe givers paid bribes in Thailand and other countries in connection with an international film festival, but the case study explored challenges faced in large-scale MLA and asset-recovery cases.

13. TIMOR-LESTE: The Anti-Corruption Commission (CAC) places great emphasis on promoting public participation and civic engagement in anti-corruption efforts. Corruption is a grave global phenomenon that hinders national development, slows economic growth, widens inequality gaps and harms the environment. The Timorese Constitution guarantees the right of active participation of all citizens in society and respect for the principle of democracy, and Timor-Leste's anti-corruption laws echo the importance of broad public participation, including civil society organizations, the private sector etc., in anti-corruption efforts. A new law requires a national anti-corruption strategy and disclosure requirements on assets and income of public officials. Negative public response to the defamation law, which was revoked, was an important step in protecting free speech and the right of persons to report corruption. In the context of Covid-19 corruption, the CAC plays an important role in ensuring proper oversight and sufficient internal control systems by mobilizing civil society, youth and other key stakeholders. These efforts resulted in the recovery of USD 4 million to the state treasury. Despite the CAC's efforts, strong political will remains a problem, and significant lack of public understanding of the harm caused by corruption remains. To address these issues, an integrated anti-corruption work plan needs to be promoted which requires full public participation. Regarding the prosecution of corruption cases, the Law 7/2020 on Measures to Prevent and Combat Corruption was adopted on 26 August 2020 and was promulgated by the President. This law replaces other legislation related to preventing and combating corruption,

including the Penal Code, creates new categories of illegal acts and concentrates all corruption crimes in a single law. Law 7/2020 defines corruption crimes as those committed while exercising public roles, passive corruption of public officials for illegal acts, passive corruption of public officials for legal acts, active corruption of public officials, embezzlement, embezzlement of public property, violation of the participation right and equal candidacy in procurement, sale or concession tenders, abuse of power, profiting from economic interest in business and conflicts of interest.

14. VIET NAM: Corruption in the public sector has been a persistent problem in Viet Nam in the forms of economic corruption (to obtain money and material things), abuse of power and political corruption. Emerging corruption cases include the use of false identity documents in the commission of crime and the use of legal entities, subordinates and relatives to participate in corrupt schemes. Thus, legitimate entities, bank leaders (white collar criminals) and people without significant criminal backgrounds are being used to commit corruption and fraud that results in significant state losses. These crimes are becoming more complex, and they involve transnational aspects that require international cooperation to address. The Supreme People's Procuracy (SPP) exercises the public prosecution function and supervises judicial activities to ensure that the law is implemented in a fair manner, including that all corruption cases are properly prosecuted and that all available corrupt assets are recovered. Regarding international cooperation, Viet Nam strictly follows the spirit of UNCAC and has been committed to participation in UNCAC's IRM. The SPP is the Central Authority for MLA, and Viet Nam has entered MLA treaties with numerous States. While corruption remains a serious issue, the SPP has been actively working to improve its anti-corruption practices through enforcement, MLA and asset recovery.

15. JAPAN: Despite ranking highly in Transparency International's Corruption Perception Index, Japan is not immune to corruption. Like many other countries, Japan fell victim to Covid-19 corruption in an amount exceeding 17 billion yen (as of Oct. 2022). While much of the fraud was committed by members of the public, a number of public officials were convicted for their roles in various schemes, demonstrating the need for greater efforts to enhance integrity in the public sector. Corruption in sport was also reported in connection with the 2021 Tokyo Olympics. One corruption scheme involved corporate executives bribing a board member of the Tokyo Olympic organizing committee in order to secure a corporate sponsorship agreement. Although board members of major international events are not public officials, they are "deemed public officials" under Japanese law and can be punished as such for engaging in corruption. To facilitate investigation and prosecution of corruption and other serious cases, Japan introduced a cooperative agreement system that entered into force in 2018. The new system allows suspects and defendants to enter into negotiations with public prosecutors, whereby evidence of others' criminal conduct can be provided in return for criminal charges being reduced or dropped. Cooperative agreements can be used for white collar crimes such as fraud, bribery and so on.

CONCLUSIONS AND RECOMMENDATIONS

16. In the absence of a globally accepted definition of corruption, new and emerging forms can be difficult to define and identify. The challenging nature of such efforts is complicated by differences in language, political philosophies and legal systems, domestic legislation (including definitions of corrupt acts and the issue of private-sector corruption), social norms etc., and these differences can impede efforts to combat corruption when cases involve

transnational elements. Despite, or perhaps because of, these many differences, UNCAC calls on States parties to provide the "widest measure of cooperation and assistance" when engaging in mutual legal assistance, asset recovery and technical assistance (UNCAC, Arts. 46, 51 and 60.2). In many cases, new and emerging forms of corruption are new variations on old themes – new modus operandi for committing corruption-related crimes such as abuse of power, embezzlement and bribery, and new money-laundering measures to conceal and transfer the proceeds of corruption.

17. Among the numerous forms of corruption discussed during the seminar, Covid-19 corruption, corruption in sport, and the use of digital assets and electronic transfers in corruption and money-laundering stand out as new and emerging forms of corruption that many countries are dealing with or are likely to face in the near future. In developed and developing countries alike, *Covid-19 corruption* has taken many forms, including abuse of power, bribery, conflicts of interest, embezzlement, fraud, price gouging, etc. Public officials – alone or in concert with others – have created illegal schemes to line their pockets with public funds at the expense of members of the general public who are in desperate need of government assistance. Likewise, *corruption in sport* is a growing concern that threatens the integrity of athletics and other competitions (including e-sports), undermining public confidence in the fairness of publicly held events. Some cases involve rigging the outcome of a particular competition (e.g., to gain illicit proceeds from gambling), while other cases involve corruption in the administration or sponsorship of major sporting events to unfairly obtain financial benefits through bribery, conflicts of interest etc. at the expense of private-sector competitors or the public. Finally, *digital assets and electronic transfers* have been used as a means to facilitate corruption and money-laundering. Cryptocurrencies and NFTs are used to pay, transfer and conceal bribes and other corrupt payments, and business professionals engaged in white collar crime continue to help corrupt clients move and hide their illicit proceeds.

18. To counter these and other new and emerging forms of corruption effectively, States parties are invited to consider the following recommendations:

    A. Address Covid-19 corruption by (1) creating, implementing and updating corruption risk management strategies for programmes, projects and subsidies that may be targeted by corruption, such as by imposing internal controls, conducting audits and ensuring oversight, and (2) requiring continuous integrity training for public officials and verifying integrity through regularly updated and transparent asset, income and conflict-of-interest disclosures;

    B. Address corruption in sport by (1) extending integrity training and verification practices, as well as oversight and enforcement functions, to individuals and private-sector entities involved in major international sporting events and (2) promoting public awareness of corruption in sport, its links with criminal organizations and impact on sustainable development by targeting youth and other relevant stakeholders;

    C. Address the use of digital assets and electronic transfers in corruption and money-laundering by (1) establishing specialized units to engage in special investigation techniques, including real-time data interception and seizure of electronic assets, (2) conducting basic training for criminal justice practitioners on the use of technology in the commission of crime, and (3) combating white collar crime by ensuring proper regulation and oversight of financial, accounting, legal and other professional advisers;

D. Continue efforts to identify new and emerging forms of corruption by, among others, pursuing efforts to utilize databases and AI technologies to evaluate corruption trends and conduct investigations;

E. Within the scope of UNCAC, reinforce basic anti-corruption measures and practices to address new and emerging threats, such as preventive measures, criminalization and law enforcement, and the "widest measure of cooperation and assistance" when engaging in mutual legal assistance, asset recovery and technical assistance;

F. Allocate sufficient resources to central and competent authorities to strengthen their capacity to conduct investigations and engage in international cooperation, which is necessary to counter new and emerging forms of corruption, including investigative techniques using new technologies;

G. Enhance international cooperation and technical assistance, including by sharing good practices and effective countermeasures, to establish robust mechanisms for raising public awareness, maintaining the integrity of public officials, conducting effective oversight, and training to counter new and emerging forms of corruption.

16 DECEMBER 2022
TOKYO, JAPAN

EXPERTS' CONTRIBUTIONS

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NEW AND EMERGING FORMS OF CORRUPTION AND THE EFFECTIVE COUNTERMEASURES

Andrew Cheung[*]

I. INTRODUCTION

This paper will discuss the new and emerging forms of corruption and the effective countermeasures from the perspective of a practitioner with the Operations Department of the Independent Commission Against Corruption (ICAC) of the Hong Kong Special Administrative Region of the People's Republic of China (PRC). For a better understanding of the approach taken by the ICAC, this paper will set out the brief history of the ICAC, the anti-corruption strategy adopted by it to stem out the then widespread corruption, the transformation of the corruption scene in Hong Kong in recent decades, and finally outline the corresponding countermeasures in response to the new and emerging forms of corruption.

II. BRIEF HISTORY OF THE ICAC

In Hong Kong in the late 1960s and early 1970s, corruption was rampant and was a way of life. Public services, such as nursing care at hospital, were provided on condition that the patient was willing to pay the bribe. Corruption seriously undermined the legitimacy of the public administration, and, therefore, distrust grew substantially between the public and the then administration. The administration sensed the alarming distrust and pressed for the establishment of a new watchdog – the ICAC.

In late 1970 when moving the second reading of the Prevention of Bribery Bill – the very weapon with which the ICAC was equipped to crack down on corruption – the then Attorney General made a remark that succinctly outlined the acute situation in Hong Kong as follows:

> *Sir, it is impossible to assess with any accuracy the extent to which society in Hong Kong is affected by corruption… But… corruption does exist here to an extent which not only justifies, but demands, that the utmost efforts be made to eradicate it from our public and business affairs…*

It was against such backdrop that the ICAC was established. In March 1974, the ICAC became the new organization charged specifically with the responsibility to combat corruption. It was given extensive special investigative powers that changed the way corruption had been tackled in the past. Most importantly, to underscore its independence, the control of the ICAC was shifted from the Attorney General to the Commissioner who was appointed by and accountable to the then Governor. In fact, after the resumption of the exercise of sovereignty over Hong Kong by the PRC, the accountability system remained, save that the Commissioner is now held accountable to the Chief Executive. Its independence is further entrenched into Article 57 of the Basic Law, which provides:

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[*] Principal Investigator, Operations Department, Independent Commission Against Corruption, Hong Kong Special Administrative Region, People's Republic of China.

A Commission Against Corruption shall be established in the Hong Kong Special Administrative Region. It shall function independently and be accountable to the Chief Executive.

Independence aside, the accountability of the ICAC is seen in the set-up of the Operations Review Committee (ORC) which, comprising 13 non-official members, monitors all ICAC investigations. The ORC, appointed by the Chief Executive, meets regularly to receive status reports on all cases and monitors investigations, people on bail and court cases. The ORC directs follow up investigations and referrals of cases which can include advice for internal disciplinary actions or administrative reform. Its purpose, among others, is to ensure that there are no cover-ups and failures of the ICAC to pursue matters that should be investigated. It is a bold innovation in terms of the check and balance regime that can rarely be seen in other foreign counterparts to allow such substantial involvement of civilians in the daily operational matters of an anti-corruption watchdog. The set-up of the ORC by itself underlines the value of independent oversight and review of the operational aspects of the ICAC's work.

III. THREE-PRONGED APPROACH

It should be noted that at the outset the ICAC was intended not only to combat corruption by means of enforcement, but also in a holistic manner by prevention and education. Such approach was codified in section 12 of the Independent Commission Against Corruption Ordinance, Cap. 204, Laws of Hong Kong which provides:

It shall be the duty of the Commissioner, on behalf of the Chief Executive, to –

(a) receive and consider complaints alleging corrupt practices and investigate such of those complaints as he considers practicable;

(b) investigate –

(i) any alleged or suspected offence under this Ordinance;

(ii) any alleged or suspected offence under the Prevention of Bribery Ordinance (Cap. 201);

(iii) any alleged or suspected offence under the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554);

(iv) any alleged or suspected offence of blackmail committed by prescribed officer by or through the misuse of his office;

(v) any alleged or suspected conspiracy to commit an offence under the Prevention of Bribery Ordinance (Cap. 201);

(vi) any alleged or suspected conspiracy to commit an offence under the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554);

(vii) any alleged or suspected conspiracy (by 2 or more persons including a prescribed officer) to commit an offence of blackmail by or through the misuse of the office of that prescribed officer;

(c) investigate any conduct of a prescribed officer which, in the opinion of the Commissioner, is connected with or conducive to corrupt practices and to report thereon to the Chief Executive;

(d) examine the practices and procedures of Government departments and public bodies, in order to facilitate the discovery of corrupt practices and to secure the revision of methods of work or procedures which, in the opinion of the Commissioner, may be conducive to corrupt practices;

(e) instruct, advise and assist any person, on the latter's request, on ways in which corrupt practices may be eliminated by such person;

(f) advise heads of Government departments or of public bodies of changes in practices or procedures compatible with the effective discharge of the duties of such departments or public bodies which the Commissioner thinks necessary to reduce the likelihood of the occurrence of corrupt practices;
(g) educate the public against the evils of corruption; and
(h) enlist and foster public support in combatting corruption.

Organizationally, the ICAC comprises the Operations Department, the Corruption Prevention Department, the Community Relations Department as well as the International Cooperation and Corporate Services Department. The former three departments were charged with the respective responsibilities as per the ICAC Ordinance detailed above.[1] This in a way reflected the three-pronged approach the ICAC has been employing since its establishment. Looking back, it was quite a novel approach especially in comparison with the then foreign counterparts who largely intended their anti-corruption watchdog to be an investigatory body only. The rationale for such a broad and novel approach to the problem of corruption was explained by the then Colonial Secretary on the occasion of the second reading of the ICAC Bill:

It is the intention of the Commission to concentrate much of its energies on the prevention of corruption. In the past our efforts in dealing with the problem have tended to be concentrated mainly on the punishment of it and I believe honourable Members will support the organisation of the Commission into three complementary departments for if the problem of corruption is to be tackled successfully, our efforts must not only be directed at the detection and punishment of offenders but also at the social causes and administrative sources of corruption.

Shortly after the establishment of the ICAC, corruption in Hong Kong was substantially cut down. Not only were the corrupt criminals brought to justice but the seeds of anti-corruption were sowed in the public administration and the civic society, much thanks to the excellent work by the prevention and education arms of the ICAC.

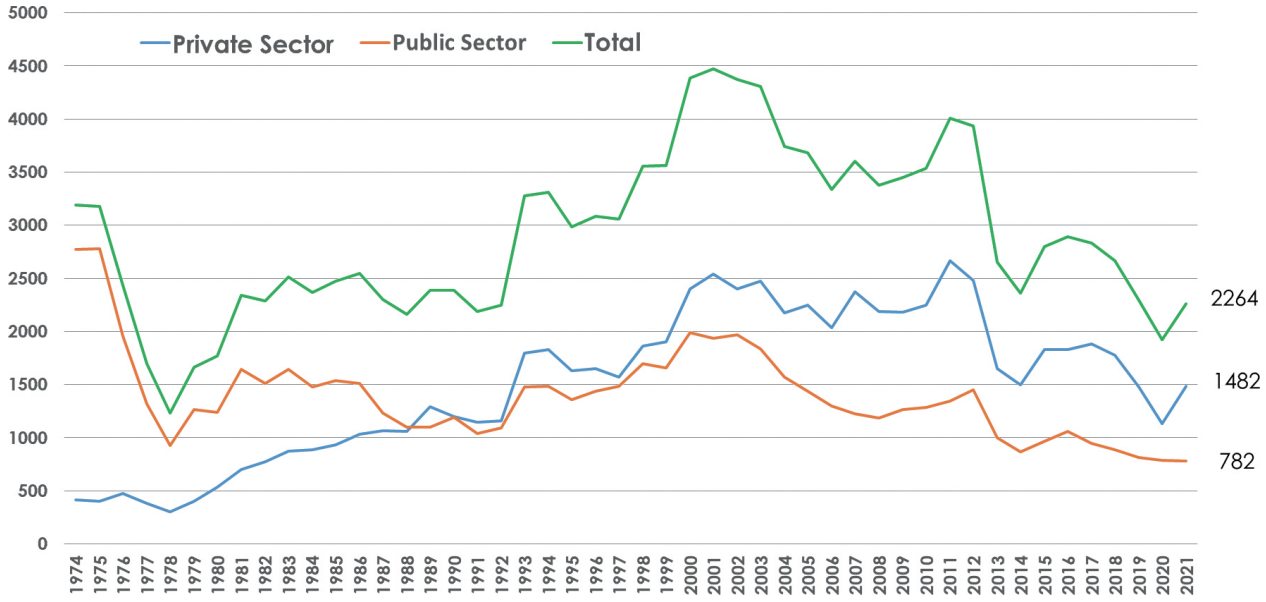
In fact, the three-pronged approach is also in line with requirements of the United Nations Convention Against Corruption (UNCAC), which urges the States parties to tackle corruption using a comprehensive approach comprising enforcement, prevention and education measures.

IV. CHANGES IN THE CORRUPTION SCENE

From 1974 till now, the ICAC has been actively enforcing the anti-corruption laws and witnessing the shift of the corruption scene in terms of, inter alia, the case figures in the public and private sectors, as well as the case typologies in recent years. The following table outlines the figures of corruption complaints in the public and private sectors:

[1] Points (a), (b) and (c) correspond to the works of the Operations Department; (d), (e) and (f) to the Corruption Prevention Department; and (g) and (h) to Community Relations Department.

Figures of Corruption Complaints



Note: A corruption report may contain multiple complaints against different government departments / public bodies / industries. Commencing 2010, corruption statistics have been compiled on the basis of complaints instead of reports

Corruption complaints against the public sector took the largest share in the first few years following the establishment of the ICAC. This trend should be read in the context that the creation of the ICAC was a direct response by the then administration to dismantle the deeply rooted corruption syndicates in the then civil service in Hong Kong, and, therefore, the general public would be eager to come forward to the ICAC to lodge corruption complaints against the civil service.

1977 was a watershed year for the ICAC. The huge success in cracking down on the corruption syndicates in the first few years had been won at huge cost to the police. Police morale was low and there was building resentment over the way that the ICAC used accomplices as prosecution witnesses in its investigation. The prevalent use of accomplices turned colleague against colleague and created an atmosphere of suspicion and mistrust between police officers. Given the sentiments, coupled with an operation in late 1977 resulting in the mass arrest of over 140 police officers for alleged involvement in syndicated corruption, a group of police officers marched to and raided the office of the ICAC with a view to protesting against the latter's rigorous enforcement. The crisis did not end with the demonstration – it escalated further because the police demanded an outright response by the then administration to abort the corruption investigation against the police. Since the matter had been elevated to a security issue threatening a breakdown of law and order, the then administration promulgated a partial amnesty that was subsequently inserted into the ICAC Ordinance as section 18A.

It is against the above backdrop that Hong Kong saw corruption complaints against the public sector plummet in 1977. After a decade's time of vigilant enforcement against public sector corruption, the pleasing result was seen in the year of 1988 when the number of private sector corruption complaints outnumbered that of the public sector for the very first time since the establishment of the ICAC. And such a bifurcated trend remains as of today.

A. Case Typologies

In terms of case typologies, those in the public sector and private sector are different in nature, complexity and modus operandi. Before illustrating their respective trends in recent decades, it is helpful to first set out their legal principles.

The workhorses of the ICAC in prosecuting corruption in the public and private sectors are sections 4 and 9[2] of the Prevention of Bribery Ordinance (POBO), Cap. 201, Laws of Hong Kong, respectively.

In regard to public sector corruption, section 4 of the POBO provides:

> *(1) Any person who, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, offers any advantage to a public servant as an inducement to or reward for or otherwise on account of that public servant's –*
>
> *(a) Performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as a public servant;*
>
> *(b) Expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by that public servant or by any other public servant in his or that other public servant's capacity as a public servant; or*
>
> *(c) Assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body,*
>
> *shall be guilty of an offence.*
>
> *(2) Any public servant who, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his –*
>
> *(a) Performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as a public servant;*
>
> *(b) Expediting, delaying, hindering or preventing, or having expedited, delayed, hindered, or prevented, the performance of an act, whether by himself or by any other public servant in his or that other public servant's capacity as a public servant; or*
>
> *(c) Assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body,*
>
> *shall be guilty of an offence.*

In regard to private sector corruption, section 9 of the POBO provides:

> *(1) Any agent who, without lawful authority or reasonable excuse, solicits or accepts an advantage as an inducement to or reward for or otherwise on account of his –*

[2] Sections 3 (Soliciting or accepting an advantage), 5 (Bribery for giving assistance, etc. in regard to contracts), 6 (Bribery for procuring withdrawal of tenders), 7 (Bribery in relation to auctions) and 8 (Bribery of public servants by persons having dealings with public bodies) of POBO are also other offences used to prosecute bribery. For illustration purpose, the present discussion would focus on sections 4 and 9 of POBO.

(a) Doing or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or

(b) Showing or forbearing to show, or having shown or forborne to show, favour or disfavour to any person in relation to his principal's affairs or businesses,

shall be guilty of an offence.

(2) Any person who, without lawful authority or reasonable excuse, offers any advantage to any agent as an inducement to or reward for or otherwise on account of the agent's –

(a) Doing or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or

(b) Showing or forbearing to show, or having shown or forborne to show, favour or disfavour to any person in relation to his principal's affairs or businesses,

shall be guilty of an offence.

A person can be guilty of the above offence if he offers an advantage to an agent, or being an agent, he solicits or accepts an advantage. However, there is no mention of the word "corruption", or variants of it, in these offences. Proof of corruption comes from establishing that the advantage was offered, solicited or accepted "as an inducement to, reward for or otherwise on account of" the agent doing an act in his capacity as a public servant (section 4); or an act in relation to his principal's affairs (section 9).

Notwithstanding the slight variances in the words employed by sections 4 and 9, the core requirement of the need to establish the purpose, be it "as an inducement to, reward for or otherwise on account of", of the advantage being offered, accepted or solicited stands the same. Such purpose is an element of the offence which makes the conduct of the offering, soliciting or acceptance of the advantage corrupt, and hence it is essential that it be proved.

One can imagine the proving of such linkage would rely on the utterance of at least one party to the crime to tell the investigators how the corruption scheme is orchestrated. When the ICAC was established, the initial scepticism of the public towards its effectiveness soon turned to unswerving support because of both the positive case results and complete convictions exhibited by the investigators. Therefore, quite a number of offerors, especially those who had succumbed to the undue requests by the corrupt public servants, were willing to come forward and lodge complaints with the ICAC to testify against the corrupt public servants. As a result, the ICAC yielded a number of successful prosecutions concerning public sector corruption, and dismantled the deeply-rooted corrupt syndicates in a very quick and effective manner.

B. The Prevalent Use of the Common Law Offence "Misconduct in Public Office" to Prosecute

After almost two decade's rigorous enforcement, the corruption situation in the public sector stabilized. But it does not mean that corruption was completely rooted out; instead, there were cases where public servants abused their position and powers for the benefit of themselves or others, used their discretionary power improperly, showed favours to a particular contractor for personal interest, and wilfully neglected to perform their duties. All such behaviours undoubtedly exhibited signs of deviation from integrity and fidelity; however, they did not

involve the solicitation or acceptance of advantages, and hence escaping from the reach of sections 4 and 9 of the POBO.

This became a problem, namely that there was no statutory crime targeting the aforementioned misbehaviour. So, attention inevitably turned to the common law offence in the hope that it might complement the existing bribery laws by filling a gap left by an ordinance that otherwise exhaustively dealt with all possible permutations of bribery by and of public officials.

C. Private Sector Corruption

As compared to public sector corruption against which the legislature had created several offences[3] to combat, section 9 is the only offence in the POBO dedicated solely to corruption in the private sector, but it is limited in its scope by the requirement that there exists a principal/agent relationship and that the principal's interests are prejudiced or at risk of being prejudiced by the secret actions either of his corrupt agent or by a person with whom he is having dealings who seeks to corrupt his agent. This is the traditional narrow view of corruption which is typically found in anti-corruption legislation and is even reflected in Article 21 of the UNCAC, which proscribes the offering, solicitation or acceptance of undue advantages to or by the employees of private sector entities "in order that he or she, in breach of his or her duties, act or refrain from acting". Thus, the focus of UNCAC and other similar offences is on conduct which undermines the integrity of the agent in his relationship with his principal. But a caveat must be added here that not all acts that undermines the integrity of the agent in his relationship with his principal are subjected to criminal sanctions. The very act that section 9 is intended to address is one of "secret commissions". Thus, in order that the offence can be established, the principal must be unaware of what is taking place, or otherwise a defence of the principal's consent, be it express or implied, would be pleaded by the corrupt agent.

Those who make their living by earning agency commissions on sales or other transactions, which account for a large portion in the commercial world nowadays, are under the radar of section 9. Given the rapid economic development in Hong Kong over the last half century, the prosperous economic activities naturally brought about a higher number of cases of corruption in the private sector.

Although the corruption-complaint figures in the private sector remained steady over the past two decades, there is an uprising trend of prosecution of s.9 offences *in conjunction with* other common dishonest offences, such as fraud, deception and theft (both in their substantive and inchoate forms), as well as serious and organized crimes, such as money-laundering, the trafficking of dangerous drugs, illegal gambling and smuggling. In many instances, corruption is a predicate offence that facilitates the commission of the underlying substantive crime. Therefore, in the majority of corruption investigations nowadays, the scope of the investigation very often goes beyond corruption to include crimes that are connected with or facilitated by corruption.

Rapid change in technology plays a highly influential role in driving how corruption investigation, especially in the private sector, is undertaken. The continuing advances in science and technology undoubtedly have a far-reaching impact in all areas of human endeavour. Insofar as corruption is concerned, when nowadays communication goes largely

[3] Please refer to note 2 for the list of provisions dealing with public sector corruption.

virtual, the chance of collecting direct evidence to prove the corrupt negotiation of the parties becomes slimmer than that in the past, not to mention the fact that most instant messaging platforms are now designed with message self-destruction function. The situation was aggravated by the outbreak of Covid-19. The daily life of people has been changed and many of them worked from home, and avoided or were prevented from meeting with others due to social distancing measures and travel restrictions. Investigators are to exhaust all conceivable means to collect more and more circumstantial evidence than ever in the past to prove to the court of law that the accused is beyond reasonable doubt guilty of corruption offences.

The increasing trend of globalization requires investigators to look beyond the traditional concepts of physical locations and territories. In this day and age, businessmen handle multinational projects and need to deal with cross-border transactions. And many are engaged in transactions in cyberspace with no physical boundaries. This global development means that law enforcement agencies, including corruption investigators, are required to tackle cross-border criminal activities. Under the current complicated geopolitical climate, investigators would come to a standstill on occasions when the investigation in question involves an adversarial foreign jurisdiction, rendering informal law enforcement cooperation and mutual legal assistance unfeasible and inviable. This in a way makes cross-border investigation counterproductive.

V. MEETING THE NEW CHALLENGE

To meet the aforementioned challenges, first and foremost we must ensure that there is and continues to be a solid and effective infrastructure that consists of a sound legal framework, an effective enforcement agency, an independent judiciary to uphold the rule of law, and equally important, a supportive community. These have been covered in the previous paper submitted by a participant from the ICAC,[4] and thus are not intended to be repeated here.

In the fight against corruption, an anti-corruption watchdog can never afford to be complacent regardless of how much remarkable progress has been made to reduce and minimize the risk of corruption. Every era gives rise to fresh challenges, and thus investigators need to be alert to new trends and new types of corruption-related activities, and must adapt and update their skills and knowledge in combating corruption. In addition, investigators also need to respond to changing circumstances promptly and appropriately, and have to anticipate changes and devise strategy to cope with the problems.

Over the years, the ICAC has been sparing no efforts in sharpening investigative capabilities. During the past decade, in order to improve work efficiency and streamline work procedures, the ICAC implemented the new Operations Department Information System (OPSIS), which serves as the one-stop-hub to digitalize the corruption investigation process. OPSIS also acts as a centralized database that stores the information on the parties involved in the case. This lays one core pillar of the infrastructure supporting the efficient conducting of corruption investigation in the ICAC because it allows investigators to identify the otherwise undetectable linkage between the relevant corrupt parties.

To further strengthen investigative capabilities, the ICAC invented the Records Digitalization System (RDS) that consolidates and analyses the usually voluminous case data

[4] https://www.unafei.or.jp/publications/pdf/RS_No105/No105_16_IP_HongKong.pdf

such as bank transactions, greatly facilitating the corruption investigation and unearthing the intricate relationships of the corrupt and their associates.

As mentioned before, the scope of corruption investigation extends to many other offences that intermingle with the underlying corruption. Their effective crack-down needs a context-specific understanding of a wide variety of issues, for example the product knowledge of relevant industries and the legal principles emanating from recent judicial decisions that dictate the way investigators collect admissible evidence. A thorough understanding of such issues is thus of paramount importance to successful corruption investigation. However, learning takes time, so a systematic self-help repository substantially promotes efficiency. To close the gap, the ICAC rolled out the Information and Knowledge Management System (IKMS) – a platform which identifies, captures and retains valuable information, knowledge and experience related to the work of the investigators. It turns disparate information, knowledge and experience into a structured system to train, inform and assist investigators to better discharge daily investigative duties. Now, investigators no longer need to spend time on figuring out who to talk with and learn from; they look up in IKMS and locate the answers to their questions conveniently.

There are many other technological tools and systems in place in the ICAC to facilitate the daily work of the investigators. But law enforcement agencies, especially those who are predominantly involved in combating white-collar crimes like the ICAC, shall stay vigilant about the technological know-how to make sure that they are always one step ahead of the criminals.

Further, as Hong Kong is an international financial centre, ICAC's expertise in tackling corruption in the financial market must be continuously developed given the rapidly evolving nature of the financial system. To this end, in 2019 and 2021, respectively, the ICAC entered into Memorandums of Understanding (MoUs) with the Securities and Futures Commission and the Financial Reporting Council to formalize and strengthen cooperation in fighting against corruption, illicit activities and malpractice in the financial market. The MoUs cover a range of matters including referral of cases, joint investigations, exchange and use of information, mutual provision of investigative assistance, as well as capacity-building.

VI. THE WAY FORWARD

In the era of big data, a corruption watchdog shall make good use of the massive historical and ongoing data generated from corruption investigation to assess the corruption scene, make informed decisions and allocate resources based on predictive analysis to maximize the enforcement effect while minimizing the resources needed.

Firstly, artificial intelligence should be promoted to increase both efficiency and effectiveness at work. For example, investigators quite often come across voluminous video and image analysis and need to examine them to elicit information regarding people, objects and actions to support criminal investigations. The examination exercise is labour intensive, and there are existing analytical tools to crop the relevant part of video and image by investigators to further the corruption investigation. Artificial intelligence should be proactively and widely used in other areas of the investigative work.

Secondly, undertaking crime forecasting by suitably tapping on the historical and ongoing case data can help the anti-corruption watchdog allocate resources more accurately. As

explained, the corruption landscape changes from time to time. Those managing the anti-corruption watchdog need to engage themselves in predictive analysis, which utilizes large volumes of data to forecast and formulate potential outcomes, and predict and reveal people or establishments at risk from such enterprises. When suitable, the anti-corruption watchdog can deploy resources and intervene early to frustrate corrupt criminal enterprises so that the spill-over damages to society can be kept to the minimum. In contrast with the traditional approach, which relies substantially on the expertise and experience of the human analyst, such predictive analysis operated by artificial intelligence hugely improves efficiency and accuracy, thereby assisting management in optimizing resources in a more precise manner.

Last but not least, the trend of cross-border corruption is on the rise, and as a result transnational anti-corruption enforcement is urgently needed more than ever before to prevent the corrupt from abusing the high accessibility to the global financial systems to advance their corrupt schemes and hide corrupt proceeds. But nowadays the tension and friction in international relations render the multilateral law enforcement cooperation and mutual legal assistance regime counterproductive. Cooperation and multilateralism must be restored to drive forward development and ensure that some of the world's most pressing issues, including corruption, can be more effectively tackled and their ill-effects reversed.

VII. CONCLUSION

Corruption is a complex challenge that continues to persist in many countries across the world. It has a direct impact on the three dimensions of sustainable development – social, economic and environmental – and affects each of the five pillars of the United Nations 2030 Agenda: people, planet, prosperity, peace and partnerships. The 2030 Agenda has established anti-corruption as a global imperative on which hinges the achievement of all sustainable development goals. Goal 16 is rooted in human rights and highlights the importance of strengthening institutions and governance in our pledge to leave no one behind. It is hoped that by a discussion from multiple perspectives the readers of this paper will be informed of the new and emerging forms of corruption and the effective countermeasures, in order that practitioners in the anti-corruption community are equipped with the necessary know-how to devise strategies, appropriate and consistent with their domestic legal systems, to call a halt to the evil phenomenon of corruption.

THE UN CONVENTION AGAINST CORRUPTION: THE CONFERENCE OF THE STATES PARTIES TO THE CONVENTION, ITS IMPLEMENTATION REVIEW MECHANISM AND NEW AND EMERGING CORRUPTION FORMS

Giovanni Gallo[*]

I. NEW AND EMERGING FORMS IDENTIFIED BY THE GENERAL ASSEMBLY

In June 2021, the General Assembly held an unprecedented special session against corruption that culminated in the adoption of a high-level political declaration[1] in which Member States "pledge[d] to pursue a multilateral approach in preventing and combating corruption and reaffirm[ed] [their] strong commitment to the Convention as the most comprehensive legally binding universal instrument on corruption, and to integrating it into [their] domestic legal systems, as necessary". Member States further stated: "We reaffirm our support for the bodies created under the Convention, most notably the Conference of the States Parties to the United Nations Convention against Corruption and the Mechanism for the Review of Implementation of the Convention, which are leading to important improvements and progress in the implementation of anti-corruption measures in many States parties. We will step up our efforts to promote and effectively implement our anticorruption obligations and robust commitments under the international anticorruption architecture, which we as a community have created together, and will further work towards finding synergies and common solutions".[2]

Those deliberations represent a clear commitment to the existing anti-corruption normative frameworks, to the United Nations Convention against Corruption (hereinafter, "UNCAC" or "the Convention") and the bodies created under it, placing emphasis on the need to redouble implementation efforts.

The political declaration contains seven operational sections. The first five, preventive measures, criminalization and law enforcement, international cooperation, asset recovery and technical assistance and information exchange, mirror the chapters of the Convention. The sixth and the seventh, on anti-corruption as an enabler for the 2030 Agenda for Sustainable Development and advancing a forward-looking anti-corruption agenda and framework, reaffirm the centrality of anti-corruption to the attainment of the 2030 Sustainable Development Agenda, the need to strengthen anti-corruption measures in the United Nations peacekeeping and peacebuilding efforts and the need to advance anti-corruption responses.

In particular, in the seventh and final section of the political declaration, Member States commit to ensuring that "appropriate measures are in place to prevent and combat corruption

[*] United Nations Office on Drugs and Crime (UNODC).
[1] See the Political declaration adopted through Resolution S-32/1 by the General Assembly at its special session against corruption (June 2021), entitled "Our common commitment to effectively addressing challenges and implementing measures to prevent and combat corruption and strengthen international cooperation".
[2] Ibid. 3.

when responding to or recovering from national crises and emergencies, while striving not to negatively impact the speed and quality of responses in such situations."[3]

In furtherance of these commitments, Member States also recognize the important role of supreme audit institutions and oversight bodies, the need to substantially decrease corruption by 2030, and the central role of the Convention and its Implementation Review Mechanism (hereinafter, "IRM" or "the Review Mechanism") "in global efforts to improve the capacity of and cooperation among States parties to effectively and comprehensively prevent and combat corruption."[4]

Since its entry into force in 2005, the Convention has been used by States to prevent and counter corruption in contexts that were unimaginable at the time of negotiating it. Despite the continuous emergence of new corruption risks posed by emergencies such as the Covid-19 pandemic or the emerging forms of corruption in sectors such as sport or wildlife, UNCAC continues to provide a comprehensive framework for effective responses.

II. NEW FORMS OF CORRUPTION AND UNCAC IMPLEMENTATION

A. Innovative Resolutions of the Conference of the States Parties

As recognized by Member States and foreseen by the Convention, the Conference of the States Parties (hereinafter "CoSP" or "the Conference") plays a critical role in improving the capacity of and cooperation between States in the implementation of the Convention. Its resolutions provide direction to the secretariat and to States parties on focus areas aimed at supporting their efforts to respond to new challenges faced by States or identified through the IRM.

In December 2019, at its last session before the onset of the Covid-19 pandemic, the Conference recognized the risks of corruption in sport and the environment as well as the importance of education in addressing corruption at its root. In particular, the Conference adopted resolution 8/4 on "Safeguarding sport from corruption" in which it reaffirmed its commitment to further coordinating and strengthening efforts to mitigate the risk of corruption in sport and reiterated the role of sport as an "important enabler of sustainable development"; resolution 8/5 on "Enhancing integrity by raising public awareness", in which it encouraged States to build a culture of zero tolerance into national educational programmes to mitigate the risks of corruption; and resolution 8/12 on "Preventing and combating corruption as it relates to crimes that have an impact on the environment".

At the most recent session of the Conference held in December 2021, States parties recognized new corruption threats, particularly those arising in the context of the Covid-19 pandemic as well as in other global emergencies and crises. This culminated in resolution 9/1 entitled "Sharm el-Sheikh declaration on strengthening international cooperation in the prevention of and fight against corruption during times of emergencies and crisis response and recovery". Through this resolution, States recognized that "corruption risks may increase during times of emergencies and crisis response and recovery as the urgency of needs, high demand for economic and health-related relief and the speed with which Member States and parties to the Convention against Corruption are required to respond create opportunities for

[3] Ibid., para. 73.
[4] Ibid., paras. 74-76.

corruption…".[5] The resolution highlights the risks that arise particularly in times of a national or global emergency and the need for States parties to strengthen prevention, oversight and enforcement mechanisms to address those risks. To that end, the Conference notably urged States parties to strengthen "whole public procurement cycles", building on prior efforts that had focused on specific segments of the procurement cycle.

The global nature of emergencies and crises have underscored the importance of international coordination and cooperation in responding to challenges, including the challenges posed by corruption. In resolution 9/2, States parties reaffirmed the political declaration and committed to improving cooperation including with international and regional organizations. In view of the new challenges posed by the pandemic and other emergencies, the Conference reiterated "the need to strengthen measures and develop new approaches" to identifying and addressing challenges and gaps and overcoming obstacles in the implementation of the Convention.[6]

B. The Findings of the UNCAC Implementation Review Mechanism

The Conference took a bold step when it agreed at its first session to establish a mechanism to assist States parties in reviewing the implementation of the Convention. The Mechanism was thus established as a peer review process aimed at supporting States parties in their effective implementation of the Convention. Reviews are conducted in accordance with the Mechanism's Terms of Reference, which require each State party to be reviewed by two peers, one of which is from the same regional group, determined by a drawing of lots. The first cycle of the Review Mechanism commenced in 2010 and covers the substantive chapters of the Convention on criminalization and law enforcement and international cooperation. The second cycle, launched in 2015, covers the substantive chapters on preventive measures and asset recovery. The cornerstones of the Review Mechanism are its objectivity and impartiality, as it consists of technical reviews undertaken by anti-corruption experts.

More than ten years since its establishment, and in view of the Convention's almost universal reach and the breadth of its substantive provisions, the Review Mechanism is unprecedented in terms of geographic and thematic reach. It has had a considerable impact on States parties, leading to legislative reforms, improved institutional frameworks, enhanced coordination and information-sharing among national institutions, strengthened international cooperation, and overall increased capacity to prevent and act against corruption. The Covid-19 pandemic exposed weaknesses in institutional and legal frameworks. Together with new challenges arising from the emergency measures implemented in response to the pandemic, the need to mainstream integrity and corruption-prevention measures has been further underscored.

An important element of the evolution both of corruption and the mechanisms to prevent and counter it is the advancement of technology. The use of technologies in the fight against corruption has attracted growing attention in recent years. Innovation in anti-corruption efforts and the rapid development of those technologies have led to new approaches and solutions,

[5] Resolution 9/1 adopted by the Conference of the States Parties to the United Nations Convention against Corruption at its ninth session (December 2021), entitled "The Sharm el-Sheikh declaration on strengthening international cooperation in the prevention of and fight against corruption during times of emergencies and crisis response and recovery".

[6] Resolution 9/2 adopted by the Conference of the States Parties to the United Nations Convention against Corruption at its ninth session (December 2021), entitled "Our common commitment to effectively addressing challenges and implementing measures to prevent and combat corruption and strengthening international cooperation: follow-up to the special session of the General Assembly against corruption".

which may be used to strengthen transparency and accountability, increase public participation and build trust in government. Solutions based on information and communications technologies provide citizens with direct access to government information and public services, limit face-to-face interaction with public officials, thus reducing opportunities for corruption, provide direct communication channels with society and facilitate citizens' feedback, and can be used to build the capacity of preventive anti-corruption bodies, to facilitate inter-agency coordination and to boost the effectiveness of anti-corruption efforts.

The development or use of technological tools is a cross-cutting need in the fight against corruption or to minimize corruption opportunities.[7] Their use has been effective for procurement systems, the management of conflicts of interest through online interest and asset declarations, as well as for financial investigations and forensic accounting.

III. NEW AND EMERGING FORMS OF CORRUPTION AND RESPONSES

Chapter II (preventive measures), Chapter IV (international cooperation) and Chapter V (asset recovery) of the Convention provide States parties with comprehensive measures to prevent corruption and respond to corruption offences through international cooperation and asset recovery. The sections below provide an overview of the practices of implementation of these chapters to address all types of corruption risks arising in various contexts and sectors.

A. Preventive Measures

An entire chapter of the Convention is dedicated to prevention, with measures directed at both the public and private sectors. These include model preventive policies, such as the establishment of anti-corruption bodies and enhanced transparency in the financing of election campaigns and political parties. States must endeavour to ensure that their public services are subject to safeguards that promote efficiency, transparency and recruitment based on merit. Once recruited, public officials should be subject to codes of conduct, requirements for financial and other disclosures and appropriate disciplinary measures.

1. Corruption Risk Management

The Convention requires States parties to have "effective and efficient systems of risk management and internal control" as a means for promoting "transparency and accountability in the management of public finances".[8] All organizations and government institutions face risks of corruption. Whether through the awarding of public contracts, the management of public finances, payment of social benefits, or in any of the other ways in which a government interacts with its citizens, there is the ever-present possibility that in the absence of measures in place, corruption may occur.

Likewise, persons interacting with government institutions and public officials might try to use corruption to influence or circumvent rules, procedures and decisions. The challenge that most organizations face is identifying the points in their operations where corruption is most

[7] Note of the Secretariat presented at the ninth session of the Conference of the States Parties to the United Nations Convention against Corruption (December 2021), entitled "Analysis of technical assistance needs emerging from the country reviews and assistance delivered by the United Nations Office on Drugs and Crime in support of the implementation of the United Nations Convention against Corruption" at para. 26, p. 9.

[8] United Nations Convention against Corruption (2004), art. 9, para. 2(d): "2. Each State Party shall, in accordance with the fundamental principles of its legal system, take appropriate measures to promote transparency and accountability in the management of public finances. Such measures shall encompass, inter alia: […] (d) Effective and efficient systems of risk management and internal control; […]".

likely to occur, developing and implementing strategies to prevent such forms of corruption from occurring, and ensuring that all members of the organization work with integrity to achieve the organization's mandate.[9]

Corruption risk management can contribute to the enhanced delivery of services to citizens that is neutral and objective, prevent the loss of revenue or safeguard law enforcement operations.

In implementing preventive measures and in the context of the Review Mechanism, several States parties have identified risk management and, more specifically, the conduct of corruption risk assessments, as a technical assistance need. The institutions targeted by such risk assessments ranged from public sector institutions in general and "corruption-prone institutions" more specifically, to private sector entities. Such increased interest in risk assessments has also been witnessed by UNODC during the Covid-19 pandemic.

IN FOCUS: Preventing Corruption Within Wildlife Authorities

In 2015, Kenya, and much of Eastern Africa, was experiencing a wildlife-poaching crisis, with numbers in flagship species decreasing by the day. In the media, corruption in the wildlife sector was indicated as the main enabler of wildlife crime, with wildlife authorities being accused of being corrupt and of facilitating the illegal wildlife trade. Furthermore, civil society and the public at large identified corruption as a key factor enabling wildlife crime and illegal trade. In response to a request from the Government of Kenya, UNODC began working with the Kenya Wildlife Service (KWS) to strengthen its internal mechanisms and systems to better prevent future occurrences of corruption from taking place.

The project Preventing Corruption Within Wildlife Authorities, uses a risk mitigation approach articulated in three steps:

1. First, establishing a working group of senior managers to identify and prioritize areas vulnerable to risk.
2. The working group then develops risk mitigation strategies, which are detailed and systematized with the view of addressing the root cause of each risk area.
3. Finally, a corruption prevention committee (CPC) is established within the institution to ensure ownership and implementation of the risk mitigation strategies developed. Often CPCs are composed of the senior managers from various divisions who developed the risk mitigation strategies.

As the CPC progressively became empowered in its institutional role, it began to be recognized as an important committee to be included in various forums.

2. Education

The importance of education in preventing corruption and raising awareness of its harmful effects was stressed by the Conference in its resolution 9/8, which called upon States parties to promote, at various levels of the education system, programmes that instil concepts and principles of integrity and accountability, and to devote special attention to working with young people and children as part of a strategy to prevent corruption. The political declaration adopted by the General Assembly in 2021 places anti-corruption education and training at the core of a holistic and multidisciplinary approach to promote transparency, accountability, integrity and a culture of rejection of corruption as a basis for preventing and countering corruption. In a

[9] UNODC publication "State of Integrity: A guide on conducting corruption risk assessments in public organizations" (2015).

meeting to follow up on the implementation of the political declaration held in September 2022, Member States again emphasized the importance of education and of raising public awareness of the existence and root causes of corruption and committed to furthering their efforts.[10]

Building on the success of the Education for Justice (E4J)[11] and Anti-Corruption Academic (ACAD) initiatives, UNODC launched the Global Resource for Anti-Corruption Education and Youth Empowerment (GRACE)[12] initiative, to further promote the role of education and youth empowerment in preventing and countering corruption. The GRACE initiative brings to the international community knowledge of and expertise in working with educators, academics, children and youth, anti-corruption authorities and practitioners to foster a culture of rejection of corruption. The initiative helps children and youth become responsible citizens and integrity leaders of tomorrow by equipping them with skills and mindsets required to promote transparency, accountability and integrity within their communities and organizations.

3. Public Procurement and Management of Public Finances

Mindful of the cases of corruption in the procurement of medical equipment and services reported throughout the Covid-19 pandemic, more focus has been placed on the corruption risks across the whole procurement cycle. Several States parties have identified technical assistance needs related to public procurement, particularly to training requirements including the conduct of risk-based procurement audits, the prevention and detection of fraud in public procurement, the monitoring and evaluation of public procurement systems, the conduct of procurement investigations and the preparation of procurement investigation reports. Several States parties have also adopted e-procurement systems, with enhanced oversight, simplification and clarity being highlighted as benefits of their introduction.[13] In the quest for enhancing transparency, different practices have been observed. One State party reported establishing a "transparency portal" for the budgeting process of public finances, while another processed state expenses (with certain exceptions) through an electronic database, following the adoption of a new law on budgetary transparency. For enhanced transparency in public spending, one anti-corruption body established an online tool compiling all financial transactions in the public sector. Similarly, another State party established an electronic dashboard for real-time tracking of budget and infrastructure spending. Driven by the Covid-19 pandemic, data on expenses on health-care infrastructure had been added as a separate category.

Finally, States recognize that oversight by supreme audit institutions or other bodies remains critical to ensuring that public procurement or finance systems are used in accordance with the legal framework in place.

IN FOCUS: The Abu Dhabi Declaration Programme

Given the broad range of offences that are covered by the Convention, it is critical to recognize that *all* parts of society have a unique yet complementary role to play in addressing corruption. Accordingly, the work of anti-corruption bodies must be aligned in scope and

[10] "Outcome of the intersessional meeting of the Conference on the achievements of the political declaration adopted by the special session of the General Assembly against corruption" (September 2022), at p. 5.
[11] See website of the "Education for Justice" initiative.
[12] See website of the "Global Resource for Anti-Corruption Education and Youth Empowerment" (GRACE) initiative.
[13] Note of the Secretariat presented at the ninth session of the Conference of the States Parties to the United Nations Convention against Corruption (December 2021), entitled "Good practices and experiences of, and relevant measures taken by, States parties after the completion of country reviews, including information related to technical assistance" at para. 58, p. 13.

supported by the work of other institutions that may play a part in the prevention, detection and tackling of corrupt practices. Crucially, this includes supreme audit institutions, whose role in monitoring the effective management of public resources and ensuring transparency and accountability, makes them a pivotal entity in the response to corruption.

While traditionally not considered central entities in this area, supreme audit institutions and their role have increasingly been recognized in international anti-corruption forums. At the eighth session of the Conference, resolution 8/13 was adopted, calling for enhanced collaboration between supreme audit institutions and anti-corruption bodies to more effectively prevent and counter corruption. This resolution, and its subsequent discussions at the ninth session of the Conference, underscore the critical role of supreme audit institutions and their relationship with anti-corruption bodies in promoting integrity, accountability, transparency and the proper management of public affairs and public property.

This recognition comes at a highly relevant moment in time. As the pandemic demonstrated, the vast amounts of resources allocated towards crisis response and recovery efforts – often with weak or insufficient oversight and accountability measures –, lead to increased opportunities for corruption.

4. Corruption in Sport

The sport sector has undergone significant changes in recent decades. Globalization, a huge influx of money at the top level of professional sport, the rapid growth of legal and illegal sports betting and marked technological advances have transformed the way in which sport is played and consumed. These factors have also had a major impact on corruption in sport, both in terms of its scale and its forms, and on the role played by international organizations, governments, and sports bodies to tackle it.[14]

Competition manipulation has become a significant problem in sport. Major evolutions in sport have made it more vulnerable to this type of corruption, with the risks becoming increasingly complex. Corruption within sports organizations has been exposed on a broad scale, not least with regard to the awarding of hosting rights of major sport events. The role of organized crime groups in corruption in sport and the criminal infiltration of sports organizations has also grown markedly because of the recent evolutions in sport. Criminal groups are exploiting vulnerabilities linked to development-related changes and the weaknesses of legislative and regulatory frameworks that govern sport.

The need to strengthen legislative and regulatory frameworks and tools to effectively combat corruption in sport has put the spotlight on sports administrations, their autonomy and cooperation with criminal justice authorities.[15]

- UNODC works to safeguard sport from corruption and crime by supporting the: Effective implementation of the United Nations Convention against Corruption, including where appropriate, reviewing and updating legislation, regulations and rules to bring them in line with the requirements of the Convention.

[14] UNODC publication "The Global Report on Corruption in Sport" (2021).
[15] Ibid.

- Development of comprehensive anti-corruption policies in sport based on an assessment of risks, including those related to the organization of major sports events, competition manipulation, illegal betting and the involvement of organized crime groups.

- Establishment of bodies by international organizations, governments and sport organizations that have a clear responsibility for the prevention, detection, investigation and sanctioning of corruption in sport, ensuring they have the independence, training and resources required to carry out their functions effectively.

5. Protection of Reporting Persons

The value of facilitating the reporting by citizens and persons working within the institutions is clear: information provided by individuals is one of the most common ways – if not the most common way—in which fraud, corruption and other forms of wrongdoing are identified.[16]

This was demonstrated during the Covid-19 pandemic, which led States to mobilize and disburse emergency funds to contain and mitigate the spread of the virus, with the resulting risk of increased corruption. In ordinary and emergency circumstances, it is essential to establish measures and mechanisms to protect reporting persons and to facilitate confidential and timely reporting in order to allow States to detect instances of wrongdoing, including corruption.

B. International Cooperation

Successful international cooperation is required to eradicate the corrosive effects of corruption. The United Nations Convention against Corruption offers a strong framework for States parties to engage in international cooperation at both the informal and formal levels. One of the central goals of the Convention is to promote, facilitate and support international cooperation in the fight against corruption. Chapter IV of the Convention contains detailed provisions on the main modalities of international cooperation in criminal matters, such as extradition, mutual legal assistance and the transfer of sentenced persons; it also covers law enforcement cooperation, joint investigations and special investigative techniques. Moreover, the Convention, in its article 43, requires States parties to consider assisting each other in investigations of and proceedings in civil and administrative matters where appropriate and consistent with their domestic legal systems.[17] Open-ended intergovernmental expert meetings to enhance international cooperation under UNCAC are convened once a year.[18] By bringing

[16] UNODC publication "Resource Guide on Good Practices in the Protection of Reporting Persons" (2015) and UNODC publication "Speak up for Health, Guidelines to enable whistle-blower protection in the healthcare sector" (2021).

[17] United Nations Convention against Corruption (2004), art. 43:

"Article 43 International cooperation

1. States Parties shall cooperate in criminal matters in accordance with articles 44 to 50 of this Convention. Where appropriate and consistent with their domestic legal system, States Parties shall consider assisting each other in investigations of and proceedings in civil and administrative matters relating to corruption.

2. In matters of international cooperation, whenever dual criminality is considered a requirement, it shall be deemed fulfilled irrespective of whether the laws of the requested State Party place the offence within the same category of offence or denominate the offence by the same terminology as the requesting State Party, if the conduct underlying the offence for which assistance is sought is a criminal offence under the laws of both States Parties".

[18] See webpage of the Open-ended intergovernmental expert meetings to enhance international cooperation under the United Nations Convention against Corruption.

together competent authorities, anti-corruption bodies and practitioners involved in extradition and mutual legal assistance, these meetings facilitate the exchange of experiences, disseminate information on good practices in order to strengthen capacity at the national level and to build confidence and encourage cooperation between requesting and requested States parties.[19]

1. Law Enforcement Cooperation

The most prevalent challenges to international cooperation exist at the legislative and practical levels. Some States lack legislation allowing for cooperation and for the Convention to be used as a legal basis when extradition is conditional on the existence of a treaty.[20] As a result, although the legislation of many States allows for the Convention to be used for the purposes of extradition and mutual legal assistance, few cases of its effective use have been observed. This highlights the importance of conducting further research on the use of the Convention as a legal basis for extradition and mutual legal assistance and enhancing awareness among practitioners of the benefits of such application.

The Convention has been more often used as a legal basis for mutual legal assistance requests than for extradition requests. The completeness of requests, as well as appropriate training of relevant staff are fundamental for the success of mutual legal assistance requests. Most forms of cooperation have been based on bilateral or multilateral agreements that regulate cooperation between the competent authorities of the parties and generally provide for the following forms of cooperation: exchange of intelligence and legislative information; assistance in locating persons suspected of having committed crimes; assistance in carrying out investigative measures; exchange of experience and specialists; and training of members of the competent authorities. These formal modes of cooperation are supplemented by informal cooperation among law enforcement authorities.

IN FOCUS: The GlobE Network

The Global Operational Network of Anti-Corruption Law Enforcement Authorities (GlobE) was established in 2021 under the auspices of UNODC to facilitate informal cooperation by providing a global network for anti-corruption law enforcement authorities.

The proposal for the GlobE Network was originally conceived under the presidency of Saudi Arabia of the G20 in 2020 and was welcomed at the G20 Anti-Corruption Ministerial Meeting held on 22 October 2020 and the G20 Leaders' Summit held on 21 and 22 November 2020. UNODC convened an online meeting of experts on 3 and 4 March 2021, which brought together over 130 technical experts and participants from 53 States from the five regional groups of the United Nations and 21 international organizations and entities. Interim task forces were created to develop various components of the Network.

The first plenary meeting of the GlobE Network was held in Vienna in a hybrid format from 15 to 17 November 2021. In its first meeting, the plenary adopted the charter of the

[19] See generally Note of the Secretariat presented at the tenth session of the Open-ended intergovernmental expert meetings to enhance international cooperation under the United Nations Convention against Corruption (September 2021), entitled "Statistical information on the use of the United Nations Convention against Corruption as a legal basis for extradition, mutual legal assistance and law enforcement cooperation" .

[20] Note of the Secretariat presented at the tenth session of the Open-ended intergovernmental expert meetings to enhance international cooperation under the United Nations Convention against Corruption (September 2021), entitled "Statistical information on the use of the United Nations Convention against Corruption as a legal basis for extradition, mutual legal assistance and law enforcement cooperation".

GlobE Network and established its governance structure to ensure that its activities directly respond to the needs of its members.[21]

The GlobE Network has grown rapidly since its launch. As of 9 August 2022, it included 112 authorities from 63 States parties to the Convention and one observer. Pursuant to the political declaration adopted by the General Assembly at its special session against corruption, the GlobE Network aims at providing a quick, agile and efficient tool for facilitating transnational cooperation in combating corruption and strengthening communication exchange and peer learning between anti-corruption law enforcement authorities.

C. Asset Recovery

The process of tracing, freezing, confiscating and returning stolen assets to their country of origin is typically a complex and lengthy one, involving multiple jurisdictions and often complicated by technical, legal and political barriers. Recognizing the serious problem of corruption and the need to facilitate the recovery of corruption proceeds, the international community introduced a new framework for the return of stolen assets through Chapter V of the Convention, which requires States parties to take measures to seize, confiscate, and return the proceeds of corruption.

Over the past 12 years, States have reinforced their efforts to trace stolen assets across borders, with a marked increase in cases of completed returns of corruption proceeds between 2017 and 2021. Almost all States parties now have some form of framework or arrangement for asset recovery (art. 51) in place, although the extent of these at the regulatory, institutional and operational levels vary significantly.[22] While many challenges remain throughout the recovery and return process, data shows that the continued discussion of the topic of asset recovery by the international community has spurred countries to action.[23] International asset recovery of proceeds of corruption can no longer be considered a rare occurrence, and active engagement in international cooperation on asset recovery has become prevalent.[24]

A number of States parties make use of asset recovery networks or other initiatives to facilitate international cooperation in asset recovery efforts. The Stolen Asset Recovery Initiative (StAR) is a partnership between the World Bank Group and the United Nations Office on Drugs and Crime that supports international efforts to end safe havens for corrupt funds. StAR works with developing countries and financial centres to prevent the laundering of the proceeds of corruption and to facilitate a more systematic and timely return of stolen assets.

1. Beneficial Ownership

One of the key obstacles to tracing and recovering illicit gains from corruption is a lack of corporate transparency: during corruption investigations, investigators must first uncover who controls a company or benefits from the ownership of an asset – for example, a real estate

[21] See website of the Global Operational Network of Anti-Corruption Law Enforcement Authorities (GlobE Network).
[22] Thematic Report prepared by the Secretariat presented at the second resumed thirteenth session of the Implementation Review Group (November 2022), entitled "Implementation of chapter V (Asset recovery) of the United Nations Convention against Corruption".
[23] Note of the Secretariat "Statistical information on the use of the United Nations Convention against Corruption as a legal basis for extradition, mutual legal assistance and law enforcement cooperation".
[24] Thematic Report prepared by the Secretariat, "Implementation of chapter V (Asset recovery) of the United Nations Convention against Corruption", table 2, p. 4.

property or a corporate bank account that is involved in a corrupt scheme – since the beneficial owner may be hidden behind multiple layers of shell companies or behind a nominee director.

Implementing an effective beneficial ownership disclosure regime is increasingly seen as an essential policy tool in the fight against corruption and for preventing money-laundering. Article 12, paragraphs 1 and 2, of the Convention promotes beneficial ownership transparency by providing that each State party shall take measures to prevent corruption involving the private sector. Over the past few years, States parties have increasingly enacted laws and issued regulations to enhance their domestic frameworks and achieve greater transparency with regard to the ultimate beneficial ownership of legal entities and trusts. While only a few States established a comprehensive framework as recently as in 2018, an increasing number are in the process of setting up, or actively considering creating, a framework for the establishment of a beneficial ownership register.[25]

While beneficial ownership transparency may be an effective tool for asset recovery in complex transnational corruption cases, it remains a highly technical area in which many countries still lack sufficient legal, regulatory and institutional frameworks and systems, as well as practical experience. Beneficial ownership transparency is a critical tool for combating corruption and tackling the misuse of legal structures to conceal proceeds of corruption.

IV. CONCLUSIONS

In September 2022, a follow-up inter-sessional meeting of States parties on the achievements of the political declaration was held, during which States took stock of the implementation of the commitments made in the political declaration and emphasized that "corruption is a local and a transnational phenomenon that affects all societies and undermines economies, making international cooperation to prevent and combat it essential."[26]

The United Nations Convention against Corruption remains the key global instrument to facilitate international cooperation and prevent and fight corruption. New forms of corruption have only reinforced the urgent need to fully implement the Convention as Member States aim to achieve the Sustainable Development Agenda 2030.

The political declaration represents a reaffirmation of the importance of this legal instrument and a commitment by the Member States to redouble efforts to addressing corruption in all of its forms.

In its final operative paragraphs, the General Assembly requests UNODC "to prepare a comprehensive report for the Conference on the state of implementation of the Convention after the completion of the current review phase, taking into account information on gaps, challenges, lessons learned and best practices in preventing and combating corruption, in international cooperation and in asset recovery since the Convention entered into force."[27] Once completed, this report will provide a comprehensive overview of the state of

[25] Conference Room Paper presented at the sixteenth session of the Open-ended Intergovernmental Working Group on Asset Recovery (November 2022), entitled "Good practices and challenges with respect to beneficial ownership and how it can foster and enhance the effective recovery and return of proceeds of crime".
[26] Preamble of the Political Declaration "Our common commitment to effectively addressing challenges and implementing measures to prevent and combat corruption and strengthen international cooperation".
[27] Political Declaration "Our common commitment to effectively addressing challenges and implementing measures to prevent and combat corruption and strengthen international cooperation", para. 83.

implementation of the Convention following the first and second cycles of the Review Mechanism and opportunities and areas for new or more effective measures. It should, therefore, serve as a useful tool to further support States parties in their individual and collective efforts to develop stronger legislative and institutional frameworks and enhance capacity to better prevent and counter corruption, including its new and emerging forms.

COUNTRY PRESENTATION PAPERS

Mr. Md Khairol Faizal Rizal Paijan & Mr. Md Qamarul Affyian Abdul Rahman, Brunei Darussalam

***

Mr. Soy Chanvicheth & Mr. Ros Saram, Cambodia

***

Mr. Suyanto Reksasumarta & Mr. Titto Jaelani Agis, Indonesia

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Mr. Hiroshi Kubo, Japan

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Ms. Kienthong Namkhalak, Lao PDR

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Mr. Yuhafiz Bin Mohd Salleh & Mr. Law Chin How, Malaysia

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Ms. Luanne Ivy Montano Cabatingan, Philippines

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Mr. Hu Youda Eric, Singapore

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Mr. Yongyoot Srisattayachon & Ms. Panyakorn Amonpanyapakomol, Thailand

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Mr. Matias Soares & Mr. Luis de Oliveira Sampaio, Timor-Leste

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NEW AND EMERGING FORMS OF CORRUPTION AND THE EFFECTIVE COUNTERMEASURES

Khairol Faizal Rizal Paijan[*]

I. BACKGROUND

Integrity in public office is integral in ensuring the efficiency of the delivery of services in the Government. In addressing the civil service, His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam has emphasized that integrity is crucial to be practiced by civil servants. He had mentioned in his 2010 New Year Royal Decree that "…*Integrity should be the cornerstone of public services. Without it, any country can collapse, or at best lose its will (ability) to develop*". Corruption will not be tolerated in any form, and stern actions will be taken against civil servants involved in any corrupt practices.

Integrity is unquestionably a priority and an important principle that contributes to the success in suppressing corruption. With a high standard of integrity in public office, the Government will maintain public trust and most importantly the trust of foreign investors. Brunei is constantly working to diversify its economy and reduce its dependency on oil and gas. Foreign Direct Investment is seen as one of the strategic ways for that purpose; hence, maintaining corruption free governance is vital in attracting foreign investors.

II. NEW AND EMERGING FORMS OF CORRUPTION IN EACH PARTICIPATING COUNTRY

A. Mechanisms for the Detection of New and Emerging Forms of Corruption

- The ACB works on two fronts when it comes to detecting corruption activities: **reactive** and **proactive** detection.

- **Reactive** – Apart from receiving formal complaints via hotline or from those who lodge reports at the ACB office, the ACB also receive referral letters from other Government agencies informing of corrupt practices committed by third parties or members of those departments.

- **Proactive** – On the proactive side, the **ACB's Special Intelligence Services Division (SPIN)** have been working actively with our formal/informal sources in order to track down corrupt activities. The ACB is also working closely with intelligence agencies, the Audit Department, FIU and other Law Enforcement Agencies, and this has been of great assistance in further strengthening our network in our effort to combat corruption.

- **Technological Capabilities** – Technological capabilities is one of the areas which the ACB has been tapping into. Under SPIN, two units have been tasked on developing technical capabilities, namely the **Operational Research Unit (OPUS**) and the **Digital Forensic and Technical Services Unit (DATA)**. Both units have a dedicated team to

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conduct research and development on developing tools for intelligence and surveillance purposes. The forensic team meanwhile has the capability to examine and retrieve valuable digital evidence that can be used for intelligence and investigation purposes.

B. Features and Trends of New and Emerging Forms of Corruption

- One of the common trends which has been investigated by the ACB in recent years is the abuse of power by the people holding senior positions in the Government.

- The gratification received may not come in the form of cash and may not be transferred directly to the public officer. The gratification may be transferred using a proxy or to an immediate family member in the form of employment, assets, property development, shares and vehicles.

- In one of the cases that has been investigated by the ACB, a former surveyor-general of the Surveyor Department, namely Haji Mohammed Jamil bin Haji Ali, had received gratification in the form of six return plane tickets and bill payments for car servicing, mobile phone use and broadband Internet from one Puah Heng Yew of Selective Powertech Consulting (SPC).

- The gratification was received following the awarding of a $9.5 million e-government project to create National Spatial Data Infrastructure for which SPC was selected as the primary contractor in 2007.

- Haji Mohammed Jamil was found guilty on four charges for corruptly accepting gratification with a total value of $7,479.31. He was also found guilty of all 16 counts of offences under Section 165 of the Penal Code, which forbids public servants from obtaining "valuable things" from a person connected to his official function. He was sentenced to four years' imprisonment.

- Meanwhile, co-accused Puah Heng Yew also received a four-year sentence after being found guilty of bribing the surveyor-general as an inducement or reward for varying tender specifications for a Government spatial mapping project and submitting SPC's progress payment claims to the Ministry of Development between May 2007 and October 2008 in respect to the tender.

- Puah was also found guilty of all 16 charges of abetting Haji Mohammed Jamil in committing the offences under Section 165 of the Penal Code by giving the said "valuable things" to Haji Mohammed Jamil.

C. Principal Causes or Backgrounds of New and Emerging Forms of Corruption

a) **Greed and the lack of integrity**. In the above case, Haji Mohammed Jamil has taken advantage of his position being the project manager and abused his power.

b) **Lack of supervision and monitoring from higher authority**. During the implementation, the project has encountered several problems such as delays in delivering hardware, disagreement between project members and the surveyor-general. The Ministry of Development was also unaware of the changes made by Haji Mohammed Jamil.

c) **Lack of due diligence during tender process**. There was no prior checking on the contractor's portfolio and capabilities to take up a project of that size when the tender assessment was made. In the end, the project was deemed unsalvageable after the contractor failed to meet its one-year completion date even after being twice given extensions when it fell behind schedule.

D. Prospects of the Future Evolution or Transformation of New and Emerging Forms of Corruption

- Continued evolution beyond traditional cash transactions to receiving in-kind or through third party services via digital mediums.

III. BEST PRACTICES FOR TACKLING NEW AND EMERGING FORMS OF CORRUPTION

A. Challenges and Obstacles Posed to Investigation, Prosecution and Adjudication

- In the new and emerging forms of corruption, the perpetrators have used electronic platforms to facilitate and cover their activities, such as social platforms for their mode of communication as well as the use of fintech such as cryptocurrency for transferring gratification.

- Apart from that, corruptors have been using a "hawala" type of transaction to transfer the proceeds of crime. Bribe money is paid by someone linked to the giver and received by a proxy on behalf of the public officer. It would be even harder to detect if the transaction is executed in a foreign country.

- Some project/equipment needs an expert to understand the technical complexity of the matters to be investigated. The investigation team may not have personnel that has the relevant expertise and may end up searching for outsiders who can perform the task.

- Some of the witnesses or the subjects may be residing in other countries. Firstly, locating the subjects or witnesses may take time and sometimes they could not be traced at all. Secondly, for the witnesses, under Mutual Legal Assistance arrangements, some cannot be compelled to give evidence to the requesting party and their availability is dependent on their willingness to cooperate with the investigators.

B. Effective Methods for Investigation, Prosecution and Adjudication of New and Emerging Forms of Corruption, E.g. Detection of Criminals, Collection of Evidence

- In the context of investigation, the most effective method of detecting new and emerging forms of corruption is by strengthening intelligence capabilities as well as the intelligence network. Conducting continuous research with regard to the development of the new trend will also help in identifying the possible modus operandi and at which process that corruption is likely going to happen.

- Traditional surveillance will no longer be effective to uncover corrupt activities. New approaches have to be made such as better penetration of electronic devices, media

platforms and electronic access such as company records, call logs from service providers and national registries.

- Another way to detect the activity of the people involved in corrupt activities is through bank accounts and digital records. This can help intelligence officers assess the spending pattern and whether or not the target is living beyond means.

C. Future Recommendations

- Information-sharing sessions between agencies involved in international investigations on latest detection technologies, and making them available to other agencies, is very much required for investigations to close in on changing and modern modus operandi of syndicates.

- Financial institutions also need to proactively and very quickly report on suspicious transactions, as well as develop their own internal checks on any likely money-laundering activities.

IV. INTERAGENCY COOPERATION AND INTERNATIONAL COOPERATION

A. Cooperation among Domestic Agencies (FIU, Security, Taxation, Customs Etc.)

- In our effort to combat corruption, the ACB has over the years been working closely with various intelligence, law enforcement agencies as well as the Attorney General's Chambers. ACB is also a member of the Brunei National Anti-Money Laundering and Combating the Financing of Terrorism Committee (NAMLC) and is empowered as one of the investigative bodies under the Criminal Asset Recovery Order, 2012.

B. International Cooperation (Joint Investigation and Other Forms of Cooperation)

- Over the years, the ACB has been working closely with its Malaysian counterpart, the Malaysian Anti-Corruption Commission (MACC), Singapore's Corrupt Practices Investigation Bureau (CPIB) and the Indonesian Corruption Eradication Commission (CEC) for matters pertaining to investigation such as locating persons of interest, repatriation and expatriation of subjects and proceeds of crime, recording of statements as well as conducting joint investigation.

- Our cooperation is also extended to training, capacity-building, and legal and operational coordination.

CORRUPTION: A PROSECUTOR'S PERSPECTIVE

Muhammad Qamarul Affyian Abdul Rahman[*]

I. INTRODUCTION

The flagship Corruption Perception Index by Transparency International scored Brunei Darussalam at 60 of 100 – ranking Brunei Darussalam 35th out of 180 countries and 2nd in the South East Asian region in 2020. Despite its relatively small size and population, Brunei Darussalam is not shielded from the negative effects brought by corruption.

Brunei Darussalam has always taken a zero-tolerance approach towards corruption. Demonstrating the need to eradicate all types of corruption, His Majesty Sultan Haji Hassanal Bolkiah Mu'izzaddin Waddaulah bin Al-Marhum Sultan Haji Omar 'Ali Saifuddien Sa'adul Khairi Waddien, Sultan and Yang Di-Pertuan of Brunei Darussalam, in a number of *Titahs* addressed to the nation highlighted the devastating impacts of corruption to developments in both the public and private sectors. He stresses that corruption can weaken the administration and bring about a country's downfall.

Accordingly, the Prevention of Corruption Act, Chapter 131, provides for crushing penalties to ensure that corruption is a crime that does not pay in Brunei Darussalam.

II. CHALLENGES AND EFFECTIVE MEASURES

While fraud takes minutes, investigation takes months, and prosecutions take even longer. Corruption cases are hard cases to make. They can be nuanced and difficult to pinpoint.

To set things in motion before a corruption offence is brought to court, section 31 of the Prevention of Corruption Act, Chapter 131, requires the consent of the Public Prosecutor. This requirement is to ensure that proposed prosecution is first scrutinized and that judgment is made about its appropriateness before proceedings are brought.

The Attorney-General's Chambers of Brunei Darussalam have identified the following challenges in prosecuting corruption cases:

A. Prosecutorial Discretion

Article 81(3) of the Brunei Constitution provides that the Public Prosecutor has power exercisable in his discretion to institute, conduct or discontinue any proceedings for any offence. In short, prosecutorial discretion is the power to decide whether or not to charge a person for a crime, and which charges to bring. It is exercised wisely, not abusively, without fear or favour, ill will or affection.

The outcome following the considerations expounded below have enormous impact on individuals and communities and one that is not, rightly so, taken lightly. It is seldom a straightforward exercise and is one that requires the balancing of competing interests.

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The underpinning thread at the heart of the decision-making process is fairness – fairness not just to victims, but it also extends to witnesses and suspects. Independent from investigators, prosecutors ensure that the decision whether to bring the matter to court is made impartially. It would not be fair to expect anyone so intertwined and so close to the investigation of a serious case to make the vital decision to charge a person or, just as importantly, not to charge that person.

With this in mind, prosecutors apply a consistent test across all referred cases before proceedings are initiated. Every decision is based on a two-stage test:

1. Is there enough evidence to prosecute the person for the crime, and

2. Is it in the public interest to charge the person?

Evaluation on whether to pursue prosecution would likely include, but not be limited to, the following questions: What is the level of evidence against the subject? Can the evidence gathered be effectively tendered in court? What is the likelihood that further investigation will uncover additional evidence? Can the information obtained from a particular subject be corroborated? What is the credibility of the suspect? What is the credibility of the witnesses when he or she testifies? What will serve the public in the long run? Do we take a top-down approach in bringing these cases to court or work our way up the hierarchy? Can the matter be dealt with in a better way without going to court? Is the case so serious that prosecutors need to decide straight away whether to charge or not? What will be the bail considerations?

The trouble in arriving at a just decision is heightened in corruption offences due to its covert nature, where in most cases, independent supporting evidence are absent. In those instances, the strenuous exercise on who, what and when to prosecute hinges on the statements made by the receiver and/or giver only. Where there exists independent evidence to support the charge, both the receiver and the giver are prosecuted.

The cases below illustrate that the decision depends on the circumstances particular to each case:

In the case of the former head of the Serious Investigations Unit at the Royal Brunei Police Force involving a complex web of abuse of power and secret dealings with cross-border organized crime syndicates, the then Supt Hj Khairul Rijal was charged for accepting a Toyota Hilux from a Malaysian national in exchange for facilitating his re-entry into Brunei Darussalam after being expelled. The Malaysian national was also charged for giving the gratification. Following a joint trial, both of them were found guilty.

Similarly, in a case involving the then Minister of Development, a man in high and powerful public office, charges were brought against him together with the giver, the managing director of TED Sdn Bhd. The case involves three construction contracts and five variation orders in respect of one of them being awarded to TED Sdn Bhd. The decision was made to try the case together and the prosecution secured a conviction.

On the contrary, collectively known as the Brunei Shell Petroleum (BSP) corruption cases, it was decided that the defendants were to be charged separately. The former BSP employees received bribes as gratification for creating purchasing work orders in their respective roles within BSP which allowed Musfada Enterprise to sell supplies to BSP, with many of the orders

not delivered at all, causing losses for BSP. The prosecution went for the managing director of Musfada Enterprise first before going after the BSP employees.

In the trial involving ex-judges siphoning $15.75 million from the judgment debtors' accounts, the largest amount of money ever embezzled by a public servant in Brunei Darussalam, the decision was to engage a Queen's Counsel (QC) from the United Kingdom to lead the prosecution team to avoid any perception of bias. Similarly, the Judiciary Department also assigned the case to be heard before a visiting High Court Judge from the United Kingdom.

B. Securing Witnesses Out of Jurisdiction

Where there is a cross-border element, an additional hurdle faced by the prosecution is securing witnesses out of jurisdiction. The prosecution has identified that the witness list must remain flexible in order to control the inevitable – unplanned events and issues that arise in almost every trial.

This was certainly the case in the trial involving ex-judges explained above where the prosecution tried to secure the attendance of a witness residing in Malaysia.

During investigations, the defendants had explained that the accumulated "wealth" came from a lady residing in Malaysia, but due to the confidential agreement and nature of the job, the defendants were reluctant to discuss the matter any further. The Anti-Corruption Bureau (ACB) worked with their Malaysian counterparts, the Malaysian Anti-Corruption Commission (MACC), to secure an explanation from the lady in the form of a written statement.

In the early stages of preparing for the case, the Malaysian lady agreed to give evidence through video-link and as such, she was listed as a prosecution witness and arrangements were made for her to testify virtually. However, due to scheduling constraints, which only arose mid-trial, she eventually became unable to testify.

C. Presentation of Evidence of Corruption in Court

Due to the nature and complexity of corruption offences, prosecutors must strategize on how to effectively build a case. Equally indispensable is how evidence is eventually presented in court.

The fundamental rule of evidence states that relevant evidence is admissible, irrelevant evidence is not. The two general types of evidence are direct and circumstantial evidence. Direct evidence is considered to be the strongest method of proof, but circumstantial evidence is evidence that tends to prove a fact indirectly, or by inference from other facts. A combination of these two will be presented to persuade the court. In particular, proof of knowledge and intent are almost always proved by circumstantial evidence in corruption cases.

The logical sequence of evidence presented to the court would be, for example, the use of direct evidence to show that the suspect had received a thing of value usually through bank transfers in the form of bank slips or statements, followed by circumstantial evidence such as the sudden spike in wealth which cannot be accounted for or the substantial use of cash without legitimate source of funds. This evidence can be strengthened again through the discovery of concealed or withholding of relevant records during investigations. The aim in the sequencing of the evidence is to lead the judge, one step at a time, to the sensible conclusion that the defendant is indeed guilty beyond reasonable doubt.

In particularly convoluted corruption cases, an effective presentation can also include the introduction of aids. Examples include: a money trail analysis chart, transcript of recorded telephone conversations pre-marked and the effective use of headings in court documents.

In the context of the ex-judges' case above where there was a dizzying amount of documentary evidence that relied on involving numerous banking records, copious correspondence and complex money-trail analysis, the prosecution presented sample documentary evidence in the opening speech of the trial before meticulously going through each of them in the trial proper. In doing so, this allowed the judge to be introduced to the series of documents and their relevancy before being tendered by the witnesses.

Alongside the above, the prosecution listed 133 witnesses in their witness list to prove their case. In preparing such a list, the prosecution grouped, with the use of headings, the witnesses according to their roles and respective agencies, such as, the Judiciary witnesses, the Banking witnesses, the car dealership witnesses and the ACB witnesses. This was to ensure that the direction and presentation were made clear to the judge at the outset.

D. Case Management

It goes without saying that the criminal courts were congested even before the pandemic. With criminal trials initially put on hold as a response to containing the virus, the burden on the prosecution of live caseloads and backlogs was immense – the longer cases run, the more case tasks there are to manage.

In recognizing the issues arising when trials are adjourned indefinitely, the adoption of technology was unprecedented in pace and scale. The outbreak of the coronavirus has forced the prosecution to shift to online presence rapidly. In particular, the prosecution has leveraged technology not just to stay operational during the pandemic but also to improve swift disposal of cases.

Now, virtual courtrooms are the norm and relevant agencies are now equipped with the necessary infrastructure to ensure that cases run smoothly even when conducted remotely. In some instances, proceedings are heard almost entirely virtually. For example, in the case of the former director of state broadcaster, Radio Televisyen Brunei, who was charged for allegedly accepting a luxury car in exchange for promoting the assistant head of the news division, the court mention was conducted virtually without the defendant ever setting foot into a courtroom. In that particular case, the defendant was present at the ACB Headquarters for the mentions.

Mindful of the emerging trends showing increasingly intricate corruption cases especially in this digital age, and the challenges discussed above, it is imperative for prosecutors to be ahead of the curve. Prosecutors need to be equipped with the necessary expertise by specialist training and sharing of good practices. The adoption of best practices shared regionally and internationally remains paramount in order to advance the understanding of the crime.

III. CONCLUSION

We are all aware that the fight against corruption is not one that can be fought by one country alone; any success to be meted out will have to be the result of a unified stance at both the regional and global levels to enhance and continue efforts to stifle these criminal activities which deeply impact governments and individuals around the world.

To this end, the Attorney-General's Chambers of Brunei Darussalam is committed to continuously improving our work and adopting best practices learned through its own experiences, as well as those of other countries.

NEW AND EMERGING FORMS OF CORRUPTION AND EFFECTIVE COUNTERMEASURES

Chanvicheth Soy[*]

I. OVERVIEW

Corruption is a complex problem that impacts the world, even rich or poor countries. Corruption slows the economy, creates social injustice, undermines investment and exacerbates poverty. For the Royal Government of Cambodia (RGC), good governance is the key needed to achieve sustainable economic development and ensure equity and social justice. Good governance requires active participation with strong commitment, responsibility and transparency from all concerned stakeholders. The RGC always considers corruption as obstacles to economic development, the rule of law, democracy, social stability, as well as the main cause of poverty.

A. Institutional Framework

On 17 April 2010, the Anti-Corruption Law (ACL) was promulgated, and the Anti-Corruption Institution (ACI) was established. The Anti-Corruption Institution has two bodies: the National Council Against Corruption (NCAC), which plays the role as an advisory body giving advice, recommendations and setting out the strategies on the fight against corruption, while the Anti-Corruption Unit (ACU) has the role of the implementing body to independently undertake its duties.

The ACL was based on the Code of Criminal Procedure 2007 and the Criminal Code 2009 of Cambodia. The ACL has the purpose to promote the effectiveness of all forms of service delivery and to strengthen good governance and the rule of law as well as to maintain integrity and justice, which are fundamental to social development and poverty reduction.

B. The Highlights of the Anti-Corruption Law

1. <u>The Investigative Power of the ACU</u>
    a. Exclusive power to investigate all corruption offences.[1]
    b. In the course of the investigation if other offences are found related to the corruption case being investigated, the Judicial Police Officers (OPJ) of ACU are empowered to investigate the new offences to the final stage.
    c. The ACU can investigate all criminal offences if ordered by the court.
    d. In the framework of these investigations, the President of the ACU, or the officially assigned representative thereof, has the duty to lead, coordinate and control the mission of the ACU's OPJ on behalf of the Prosecutor till the stage of arresting the suspect.[2]

2. <u>Privileges of the ACU</u>[3]
    If there is a clear lead on a corruption offence, the ACU is empowered to:

[*] Assistant to Anti-Corruption Unit (ACU), Kingdom of Cambodia.
[1] Anti-Corruption Law, 17 Apr. 2010, art. 22.
[2] Anti-Corruption Law, 17 Apr. 2010, art. 22.
[3] Anti-Corruption Law, 17 Apr. 2010, art. 27.

a. Check and put under observation the bank accounts or other accounts that are viewed as bank accounts.
b. Check and order the provision or copy of authentic documents or individual documents, or all related banking, financial and commercial documents.
c. Monitor, oversee, eavesdrop, record sound and take photos, and engage in phone tapping.
d. Check documents and documents stored in the electronic system.
e. Conduct an operation with a view to collect flagrant evidence.

The ACU has its own custody room and is authorized to keep suspects in custody at any place, for example a hotel room, wherever appropriate. In addition, the ACU can request competent institutions to keep any suspect arrested by the ACU in custody.[4]

The President of the ACU is empowered to command public authorities, government officials, citizens who hold public office through election as well as units of the private sector concerned, namely financial institutions, to cooperate with officials of the ACU in the work of investigation.[5] In a criminal case related to corruption, the court receiving the case shall conduct a speedy trial.[6]

C. International Legal Framework

As we are living in a globalized world, countries are connected, and cooperation between countries is crucial. In order to perform its duty, the ACU has been working closely with national, regional and international organizations to share information and help each other.

In terms of international cooperation, the ACU has been a full member of the following anti-corruption institutions and international instruments, namely (i) The ADB/OECD Anti-Corruption Initiative on 5 March 2003; (ii) The United Nations Convention against Transnational Organized Crime (UNTOC) on 12 December 2005; (iii) The International Association of Anti-Corruption Authorities (IAACA) since 2006; (iv) The United Nations Convention against Corruption (UNCAC) on 5 September 2007; (v) South East Asia Parties Against Corruption (SEA-PAC) on 11 September 2007; (vi) ASEAN Mutual Legal Assistance in Criminal Matters on 26 January 2010; and (vii) The International Anti-Corruption Academy (IACA) on 14 December 2013. Regarding bilateral cooperation, the ACU signed an MoU on anti-corruption with the State Inspectorate and Anti-Corruption Agency of Laos (15 Nov 2013) and the National Anti-Corruption Commission of Thailand (3 Sep. 2014).

II. NEW AND EMERGING CORRUPTION AND ITS PRINCIPAL CAUSES

A. New and Emerging Forms of Corruption

Despite good anti-corruption laws and commitments, corruption in the region is still a problem and continues to weaken the society, economy and justice. Cambodia is also experiencing this situation. The ACU, as the implementation body for fighting against corruption, has worked responsibly and transparently until it gained support and recognition from the public. Corruption in the form of abuse of power refers to an act committed by public servants or citizens in the exercise of their duty or in the course of exercising their duty such as taking action to hinder law enforcement in order to take any illegal advantage, and the acts of misappropriation of public funds, which is committed by a public official by demanding or

[4] Art. 26 of the Anti-Corruption Law.
[5] Art. 29 of the Anti-Corruption Law.
[6] Art. 30 of the Anti-Corruption Law.

receiving of any sum known not to be due, or known to exceed the due amount. These have been recognized as emerging forms of corruption in the country. The two cases below are examples of the two forms.

B. Case Study #1 (Abuse of Power)

- The ACU received complaints regarding the irregularities committed by Mr. LBB demanding unofficial payment, so the ACU started to collect information and evidence with regard to the matter. After receiving additional information that Mr. LBB demanded illegal money that amounted to US$ 100,000 from one company, the ACU arranged an operation to collect information and evidence on the spot, arresting three people (Mr. LBB,[7] Mr. CVV and Mr. TBB) in a restaurant, while the latter were receiving US$45,000 from the victim, in addition to the previous US$5,000 (a few days before), in total US$50,000.[8]

- Based on the investigation, the ACU also found the previous transactions committed by Mr. LBB, who demanded illegal payment from Mr. CT in the amount of US$20,000 and from Mr. CHL in the amount of US$12,000.

- Through our search at his office, the ACU found that since 2016 until the day of arrest, Mr. LBB demanded illegal money involved in over 140 cases which amounted to about US$ 384,997. We also found his cash in the drawer amounted to US$21,587. Mr. LBR used the money generated from these illegal acts (384,997+20,000+12,000= US$416,997) to buy two houses, one plot of land (plus construction of a swallow's nest) and two vehicles which in total amounted to around US$ 421,500.

- After being sent to court, the three offenders were charged. First Mr. LBB with extortion, abuse of power and money-laundering (Art. 592-593 of the Criminal Code, Art. 35 of the Anti-Corruption Law, Art. 29-30 the new Law on Anti-Money Laundering and Combating the Financing of Terrorism), while the other two (Mr. TBB and CVV) were charged with extortion and abuse of power (Arts. 592-593 of the Criminal Code, Art. 35 of the Anti-Corruption Law).

C. Case Study #2 (Misappropriation of Public Funds)

During the Covid-19 pandemic, the health sector in every country struggled to survive. Cambodia also experienced that difficult time. The high demand of staff in the health sector, especially for Covid-19 patients, sharply increased almost beyond capacity. The government immediately issued the policy to encourage and incentivize people to work in the health sector by giving the opportunity to the qualified medical staff who are working as volunteers to become permanent staff without taking any exam if they agreed to work with doctors who were taking care of Covid-19 patients both at home or in the hospital. Two officers of the provincial health department committed corruption. After receiving the information about the policy from the ministry, those two officers forced their staff members in the province to pay money to them if they wanted to be selected as permanent staff. The two officers believed they would not be noticed as the government was focused strongly on fighting against Covid-19 more than anything else, and most parts of the country were in lockdown as people worked remotely from home. But the ACU received complaints from victims, and we started to collect information

[7] He overcharged the official payment for permission of the construction of solar power.
[8] He demanded extra money in return for his services.

and evidence with regard to the matter. The ACU arranged an operation to collect information and evidence on the spot and arrested two offenders. The amount of $854,000 has been recovered from the two detainees and returned back to the victims. The ACU found that money was collected from 129 qualified medical staff members. The two officers were charged with "misappropriation of public funds".

D. Principle Causes of Corruption

Since established, the ACU has performed its job with responsibly and transparency. Corruption has been considered as a complicated offence. The two parties, the giver and the taker of the bribery, both end up happy. Corruption cases demand strong evidence and good investigation. There are several causes of corruption that we should take into account:

- People have little knowledge about the corruption laws, and some people cannot differentiate between a gift and bribery. In the Asian context, especially for Cambodian people, giving a gift to anyone who provided a service for them is wrongly thought of as a thank you.

- Corruption is still a new context for some people. Based on the complaints to the ACU, we have seen that many of the complaints are unrelated to corruption. But because of the people's trust and the good reputation of the ACU, it was considered as one of their first options for reporting possible crime.

- As a developing country, we understand that low monthly earnings are one of the main reasons which some people use as their excuse to commit corruption.

- When we are talking about corruption, we also take the loopholes of the system into consideration. When the service provider and the service receiver have more chances to meet in person, the rate of corruption also increases. As a developing country, the digitalization of the public services has been seen as a key to reducing corruption.

III. BEST PRACTICES FOR TACKLING CORRUPTION IN THE CAMBODIAN CONTEXT

Even though there is a long way to go, the ACU in Cambodia can be considered as a new anti-corruption body compared to those other in regions, but it has been significantly recognized and trusted by the Cambodian people. Following its own strategy and policy, the ACU has focused on education, prevention and law enforcement in combating corruption.

A. Education and Dissemination Activities

1. Law Dissemination

With its knowledge on anti-corruption laws (ACL), the ACU has set out its action plan and successfully disseminated the ACL to a total of 652 targets and **921,747 participants** from 2012-2022.

2. Education on Anti-Corruption

Regarding education, the ACU in collaboration with Ministry of Education Youth and Sport have also launched an education programme on anti-corruption:

- High school level (grades: 10,11,12): implemented 2014-2015,

- Secondary school level (grades: 7,8,9): implemented 2015-2016,

- We are in the process of collecting data for university and vocational training textbooks.

3. Anti-Corruption Day

Cambodia has organized the National-International Anti-Corruption Day (9 December) from 2011 to the present.

B. Prevention Activities

1. Public Services Work 2012-2021

The ACU has participated with the concerned ministry to review, launch and adjust an inter-ministerial joint declaration (*Joint Prakas*) on the public service delivery, penalties and incentives with a total of 22 institutions, and 118 *prakas*.

2. The Signing of MOUs

A total 105 MOUs were signed, as well as with more than 1,000 companies and more than 30 private higher learning institutions. The main objective of the MOU is to ensure that the company will not become involved in any corruption, but the company will be the partner of the ACU for reporting any corruption committed by any public servant.

C. Obstruction Activities

The ACU has participated in observing the procurement and examination processes. From 2012-2021, the ACU observed public procurements with a total 308 procurement entities, totalling 5,019 projects. Prior to these observations, procurement was considered as one of the high-risk sectors. Regarding the examination process, the ACU observed high school entrance exams every year since 2014, as well as exams for the recruitment of civil servants.

D. Law Enforcement

An effective complaint and response system is important for fighting corruption. Corruption complaints are accepted through a 24/7 complaint system by telephone, white boxes, e-mail and direct complaints made at the ACU office. The complaint system is, thus, easy to use and implement. Complaints will be analysed only one to three days after they have been made, and we have breakfast meetings every morning to discuss the received complaints. We also allow the complainer to join the meeting if they agree.

It is also important to have an effective investigation process. There must be a fast response to the complaint for collecting the evidence or investigating the case. Officials must work closely with the Ministry of Justice to ensure that the judge will set the corruption case to a speedy trial. A clear witness-protection mechanism should be established to encourage people to report corruption cases. Finally, it is important to build up good collaboration with important institutions such as the FIU, tax department, customs department, telecom companies, land registration, vehicle registration body etc.

IV. CHALLENGES AND OBSTACLES POSED TO INVESTIGATION

The ACU of Cambodia does face challenges in investigation of corruption cases. Actually, before the suspect has been sent to court, the investigator has done much work. But the evidence stage is always hard and complicated. Anonymous complaints typically point only to a person or case but rarely include evidence. So, in these cases, it takes the investigator a very long time to gather the information or evidence.

The ACU is also facing difficulty in doing computer forensics in order to obtain evidence. In some cases, the main evidence must be retrieved from an electronic storage device. In addition, the slow response from the relevant entities in sharing the information of the suspect is also considered as one of the problems that always delays the process of the investigation.

V. CONCLUSION

From the time that the Anti-Corruption Unit was established in 2010 to the present, the ACU, with the strong support of the Royal Government of Cambodia, has been recognized and trusted by most people and became one of the first options of the people as a law enforcement agency. The ACU will continue to perform its job with utmost care, responsibly and transparency. The ACU is also ready to work together with all anti-corruption agencies and stakeholders to quickly respond to all kinds of challenges, especially new and emerging forms of corruption.

NEW AND EMERGING FORMS OF CORRUPTION IN CAMBODIA

Ros Saram *

I. INTRODUCTION

I am pleased to be nominated by the Ministry of Justice of the Kingdom of Cambodia to attend this 16th Regional Seminar on Good Governance for Southeast Asian Countries under the theme *"New and Emerging Forms of Corruption and the Effective Countermeasures"* upon the invitation of UNAFEI (United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders). In fact, corruption does exist in Cambodia. Corruption has caused damage, affected the quality of life, and distorted the market. Corruption may also lead to terrorism, organized crimes, and unfair competition. Therefore, the combating of actions defined as "corruption" is the commitment of the Cambodian Government and the relevant stakeholders. I believe that today's seminar will further broaden knowledge about corruption in each country and further enhance the comprehension of the challenges in the investigation, prosecution and trial of corruption cases, as well as further strengthen the inter-agencies and international cooperation.

To exchange experiences, to understand the challenges and obstacles in the process of investigation, prosecution, and collection of evidence, and to find the effective measures in combating the new forms of corruption, I would like to raise two cases occurring in Cambodia as follows:

II. CASE NO. 1[1]

A. Facts

Between April and May of 2019, the representative of a Solar Company engaged with X, an official of Pursat Casdatral Department to inquire about the application for solar construction. The representative of the company has provided the land title to X. On 26 July 2019 at 11 am, X has guided the representative of the company to meet Y who is the superior of X at Y's office to discuss the service fee for the construction of a solar factory. Y and X have calculated the fee for the transfer of land title which amounts to USD 75,000 (seventy-five thousand) and the fee for the application for a construction permit which amounts to USD 25,000 (twenty-five thousand). The meeting between the representative of the company and X was arranged by A. On 27 July 2019 at 8 am, Y told X and A to meet the representative of the company at Moha Leap restaurant in room no. VIP8. Y was also present in that room. The representative of the company handed over the cash amounting to US 45,000 (forty-five thousand) to Y, and Y gave this cash for X to count. A was outside guarding the room, promising the company's representative that he would watch out here. Shortly after, the Anti-Corruption Unit (ACU) intervened in this *flagrante delicto* case and arrested X, Y, and A for further questioning and taking other measures as provided by law.

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* Prosecutor of the Prosecution Office attached to the Koh Kong Provincial Court of First Instance, Cambodia.

[1] Criminal case file No. 4930 dated 30th July 2019 of Prosecution attached to Phnom Penh Court of First Instance; Criminal judgement No. 157 "[illegible]", 27 February 2020 of Trial Judge of Phnom Penh Court of First Instance.

B. Procedures

The ACU arrested X, Y, and A and sought the property suspected as the proceeds of crime. On 30 July 2019, the ACU brought X, Y, and A before the Prosecution Office attached to the Phnom Penh Court of First Instance. The prosecution charged X and A for "misappropriation of public funds" and Y for "*misappropriation of public funds*", "*abuse of power*" and "*money laundering*". The prosecution and request for the confiscation of property were conducted in parallel with the inculpatory statement of the ACU, the judicial police in this case. X, Y, and A were detained the next day. In the judicial investigation process, the investigating judge ordered to freeze Y's property. The public hearing of the three accused took place on 6 February 2020 and continued on 7 February 2020. The bench, consisting of three judges of the Phnom Penh Court of First Instance issued judgment no. 157 "ក្រ.ជ.ញ" dated 27 March 2022 but dropped the charge on "*abuse of power*" for X and A.

C. Penalty and Law

For the act conducted in Pursat province on 26 and 27 July 2019, X and A were sentenced to 2-years-and-6-months' imprisonment on the charge of "*misappropriation of public funds*" per Article 592 and Article 593 of the Cambodian Criminal Code.

For the act committed in Pursat from 2016 until 26 and 27 July 2019, Y was sentenced to 8 years' imprisonment and was ordered to pay a monetary fine in the amount of Riels 8,000.000 (eighty million) on the charge of "*misappropriation of public funds*", "*abuse of power*" and "*money laundering*" per Article 592 and Article 593 of the Cambodian Criminal Code, Article 35(2) of the Law on Anti-Corruption and Article 3(new) and Article 29(2)(new) of the Law on the Amendment of Article 3, Article 29 and Article 30 of the Law on Anti-Money Laundering and the Combating of the Financing of Terrorism.

D. Enforcement of the Judgment

The judgment above became final on 2 July 2020. The property of Y, such as a house, three plots of land, two cars, and cash in the amount of USD 17,529 and Riels 16,250,000, was confiscated as public property.

E. Challenges and Obstacles

In fact, in each country, public services come in many forms, from small to large, and some are complex, and require collaboration with national and sub-national ministries and institutions. Completing public service applications is often a bit of a hassle for civilians due to a lack of comprehensive understanding of a particular public service, and, therefore, public service applicants and public service providers often have to pay extra or overpay in order to achieve the desired results or needs. The Royal Government has the Anti-Corruption Unit as its secretary body, striving to prevent all forms of corruption by using various methods. However, the above offences are very difficult to suppress and find evidence to charge the perpetrators. Bribery is similar to the above facts, sometimes from service users and sometimes from public service providers. Due to the lack of cooperation from the victims, the repression was met with real obstacles. In fact, in court, I have never had a victim submit an application or file a complaint for corruption against anyone. I would like to share the above forms of public service corruption with ASEAN countries and together find effective ways to prevent and suppress them.

III. CASE NO. 2 [2]

A. Facts

On 22 October 2021 at 10:15 am, the Police Commissioner of Koh Kong province, under the facilitation of the representative of the Prosecution Office attached to the Koh Kong Provincial Court of First Instance, led a team comprising an Anti-Drug Crime Force, Srea Ambel District Police Inspectorate, a special intervention force, and a border police battalion no. 269 and cracked down on a case of illegal drug possession, transportation, and trafficking of narcotic substances in Chom Kar Krom Village, Srea Ambel Commune, Srea Ambel District, Koh Kong Province. During the crackdown, a total of 7 people along with other exhibits, including 10 boxes of white powder (heroin) weighing 212.40 kg, one Toyota Highlander, two different types of boats, 7 mobile phones, and various cards, were arrested or seized. After the initial inquiry with the suspects, the authorities continued to inspect the boats and another house on Steung Meas Street, Village no. 3, Au Tres Commune, Steung Hav District, Sihanouk Province; however, no new evidence was found. Then, the authorities confiscated the white powder to test with a TruNarc scanning machine and MakiTest and found that the confiscated white powder is indeed heroin. Consequently, the authorities forwarded this case to the Prosecution Office attached to Koh Kong Provincial Court of First Instance for further legal proceedings.

B. The Prosecution and Confiscation

Regarding the above-mentioned case, 9 people were prosecuted for illegal drug possession, transportation, and trafficking of narcotic substances as well as for money-laundering as per the Order no. 34 អ.យ/២២ dated 7 March 2022 of the Prosecution Office attached to the Koh Kong Provincial Court of First Instance. The identities of the above 9 people are as follows:

1. Name: SangSing Bramuch, called Lag, Male, 55 years old, Thai national
2. Name: Si Thavnoyar, called Yar, Male, 55 years old, Thai national
3. Name: Horn Phanna, called Anna, Female, 32 years old, Khmer national
4. Name: Pich Kong, called Rim, Male, 39 years old, Khmer national
5. Name: Ros Sithanh, Male, 46 years old, Khmer national
6. Name: Nov Chanthou, called Chhit, Male, 46 years old, Khmer national
7. Name: Sav Nak, Male, 43 years old, Khmer national
8. Name: CHAT SUWAN THEERAPHAT, called Auo, Male, Thai national
9. Name: SIRISAK CHATSUWAN, called Piyai, Male, Thai national

However, the Koh Kong Provincial Court of First Instance held a public hearing on 15 July 2022 and on the same day issued judgment number 67 "ឋ", where:

1. Name: SangSing Bramuch, called Lag, Male, 55 years old, Thai national
2. Name: Si Thavnoyar, called Yar, Male, 55 years old, Thai national
3. Name: Horn Phanna, called Anna, Female, 32 years old, Khmer national
4. Name: CHAT SUWAN THEERAPHAT, called Auo, Male, Thai national
5. Name: SIRISAK CHATSUWAN, called Piyai, Male, Thai national

were sentenced to 3 years' imprisonment for a money-laundering offence committed in Koh Kong Province in 2021 pursuant to Article 38 of the Law on Anti-Money Laundering and

[2] Criminal case file No. 55 dated 24th February 2022 of Prosecution attached to Koh Kong Court of First Instance. + Criminal judgment No. 67 "ឋ" dated 15th July 2022 of Trial Judge of Koh Kong Court of First Instance.

Combating the Financing of Terrorism. However, the remaining four suspects were not convicted of a money-laundering offence.

The significant assets confiscated as public property include a vehicle, a ferry, a boat, a motorbike, and cash of about USD 45,982 (forty-five thousand nine hundred eighty-two).

C. Challenges and Obstacles

Regarding the above cases, it was very challenging for the Cambodian authorities to trace the assets being the proceeds of crime from the offence committed by the criminal in the past and which have been hidden overseas. Moreover, there were Thai nationals among the arrested suspects which required regional and international cooperation for evidence collection. However, international cooperation in criminal cases must follow international law and conventions which consume a substantial amount of time and thus affect the judicial investigation. The duration of provisional detention has also been clearly determined under the law which forces the court to close the investigation prematurely even though in some cases, the masterminds or the criminals could not be identified and convicted, for instance, in the case of SIRISAK CHATSUWAN, called PHAI YA.

IV. FURTHER COMMENTS

In the meantime, I notice that recently the Cambodian government is strongly committed to cracking[3] down and tackling crimes including drugs, human trafficking, labour exploitation, online scams, illegal gambling, corruption, customs, and environmental offences in order to trace and implement the Law on Anti-Money Laundering[4] and Combating the Financing of Terrorism where many adhoc working groups have been established continuously. Furthermore, all courts at all levels throughout the country have been prompted to investigate, prosecute, freeze and confiscate the assets of criminals consecutively.

From my point of view, combating corruption in Cambodia should start with the educational campaigns educating the local people and the strengthening of work productivity of the public and private institutions as well as the strengthening of law enforcement. The mechanisms established by the Cambodian ggovernment as mentioned above have also tremendously helped to diminish the new forms of corruption. On the other hand, the advancement of technology is another concern that might hinder the prevention of new forms of corruption, which are occurring globally.

[3] Instruction No. 768 សជណ dated 09th September 2022 of the Cambodian Government.
[4] Decision No. 04 កយ.សសរ/22 dated 18th January 2022 of the Ministry of Justice; Decision No. 001 សសរ/កសហ dated 21st January 2022 of the Cambodian Government.

NEW AND EMERGING FORMS OF CORRUPTION IN INDONESIA AND THE EFFECTIVE COUNTERMEASURES: CORRUPTION IN THE STOCK MARKET SECTOR

Suyanto R. Sumarta[*]

I. INTRODUCTION

A characteristic of a developed country is the existence of an advanced stock market. The stock market refers to an equity market and is one of the important areas of a market economy as it gives firms access to capital while both the existing and potential investors could also be part of a company's ownership through the acquisition of shares.[1] The stock market also provides information about the economic condition of a country, through the composite stock index report. Stock Market development plays a crucial role in the national economy and finance.[2] If the composite stock index shows a declining trend, it indicates that there is an economic crisis in a country. Several countries in Asia, including Indonesia, have been hit by a financial crisis, and Indonesia has been hit by the crisis for a long time due to its fragile economic foundation. Some factors causing the crisis are mismanagement by the company's management and corruption.

Corruption cases are not only an issue for national development in Indonesia but also have been an issue of global development.[3] In Indonesia, corruption was widespread in government at both central and local levels, and no exception to the business sector involving state companies (state-owned enterprises), that have core business in banking, taxation, capital market, trade and industry, commodity futures, or in the monetary and financial sector.

In 2020, the Attorney General Office of the Republic of Indonesia (AGO RI) in this case Deputy Attorney General on Special Crime Affairs[4] investigated corruption at PT Jiwasraya[5] with a state financial loss amount of Rp16.81 trillion (equivalent to USD1.1 billion).[6] Then in 2021, AGO investigated corruption at PT Asabri[7] with a state financial loss amount of Rp22.788 trillion (equivalent to USD1.5 billion).[8]

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[*] Special/Specific Crime Investigator and Prosecutor, Head of Section II of Sub. Directorate Corruption and Money Laundering at Directorate Investigation of Deputy Attorney General on Special Crime Affair.

[1] Kennedy, Osoro. 2013. *Kenya's Foreign Trade Balance: An Empirical Investigation*. European Scientific Journal July 2013 edition vol.9, No.19 ISSN: 1857 – 7881. School of Economics, University of Nairobi, Kenya.

[2] Hasan Ayaydın, Nuri Baltacı. 2013. *Corruption, Banking Sector, And Stock Market Development: A Panel Data Analysis*, European, Journal of Research on Education.

[3] Zulkipli. 2016. *Legal Policy of Corruption Eradication At State-Owned Enterprises Sector In Indonesia*, International Journal Of Scientific & Technology Research Volume 5, Issue 02, February 2016.

[4] At the Attorney General Office of the Republic of Indonesia, special/specific crimes refer to corruption, tax crimes, customs crimes, economic crimes, and serious human rights violations crimes (genocide and crimes against humanity).

[5] A state-owned enterprise (BUMN) with a core business in the insurance sector.

[6] https://www.bpk.go.id/news/kerugian-negara-kasus-jiwasraya-rp1681-triliun.

[7] Other state-owned enterprises (BUMN) with a core business in the insurance sector.

[8] https://papua.bpk.go.id/bpk-kerugian-negara-dari-kasus-korupsi-asabri-rp-2278-triliun/

The results of the investigation revealed that PT Jiwasraya and PT Asabri invested their funds in shares affiliated with Heru Hidayat and Benny Tjokrosaputro. Then the shares were pumped and dumped at the desired value so that it seemed like PT Jiwasraya and PT Asabri were making a profit. In Indonesia, corruption cases in the capital market are new and emerging forms of corruption. Corruption in the capital market is very complicated because it involves so many parties i.e., brokers, investment management, Indonesia Stock Market, Financial Service Authority, nominees, more than 100 companies affiliated with Heru Hidayat and Benny Tjokrosaputro, and more than 200 bank accounts belonging to suspects and nominees.

II. ATTORNEY GENERAL OFFICE AT A GLANCE

The Attorney General Office of the Republic of Indonesia is the state agency that implements state power, especially in the field of prosecution. The Attorney General is a competent authority in law enforcement and justice, elected by and responsible to the President.

The Attorney General Office has wider core duties and powers, from the investigation of special crimes up to the execution of court sentences and criminal decisions. These are added by the duties to upkeep public order and stability, and supervision of religious and traditional beliefs which might be a threat to the state and public interest.

With numerous duties applied for the legal field, the AGO as one of the law enforcement authorities is demanded to perform more roles in law enforcement that are free from corruption, collusion, and nepotism, the upholding of legal supremacy, protecting the public interest, as well as the preservation of human rights. Referring to Legislation Number 16/2014 and Number 11/2021, the AGO as a government institution exercising the prosecutorial power of the state must be independent in performing the functions, duties, and powers, unbounded to any influence, either from the governing power or other parties.

Besides a role in a criminal case, prosecutors also have other roles in the Civil Code and the State Administration, which may represent the Government in a Civil Case and the State Administration for the State Attorney Prosecutor.

III. CORRUPTION CASES IN THE LAST TEN YEARS

The Government of Indonesia has implemented strategies and approaches to combating corruption, by Law Number 31/1999 on Eradication of Corruption, as amended with Law Number 20/2001 on the Amendment of Law Number 31/1999 on Eradication of Corruption. The law regulates seven types of corruption, i.e.:

- unlawful acts that cause state financial or economic loss;
  The formulation of the element of "*state financial losses*" in the provision has the consequence that there should be a state financial loss caused by an unlawful act or abuse of power.
- bribery;
- embezzlement;
- extortion;
- fraud;
- conflict of interest; and
- gratification.

In Indonesia, three institutions have the authority to investigate corruption cases, i.e., the Attorney General's Office, the Indonesian National Police, and the Corruption Eradication Commission (KPK-RI).

In the last ten years, many corruption cases have been revealed by these three institutions. Most cases are corruption in the procurement of goods and services sector. Based on the performance report of the Prosecutor's Office of the Republic of Indonesia in 2021, the investigation stage is 1,856 cases, the prosecution stage is 1,633. Statistically, when compared to the previous years, the number of cases handled tends to increase, with details as follows:

Table 1. Corruption Cases Handled by the INP,[9] the AGO-RI, and the Corruption Eradication Commission (KPK-RI) from 2012-2021

No	Period	INP & AGO RI	KPK-RI[10]
1	2	3	4
1	2021	1.633[11]	122[12]
2	2020	1.275[13]	81[14]
3	2019	1.596[15]	234[16]
4	2018	1.803[17]	151[18]
5	2017	1.918[19]	103[20]
6	2016	2.434[21]	76[22]
7	2015	2.446[23]	95[24]
8	2014	2.225[25]	45[26]
9	2013	2.013[27]	73[28]
10	2012	1.511[29]	45[30]

[9] Indonesian National Police (Polri).
[10] Corruption Eradication Commission of the Republic of Indonesia.
[11] Secretariat of Deputy Attorney General on Special Crime Affair, (2022) *Recapitulation of Corruption Cases in 2021*, Jakarta.
[12] KPK-RI, (2022), 2021Annual Report, p. 40.
[13] Ibid.
[14] KPK-RI, (2021), 2020 Annual Report, p. 50.
[15] Deputy Attorney General on Special Crime Affair, (2022), *Recapitulation of Corruption Cases in 2021*, Jakarta.
[16] KPK-RI, (2020), 2019 Annual Report, p. 64.
[17] Attorney General Office, (2019), *2018 Annual Report*, Jakarta: AGO, p. 47.
[18] KPK-RI, 2018 *Annual Report*, p. 73.
[19] Ibid.
[20] Ibid.
[21] Attorney General Office, (2017), *2016 Annual Report*, Jakarta: AGO, p. 64.
[22] Ibid.
[23] Attorney General Office, (2016), *2015 Annual Report*, Jakarta: AGO, p. 58.
[24] KPK-RI, *2015 Annual Report*, Jakarta: KPK-RI, p. 72-102.
[25] Attorney General Office, (2015), 2014 *Annual Report*, Jakarta: AGO, p. 53.
[26] KPK-RI, 2014 *Annual Report*, Jakarta: KPK-RI, p. 41.
[27] Attorney General Office, (2014), 2013 *Annual Report*, Jakarta: AGO, p. 49.
[28] KPK-RI, 2013 Annual Report, Jakarta: KPK-RI, p. 59-83.
[29] Attorney General Office, (2013), *2012 Annual Report*, Jakarta: AGO, p. 47.
[30] KPK-RI, 2011 *Annual Report*, p. 64-72.

Table 2. Recapitulation of Asset Recovery in 2012-2021[31]

No	Period	Asset Recovery by AGO		Asset Recovery by KPK-RI	
		Trillion Rupiah	Million USD (1USD~ Rp15,247)	Billion Rupiah	Million USD (1USD~ Rp15,247)
1	2	3	4	5	6
1	2021	22.135	1,453	249.6	16.4
2	2020	19.563	1,284	122	8
3	2019	2.237	147	330.63	21.7
4	2018	0.843	55.3	528.12	34.6
5	2017	0.734	48.2	315.15	20.7
6	2016	0.579	37.9	512.3	33.6
7	2015	1.347	88.4	211.92	13.9
8	2014	1.614	105.8	112.7	7.4
9	2013	0.607	39.8	260.62	17.1
10	2012	0.404	26.5	146.38	9.6

IV. CORRUPTION IN THE STOCK MARKET SECTOR

The Deputy Attorney General on Special Crime Affairs focuses on corruption with a large scale of state financial losses and complex case corruption that is difficult to prove. As per the Corruption Crime Law, Indonesia categorizes corruption as a crime that is challenging to prove, with the following indicators:

a. cross-sector;
b. conducted using advanced technology; or
c. committed by the suspect/defendant as a state administrator.

The explanation of Article 27 of the Corruption Crimes Law states that those categories include: corruption in the banking sector, taxation, capital market, trade and industry, commodity futures, or in the monetary and financial sector.

In the last ten years, AGO-RI has shown a significant role in dismantling and proving cases that are categorized as difficult. Cases categorized as complex cases include the following:

1. the perpetrator is a high-ranking public official;
2. the perpetrator is from the private sector (corporations and other businesses);
3. using a pattern of financial transactions that are complicated;
4. capital market and banking sector;
5. export/import of commodities needed by the public, especially during periods of crisis;
6. enormous state losses.

In handling complex cases, the Investigators and Prosecutors of the AGO no longer perform a simple proof mechanism but have also optimized scientific evidence, including electronic

[31] Processed from the Annual Reports of the Attorney General Office of the Republic of Indonesia and Corruption Eradication Commission (KPK-RI) from 2012-2021.

evidence. Forensic analysis of electronic evidence is one of the important sources of information used in investigations, including interception technology.

Several other methods are used in the investigation of trading on the stock market, investigation of companies that are nominees who are facilitators of corruption, and concealment of corruption proceeds.

These “high profile” cases also involve foreign jurisdictions in concealing the proceeds of corruption. For example, in the Jiwasraya corruption case, the Investigator utilized electronic evidence to prove the corruption, by analysing electronic data from computers, mobile phones and other electronic devices.

A. Summary of the Jiwasraya Corruption Case

Jiwasraya's finances, which have been worsened since 2008, were used by the suspects (Benny Tjokrosaputro, Heru Hidayat, and friends) to benefit themselves by pretending to have saved Jiwasraya's finances. First, Heru Prasetyo, Finance Director of Jiwasraya, made an agreement with Heru Hidayat and Benny Trokrosaputro, that Jiwasraya would place its funds in shares owned by Heru Hidayat and Benny Tjokrosaputro. Jiwasraya bought shares owned by Benny and Heru Hidayat without proper analysis. The shares purchased are third-liner shares which are not liquid and are “pump and dump” shares. The shares were pumped and dumped for window dressing so that Jiwasraya's financial statements seemed to be making a profit.

Because the composition of shares affiliated with Heru Hidayat and Benny Tjokro in the Jiwasraya portfolio exceeded the regulatory limit, then Hery Prasetyo made an agreement with 13 Investment Managers to create a special Mutual Fund (Reksa Dana) for Jiwasraya only. The mutual funds (reksa dana) are not managed professionally by Investment Management but are controlled by Benny Tjokro and Heru Hidayat through Joko Hartono Tirto. Underlying the Mutual Funds (Reksa Dana) are also shares owned by Benny Tjokro and Heru Hidayat. The shares as an underlying Mutual Fund are also third-liner shares which also are not liquid and are “pump and dump” shares.

The consequences of the actions of the suspects have caused a state financial loss of Rp16.81 trillion (equivalent to USD1.1 billion).

B. Money-Laundering

State financial losses amounting to Rp16.8 trillion (equivalent to USD1.1 billion) were received by Benny Tjokrosaputro and Heru Hidayat, through the accounts in the names of Benny Tjokrosaputro and Heru Hidayat and on behalf of several nominees. For example, from 26 November to 22 December 2015, Benny Tjokrosaputro received payment of the Medium Term Note (MTN) of PT Armidian Karyatama and PT Hanson International, in the amount of Rp880 billion. Furthermore, Benny Tjokrosaputro hid or disguised the origin of the funds, used the proceeds to purchase property in Jakarta, Bekasi, Maja, Lebak, Jogjakarta, Singapore, New Zealand, and also used the proceeds to purchase shares in the name of another person (nominee) and companies.

The money-laundering carried out by Benny Tjokrosaputro and Heru Hidayat involved more than 100 companies affiliated with Heru Hidayat and Benny Tjokrosaputro, more than 200 bank accounts belonging to suspects and nominees.

C. Asset Recovery

Benny Tjokrosaputra and Heru Hidayat have testified at trial that they purchased assets in Singapore and New Zealand. Accordingly, AGO RI pursued international cooperation to recover the proceeds of crime.

To recover the state's financial losses, the AGO has made efforts to request cooperation with several regional countries to assist the Government of Indonesia in the forfeiture of assets by sending requests for mutual legal assistance (MLA). The AGO also cooperates with New Zealand in asset recovery in the country through the informal asset recovery network, ARIN-AP.

Regarding asset recovery, Indonesia issued Law No. 8/2010 on Anti-Money Laundering, which provides more opportunities to investigate with a "follow the money" approach. This law has been implemented in Indonesia as an instrument to recover assets from the perpetrators of corruption. With the Anti-Money Laundering Law, crime proceeds can be recovered and controlled by the state. These have been done by forfeiture and prosecution so that the assets can be recovered by the State, following the asset recovery strategy of UNCAC.

AGO RI has investigated and prosecuted the Jiwasraya corruption for 5 (five) months, from 27 December 2019 to 11 May 2020. In the forfeiture of assets, Investigators and Prosecutors seized assets of the suspects worth Rp18.5 trillion (equivalent to USD1.17 billion) in the form of land, buildings, apartments, hotels, factories, coal mining, cash, mutual funds, insurance policies, and securities/shares as well as companies.

V. CHALLENGES OF ASSET TRACING AND ASSET RECOVERY

Modern communication tools as well as the easy mobility of assets and funds allow individual perpetrators to transfer their illicit proceeds around the globe. So that requires very close cooperation on a supranational level, especially in Asia and the Far East. Secondly, laws in the relevant jurisdictions need to provide powerful tools to freeze assets, which are potentially proceeds of corruption.

The international community has recognized the importance of asset tracing and recovery, i.e., *First*, the United Nations Convention Against Corruption considers the return of stolen assets one of its fundamental principles, and requires its signatories to provide a factual and legal framework for the effective cross-border recovery of assets. *Secondly*, the European Union has introduced several legal instruments aimed at simplifying asset recovery and tracing – considered to be a strategic priority – across the jurisdictions of its member states.[32]

In the Jiwasraya corruption case, until now after the final judgment, not a single asset from overseas has been recovered by AGO RI. The Government of Indonesia has requested assistance through an MLA request to Singapore for the freezing and returning of the following assets:

1. Forfeiture of 28 apartment units;

2. Freezing of 7 bank accounts.

[32] Knoetzl, B. and Marsch, P. 2016. Article: Challenges of Asset Tracing and Asset Recovery. <www.whoswholegal.com>

Based on court sentences/criminal decisions, all assets indicated above stemmed from corruption. Hence, AGO RI requested help from Singapore to freeze and forfeit all these assets. However, until now, no agreement has been met to obtain the MLA agreement approval.

Therefore, through this meeting, AGO RI hopes to develop solutions with other countries in the region to provide practical steps for each country facing obstacles in enforcing corruption laws overseas. We hope to get assistance in the form of a quick reaction that is certainly beneficial for asset recovery, as envisioned by UNCAC.

VI. COUNTERMEASURES

A. Imposing Maximum Penalties in Corruption Cases

According to the Supreme Court's decision, Heru Hidayat and Benny Tjokrosaputro were sentenced to life imprisonment, as well as compensation for state financial losses of Rp 10.78 trillion (Heru Hidayat) and Rp6,078 trillion (Benny Tjokro). Meanwhile, Hary Prasetyo, Hendrisman Rahim, and Joko Hartono Tirto were sentenced to 20 years in prison. Syahmirwan was sentenced to 18 years in prison.

This is an historical judgment in the effort to eradicate corruption in Indonesia and proves that the Attorney General's Office of the Republic of Indonesia is very serious about eradicating mega corruption.

B. Forfeiture of All Proceeds of Crime and Criminal Instruments

In the Jiwasraya corruption case, investigators and prosecutors carried out asset tracing and recovery with an estimated value of around Rp18.5 trillion in the form of property, cash, mutual funds, insurance policies, and securities/shares as well as companies.

C. Implementation of Corruption Impact Assessment

The Deputy Attorney General on Special Crime Affairs is committed to implementing the Corruption Impact Assessment as a key mechanism to identify and remove corruption-causing factors in legislation and supporting institutional arrangements.

The corruption impact assessment is designed to examine, evaluate and remove, where appropriate, corruption-causing factors in laws, regulations, and other legal instruments.

The Guidelines are designed to assist government agencies with identifying corruption-causing factors in legislation, regulations, and other legal instruments and the supporting institutional arrangements, and to develop and implement appropriate strategies to remove identified corruption-causing factors.

VII. CONCLUSION

From the above description, the following conclusions can be conveyed:

1. In the last ten years, AGO has revealed many cases of corruption, and new and emerging forms is corruption are arising in the stock market sector;

2. Corruption in the stock market sector is a “high profile” and very complicated case because it involves so many parties, i.e., brokers, investment management, nominees,

more than 100 companies affiliated with Heru Hidayat and Benny Tjokrosaputro, and more than 200 bank accounts belonging to suspects and nominees;

3. Effective countermeasures include the imposition of maximum penalties, forfeiture of assets, and the application of the Corruption Impact Assessment (CIA); and

4. The effectiveness of asset tracing and recovery will depend on the degree of cooperation between countries, especially in Asia and the Far East.

VIII. RECOMMENDATION

AGO-RI supports regional solutions to provide practical steps for each country facing obstacles in enforcing corruption laws overseas. The Deputy Attorney General of Special Crime Affairs hopes to get assistance in the form of a quick response that is certainly beneficial for asset recovery, as envisioned by UNCAC.

IX. CLOSING

The work of AGO RI in dealing with corruption cases has increasingly gained trust and appreciation from the public. This is shown by the results of the 2022 national survey regarding the Public Evaluation of Government in the field of Economy, Politics, Law Enforcement, and Corruption Reduction, which shows an increase in public trust toward AGO RI.

Previously on April 2022, AGO RI placed eighth on the survey. The institution has now climbed to fourth place in July 2022 with 74.5 per cent. This is a result of our success in handling and resolving massive and complex cases, and resulting in significant state loss, and even impact on the state economy. We managed to handle the Jiwasraya case with a state financial loss totalling Rp16.81 trillion (equivalent to USD1.1 billion), the Asabri case with Rp22.788 trillion (equivalent to USD1.5 billion), and a corruption case committed by a public administrator resulting in the rarity of cooking oil in a period of crisis with current calculated loss of 20 trillion rupiahs, and Duta Palma which caused state financial losses and state economic losses of around Rp78 trillion (equivalent to USD5 billion), both of which are still being tried.

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WHEN THE VIRUS BROKE OUT, THE OUTBREAK OF CORRUPTION WAS EVEN MORE MASSIVE IN INDONESIA

Titto Jaelani[*]

I. THE STATUS OF THE NATIONAL DISASTER IS A REASON FOR CORRUPTION

On 2 March 2020, the first case of Covid-19 was officially detected in Indonesia. This suddenly shocked the public, considering that at first the government was optimistic that the virus variant would not enter Indonesian territory, so that people were faced with a situation in which they had not been prepared to deal with the emergency. The spread of Covid-19 has had the impact of increasing the number of victims and property losses, expanding the coverage of areas affected by the disaster and having implications for broad socio-economic aspects in Indonesia.

To anticipate this emergency, the President of Indonesia issued Presidential Decree No. 12 of 2020 concerning the Designation of Non-Natural Disasters Spreading COVID-19 as a National Disaster (Keppres 12/2020) deciding the spread of Covid-19 as a National Disaster and the establishment of a Task Force chaired by the Regional Head, namely the Governor, Regent and Mayor, to decide a policy in the affected area.

In line with the adage "*Salus Populi Suprema Lex Esto*", which means people's safety is the highest law, the Indonesian government immediately rushed to take various steps and strategies to suppress the spread of Covid-19 and also overcome the domino effect of the pandemic. One of the sectors affected by the pandemic is the economic sector, so the government was forced to immediately take the right policies.[1]

The initial step taken by the government was the enactment of Law Number 2 of 2020 concerning State Financial Policy and Financial System Stability for Handling the COVID-19 Pandemic and/or in Facing Threats That Endanger the National Economy and/or Financial System Stability (Law 2 /2020), but the problem is seen in Article 27 paragraph (2) of the Law, namely:

> *KSSK members, secretaries, secretariat members and officials or employees of the Ministry of Finance, Bank Indonesia, the Financial Services Authority and the Deposit Insurance Corporation and Other Officials, relating to the implementation of this Regulation, cannot be prosecuted either civilly or criminally if in carrying out the task it is based on good faith and in accordance with the provisions of the regulation.*[2]

The content of Article 27 of Law 2/2020 shows that there is "immunity" for the actions of officials in handling Covid who may commit corrupt acts. Sure enough, the practice of corruption has never been extinguished even though the country is being hit by the Covid-19

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[1] Journal of Anti-Corruption, Volume 3 Issue I, May 2021.
[2] Law Number 2 of 2020 (emphasis added).

pandemic and is even more massive and worrying. During the Covid-19 pandemic, where Indonesia is helter-skelter to face the epidemic, corruption is getting worse and had mushroomed into a "new epidemic". Like a dazzling gold field, the situation is all-round. This difficulty is used by corruptors for personal gain. Corruption controversies have become increasingly heated after the former Minister of Social Affairs, Juliari Batubara, was caught red handed over corruption cases involving public social assistance funds. Society is being hit by an all-round situation, and the crisis is getting worse. The priority of the state at this time is indeed the health aspect, but this type of *white-collar crime* cannot be ignored. This paper will discuss the mode of corruption during the pandemic, especially cases that have been handled directly by the author.

II. MAIN DISCUSSION

A. Typology of Corruption in Indonesia

Corruption in Indonesia is widespread in society. Its development continues to increase from year to year, both in terms of the number of cases that occur and the amount of state financial losses as well as in terms of the quality of criminal acts that are carried out more systematically and in scope that enters all aspects of people's lives.

The uncontrolled increase in corruption crimes will bring disaster not only to the life of the national economy but also to the life of the nation and state in general. The widespread and systematic crime of corruption is also a violation of social rights and economic rights of the community, and because of that all corruption crimes can no longer be classified as ordinary crimes but have become extraordinary crimes. Likewise, in efforts to eradicate it, it can no longer be carried out normally, but extraordinary methods are required through special rules governing it.

One of the principles of preference known in legal science is *lex specialis derogate legi generalis,* namely special laws that override general laws. The principle has the intention that for special events a law that mentions the event must be applied, although for such special events a law can also be applied which mentions the event more broadly or more generally.

In line with this principle, the crime of corruption is regulated lex specialist through the Law of the Republic of Indonesia Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption as amended by Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 (PTPK) concerning Eradication of Acts of Corruption. Meanwhile, in a *lex generalist manner, the rules for* corruption are contained in the Criminal Code (KUHP).

The categories of types of criminal acts of corruption as contained in the 30 Articles contained in the Law of the Republic of Indonesia Number 31 of 1999 are as follows:

- State financial losses;
- Bribery;
- Blackmail;
- Embezzlement in Position;
- Fraud;
- Conflict of Interest in the Procurement of Goods and Services;
- Gratification.[3]

[3] Adami Chazawi, Material Criminal Law and Formal Corruption in Indonesia.

Referring to the category of types of corruption and looking at the handling of corruption related to the Covid-19 pandemic, law enforcement officers in Indonesia usually charge corruption related to state financial losses as regulated in Article 2/Article 3 of the PTPK Law and Bribery as regulated in Articles 5, 11, 12, 13 of the PTPK Law.

Likewise in handling corruption cases involving the Minister of Social Affairs, Juliari Batubara, corruption cases of public social assistance funds are subject to an article on bribery, namely Article 12 of the PTPK Law. Therefore, the author will discuss cases of corruption during the Covid-19 pandemic outside of corruption which resulted in state financial losses and bribery, namely Conflicts of Interest in the Procurement of Goods and Services (Article 12 Letter I of the PTPK Law).

B. Authority of the CEC Post Revision of the Law

In Indonesia, there are basically three law enforcement agencies in eradicating corruption, namely: (i) the Police; (ii) the Corruption Eradication Commission (CEC) and (iii) the Attorney General's Office (AGO). Each agency has the authority to investigate criminal acts of corruption.

In an effort to eradicate corruption, the implementation is carried out optimally, intensively, effectively, professionally and continuously. Based on the provisions of Article 43 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001, the CEC has the authority to coordinate and supervise, including conducting investigations, and prosecution. The CEC is a Central Government institution that has the duty and authority to prevent and eradicate Corruption Crimes as regulated in Law Number 30 of 2002 concerning the CEC.

However, in its development, the performance of the CEC is felt to be less effective, the lack of coordination between law enforcement lines, the occurrence of violations of the code of ethics by the leaders and staff of the CEC, as well as problems in the implementation of duties and authorities. These problems include: (i) the implementation of the duties and authorities of the CEC that are different from the provisions of the criminal procedure law, (ii) weakness of coordination with fellow law enforcement officers, (iii) problems of wiretapping, (iv) management of investigators and investigators who are not coordinated, (v) overlapping authority with various law enforcement agencies, as well as the weakness of the absence of a supervisory agency capable of supervising the implementation of the duties and authorities of the CEC so as to allow faults and deficiencies to exist, and (vi) accountability for the implementation of the duties and authorities of eradicating corruption by the CEC. For this reason, legal reform has been carried out so that the prevention and eradication of corruption acts in an effective and integrated manner so as to prevent and reduce state losses that continue to grow due to corruption.

Furthermore, the Government of Indonesia together with the House of Representatives of the Republic of Indonesia promulgated Law number 19 of 2019 concerning the Second Amendment to Law number 30 of 2002 concerning the Corruption Eradication Commission where the institutional arrangement of the CEC was carried out in line with the Constitutional Court Decision Number 36/PUU-XV/2017, which stated that the CEC is part of the executive branch of government, which is often called a government institution.

Under Article 6 of Law number 19 of 2019, the CEC has the task of taking preventive actions, coordinating with agencies authorized to carry out eradication of corruption and agencies that

carry out public services, monitoring the implementation of state government, supervision of agencies authorized to carry out corruption eradication, investigation and prosecution of criminal acts of corruption as well as actions to carry out the determination of judges and court decisions.

Then in addition to the duties, there is also the authority of the CEC as contained in Article 11 of the Act, namely, in carrying out its duties, the CEC has the authority to carry out investigations and prosecutions carried out by:

- involving law enforcement officers, State Administrators, and other people who are related to Corruption Crimes committed by law enforcement officers or State Administrators; and/or

- concerning state losses of at least Rp. 1,000,000,000.00 (one billion rupiah).[4]

C. Corruption Case Related to the Distribution of Shopping Food During the Covid-19 Pandemic

It is undeniable that Article 27 of Law 2/2020 is a gap for corrupt officials to smooth out their intentions to take advantage to be used for their personal and cronies' interests. Instead of saving the community from the impact of the Covid-19 pandemic, the official betrayed the nation and state, especially with regard to his influence on the procurement of goods and services in the procurement of social assistance in the form of nine basic commodities (sembako) for the lower middle class.

1. Case Description

Former West Bandung Regent AA UMBARA SUTISNA, hereinafter referred to as the Perpetrator, was, around March 2020, involved in a corruption case involving the misuse of his position to participate in the procurement of goods for the COVID-19 Pandemic Emergency Response at the West Bandung Regency Social Service Office in 2020. The case began after there were reports from the public related to the existence of social assistance in the form of packages of nine staples (sembako) which are not feasible where the budget allocation comes from the Unexpected Expenditure (BTT) of West Bandung Regency in the amount of Rp52,151,200,000.00 *(fifty two billion one hundred fifty one million two hundred thousand rupiah)* , which is intended for social assistance in the form of food packages as much as 120,000 *(one hundred and twenty thousand).*

However, in realizing the Social Assistance programme, because the Perpetrator wanted benefits for himself and his family, the Perpetrator appointed the social assistance package provider to the closest people to the Perpetrator and the Perpetrator's family, which was carried out in the following modes, namely:

- The perpetrator held a meeting with M. TOTOH GUNAWAN, a businessman who was his friend since childhood who was also the Perpetrator's Success Team during the 2018-2023 West Bandung Regent Election; in the meeting it was agreed that M. TOTOH GUNAWAN would be the provider of the Social Assistance (Bansos) package for the people of West Bandung Regency who were affected by the Covid-19 pandemic as many as 120,000 *(one hundred and twenty thousand)* basic food packages with the condition that they must set aside six per cent of the total profit for the Perpetrator;

[4] Article 11 of Law number 19 of 2019.

- The perpetrator ordered the procurement official to directly appoint the company M. TOTO GUNAWAN without being accompanied by a study by the agency regarding the feasibility of the company.

- The Perpetrator also used the company owned by M. TOTOH GUNAWAN in the procurement of this social assistance, the Perpetrator also appointed a company prepared by ANDRI WIBAWA (the Perpetrator's biological son) without being accompanied by a study by the agency regarding the feasibility of the company in exchange for one per cent of the company's profits.[5]

The perpetrator as the West Bandung Regent who was assigned to oversee the procurement of goods and services in an emergency; however, it turned out that the Perpetrator participated in arranging the provider of the goods procurement package for the COVID-19 Pandemic Emergency Response at the District Social Service West Bandung TA. 2020 by appointing his close friend, TOTOH GUNAWAN and including his son ANDRI WIBAWA.

By the CEC Public Prosecutor, Perpetrator AA UMBARA was charged with a violation of Article 12(i), which reads: *"a civil servant or state administrator either directly or indirectly intentionally participates in the chartering, procurement, or leasing, which at the time of the act, for the whole or in part assigned to manage or supervise it",* then imprisonment for 7 (seven) years and additional punishment in the form of payment of compensation as much as received by the Perpetrator in the amount of Rp.2,379,315,000.00 *(Two billion three hundred seventy nine million three hundred and fifteen thousand rupiah)* as well as the revocation of the right to be elected in public office for 5 (five) years after serving the sentence.

Furthermore, the judge at the first level up to the cassation level granted all the demands of the Public Prosecutor, but the case of corruption involving a close friend and child of Perpetrator AA UMBARA was acquitted by the judge on the grounds that it was not legally and convincingly proven.

2. Obstacles in Handling the Case

The main challenge in handling this case was to prove the involvement of the private sector or other parties for proof of article 12(i). This was the first time the CEC carried out a Covid-19 social assistance case, which previously only used acts of corruption that harm state finances as stated in Article 2, Paragraph (1), or Article 3 and acts of bribery as referred to in Articles 5, 11, 12 and 13 of the Corruption Eradication Law.

The CEC Public Prosecutor has screened the actions of other parties in layers with the actions of people who commit or who participate in and carry out as referred to in Article 55 paragraph (1) to 1 of the Criminal Code and then also present experts in the criminal field who explain that other parties can be held criminally responsible. However, the Judge is of the opinion that conflicts of interest in the procurement of goods and services can only be imposed on officials or state administrators who have the authority or influence over the decision in the procurement, which is of course contrary to the analysis submitted by the public prosecutor.

Another challenge in handling this case is that there is no common understanding between other law enforcers who still tend to move only to find state financial losses in the misuse of social assistance funds, which on the one hand really requires quite complicated proof while

[5] Supreme Court Decision Number: 2910 .K/Pid.Sus/202 2 dated 13 July 2022.

the time is limited due to the length of detention of a suspect. The statutory instrument regulates other acts of corruption so that there is no harm in using articles that do not require complicated evidence and in the end it can also be confiscated assets by using additional penalties in the form of payment of compensation for an amount that the Perpetrator enjoys as stated in articles 17, 18 of the Eradication Law Corruption.

3. Countermeasures

Social assistance for handling those affected by Covid-19 can contain the potential for massive and large corruption due to the first weakness of supervision in the procurement process in which internal supervision is formed by the Regional Head, which is of course prone to intervention; secondly, the overlapping of rules related to procurement for social assistance and limitations of personnel in interpreting the intent of the regulation; and, thirdly, the weak value of integrity possessed by the bureaucracy in Indonesia.

The CEC has the authority in terms of prevention; therefore, strategic steps must be agreed to prevent acts of corruption including:

1. Encouraging government and winning companies to be more transparent in reporting all their activities including profits;
2. Improving the quality of the bureaucracy;
3. Strict punishment;
4. Increasing community participation in monitoring the implementation of social assistance;
5. Supervision of Anti-Corruption Institutions;
6. Reviewing overlapping rules.

From the handling of the cases above, a lesson can be drawn, namely that the Regional Head in determining policies that are prone to abuse of authority can involve relevant agencies as an example for preventing corruption involving the CEC. Then for technical procurement of goods and services it can involve the Government Goods and Services Procurement Policy Institute (LKPP).

In addition, law enforcement officers, including investigators, public prosecutors and judges, need to also improve their ability to recognize the ways in which the perpetrators of corruption carry out their actions so that there are similarities and updates on the mode of action, especially those who can be held criminally accountable, not only limited to actions regulated in one law but must be synchronized with other laws.

III. CONCLUSION

1. Social Assistance for communities affected by Covid-19 is very vulnerable to corruption, especially in Indonesia. Regional Heads or the highest officials in Ministries/Institutions are filled with people who come from political parties so that they can certainly have goals for their own interests or parties in determining policies. Instead of helping the community's economy, the fact is that the assistance was corrupted by taking refuge in the rules of Article 27 paragraph (2) of Law Number 2 of 2020 to obtain immunity, even though they forgot there was a phrase in the article that stated *"...in carrying out tasks based on Good intention..."* contrary to their actions that are not based on good faith. Therefore, serious efforts are needed to change the mindset of bureaucratic officials, especially regarding the values of integrity.

2. Conflict of Interest in the Procurement of Goods and Services is a type of corruption as referred to in Article 12(i) of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001, which is certainly vulnerable to the authority possessed by an official. Therefore, it is necessary to involve the competent agency from an early stage to oversee the procurement process starting from planning to procurement implementation so that corruption can be avoided.

NEW AND EMERGING FORMS OF CORRUPTION AND THE EFFECTIVE COUNTERMEASURES IN JAPAN

Hiroshi Kubo[*]

I. INTRODUCTION

Based on the 2021 survey of Transparency International, Japan ranked 18 among 180 countries globally in terms of the Corruption Perception Index (1 best, 180 worst). And in general, Japanese citizens place a relatively high degree of trust in public servants. That said, Japan is not a corruption-free country, and we still have a long way to go before eliminating corruption completely from our society. In this paper, I would like to touch upon "New and Emerging Forms of Corruption and the Effective Countermeasures in Japan" including the explanations of our investigative agencies and how public prosecutors investigate corruption cases in Japan.

II. INVESTIGATIVE AGENCIES IN JAPAN

A. The Police

In Japan, the police are the main investigative agency. Although officers of some administrative bodies, such as narcotics agents and coast guard officers, also have limited jurisdiction to investigate certain types of offences, police officers have general jurisdiction over all types of offences. There is no special investigative agency which exclusively investigates and prosecutes corruption cases in Japan. The vast majority of criminal cases including corruption cases are investigated by the police and referred to public prosecutors. Since the police do not have the power to decide whether to prosecute criminal cases, all cases investigated by the police must be sent to public prosecutors for disposition except for very limited minor offences. The police have headquarters in each of Japan's 47 prefectures. Currently there are approximately 260,000 police officers in Japan.

B. Public Prosecutors

Public prosecutors have the exclusive power to decide whether or not to prosecute each criminal case. Moreover, they are fully authorized to conduct criminal investigations, and actively supplement police investigations by directly interviewing witnesses and interrogating suspects as well as instructing police officers to investigate matters which they deem necessary. There are 50 District Public Prosecutors' Offices in Japan (1 in each of 46 prefectures and 4 in Hokkaido in accordance with its vast size). Currently there are approximately 2,700 public prosecutors in Japan.

III. HOW PUBLIC PROSECUTORS INVESTIGATE CORRUPTION CASES

A. Collecting Initial Information

In this section, I would like to touch upon how public prosecutors investigate corruption cases especially in bribery cases. Since these cases are committed secretly among very limited parties, it is extremely difficult to collect initial information as well as sufficient evidence to

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establish their guilt. Therefore, I believe it is worthwhile to address bribery cases and look into how investigation is conducted in such cases.

First of all, public prosecutors need to collect initial information to commence their investigation. They need some grounds or leads to initiate cases. And there are some methods to collect initial information of these cases, such as complaints from witnesses in the form of telephone, letters, emails etc., through investigation of other cases, publications such as weekly magazines or newspapers and so on. That said, public prosecutors must bear in mind that the credibility of the collected initial information is always dubious, as some people may intentionally disseminate false negative information to frame their adversaries. Therefore, public prosecutors must, in the first place, examine whether the collected information is trustworthy enough to commence an investigation. If they fail to do so, they will definitely cause great harm to the people involved and loose the trust of society, which they need the most.

B. Tracing the Flow of Illicit Funds

In the investigation of corruption cases, identifying and proving the flow of illicit funds is fundamental and crucial. For example, in a bribery case, tracing the flow of money – namely from the source of the bribe to the receipt of the bribe as well as the concealment or use of the bribe by the recipient – is indispensable to prove the facts of the case objectively. Also, tracing the flow of money enables public prosecutors to confiscate the bribe as criminal proceeds from the offender.

In order to trace the flow of illicit funds, first of all, search and seizure is imperative. By executing search and seizure in a prompt and proper manner, gathering physical evidence will be possible. For example, in the process of search and seizure, public prosecutors could collect necessary physical evidence including receipts, letters, memos, diaries, contract documents, photos, bankcards, passbooks, CDs, DVDs, USBs, computers, smartphones and other electronic devices etc. Then public prosecutors could develop the big picture of the flow of illicit funds by analysing the collected evidence.

Secondly, interviewing witnesses and interrogating suspects are also necessary. Even if physical evidence was properly collected and analysed as mentioned above, that does not always mean everything has been completely answered. In many cases, the explanations of witnesses or suspects are needed to clarify the entire flow of the funds. For example, once money in a bank account is detected, if it was withdrawn from the bank account and its current whereabouts are unknown based on the analysis of the collected physical evidence, then public prosecutors further need to seek the explanations of witnesses or suspects in order to clarify the outcome of the withdrawal of the money. Their explanations could supplement the flow of the money corroborated by the collected physical evidence.

In addition, there are also cases where international cooperation between other countries or regions is indispensable. For example, if the money in a bank account in Japan was transferred to a bank account in other country or region, public prosecutors would probably encounter difficulties in tracing the flow of the money afterward, because public prosecutors in Japan do not have jurisdiction over other countries and regions. In such cases, Japanese public prosecutors would seek assistance from investigative authorities of other countries or regions and ask them to provide necessary information to clarify the flow of the money. By utilizing these methods, public prosecutors seek to trace the flow of illicit funds.

C. Identifying the Nature of the Funds

After identifying and proving the flow of illicit funds, public prosecutors need to identify and prove the nature of the funds. In some cases, suspects may admit the receipt or use of the funds; however, they claim that the receipt or the use is legal. They argue that the receipt or use of the funds is based on legitimate transactions, or they have the legitimate right to receive or use the funds. In order to examine or, if necessary, rebut their arguments, public prosecutors need to thoroughly identify the nature of the funds and prove whether their receipt or use of the funds is illegal and groundless or not.

To identify and prove the nature of the funds, public prosecutors need to collect physical evidence including documents, data, etc., and analyse them comprehensively in addition to interviewing witnesses and interrogating suspects. Based on the analysis of the collected evidence and interrogations of suspects etc., public prosecutors may precisely understand how and why the funds were received or used by the suspects.

It is especially important to obtain the confessions of the suspects and the statements of the witnesses in order to prove the nature of the funds because they are the only ones who know the truth of their stories. For example, in a bribery case, if a bribe giver admits that funds were intended to bribe the bribe taker, and at the same time, based on the overall investigation, no evidence was found to corroborate legitimate transactions etc. between the provider and the recipient, it is highly likely that their guilt will be established at trials.

In order to obtain the confessions, it is necessary to listen carefully to the voices of the suspects and never deny their arguments completely. They may sometimes lie or hide the true story but, at the same time, they may reveal the truth to some extent. If public prosecutors try to press their opinions unilaterally, the suspects would refuse to talk and never tell the truth to public prosecutors. And it is also essential to present the collected objective evidence to the suspects and seek their opinions on the evidence. By being presented with overwhelming objective evidence, some suspects might give up arguing on and start telling the truth to public prosecutors.

D. Identifying All the Suspects

Public prosecutors also need to identify all the suspects involved in a case. In some bribery cases, in addition to a bribe giver and bribe taker, there is also an architect who organizes the crime and a beneficiary who receives criminal proceeds in the end, including gang members and politicians etc. These figures tend to hide behind other junior figures and press their responsibilities to those people to escape from their own charges, but they are the ones who should be held accountable the most.

Public prosecutors must examine the case thoroughly, identify all the suspects, especially the kingpin, and bring all of them to justice without fail. Public prosecutors must collect and analyse enough evidence so that court can be fully confident to establish guilt of all the suspects beyond reasonable doubt.

IV. NEW AND EMERGING FORMS OF CORRUPTION IN JAPAN

A. Covid-19-Related Cases

From the outset of the Covid-19 pandemic in 2020, there were cases where individuals and legal entities defrauded the Japanese Government out of subsidies originally designed to assist those adversely affected by Covid-19 in Japan. As of 6 October 2022, more than 1,600

individuals and legal entities have wrongfully received subsidies of more than 17 billion yen, equivalent to US$116 million. Among these cases, some were committed by Japanese Government officials, for example, those of the Ministry of Economy, Trade and Industry (METI), which is in charge of the Covid-19-related subsidy programme, as well as one of the National Tax Bureau, which is involved in the process of distributing subsidies. Two METI officials were found guilty and sentenced to 2 years and 6 months in prison and 2 years in prison with the sentence suspended for 4 years, respectively, for swindling 15 million yen jointly. And an official of the National Tax Bureau was also found guilty and sentenced to 3 years in prison with the sentence suspended for 5 years for swindling 7 million yen with his accomplices. Those officials, all in their 20s, have allegedly abused their knowledge and experience as officials of responsible ministries and bureaus and defrauded the government out of funds which could have otherwise helped those in desperate need.

B. Corruption Cases Related to the Tokyo Olympics

In August 2022, a former Tokyo Olympic organizing committee board member was arrested by the Tokyo Public Prosecutor's Office over allegations that he was bribed 51 million yen, equivalent to US$380,000, to secure a sponsorship contract for a business wear company and grant it approval to sell official Games goods. Technically speaking, the organizing committee board members are not public servants themselves, but they are categorized as "deemed public servants". In Japan, some non-public servants are regarded as public servants in accordance with the nature of their professions, which are highly public or related to the public benefit etc., in line with those of public servants by the special acts. For example, the officials of the Bank of Japan are not public servants, but they are deemed public servants by the Bank of Japan Act in accordance with the nature of their professions. The deemed public servants are punishable by the provisions which punish public servants such as bribery, abuse of authority by public servants etc. Likewise, the former board members are deemed public servants based on the Special Act of the Tokyo Olympic Games, and they are subject to punishment for receiving bribes.

Public prosecutors arrested the founder (former chairperson) of the company, along with the former vice chairperson and the senior managing director of the firm, for allegedly offering those bribes to the former board member. It is said that the former board member denied pushing organizing committee officials to give the company such favourable treatment, saying the money was just paid for consulting services. Following this case, the former board member was arrested several times in connection with other similar cases, but he also denies wrongdoing. The investigations by public prosecutors are still ongoing, and the overall picture of the cases is yet unclear. The Olympic Games were originally commenced to encourage interactions among athletes regardless of their backgrounds in order to establish a peaceful world, but recently they have become too extravagant. In fact, in the Tokyo Olympics (2021), US$28 billon was used, whereas, in London Olympics (2012) and in Sydney Olympics (2000), only US$15 billion and US$5 billion were used, respectively.[1] The expenses of the Olympic Games have ballooned nearly sixfold in just 21 years. I believe this trend is one of the big causes of such corruption cases, and the business wear companies and others sought to gain their own interests in the Tokyo Olympics Games by exploiting the enormous clout of the former board member on the organizing committee. If people concerned keep doing the same things and do not change their directions, similar cases might occur in the near future as there seems to be no sign of keeping the expenses of the Olympic Games down. And also, to prevent

[1] https://www.forbes.com/sites/niallmccarthy/2021/07/27/tokyo-is-the-worlds-most-expensive-city-for-construction-infographic/?sh=2a363d9170d2

the recurrence of similar cases, we need to have an effective mechanism in place which robustly scrutinizes conflicts of interest of all deemed public servants both incumbent and prospective with companies or individuals likely to be engaged in their businesses.

C. Cases Involving Cooperative Agreements

In Japan, the cooperative agreement system was created in 2016 and came into force in 2018. The new system allows suspects and defendants to enter into negotiations with public prosecutors, whereby evidence of others' criminal conduct can be provided in return for criminal charges being reduced or dropped. It covers white collar crimes such as fraud, bribery and so on.

Since its introduction, the system has been used in several cases, and the first case was related to a Japanese power equipment manufacturing company. The company was engaged in the construction of a thermal power plant in a Southeast Asian country in 2015. However, in February 2015, when the company's logistics provider tried to unload components for the plant at a jetty near the construction site, local residents along with public officials from the local port authority claimed that the logistics provider had not properly obtained the necessary licence to use the jetty and they blocked the jetty. The logistics provider was asked to pay a bribe (around USD 600,000) in order to use the jetty, and the company's employees paid the bribe to the local residents and the port authority officials, as requested, through the logistics providers, so that they could avoid the delay of the construction. Later the company became aware of the said case and could not deny the fact that the company's employees had bribed foreign public officials. Therefore, the company reported its findings to public prosecutors and entered into a cooperative agreement with public prosecutors in 2018 under which public prosecutors agreed not to charge the company in exchange for its cooperation in the investigation. Three former employees were prosecuted for bribing foreign public officials, and all of them were found guilty. Among them, two were sentenced to 1 year and 6 months in prison with the sentence suspended for 3 years, and the remaining one was sentenced to 1 year and 4 months in prison with the sentence suspended for 3 years. The number of cases in which the cooperative agreement system has been used is still small in Japan; thus, it is yet premature to judge whether the system is a truly effective means of investigation.

D. Exam-Related Cases

In Japan, national exams including the bar exam and other entrance exams of prestigious universities, especially those of medical schools, are quiet competitive. In fact, only 2 or 3 out of 100 applicants passed the bar exam each year in the past, and they were indeed extremely competitive.

In 2015, an unprecedented case happened in relation to the bar exam in Japan. A professor of a law school who was one of the members to set the bar exam of that year, disclosed some questions in advance to one of his female students, whom he was reportedly dating. This case became evident, as the female student gained unnaturally high marks. He fed exam questions to the student because she had failed the exam a year before and he wanted to help her. He was found guilty and sentenced to 1 year in prison with the sentence suspended for 5 years.

Also in July 2022, a former senior education ministry official was found guilty and sentenced to 2 years and 6 months in prison, suspended for 5 years, for allegedly receiving bribes related to a ministry support programme for private universities. He accepted a request from the members of a medical university in Tokyo to give favourable treatment to the

university in return for his second son fraudulently passing the entrance exam of that university in February 2018.

These are the two examples of corruption cases related to exams. These suspects were both in highly responsible positions, and they should have or must have surely recognized the great responsibilities attached to them at the moment of committing their crimes. However, they averted their eyes from them and acted wrongfully in favour of their loved ones even though these acts will turn out to be a major disadvantage for their loved ones in the end.

V. CONCLUSION

As mentioned above, corruption still exists in Japan and new cases are emerging. In order to prevent and fight against corruption, I believe maintaining the integrity of public servants, including those regarded as public servants, is crucial and imperative. In Japan, the National Public Service Ethics Act was enacted in 1999, and the National Public Service Ethics Code was also enacted in 2000 in order to maintain the integrity of public servants.

Based on the Act and Code etc., various trainings have been conducted for public servants so as to maintain their integrity and to raise anti-corruption awareness. However, these efforts are insufficient, and we still have much to do to completely eradicate corruption from our society. For example, in addition to conducting these trainings, we could enhance awareness of the risks of corruption by informing them repeatedly of the actual cases and teach them how corruption could destroy the suspect's life. They need to realize from the bottom of their heart that the results of corruption are enormous and irreparable. By learning these cases, I believe, they can finally associate them with their own lives more directly.

And this is completely my personal opinion, and someone may strongly disagree, but, to some extent, we may need to think of raising salaries of young public servants so that they would be commensurate with their workload. It is said that some young public servants are quitting their jobs early because they think they are not paid enough for their work, especially for overtime, compared to their peers in the private sector. In fact, after WWII, the system of the salaries of the public servants in Japan was reformed, and the salaries of police officers became higher than those of other public servants. That led to the decrease of the amount of corruption committed by police officers. Until then, in some prefectures, surprisingly, five per cent of police officers received the sanction of disciplinary dismissal due to their wrongdoing in just one year[2] (currently, it is less than 0.0001%).

It is not clear whether the amount of salary is directly connected to corruption for the moment (however, the officials of the METI and the National Tax Bureau, who committed fraud in Covid-19-related cases, were all in their 20s), and we may need to consider budgetary issues in advance, but if they receive salaries which they view as being commensurate with their own work, it could dissuade them from becoming engaged in corruption in the future.

[2] *Keisatsugaku Ronshu* (The Journal of Police Science) Vol. 65, No. 9, p. 108.

NEW AND EMERGING FORMS OF CORRUPTION AND EFFECTIVE COUNTERMEASURES

Kienthong Namkhalak[*]

I. RAISING THE ROLE OF PREVENTING AND COMBATING CORRUPTION IN THE NEW ERA

Corruption is a crime that occurs in the organizations of the public sector, a great danger that affects and delays the socio-economic development of each country in the world. Corruption is a threat to the stability of both public and private organizations, causing unrest, injustice in society, undermining the strength, trust and value of the society towards various administrative institutions and organizations. Corruption diverts money from the national budget in various development projects of the state and the income of the collectives as well as the citizens in many ways and in the most subtle ways which makes the quality of those projects low, the state and citizens lose a lot of income every year. Corruption is also an open expression of violation of laws and regulations of the state and the lack of virtue, lack of ethics of civil servants, soldiers, police in public and private organizations, causing groups, clans, and families, neighborhoods and relatives to share economic and political interests and lead to disunity, causing disunity in leadership and society. The behaviours of corruption have been expressed in many different and complicated forms. It exists in a narrow circle of individuals or groups of people and widens out to organizations, groups of people, government officials, private individuals and entrepreneurs with transnational activities and others.

II. PROVISION OF ANTI-CORRUPTION

Preventing and combating corruption in the Lao PDR is aimed at ensuring that the property of the state or the rights and interests of citizens and society are not damaged, embezzled or defrauded, and to protect the innocent, aiming to make government organizations, mass organizations and social organizations strong and transparent, ensure that the country has political stability, stable economic growth, and a peaceful, orderly and fair society. Therefore, preventing and combating corruption is the duty of all party, state and social organizations that must work together and also practice the political virtues, revolutionary moral qualities of party members, especially the party leadership.

III. ACTIVITIES TO PREVENT AND COMBAT CORRUPTION

To prevent corruption, it is important to:

- *Limit, fight and solve the phenomenon* of corruption by increasing and improving the quality of coordination between law enforcement organizations and government administration authorities at each level.

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- *Find, eliminate and solve the phenomenon* of corruption that occurs gradually by using the measures, rules, regulations and laws in the prosecution of corruption cases strictly, sincerely and fairly.

- *Limit the behaviours* of officials who abuse their powers, positions and duties to embezzle, cheat, accept bribes, and give bribes and engage in other behaviours.

State anti-corruption inspection work is the duty of party committees, administrative authorities, social organizations and inspection committees at each level, and party members and citizens have obligations as defined in the law on anti-corruption.

IV. CAUSES OF CORRUPTION

There are many causes of corruption in the state, including factors that depend on the actual environment, policies and problems related to socio-economics, customs and culture, which indicate some of the following factors:

1. Mechanisms, policies, regulations and laws are not focused and complete, and there are still many gaps, but additional improvements have been delayed;

2. The organizing and performance of the political system in general, in the party-state organization, in particular, there are still many weaknesses. Quality and efficiency are not high. The roles, duties and rights of some organizations are not clearly defined and are repeated and scattered. Solving the problem of party members who violate the laws in some sectors is sympathized which causes correction according to regulations, and laws are not strict enough;

3. Among party committees, board of directors, governing body and party members, some have not fully understood their roles, duties and rights, and have not yet been role models in organizing. Set to implement the rules of the party, state laws, leading by example, leadership is not well oriented, monitoring and inspection are not regular and continuous, some places have plans to monitor and inspect but have not yet been implemented, making the summary of the good/weak aspects in the implementation of the policy plan of the party, resolutions, orders and laws of the state do not correspond to reality, when creating plans, programmes, there are only expectations, not based on reality, causing gaps of corruption;

4. Monitoring, inspection and management of the activities of party members have not been done well. The party committee and a number of leadership committees have not yet acknowledged the number of staff and party members under their management. Education in political virtue is just done in an overall style. Resolutions, orders, regulations, laws and important documents of the party-state are not yet deep enough. A number of employee-party members are lacking in political ideas, virtues, qualities, revolutionary morals, lifestyles and lack of leading as role models for the masses.

V. PREVENTION OF CORRUPTION

In order to prevent corruption in the government and in the areas of government officials, party members to be transparent, strong, limit and fight back various scandals in the future, we must pay attention to implement some measures to prevent and fight corruption as follows:

1. Party committees and governing organizations at each level must pay attention to the party's policies, rules, requirements, laws on anti-corruption, the dangers of corruption to party workers-members, improve the state administration mechanism to be consistent, effective and transparent. At the same time, employee-party members must also be leaders who train themselves and serve as examples in respecting and following rules and laws.

2. Defining and implementing clearer policies to the staff-party members of each level and to ensure that their lives are resolved appropriately and must consider the task of inspecting, preventing and fighting corruption as an important and regular duty of the party-state and the entire Lao people in the mission of protecting and building the nation in order to simultaneously prevent and resolutely defeat corruption;

3. Party committees and governing organizations continue to improve and implement the mechanisms, policies, regulations of the state and employees in a focused manner, they also implement the work of the employees in a democratic, open, and transparent manner, especially in the selection, recruitment, placement, appointments, transfers, reshuffle, evaluations, praises, disciplinary actions for employees and other issues in a timely manner;

4. Continue to improve the legal system, monitoring, inspection, verification, investigation and consistent solution methods, the management system for the economy and society to be focused, promote the people, the media and social organizations to participate in the prevention and fight against corruption widely and strictly;

5. Increasing the coordination, monitoring and inspection activities of the sectors, the National Assembly, and the Provincial People's Council for the prevention and anti-corruption work. Enhance the role of the Lao National Front and political-social organizations, the media, and people to participate in the monitoring and inspection widely;

6. Continue to improve the state administration system and work plans, create measures, list of job positions and the number of positions in every sector to be complete; Enhancing sanctity in state management and managing society with laws to suppress and anti-corruption.

VI. THE SUMMARY OF ANTI-CORRUPTION IMPLANTATION/PRACTICES IN THE PREVIOUS PHASE

In the ranks of party members, workers have been educated in politics – the idea of organizing and improving political life within the party, conducting political life within each level of the party regularly to survey themselves and send messages to help each other within the party with sincerity to help prevent and solve such problems, so that party members, civil servants, soldiers and police can see that they maintain political virtues, good revolutionary morals, and love the party for the party, for the nation, for the rights and interests of the nation, and for the people.

Recently, especially from 2016-2020, anti-corruption laws have been strictly enforced. The party committee, leadership, management organization and inspection committee at each

level have paid attention to monitoring and inspecting the state management at their level with many goals, in which civil servants were found to violate party regulations, state laws and corruption. In these cases, the staff were disciplined as follows: 749 people (Government employees: 639 people, companies: 99 people, employees of state enterprises: 3 people, indivdiuals: 8 people). Proceedings 130 people (Government employees 93 people, companies 26 people, State enterprise employees 3 people, 8 people); Summary of the case sent to the prosecutor: 93 people (Government employees 64 people, companies 24 people, employees of state enterprises 3 people, 2 people); The court has decided 79 people (Government employees 64 people, companies 19 people, employees of state enterprises 3 People); Fix all administrative aspects 619 people, (Government employees 546 people, companies 73 people); Found all the damage 746, 27 billion kip, 362, 10 million baht, 14, 21 A million dollars and can be recovered 391, 95 billion kip, 25, 16 million baht and 10,000 dollars.

Specific year 2020 Proceeding all corruption cases 5 A list of cases in which there are those who have been prosecuted 24 people (government employees 16 people, companies 2 people, 6 people); Damaged value 208, 13 billion kip, 331, 83 million baht, 14, 3 million dollars; Cleared already 14.04 billion kip, more than 14 million baht; Requests and proposals received 4.817 Edition, in which research has been considered and corrected 1.524 Version, sent to other parties to correct 1.581 version, inform the relevant parties 155 version, collect to track 273 version, pending 1.284 Version.

A number of financial assets damaged by corruption have been recovered and returned to the state. Those who violate the law are disciplined and punished according to the law. As well as raising consciousness of respect and implementing party discipline, state laws for party workers-members and citizens are gradually improving.

VII. THE CONTENTS OF THE ANTI-CORRUPTION STRATEGY

The government of Lao PDR has defined an anti-corruption strategy. In order to define it in more detail, the State Inspection and Anti-Corruption Authority has created programmes to implement the anti-corruption strategy, which includes 4 plans and 16 projects. In order to implement the anti-corruption strategy of the government, aiming to achieve results, the prevention and anti-corruption work have been transformed in a more proactive direction, whereby the State Inspection Agency has determined a strategic implementation plan. Each phase is detailed below:

Programme 1: Education on civic knowledge and creating awareness of law

- **Project 1: Education on general political ideas** (policy guidelines, party resolutions, regulations and regulations of the state) that are issued from time to time. This is a task that needs to be done regularly and continuously;

- **Project 2: Education for law enforcement officers on laws related to the prevention of corruption** such as Law on Anti-corruption, Criminal Law, Criminal Procedure Law, Laws and other provisions by selecting the content related to the prevention of corruption. The Ministry of Justice, the State Inspection Agency, the Party Committee and various governing bodies are responsible;

- **Project 3: Recommend and organize an assessment to integrate the contents of the anti-corruption strategy.** State inspection agency, Ministries-organizations and other local parties are responsible.

The State Inspection Agency is responsible for the integration and implementation of recommendations; Party Committee of Ministries-Organizations and Localities, Department of Inspection and the inspection committee at each level is the organizer of integration and actual implementation. The period of integration and development is detailed for each ministry-agency and locality;

- **Project 4: Turn the prevention and anti-corruption content into curriculum for students and specialized schools at various levels.** The Ministry of Education and Sports, National Political-Government Institute and other institutions are responsible for coordination with the State Inspection and Anti-corruption Agency. Start taking teaching–learning courses from the 2014-2015 school year onwards;

- **Project 5: Study/review the regulations of the government, ministries-organizations, localities and police departments,** especially the requirements, regimes-regulations related to the prevention and anti-corruption. It is the duty of the leaderships of ministries-organizations, localities and various police departments which must be done regularly and continuously.

Programme 2: Research, improve and create legislation on prevention and anti-corruption

- **Project 1: Review and revise the laws that have been promulgated.** Law on Anti-corruption, Law on Handling of Petitions, Decree on Anti-Money Laundering and Counter-Financing of Terrorism, Law on State Inspection. The State Inspection Agency and the Ministry of Justice are responsible;

- **Project 2: Review the creation of new government legislation**. Executive order of the Prime Minister on property declaration and income; The requirements of the Central Party Inspection Committee on the application-proposal regulations; The Prime Minister's Department of State for monitoring and supervising government projects; The provisions of the Party Central Secretariat regarding the coordination regime of the party's inspection with the state inspection and the people's inspection. The Party Central Inspection Committee Inspection Organization and the Ministry of Justice are responsible.

  Terms of the Party Central Secretariat that the mechanism for mass organizations, social organizations, media and citizens to participate in the inspection; Responsible for the requirements of the Prime Minister regarding the subsidy policy regime for inspection workers and inspection participants. Responsible inspection agency;

- **Project 3: Revising old legislation and creating new legislation at the ministry-organization and local level**. Review and revise the laws that have been promulgated in order to be in line with the anti-corruption strategy, guarantee management-protection of employees-civil servants in their sector from corruption;

Research and create new legislation that is seen as necessary to prevent and fight corruption. The specifics of each ministry-organization and its locality. Responsible organizations: Ministries-organizations and Local.

Programme 3: Improving the state management mechanism

- **Project 1:** To improve the state administration mechanisms are:
  1.1. Research and improve the roles, duties, and rights of some ministries-organizations and local sectors to be clear and non-repetitive - step by step in accordance with the resolution 3 of the Political Department and the Prime Minister's State Department on work to create;
  1.2. Research and improve the organizational system at all levels in the direction of concise, reasonable, transparent, strong-highly effective, ensure that the work does not have a bargaining gap, drag, make the administration of the work quick, timely and transparent; and
  1.3. Improve various existing laws and create new laws such as the Administrative Law; Various regulations for administrative management and relations between the central and local governments, relations between sectors and others;

- **Project 2:** Research and improve various policy regimes for civil servants and soldiers, police, such as salary regimes, subsidies, internet, health care, and others that are deemed necessary. Responsibility: Ministry of Interior and other related organizations (responsible for both projects);

- **Project 3:** Research and determine the coordination regime between the inspection agency and the law enforcement agency. Responsible organization: the inspection agency in conjunction with law enforcement agencies.

Programme 4: To adjust the support of the organization and the staff working in the prevention and anti-corruption work

- **Project 1**: To improve the organizational structure of inspection agencies and anti-corruption agencies both at the centre and locality:

  1.1. Research and improve roles, duties, scope of rights to be clear and in line with the law on state inspection and the law on anti-corruption;

  1.2. Determine the number of positions and the criteria for positions in accordance with the political functions of inspection and anti-corruption at each level;

  1.3. The internal rules and regulations of the inspection agency and the anti-corruption agency should be clear and focused. Responsible Inspection Organization in collaboration with Ministries-organizations and localities;

- **Project 2:** Improve public sector inspection and combat corruption in various ministries-organizations, institutions and government enterprises. Ministries-organizations are responsible in conjunction with the inspection agency.

- **Project 3**: Improvement and establishment of the Department of State Inspection and Anti-Corruption in all departments in provinces, capitals and district offices to

comply with the state inspection law (to be a special unit and have professional staff to do special inspection work). Ministries-line agencies and the party committee, the inspection committee of the province of the district as well as the relevant departments and offices in the province and in the district are responsible.

- **Project 4**: Improve the general inspection unit of various grassroots units linked to the inspection board or the inspection unit of the party at each grassroots party (the inspection board at each level is in charge of each grassroots unit of the party).

- **Project 5**: Build and organize training for inspection work, prevention and anti-corruption work for staff working on inspection and anti-corruption work:

  5.1. Collect-check and re-evaluate the employees who are doing inspection work in the country.

  5.2. Organize maintenance and upgrade for 3 months, 6 months, or shorter training for employees each stage of inspection is already available.

  5.3. Select and build staff that work in a systematic inspection at the National Institute of Politics and Administration and send them to study abroad. Practice starting from 2013 onwards. Responsible organization: Party Central Inspection Committee in conjunction with the Central Organizing Committee and the National Political-Government Institute.

VIII. HOW TO IMPLEMENT

1. The Central Party Inspection Committee, the inspection organization will continue to investigate and organize into a detailed schedule for each job and coordinate with relevant ministries and local organizations to clearly define and divide responsibilities; Allocate in more detail the duration of the implementation to suit each task.

2. The programmes and projects defined as such, each ministry-organization and locality must be responsible for detailed research and implementation according to their roles and responsibilities.

3. The implementation of the strategy must be evaluated every year, starting with each ministry-organization and local area, summarizing, evaluating, learning lessons every 6 months (for each ministry-organization and local area, police department) and reporting to the State Inspectorate two times a year. To determine the implementation period of the organization State inspection summary and interpretation Draft strategic plan for the next phase.

4. Through actual implementation, if there is any difficulty, there must be a regular report and feedback from the upper level (in particular, the inspection agency in the coordinating place).

Corruption includes behaviours of employees, civil servants, soldiers, and police officers who abuse their power, position and duties to embezzle, defraud, accept bribes, give bribes and other behaviours defined in Article 11 of the Law on Anti-Corruption (2013) to gain

benefits for themselves, relatives, friends and other parties, which harm the interests of the state, collective, society or the legitimate interests of citizens.

From these problems, our state party has always taken importance and paid attention to the solution of crime, preventing and fighting corruption, by pointing out the danger of crime and corruption, and paying attention to prevent and solve this problem forever. Starting with political-ideological education, disseminating legislation on prevention and corruption, such as the law on anti-corruption, resolutions, orders and strategic plans to combat and prevent corruption, 9 prohibitions for party members; 14 prohibitions for civil servants at each level and other documents for party members, civil servants to understand and mobilize the masses to participate in combating and suppressing the crime and the widespread corruption problem.

In order to solve the problems to reduce corruption gradually, according to the author's point of view, the following points are important:

1) Continue to advance awareness and understanding of the evils and intractability of crime and corruption. First of all, starting from the strategic leadership staff, the leadership-management staff at each level must focus on correcting selfish thinking, private thinking, abusing the position for personal gain and paying attention to raising the leadership role of the party and the leadership role model of the party committee and party members.

2) To improve the mechanism, system and regulations regarding the prevention and treatment of crime and corruption, such as the system of the administrative plan and the working methods of the party committee and administrative staff at all levels; Regime, regulation and the content of political life is to conduct monthly and annual reviews of party committees and party members regularly, to ensure the nature of education, the nature of leadership and the nature of struggle, with mutual feedback and strictly creative, enhancing democracy, creating conditions for the lower level to form ideas, to direct the upper level; Research and improve the various policies of party workers-members, who have worked for the nation, for the revolution appropriately; Research legislation, regulations, such as management regulations and promote the creation of the family economy of employees, soldiers, police officers and other regulations that are not yet sufficient and oriented.

3) Increase the effectiveness of state management by law; The National Assembly, Provincial-Capital Council, State Audit Organization, Party Central Inspection Committee, State Inspection Organization and Anti-corruption Organization at each level must increase strictness and pay attention to the implementation of their roles and responsibilities to be higher, be the ones to monitor, inspect the implementation of party discipline, state laws regularly so that everyone, all organizations have a sense of respect and strictly implement the law.

4) To improve the organization of the party so that it is clear and strong, first of all, the role of the organization of the party must be improved at the central level ministries and local agencies, determining the content, rules and regulations for building the foundation of the party to be clear and in accordance with the role, which is from the grassroots area.

5) Respect and strictly adhere to the principles of inclusive democracy, organize as a committee, divide work into responsible individuals, discuss work democratically, the lower level must follow the upper level, the individual should follow the organization, the voice of the minority depends on the voice of the majority; Working closely with reality, sticking to the grassroots, being the master of the fight against and eradicating crime, solving the abuse of power that is a violation of the rules and principles of the party and violations of the laws and regulations of the state, correcting the situation of many meetings but the agreement to solve the problem is not clear, decisive, always easy, acting superficially, lacking responsibility, talking not in line with the actual action, talking more and doing less, solving problems not according to rules and principles, doing things according to others.

6) To increase the status of the party committee as a good role model, leadership, governing body and inspection committee at each level in carrying out the assigned political duties, leading a life of integrity, transparency, economy, and anti-fraud; Being directly responsible for the scandal, damage to property, violation of discipline and violation of the law of employees, party members under their management.

7) Hold importance and pay special attention to monitor and inspect areas that are at risk of corruption such as: revenue collection, tax evasion, tax, budget revenue-expenditure management, infrastructure investment, land use management, management and exploitation of natural resources, planning, procurement, hiring, etc.; Monitoring, inspecting and taking action against those who violate the law, abuse their position, their duties for personal gain, bribery, partying.

8) Paying attention to monitoring and inspecting party members, civil servants, including administrative and management staff at each level with unusual wealth, raising voices, reporting, and filing complaints from employees, party members and citizens. When examining problems related to abuse of office, corruption, they must be resolved carefully and promptly according to the scope of management rights at each level.

References:

- Law on Anti-corruption of Lao PDR (Amended in 2013)
- Law on the Office of the People's Prosecutor (Amended version 2017)
- Anti-corruption Strategic Plan of the State Inspection Authority
- Extract from the Inspective Magazine

NEW AND EMERGING FORMS OF CORRUPTION AND THE EFFECTIVE COUNTERMEASURES

Yuhafiz Bin Mohd Salleh[*]

I. INTRODUCTION AND EMERGING CORRUPTION

New threats of crime including corruption are evolving rapidly at the same pace of the new technology. This crime is progressing intensively, and the modus operandi have also changed. Therefore, as law enforcement in anti-corruption, we need to buff up on our methods and investigation skill to overcome such threats.

Corruption happens everywhere and involves multiple levels of society. From politicians misusing public funds to government officials involved in bribes in exchange for services, corruption can happen anytime, anywhere and behind closed doors. Furthermore, the rewards can be in different kinds of assets, not only in cash or properties but in bonds, shares and even in bitcoins. The same scenario is happening in the private sector where people at all levels are also involved in soliciting, accepting of bribes and misuse of power. The higher the position, the bigger the cash cows flooding in and the higher the value of the bribe taken!

The cost of corruption exceeds its monetary value in that it infringes your rights and the rule of law. Corruption has devastating socio-economic impacts for a country and certainly has a big political impact. Corruption is one of the causes for the people being denied the expected service delivery access, uneven distribution of wealth and leakages of the nation's resources and government funds.

Sharing the experience of MACC in investigation of the 1MDB case, the investigator detected that the money was transferred to numerous accounts in various countries before it ended up in the suspect's account in Malaysia. This is a classical case where the crime-scheme was very well organized using forged documents and shadow companies. The shadow company was purposely formed using the same name as the genuine company. The suspect holds multiple strategic posts in Government, and the government-linked company misuses its power and position to collude with well-known businessman to syphon the money out of Malaysia. The money trail showed that the money ended up in the suspect's bank account, and the company now struggles with a very high debt. With good collaboration and cooperation from the countries, MACC managed to complete the investigation and the suspect was charged in Court. The suspect was found guilty and sentenced to 12 years' imprisonment and a fine of MYR210 million.

Corruption is an inherited crime. It has happened for ages and has caused the fall of civilizations. Before such collapse, the crime only involves "petty corruption" and does not involve cross-border links, syndicated crime or multiple transactions through bank institutions. Based on my experience, the current ways of crime are well-organized and difficult to investigate. Enforcement agencies will face a very tough task to penetrate such schemes. The current scenario of the corruption case involved syndicated/organized crime, cross-border

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transactions, proxy/shadow companies and hid behind political funds, inexperienced judges, weak political will, weakness of law and weakness of investigation techniques.

II. EFFECTIVE COUNTERMEASURES

A. Enforcement Technique/Model

The objective of an investigation is to collect the evidence and ensure it is admissible in courts. It is important for the enforcement agencies to have an efficient technique/model of investigation. Weak techniques or strategies of investigation may result in failure, and the suspect will avoid conviction. To meet the investigation's objectives, the Malaysian Anti-Corruption Commission (MACC) implemented *Intelligence Based Investigation* (IBI) and *Managing Team Based Investigation* as techniques in investigation.

IBI was used in the pre-operation stage to collect all the relevant information like general information of the suspect or witness, companies' details, list of assets ownership and modus operandi (MO). This information will be useful to the investigation team. While MTI[1] is used in the operation and post-operation stage. Its focus is on management of the case, which involves the planning and monitoring of the investigation process, determining the action to be taken and identifying the witnesses and evidence. MTI ensures the positive outcome of the investigation and shortens the investigation period through tight monitoring and optimization of manpower.

In addition, MACC also emphasizes asset tracing to identify the proceeds owned illegally, such as by means of corruption or as a result from any other crime. All the illegal proceeds will be forfeited. The tracing of assets is done during the pre-operation stage using multiple sources like banking institutions, land offices, local authorities and other relevant authorities.

B. Law Reform

Strict laws are required to combat corruption and increase integrity among society. The corruption law in Malaysia has undergone a process of change and amendment. The culmination of these changes was the 2009 passage by the House of Representatives and Senate of the Malaysian Anti-Corruption Act 2009 (MACC Act 2009). This act enhanced the Anti-Corruption Act 1997 (ACA 1997), which led to the establishment of MACC, formation of the independent panel as a check and balance mechanism and amendments to some less-clear parts of the previous act.

In 2018, MACC Act 2009 again underwent changes when section 17A (corporate liability) and section 41A (admissibility of documentary evidence) were added. The aim of section 17A is to foster the growth of a business environment that is free of corruption and to encourage all commercial organizations to take reasonable and proportionate measures to ensure their business does not participate in corrupt activities for their advantage or benefit. Meanwhile, Section 41A provides that any document obtained by the Malaysian Anti-Corruption Commission shall be admissible in evidence in any proceedings under the principal Act, notwithstanding anything to the contrary in any other written law. This provision appears wide enough to include illegally obtained documents and privileged documents.

The issue of witness intimidation has been brought up by many countries many years ago. Witness-protection assistance is important to help protect the witness from any threats which

[1] See MACC's Guidelines on MTI.

might be made by persons whom the witness might testify against. Threat or intimidation to the witness can take place in many ways. Therefore, the protection assistance should be able to overcome each and every threat so as to effectively shield the witness from intimidation. The introduction of the Witness Protection Act in Malaysia could be regarded as one approach adopted by the government to overcome the above problem. The Witness Protection Act 2009 took effect on 15 April 2010. This ensured that witnesses could properly testify, without being fearful of the accused or any party. Hence, the law aims to avoid cases in which prosecution fails when no witness is daring enough to come forward because he or she feels threatened.

Furthermore, in 2010, the Whistleblower Act 2010 was enforced in Malaysia. This act is to combat corruption and other wrongdoings by encouraging and facilitating disclosures of improper conduct in the public and private sectors, to protect persons making those disclosures from detrimental action, to provide for the matters disclosed to be investigated and dealt with and to provide for other matters connected therewith. The effectiveness of this act, has boosted the confidence level of the public and resulted in an increase of the amount of corruption information provided to the MACC.

C. Special Law on Beneficial Ownership (BO)

A beneficial owner is an individual or natural person who ultimately owns or controls an entity. In Malaysia, business entities play an important role in economic growth. However, the legal structure of this business such as Sdn Bhd, or Limited Liability Partnership, is susceptible to being misused for carrying out illicit activities such as money-laundering, terrorism financing, corruption and others. The individuals that hide behind such businesses employ devious means to avoid their identities from being detected.

The Companies Commission of Malaysia (SSM) is the Registrar issuing the Guidelines Reporting Framework for Beneficial Ownership of Legal Persons, which came into effect on 1 March 2020 and established a transitional period of 1 March 2020 to 31 December 2020. During the transitional period, entities need to obtain, keep and update the beneficial ownership information at the entity level. After the transition period, they are required to obtain, keep and update the beneficial ownership information and inform the Registrar. However, as of now, the period has been extended to a later date to be determined by the Registrar to coincide with the enforcement date of the proposed Companies (Amendment) Bill and Limited Liability Partnerships (Amendment) Bill.

D. Special Law on Anti-Jump Party

On 9 December 2020, Datuk Seri Akhbar Sattar, former President of Transparency International Malaysia (TI Malaysia), stated that "Malaysia should enact an Anti-Party Hopping law to overcome the 'political pandemic' in the country." He said the rather regular cases of party-hopping among elected representatives at both Parliament and State Legislative Assembly levels should no longer be allowed to persist as they undermined the stability of the government. Apart from this, such party-hopping would also lead to corrupt practices. When they hop from one party to another, it could also lead to the collapse of a ruling government, and they do this because they are paid to do so.

Many Malaysians seem to agree with the above statement, and they believe that the act of hopping from one party to another party was influenced or inspired by something valuable like money (huge sums), positions or projects. The act of hopping by politicians (dubbed as "frogs") is considered as betraying the trust given by the voters and as being selfish. Money is a major

incentive for elected representatives to party hop. Though hard to prove, money is certainly a big reason why Malaysia is experiencing political instability.

Malaysia needs a law to stop this unethical behaviour, and history was made in Malaysia on 4 October 2022, after the King consented to the enforcement of the anti-hopping law, which entered into force on 5 October 2022. The law, Constitution (Amendment) (No. 3) Act 2022 will be enforced against any Members of Parliament who switch parties.

E. Special Law on Political Funding

Political funding, or political financing, refers to how political parties or politicians raise money for election campaigns and other activities. A political funding law regulates how parties and politicians receive and use money by ensuring disclosure of the source of funds and donations as well as the amounts received. Proponents of the law argue that it is essential for holding political parties and politicians accountable, ensuring transparency over funds and preventing misappropriation, bribery, fraud or abuse of power where funding is concerned.

Former President of Transparency International Malaysia Datuk Seri Akhbar Sattar also pointed out that a law on political funding to check and balance the risks of corruption among politicians that had long been debated about should be enacted without further delay. Such law would be an effective means to curb abuse of power, corruption, breach of trust and uncontrolled political funding.

On 19 May 2022, the Malaysian Prime Minister announced that Special Cabinet Committee on Anti-Corruption had agreed in principle to a political funding bill, adding that the proposal would be discussed in the Cabinet before further engagement with political parties. The Law Minister announced that the bill on political funding will be tabled in the House of Representatives and is hoped to be passed before the 15th General Election.

F. The Judiciary

On August 2022, the Special Committee on Corruption (a committee formed under the MACC Act 2009) proposed the creation of the Anti-Corruption Court as an enhancement to the existing Special Session Court of Corruption. Currently, there are 18 Special Session Courts in Malaysia. There is a need for an Anti-Corruption Court, or a court on corruption to be established specifically, from (the level of) the Sessions Court, the High Court, the Court of Appeal and the Federal Court, with judges who are experts and who are not changed periodically. This is to ensure the country has expertise, as well as the precision to run a court specifically to handle corruption cases.

Currently, trials related to corruption are considered ordinary trials, without any priority accorded to them. The establishment of the Anti-Corruption Court (High Court, Court of Appeal and Federal Court) will speed up the trials and help to reduce the number of pending cases. The appointment of experienced judges is expected to uphold justice, transparency and integrity, and they should not be easily compromised. Ridiculous excuses and requests to postpone scheduled proceedings would be rejected. Justice delayed is justice denied! This proposal was in the attention of the Government of Malaysia. I hope the Malaysian Government will give due attention to this and not delay its implementation.

G. Government Administration

In 2018, an asset declaration portal administered by MACC was launched whereby the government agreed that all Ministers and Deputy Ministers would be required to declare their assets. Further, this policy was enhanced by the current Prime Minister of Malaysia on 19

September 2022, whereby it was announced that Members of Government Linked Companies (GLCs), Members of Linked Investment Companies (GLICs) and Judiciary Members are required to declare their assets to MACC as well. However, these are still being researched by MACC and to be presented later.

H. Governance, Integrity and Anti-Corruption Centre (GIACC)

GIACC formed on 1 June 2018. GIACC's objectives are to plan, coordinate and monitor the implementation of the policies about anti-corruption and good governance initiatives. The coalition has created the institutions and pathways, and articulated the objectives and norms that warrant documentation and assessment. GIACC reports directly into the Prime Minister's Office, which underscores its commitment to all efforts to strengthen governance in Malaysia post GE14.

GIACC also launched the National Anti-Corruption Plan (NACP) on 29 January 2019 to create a corrupt-free nation through specific goals which are the Accountability and Credibility of Judiciary, Prosecution and Law Enforcement Agencies, Efficiency and Responsiveness in Public Service Delivery, and Integrity in Business. The NACP aims at establishing practical targets based on the initiatives to address national issues of corruption, integrity and governance to be undertaken during the next five years.

I. Curbing the Cartel

Elite corruption is the most difficult to combat because of the power at the disposal of the elite unless there is a major political upheaval. Based on the corruption trend in Malaysia over the last five years (2013-2018), [2] the public sector has been the most vulnerable to corruption. Compared to the vulnerability rate of 17.06 per cent in the private sector, the public sector showed a more alarming rate of 63.30 per cent. It was discovered that such a high vulnerability to corruption in the public sector stemmed from weak governance in its procurement practices, legal enforcement agencies and administration. This fact was further substantiated by the MACC's statistics. The agency found that between 2015 and 2018, a total of 30 top civil servants had been arrested for corruption charges. Their involvement does not only cause losses in the public funds, but more crucially it questions the public sector's integrity in ensuring the country's security and prosperity.

Recently, however, a new style of crime has been developing widely, which is corruption by cartel. A group of crime perpetrators are working together to get contracts from the government by manipulating their quotation and price submitted during the tender process of the government contract. When the selected contractor are chosen, pricing are manipulated, services provided are minimal and sometimes the jobs are not performed at all. MACC's prevention section managed to overcome this issue by advising government on short-term and long-term remedies. Although it shall never eliminate these cartel issues, it helps government offices to control and restrain further the losses to the value of government contracts.

Integrity pledges have also been introduced for public and private offices in Malaysia. This is a pledge taken by the leader of the office leading the whole staff, including officers and even board members, to give their oaths to refrain from taking bribes or becoming engaged in corruption within the office. To date, there are 1,828 agencies that have taken the oath.

[2] Statistics from MACC's records.

III. CONCLUSION

It is apparent that corruption not only ruins the corruptors, but it can go beyond to ruin the entire country. Malaysia has come under the spotlight for being involved in mega scandals. These scandals have seen billions of ringgit being syphoned off from the country. Syndicated cases involved high-level corruption and lack of governance on funds amounting to millions of ringgit affected multiple countries. The adverse effects of corruption on countries' economic development are widely acknowledged. Such large-scale corruption will also affect the overall public confidence, which will shake the confidence of investors, reduce the productivity of public expenditures, distort the allocation of resources and, thus, lower the economic growth of countries. Therefore, to combat corruption in full force, government plays a critical role in ensuring resources (e.g., human resource and financial) as well as access to these resources are made available to all the relevant stakeholders to undertake the various initiatives. We at the MACC do hope that the responsibility in achieving Malaysia as a corruption-free country is not only on us solely but on other public and private agencies as well. In the end, the benefits will be shared by all.

NEW AND EMERGING FORMS OF CORRUPTION AND THE EFFECTIVE COUNTERMEASURES

Law Chin How[*]

The outbreak of the deadly Covid-19 virus, which has been sweeping across the world, has caused the loss of life in millions in every corner of the world. Governments have come up with a variety of countermeasures to contain the spread of Covid-19 for the livelihood and survival of the mankind. Corruption, which is tantamount to another form of pandemic and much more lethal than Covid-19 in causing the irreparable destruction to any civilization, as if corruption is yet to eradicate society from stem to stern. A new form of corruption has emerged during the pandemic as some unscrupulous people take advantage of the incentives or subsidies offered by the government to groups that are underprivileged and who are struggling to make ends meet.

Against that backdrop, the Government of Malaysia announced the economy stimulus package in March 2020 which includes financial aid, incentives, training or reskilling courses etc. for the poorer or underprivileged to ease their burdens during the Covid-19 pandemic movement control order (MCO), or the lockdown, that was implemented by the authorities to curb the spread of Covid-19 across Malaysia.

For instance, the Ministry of International Trade and Industry (MITI) of Malaysia introduced the "Service Provider for Employability and Re-Training Local Talent" programme (ERT) which amounted to RM 40 million in June 2020 being the course to enhance skill and value of the workforce in the automotive industry that has been badly hit by the pandemic. Unfortunately, the goodwill of the ministry did not reach the labours of this dying industry, but the scenario is deteriorating because of some irresponsible parties who manipulated the programme and eventually pocketed the financial allocation of the ministry that was initially meant to train people earning low incomes to be much more competitive, competent and productive in this automotive industry. The chief executive officer (CEO) of the subsidiary company, i.e. A2Z which is wholly owned by the ministry (MITI), had manipulated this ERT programme by awarding this programme to another company, i.e. AKSB, and in return the CEO solicited RM 5 million from AKSB which obtained the ERT programme. The CEO instructed AKSB to camouflage the corrupt gratification of RM 5 million as a purported friendly loan given by AKSB by way of entering the loan agreement between the CEO and AKSB. The AKSB channelled the RM 5 million to the account of a law firm that acted as a stakeholder for the CEO upon the instruction of the CEO after the purported loan agreement entered by the parties. The said law firm was involved in money-laundering activities by way of helping the CEO to disburse the corrupt money to various parties on the instruction of the CEO. Moreover, part of the sum of RM 5 million was used by the CEO as paid-in capital to set up the law firm which eventually helped the CEO with money-laundering activities. Ironically, the legal practitioners of said the law firm, who supposedly act as guardians to steadfastly uphold justice and the rule of law but opted to dip themselves into the clandestine money-laundering plot for the ill-gotten gain.

[*] Deputy Public Prosecutor, Attorney General's Chambers, Malaysia.

Another new form of corruption took place in Malaysia during the Covid-19 pandemic when the organizer of an employee training course in the automotive industry misappropriated the budget allocated by the MITI (the ministry). The said organizer manipulated the module and the syllabus of the training course, that is being designed initially to intensify the skill and experience of the workforce in this industry. AKSB, the company that organized the employee training course, was supposed to hold the training at a designated site. Instead, the company held the online course virtually to dispense with the physical appearance of the employees at the training site. The change of the training module and syllabus by the organizer at the very last minutes defeated the goal of having the employees become more productive, efficient and competitive regarding the workmanship in the automotive industry as the training course was held virtually and theoretically without physical practice at the site, defying the golden rule principle of "Practice Makes Perfect" which is applicable in every industry.

On 5 June 2020, the Government of Malaysia announced an economic restructuring plan under which hiring incentives would be paid to the employers who keep their employees in the course of business throughout the Covid-19 pandemic. The purpose of the plan was to relieve the financial burden on the employer for survival and sustainability during this hard time. The authority in charge was namely, PERKESO, was to reimburse the employer the hiring incentives which amounted to RM 800 monthly per employee below the age of 40 years old and RM 1000 monthly per employee above the age of 40 years old. The hiring incentives were to be paid monthly to the employer in six months continuously after the incentive application made by the employer was approved by PERKESO. Unfortunately, the hiring incentives were misused by irresponsible parties who made false statements to substantiate their claims to PERKESO. ESM, a company which engages in the field of construction, had submitted to PERKESO incentive applications that contained false particulars such as the number and details of the employees are in doubt. The modus operandi of the ESM began with a job offer that requires the personal particulars as application credentials via a social media platform such as Facebook or WhatsApp and such personal particulars of the job applicant were stated in the incentive application to PERKESO. Sometimes, ESM paid RM100 to each job applicant, while RM800 or RM1000 was received by ESM from PERKESO as hiring incentives albeit no job applicant was hired by ESM. Seventy-four (74) false incentive applications were submitted by ESM and approved by PERKESO, which suffered the loss of RM 370,800.00.

Meanwhile, there is a scenario where an unscrupulous employer instructed his employees to set up new companies and, accordingly, to submit incentive applications that contained false particulars of the purported working personnel, whereas there is no employment in the light of the incentive application. All the correspondence and documentation were prepared by the employer for the approval process of PERKESO before the false incentive application was submitted by his employee under the purported new company. The said employee will be paid RM 2000 by the employer in the event that the incentive application of the new company incorporated by his employee is approved by PERKESO.

On the other hand, there was a company which employed the worker with pay that was below the minimum wage, which is RM 1000 as prescribed by the government, and the company submitted the incentive application to PERKESO in order to facilitate the hiring incentive claim of RM 800 or RM 1000 per person during the pandemic.

The foregoing reflects that new forms of corruption took place in Malaysia during the Covid-19 pandemic. Such corrupt practices have rendered the entire effort of government in vain as the poor keep getting poorer and richer keep getting richer; hence, the needs of society

are not addressed effectively and efficiently pertaining to the hardship and misery caused by the Covid-19 pandemic. Indirectly, the spread of Covid-19 failed to be contained by the government, as the poor and underprivileged continued to work during the pandemic to make ends meet although they knew they would be highly exposed to this deadly virus.

In a nutshell, corruption is a menace to the country. Therefore, effective countermeasures must be taken to eradicate this disease which is much more fatal than Covid-19. I would like to adopt and apply the principle of T.R.U.S.T, which is distilled from the ministry guidelines concerning corporate liability, which might give us some ideas in thinking of corruption countermeasures. The principle of T.R.U.S.T consists of the following:

Top-Level Commitment:

(a) The top-level management of the commercial organization ("Top-Level Management") must ensure that the highest level of integrity and ethics is practised in the commercial organization. There should be full compliance with the applicable laws and regulatory requirements on anti-corruption and key corruption risks of the organization must be effectively managed.

(b) The Top-Level Management must provide assurance to its internal and external stakeholders that the organization is operating in compliance with its policies and applicable regulatory requirements.

(c) The Top-Level Management must establish, maintain and periodically review an anti-corruption compliance programme and communication of the organization's anti-corruption policies and commitment internally and externally.

(d) The Top-Level Management must encourage the use of any reporting (whistle-blowing) channel. The results of any audit, reviews of risk assessment, control measures and performance are reported to all top-level management including the full Board of Directors and acted upon.

For instance, in the case study of ERT that I mentioned earlier, there is an urgency to have an effective, efficient and expedient reporting system implemented promptly within or outside the commercial organization to encourage its subordinate to report any alleged wrongdoing of anyone including the CEO or director of A2Z to authorities such as the Malaysian Anti-Corruption Commission (MACC) or the top management of the commercial organization before the same report is lodged to the MACC without putting the whistle-blower at the risk of identity exposure. Statutory protection is conferred to the whistle-blower under the Whistle Blower Protection Act 2010, an act to combat corruption and other wrongdoings by encouraging and facilitating disclosures of improper conduct in the public and private sector, to protect persons making those disclosures from detrimental action, to provide for the matters disclosed to be investigated and dealt with and to provide for other matters connected therewith.

Meanwhile, section 17A of the Malaysian Anti-Corruption Commission Act (MACC) 2009 entered into force in June 2019 concerning corporate liability. In the case of ERT, the AKSB should be indicted under this provision as the AKSB bribed the CEO of A2Z, and the CEO of A2Z should be charged in court for accepting a bribe. We must eradicate corruption from stem to stern adamantly and relentlessly. Section 17A of the MACC Act 2009 is reproduced as follows:

(1) A commercial organization commits an offence if a person associated with the commercial organization corruptly gives, agrees to give, promises or offers to any person any gratification whether for the benefit of that person or another person with intent-

(a) to obtain or retain business for the commercial organization; or
(b) to obtain or retain an advantage in the conduct of business for the commercial organization.

(2) Any commercial organization who commits an offence under this section shall on conviction be liable to a fine of not less than ten times the sum or value of the gratification which is the subject matter of the offence, where such gratification is capable of being valued or is of pecuniary nature, or one million ringgit, whichever is the higher, or to imprisonment for a term not exceeding twenty years or to both.

(3) Where an offence is committed by a commercial organization, a person-
(a) who is its director, controller, officer or partner; or
(b) who is concerned in the management of its affairs,

at the time of the commission of the offence, is deemed to have committed that offence unless that person proves that the offence was committed without his consent or connivance and that he exercised due diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his function in that capacity and to the circumstances.

(4) If a commercial organization is charged for the offence referred to in subsection (1), it is a defence for the commercial organization to prove that the commercial organization had in place adequate procedures to prevent persons associated with the commercial organization from undertaking such conduct.

(5) The Minister shall issue guidelines relating to the procedures mentioned in subsection (4).

(6) For the purposes of this section, a person is associated with a commercial organization if he is a director, partner or an employee of the commercial organization or he is a person who performs services for or on behalf of the commercial organization.

(7) The question whether or not a person performs services for or on behalf of the commercial organization shall be determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship between him and the commercial organization.

(8) For the purposes of this section, "commercial organization" means-
(a) a company incorporated under the Companies Act 2016 [Act 777] and carries on a business in Malaysia or elsewhere;
(b) a company wherever incorporated and carries on a business or part of a business in Malaysia;
(c) a partnership-
(i) under the Partnership Act 1961 [Act 135] and carries on a business in Malaysia or elsewhere; or

(ii) which is a limited liability partnership registered under the Limited Liability Partnerships Act 2012 [Act 743] and carries on a business in Malaysia or elsewhere; or
(d) a partnership wherever formed and carries on a business or part of a business in Malaysia.

Furthermore, top level commitment must be shown blatantly, fearlessly and unreservedly by the government and the private sector as we do not tolerate any form of corruption in Malaysia. A good illustration, on 23 August 2022, was when the apex court in the case of *Dato Sri Mohd Najib Bin Hj Abdul Razak v Public Prosecutor* (Criminal Appeal No: 05(L)-289-12/2021) upheld the conviction and sentence meted by the High Court against the former premier of Malaysia in respect of 1 charge of abuse power, 3 charges of criminal breach of trust and 3 charges of money-laundering in relation to RM 42 million entered into the account of the former premier in the case of SRC International. The former premier has to serve 12 years' incarceration and pay a fine of RM 210 million.

Risk Assessment:

(a) Comprehensive risk assessments are advised to be conducted every three (3) years, with intermittent assessments to be conducted whenever necessary.

(b) Risk assessment should be used to establish appropriate processes, systems and controls approved by the Top-Level Management to mitigate specific corruption risks and/or potential corruption risks that the commercial organization may be exposed to.

The government and commercial organization should be taking the risk assessment on every high-risk position held by any personnel from time to time to prevent any one-man decision in respect of any matter. In the case of ERT, the impugned CEO held the managerial position at A2Z with exclusive administrative power since its incorporation without any check and balance from the board of directors of A2Z. A rotation of high-risk position is reasonable and in line with the spirit of good governance regardless of the seniority and contribution of the personnel in the organization.

Undertake Control Measures:

(a) Appropriate controls and contingency measures, which are reasonable and proportionate to the nature and size of the commercial organization, are advised to be implemented and enforced to address any corruption risks arising from weaknesses in the commercial organization's governance framework.

(b) The said controls and measures should include due diligence and reporting channels.

(c) Policies and procedures should be endorsed by Top-Level Management, which should be up-to-date and easily available.

Due diligence must be taken in every decision-making process to avoid any unscrupulous party from taking advantage of the weaknesses in the system. In the case of misappropriation of the hiring incentives given by the PERKESO to the applicant, i.e. the employer, the wrongful loss suffered by PERKESO could be avoided as if due diligence performed by the PERKESO in verifying the particulars of the employee stated in each application such as interviewing the

said employee or cross checking with the Inland Revenue Board or other agency. Tragically, no due diligence was done by PERKESO, which merely acted as a rubber stamp on each application.

Systematic Review, Monitoring and Enforcement:

(a) The Top-Level Management is advised to ensure regular reviews are conducted to assess the performance, efficiency and effectiveness of the anti-corruption programme of the commercial organization and to ensure the anti-corruption programme is enforced effectively.

(b) Reviews may take the form of an internal audit or an external audit.

(c) Reviews should form the basis of any efforts to improve the existing anti-corruption controls in place in the organization.

Collaboration among the agencies such as the MACC, Customs Department, Inland Revenue Board, Police Force, Immigration Department etc. is needed badly and swiftly, which will prompt positive and fruitful outcomes as each agency plays the role watchdog to one another in every decision-making process. For example, there is no room for false claims to take place if the Inland Revenue Board or Employee Provident Fund is involved in the inspection of particulars of employees when the incentive application is submitted to PERKESO, even assuming that PERKESO fails to perform due diligence when discharging its duty.

Training and Communication:

(a) Commercial organizations should develop and disseminate internal and external training and communications relevant to their anti-corruption management system, in proportion to their operations.

(b) The commercial organization's anti-corruption policy should be made publicly available and appropriately communicated to all personnel and business associates.

(c) When planning strategies for communicating the organization's position on anti-corruption, the organization should take into account what key points should be communicated, to whom they should be communicated, how they will be communicated, and the timeframe for conducting the communication plan.

(d) Employees and business associates should be provided with adequate training to ensure their thorough understanding of the organization's anti-corruption position, especially in relation to their role within or outside the commercial organization."

All public servants and private-sector employees should take the training course in relation to anti-corruption, which is paramount to society if this detrimental issue is not sufficiently addressed through deterrence. We must not overlook the cause behind what motivated the people who willingly gave their personal particulars to the purported employer who had ill intention to submit the false incentive application to PERKESO. Such abettors were willing to work in cahoots with others to defraud PERKESO in exchange for RM 100 for personal details given by him. Based on the statistics given by the MACC, the 61 companies involved in the

fraud incentives application to PERKESO and 51 wrongdoers were arrested in relation to this matter. The total loss suffered by PERKESO is RM 38,939,508.00 nationwide. Lack of public awareness and education of the society on the corruption issue is the main reason why everyone takes corruption lightly. Some might even think that corruption creates a win-win situation.

The Federal Court in the case of *Public Prosecutor v Dato' Waad Bin Mansor* [2005] 2 MLJ 101 has articulated the severity and seriousness of corruption which warranted a deterrence sentence to be meted out against the accused who was convicted of a corruption offence:

> Any offence, be it murder, rape, robbery or corruption is viewed as an offence against society and the community at large. By stating that the crime of corruption stands in a league of its own and cannot be equated with the heinous crimes of murder, rape, robbery, criminal breach of trust etc, the CA has certainly underplayed the effect of corruption in our society. The offence of corruption, if unabated or undeterred, is more far reaching in its consequences than the crimes of robbery, criminal breach of trust or rape. Thus, we feel that the sentences imposed for offences of corruption should be deterrent in nature so as to reflect the gravity of the offences.

Therefore, combating corruption is never done regardless of the form in which corruption emerges. We all have responsibility in maintaining the integrity of society as justice is needed indefinitely and everywhere for any civilization of mankind.

CORRUPTION IN THE PHILIPPINES IN THE MIDST OF THE PANDEMIC

Olivia I. Laroza-Torrevillas[*]

Corruption is a form of *dishonesty* or a *criminal offence* which is undertaken by a person or an organization which is entrusted in a position of authority, in order to acquire illicit benefits or abuse of power for one's personal gain. While corruption appears to be a legal and institutional problem, the same should be treated as a social, political, and cultural phenomenon driven by human behaviour and circumstances.

Philippine Laws Penalizing Corruption:

1. Acts of Graft and Corruption punishable under the Revised Penal Code;
2. Republic Act No. 3019, or the Anti-Graft and Corruption Practices Act;
3. Republic Act No. 7080, or An Act Defining and Penalizing the Crime of Plunder;
4. Republic Act No. 6713, or the Code of Conduct and Ethical Standards for Public Officials and Employees;
5. Republic Act No. 9184, or the Government Procurement Reform Act;
6. Republic Act No. 9485, as amended by RA 11032, or the Ease of Doing Business and Efficient Government Service Delivery Act of 2018;
7. Republic Act No. 6770, or the Ombudsman Act of 1989;
8. Presidential Decree No. 46 series of 1972, Punishing the Receiving of Gifts by Public Officials and Employees; and
9. Anti-Red Tape Act of 2007.

I. THE DUTERTE ADMINISTRATION'S FIGHT AGAINST CORRUPTION

It was the commitment of then President Rodrigo Duterte to rid the government of corrupt officials and employees. He issued Executive Order No. 43 creating the Presidential Anti-Corruption Commission, the anti-corruption government agency during the Duterte administration. Also, in a Memorandum dated 27 October 2020, he mandated the Department of Justice to investigate allegations of corruption in the entire government. Thus, the Department of Justice, in a Department Order, created the mega Task Force Against Corruption which consists of other bodies and agencies of the government. The Task Force Against Corruption was authorized to investigate, prosecute and file appropriate charges in allegations of corruption, taking into consideration the gravity of the acts and the impact on the delivery of government services. The creation of TFAC resulted in the filing of corruption complaints directly with the Office of the Secretary of Justice who acted as the Chairperson of the Task Force Against Corruption.

The Covid-19 outbreak increased corruption risks, exposing the health sector and undermining the health care system of the Philippines. The pandemic led to the granting of emergency powers to then President Rodrigo R. Duterte who enacted measures, rules and laws to address the Covid-19 crisis.

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II. REPUBLIC ACT NO. 11469 OR THE BAYANIHAN TO HEAL AS ONE ACT

Republic Act No. 11469, also known as the *Bayanihan Act*, is a law in the Philippines that was enacted in March 2020 granting the President additional authority to combat the Covid-19 pandemic in the Philippines. The law provides the President of the Philippines the power to implement temporary emergency measures to respond to the crisis brought about by Covid-19, such as:

- adopting and implementing measures, to prevent or suppress further transmission and spread of Covid-19;
- authorizing the National Health Insurance Program of the Philippine Health Insurance Corporation to cover the cost of medical expenses due to Covid-19;
- providing an emergency subsidy amounting to five thousand pesos (₱5,000.00) to eight thousand pesos (₱8,000.00) to low-income households based on prevailing regional minimum wage rates;
- partnering with the Philippine Red Cross in giving aid to the people;
- implementing an expanded and enhanced Pantawid Pamilya Pilipino Program and providing an assistance programme through the Department of Social Welfare and Development and the Department of Labor and Employment;
- enforcing measures against hoarding, profiteering, injurious speculations, manipulation of prices, product deceptions, cartels, monopolies or other combinations to restraint trade or affect the supply, distribution and movement of food, clothing, hygiene and sanitation products, medicine and medical supplies, fuel, fertilizers, chemicals, building materials, implements, machinery equipment and spare parts for agriculture, industry and other essential services;
- procuring of goods and services for social amelioration measures, in the most expeditious manner through exemptions from Republic Act No. 9184 or the "Government Procurement Reform Act" and other relevant laws; and
- Others.

III. RECENT CORRUPTION SCANDALS

The emergency powers given to the President under the Bayanihan Act did not deter private and public individuals from committing corruption activities during the pandemic. A number of corrupt acts emerged during the Covid-19 pandemic which are magnified in the following scandals:

A. Pharmally Scandal

The emergency procurement system was hit by corruption when in 2020-2021, the government of the Philippines entered into a string of multi-billion-peso contracts with a company called Pharmally Pharmaceuticals, despite the fact that Pharmally is a small firm that was incorporated only in 2019 and lacked the funds, experience and credibility to handle major government contracts. It was later revealed that Pharmally has direct ties with Chinese

businessman Michael Yang, a close friend and former advisor of President Rodrigo Duterte. While direct corruption in this case has not yet been proven, the circumstances are extremely suspicious, and this is just one high-profile example of questionable Covid-related procurement deals.

B. Wasted Pandemic Response Fund

The Commission on Audit reported trillions of pesos of wasted pandemic response funds. In August, the Commission on Audit (COA) flagged deficiencies in the use by the DOH of P63.72 billion in funds which were supposed to be used to help fight the Covid-19 pandemic. The COA found billions of pesos in the coffers of the health department, as well as suspected irregularities in transactions made using the Covid-19 funds. COA findings also showed that: (1) P6 million was spent on expired drugs and medicines; (2) P69 million was spent on overstocked, slow-moving or idle drugs and medicines; and (3) P20 million was spent on nearly expired drugs and medicines. Senators also questioned the alleged P550 million worth of test kits that had expired in 2020 without being used, as well as the acceptance by PD-DBM of face shields deemed unfit for use by health care workers at the frontline.

C. Corruption in PhilHealth

The problem of corruption in PhilHealth more than anything victimizes the vulnerable, the sick and poor Filipinos who are being cheated on medical assistance that could have been used to treat their illnesses and possibly save their lives. The current composition of PhilHealth underrepresents patients, health providers, concerned civil society groups and the public (Filipino citizens) in general, and overrepresents the government. There's only one slot on the PhilHealth board dedicated to consumer/patient representation. This is a major deficiency that needs to be addressed if accountability and transparency are to be ensured in PhilHealth's operations and decision-making processes.

D. Corruption in the Implementation of the Social Amelioration Program (SAP)

According to the Presidential Anti-Corruption Commission, a total of 7,601 complaints of corruption in the distribution of cash aid in time of the pandemic have been reported and investigated by its office. It shows that the billions of pesos could have been misused. One of the Philippine senators claimed irregularities when DSWD tapped a private corporation to issue the cash assistance through e-wallets. Thus, the recipients who do not know how to download the app for e-wallets did not receive the allocated financial assistance.

CORRUPTION – THE SECONDARY "PANDEMIC" IN THE TIME OF COVID, AND THE CHALLENGE OF FACING DUAL PANDEMICS

Luanne Ivy M. Cabatingan[*]

I. INTRODUCTION

In the latest[1] Corruption Perception Index (CPI) of Transparency International,[2] the Philippines ranks 117th worldwide, with a score of 33,[3] dropping two places from its 2020 ranking of 115th and scoring 1 point less. In fact, the Philippines ranks second among the "Most Significant Decliners" in the Asia-Pacific region, having declined 5 ranking spots since 2014.[4] With the average score for the region being 45, the Philippines' declining score, already far below the regional average, shows much to be done in the country's battle against corruption. Given the fact that the country's rank (and score) in the CPI for both 2020[5] and 2021 have been its lowest since 2012, one must wonder if the situation brought about by the Covid-19[6] pandemic[7] contributed to the worsening corruption in the country, and to what extent it has done so. From various news reports during the pandemic, the effect appears to be quite significant, to the point that corruption has been likened more than once to the pandemic itself, and even said to be "deadlier" than Covid.[8] How, then, does a country embattled by a pandemic, the likes and magnitude of which it has never faced before, deal with another, all-too-familiar "pandemic" at the same time?

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[1] For 2021.

[2] Transparency International is a global movement working in over 100 countries to end the injustice of corruption. <https://www.transparency.org/en/about>

[3] Corruption Perception Index for 2021, <https://www.transparency.org/en/cpi/2021>

[4] "CPI 2021 FOR ASIA PACIFIC: GRAND CORRUPTION AND LACK OF FREEDOMS HOLDING BACK PROGRESS," 25 January 2022, <https://www.transparency.org/en/news/cpi-2021-for-asia-pacific-grand-corruption-holding-back-progress>

[5] Found in "PH further drops two places in 2020 Corruption Perception Index", by Camille Elemia, Rappler, 28 January 2021, available at https://www.rappler.com/nation/philippines-rankings-corruption-perception-index-2020/

[6] Previously known as 2019 Novel Coronavirus; otherwise known as Coronavirus Disease / disease caused by the Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2), <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-(covid-2019)-and-the-virus-that-causes-it>

[7] Defined as "the worldwide spread of a new disease." Found in the article "Novel coronavirus: What makes an outbreak a pandemic?" by Jodesz Gavilan, Rappler, 12 March 2020, available at https://www.rappler.com/newsbreak/iq/254242-things-to-know-pandemic-definition-novel-coronavirus/

[8] "Corruption is deadlier than COVID-19," Rufa Cagoco-Guiam, Philippine Daily Inquirer, 15 March 2021, <https://opinion.inquirer.net/138496/corruption-is-deadlier-than-covid-19>

"Scale of corruption has become 'pandemic-like' during COVID-19 crisis, say experts," Ina Reformina, ABS-CBN News, posted online on 10 December 2020, <https://news.abs-cbn.com/news/12/10/20/scale-of-corruption-has-become-pandemic-like-during-covid-19-crisis-say-experts>

"Pandemic corruption," Gerardo P. Sicat, The Philippine Star, 2 September 2020, <https://www.philstar.com/business/2020/09/02/2039392/pandemic-corruption>

II. THE PHILIPPINES AND THE COVID-19 PANDEMIC

Then President of the Republic of the Philippines, Rodrigo Roa Duterte, declared a State of Public Health Emergency throughout the Philippines due to Covid-19 on 8 March 2020, by virtue of Proclamation No. 922, Series of 2020. The Senate and House of Representatives, prompted by said Proclamation, accordingly passed[9] Republic Act No. 11469[10] (otherwise known as "Bayanihan to Heal As One Act", or Bayanihan Act I, for brevity). While the aforesaid piece of legislation encompassed various areas which the Philippine legislative body found essential in the country's efforts to battle the pandemic, the highlight of Bayanihan Act I was the authority given to the President to realign unused or unallocated funds from the 2020 national budget and utilize them to augment the budget for priority areas specified under said law. A second "Bayanihan Act", Republic Act No. 11494[11] (otherwise known as "Bayanihan to Recover as One Act", or Bayanihan Act II, for brevity), was subsequently passed,[12] which in essence was mostly an "economic stimulus" intended to place the country on the track to (economic) recovery.

In line with the aforementioned laws, the different government agencies also came up with numerous issuances to carry out the various directives and/or objectives of said laws. The Department of Health (DOH), for instance, being the principal health agency in the country and, therefore, at the forefront of the battle with the Covid pandemic, had a plethora of policy issuances pertaining to Covid-19.[13] The Philippine Health Insurance Corporation (PhilHealth, for brevity), the primary health insurance provider in the country, being responsible for the administration of the "National Health Insurance Program," has a dedicated "Covid" page, where one could find its various issuances and other information (such as health care packages / benefits) pertaining to Covid-19.[14]

At the heart of both Bayanihan Acts is the provision of assistance, subsidies and other forms of socioeconomic relief to low-income households and other individuals or sectors, such as displaced workers / employees. The key agency tasked with the distribution of such assistance / subsidies / relief is the Department of Social Welfare and Development (DSWD). There are several programmes for the distribution of financial and other forms of assistance and services to affected individuals and communities, involving DSWD in coordination and collaboration with other national government agencies such as the Department of Labor and Employment (DOLE), Department of Trade and Industry (DTI), Department of Agriculture (DA), Department of Finance (DOF), Department of Budget and Management (DBM), and Department of Interior and Local Government (DILG), which programmes are known by the collective term "SAP", short for "Social Amelioration Program."[15] More precisely, it is the

[9] Passed by both Senate and House of Representatives on 23 March 2020; signed into law by President Rodrigo R. Duterte on 24 March 2020.

[10] An Act Declaring the Existence of a National Emergency Arising from the Coronavirus Disease 2019 (COVID-19) Situation and a National Policy in connection therewith, and Authorizing the President of the Republic of the Philippines for a Limited Period and Subject to Restrictions, To Exercise Powers Necessary and Proper to Carry Out the Declared National Policy and for Other Purposes

[11] An Act Providing for COVID-19 Response and Recovery Interventions and Providing Mechanisms to Accelerate the Recovery and Bolster the Resiliency of the Philippine Economy, Providing Funds Therefor, and for Other Purposes

[12] Passed by the Senate on 20 August 2020 and the House of Representatives on 24 August 2020; signed into law by President Rodrigo R. Duterte on 11 September 2020.

[13] DOH Covid-19 policies can be found here: https://doh.gov.ph/COVID-19-policies

[14] PhilHealth's Covid-dedicated page can be found here: https://www.philhealth.gov.ph/covid/

[15] DSWD's page for Frequently Asked Questions (FAQs) on SAP, in Filipino, can be found here: https://www.dswd.gov.ph/frequently-asked-questions-on-sap/

"Emergency Subsidy Program" (ESP) of the SAP which encompasses the provision of cash or non-cash subsidy to 18 Million (low-income) household beneficiaries, in the total amount of at least PhP5,000.00, but not exceeding PhP8,000.00, per month for two months, intended for basic food, medicine and toiletries of the target beneficiaries. Special Guidelines were issued in relation thereto, specifically Joint Memorandum Circular (JMC) No. 1, Series of 2020, executed by and between DSWD, DOLE, DTI, DA, DOF, DBM and DILG. These involved agencies also had various issuances in relation to the implementation of the aforesaid JMC and the particular social amelioration programmes administered by their respective agencies pursuant thereto.

In the country's recovery efforts, these various agencies also had programmes / initiatives and/or other forms of assistance or services. The DSWD, for instance, had the Educational Cash Assistance, which aimed to extend financial assistance to qualified indigent students.[16] DOLE, on the other hand, had "TUPAD"[17] (which stands for Tulong Panghanapbuhay sa Ating Disadvantaged / Displaced Workers), while DTI also extended various services to assist[18] in the recovery efforts and also in the programmes being implemented by the other national government agencies in relation thereto.

Recognizing the urgent need to procure vital medical equipment and supplies for the country's Covid response efforts, the Government Procurement Policy Board (GPPB) swiftly issued "Guidelines for Emergency Procurement under Republic Act No. 11469 or the Bayanihan to Heal as One Act",[19] followed by various issuances to cover myriad aspects of the government procurement process during the pandemic.

With the numerous legislative and executive (implementing) measures in place, the country seemed poised to tackle the Covid-19 pandemic head-on. On paper, at least, the Philippines appeared to be quite capable and ready to face the emergency situation suddenly brought about by Covid. How seemingly swift and decisive action brought about a second "pandemic" can best be seen, however, from the manner of implementation by various agencies of these measures.

III. EMERGING CORRUPTION TRENDS AND THREATS

Being at the forefront of the fight against Covid, the DOH was the first, if not, most prominent to face an onslaught of corruption allegations. Not long after the passage of Bayanihan Act I in March 2020, Senators were already calling for a probe / investigation into allegations of overpricing in the purchase of personal protective equipment (PPE) and swab kits for coronavirus disease 2019 (Covid-19) testing.[20] This call for investigation was repeated after the Commission on Audit (COA) released its Consolidated Annual Audit Report on the DOH for Calendar Year 2020.[21]

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[16] "DSWD Cash Assistance for Students (All Levels) Nationwide," <https://governmentph.com/dswd-cash-assistance/>

[17] DOLE's page, "About TUPAD," can be found here: https://www.dole.gov.ph/tupad-contents/

[18] DTI's page, "DTI ASSISTANCE AND OTHER GOVERNMENT INITIATIVES FOR MSMES," can be found here: https://www.dti.gov.ph/covid19/assistance/

[19] GPPB Circular 01-2020

[20] "Probe alleged overpriced PPE gears, test kits: solons," Jose Cielito Raganit, Philippine News Agency (PNA), 18 May 2020, <https://www.pna.gov.ph/articles/1103229>

[21] Senate Press Release: "Drilon seeks Senate investigation into DOH mismanagement of P67.32B COVID-19 funds," 12 August 2021, <https://legacy.senate.gov.ph/press_release/2021/0812_drilon1.asp>

In its report, the COA found "*various deficiencies involving some PhP67,323,186,570.57 worth of public funds and intended for national efforts of combatting the unprecedented scale of the COVID-19 crisis*". The COA stated that "(*T)hese deficiencies contributed to the challenges encountered and missed opportunities by the DOH during the time of state of calamity / national emergency, and casted doubts on the regularity of related transactions*."[22] The findings consisted of the following: (i) Unobligated / unutilized funds, which were intended to improve the capacity of DOH to address the ongoing health crisis, and to reinforce the country's health care system; (ii) Failure to meet the accomplishment targets for the rollout of Foreign-Assisted Projects by the end of 2020; (iii) Various deficiencies in the procurement process and lack of documentation in a number of contracts; (iv) Unutilized and not immediately utilized medical equipment and supplies procured for Covid-19 response; (v) Issues in the grant of cash advances and handling of petty cash funds by various operating units; (vi) Fund transfers to procurement partners or implementing agencies without memoranda of agreement or other supporting documents, as well as delays in delivery of much-needed medical equipment / supplies / devices; (vii) Failure to pay around PhP4.88 million worth of claims to financial aid beneficiaries by the end of 2020 due to delayed downloading of cash allocations; (viii) Incomplete documents for the payment of Covid-19 allowances to health workers, payment to unqualified recipients, overpayment, and payment of such allowances during periods not covered by the Enhanced Community Quarantine (ECQ); (ix) Distribution of meal allowances to operating unit personnel through cash allowances, gift certificates and grocery items, without sufficient legal basis and which were charged to funds intended for life insurance, accommodations, transportation and meals of public health care workers; (x) Payment of death and sickness compensation despite deficient or non-existent supporting documents; (xi) Lack of proper accounting for in-kind donations; and (xii) Deficiencies in the management of funds for the Interim Reimbursement Mechanism (IRM) by public health care institutions.

The DOH was swift to deny the allegations of corruption, claiming it was ready to face any probe regarding them.[23] Banking on the clarification made by COA[24] that the Annual Audit Report did not mention any findings of funds lost to corruption, and that the audit process for the deficiencies pointed out had not yet been completed as there were recommendations for compliance, DOH asserted that it had always been transparent and that the accusations of corruption were misplaced, as the agency was yet in the process of submitting the needed evidence or documents in relation to the COA findings.[25] The Annual Audit Report for the Calendar Year 2021 seems to "support" its claims, as the majority of the COA recommendations on the Covid-19 Audit Findings for 2020 were "implemented", while only a few were either partially implemented or not implemented. The 2021 Report, however, brought with it new audit findings still related to the Covid-19 response. What remains to be seen is whether these new findings were attended by some form of corruption or caused merely by lapses of internal control in the DOH that may be corrected by implementing the audit recommendations.

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[22] Part E, No. 1 of the 2020 Executive Summary (in relation to the COA Consolidated Annual Audit Report on the DOH for the Calendar Year 2020).

[23] "'Disheartened' DOH ready to face any probe on corruption allegations," Analou de Vera, Manila Bulletin, 29 June 2021, <https://mb.com.ph/2021/06/29/disheartened-doh-ready-to-face-any-probe-on-corruption-allegations/>

[24] COA News Release: "COA clarification on audit findings of DOH COVID-19 funds," 16 August 2021, <https://coa.gov.ph/coa-clarification-on-audit-findings-of-doh-covid-19-funds/>

[25] "DOH transparent, no corruption in P67-B flagged by COA: exec," Joyce Ann L. Rocamora, PNA, 14 August 2021, <https://www.pna.gov.ph/articles/1150455>

While the probe of DOH pushed through, with various government agencies conducting their own investigations, another government agency was brought into the "limelight" of corruption accusations as a result thereof – the Procurement Service of the Department of Budget and Management (PS-DBM). Central to this was the Senate Blue Ribbon Committee probe on the procurement of Covid-19 supplies from "Pharmally",[26] a company created mere months before the declaration of a state of national emergency (due to the Covid-19 pandemic) that lacked funds,[27] track record and credibility to handle the multi-billion-Peso deal(s) it was awarded by the government through the PS-DBM. While the Committee's Report died a swift death due to failure to garner enough signatures from the Senators in order for the Report to be tackled before the Plenary,[28] the findings[29] of the Committee were still widely publicized by various news outlets. Besides findings of overprice in the medical supplies (such as PPEs,[30] face masks, face shields) purchased from Pharmally, some of the supplies provided were also found to be substandard or defective, prompting even the DOH itself to launch its own investigation on the matter.[31]

The matter of procurement of various medical supplies by the PS-DBM from Pharmally not even having been settled completely, the corruption spotlight falls upon PS-DBM once again, this time together with the Department of Education (DepEd), on the matter of its procurement of laptop computers intended for the use of teachers, who had to conduct online classes due to the pandemic. The approved budget for the contract was supposed to be at PhP35,046.50 per unit, for a total purchase of 68,500 units. However, the laptops purchased were priced at PhP58,300.00 each, resulting in fewer units purchased. Worse, the laptops purchased were also assailed for not just being "pricey" but also "outdated", being equipped with Intel Celeron processors. As succinctly stated by COA in its 2021 Management Letter,[32]

> *(A) public school teacher needs an efficient and effective processor that can allow multiple applications to run at the same time. The TSs required by the DepEd did not intend to procure a laptop computer equipped with an Intel Core Celeron, the most low-end type of Intel processor in the market. As a result, public school teachers were deprived of the benefits of the use of a laptop computer equipped with better processor that would help them to perform their tasks.*

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[26] Pharmally Pharmaceutical Corporation

[27] Pharmally reportedly only had PhP625,000.00 of paid-up capital. Found in "What is Pharmally Pharmaceuticals? Who controls it?", ABS-CBN News, Posted and updated on 31 August 2021, <https://news.abs-cbn.com/business/08/31/21/what-is-pharmally-pharmaceuticals-who-controls-it>

[28] "Gordon: Filipinos lose as Pharmally report failed to get Senate's nod," Hannah Torregoza, Manila Bulletin, 3 June 2022, <https://mb.com.ph/2022/06/03/gordon-filipinos-lose-as-pharmally-report-failed-to-get-senates-nod/>

[29] "LIST: Alleged anomalies uncovered at Senate probe on Pharmally," Benise Balaoing, ABS-CBN News, Posted on 27 September 2021, <https://news.abs-cbn.com/spotlight/09/27/21/read-what-has-been-uncovered-so-far-at-senate-probe-on-pharmally>

[30] Personal Protective Equipment

[31] "DOH probes Pharmally sale of substandard face shields," Sheila Crisostomo, The Philippine Star, 28 September 2021, <https://www.philstar.com/headlines/2021/09/28/2130212/doh-probes-pharmally-sale-substandard-face-shields>

[32] Management Letter was issued, in lieu of an Annual Audit Report, as the COA Audit Team was unable to express an opinion on the financial statements of the PS-DBM, which had not submitted its year-end (2021) financial statements by 23 June 2022. Found in the 29 June 2022 Transmittal Letter of the Management Letter of the Audit on the Procurement Service for the period 1 January to 31 December 2021, from Daria B. Sison, Director IV of the National Government Audit Sector, Cluster 2 – Oversight and Public Debt Management Agencies, addressed to Atty. Jasonmer L. Uayan, Officer-in-Charge of the Procurement Service.

In response to the COA's findings[33] on the questionable laptop procurement, the DepEd essentially "passed the bucket" to PS-DBM for an explanation on the matter,[34] while the latter agency just caused the issue to be more muddled, with the confusing and inconsistent testimonies of its officials before the Senate.[35]

Another government agency vital to the Covid-19 response that has been equally, if not more, hounded by corruption allegations is the DOH attached agency, PhilHealth. Not long after the start of the state of national emergency, there were already allegations of overpricing in its Covid-19 testing package, which cost around double the package cost that other facilities could offer.[36] The dust on this matter was far from even settled[37] when new corruption allegations were levelled against the agency, by no less than one of its officials who had resigned over such corruption issues, among other reasons.[38] Questions were raised on the matter of the Interim Reimbursement Mechanism (IRM),[39] prompting various calls for investigation on the alleged corruption in PhilHealth. Both the Senate and the House of Representatives held several investigative hearings on the matter, wherein several issues, beyond the IRM matter, were uncovered, such as: (i) bloating of PhilHealth's proposed information technology budget for 2020; (ii) a proposal to procure 15 Cisco network switches that was grossly overpriced, which had already been flagged by COA; (iii) "doctored" financial statements intended to cover up losses and inconsistencies that would have been otherwise difficult to explain; (iv) use of the "case rate package" as a scheme for fraud / unjust enrichment by hospitals; (v) additional burdens to Overseas Filipino Workers (OFWs); and (vi) existence of a "syndicate" or "mafia" comprised of high-ranking PhilHealth officials that perpetuated illegal operations in the agency.

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[33] There were also corresponding findings in the 2021 Annual Audit Report for the DepEd.

[34] Official Statement of the Department of Education: "On the COA report on the procurement of laptops," 5 August 2022, <https://www.deped.gov.ph/2022/08/06/on-the-coa-report-on-the-procurement-of-laptops/>

[35] "New PS-DBM head: DepEd's laptop procurement may be illegal," contributed by Marvin Joseph Ang, Yahoo! Philippines (News), 3 October 2022, <https://ph.news.yahoo.com/new-ps-dbm-head-deped-laptop-procurement-may-be-illegal-062916112.html>

"DepEd laptops procurement process 'defective,' says senator," Hana Bordey, GMA News, 15 September 2022, <https://www.gmanetwork.com/news/topstories/nation/844970/deped-laptops-procurement-process-defective-says-senator/story/>

"Gatchalian flags inconsistent statements of PS-DBM execs on legal basis of DepEd laptop procurement," Hana Bordey, GMA News, 29 September 2022, <https://www.gmanetwork.com/news/topstories/nation/846419/gatchalian-flags-inconsistent-statements-of-ps-dbm-execs-on-legal-basis-of-deped-laptop-procurement/story/>

[36] "'Overpriced': Drilon urges DOH to review PhilHealth's P8,150 COVID-19 testing package," Dona Magsino, GMA News, 19 May 2020, <https://www.gmanetwork.com/news/topstories/nation/738872/overpriced-drilon-urges-doh-to-review-philhealth-s-p8-150-covid-19-testing-package/story/>

[37] "Duterte wants probe on PhilHealth's COVID-19 test price issue," Krissy Aguilar, Inquirer, 22 May 2020, <https://newsinfo.inquirer.net/1279348/duterte-wants-probe-on-philhealths-covid-19-test-price-issue>

[38] "3 PhilHealth officials resign over alleged widespread corruption in agency," BAP/KBK, GMA News, Published and updated on 24 July 2020, <https://www.gmanetwork.com/news/topstories/nation/748272/3-philhealth-officials-resign-over-alleged-widespread-corruption-in-agency/story/>

[39] The Interim Reimbursement Mechanism or IRM is an emergency cash advance measure applied by PhilHealth to provide hospitals with an emergency fund to respond to unanticipated events like natural disaster and calamities. Found in "Philhealth issues official statement on Interim Reimbursement Mechanism (IRM)," By BMPLUS, Business Mirror, 26 May 2020, <https://businessmirror.com.ph/2020/05/26/philhealth-issues-official-statement-on-interim-reimbursement-mechanism-irm/>

While PhilHealth disavowed the purportedly false and/or baseless accusations against it and its executives,[40] the various agencies looking into the myriad corruption issues PhilHealth was embroiled in came out with findings to the contrary. The Philippine Anti-Corruption Commission (PACC)[41] had already uncovered loopholes and systemic flaws in PhilHealth's system[42] and correspondingly submitted its report[43] to the President.[44] Both the Senate and House of Representatives came out with findings adverse to PhilHealth as a result of their respective investigations.[45] A special task force ordered by then President Duterte to investigate the PhilHealth anomalies recommended the filing of charges against top officials of the agency, which the President duly approved.[46] But while the agency remains mired in corruption controversies that are subject of ongoing investigations and/or formal complaints, it decided to "add insult to injury" when it went ahead with the imposition of the increase in its premium collection rate just this year.[47] While the increase in contribution rate was supposed to be implemented long before, the corruption issues that had been uncovered (and continue to be uncovered) in relation to the agency certainly make the imposition of rate increase at this point in time an even greater burden to bear, as if the paying PhilHealth members are being made to shoulder the responsibility for the iniquities of the corrupt.

Although it hasn't been slapped with as many (or as severe or as major) corruption issues as the previously mentioned agencies, the Department of Social Welfare and Development (DSWD), being the primary implementing agency for the distribution of assistance to the sectors of society hardest hit by the pandemic, cannot escape the "spotlight" of corruption entirely. Issues stem, however, mainly from DSWD's "partner" in the distribution of assistance, the various Local Government Units (LGUs). The DSWD had explained that it would be the LGUs, particularly the *barangay* leaders (Barangay Captain / Punong Barangay), who would identify the target beneficiaries. The LGUs were also tasked with the door-to-door distribution of the Social Amelioration Card (SAC), limited to one card per household, to be filled up by the household head. The list of beneficiaries comes from the LGUs, subject to validation by the DSWD. As with previous and similar cash assistance distribution programmes of the DSWD, such as the Emergency Shelter Assistance (ESA) for the victims of super typhoon

[40] "OFFICIAL STATEMENT ON ALLEGATIONS OF IRREGULARITIES AND CORRUPTION," From PhilHealth News Archives, 31 July 2020, <https://www.philhealth.gov.ph/news/2020/on_allegations.php>
"PhilHealth bucks corruption issue," SunStar / Baguio, 6 August 2020, <https://www.sunstar.com.ph/article/1866140/Baguio/Local-News/PhilHealth-bucks-corruption-issue>

[41] Now abolished by virtue of Executive Order No. 1, Series of 2022, signed by President Ferdinand R. Marcos, Jr. on 30 June 2022.

[42] "PACC uncovers loopholes, systemic flaws in PhilHealth system," Leila B. Salaverria, Inquirer, <https://newsinfo.inquirer.net/1315424/pacc-uncovers-loopholes-systemic-flaws-in-philhealth-system>

[43] "PACC initial report: Fire or charge 36 PhilHealth officials over corruption," Cathrine Gonzales, Inquirer, 5 August 2020, <https://newsinfo.inquirer.net/1317111/pacc-initial-report-fire-or-charge-36-philhealth-officials-over-corruption>

[44] Then President Rodrigo Roa Duterte

[45] "Senate recommends criminal, admin cases vs PhilHealth execs," Bella Perez-Rubio, The Philippine Star, 1 September 2020, <https://www.philstar.com/headlines/2020/09/01/2039382/senate-recommends-criminal-admin-cases-vs-philhealth-execs>
"House panels recommend charges vs. Duque, Morales over PhilHealth mess," Erwin Colcol, GMA News, Published and updated on 27 October 2020,
<https://www.gmanetwork.com/news/topstories/nation/761593/house-panels-recommend-charges-vs-duque-morales-over-philhealth-mess/story/>

[46] "Duterte approves corruption charges vs PhilHealth officials," Gillian M. Cortez, Business World, 15 September 2020, <https://www.bworldonline.com/the-nation/2020/09/15/316769/duterte-approves-corruption-charges-vs-philhealth-officials/>

[47] "PhilHealth hike amid corruption," Philippine Daily Inquirer Editorial, 19 May 2022, <https://opinion.inquirer.net/153095/philhealth-hike-amid-corruption>

Yolanda,[48] issues and questions abound with the "SAP" (as the financial assistance in relation to the Covid-19 pandemic is commonly called), particularly the delay in the distribution of assistance, allegedly selective (and even politicized) distribution of not just the assistance itself but even the forms for application for assistance (the SAC), and the questionable selection of target beneficiaries, wherein lists either excluded otherwise qualified beneficiaries or included unqualified persons as beneficiaries. DSWD had explained the process of distribution of SAP[49] and also undertook to discuss issues on the distribution (such as delay) with the LGUs.[50] DSWD even set up a grievance mechanism which would allow it to address such issues.[51] Guidelines were also issued for those who received more than one form of Covid-19 financial assistance or were otherwise ineligible to receive such assistance to refund such amounts.[52] The refunding of such amounts, of course, banks on the "*honesty and adherence to the law*" of the recipients thereof. Despite all these, anomalies in the distribution of financial assistance still could not be quelled, such that the Criminal Investigation and Detection Group (CIDG) of the Philippine National Police was tapped to investigate the irregularities in the SAP distribution.[53]

Another issue that was brought up against DSWD, however, concerned its distribution of SAP through digital / electronic channels. Particular attention was called to the inclusion of "Starpay Corporation" in the Financial Service Providers (FSPs) tapped to administer the electronic payment and distribution of SAP to beneficiaries. An investigation was sought on the matter in both the Senate[54] and the House of Representatives.[55] Both Starpay and DSWD denied the allegation of "missing funds" resulting from the failure to distribute to beneficiaries the funds downloaded by DSWD to the FSP for that purpose.[56] The Bangko Sentral ng Pilipinas (BSP), which had accredited Starpay as an Electric Money Issuer (EMI) only in 2018, nevertheless stated that it would look into the issue.[57]

The above-discussed matters are merely just the tip of the iceberg. These are just some of the most publicized corruption-related matters that came up from the time the country was placed under a state of national emergency. These barely scratch the surface, yet are already alarming in and of themselves, given the billions of government funds involved. It is no wonder then that corruption in the time of the Covid-19 pandemic has been characterized as another

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[48] International name: Haiyan.

[49] "DSWD clarifies issues, updates progress on cash aid," Christopher Cudis, Philippine News Agency, 9 April 2020, <https://www.pna.gov.ph/articles/1099315>

[50] "DSWD vows to discuss social aid distribution issues with LGUs," Gabriel Pabico Lalu, Inquirer, 29 April 2020, <https://newsinfo.inquirer.net/1266906/dswd-vows-to-discuss-social-aid-distribution-issues-with-lgus>

[51] "DSWD sets up mechanism for grievances and appeal on SAP," by Social Marketing, DSWD, 24 April 2020, <https://www.dswd.gov.ph/dswd-sets-up-mechanism-for-grievances-and-appeal-on-sap/>

[52] "DSWD explains SAP refund process," by Social Marketing, DSWD, 8 June 2020, <https://www.dswd.gov.ph/dswd-explains-sap-refund-process/>

[53] "CIDG to probe irregularities in SAP distribution," Christopher Lloyd Caliwan, Philippine News Agency, 5 May 2020, <https://www.pna.gov.ph/articles/1101896>

[54] "Pacquiao seeks probe of missing P10.4-B aid," Kyle Aristophere T. Atienza, Business World, 15 July 2021, <https://www.bworldonline.com/the-nation/2021/07/15/382972/pacquiao-seeks-probe-of-missing-p10-4-b-aid/>

[55] "House probe sought over SAP funds flagged by COA," RG Cruz, ABS-CBN News, Posted on 19 August 2021, <https://news.abs-cbn.com/news/08/19/21/house-probe-sought-over-sap-funds-flagged-by-coa>

[56] "Statement of Starpay Corporation on the Issue of Ayuda Distribution," Journal Online, 5 July 2021, <https://journal.com.ph/starpay-issue-ayuda-distribution/>

"DSWD wants to see data on 1.3 million SAP unserved beneficiaries due to use of Starpay app," Charissa Luci-Atienza, Manila Bulletin, 5 July 2021, <https://mb.com.ph/2021/07/05/dswd-wants-to-see-data-on-1-3-million-sap-unserved-beneficiaries-due-to-use-of-starpay-app/>

[57] "Bangko Sentral to probe complaint on e-wallet Starpay: Diokno," ABS-CBN News, Posted on 18 October 2021, <https://news.abs-cbn.com/business/10/18/21/bangko-sentral-to-probe-complaint-on-starpay>

pandemic. Prevalent in the myriad corruption issues are problems with procurement, management and/or accounting (e.g., internal controls) of Covid-19 funds, and irregularities in the giving of financial and even non-monetary assistance. These forms of corruption do not appear to be anything new. So rather than call the various forms of corruption that appeared during the Covid-19 pandemic as "new and emerging" forms of corruption, it would, perhaps, be more appropriate to say that the Covid-19 pandemic brought *new (and grander) opportunities for corruption*, as well as *a fresh new excuse for it*.

One "new" form of corruption unique to or which emerged during the Covid-19 pandemic, however, was the alleged *selling of Covid-19 vaccines and even vaccination slots and vaccination cards*. Linked to the LGUs, who were responsible for implementing the Government's Covid vaccination programme in their jurisdictions, there were reports that persons were selling the Covid-19 vaccines, which were either donated to or purchased by the Government and supposed to be administered to the citizens free of charge under the programme. As the vaccine rollout was scheduled based on a classification or grouping system, some took advantage of this to sell vaccination "slots" to those who wanted to avail of the vaccination earlier than their supposed schedule based on their classification / grouping. The police were deployed to crackdown on the perpetrators of these scams.[58] As the transactions were conducted mostly online, the crackdown involved not just the CIDG of the PNP, but also the Cybercrime Division of the National Bureau of Investigation (NBI).[59] "Fixers"[60] involved in such illegal operations were also investigated by the CIDG.[61]

IV. CORRUPTION IN THE TIME OF COVID: THE "LOCAL" EXPERIENCE

In the Office of the Ombudsman – Visayas (OMB-Visayas, for brevity), the corruption cases dealt with cover three Regions in the country: Region VI, Region VII and Region VIII. While the OMB-Visayas covers the fewest regions out of all the Ombudsman offices, it is also the only one that has a "Regional" office in each of its covered regions, stemming mainly from the fact that the 3 Regions under its territorial jurisdiction are separated land masses. Travel to each of the three regions would entail travel by sea or air. The main office of OMB-Visayas is located in Cebu City, part of Region VII, which was one of the hardest-hit by super typhoon Odette[62] last December 2021. Before the typhoon wreaked havoc in Cebu City, the Covid-19 response of the LGU had already been assailed for various irregularities and anomalies. Flagged by the COA in its Annual Audit Report on the City of Cebu for the Year Ended 31 December 2020 were the following Covid-related matters: (i) Distribution of SAP which included persons ineligible for such financial assistance; (ii) The award of several purchases of rice for Covid-19 relief operations to unqualified suppliers; (iii) Irregularities in the procurement process for the Quarantine Building constructed at Block 27, North Reclamation Area, Cebu City; (iv) Procurement of KN95 masks at a price in excess of the maximum retail price set by the DOH; (v) Non-compliance with various documentary requirements and procedures in the procurement of rapid anti-body test kits; (vi) Non-submission of the

[58] "Eleazar orders crackdown on people selling vaccine, vaccination slot," Aaron Recuenco, Manila Bulletin, 22 May 2021, <https://mb.com.ph/2021/05/22/eleazar-orders-crackdown-on-people-selling-vaccine-vaccination-slot/>

[59] "CIDG, NBI go after online sellers of jab slots," Dexter Cabalza, Philippine Daily Inquirer, 23 May 2021, <https://newsinfo.inquirer.net/1435371/cidg-nbi-go-after-online-sellers-of-jab-slots>

[60] "A person who intervenes to enable someone to circumvent the law or obtain a political favor," <https://www.merriam-webster.com/dictionary/fixer>

[61] "CIDG probes fixers behind sale of vaccine slots," Christopher Lloyd Caliwan, Philippine News Agency, 29 June 2021, <https://www.pna.gov.ph/articles/1145286>

[62] International name: Rai.

Summary / List of Donations Received, Distributed and Balance, and its supporting documents, as well as the required one-time report for cash and in-kind donations; and (vii) Grant of Special Risk Allowance (SRA) to non-public health workers.

What the Annual Audit Report did not reveal, however, were other issues in relation to the City's Covid-19 response in 2020, such as the controversial "sardines" procurement (among other items) which was priced at PhP22.00 per 155g can, when the price freeze imposed by the DTI at the time pegged the price of a can of sardines of the same weight at PhP13.25 (for the least expensive brand in the market) to PhP17.00 (for the most expensive brand in the market).[63] Another issue that the audit could not reveal was the allegedly politicized distribution of aid (such as the questionably procured rice) from the City. Even with the distribution of "quarantine passes",[64] there were already arguments regarding the interference of the "MILO"[65] when the Barangay LGUs were supposed to take charge of it.[66] Considering the fact that the number of quarantine passes issued by the City could not suffice for the number of households in the City, these MILO personnel taking a portion of that already limited number of passes for their own "distribution" activities resulted in even more households not getting any quarantine pass and some households having more than one. With the MILO also taking charge of distributing the rice assistance from the City, reportedly in Barangays belonging to the "opposition party",[67] the issue of politicizing aid became all the more prominent. While then Mayor Labella ordered a probe into the matter of distribution of rice assistance, which he claimed he had instructed particularly to be coursed through the elected Barangay officials and not the MILO,[68] one of his allies in the City Council was quick to pass the bucket to the Department of Social Welfare and Services (DSWS)[69] in relation to the MILO's involvement in the distribution of rice.[70]

The COA was able to note, in its 2020 Annual Audit Report, the failure of the City to submit the required documents pertaining to cash and in-kind donations. Even after Management commented on the finding, COA still found that, due to the lack of required documents submitted, it would be hard to prove total donations and that they were used for the places and/or persons they were intended. A clear demonstration of this is the "missing chickens" case, wherein chickens donated by a private company for the City's Covid relief operations went "missing" but turned out to be (allegedly) sold off by unscrupulous persons, purportedly linked to the MILO, instead of being given, free of charge, to the qualified and intended beneficiaries thereof. While the City Council member in charge of said donation for the South district of the City "explained" regarding the chickens and how they were not

[63] "At P22 per can: CH sardines overpriced?", Mary Ruth R. Malinao, The Freeman, 8 May 2020, <https://www.philstar.com/the-freeman/cebu-news/2020/05/08/2012601/p22-can-ch-sardines-overpriced>

[64] A document that allows the holder to leave his / her residence for allowed purposes during the implementation of the Enhanced Community Quarantine.

[65] Mayor's Information and Liaison Office, an office created by then Cebu City Mayor Edgardo Labella to serve as his "liaison" office within each of the 80 Barangays of Cebu City.

[66] "Barangays complain vs. passes distribution by Milo," JJL, SunStar / Cebu, 2 April 2020, <https://www.sunstar.com.ph/article/1851040/Cebu/Local-News/Barangays-complain-vs-passes-distribution-by-Milo>

[67] Not allied with then Cebu City Mayor Labella's party, Barug-PDP Laban.

[68] "Labella orders probe on rice distribution in Inayawan," Delta Dyrecka Letigio, Cebu Daily News, 2 July 2020, <https://cebudailynews.inquirer.net/323636/labella-orders-probe-on-rice-distribution-in-inayawan>

[69] The local government unit's version of the DSWD; a department of the local government unit, and not a part of the DSWD, which is a national government office.

[70] "Barangay vs MILO, who holds the turf in the barangays?", Delta Dyrecka Letigio, Cebu Daily News, 1 April 2020, <https://cebudailynews.inquirer.net/299145/barangay-vs-milo-who-holds-the-turf-in-the-barangays>

"missing"[71], some city residents still lodged a complaint with the City Mayor, having reason not to believe the proffered "explanation".[72] Now, rather than the chickens, the outcome of that complaint may be what is truly "missing".

In addition to the foregoing, the corruption issues plaguing the previously discussed national government offices also trickled down to the local level. Officials from the PhilHealth Region VII office, together with officials and employees of some hospitals in the City, were charged by the NBI – Central Visayas, over anomalous or fake Covid-19 claims (for payment).[73] The matter of selling of vaccines and vaccine slots was also encountered. While there was no mention of which specific LGU or LGUs was or were involved in the reported incidents, the CIDG was also asked to investigate the matter.[74] The issues in the distribution of financial assistance by the DSWD coursed through the Local Government Units, were also present in Cebu City, as well as throughout Regions 6, 7 and 8. Even while the distribution of aid was ongoing, the number of complaints received by the CIDG from these 3 Regions already ranked in the top 5 most number of cases received, among all the Regions in the country.[75]

The onslaught of super typhoon Odette brought a fresh wave of problems to the City, as well as new opportunities for corruption. Financial aid came from the national government for the victims of the typhoon, while the City also allocated an amount from its own funds intended as financial assistance for every house damaged by the typhoon (basically, for repairs).[76] While the funds from the national government were distributed by the City, under the supervision of the Department of Interior and Local Government (DILG), the list of recipients still came from the DSWS, which purportedly validated the list that was prepared and forwarded by the "barangay officials".[77] In the end, whether it be the financial assistance from the national government or from the city's coffers, the same problem of who made it into the list of recipients (and how they made it into the list) attended the distribution of both. While an

[71] "Case of 'missing chickens' solved," JJL, SunStar, 24 June 2020, <https://www.sunstar.com.ph/ampArticle/1861342>

[72] "Residents file formal complaint over 'sale' of donated chicken," Gregg M. Rubio, The Freeman, 24 July 2020, <https://www.philstar.com/the-freeman/cebu-news/2020/07/24/2030244/residents-file-formal-complaint-over-sale-donated-chicken>

[73] "Philhealth 7, hospital officers charged for 'false' Covid-19 claim," JOB with ANV, Yahoo! News, 9 February 2021, <https://ph.news.yahoo.com/philhealth-7-hospital-officers-charged-152100306.html>
"PhilHealth, PSH employees charged for 'anomalous' Covid-19 claims," Wenilyn Sabalo, Yahoo! News, 29 October 2020, <https://ph.news.yahoo.com/cases-filed-vs-8-philhealth-073600943.html>

[74] "Cebu City to CIDG: Investigate selling of vaccines," Dyrecka Letigio, Cebu Daily News, 13 August 2021, <https://cebudailynews.inquirer.net/394134/cebu-city-to-cidg-investigate-selling-of-vaccines>
"CIDG-7 asks public to report selling of vaccination slots and cards," Pegeen Maisie M. Sararaña, Cebu Daily News, 16 August 2021, <https://cebudailynews.inquirer.net/394655/cidg-7-asks-public-to-report-selling-of-vaccination-slots-and-cards>

[75] "Cases handled by CIDG on cash aid anomalies reaches 300," Anna Felicia Bajo, GMA News, 13 July 2020, <https://www.gmanetwork.com/news/topstories/nation/746656/cases-handled-by-cidg-on-cash-aid-anomalies-reaches-300/story/>

[76] "CH disburses P179 million for Odette victims," Caecent No-ot Magsumbol, The Freeman, 14 February 2022, <https://www.philstar.com/the-freeman/cebu-news/bottom-article-list/2022/02/14/2160744/ch-disburses-p179-million-odette-victims>
"EXPLAINER: P5,000 per-house/household for Cebu City's typhoon victims, 'rich or poor.' What we know about Mayor Rama's plan, the kinks to watch out for.", Pachico A. Seares, SunStar / Cebu, 7 January 2022, <https://www.sunstar.com.ph/article/1917434/cebu/local-news/explainer-p5000-per-househousehold-for-cebu-citys-typhoon-victims-rich-or-poor-what-we-know-about-mayor-ramas-plan-the-kinks-to-watch-out-for>

[77] "'Odette' victims in Cebu City get P22-M cash aid," John Rey Saavedra, Philippine News Agency, 3 February 2022, <https://www.pna.gov.ph/articles/1166974>

investigation[78] was ordered by then Mayor Michael Rama,[79] the controversy has obviously died down with no clear resolution of the matter as there are still qualified beneficiaries and actual victims of the typhoon who have not received any financial assistance up to the present. One can only hope that investigations by other bodies (e.g., NBI, CIDG) on the issue yield actual results.

V. BATTLING THE CORRUPTION PANDEMIC: CHALLENGES AND BEST PRACTICES

The Philippines is not short of anti-corruption legislative measures. Even during the pandemic, the various agencies of Government involved in some measure with pandemic response and recovery efforts had various guidelines, rules and regulations that included some form of assurance of transparency. Even as efforts were made to streamline processes and requirements, as time was of the essence in such an emergency situation, there was still some measure of documentation and reportorial requirements imposed, penalties provided for violations, and even a review mechanism in place. But none of these seemed to deter the proliferation of various corrupt schemes during the height of the (Covid) pandemic.

Perhaps the greatest challenge in the implementation of the various anti-corruption measures in place before and during the pandemic was *time*. The urgency of the situation brought about by Covid-19, given that lives were at stake with every passing second, coupled with the fact that no part of the country remained unaffected by the crisis situation, posed a massive challenge for all the agencies of government at the forefront of the country's Covid-19 response, but at the same time provided the greatest opportunity for the unscrupulous and corrupt to take advantage of. Despite the attempts to streamline the usual processes and practices, it is noticeable from the audit reports of various agencies (e.g., DOH, PhilHealth, DSWD, DepEd, PS-DBM) for 2020 that a number of findings concerned the failure to submit various documentary requirements for transactions, resulting not just in a failure to properly account for the funds involved in such transactions but also to questionable legitimacy of and inadequate transparency in the same. Due to the nationwide extent of the situation, the sheer volume of transactions involved and the massive amount of funds being expended, documentary and reportorial requirements, even if streamlined, took a backseat to the most pressing and immediate concern of life and death. With the constant influx of policy issuances from key agencies, and the limitations in communication (e.g. slow and inconsistent internet connectivity) prevalent in the country and varying travel restrictions imposed based on the differing quarantine statuses of different parts of the country, the rules and requirements to be followed by the various local offices or operating units of national government agencies, and even local government units, would change either significantly or minimally at a speed that far outpaced the actual implementation thereof. If anything, the pandemic highlighted the various defects and weaknesses in the internal controls and management, or systemic flaws, of several agencies. With such plausible "excuses" in place, any system of checks and balances would be hard-pressed to keep up with, much less detect and/or prevent in a timely fashion, corruption wherever and whenever it struck. While investigations abound, actual results (and actions on the results, if any) are far and few between. Investigative work itself is hampered by the same

[78] "Mayor orders probe into 'bogus' Odette aid beneficiaries," by PIO/jsb/rhm, Cebu City News and Information, 9 June 2022, <https://cebucity.news/2022/06/09/mayor-orders-probe-into-bogus-odette-aid-beneficiaries/>

[79] Although Michael Rama is the Mayor of Cebu City at present, the period of time being referred to pertains to the time when Michael Rama became Mayor by succession, serving the remaining term of deceased Mayor Edgardo Labella; hence, the use of the term "then", to distinguish that period from his incumbency now by virtue of being elected to the office.

limitations that have allowed corruption to be rooted more firmly during the pandemic. Even reporting or filing complaints with concerned offices has also been made difficult by the restrictions brought about by the pandemic. While various government agencies have websites and social media pages containing information on how to contact them, how many people actually avail of these or actually persist in their grievances when they remain unresolved remains to be seen. Further, while a survey / study result showed that internet usage and "obsession" with social media surged during the pandemic, it seemed that people utilized digital platforms more for activities meant to assuage the social distancing and "stay at home" measures imposed on them during the period.[80] As quarantine restrictions and the rising number of Covid cases also hampered the work of non-frontline (or not Covid-related) government offices (e.g. Office of the Ombudsman) involved in anti-corruption efforts, the challenge for a timely response to the "second pandemic" mounted, as there was only so much one could do in a work-from-home situation. Field work (such as in fact-finding investigations) was brought to a virtual standstill for around two years due to travel restrictions and office safety protocols.

As most of the corruption issues that arose during the pandemic were similar in nature, though greater in scale or magnitude, to previous or already existing corruption issues, such as irregularities in the procurement process and questionable distribution of aid, investigation, adjudication and prosecution practices that have garnered positive and/or successful results find worth in the pending and upcoming investigations and possible prosecution of cases arising from pandemic-related complaints.

For instance, in the Office of the Ombudsman-Visayas, the input from our Fact-Finding Investigators was that corruption schemes at the local level were not committed through particularly sophisticated or novel means, albeit there was more creativity in the execution. In previous investigations on anomalous distribution of aid, it was found that the identification of beneficiaries and distribution of aid was done through the LGUs, particularly through the LGU's own social welfare and services office, which in turn devolved the task to the *barangay*. The same system of aid distribution has been utilized during the pandemic, in which case the same types of cases are expected to be (or have been) filed, the same or similar "excuses" from respondents are expected to be raised, and the same types of evidence are expected to either make (if present) or break (if absent) the cases thus filed before the Office.

From investigators of our Office who have dealt with previous similar cases (e.g., the typhoon Yolanda-related cases) for preliminary investigation and/or administrative adjudication, the favourite "scapegoat" of accused local government officials / employees was the DSWD. Because DSWD supposedly "validated" the list of beneficiaries prepared and submitted by the local government unit, the local government officials and employees accused of manipulating the list they submitted, that resulted in ineligible persons receiving government aid while qualified beneficiaries did not, usually pointed out that the list they prepared was still subject to and (supposedly) in fact validated by the DSWD. It is, thus, important for complainants to implead or include in their complaint the validation team involved so as to lay bare the entire process and determine at which point corruption possibly occurred, and who should be indicted for what offence (or administratively penalized), if any.

[80] "Internet: Overcoming pandemic lockdowns," Cristina Eloisa Baclig, Inquirer, 21 June 2021, <https://newsinfo.inquirer.net/1448837/internet-overcoming-pandemic-lockdowns>

Another favourite excuse in cases where complainants, supposedly qualified beneficiaries, did not receive any financial aid, was that "the funds were not enough for the number of beneficiaries". In such situation, documentation plays an important role. Not only would it be important to know the amount of funds available for that particular distribution of financial assistance, and the intended number of beneficiaries thereof, proof of ineligibility of those who received the financial aid in lieu of the rightful qualified beneficiaries is also just as, if not more, important.

A unique form of "corruption" in the matter of distribution of financial assistance that was brought out in previous similar cases was how some local government officials, in charge of identifying the beneficiaries and preparing the corresponding list, would promise to include persons in the list (whether or not eligible to be beneficiaries) in exchange for a promise of payment from them of a certain portion or amount from the financial assistance they would receive. Testimonial evidence, by way of sworn statement or affidavit, of witnesses and victims would certainly form a crucial part of case evidence in such a situation.

Given the onslaught of typhoon Odette in various areas under the territorial jurisdiction of the OMB-Visayas, there is now a fresh new excuse (on top of Covid) that may be employed by respondents (or would-be respondents, as the case may be). With super typhoon Odette causing extensive property damage, it presents a convenient excuse for parties, where the case involves failure to submit or present certain documents or requirements, in establishing their cause of action or their defence. In fact, even with cases that were already pending before typhoon Odette struck, some respondents have already utilized the excuse of "lost due to typhoon Odette" for their failure to present controverting evidence in the cases filed against them. As there may indeed be cases where such excuse is tenable, the Office will have to carefully scrutinize the particular circumstances attending each case where such an excuse may be employed by the parties.

On the national front, Ombudsman Samuel R. Martires had ordered probes on some of the corruption issues with far-reaching effects and great significance to the country's Covid response and recovery efforts. While the Ombudsman had expressed the desire of the Office to work quietly and away from the limelight,[81] it was also revealed that the Office had been conducting its own investigations on some of the more prominent issues, such as the government's deals with Pharmally.[82] As the Office of the Ombudsman is the central corruption prevention arm of the government, its own (corruption-targeted) investigation (which complements the investigation of other government agencies) into such matters of national concern can only serve to benefit the country's anti-corruption efforts. The Ombudsman also did not hesitate to impose preventive suspensions on officials and employees of various agencies, who may have been involved in the anomalous and irregular Covid-related transactions, so that they would not be able to impede the investigations thereon.[83] In these

[81] Office of the Ombudsman Press Release: "PRESS RELEASE/STATEMENT," 20 August 2021, <https://www.ombudsman.gov.ph/press-releasestatement/>

[82] "Ombudsman Martires reveals probe on Pharmally transactions for COVID-19," Jel Santos, Manila Bulletin, 26 October 2021, <https://mb.com.ph/2021/10/26/ombudsman-martires-reveals-probe-on-pharmally-transactions-for-covid-19/>

[83] "Ombudsman suspends 8 PhilHealth, 5 DOH execs over fund issues," Rio N. Araja, Manila Standard, 29 October 2020, <https://manilastandard.net/news/top-stories/338102/ombudsman-suspends-8-philhealth-5-doh-execs-over-fund-issues.html>

"Ombudsman suspends DOH, BI officials," Rhodina Villanueva, The Philippine Star, 28 October 2020, <https://www.philstar.com/headlines/2020/10/28/2052796/ombudsman-suspends-doh-bi-officials>

investigations where documentary evidence would be crucial to case build-up, the Ombudsman's exercise of the power of preventive suspension in order to safeguard evidence needs to be both swift and timely. Indeed, the preventive suspension of 89 Barangay Captains (or Punong Barangays), in relation to the anomalies in the SAP distribution,[84] was a welcome move to prevent these officials from possibly prejudicing the investigation of the cases against them. As the second tranche of SAP distribution was still ongoing at the time, abuse of power was a very real possibility to discourage witnesses to and/or victims of the anomalies to pursue and/or persist with their complaints.

The Office of the Ombudsman has also been implementing, for years now, various anti-corruption programmes geared towards educating different sectors about corruption and public accountability, fostering integrity and social responsibility, and promoting good morals and ethical conduct. Of the different anti-corruption programmes of the Office, three programmes have been rolled out to and implemented by the OMB-Visayas to date, namely: (i) Integrity, Transparency, Accountability in Public Service (ITAPS) Programme;[85] (ii) Anti-Corruption Laws Lecture Series (ACLS);[86] and (iii) Training and Leadership for Campus Integrity Crusaders (TLC)[87] Programme.[88] Even with the restrictions imposed by the Covid pandemic, these programmes had been adapted to an online / digital format so that the Public Assistance and Corruption Prevention Bureau (PACPB) of the OMB-Visayas could continue to implement them, whether from their homes or from the office, when face-to-face implementation was not possible or allowed. In the national Office, there are some programmes that are in their pilot stages / initial roll out, such as the Values Education Campaign that has been implemented in some pilot areas.[89] Hopefully, the Office would be able to implement / roll out these other programmes nationwide, to better strengthen the Office's corruption prevention campaign. After all, "*an ounce of prevention is worth a pound of cure*",[90] and this applies not only to Covid but to corruption as well.

"Ombudsman orders suspension of 13 PhilHealth officials," Daniel Manalastas, PTV News, 19 August 2020, <https://ptvnews.ph/ombudsman-orders-suspension-of-13-philhealth-officials/>

[84] "89 barangay chairpersons suspended over SAP anomalies," Third Anne Peralta – Malonzo, SunStar / Manila, 13 September 2020, <https://www.sunstar.com.ph/article/1870052/manila/local-news/89-barangay-chairpersons-suspended-over-sap-anomalies>

[85] The ITAPS is a corruption prevention programme of the Office of the Ombudsman wherein seminars are held for various government officials and employees, with the aim of providing "a venue whereby public service values are internalized and to enhance a deeper understanding of the role of public servants and the accountability attached to the positions in the government." <https://www.ombudsman.gov.ph/transparency-in-government/programs-projects/education-anti-corruption-promotion/integrity-transparency-and-accountability-in-public-service-itaps/#:~:text=Integrity%2C%20Transparency%20and%20Accountability%20in%20Public%20Service%20%28ITAPS%29,accountability%20attached%20to%20the%20positions%20in%20the%20government.>

[86] A corruption prevention programme of the Office of the Ombudsman for government officials and employees, which aims to educate and raise awareness on the anti-corruption laws, as well as the consequences for their violations

[87] Formerly, the Campus Integrity Crusaders Programme.

[88] Campus Integrity Crusaders (CIC) refers to any non-partisan school-based youth organization recognized by a secondary or tertiary educational institution and duly accredited by the Office of the Ombudsman. Found in Sec. 3, Office of the Ombudsman Memorandum Circular No. 04, Series of 2012.
Under the programme, the Office of the Ombudsman and a CIC may jointly undertake activities that aim to: (a) Cultivate the virtues of uprightness, responsibility, honesty, respect for authority, and love of country; (b) Instill a sense of good citizenship and responsible leadership; (c) Inculcate the basic principles of human rights and civic duties; and (d) Promote the integration of corruption prevention education (CPE) teaching modules in the school curricula.

[89] Office of the Ombudsman Press Release: "OMB rolls out values education campaign in pilot areas," 28 June 2021, <https://www.ombudsman.gov.ph/omb-rolls-out-values-education-campaign-in-pilot-areas/>

[90] By Benjamin Franklin.

VI. CONCLUSION AND RECOMMENDATIONS

The Philippines is not the only country battling corruption. Corruption is global. This highlights the need of establishing effective and enduring linkages with other countries to effectively combat corruption worldwide. Too often have persons subject of corruption cases either fled to other countries or, at the very least, transferred away to other countries the effects of their corrupt practices. Inter-country activities, such as the present Seminar on Good Governance, will aid vastly in coming up with new and/or enhancing existing inter-country mechanisms of anti-corruption cooperation / participation, through the exchange of ideas and experiences.

But in order for the Philippines to be an effective global partner / participant in the war on corruption, it must first improve or enhance its internal mechanisms of anti-corruption cooperation / participation. As the nation struggles to adapt to a "new normal" and pick up the pieces left in the wake of the Covid-19 pandemic (which isn't even entirely over yet), it is vital for us to learn, and learn well, the lessons brought by this experience and similar ones before it, in order to prepare a better response to future emergency situations and in order to keep at bay, if not totally eradicate, the other pandemic that has plagued us alongside the coronavirus. In this regard, cooperation is vital between the various agencies involved in the implementation of anti-corruption measures. Communication and mutual respect for the roles each one plays in the fight against corruption are crucial if we are to succeed in some measure. Everyone needs to be on the same page when it comes to battling this second "pandemic", rather than being focused on saving face and covering up the ugly flaws being uncovered. The commitment to cooperate in investigations to expose and put an end to corrupt practices needs to be more than just mere lip service. Each and every public official or employee plays a critical role in the fight against corruption. No role is too small or unimportant. While the public accountability / transparency measures imposed by existing laws, rules and regulations may seem tedious / time-consuming to comply with in such an emergency situation, one must always keep in mind that putting in the extra work to comply with these measures may save more lives, even one's own.

The fight against corruption is a battle that belongs not just to the different agencies of government, but also to each and every citizen of the nation. In this case, education is key. The public must know not just their rights, but also how they can safeguard or vindicate them when trampled upon by others. They need to learn how to avail of the grievance mechanisms in place, as well as how to report (and what is needed to support a report of) incidents of corruption that either victimize them or those around them. In order to accomplish this, government must find a viable method to make the citizens actively involved in the anti-corruption response. Programmes and measures that increase and improve the relationship between government and citizens are vital, in order to enhance the people's trust in the government and gain their sincere cooperation in the seemingly never-ending battle against corruption. Existing programmes and measures need to be periodically reviewed and correspondingly enhanced and improved, in order for their implementation to be both appropriate and adapted to ever-changing and/or sudden situations, such as the Covid-19 pandemic. The citizens must know and understand the importance of their roles in this battle, to help them feel invested in not just their present but also in their future, by playing their part in the fight against corruption, hand-in-hand with the Government.

NEW AND EMERGING FORMS OF CORRUPTION AND EFFECTIVE COUNTERMEASURES: A SINGAPORE PERSPECTIVE

Eric Hu[*]

I. INTRODUCTION

During the Covid-19 pandemic in 2020, Singapore had to grapple with a plunge in services exports which came on the back of border closures imposed by countries globally to prevent the spread of the virus.[1] Despite this, Singapore still ranks top in the world as the best place to conduct business.[2] Singapore is consistently considered as one of the most globally connected countries in the world.[3]

With Singapore's reputation as an international financial hub, there remains risk that criminals would seek to commit offences and launder their ill-gotten gains through Singapore. It is thus imperative for Singapore to act swiftly to address new and emerging areas of concern in criminal activities, including corruption. Singapore regularly reviews its system, policies, and legislation to ensure that it remains effective in investigating and prosecuting errant offenders.

In the recent few years, Singapore has not observed any new and emerging *trends* of corruption. However, for the purposes of this Seminar, it is useful for Singapore to share emerging areas of concern for corruption offences it has observed, and the countermeasures taken to address them. This paper aims to provide a broad overview of Singapore's legislative framework before delving into three emerging areas of concerns and some measures taken by our agencies thus far.

II. THE LEGISLATIVE FRAMEWORK IN SINGAPORE

A. Overview

Singapore has taken a zero-tolerance approach towards corruption as our development and success depends strongly on the country being clean and corruption-free. The founding leaders and successive governments have put in place a robust legislative framework.

The primary governing legislation for corruption offences is the Prevention of Corruption Act 1960 ("PCA"). The objective of the PCA is to provide for the more effectual prevention of corruption. It also provides for extra-territorial jurisdiction so that the corrupt actions of Singaporean citizens overseas are treated the same as actions committed in Singapore. Under

[*] Deputy Public Prosecutor, Attorney-General's Chambers, Singapore.

[1] Ministry of Trade and Industry Singapore (25 May 2022), *Impact of the COVID-19 Pandemic on Singapore's Services Export*, available online at: https://www.mti.gov.sg/Resources/feature-articles/2022/Impact-of-the-COVID-19-Pandemic-on-Singapore-Services-Export

[2] Economist Intelligence (27 October 2022), *Singapore retains its lead in business environment rankings*, available online at: https://www.eiu.com/n/singapore-retains-its-lead-in-business-environment-rankings/

[3] Deutsche Post DHL Group, DHL Global Connectedness Index 2020, available online at: https://www.dhl.com/content/dam/dhl/global/dhl-spotlight/documents/pdf/spotlight-g04-dhl-gci-2020-country-book.pdf

the PCA, any person found guilty of receiving a bribe may also be ordered to pay a penalty equal to the amount of the bribe itself. Our anti-corruption agency, the Corrupt Practices Investigation Bureau ("CPIB"), is well resourced and empowered to investigate any persons, including political office holders and public service officers. When individuals commit corruption offences, they will be severely dealt with in accordance with our laws.

Apart from the PCA, the Corruption, Drug Trafficking, and other Serious Crimes (Confiscation of Benefits) Act 1992 ("CDSA") is a key piece of legislation criminalizing money-laundering. The CDSA criminalizes the laundering of criminal benefits of corruption and other serious offences in and beyond Singapore. Persons convicted of such offences may a face jail term of up to 10 years and a fine of up to S$500,000. In addition, the CDSA allows for the restraining and confiscation of benefits derived from corruption and serious offences.

Today, Singapore is consistently considered as one of the least corrupt countries globally, ranking fourth out of 180 countries on the latest Transparency International Corruption Perception Index 2021.[4] Although Singapore has achieved some success eradicating corruption, we recognize and harbour no illusions that we have completely eradicated the problem. It is thus important to continually be alert to emerging areas of concerns and address them in a timely fashion.

We highlight three areas and elaborate below.

III. EMERGING AREAS OF CONCERN AND COUNTERMEASURES

A. Corruption in E-Sports and Involving Young Adults

An emerging area of concern pertains to corruption within the e-sports industry and the involvement of young adults.

Recently, Singapore hosted an annual multi-million-dollar world championship e-sports tournament "*Dota 2: The International 11*", which was one of the world's biggest e-sports competitions.[5] It took place across 23 days in October 2022. Competitors came from all over the world, from Western Europe to Southeast Asia and to South America.[6] Since its inception in 2011, the tournament had attracted large cash prizes. This year, the total prize pool stood at over USD 18 million.[7]

Singapore has consistently taken a zero-tolerance approach towards corruption. That extends to match-fixing of any form. Match-fixing is defined as dishonestly determining the

[4] Corrupt Practices Investigation Bureau (5 May 2022), *Corruption Situation in Singapore Firmly Under Control*, available online at: https://www.cpib.gov.sg/press-room/press-releases/050522-corruption

[5] Kurt Lozano (3 September 2022), *Dota 2's The International 11 in Singapore: Everything you need to know*, available online at: https://sg.news.yahoo.com/dota-2-s-the-international-11-singapore-everything-you-need-to-know-035008119.html/.

[6] Ibid.

[7] Cale Michael (2 November 2022), *How much is Dota 2's The International 2022's prize pool?*, available online at: https://dotesports.com/dota-2/news/how-much-is-dota-2s-the-international-2022s-prize-pool-t11-prize-pool-tracker

outcome of a match before it is played.[8] This can either be a consequence of players betting on themselves or players being pressured by syndicates to lose on purpose.[9]

In past years, persons found guilty of match-fixing for football games had been sentenced to lengthy custodial sentences. For example, in September 2015, Singaporean Rajendran S/O K Kurusamy was sentenced to 48 months' imprisonment for offences related to football match-fixing activities at the 28th Southeast Asia Games. He was found guilty of engaging in a conspiracy with other persons to give bribes to players of a football team and a director of a football association to induce that team to lose a football match.

As e-sports tournaments attract record-breaking viewership numbers and staggering cash prize pools,[10] there is no doubt that unscrupulous individuals may be tempted to get involved in match-fixing of such e-sports games, which is a young but rapidly growing industry. Match-fixing undermines the reason people watch competitive games in the first place[11] and has the potential of tarnishing the image of Singapore, if left unchecked.[12]

Many players in prominent e-sports teams are young adults and might not be knowledgeable about the risks or implications posed by match-fixing and corruption.[13]

Recently, in August 2022, two young men (aged 20 and 24) were charged in the State Courts for being allegedly involved in e-sports match-fixing.[14] One of the men had allegedly given gratification to the other in the form of winnings from bets placed through an illegal online gambling site. The gratification was to induce the latter to fix an online e-sports match for the first-person shooter video game "Valorant" between two teams in the Epulze Royal Southeast Asia Cup Tournament. The case is ongoing in the courts.

This case presents an emerging area of concern, both with corruption in the e-sports industry as well as the involvement of young adults in such offences. E-sports regulators have stated they are constantly on the lookout for irregular player patterns and are continuously looking for new ways to detect cheating attempts.[15] CPIB also recently issued a press release warning against match-fixing of any form.[16]

However, beyond taking stern and swift action, Singapore enforcement agencies recognize the need to take proactive steps to educate and engage young adults.

CPIB has observed that there was a lack of awareness of corruption among young adults. A survey polling 1,000 youth showed that about 72 per cent were not aware of the existence of

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[8] Esports Insider (18 January 2022), *Abios: Combatting match-fixing and cheating in esports is crucial*, available online at: https://esportsinsider.com/2022/01/abios-combatting-match-fixing-and-cheating-in-esports-is-crucial?amp

[9] Ibid.

[10] Ibid.

[11] Ibid.

[12] *Kannan s/o Kunjiraman and another v Public Prosecutor* [1995] 3 SLR(R) 294 at [24].

[13] *Supra* note 8.

[14] Samuel Devaraj (5 August 2022), *Two men charged over match-fixing in e-sports tournament*, The Straits Times.

[15] *Supra* note 8.

[16] Corrupt Practices Investigation Bureau (5 August 2022), *Two esports players charged for alleged corruption and gambling offences*, Press Release, available online at: https://www.cpib.gov.sg/press-room/press-releases/05082022-two-esports.

the CPIB.[17] The CPIB published an electronic book titled "Corruption Casebook – Stories From Under The Table", available for download on its website.[18] The book is catered towards youth. It showcases 16 curated cases involving different forms of bribes across areas such as national security and public health, as well as the consequences that may follow from corruption. For example, bribes paid towards inspectors to be lenient when checking for mosquito breeding sites can be especially insidious in a year which has seen the dengue death toll hit a record high of 29 amid Singapore's largest break in 2020.[19]

In its outreach efforts, the CPIB rolled out an Anti-Corruption Badge Programme with the National Police Cadet Corps.[20] Through the programme, the CPIB has already reached out to more than 400 secondary students across 36 schools. A notable case which was shared with the students was that of the forklift operators at a container depot who took $1 bribes from truck drivers. The case made headlines because of what appeared to be an insignificant bribe. However, when the students discovered that the bribes went on for several years and began to add the sums up, they realized that even the smallest of bribes could snowball if corruption went undetected.

CPIB also collaborated with students to co-create corruption prevention solutions. For example, the CPIB had collaborated with lecturers and students of Nanyang Polytechnic to create a web game, Corruzione, which tapped on the students' expertise in gamification technology and digital media.[21] This rides on a gaming environment to enhance learning and to raise awareness of corruption issues in a fun way to the youth.

B. Corruption and Covid-19

The past three years have seen all countries around the globe grapple with the Covid-19 pandemic and the economic struggles that ensued. A Resolution adopted by the Conference of the States Parties to UNCAC had recognized that corruption is one of the factors that jeopardizes concerted multilateral efforts to overcome the Covid-19 pandemic.[22]

At the height of the Covid-19 pandemic, Singapore adopted differentiated measures for persons who were vaccinated and those who were not. The unvaccinated persons would be subjected to more strict rules and frequent testing.[23] These in turn encouraged most of the population to be vaccinated and proved to be a key strategy in allowing the country to eventually open up to the rest of the world. As of October 2022, 92 per cent of the population had completed the recommended vaccination regimen against Covid-19.[24]

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[17] Jean Tan (28 December 2020), *CPIB launches e-book to educate teenagers on corruption and its pitfalls*, available online at: https://www.straitstimes.com/singapore/courts-crime/cpib-launches-e-book-to-educate-teenagers-on-corruption-and-its-pitfalls/

[18] Ibid.

[19] Ibid.

[20] David Sun (8 May 2020), *CPIB engages NPCC cadets in new anti-corruption badge programme*, available online at: https://www.cpib.gov.sg/files/news/2020.05.08.TNP_CPIB%20engages%20NPCC%20cadets%20in%20new%20anti-corruption%20badge%20programme.pdf

[21] *Supra* note 4.

[22] Resolution 9/1 Sharm el-Sheikh Declaration on Strengthening International Cooperation in the Prevention of and Fight against Corruption during Times of Emergencies and Crisis Response and Recovery.

[23] Abigail Ng (16 July 2021), *Singapore announces separate Covid rules for people who are vaccinated*, available online at: https://www.cnbc.com/2021/07/16/covid-singapore-to-introduce-different-rules-for-vaccinated-people.html.

[24] Statista, *COVID-19 vaccination rate Singapore 2022*, available online at: https://www.statista.com/statistics/1223524/singapore-covid-19-vaccines-administered/.

Singapore has been fortunate that it has not observed any *trend* of corruption impinging on its efforts to contain the pandemic, although there were instances of persons attempting to bribe public officers in the course of their duties.

In May 2020, the CPIB received information that a foreign worker in Singapore had attempted to bribe a Police officer after he was detained for committing an offence under the Covid-19 (Temporary Measures) Act 2020.[25] He did not wear his mask properly. Despite a warning, he persisted in not complying with directions. When he was eventually questioned by a Police officer, he offered a S$50 bribe to the said officer to let him go. The officer rejected the offer and reported it to the CPIB. The offender was convicted and sentenced to four weeks' imprisonment.

In January 2022, a male Singaporean was charged in Court for allegedly attempting to bribe a vaccination nurse at Healthway Medical Group in October 2021.[26] He allegedly offered the nurse a bribe of S$50 and asked her to reflect in the healthcare system that he had received his second dose of the vaccination when it was not administered. The nurse rejected his offer and reported the matter to the Duty Health Services Manager. Although the bribe amount in this case was small, his actions can potentially undermine the Government's efforts against the pandemic. The case is ongoing in the courts.

However, the above cases appear to be isolated incidents, rather than a trend.

This is not surprising as Singapore has painstakingly established a robust and comprehensive anti-corruption framework over the years. The Government has maintained a zero-tolerance approach towards corruption and the CPIB have acted swiftly and effectively. A fair and independent judiciary has built up public confidence and inspired trust in the rule of law. The effective enforcement of laws and the consequence of the imposition of harsh penalties have allowed Singapore to stamp out corruption through deterring would-be offenders.

A domestic survey polling Singaporeans in 2020 showed that 94 per cent of the respondents felt that the corruption control efforts in Singapore were effective.[27] The level of public trust in the CPIB and its work was high, with 80 per cent of respondents trusting the CPIB as an effective agency in the fight against corruption.[28]

In addition, the CPIB had put in place a strong system for anonymous reporting of corruption, including visits to the CPIB, calls or emails. The PCA protects the identity of whistle-blowers from being revealed in court.[29] This has proven effective in allowing CPIB to identify and investigate cases, which it may not otherwise be alerted to. Of the cases registered for investigation in 2021, close to one-fifth of them were from anonymous sources.[30]

[25] Corrupt Practices Investigation Bureau (22 April 2021), *Corruption Situation in Singapore*, available online at: https://www.cpib.gov.sg/press-room/press-releases/corruption-situation-singapore/.
[26] *Supra* note 4.
[27] *Supra* note 25.
[28] Ibid.
[29] Section 36 of the PCA.
[30] *Supra* note 4.

C. Corruption and Cryptocurrency

Cryptocurrency and blockchain technology received popular attention in the recent few years. The IMF has estimated cryptocurrencies' market capitalization to be at a staggering USD 2.5 trillion, reflecting its significant economic value.[31]

With the recent crashes in cryptocurrencies such as Terra and Luna as well as the collapse of the crypto exchange FTX, many investors saw their investments vanish in a matter of days.[32] Regulators in many parts of the world also expressed concerns over the potential of cryptocurrencies being exploited for fraudulent activities and money-laundering. Criminals may move illicit funds through thousands of wallets before depositing the funds and cashing out the funds at a crypto exchange.[33] Unlike bank accounts, thousands of wallets may be opened without proof of identity within seconds.[34]

While there are no reported cases concerning crypto assets linked to corruption presently, Singapore's enforcement and regulatory authorities recognize the importance of getting ahead of criminal syndicates and equipping its officers with the technical knowledge of cryptocurrency transactions. For example, CPIB regularly conducts trainings for its officers to help them understand the evolving nature of assets and how to seize and manage such crypto assets. Its Computer Forensic Branch conducts in-house simulations of transaction flows of crypto assets to allow officers to gain a better understanding of a particular asset's mechanisms.

Authorities also have in their arsenal investigative powers drawn from the Criminal Procedure Code 2010 ("CPC"). Investigators can utilize production orders to banks, financial institutions, and even crypto exchanges to obtain information for investigations. A failure to comply with such orders can constitute a criminal offence. Singapore has also recently amended Section 39 of the CPC. It now empowers investigators to access computers, even those located outside of Singapore under certain circumstances.[35] This allows investigators to be able to compel suspects to transfer cryptocurrency to wallets held by the law enforcement agency while investigations are ongoing. This prevents dissipation of such assets, which could easily be transferred out within seconds.

Prosecutors in the Attorney-General's Chambers ("AGC") also undergo regular trainings and attend conferences to keep abreast of developments in technology. Within AGC, a Commercial and Technological Crimes Cluster is formed, where the prosecutors therein specialize and handle more complex technological crimes. Across the Government, a Technology Law Cluster is also formed in February 2019 to allow for a community of practitioners across all public agencies to learn and share with each other their experiences and expertise in technology law.

Further, Singapore courts have also become more attuned to issues concerning blockchain technology. A recent blockchain innovation which has gained traction is the non-fungible token

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[31] Thomson Reuters, *Cryptos on the rise 2022*, available online at: https://www.thomasreuters.com/en/reports/cryptos-on-the-rise-2022.html

[32] Alex Gailey & Ryan Haar, *The Future of Cryptocurrency: 8 Experts Share Predictions for the Second Half of 2022*, available online at: https://time.com/nextadvisor/investing/cryptocurrency/future-of-cryptocurrency/

[33] Katherine A. Lemire (26 September 2022), *Cryptocurrency and anti-money laundering enforcement*, available online at: https://www.reuters.com/legal/transactional/cryptocurrency-anti-money-laundering-enforcement-2022-09-26/

[34] Ibid.

[35] For example, if the computer's owner consents, or if the investigator has managed to seize documents containing the login credentials to the account.

or NFT, which often refers to unique digital collectibles. Given the rapid pace at which technology develops, legal issues arising out of the application and deployment of such technologies will become more common.

In recent court decisions in *CLM v CLN* [2022] SGHC 46 and *Janesh s/o Rajkumar v Unknown person (CHEFPIERRE)* [2022] SGHC 264 ("*Janesh*"), the Singapore High Court has had the opportunity to decide whether stolen cryptocurrency assets were capable of giving rise to proprietary rights (i.e., be considered as property), which could be protected by a proprietary injunction. In both cases, the Court granted an injunction as sought by the claimant and provided a provisional view that cryptocurrency assets were capable of giving rise to proprietary rights. In the *Janesh* case, the asset in question was a Bored Ape NFT, which was a "very unique" artwork and the only one in existence. The Court considered that what is truly unique and irreplaceable was the string of code that represents the Bored Ape NFT on the blockchain.

Recently, the definition of "property" has been amended in the Penal Code 1871 to expressly include virtual currency.[36] It is perhaps not too far in the distant future that the prosecution and law enforcement agencies must tussle with the various legal issues that accompany these virtual assets.

Indeed, the Financial Action Task Force (FATF) has stated in a recent update that differences in NFT definitions and functions across jurisdictions can present challenges in determining how to apply anti-money-laundering and counter-terrorism financing (AML/CFT) in practice.[37] Agencies must thus closely monitor this issue and implement any changes through new or amended legislation, if necessary.

IV. CONCLUSION

Modern corruption often takes shape in different forms. Corrupt offenders and syndicates are evolving and adapting their *modus operandi* to evade detection. Singapore's experience is that it is necessary for enforcement and regulatory authorities to continually upskill their officers to be familiar with evolving modes of criminality. The fact that more youth are becoming emboldened to conduct illicit activities must also be addressed in an early and incisive manner. In that regard, agencies have expanded their pool of strategic partners to leverage their networks and expertise to strengthen prevention and outreach initiatives. Singapore remains resolutely committed to the ongoing fight against corruption.

[36] Section 22 of the Penal Code 1871.

[37] Financial Action Task Force, *Targeted Update on Implementation of the FATF Standards on Virtual Assets and Virtual Asset Service Providers*, June 2022 at page 20.

PROBLEMS AND OBSTACLES OF INTERNATIONAL COOPERATION IN CASES INVOLVING NEW FORMS OF CORRUPTION

Yongyoot Srisattayachon *

I. INTRODUCTION

Currently, the problem of corruption is regarded as a major problem that occurs in countries around the world, whether it is developed countries or underdeveloped countries. Corruption has become one of the most important problems in many countries. By this problem, there is no sign that it will go away. It's also getting more intense and complicated. Even though many countries have stepped into modernization, there is a modern public administration system. There are campaigns from state or independent organizations such as the United Nations, World Bank and the people's sector that all agree that corruption is a problem that leads to poverty and is a real barrier to development. The case becomes more complex because it touches upon the components of international character or involves the matters of a state's jurisdiction. Nowadays, a new form of corruption is a crime that has been committed in one country and the criminal has transferred money from the proceeds of the crime into overseas bank accounts, and there are numerous practical and political factors that can impede cooperation. Also, if the investigation or prosecution is carried out in one country but the essential evidence or witnesses exist in another country, how we can obtain such evidence or statements of such witnesses? There still exist many problems, the difficulties of which are beyond the capacity of a single state to deal with, especially under the current situation. Every state must internationally cooperate with each other in prevention and suppression. Assistance and coordination between states to combat the crime can take many forms and is collectively known as "international cooperation." In this report, I will address the facts of a corruption case based on a true story, mutual legal assistance in criminal matters, problems and obstacles of international cooperation along with solutions.

II. FORMS OF CORRUPTION IN THAILAND

For Thailand, it is widely known that the problem of corruption is one of the top problems that greatly affects the development of the country. Corruption in Thailand can be roughly divided into three eras as follows:

During the first era (before 1980), the form of corruption was an ancient form of budget fraud, which was to approve budgets for personal gain and opening up opportunities for businesses to become more involved in politics.

During the second era (between 1981-1990), the beginning of the era was not as corrupt as other eras. The reason is probably due to the fact that the economy was not doing well. There was not much money injected from the government to invest in large projects. However, after the economic expansion began and political parties became more active, many

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large projects were invested in by the government. There was so much corruption that the government of that era was called the "Buffet Cabinet".

During the third era (between 1991-2022), the form of corruption in this period was highly concentrated on procurement. The abuse of power by politicians has led to the transition from "project corruption" to "systematic corruption" as well as severe "political corruption". The structural problem of this era is strong cooperation between politicians and bureaucrats with businessmen behind them. Although corruption has decreased somewhat, it is ready to rise in the next period owing to the fact that the political structure is heavily dependent on finances. It has given rise to the idea in society that money can buy everything, and money can deal with the crackdown by anti-corruption agencies.[1]

Corruption in the aforementioned forms, money or assets mostly obtained from corruption will remain in Thailand. Nowadays, new forms of corruption, especially receiving large bribes, are often transferred to overseas bank accounts or traded in real estate in the names of other people abroad.

III. MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

Thailand adopted the Act on Mutual Assistance in Criminal Matters B.E. 2535 in 1992. This Act is the main legislation to be applied to all processes of providing and seeking assistance upon receiving requests from foreign states or Thai agencies; however, if it is inconsistent with the terms or provisions used by the treaties concluded between Thailand and such foreign countries, the treaty shall prevail. Assistance in Thailand may be granted even if no treaty exists between Thailand and the requesting State, provided that such state commits to assist Thailand in a reciprocal manner when requested.

A. Agencies and Organizations Responsible for These Matters

In ordinary dealing, the request for assistance shall be submitted through diplomatic channels. However, if a mutual assistance treaty between Thailand and the requesting State is in force, commitments of reciprocity and submission through diplomatic channels will be waived. The request for assistance in such a case as well as other communications shall be made directly to the Attorney General, who is the Central Authority of mutual legal assistance as prescribed by the law.

B. Conditions and Requirements to Request MLA

1. Forms of Assistance

In Thailand, forms of assistance are basically understood to include certain forms of the processes of criminal case handling, as well as other indefinite conduct under the scope of the stipulated indefinite description. According to section 4 of the Act on Mutual Assistance in Criminal Matters B.E. 2535, “assistance” means assistance regarding investigation, inquiry, prosecution, forfeiture of property, and other proceedings relating to criminal matters. Categorization of the forms of assistance can be further enlightened by the provision of Section 12 of the same Act to cover the following:

(a) Taking statements of persons, providing documents, articles and evidence out of Court, serving documents, searches, seizure of documents or articles, locating persons;

[1] Pasuk Phongpaichit, Sangsit Piriyarangsan, Nualnoi Treerat, Research on Corruption and Thai Democracy Outlaw Economy and Public Policy in the Thai Bureaucracy, Center for the Study of Political Economy, Faculty of Economics, Chulalongkorn University.

(b) Taking the testimony of persons and witnesses or adducing documents and evidence in court, and requesting forfeiture or seizure of property;
(c) Transferring persons in custody for testimonial purposes;
(d) Initiating criminal proceedings.

It is quite clear from the above provision that the term "other proceeding", stipulated in Section 4, is capable of accompanying other forms of assistance in the treaties with other countries.

2. Authorities and Officials

In Thailand, according, to the Act on Mutual Assistance in Criminal Matters B.E. 2535 as well as treaties concluded with various countries, the "Central Authority" is the "Attorney General or, the person designated by him." The Central Authority is the official who takes the most predominant role in requesting assistance. Apart from the general function as the coordinator to receive the request for assistance from the requesting State and transmitting it to the Competent Authorities concerned, as well as to receive the request seeking assistance presented by the agency of Thai Government and deliver it to the requested State, another equal or more significant task entrusted to the Central Authority is to determine the legality and eligibility of all requests and processes. In this context the Central Authority is also authorized to interpret the rule or announcement for the implementation of the whole process.

Determination of the Central Authority in all matters regarding the grading and seeking of assistance will be final except in two situations: firstly, if it is overruled by the Prime Minister, and secondly, if a request relates to the issues of national sovereignty or security, crucial public interest, international relations, political offences or military offences, and where the Advisory Board has a dissenting view and the Prime Minister agrees with such dissenting view.[2]

3. Competent Authority

The Competent Authority includes those officials who actually carry out the function conforming to the request for assistance as notified by the Central Authority. In Thailand, the Competent Authority includes the following:

(1) The Commissioner General of the Royal Thai Police, the Director General of the Department of Special Investigation, the Secretary General of the Public Sector Anti-Corruption Commission or the Secretary General of the National Anti-Corruption Commission: to deal with the request for taking statements of persons, providing documents or items of evidence which is an out of Court procedure, serving documents, locating persons and freezing or seizure of documents or articles for the purpose of gathering of evidence;

(2) Public Prosecutor: to deal with the request for questioning of witnesses, documentary evidence or physical evidence which is conducted in court; freezing or seizure of property for the purpose of forfeiture of property or demand for payment in lieu of forfeiture of property against any person; and a request for freezing, seizure or forfeiture of property or demand for payment in lieu of forfeiture of property as per a judgment or an order of courts in a foreign state;

[2] Poonpol Ngearndee, "MUTUAL LEGAL ASSISTANCE AND EXTRADITION IN THAILAND" 148.

(3) The Director General of the Correction Department: to deal with the request for transfer or receipt of transfer of a person in custody to assist proceedings at the stage concerning the authorities or at the trial stage;

(4) Public Prosecutor, the Commissioner General of the Royal Thai Police, the Director General of the Department of Special Investigation: to deal with the request for initiating criminal proceedings.[3]

4. Double Criminality

The principle of double criminality requires that the conduct underlying the assistance requested must also be a criminal offence punishable under the law of the requested State, otherwise such request must be refused. This position in Thailand seems to be a compromise between the concept of protecting the innocent's rights and liberty by the principle of double criminality on one hand, and the spirit of cooperation between and among states to support and control crime on the other hand.

While the Act on MLA places the principle of "Double Criminality as a prerequisite for granting assistance, there are many treaties concluded with foreign states such as the United States, Canada, the United Kingdom, of which the principle of double criminality is not required." On the contrary, all said treaties impose obligations on each Contracting Party to provide assistance to the other Contracting Party even if the underlying conduct so requested does not constitute a criminal offence in the requested State.

5. Refusal of Requests

In Thailand the grounds for refusal are stipulated both in the Act on MLA as well as various treaties concluded with foreign states. Article 9 of the Act on MLA stipulates that assistance to a foreign state shall be subject to the following conditions:

(1) Assistance may be provided even if no mutual assistance treaty exists between Thailand and the requesting State, provided that such State commits to assist Thailand in a similar manner when requested;

(2) The act on which the request is based must be an offence punishable under Thai laws unless Thailand and the requesting State have a mutual assistance treaty between them, and the treaty specifies otherwise, provided, however, that assistance must be conformed to the provisions of the Act;

(3) A request may be refused if it affects national sovereignty or security, or other crucial public interest of Thailand, or is related to a political offence;

(4) Assistance shall not be related to a military offence. As regards mutual legal assistance treaties, the clause related to the refusal of a request is usually prescribed similarly, for example, the requested State may refuse to execute a request to the extent that
(a) the request would prejudice the sovereignty, security, or other essential public interest to the requested State: or
(b) the request is related to a political offence.

[3] The Act on Mutual Assistance in Criminal Matters B.E. 2535 section12.

IV. CASE STUDY

At the Federal Court in Los Angeles, on 11 September 2009, Mr. A and Mrs. B, American entrepreneurs, were unanimously found guilty of violation of the Foreign Corrupt Practices Act, money-laundering laws and taxation law of the United States in relation to bribe payments to the Governor of Tourism Authority of Thailand (TAT).

The National Anti-Corruption Commission of Thailand (NACC) investigated an allegation against Mrs. C, former Governor of TAT, for receiving bribes in exchange for the TAT contracts awarded to Mr. A and Mrs. B to run the Bangkok International Film Festival (BKKIFF) and other projects from 2003 to 2007. The investigation found that Mrs. C committed the acts of corruption in the course of her duties and abused her position as she helped Mr. A and Mrs. B to enter into several contracts with TAT including the organizing of the Bangkok International Film Festival (BKKIFF) during the period from 2003 to 2007. In return for TAT contracts and sub-contracts, Mr. A had paid bribes, both directly and indirectly, to Ms. D, the daughter of Mrs. C, and accomplices. There is evidence that 59 payments were made in total of USD 1,822,494.

Mr. A and Mrs. B operated eight companies – all of which had the same office address – and entered into contracts with the Tourism Authority of Thailand (TAT) and gave assets to Mrs. C for the performance of duties or exercise of powers in the performance of such duties, in connection with 11 projects in total. Ms. D, daughter of Mrs. C and Mr. E, who had been acquainted with Mrs. C before becoming the holder of assets improperly acquired in lieu of Mrs. C. Regarding such payment of remuneration from companies owned by Mr. A and Mrs. B to Mrs. C, there were three patterns thereof, i.e. 1) wire transfer; 2) cheques payable to cash; and 3) cashier's cheques. Money had been transferred into the overseas bank accounts of Ms. D and Mr. E. According to the evidence, it appeared that Ms. D, daughter of Mrs. C, was the recipient and occupier of such assets improperly acquired in lieu of Mrs. C. Details thereof were as per the bank accounts, as follows:

(1) money in a deposit account opened with HSBC Bank PLC, Coventry Branch, United Kingdom; Account Name: Ms. D; Amount: USD 463,084;

(2) money in a deposit account opened with HSBC International Limited, Isle of Jersey Branch; Account Name: Ms. D; Amount: USD 366,434;

(3) money in a deposit account opened with Standard Chartered Bank in Singapore; Account Name: Ms. D; Amount: USD 327,300;

(4) money in a deposit account opened with Citibank, Singapore; Account Name: Ms. D; Amount: USD 572,456.79

The NACC concluded that such acts of Mrs. C constitute criminal offences, namely:

1. An official unlawfully soliciting, accepting or promising to accept any property or benefit in exchange for the performance of, or refraining from, any official duty under

section 6 of the Act on offence Committed by Officials of State Organizations or Agencies, B.E. 2502 (1959)[4];

2. An official unlawfully performing or refraining to perform the official duty so as to impair another, or dishonestly performing or refraining from performing the official duty under section 11 of the Act on Offences Committed by Officials of State Organizations or Agencies, B.E. 2502 (1959)[5];

3. An official committing any act with aims to create unfair competition for pricing, to encourage any specific proposer or bidder with privilege or advantage for establishment of a contract with relevant government agencies under section 12 of the Act on Offences on Bidding towards the Government Agencies, B.E. 2542.[6]

In addition, it reached the conclusion that Ms. D's conduct is considered as supporting the first two offences.

On 25 August 2015, having considered the inquiry report submitted by the NACC, the Attorney General consequently prosecuted Mrs. C and Ms. D, the first and second defendants, respectively, for the above-mentioned offences to the Central Criminal Court for Corruption and Misconduct Cases in a criminal corruption case.

On 23 March 2017, in addition to the above-mentioned criminal corruption case, the NACC reached a resolution, that Mrs. C, the Alleged Person, while assuming the office of TAT Governor, had unusual wealth[7] and received assets which were unreasonably acquired resulting from the performance of duties or exercise of powers in the performance of duties relating to the purchasing and procurement of the private enterprises to become a party to contracts with the Tourism Authority of Thailand (TAT) and Thailand Privilege Card Co., Ltd., in connection with the Bangkok International Film Festival (BKKIFF) and other projects during 2003-2007, In total, the 11 projects amounted to 1,822,494 USD (approximately 65,609,784 Baht), which was the amount of money that Mrs. C, the Alleged Person, had received from Mr. A and Mrs. B directly or indirectly, a total of 59 times. According to the evidence, it appeared that Ms. D, the daughter of Mrs. C, received and occupied assets improperly acquired in lieu of Mrs. C. The matter was subsequently submitted to the Attorney-General.

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[4] Section 6: "Any person who is an official and, either for his own sake or for the sake of a third person, unlawfully, solicits, accepts or promises to accept in any property or benefit in exchange for the performance of or refrain from any act in his official capacity shall, whether such act is in breach of his official duty, be liable to imprisonment from five years to twenty years or for life and a fine from two thousand to forty thousand baht, or to death."

[5] Section 11: "Any person who is an official and unlawfully performs or refrains from his official duty so as to impair another, or dishonestly performs or refrains from his official duty, shall be liable to imprisonment from one year to ten years, or a fine from two thousand baht to twenty thousand baht or to both."

[6] Section 12: "Any official of a State agency who commits an offence under this Act, or commits any act with the purpose of preventing fair competition by favoring any bidder as the entitled to enter into a contract with a State agency, shall have committed the offence misfeasance in office and shall be liable to imprisonment for a term from five years to twenty years or Life imprisonment and a fine from one hundred thousand baht to four hundred thousand baht."

[7] The Organic Act on Counter Corruption B.E. 2542 (1999), Section 4: "Unusual wealth" means having an unusually large quantity of assets, having an unusual increase of assets, having an unusual decrease of liabilities or having illegitimate acquisition of assets in a consequence of the performance of duties or the exercise of power in office or in the course of duty."

On 29 March 2017, the Central Criminal Court for Corruption and Misconduct cases ruled that Mrs. C contravened section 6 and 11 of the Act on Offences Committed by Official of State Organizations or Agencies, B.E. 2502 (1959), and section 12 of the Act on the Offences Relating to the Submission of Bids to Government Agencies, B.E. 2542 (1999), whereas, Ms. D, as a supporter, contravened sections 6 and 11 of the Act on Offences Committed by Officials of State Organizations or Agencies, B.E. 2502 (1959) and section 86 of the Criminal Code. Hence, the Court sentenced Mrs. C to 66 years' imprisonment and Ms. D to 44 years' imprisonment, respectively, as well as ordered the forfeiture of USD 1,822,494 in ill-gotten gains.

On 19 July 2017, the Attorney-General filed a petition to the Central Criminal Court for Corruption and Misconduct Cases to forfeit the amount of USD 1,822,494 in unusual wealth to the Thai State involving a civil claim in connection with an offence.

In the criminal corruption case, the defendants submitted their appeals on 17 October 2017. On 8 February 2018, in the criminal corruption case, the Thai Central Authority submitted a request for mutual legal assistance in criminal matters, requesting the Central Authorities of Singapore, the United Kingdom, Ireland, Jersey and Switzerland to assist in the restraint of assets kept in banks in Singapore, the United Kingdom, Ireland, Jersey and Switzerland.

The NACC, the Office of the Attorney-General of Thailand, and the United States Department of Justice, specifically the Office of International Affairs, Fraud Section, and the Money Laundering and Asset Recovery Section of the Criminal Division, have been coordinating closely on related proceedings in the United States and Thailand since 2009, resulting in successful criminal convictions of the individuals involved in both countries. Thailand is of the understanding that the funds that we are requesting the authorities in Singapore, the United Kingdom, Ireland, Jersey and Switzerland to restrain are the same funds currently being restrained based on a prior US MLA request.

It should also be noted that the above-mentioned funds are among other direct proceeds of crime and must be restrained for further confiscation. Moreover, apart from these proceeds of crime, there are insufficient property and assets of the defendants elsewhere to satisfy the Court's forfeiture order.

On 8 May 2019, the Appeal Court adjudicated that Mrs. C contravened section 6 of the Act on Offences Committed by Officials of State Organizations or Agencies, B.E. 2502 (1959), and section 12 of the Act on Offences Relating to the Submission of Bids to Government Agencies, B.E. 2542 (1999). Whereas, Ms. D, as a supporter, contravened section 6 of the Act on the Offences Committed by Officials of State Organizations or Agencies, B.E. 2502 (1959) and section 86 of the Criminal Code. The Court sentenced Mrs. C to 66 years' imprisonment but decided to lower Ms. D's jail term from 44 years to 40 years. The Court of Appeal, however, decided to overturn the lower court's order to forfeit USD 1,822,494 on procedural grounds.

On 20 August 2020, the Supreme Court rendered a final judgment in line with the decision of the Appeal Court by affirming the jail sentences and dismissing the Court of First Instance's order to forfeit USD 1,822,494 of ill-gotten gains on procedural grounds. The case is final.[8]

[8] Judgment of the Central Criminal Court for Corruption and Misconduct Cases (Black Case No.Or.Tor.46/2559, Red Case No.Or.Tor.17/2560).

On 8 January 2021, the Thai Central Authority submitted a Request for Mutual Assistance in Criminal Matters based on the unusual wealth proceeding, requesting the Singapore to restrain the relevant accounts in Singapore pending the outcome of such proceeding in a Thai court.

On 29 January 2021, Singapore's Central Authority informed the Thai Central Authority that pursuant to the request for Mutual Assistance in Criminal Matter restraint of assets (dated 8 January 2021) requesting the Central Authority of the Republic of Singapore to freeze assets in the unusual wealth case, the Singapore Central Authority could not render assistance on the basis of the unusual wealth proceeding as the dual criminality requirement is not met.

Therefore, on 18 June 2021, the Thai Central Authority submitted a Request for Mutual Assistance in Criminal Matters based on money-laundering proceeding, requesting the Singapore authority to restrain dealing in property or freezing of property derived from the commission of an offence and providing information and documents in the money-laundering case of Mrs. C and Miss D.

On 31 August 2021, a Public Prosecutor filed a complaint requesting the Civil Court to order that the assets connected with the commission of the offence of Mrs. C and associates, i.e. a deposit in a bank account in an amount of USD 500,000, plus accrued interest, be devolved on the state under Section 51 of the Anti-Money Laundering Act B.E. 2542 (1999).

On 29 October 2021, officers from the United States Department of Justice, the Office of the Attorney General of Thailand, the Anti-Money Laundering Office of Thailand and the National Anti-Corruption Commission of Thailand attended an online meeting and came to the following conclusions:

1. The United States Central Authority explained that an offence committed by the defendant before 2006 may be partially terminated, not all money can be forfeited, but only a small part of the money can be forfeited which the law of the United States allows for negotiations by allowing the accused to transfer the money back to avoid prosecution, but Thai law has no law to do so.

2. Requesting the distribution of money obtained from the forfeiture of Mrs. C and Miss D in various countries, the United States Central Authority explained that the proceedings in Thailand and the United States are separate, and separate proceedings may result in the inability to divide the confiscated property.

3. Global settlement means agreement to settle all cases involving Mrs. C and Miss D's assets located both in Thailand and abroad. In terms of the United States, that means a civil forfeiture case and in terms of Thailand, it means an unusual wealth case and civil confiscation cases for money-laundering.

4. The global settlement agreement will have three parties: 1. The United States Department of Justice. 2. An authorized agency of Thailand. 3. Mrs. C and Miss D.

5. In the event that the parties agree to enter into a global settlement agreement, Mrs. C and Miss D can inform the bank to transfer the money back to Thailand directly without the United States forfeiture judgment as agreed in the global settlement agreement. But

> if there is no global settlement agreement, the United States may continue civil forfeiture proceedings. Once the verdict has been given to forfeit the property and assets, the money will be returned to the United States, and then other competent officials will consider returning the money to or sharing it with Thailand.

The United States Department of Justice has asked Thai authorities to provide information on which agency has the power to withdraw lawsuits against unusual wealth cases and civil confiscation cases for money-laundering. In addition, the United States has asked Thai authorities to estimate the value of the money they want to receive back from Mrs. C and Miss D, which may be a value range, so that the United States can compare it with the proposal of Mrs. C and Miss D.

Finally, the Thai Central Authority informed the United States Department of Justice that the domestic laws of Thailand do not allow Thai authorities to enter into a global settlement agreement.

On 17 January 2022, the Civil Court ordered that the money in an amount of USD 500,000 in UOB Bullion & Futures Ltd. account, account No…., account name (previously known as account No…., account name Miss D and account No…., account name…..) in the Republic of Singapore of Miss D, plus accrued interest, listed in document No… of the assets listed submitted to the public prosecutor to file a complaint to the court requesting that the assets be devolved on the state in accordance with Section 51 Paragraph One of the Anti-Money Laundering Act B.E. 2542 (1999).[9]

On 16 March 2022, the Thai Central Authority submitted a Request for Mutual Assistance in a Criminal Matter Informing of Supreme Court's Judgement and restraint of assets based on the unusual wealth proceeding, requesting the authorities of the United Kingdom, Ireland and Jersey to restrain the assets kept in banks in their respective jurisdictions, pending the outcome of such proceeding in Thai court.

On 25 April 2022, the Central Criminal Court for Corruption and Misconduct Cases adjudicated that (1) the money in a deposit account opened with HSBC Bank PLC, Coventry Branch, United Kingdom; Account Name: Ms. D; Amount: USD 463,084; (2) Money in a deposit account opened with HSBC International Limited, Isle of Jersey Branch; Account Name: Ms. D; Amount: USD 366,434; (3) Money in a deposit account opened with Standard Chartered Bank in Singapore; Account Name: Ms. D; Amount: USD 327,300; and (4) Money in a deposit account opened with Citibank, Singapore; Account Name: Ms. D; Amount: USD 572,456.79 and other assets of the alleged Person – in total, USD 1,822,494 (equivalent to approximately 65,609,784 Baht) – together with accrued interest, shall be vested in the State. If no legal execution could be made against the whole or part of such assets of the Alleged Person, then, it shall be made against other assets of the Alleged Person but not exceeding the value of such assets. In case the Alleged Person shall settle payment thereof in Thai Baht or Thai Baht shall be applicable to other assets of the Alleged Person, it shall be calculated with the average rate thereof of a commercial bank at the place and time of spending of money. If there was no exchange rate thereof on such date, the last date that such exchange rate was applied before the date of spending of money shall be considered. Other applicants shall be dismissed.[10]

[9] Judgment of the Civil Court (Black Case No.For.120/2564, Red Case No.For.92/2564)
[10] Judgment of the Central Criminal Court for Corruption and Misconduct Cases (Black Case No.Or.Ror.3/2560, Red Case No.Or.Ror.1/2560)

Although the account in Ireland was not specifically mentioned in the Unusual Wealth Judgment dated 25 April 2022 (because it did not directly receive the bribe payments from Mr. A and Mrs. B), it appears from the investigation, as explained above, that, after the bribe money was transferred from the Mr. A and Mrs. B to Ms. D in the HSBC Coventry UK Account, Ms. D subsequently transferred an amount of GBP 200,000 from the HSBC Coventry UK account to HSBC Life (Europe) in Ireland held in the name of Ms. D. (Currently, the funds, in the approximate sum of €250,000 are held in a bank account under the control of the Criminal Assets Bureau Receiver).

Since Ms. D was convicted by the Thai Supreme Court in the criminal corruption case as a supporter of the crimes committed by Mrs. C and the Central Criminal Court for Corruption and Misconduct Cases in the unusual wealth case has also adjudicated that the assets in the amount of USD 1,822,494 were improperly acquired and received and controlled by Ms. D in lieu of the Alleged Person (Mrs. C), it is, therefore, believed that the funds in the above-mentioned account in Ireland are also illegitimately acquired and held by Ms. D on behalf of Mrs. C.

In this connection, the funds in Ireland are deemed to be the illegal assets involved with the bribery scheme committed by Mr. A and Mrs. B and Mrs. C and Ms. D and are also considered to be "other assets" of the Alleged Person (Mrs. C) in the unusual wealth case, which could be executed according to the judgment in the unusual wealth case dated 25 April 2022. Therefore, such assets shall be vested in the Thai State.

On 12 July 2022, the Thai Central Authority submitted an MLA request to the authorities of the United Kingdom, Ireland and Jersey, informing them of the judgment and confiscation order in the unusual wealth case against Mrs. C, requesting those authorities to confiscate assets and return them to Thailand in order to fulfil the judgment.

The unusual wealth case is not yet final because the attorney general has appealed the judgment of the Court of First Instance on the grounds that the court has not ordered the forfeiture of interest according to the prosecutor's request.

V. PROBLEMS OF AND OBSTACLES TO INTERNATIONAL COOPERATION

After the Attorney General, the Central Authority of Thailand, submitted the request to the Central Authorities of Singapore, the United Kingdom, Ireland, Jersey and Switzerland to assist in restraining of dealings in property or the freezing of property derived from the commission of an offence that may be recovered, forfeited or confiscated, there have been problems and obstacles related to international cooperation. For easy understanding, in this report, I would like to address these problems and obstacles separately by country, as follows:

A. Singapore

On 29 January 2021, Singapore's Central Authority informed the Thai Central Authority of its decision, as follows:

1. Pursuant to the request for Mutual Assistance in Criminal Matters (dated 8 January 2021) requesting the Central Authority of the Republic of Singapore to freeze assets in the unusual wealth case, the Singapore Central Authority cannot render assistance on the basis of unusual wealth proceedings as the dual criminality requirement is not met.

2. In the event that the Central Authority of Thailand will submit a new request for mutual assistance in criminal matters in the cases of Mrs. C and Ms. D, they must be prosecuted for money-laundering offences in both criminal and civil cases relating to money-laundering offences at the same time, if the Thai authority prosecuted for money-laundering and the Singapore court orders the UOB account was frozen for that reason. The order to freeze the account will be for a period of three months from the date of the court's decision order. The Singapore Central Authority requires a confirmation letter from the Kingdom of Thailand that the proceedings have commenced in the Thai courts within a period of three months.

B. The United Kingdom

The Central Authority of the United Kingdom informed the Central Authority of Thailand that assets are kept in HSBC Bank PLC, Coventry Branch, United Kingdom; Account Name: Ms. D; Account No…….; Amount: USD 463,084 are already subject to a freezing order made on behalf of the US authorities. Therefore, the Crown Prosecution Service are unable to take any further action on the request to freeze given that the assets are already subject to an existing court order. It is noted that under the United Kingdom system, cases for asset recovery founded completely on an offence of unexplained wealth are very difficult to execute. This is because the United Kingdom has no equivalent criminal offence to an unexplained wealth offence.

C. Ireland

On 8 April 2012, the Central Authority of Ireland informed the Central Authority of Thailand that:

1. Request For Mutual Assistance in Criminal Matter Informing of Supreme Court's Judgement and restraint of assets based on the unusual wealth case dated 16 March 2022 must be considered under the United Nations Convention Against Corruption (UNCAC), which both Ireland and the Kingdom of Thailand have ratified, with the request of the Kingdom of Thailand not referring to the Convention and when the request for assistance made under the UNCAC can be sent directly to the requesting country. It was transferred under the Proceeds of Crime Act 2006 in 2015 from an HSBC bank account to an account controlled by the Criminal Assets Bureau, International Affairs Department.

2. For a request to share the forfeited money in the case between the Republic of Ireland, the United States of America and the Kingdom of Thailand. The Central Authority of Ireland informed that in accordance with the relevant laws of the Republic of Ireland, the sharing of property forfeited in lawsuits can only be made in the member states of the European Union, other countries which are not a member of the European Union such as the Kingdom of Thailand or the United States cannot ask for sharing the forfeited money.

D. Jersey

The Central Authority of the Bailiwick of Jersey informed the Central Authority of Thailand that

1. The amount of around £249,000 of Miss D's assets were requested to be restrained by the US authorities in April 2008, but the said money is no longer in HSBC International

Limited bank, account number……. The funds have been moved to preserve them on behalf of the Jersey authorities.

2. As a result of the Supreme Court's final judgment in line with the decision of the Appeal Court by affirming the jail sentences and dismissing the Court of First Instance's order to forfeit USD 1,822,494 of ill-gotten gains in the criminal corruption case, the assets cannot be seized by the Jersey authorities. Therefore, the Kingdom of Thailand must confirm that the Request for Mutual Assistance in Criminal Matters in the case of Mrs. C and Miss D has been withdrawn because the request for restraint of assets is related to criminal proceedings which are not related to a request for restraint of assets in an unusual wealth case.

3. Jersey laws contain provisions relating to civil forfeiture. When considering Jersey Laws relating to a request for freezing assets according to the Civil Asset Recovery (International Co-operation) (Jersey) Law 2007 Article 6(5), it is their opinion that in the case of unusual wealth cases which are currently in the process of Court proceedings in Thailand, another request for restraining of assets must be submitted to allow the Jersey authorities to freeze the money of Mrs. C and Miss D.

4. In the event that the Central Authority of Thailand has submitted a request for Mutual Assistance in restraining of assets and if the Thai court enters a judgment in the unusual wealth case, the Thai Central Authority can submit another Request for Mutual Assistance to the Jersey authorities asking for asset sharing. The money will be transferred to the Jersey Government funds and the attached funds will be shared with the Jersey Government.

E. Switzerland

The Central Authority of Switzerland informed the Central Authority of Thailand that the Request for Mutual Assistance in Criminal Matters based on the criminal corruption case dated 8 February 2018 must be made in French, German or Italian.

Currently, the Thai Central Authority has not been notified by the five above-mentioned Central Authorities whether the requested assets have been restrained because the unusual wealth cases of Mrs. C and Miss D in Thailand are not yet final.

VI. CONCLUSION AND SOLUTIONS

Although the Thai Central Authority has sent the Request for Mutual Legal Assistance in Criminal Matters (international cooperation) to the five above-mentioned central authorities, we have encountered problems and obstacles. These problems and obstacles are summarized below, and solutions are offered.

A. Dual Criminality

Singapore's Central Authority informed the Thai Central Authority that Singapore cannot render assistance on the basis of unusual wealth proceedings as the dual criminality requirement is not met.

The United Kingdom Central Authority informed the Thai Central Authority that, under the system of the United Kingdom, cases for asset recovery founded completely on an offence

of unexplained wealth are very difficult to execute. This is because the United Kingdom has no equivalent criminal offence to an unexplained wealth offence.

1. Solution

According to the United Nations Convention against Corruption:

Article 1
Statement of purpose

The purposes of this Convention are:
(a) To promote and strengthen measures to prevent and combat corruption more efficiently and effectively;
(b) To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery;
(c) To promote integrity, accountability and proper management of public affairs and public property.

Article 46
Mutual legal assistance

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.
2……
9. (a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;
(b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention.
(c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.

2. Suggestion

Therefore, a requested State shall take into account the purposes of this Convention by complying with article 1 and 46.

B. Language to Be Used in Requests for Mutual Legal Assistance

Swiss Central Authority informed Thai Central Authority that the Request for Mutual Legal Assistance in Criminal Matters must be made in the French language, German language or Italian language (English language is not applicable).

1. Solution

According to the United Nations Convention against Corruption:

Article 46
Mutual legal assistance

14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity……..

2. Suggestion

The English language is the main language for communicating all over the world. Therefore, this convention should provide that English language can be applied to a request for mutual legal assistance.

C. Priority of Filing a Request for Mutual Legal Assistance

The United Kingdom's Central Authority informed the Thai Central Authority that the United Kingdom Central Authority are unable to take any further action on the request to freeze given that the assets are already subject to an existing court order because the US has filed an MLA request before Thailand

1. Solution

According to the United Nations Convention against Corruption:

Article 59. (Bilateral and multilateral agreements and arrangements)

States Parties shall consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this chapter of the Convention.

In this case, Mrs. C and Miss D's actions were against the law of the United States and Thailand, but the United States filed a request for mutual legal assistance first. As a result, Thailand is unable to file a request. The laws of both countries stipulate that each country has the right to file a request for returning of property acquired through an offence.

2. Suggestion

Both parties should agree to a contract to share the property by conducting bilateral or multilateral agreements, or the United Nations Convention against Corruption should prescribe rules for asset sharing.

D. Global Settlement

The US Central Authority proposed the Thai Central Authority enter into a global settlement, which was allowed by US Law, but the domestic laws of Thailand do not allow the Thai authority to enter into a global settlement agreement.

1. Solution

Thai domestic law should prescribe rules to permit the Thai Central Authority to enter into a global settlement.

E. Asset Sharing

If the Thai court has a judgment in the unusual wealth case, the Thai Central Authority can submit another Request for Mutual Assistance to the Jersey authorities asking for asset sharing.

In accordance with the relevant laws of the Republic of Ireland, the sharing of property forfeited in lawsuits can only be made in the member states of the European Union, and other countries which are not members of the European Union, such as the Kingdom of Thailand or the United States, cannot ask to share the forfeited money.

1. Solution

In the United Nations Convention against Corruption should prescribe rules for asset sharing.

THAILAND'S CURRENT CHALLENGE: POLICY CORRUPTION

Panyakorn Amonpapyapakomol[*]

Thailand has suffered from corruption for such a long time. In the past, corruption has been endemic among state officers. However, Thailand has experienced a significant change in the form of corruption in recent decades. As of now, it is evident that Thailand is suffering from a new form of corruption which has proliferated not only among state officers but politicians, bureaucrats, as well as those from the business sector.

This article will discuss the current forms of corruption that took place through policy and will present some case studies on the issue. Additionally, it proposes anti-corruption efforts led by some inspection agencies designed to enhance measures and mechanisms to prevent policy corruption.

I. CURRENT FORM OF CORRUPTION: LEGITIMACY AND COMPLEXITY

In the past, corruption in Thailand was profoundly witnessed among state officers at all levels, mostly centred among low-ranking state officers.[1] Bribery and embezzlement were common forms of corruption. State officers sought illicit gains by looking for loopholes in their work process. Therefore, corruption was not complicated and only a limited number of people were concerned. Simply put, corruption in the past was an illegal act of those who seek benefits on the existence of policy and law. There were no attempts to legalize the act by creating or altering policy or law.[2]

In this day and age, corruption in Thailand has become more complex as well as broader than bribery and asset misappropriation. Those who engage in this recent form of corruption are no longer confined to embezzlers and bribe takers. They include politicians, senior bureaucrats, cabinet ministers, and some businessman and multi-national corporations. Academics have defined the current form of corruption that took place through policy as "Policy Corruption[3]."

The National Anti-Corruption Commission identifies that policy corruption often has the following characteristics[4]:

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[1] BertesmannStiftung, (2020) BTI 2022 Country Report: Thailand. Available at https://bti-project.org/fileadmin/api/content/en/downloads/reports/country_report_2022_THA.pdf. Accessed 15 October 2022.

[2] Sangrungruang, Y. (1983) The suitable model of the office of the commission of counter corruption in Thailand, Chulalongkorn University, Bangkok.

[3] Rathamarit, U. (2016) Policy Corruption Project: Legal Measures to Control and Prevent Policy Corruption in Thailand, The Thailand Research Fund (TRF), Bangkok.

[4] The National Anti-Corruption Commission, What's Policy Corruption?, Available at http://baanbangmoung.go.th/public/list_upload/backend/list_2281/files_default_7589_1.pdf. Accessed 15 October 2022.

(1) Government agencies, cabinet ministers or politicians determine any particular policies or projects with a claim of national interests or the people's well-being.

(2) Policy corruption is generated by amending the law, enacting new law, changing policy or creating new policy to legalize certain policies or projects. For this reason, the public will recognize the policy or project as being legal.

(3) New policy or project implementation contributes to unreasonable benefits to an individual, a group of people, friends or relatives of the policymakers whether in the form of money, property or any benefits.

By doing so, the political sector raises certain social issues for the public's consideration and pushes these issues as a part of an urgent agenda, even when those social issues are not the real problem of society. The study found that an essential prerequisite for policy corruption is legitimacy building. Therefore, policy corruption is concerned with the use of political power or political conditions with the mechanism of both legislative power and executive power to make certain policies or projects possible. Finally, these policies or projects benefit a certain limited group of people.

This essay will discuss the first example of policy corruption in Thailand: the cancellation of the price ceiling price on medicine. The case has been recognized as the first case of corruption for which a former politician was convicted and served a jail term for corruption. Another case that this essay will elaborate is the rice pledging scheme, which is the most recent mega-scandal in Thailand. The two cases obviously show how corruption works through policymaking.

II. THE MEDICINE AND MEDICAL SUPPLIES PRICE SCANDAL: THE DISCONTINUATION OF THE CENTRAL PRICING SYSTEM

Since 1988, the Ministry of Public Health announced the central price of medicine and other medical supplies aimed at controlling the prices at a reasonable level. Thus, hospitals nationwide could purchase medicine and medical supplies at the median price. There is no need to pay more for medicine than the price ceiling.

The central pricing system, through which the prices were announced and controlled by the ministry, came to an end during the administration of the new minister who held a political position. In 1997, he issued an announcement of the Ministry dated 15 December 1997 to cancel the price ceilings for medicine. To legitimate the act, the Ministry claimed that this would lead to price competition according to market mechanisms. Therefore, the community as a whole will benefit from the dropping medical price. Also, the minister claimed that due to the economic situation and an increase of the value added tax (VAT) from 7 to 10 per cent affected the prices of medicine and medical supplies. As a result, the central pricing system must be discontinued. The cancellation of the central pricing system provided channels for people to seek benefits.[5]

[5] Roengtam, S. (2007) Understanding Corruption through Policy: Case Study of the Corruption in Medicine and Medical Supplies of Ministry of Public Health, 1998, JOURNAL OF POPULATION AND SOCIAL STUDIES Volume 15 Number 2 January 2007.

Simultaneously, in 1998, the Cabinet approved the proposal of the Budget Office to allocate additional budget to the Ministry of Public Health in the amount of 1.4 billion baht. The Ministry of Public Health then allocated it to provincial and community hospitals.

Without the central pricing system, each hospital is authorized to make procurement freely through negotiated prices. As a result, the drug companies sell drugs and medical supplies to hospitals more expensive than usual by 300-600 percent. Concerning the procurement, the investigation identified that some politicians and civil servants of the Ministry of Public Health intervened by various methods from asking, persuading, forcing, negotiating, or recommending provincial and community hospitals to order medicine, medical supplies, tools and even unnecessary materials from certain drug companies.[6]

If hospitals denied making procurement with the drug company directly, there is an alternative method for making purchases from the Government Pharmaceutical Organization (GPO). The GPO, which has capability to manufacture some medicines, preferred purchasing them from drug companies listed by high-ranking politicians and state officers, at very high prices. Also, during the same period, the GPO has charged hospitals various prices for the same medicines. This contributed to the same result as the public health agencies having purchased medicine and supplies at an unreasonable price, higher than the market price.[7]

From the investigation led by an inspection agency, the Public Health Minister's advisor received a 5 million-baht bribe from the deputy managing director of a specific drug company in exchange for the cancellation of the price ceiling and being proposed as a medicine trade partner.

In this case, an inspection was triggered after reports by those who work in the ministry that there was massive corruption in the purchasing of medicine and supplies causing a lot of financial damage. Firstly, an internal investigation committee of the ministry was appointed. After that, the Public Health Commission led by the House of Representatives and the National Anti-Corruption Commission conducted the investigation. There was reliable and sufficient evidence that the procurement of medicines and medical supplies were by far more expensive than they should have been in 34 provinces nationwide. The fraudulent behaviour involved administrators of the ministry who abused their power and position to seek benefits, relevant officials who failed to perform duties required by the law and the pharmaceutical company that offered a bribe and sought benefits from the cancellation of the price ceiling. The offenders were punished with disciplinary and criminal actions.[8]

Considering the case, the discontinuation of the central pricing system scandal is the first case in Thailand which triggers recognition among the Thai people concerning the adverse effects of policy corruption. A group of people with political power could exercise power to extort policy to facilitate the business sector, the pharmaceutical companies, with the support of the executive mechanism led by high-ranking civil servants. However, it is also a renowned

[6] Tangkitvanich, S. (2014) Corruption Menu And Benefit Seeking, Thailand Development Research Institute, Bangkok
[7] Roengtam, S. (2007) Understanding Corruption through Policy: Case Study of the Corruption in Medicine and Medical Supplies of Ministry of Public Health, 1998, JOURNAL OF POPULATION AND SOCIAL STUDIES Volume 15 Number 2 January 2007
[8] Ibid.

case since the investigation of inspection agencies led to the successful prosecution of the offenders.[9]

III. THE RICE PLEDGING SCHEME: A SYSTEMIC COUNTERFIET

The rice pledging scheme is a project initiated by the government in 2011. The government at the time promoted the legitimacy of the policy by claiming that 1) It would support the price of rice in the market that would finally lift the well-being of farmers; 2) It could promote the country's economic growth with the expansion of domestic consumption when farmers have better income; 3) The scheme would result in a higher price of rice compared to the market price. The Pheu Thai party proposed the policy during the national election campaign. When the party won the election, the rice pledging scheme was implemented in 2011.[10] The scheme was a so-called populist policy since it was formulated to maintain the party's popularity to satisfy people who cast a vote for the Pheu Thai party.

However, before launching the scheme, many scholars as well as the National Anti-Corruption Commission raised concerns that the policy is prone to corruption and could lead to massive devastation due to its size in terms of the amount of budget, the number of people involved and the area or operation.[11] As a result, they urged for a reconsideration and termination of the policy. Turning a blind eye and a deaf ear to warnings, the government initiated the project.

In operation, to begin with, farmers were required to register with the Agricultural Office in their district. They have to provide information regarding the amount of rice planted (by land area) so that the government could predict the amount of the yield. Meanwhile, the local mill had to apply to the State and the State will select which mill to participate in the programme.

After the harvest, farmers bring the harvested rice to the registered mill. The mill will record quantity and quality in terms of moisture, purity and weight. At this stage, a warrant certificate was issued to farmers. This document made them eligible receive money from the Bank for Agriculture and Agricultural Cooperatives.

The mill, then, started threshing harvested rice crop into rice before delivering them to the central warehouse established in each area. The central warehouse was also required to register and be selected by the State.

The final procedure was to distribute rice through various methods including exporting through Government to Government (G2G) deals, packing for domestic sales at cheap price to reduce the people's cost of living. Also, the government donated some of them to those affected by natural disasters both in the country and abroad.[12]

The corrupt behaviour has been identified in each stage of the rice pledging scheme operation. Firstly, some farmers provided false information regarding the amount of planted area that turned out to be too excessive. The excessive amount of planted area would make

[9] Rathamarit, U. (2016) Policy Corruption Project: Legal Measures to Control and Prevent Policy Corruption in Thailand, The Thailand Research Fund (TRF), Bangkok.
[10] Ibid.
[11] Mahakun, V. (2018) Lesson learned in fighting corruption in the rice-pledging scheme, ANTI - CORRUPTION FOUNDATION, Bangkok.
[12] Dechgitvigrom, W. (2014) An epic of Cheating: Rice, Lips Publishing, Bangkok.

them eligible to bring more harvested rice to join the programme. Some farmers or the mill fraudulently imported rice from neighbouring countries at cheaper prices to sell them in the programme at higher prices so that they could gain the surplus. [13] For instance, the pledge price of jasmine rice (moisture content not exceeding 15.00 per cent) was 15,000-20,000 baht/ton, while the market price was 8,000-9,000 baht/ton.

Next, it was found that some unqualified mills and the central warehouses offered bribes to the state offices in exchange for being selected by the State to join the programme. The mills played a key role in the corruption process. They distorted the moisture, purity and weight of the rice. Consequently, the amount of money that farmers participating in the project received was less than it should be. The mill distorted the overall weight so that they could bring more rice into the programme. The investigation also found that some mills brought the harvested rice (with higher quality) received from the farmers and sold them itself. The mills then take harvested rice from other sources (with inferior quality) and delivered them to the central warehouse. Meanwhile, the central warehouse also failed to secure the rice as a large amount of rice was lost from the warehouse. They also distorted the moisture, purity and weight of the rice in exchange for benefits paid from the mills.

To distribute rice, the government committed a deal “Government to Government (G2G)”. However, it turned out that there was not trade between states as planned. Some influential persons in the rice industry had connections with people in the government and set up fake companies aboard to buy rice from the government at cheap prices.

From the investigation, the damages were about 136 billion baht. The Supreme Court's Criminal Division for People Holding Political Positions sentenced a jail term without suspension against the Prime Minster and the Commerce Minister at the time.

The criminal charge against the Prime Minister at the time she violated Section 157 of the Criminal Code on malfeasance. Section 157 concerns wrongful exercise of duties, and it stipulates that whoever, being an official, does not exercise any of functions to the injury of any person, or dishonestly omits to exercise any of his functions, shall be punished. The Court points out that she failed to scrap the policy in spite of knowing the scheme was plagued by corruption.

Meanwhile, from the investigation, the former Commerce Minister found guilty of falsifying G2G deal between Thailand and China. The ministry insisted that rice was sold to Chinese firms, acting on behalf of the Chinese government. Actually, there was no rice exported through G2G deals but locally sold. The firms claimed to be Chinese were fraudulent set up by Thais. The fabricated deals with the Chinese firms caused huge losses to Thailand.

The rice pledging scheme is a new policy that the government initiated without precautionary measures against possible corruption. The government hastily kicked off the project in spite of arguments from various actors. Moreover, there are no studies conducted to identify the possibility of success and failure, pros and cons and other risks of the project. That is why the scheme is called a populist policy, operating to satisfy those who cast a ballot for the party. The scheme created opportunities for all parties to seek advantages, and it seemed as though the process was lawful.

[13] Ibid.

IV. POLICY CORRUPTION RISK INDICATOR

Apart from seriously cracking down on corruption and motivating all stakeholders in fraud prevention, one of the attempts that the National Anti-Corruption Commission initiated to prevent policy corruption is by designing a tool named the "Policy Corruption Risk Indicator", or PRI. The cabinet has approved the National Anti-Corruption Commission's proposal on the issue in 2019.

PRI is a declaration form that all political parties have to submit to the Office of the Election Commission of Thailand, and it is a prerequisite before elections. PRI aims at providing information for people to help them decide which political party to vote for. Political parties are required to select at least one important policy or project to assess. The selected policy or project must be one that political party prioritizes and which the party intends to implement after being elected.

With PRI, political parties must identify the origins of the policy or project, including whether it has cascaded from the national strategy; assess whether their own project or policy is at risk of policy corruption as well as to provide adequate measures to prevent corrupt practices; and analyse impacts, worthiness and feasibility. PRI also pushes the political parties to conduct reliable research attached to the assessment.

The reason why PRI is so important as it would directly help promote transparency and accountability by making political parties' data available to all. However, in 2019, after the PRI assessment was implemented, there were only 24 political parties (from 103 parties) that submitted the form. It reflects that the PRI itself still lacks enforcement. Currently, in order to prepare for the next general election, which could take place by the end of 2023, the National Anti-Corruption Commission in cooperation with the Office of the Election Commission of Thailand are redesigning the PRI with the intention to prevent policy corruption at the beginning of the new government term.

FORMS OF CORRUPTION IN TIMOR-LESTE AND ITS COUNTERMEASURES

Matias Soares[*]

Corruption is a pernicious phenomenon that subverts the fundamental values of life in society. Corruption undermines the foundations of the democratic rule of law, distorting the fair distribution of national wealth, fostering divisions and friction in society. In a word, corruption attacks justice and social harmony. Fundamental principles of the Constitution such as the university of laws, equality and legality are emptied of content in favour of the particular interests of some unscrupulous people. As it is today a global phenomenon of increasingly difficult persecution and combat, it is imperative that the Timorese State adopt exceptional measures to ensure greater effectiveness in the fight against this crime.

The fight against passive corruption, therefore, must be assumed by everyone and provided with legal mechanisms that allow facing its hidden nature because, although it offends the foundations of the State, it ends up not having anyone, in particular, as a victim. The Timorese legal framework already has legal instruments to prevent and combat corruption and associated crimes, such as the Penal Code and the legal regime for preventing and combating money-laundering and the financing of terrorism. In the current context, it is important, in coherence with the existing legal framework, to establish new measures to prevent and fight corruption. Therefore, it was understood that this law should contain, as it does, provisions of a preventive and not just criminal nature. And, in this context, it was also considered convenient to have already provided here about the regime for the declaration of income, assets and interests.

Regarding criminal matters, it was decided to concentrate all corruption crimes in a single legal diploma, which resulted in the expurgation of those provided for in the Penal Code and their inclusion in this law, together with the new types that it enshrines.

Timor-Leste is one of the world's youngest and Asia’s poorest countries, and the country is under development in various aspects of the country. The weakness of the regulatory and institutional framework in Timor-Leste is exposed to being targeted as a layering country in global money-laundering schemes, as well as losing public money through corruption, embezzlement and tax evasion and other crimes that are committed by public servants relating to the projects and public tenders. According to World Bank estimates, countries lose around 2 per cent of GDP annually due to corruption: in other words, approximately 60 million USD. The regulation and legal framework, especially penal code, entered into force in 2009, and that same the Anti-Corruption Commission (CAC) was established with the main task of the prevention of corruption.

Ten years later in year of 2020, the Timor-Leste National Parliament approved and the President of Republic promulgated a new law that defines the new measures to prevent and fight against corruption. The law was published and came into force in February 2021.

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The objective of the new law is the necessary mechanisms for an effective fight against corruption in order to meet the Constitution's fundamental principles, such as the universality of rights, equality and legality. The new law describes the general measures to prevent corruption and the income, assets and interests declaring regime. The corruption crimes, the applicable penalties and the special means of obtaining and retaining evidence are also defined. This law also changes other pieces of legislation related to preventing and combating corruption, namely the Penal Code, highlighting the creation of the new categories of illegal acts and the concentration of all corruption crimes in a single legal diploma.

With regard to the public sector, the Law 7/2020 provides guidelines that emphasize the need to observe appropriate procedures for the selection and training of people for public office, the turnover of these people in these positions and, finally, the need of implementing a regular training programme for them. The law also proposed a set of rules to be developed in guiding and regulating the conduct of public officials, in order to promote the personal behaviour standards of integrity, honesty, responsibility and impartiality. In order to facilitate the reporting of corrupt acts, it is foreseen that police and judicial authorities may accept anonymous complaints and protect the identity of whistle-blowers protection and protection against reprisals.

This law also emphasizes the promotion of publicity and transparency in procurement and public procurement procedures. It is also stressed the need for procurement procedures for goods and services acquisition to be carried out based on economic criteria and based on the principle of optimizing the cost and benefit relationship. Further, in addition to facilitating the public access to the competent authorities, it is expected that the administrative procedures may be simplified, thereby mitigating corruption opportunities.

Another innovation implemented through the law in question concerns the obligation for all individuals in public service and their household members to declare income, assets and interests, thus enabling the State to discover and prevent conflicts of interest and monitor more efficiently the wealth variations, in order to identify significant and unjustified increases in the declarant's wealth. These statements may be completed in an electronic form, to be prepared and provided by the relevant authorities.

It is also defined that public institutions disclose their activity, operation and decision-making processes to the public, through regular publication of activity reports and their broad dissemination through electronic media.

This law also recognizes the existence of more appropriate mechanisms to control corruption, such as the accountability of legal persons. Thus, commercial companies that engage in illegal practices such as bribery, influence peddling or other practices that result in the removal of competitors in procurement procedures or money-laundering, for example, will be held criminally liable.

This law also forbids public officials, for a two-year period after the end of his term, from engaging in any activity in the private sector, whenever the service to be rendered or the employment is directly related with the roles performed by him or under his supervision when he was in office holding a public position.

Law 7/2020 defines corruption crimes as those committed while exercising public roles, passive corruption of public official for an illegal act, passive corruption of a public official for

a legal act, active corruption of a public official, embezzlement, embezzlement of public property, violation of the participation right and equal candidacy in procurement, sale or concession tenders, abuse of power, profiting from economic interest in business and conflict of interest. Whoever is convicted of a crime enshrined in this Law, punishable by imprisonment for more than 5 years, is prohibited from taking or being in public offices for a period of 5 to 10 years.

Through the enactment and entry into force of this important law, Timor-Leste marked a fundamental stage of the national cause to fight against corruption. However, the determining factor of this effort goes beyond the enactment, which will be the institutional and social preparations to rigorously implement the law, always maintaining the momentum and the political will to fulfil the purposes of this law.

Responding to the new law, the Anti-Corruption Commission (CAC) of Timor-Leste, assisted by UNODC has developed manuals on asset declaration and investigations for the Commission, and the manuals are used in the context of operationalizing the new Anti-Corruption Law (2020), which introduces new criminalization of corruption elements. The law also mandates the CAC to administer the new system for the declaration of income, assets and interests, with a view to preventing conflicts of interest and facilitating the detection of sudden, unjustified changes in wealth.

As part of the manual on asset declarations, assisted by the UNODC, the CAC has prepared a declaration form that is currently under review and being considered for approval by Timor-Leste's Supreme Court of Justice. The manual includes technical instructions on the form's effective use, in order to support verification, collation and analysis efforts within the country's legal framework. Another key element of the manual is a compendium detailing practical ways to respond to borderline cases, such as wealth in crypto currencies, how to consider former spouses and requirements for re-elected Members of Parliament.

Meanwhile, the manual on investigations looks comprehensively at all stages of preliminary and formal anti-corruption investigations, within the legal context of Timor-Leste. Sections include the legal authority of the Commission, whistle-blowing, responding to complaints, financial and digital investigations, managing information, interviewing witnesses, developing cases and asset recovery.

Multiple studies in different countries and sectors have shown the value of whistle-blowing to detect fraud, corruption and other misconduct and its importance is often rated equally high as internal audits or due diligence checks. At the same time, challenges in reporting are very high and acts of corruption remain largely under-reported, both by direct witnesses and by whistle-blowers who come across alleged wrong doing in the workplace. Studies show that potential whistle-blowers do not believe in appropriate follow-up to their report; they are afraid of retaliation ranging from negative consequences for their career to physical threats; they are afraid of civil or criminal liability; and they would not know where to receive advice.

Timor-Leste currently has no whistle-blowers' protection legal framework. A witness protection law was enacted in 2009, but the operating procedures and institutional arrangements to operationalize the law are still missing. The event resulted in a series of recommendations on how to develop these arrangements; Timorese authorities requested follow-up support from the UNODC to establish the needed systems at the national level.

Approved on 29 June 2009 by the National Parliament, the law that creates the Anti-Corruption Commission aims to give the competence to the independent State specialized criminal police that in its action will be based only on the criteria of legality and objectivity in articulation with the competent authorities, as it is important for its credibility as a mechanism to combat corruption.

Corruption is a phenomenon with negative consequences for society and the economy that affects the principle of democracy and the rule of law and, given that fact, the IV Constitutional Government wrote and proposed to the National Parliament a legal framework for the CAC. This is a clear example of ethics, responsibility and transparency in governance according to the principles set out in the Constitution and reflecting the spirit of the United Nations Convention against Corruption.

The CAC reports to the Parliament but is otherwise fully independent. It has the power to begin and conduct criminal investigations related to corruption cases, according to the criminal code. Besides that, it also has the role of education and public awareness, by identifying and promoting the measures that prevent corruption.

Corruption cases are also connected with transnational organized crime, which is characterized by having high profits and involving more than one person and one country as its main scope, violates human rights, causes damage and undermines the socio-economic development of countries. The advent of communication technologies, the interconnection of the world economy and the greater circulation of people, goods and services, created favourable conditions for organized crime to globalize its activities, becoming a stateless organization, which stopped being contained within the limits of physical borders of a country, having similar characteristics in the different countries, and that makes the use of the most modern technology one of the mechanisms of it global strategy.

Faced with a criminal phenomenon with similar characteristics, responses focused only on the internal mechanisms of each country will be doomed to failure. Therefore, the response to transnational organized crime will have to be coordinated, and by international legislative systems in which the main focus should be on cooperation between the different organs of the different States, with responsibility for the prevention and repression of crime. Therefore, it is necessary to strengthen the rule of law and the institutions responsible for the investigation, prosecution and adjudication of transnational organized crime at the level of each affected State and, at the same time, to strengthen the State's mechanisms for international legal and judicial cooperation. In this context, States are faced with the challenge of ratifying and adopting their domestic legal systems, the most important international conventions whose main purpose is to combat organized crime, and which encourage cooperation and mutual international legal assistance.

The Timor-Leste Parliament also adopted the United Nations Convention against Transnational Organized Crime (Palermo, 2000) and the United Nations Convention against Corruption (Mérida, 2003). The adoption of these conventions that encourage international legal and judicial cooperation mean that Timor-Leste is able to ensure not only due legal processes, but above all that the borders of countries do not impede the fight against crime. These conventions ensure that criminals who commit cross-border crime can be pursued, tried and held criminally responsible.

By generating transnational organized crime with high profits, its fight also will only be effective insofar as the assets and advantages generated by it are effectively reverted to the State, through mechanisms of widespread loss, of assets and advantages of the crime that once reverted in favour of the States should preferably be used to strengthen the rule of law and the institutions of the States responsible for fighting crime.

Aware of the damage that transnational organized crime is capable of causing and, convinced that acting in isolation, it will not be possible to effectively fight these criminal phenomena, Timor-Leste not only ratified the most important United Nations Conventions mentioned above, but also approved specific legislation on the preventing and fighting money-laundering and terrorist financing, which establishes special measures to collect evidence, breach of confidentiality and loss of assets in favour of the State not only in relation to money-laundering and terrorist financing, but also to a wide range of serious crimes. Timor-Leste also approved specific legislation that regulates international legal and judicial cooperation in criminal matters, to favour and encourage cooperation and mutual assistance.

International, bilateral and multilateral conventions, ratified by Timor-Leste, under the terms of domestic law, are the main sources of international judicial cooperation and prevail over the legislation, with the exception of the Constitution of the Republic. In addition to the Conventions, agreements and treaties, there are two other main sources that regulate international judicial cooperation: the Constitution of the Republic and Law No. 15/2011, of 26 October.

Due to lack of understanding about the laws and regulations regarding the public administration service, many public servants and high-level government officials are involved in maladministration and corruption. The impact is that public projects lack sufficient quality, so the public prosecutors have to investigate many cases such as embezzlement, tax fraud, falsification of public documents, harmful administration, economic participation in business and many more.

Internally, the Public Prosecution of Timor-Leste can utilize a new law that entered into force on 17 August 2022 that regulates the Central Office for Combating Corruption and Organized Crime, which was already established in 2015. During this year from January to July, the Central Office for Combating Corruption and Organized Crime was handling investigations of about 48 cases and most cases about embezzlement, tax fraud, falsification of public document, harmful administration, economic participation in business, abuse of power and others.

These were the ideas and information that I would like to share with the distinguished colleagues in this forum and my sincere thanks to the UNAFEI for inviting me to this conference.

PROMOTING CITIZENS' PARTICIPATION AND ENGAGEMENT AS A POWERFUL COLLECTIVE APPROACH TO ANTI-CORRUPTION EFFORTS

Luis De Oliveira Sampaio[*]

I. INTRODUCTION

Corruption has been considered as a very serious global phenomenon today, because corruption has a destructive impact that no longer only hinders national development, slows economic growth, widens inequality and poverty gaps, but has further and massive implications for climate change and the environment. Various entities at regional, national and international levels have been attempting to tackle corruption. However, it remains well entrenched and is even on the rise in some countries, particularly among those in the developing world. Of course, corruption also occurs in developed countries, but they generally have stronger legal frameworks and mechanisms in place to tackle it. By contrast, many developing countries, such as Timor-Leste, lack effective institutional capacity to deter corrupt practices.[1] Therefore, the efforts to eradicate corruption requires a more comprehensive, consistent, long-term approach and above all to build and increase awareness of citizens to be actively involved in, participate in and synergize the efforts to eradicate corruption in a consistent and organized, measurable manner. This concept is reflected in article 5 of UNCAC regarding preventive anti-corruption policies and practices, which states that:

> …Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.

Internally, CAC has stipulated in its general objective to prevent corruption by putting forward the mandate that "an active participation of citizens, through associations or groups of associations, the formal and informal education sector, youth and student groups are the key element in efforts and movements to eradicate corruption." In addition, CAC's strategic plan also reaffirms the importance of increasing public knowledge and awareness in the movement to prevent and eradicate corruption.[2]

Basically, the discourse of citizens' involvement in various aspects of the state is not a new concept, and the movement to eradicate corruption has already gained attention in the last few decades. As the National Democratic Institute (a civil-society organization (CSO) based in the United States) emphasizes that the citizens have "the right to participate in decisions that affect

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[1] Aderito de Jesus Soares, Former First Timor-Leste Anti-Corruption Commissioner; Social Movement as an Antidote to Corruption.

[2] Planu Estratejiku CAC 2021-2025: http://cac.tl/wp-content/uploads/2021/03/Planu-Estratejiku-Comissao-Anti-Corrupcao-PECAC-tinan-2021-2025.pdf

the public welfare" and "participation is an instrumental driver of democratic and socio-economic change, and a fundamental means of empowering citizens."[3]

The people of Timor-Leste have a unique history of the national liberation movement which was closely linked to the involvement of its citizens. Considering that the phenomenon of corruption has been seen as a serious social issue and it has a broad impact on all aspects of the life of the nation and state, the efforts to involve citizens' participation must be seen as mandatory.

In the context of Timor-Leste, the involvement of citizens in the issue of eradicating corruption so far has already shown a positive trend, as one of those concrete examples is the involvement of citizens to prevent corruption during the Covid-19 pandemic. However, there are still structural and cultural barriers because it seems that the citizens' involvement in fighting against corruption is still at the individual level, spontaneous, unorganized and unsystematic, inconsistent and, most concerning, is politicized. In particular, reactions and protests against anti-corruption issues begin to show up when their interests are not accommodated, then they will speak up – but on the other hand, if their interests are accommodated, even though there are clear indications of corrupt practices, their voices disappear.

II. LEGAL FRAMEWORK

As discussed above, article 5 of UNCAC has emphasized the importance of public participation which reflected the principles of the rule of law, integrity, transparency and accountability of each participating country or State party.

However, long before Timor-Leste ratified UNCAC, the Constitution of Timor-Leste, particularly in article 6 (b) on the objective of the State, expressed guaranteed active participation of all citizens, including guarantees of the right to fundamental freedoms and respect for the basic principles of democracy. This implies that the fight against corruption is a moral obligation from all elements of the state.

As part of efforts to integrate citizen involvement in the policy of preventing and eradicating corruption, Law No. 7/2020 concerning "Measures for Prevention and Eradication of Corruption", in its article 2 (2) stipulates that in order to formulate a national anti-corruption strategy, it guarantees a broad scope of public participation, especially through CSOs, the private sector, the media and other social elements.

Furthermore, article 24 especially in paragraphs (1) and (2) of the above-mentioned law, specifically requires public participation in decision-making, especially in the formulation of anti-corruption prevention strategies, and its revision or reformulation relies on the participation of all representative sectors of the organized civil society, including, among others, non-governmental organizations (NGOs), the media and religious organizations in which all elements of society are encouraged to take an active role so that their voices and interests are accommodated.

[3] UNODC Module 10: Citizen participation in Anti-Corruption Efforts https://www.unodc.org/e4j/en/anti-corruption/module-10/key-issues/the-role-of-citizens-in-fighting-corruption.html

III. EXAMPLES OF TRENDS IN CITIZENS' PARTICIPATION IN PUBLIC POLICY AND OVERSIGHT OF STATE BUDGET EXPENDITURE

The tradition of citizens' participation in Timor-Leste is not a new issue, as the implications of a democratic state, especially in terms of the state to encourage the citizens to take an active role in the public policy process has been showing a positive trend.

The following discussion will provide some real examples of the communities' or citizens' involvement, both individually or collectively, in an organized and systematic manner. Especially related to the efforts in influencing public policy through the legislative process in regard to state efforts and commitments in terms of policies for preventing and eradicating corruption and controlling the state budget expenditure during the Covid-19 pandemic.

There are some legislative policies on public interest which were discussed and approved in the National Parliament as a result of the movement and advocacy efforts of the citizens, as follows:

1. **Law No.7/2020 of 26 August: Measures to Prevent and Combat Corruption:** One of the examples of a great and historical achievement is Law No.7/2020 concerning Measures to Prevent and Combat Corruption. It was legally enacted on 22 February 2021. The law was finally discussed, passed and approved in the National Parliament and then promulgated by the President because of the result of movements, efforts and voices involving various components of society ranging from civil society, mass organizations, the youth organization of university students, academics and religious-based organizations. Advocacy and public engagement movements have been carried out consistently for approximately a decade immediately after the establishment of CAC. This law generally focuses on prevention efforts in which there are two most important components in the area of prevention, such as the national anti-corruption strategy and the regime of declaration of income, assets, and interest from the high ranking of public officials.[4]

2. **Cancellation of the draft defamation law:** Another important issue that is considered as the biggest contribution of public engagement through citizen participation and mass media and social media is the cancellation of the government's initiative to enact a special law on criminal defamation which was initiated by the Ministry of Justice's legislation department in around 2020. This initiative, of course, is strongly against the values of Timor-Leste's Constitution which guarantees freedom of opinion and freedom of the press as guaranteed in articles 40 and 41 of the Constitution. Above all, if the defamation law would have been enacted it would not only disturb the freedom of expression and media freedom, but it possesses a strong effect and serious threat to anti-corruption efforts. The defamation law would silence the voices and speech of NGOs and journalists, academics and youth/student movements and hinder citizens from fully participating in a critical way to contribute to national development, including being afraid to report the corrupt behaviour of government officials in the public sector because they would be criminalized through the Defamation Law.

[4] LEI N.o 7 /2020 de 26 de Agosto- MEDIDAS DE PREVENÇÃO E COMBATE À CORRUPÇÃO: http://cac.tl/wp-content/uploads/2021/03/Medidas-de-Prevencao-e-Combate-a-Corrupcao-Lei-No.7.2020.pdf

Considering that freedom of opinion and the press are constitutional rights of all citizens, almost all elements of societies are actively involved, both through conventional media and social media, and submission of letters to sovereign institutions of the country which all are actively against this draft law which resulted in the draft of the law being withdrawn from the government's legislative agenda.

3. **Oversight of the Covid-19 budget:** Almost all countries around the world are experiencing a serious shock regarding the threat of the Covid-19 virus, and the impact is still being felt today. This forces all countries to take strategic steps to respond to the massive impact of Covid-19. However, it must be realized that the emergency response to the Covid-19 pandemic does not give serious attention to the potential risks of corruption. In an analysis report from the U4 Anti-Corruption Resource Center, it was concluded that the policies related to the response to Covid-19 have paid very little attention to good governance and corruption.[5]

   In response to the threat of the Covid-19 virus, the Government of Timor-Leste issued Resolution No. 28/2020, 19 August – as a short-term measure to minimize and mitigate the impact of the economic crisis and introduce the new Economic Recovery Plan[6] for the country. One of the government's responses through the programme called "social assistance and economic rescue for people who were affected by Covid-19" was a subsidy provided to those families whose income is below $500 USD. This subsidy programme cost approximately USD 67 million, which covered the period of April to December 2020, and the budget covered 334,008 households as beneficiaries.[7]

   In relation to this subsidy, what I want to discuss in this paper is the involvement of the citizens or community to oversee how the relevant institutions carry out their duties with integrity in a transparent and responsible manner. Considering the weaknesses of the internal control system, CAC mobilizes important elements such as civil society, youth groups, students, the media and other oversight institutions such as the Civil Service Commission, the State of General Inspector and Ombudsmen office to control how the institutions in charge expend the funds allocated. From the close collaboration and effective oversight from various levels of civil society, media and other groups as above mentioned, in the end, funds amounting to US$4,211,776 were successfully returned to the state treasury fund from the total allocated budget.

   The three cases described above illustrated how to promote citizens' involvement and engagement as a powerful collective approach to anti-corruption efforts. The last case showed the real and concrete result from the citizens' participation.

IV. STEPS TO STRENGTHEN CITIZENS' PARTICIPATION

Since its inception in 2010, the CAC has been very active in raising awareness about the causes and consequences of corruption in public life. The CAC's vision was to "create a strong culture of rejecting corruption" in Timorese society. Awareness-raising was central to achieve

[5] https://www.u4.no/publications/anti-corruption-in-covid-19-preparedness-and-response
[6] Government approves short term measures to mitigate the COVID-19 impact on the national economy http://timor-leste.gov.tl/?p=25275&lang=en&n=1
[7] RELATÓRIO E PARECER SOBRE A CONTA GERAL DO ESTADO: https://www.tribunais.tl/wp-content/uploads/2022/02/RPCGE-2020-1.pdf

this objective, given the dark trajectory of corruption in modern Timorese society. During the first Commissioner of CAC inaugural ceremony, he strongly emphasized that "combating corruption can only be successful if it becomes a widespread social movement involving all segments of Timorese society" (Soares 2010).

As discussed in the examples above, the CAC is and will continue to encourage wider participation in efforts to involve community participation in fighting and combating corruption. However, as emphasized by Mr. Tony Kwok Man-wai,[8] we should realize that there is no single solution to the problem of corruption. We need a comprehensive approach.

Various outreach activities, such as campaigns and seminars at local, regional and national levels will continue to be the main agenda of CAC's work plan to increase public knowledge and awareness about the negative impacts of corruption. This programme has been strengthened in article 25 (1) of Law No. 7/2020 regarding public information and education, which requires CAC to conduct campaigns and publications through pamphlets and posters and encourages government institutions to use internet services to facilitate public access to programmes and public service activities in a transparent and accessible manner.

The CAC annual report published every year shows that at least 7,500[9] people from various levels of society have benefited from public-awareness efforts and information dissemination about corruption and efforts to combat it which are carried out regularly every year by the Integrity Values Promotion Unit.

In addition to activities designed and programmed in the annual work plan, the CAC also develops various efforts through meetings with leaders of NGOs, conventional and social media, political parties, students and university students. In particular, the CAC has also signed MOUs with two or more NGOs to carry out knowledge and awareness-raising activities on the impact of corruption. Further, the CAC also signs an MoU with NGOs to monitor the trial process of corruption cases in court and help analyse the draft of a new law in the National Parliament to provide input on articles that have the potential to give room/space for corruption to occur or those articles that are contrary to state commitments to fight corruption.

V. CHALLENGES

As discussed above, there is a strong spirit and enthusiasm at all levels of society to fight corruption. However, this enthusiasm and spirit are still faced various challenges and obstacles.

These challenges might as well be in the form of structural barriers, such as a lack of adequate understanding of the negative impacts of corruption and a culture of tolerance and permissiveness in the society which greatly affects the efforts to eradicate corruption in a consistent and measurable manner.

In addition, the cultural and social factors in Timor-Leste's society result in the fact that almost everyone knows each other, especially in the public sector, which also contributes to the difficulty of eradicating corruption. Such challenging factors that affect efforts to eradicate corruption are seen to be very passive and stagnant. This requires new strategies and innovative approaches.

[8] Former Deputy Commissioner and Head of Operations, Independent Commission Against Corruption (ICAC), Hong Kong. Paper: National Anti-Corruption Strategy: The Role of Government Ministries.
[9] http://cac.tl/wp-content/uploads/2022/08/RELATORIO-ANNUAL-CAC-2021-2.pdf

VI. CONCLUSION

Corruption is a complex social phenomenon which has a very massive destructive impact on humans' lives and the environment; therefore, it requires social solutions that involve all components of society to tackle corruption. Everyone in society should take an active role to promote citizens' participation against corruption.

In particular, the history of Timor-Leste's struggle for liberation essentially involved active participation from citizens throughout the process. The most important thing is how the efforts are able to build collective awareness of all citizens that corruption is a new form of colonialism that has a destructive impact that threatens the existence of the state.

To ensure consistent, well-coordinated and well-organized public involvement, of course, requires an integrated work plan. Timor-Leste's government is now at the stage of preparing a national anti-corruption strategy, as an obligation under Law No.7/2022, so the concept of integrating citizens' participation must be considered as a mandatory element.

ANTI-CORRUPTION IN VIET NAM NOWADAYS

Hoang Thi Thuy Hoa[*]

I. ACTUAL SITUATION OF CORRUPTION IN VIET NAM

The situation of embezzlement, waste and corruption in Viet Nam has been going on for many decades, occurring in all areas of social life and at all branches and levels. Corruption has greatly affected socio-economic development and reduced people's trust in the Communist Party and the State of Viet Nam. According to Transparency International (TI), Viet Nam's CPI ranking in 2021 is 39/100 points, up 3 points from 36/100 points in 2020, ranking 87/180 countries and territories. This is also the highest CPI of Viet Nam in the period 2012-2021. In the last 10 years, in general, Viet Nam's CPI has improved from a low of 30 points in 2012 to 39 points in 2021. However, it is still lower than the regional average (42 points), and is among the two-thirds (2/3) of countries in the world with serious corruption (under 50 points). This shows that corruption in the public sector is still considered very serious in Viet Nam.

The Summary Report on Communist Party Building and Charter Amendment at the 13th Party Congress stated: "Corruption in a number of areas is still serious and complicated, with increasingly sophisticated manifestations; The state of harassment of people and businesses is still quite common, causing frustration in society. Corruption is still one of the threats menacing the survival of the Party and the regime". Every time people and businesses go to apply for a certificate of ownership of houses or land, go to a doctor, send their children to school, or transfer schools, apply for investment capital, or build a construction project etc., they must give some money as "lubrication" so that everything will run smoothly. This form of corruption is "petty corruption", causing frustration and discomfort for people and the whole society. Corruption identification: From the current situation of the fight against corruption in our country, the main types of corruption can be identified as follows:

A. Economic Corruption

This is a very common form of corruption that occurs in every corner of social life, from high-ranking officials to low-level officials. But it's easy to see that they use their assigned positions and powers to harass and make it difficult to get money and material things. This form can range from petty corruption, such as receiving envelopes filled with modest amounts of money, to large-scale corruption, such as taking bribes with the value of tens of billions of dong, villas, land, cars etc.

B. Corruption in Power

This is a form of corruption in which people holding positions and powers take advantage of their positions to bring close friends, relatives and bribe-takers into holding important positions in the apparatus of the Party, the State and socio-political organizations for self-seeking purposes. This type of corruption is very dangerous and difficult to detect. When they place people without ethics and professional competence into important positions, it affects not

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only the immediate but also the long-term development, affecting the whole generation, and it is difficult to overcome the consequences.

C. Political Corruption

This is a form of corruption of powerful people who influence decisions on mechanisms, policies, and major decisions of the Party and State in order to benefit themselves, their families, or a group of people. They may collude with people with the same power to change guidelines and policies of the Party and State in order to seek benefits for their sector, locality, unit or group of people with the same interests, such as making regulations on tax policy, salary, appointment criteria, retirement or making investment decisions in big projects: building airports, seaports, urban areas, etc.

II. POLICY OF THE COMMUNIST PARTY AND STATE OF VIET NAM IN THE FIGHT AGAINST CORRUPTION

Anti-corruption in Viet Nam is identified as the responsibility of the whole political system and an important, urgent and long-term task throughout the process of socio-economic development and promoting the rule of law in Viet Nam. The Party's viewpoints on anti-corruption are clearly reflected in the Party's Resolutions, Directives and Conclusions over time, specifically: Resolution No. 04-NQ/TW, dated 21 August 2006, of the third meeting of the 10th Party Central Committee on strengthening the Party's leadership in the fight against corruption and waste (Resolution No. 04), determined to continue to improve the state institution and strengthen the inspection, examination, audit, investigation, prosecution and adjudication of corruption cases to improve the effectiveness of the fight against corruption and waste; Enhance publicity and transparency in operations and ensure integrity among officials of inspection, examination, audit, investigation, prosecution and adjudication agencies; Resolutely and promptly handle corrupt acts in anti-corruption agencies and units and those who cover up corrupt acts and prevent the fight against corruption.

In recent years, the Communist Party of Viet Nam has continued to set out guidelines and viewpoints to further improve the quality and effectiveness of anti-corruption work, especially the detection and handling of corruption cases in the current period, specifically: Conclusion No. 21-KL/TW, dated 25 May 2012, of the 5th Plenum of the XI Central Committee on continuing to implement the Resolution No. 04 on strengthening the Party's leadership for the prevention and fight against corruption and waste, Directive No. 33-CT/TW, dated 3 January 2014, of the Politburo on strengthening the Party's leadership in the declaration and control of the declaration of assets; Directive No. 50-CT/TW, dated 7 December 2015, of the Politburo on strengthening the Party leadership in detecting and handling corruption cases, which requires the implementation of many solutions to prevent and fight against corruption, Directive No. 27-CT/TW, dated 10 January 2019, of the Politburo on strengthening the Party leadership in the protection of whistle-blowers and those fighting against corruption.

At the Resolution of the 13th Party Congress, anti-corruption continued to receive the Party's attention and drastic action. Accordingly, the fight against corruption must be persistent and continuous, considered as a particularly important task and carried out with the motto "no forbidden zones, no exceptions", implementing synchronous measures in "political, ideological, organizational, administrative, economic and criminal" fields in the fight against corruption; promote "control of power" to prevent corruption; promptly handle, transfer and replace leading and managerial cadres when having negative manifestations, corruption, low

reputation; strictly handle officials who are corrupt, extortionate, causing trouble to people and businesses; and gradually expand the scope of anti-corruption to the non-state sector to prevent collusion between degenerate state officials, civil servants and those operating in the non-state sector.

As the leading force of the state and society, the Communist Party of Viet Nam is also the leading and most resolute force in the fight against corruption. In February 2013, the Party established the Central Steering Committee on anti-corruption under the Politburo, led by the General Secretary of the Steering Committee. In 2014, the first National Conference on anti-corruption was held. After that, the Party has had many policies and carried out a series of actions to strengthen the detection and handling of corruption cases.

As a result, from 2014 up to now, the National Assembly of Viet Nam has developed, supplemented, amended and passed about 100 laws and ordinances, including laws aimed at building and perfecting the state institution on socio-economic and anti-corruption, step-by-step perfection of the mechanism of prevention such as: the Law on management and use of public property; Law on property auction; Law on Denunciation (amended); Enterprise Law; Law on Bidding; Law on management and use of state capital invested in production and business in enterprises etc., or laws to strengthen the fight against violations and crimes related to corruption such as: the 2015 Law amending and supplementing a number of articles of the Penal Code; the 2015 Criminal Procedure Code; the 2018 Law on Anti-corruption etc. Recently, law enforcement agencies have detected a series of violations and crimes, and strictly handle them according to the provisions of the law.

Up to now, anti-corruption efforts have made a strong step forward, achieving many comprehensive, positive and clear results. Corruption is gradually being curbed, prevented, repelled and is tending to decrease, contributing to maintaining political stability, strengthening people's confidence, creating a healthy business environment, becoming an important factor promoting socio-economic development in Viet Nam in recent years.

III. REGULATIONS OF VIETNAMESE LAW ON ANTI-CORRUPTION

A. The Penal Code 2015

Corruption and position-related crimes are specified in Chapter XXIII of the Penal Code 2015, from Articles 352 to Article 366. In general, the provisions on crimes related to position in the Penal Code 2015 inherit the previous provisions of the Penal Code 1999. In addition, the following new content has been added:

- Expanding the scope of crimes related to positions and persons holding positions. According to Article 352 of the Penal Code 2015, crimes related to position are not only committed while performing “public duties”, a person holding a position is not only a person who has certain powers while performing “public duty” (as stipulated in the old Penal Code 1999), but also when performing “duty”. By that provision, the Penal Code 2015 has expanded the scope of crimes related to positions not only in the public sector, but also in the private sector; acts of corruption arising in state agencies and organizations as well as in non-state organizations, units and enterprises. (For example, the responsibility of managing assets of a limited liability company with capital contributions from individuals, of a 100 per cent foreign-owned enterprise may be considered and handled.)

- The concept of "bribery" and benefits given or received in some position-related crimes has been extended to non-material benefits. Specifically, the crime of receiving bribes (Article 354), Abuse of power or position to influence another person for personal gain (Article 358), giving bribes (Article 364), brokering bribes (Article 365), Abuse of influence over an office holder for personal gain (Article 366), "bribery" or benefits given or received include not only material benefits such as money, property, other material benefits but also include non-material benefits, meaning the benefits that are not tangible or have a monetary value but have the ability to bring satisfaction to the recipient.

- Provisions on third party beneficiaries in bribery crimes. Specifically, Article 354 on the crime of receiving bribes and Article 364 on the crime of giving bribes both stipulate that "bribery" can be enjoyed by the person holding a position or power or for another person or organization. The specific regulation of the above-mentioned signs creates a full and direct legal basis for dealing with bribery in cases where the bribe is not enjoyed by the person holding the position or power but by the other person or organization with the approval of the person holding the position and power.

- Additional regulations on bribery of foreign civil servants. Specifically, the act of bribing foreign civil servants has been officially recognized as a case of bribery under Article 364, paragraph 6.

B. Law on Anti-Corruption 2018

Institutionalizing the Party's Resolution on anti-corruption and the 2013 Constitution, the Law on Anti-corruption 2018, which was approved by the 14th National Assembly at its 6th session on 20 November 2018 on the basis of revising the Law on Anti-corruption 2005, amended and supplemented in 2007 and 2012, includes 10 chapters with 96 articles. This is one of the important steps in the process of perfecting the law on anti-corruption, not only overcoming the limitations and shortcomings of the Law on Anti-corruption 2005, but also playing an important role in synchronizing with new provisions of relevant legal documents, contributing to improving compatibility with the United Nations Convention against Corruption. In that spirit, the Anti-Corruption Law 2018 supplements and provides new regulations on corrupt acts; objects and types of assets to be declared; on disclosure of assets and income; regulations on what cadres and leaders are not allowed to do, and responsibilities of leaders and related persons.

C. Criminal Procedure Code 2015

In order to enhance the effectiveness of detecting and handling crimes in general and corruption in particular, the Criminal Procedure Code 2015 has some new regulations as follows:

1. Electronic Data

For crimes in the fields of economy, corruption and positions, the very important source of evidence and documents to prove and clarify criminal acts is electronic data. This is a new source of evidence specified in the Criminal Procedure Code, as provided in Article 99 of the Code: (1) Electronic data is a symbol, writing, numeral, image, sound or similar form generated, stored, transmitted or received by electronic means. (2) Electronic data is collected from electronic means, computer networks, telecommunications networks, transmission lines and other electronic sources. (3) The evidential value of electronic data is determined based on the way in which the electronic data is generated, stored or transmitted; measured to ensure and

maintain the integrity of electronic data; and how the originator and other relevant factors are determined.

Regulations on the collection of electronic media and electronic data (Articles 107, 196 of the Criminal Procedure Code 2015) are as follows: Electronic means must be seized in a timely and complete manner, accurately describing the actual situation and sealed immediately after seizing. The seizure of electronic means and electronic data as evidence shall be carried out by competent criminal justice officials and may invite persons with relevant expertise to participate. When seizing electronic media, authorities may collect attached peripherals and related documents. In case the electronic data storage medium cannot be seized, the competent criminal justice agency shall back up such electronic data to the electronic medium and preserve it as evidence, and at the same time request the related agencies, organizations and individuals to store and preserve the integrity of electronic data backed up by competent criminal justice agencies, and these agencies, organizations and individuals must be held responsible before the law. The recovery, search and assessment of electronic data can only be done on the copies, and the results of recovery, search and assessment must be converted into a form that can be read, heard or seen.

2. Special Investigative Measures

In order to meet the need to legislate special investigative measures for corruption, the Penal Code 2015 provides for the first time these measures in Chapter XVI, from Articles 223 to 228. Accordingly, only after cases are instituted may competent persons apply special investigative measures, including: (1) secret audio and video recording; (2) wiretapping; and (3) confidential collection of electronic data. These measures can also only be applied to certain types of crimes: (1) Crimes infringing upon national security, drug-related crimes, corruption-related crimes, terrorism crimes, and money-laundering crimes; and (2) other particularly serious crimes.

Along with that, in order to ensure that the application of these measures is prudent, avoiding violations of human rights and ensuring the evidence-based value of the data obtained, the Penal Code 2015 also strictly stipulates the jurisdiction, order, procedure, as well as control mechanism. Regarding the jurisdiction to decide on application, only heads of provincial-level investigating bodies, heads of military investigating agencies of military zones or higher, by themselves or at the request of the Chief Prosecutor of the provincial-level People's Procuracies, and the Chief Prosecutor of the Military procuracies of military zones have the power to issue decisions to apply special investigation measures. The decision to apply special investigation measures must be approved by the Chief Prosecutor of the same level before being executed. The time limit for application of special investigation measures shall not exceed two months from the date of approval by the Chief Prosecutor; complicated cases may be extended but not beyond the investigation time limit. Information and documents collected by special investigation measures shall only be used for the institution, investigation, prosecution and adjudication of criminal cases, and information and documents not related to the case must be promptly destroyed.

IV. INTERNATIONAL COOPERATION IN ANTI-CORRUPTION EFFORTS OF THE PEOPLE'S PROCURACY

Globalization and international integration have had a great impact on the economic, cultural and social development of countries including Viet Nam. In parallel with development, globalization and international integration also require cooperation between countries to

prevent, detect and handle violations of the law including corruption beyond the borders of each country.

Strengthening international cooperation has been a major policy in anti-corruption of Viet Nam in recent years. Resolution No. 04 of the Third Conference of the 10th Party Central Committee on strengthening the Party's leadership in anti-corruption has specifically identified tasks on international cooperation on anti-corruption with the orientation: Actively participate in anti-corruption international programmes, initiatives and forums suitable to Viet Nam's conditions; implementing international commitments on anti-corruption, focusing on commitments on building a transparent business and investment environment. Over the past years, international cooperation in anti-corruption has brought Viet Nam many benefits, and Viet Nam has gained a lot of experience and good practices from foreign countries on anti-corruption, from which to research and apply appropriately into Viet Nam's anti-corruption regime.

A. Implementing the United Nations Convention against Corruption (UNCAC)

Viet Nam, which officially became a member of UNCAC on 19 August 2009, is a country that has been and is being evaluated in both assessment cycles of the Convention. Viet Nam was recognized by the Convention Secretariat and foreign experts for its strict, straightforward and responsible implementation, especially the preparation of self-assessment reports and organization of field-assessment activities. In the first cycle, Viet Nam was one of the countries that actively conducted the assessment of the implementation of the Convention early and completed the requirements set for the evaluation process on time. The second cycle focuses on assessing the provisions of the Convention in Chapter II (Preventive Measures) and Chapter V (Recovery of Assets).

To fulfil its membership obligations after ratifying the Convention, the Prime Minister has issued a Plan on the Implementation of the United Nations Convention against Corruption. Accordingly, the Government Inspectorate is assigned to be the Permanent Agency to implement the Convention. Other relevant ministries and sectors are assigned to assume the prime responsibility for, and coordinate in the implementation of the contents belonging to their functions and tasks as prescribed by law. The Supreme People’s Procuracy (1) assumes the prime responsibility for expanding bilateral and multilateral signing of the Agreement on mutual legal assistance in criminal matters between Viet Nam and the Member States of the Convention, (2) receiving and implementing requests for mutual legal assistance in criminal matters and requesting other Member States to provide legal assistance in accordance with the Law on Mutual Legal Assistance 2007 and (3) coordinates with relevant agencies in implementing contents related to the functions and tasks of the People’s Procuracy.

The Supreme People’s Procuracy has actively coordinated with the Government Inspectorate and other relevant ministries, sectors to implement the Convention such as: Joining the Inter-sectoral Working Group to implement the Convention and the Evaluation Group on the implementation of the Convention; participate in the development and defence of the National Report on implementation of UNCAC cycle 1 and cycle 2; participate in the evaluation of the country report on UNCAC implementation of China, Congo, Solomon Islands and Austria as assigned by the Secretariat of the Convention.

B. Signing Treaties on Mutual Legal Assistance in Criminal Matters with Foreign Countries

According to Article 64 of the Law on Mutual Legal Assistance 2007 and the provisions of the Law on International Treaties, the Supreme People's Procuracy is responsible for proposing the signing of treaties on mutual legal assistance in criminal matters between Viet Nam and foreign countries. Since joining the Convention, the Supreme People's Procuracy has presided, coordinated with relevant ministries and sectors to successfully sign 12 treaties on mutual legal assistance in criminal matters with other countries. including Algeria (2010), Indonesia (2013), Australia (2014), Spain (2015), Hungary (2016), France (2016), Cambodia (2016), Kazakhstan (2017), Cuba (2018), Mozambique (2019), Laos (2020) and Japan (2021).

The signing of criminal legal assistance agreements with foreign countries contributes to perfecting the legal framework and promoting bilateral cooperation to improve the effectiveness of mutual legal assistance in criminal matters in general as well as in corruption, recovering corrupt assets, in particular affirming Viet Nam's strict implementation of international commitments in the prevention and fight of all kinds of crimes, including corruption.

C. Mutual Legal Assistance on Corruption

1. Outgoing Requests for Mutual Legal Assistance

The Supreme People's Procuracy has received 53[1] requests for legal assistance related to corruption, positions from domestic proceeding-conducting agencies to send to the foreign competent authorities. Requests for assistance have included the following crimes: Embezzlement of property; Deliberately violating the State's regulations on economic management, causing serious consequences; Abusing positions and powers while performing public duties; Lack of responsibility, causing serious consequences; Abuse of positions and powers to appropriate property; Money-laundering; Violation of regulations on management and use of State assets, causing loss and waste; Fraud at work. Among the above requests, there are eight requests relating to the recovery and return of assets to the State of Viet Nam. In general, the implementation of mutual assistance requests of foreign countries has achieved positive results. The countries have given support in terms of collecting documents and evidence, contributing to support the domestic criminal justice agencies to handle corruption cases. Notably, the results of mutual assistance have successfully solved large and complicated corruption cases involving people holding high positions in the State apparatus such as: The case involving the East-West Highway Project Management Board (CPI Department); The case involving the Vietnam Shipbuilding Industry Group (VinaShin case); The case involving the Vietnam Maritime Corporation (Vinalines case); The case involving the Vietnam Railway Corporation (JTC case); The case of property embezzlement and money-laundering by Giang Kim Dat and his accomplices; The case of abusing positions and powers while performing public duties, violating regulations on management and use of State property, causing loss and waste, and violating regulations on land management committed by Phan Van Anh Vu and his accomplices; The case of gambling and money-laundering by Phan Sao Nam and his accomplices; The case of money-laundering and violations of regulations on banking activities that was carried out by Tran Bac Ha and his accomplices, etc.

2. Incoming Requests for Mutual Legal Assistance

In the same period, the Supreme People's Procuracy received and implemented 24 requests for mutual legal assistance in criminal matters related to corruption from other countries.

[1] Statistics over the past 10 years.

Crimes related to requests for mutual assistance are embezzlement of property, taking bribes, giving bribes, money-laundering, abuse of position and power, abuse of power, etc. The Supreme People's Procuracy has paid close attention to the exercise of public prosecution and supervision of mutual legal assistance in criminal matters during the process of domestic criminal justice agencies in fulfilling foreign requests for assistance. Therefore, the implementation of the request basically meets the deadlines and procedures at the request of foreign parties, contributing to affirming Viet Nam's efforts in international cooperation in fighting corruption.

D. International Cooperation on Recovery of Corrupt Assets

According to the provisions of the Law on Anti-Corruption 2018 (Article 91), the distraint, freeze, confiscation and return of corrupt assets are international cooperation activities. The Supreme People's Procuracy is the Central Agency for international cooperation in recovering corrupt assets in criminal proceedings; receiving and processing foreign requests for criminal legal assistance in recovery of corrupt assets and requesting foreign countries to comply with Vietnamese requests for criminal legal assistance in recovery of corrupt assets. Accordingly, the Supreme People's Procuracy has submitted 12 requests for mutual legal assistance to Singapore, Laos and Cambodia for recovery and return of corrupt assets for the State of Viet Nam.

E. Bilateral, Multilateral and Technical Cooperation

The Supreme People's Procuracy has participated in many bilateral, multilateral cooperation efforts on anti-corruption, including the International Association of Anti-Corruption Agencies (IAACA), the International Association of Prosecutors (IAP), the Asia-Pacific Regional Asset Recovery Interagency Network (ARIN-AP), the Southeast Asia Network of Judiciary Agencies (SEAJust); bilateral cooperation with the Prosecutor's Office and law enforcement agencies of other countries with strong prosecutorial bases and developed judicial systems, especially South Korea, Japan, Australia, Hungary, Russia, China, the United States and Germany; and technical assistance cooperation with international agencies and organizations, including the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI).

V. SOME BREAKTHROUGHS IN THE RESULTS OF THE FIGHT AGAINST CORRUPTION IN RECENT YEARS

Along with the development of the law, the determination to fight against corruption within the Communist Party and State of Viet Nam is clearly demonstrated through the breakthrough results in the fight against corruption in recent years. The Procuracy, according to Vietnamese law, is the agency that exercises public prosecution and supervises judicial activities during the process of institution for criminal proceedings, arrest, custody, detention, investigation and prosecution, adjudication of criminal cases; taking many measures to improve the quality and efficiency of work, making an important contribution to the following results:

A. Decisive Direction to Accelerate the Investigation, Prosecution and Adjudication of Corruption Cases in a Timely Manner with the Direction of "No Forbidden Zone, No Exceptions, No Privileges, Whoever That Person Is"

In recent years, the Vietnamese State has shown a resolute attitude in detecting, investigating, prosecuting and adjudicating corruption cases. With the guiding viewpoint of the Communist Party, the State of Viet Nam is "no restricted zone, no exception, no privilege, whoever that person is". Accordingly, some particularly serious cases which have long been

considered a "sensitive and forbidden zone", and many cases which have lasted from previous years, have been directed to be dealt with decisively and strictly. This is a bright spot in the anti-corruption struggle, showing the determination of the Communist Party and State of Viet Nam. Corruption cases which were assessed as particularly serious were monitored and directed by the Central Steering Committee for Anti-corruption and were tried by the Court with strict sentences, thereby creating a breakthrough in anti-corruption.

The Communist Party and State of Viet Nam have resolutely and strictly handled a number of senior incumbent and retired officials who were involved in particularly serious and complicated corruption and economic cases. These can be mentioned as the handling of Mr. Dinh La Thang, former member of the Politburo, in two big cases: first, the case of embezzlement of property and the intentional violation of state regulations on economic management, causing serious consequences that occurred at Thai Binh 2 Thermal Power Plant and Quang Trach Vung Ang Thermal Power Plant; and, second, the case of deliberately violating state regulations on economic management, causing serious consequences and abuse of position and power to appropriate assets related to the capital contribution of 800 billion VND (35 million USD) at Oceanbank. Through two court cases, Mr. Dinh La Thang was sentenced to 30 years in prison and was forced to pay more than 600 billion VND (27 million USD) in compensation. In the above cases, in addition to Mr. Dinh La Thang, there are many defendants who have held high positions, such as three accused persons who were members of the National Assembly, four accused persons who held the position of Chairman of PVN, Vice President of the province;

Corruption develops more sophisticatedly, not only in economic sectors but also in law enforcement sectors; not only among low-level officials but also high-ranking officials. Resolution of the 4th Central Committee (term XI) assessed: A large number of cadres and party members, including those holding leadership and managerial positions, including some senior cadres, have experienced recession of politics, ethics, lifestyle…, partial, corrupt, wasteful, arbitrary, unprincipled. Therefore, the Party and State have directed the improvement of the efficiency of inspection, examination, audit, investigation, prosecution, adjudication and strict handling of violators of corruption and waste. Especially since 2016, after the 12th Party Congress, General Secretary Nguyen Phu Trong, Head of the Central Steering Committee for Anti-corruption, launched a broad, comprehensive and drastic anti-corruption campaign with the motto: "Whoever that person is, in any position, there is no forbidden zone, no exception in fighting and dealing with corruption." Since then, anti-corruption efforts have achieved very positive results, and many corruption cases from the central to local levels have been strictly adjudicated, including members of the Central Committee and members of the Politburo. As a result, in the recent five years, the entire Party disciplined nearly 1,400 party organizations and more than 74,000 party members at all levels.

Among the disciplined, there are 82 provincial commissioners and equivalent; more than 1,500 district commissioners and equivalent; nearly 3,000 party members were disciplined in the form of dismissal; more than 8,700 were expelled from the Party and more than 4,300 cadres and party members had to be handled by law. Major General Nguyen Van Tin, General Department of Politics of the People's Army said that from 2013 to 2020, the whole country had more than 1,900 corruption cases investigated and adjudicated, and 131,000 Party members were disciplined, including more than 110 cadres under the management of the Central Committee (27 members of the Party Central Committee, former members of the Party Central Committee, 4 members of the Politburo and 30 general-level officers of the armed forces). Particularly in the first 6 months of 2021, related to corruption, there were 266 cases / 646

defendants prosecuted, 250 cases with 643 defendants prosecuted. The Central Steering Committee on Anti-corruption has inspected and disciplined 12 party organizations and 20 party members under the management of the Politburo and the Secretariat (including 3 members, former member of the Central Committee, 2 deputy ministers, 1 former provincial president, 1 former deputy secretary of the provincial Party Committee, 13 general-level officers in the armed forces). A series of large corruption cases with high-ranking officials were brought to trial. The Party and State have determined that it must continue to resolutely and persistently fight against corruption both in state agencies, organizations and enterprises inside and outside the State.

B. Enhancing the Efficiency of Asset Recovery

In the process of solving corruption and economic cases, in addition to ensuring the institution, investigation, prosecution and adjudication in accordance with the law, in recent years, Viet Nam's criminal justice agencies in general and the People's Procuracy of Viet Nam in particular have been active, proactive and aggressive in the recovery of assets lost and appropriated in cases. In addition to ensuring that prosecution, investigation and adjudication are performed in a prompt, strict, accurate, fair and lawful manner, the Procuracy has proactively set out requirements for investigation, requests for inspection and verification of assets; closely coordinated with the investigating agencies to apply measures to seize distrained assets, frozen bank accounts of related persons right from the stage of dealing with denunciations, information on crimes and petitions for charge; promptly applied measures to prevent them from transferring, dispersing, concealing or legalizing assets; encouraged offenders to voluntarily hand over the appropriated property, and voluntarily remedy the damage caused in order to thoroughly recover the property to the State. The results of asset recovery in recent years has changed in both quantity and quality, clearly showing the role and responsibilities of the Procuracy in asset recovery.

As a result, criminal justice agencies recovered an amount of 66,747,243 million VND/149,616,130 million VND (30 billion USD/68 billion USD), reaching 44.6 per cent of the amount (in which, the amount of assets recovered in corruption cases were 4,623,981 million VND/66,747,243 million VND (2.1 billion USD/30 billion USD), accounting for 8 per cent of the total recovered assets; for corruption cases in judicial activities alone, 22,063 million VND (100 million USD) were recovered, reaching 58 per cent appropriated assets recovered in corruption cases in judicial activities. In addition to the recovered amount, criminal justice agencies have seized, distrained, blocked and requested to suspend transactions of many valuable assets such as: distraint of 108 parcels of real estate; 159,565 shares; 175 taels of SJC gold, cars; recovery of 68 parcels of real estate; 393,115 square metres of land; 1,336,690 cubic metres of timber; USD 50,000; frozen 32,110.71 USD; suspended transaction of 5 land use ownership certificates; seizing 8 land use ownership certificates and 433,770 kg of copper sulfide ore.

According to statistics, the recovery rate of corrupt assets has reached over 31 per cent, in which the recovery of assets in a number of serious corruption and economic cases is quite high.

NEW AND EMERGING FORMS OF CORRUPTION IN VIET NAM

Dr. Nguyen Trung Kien[*]

The practice of solving corruption cases in recent years in Viet Nam shows that corruption is the most complicated and difficult to prove as compared with other crimes. This crime is committed by individuals with powers, positions and professional qualifications in the field of work, having wide social relations, and the ability to influence other people under their authority, and they commit criminal acts in a sophisticated way and are capable of concealing their criminal acts.

Among the types of corruption that have been detected and handled, emerging corruption cases are related to state assets, finance and banking. Most of these cases are very serious or particularly serious; the value of appropriated or damaged property is huge with a large number of defendants, and each defendant/accused has a different role and position, performs a different function, task or stage of work with close, well-organized connections. The criminal acts take place for a long time, infringing upon many laws.

I. THE CHARACTERISTICS AND MODUS OPERANDI OF CORRUPTION CASES

Corruption cases generally have similar characteristics, such as the subject of the crime, the self-interested mental state of the accused and the criminal conduct.

A. The Characteristics of Corruption Cases

Regarding the subject of crime: Like other corruption cases, in the corruption cases related to state assets, finance and banks, the subject of the crime is a person holding position of authority, powers by appointment, election or assignment in an agency, organization or economic unit. However, in these cases, there are many defendants/accused holding positions and powers in many agencies, organizations and units inside and outside the State colluding to commit crime. Position and authority are not only the specific personal characteristics of the offender, but also a means used by the offender to perform self-seeking motives through appropriating or causing damage or loss of property of agencies, organizations or economic units. Common positions and powers of offenders in these cases are heads of ministries, sectors and local authorities, chairpersons of the management board, directors, deputy directors, accountants, treasurers and bank officials. For example, in case of offender Pham Cong Danh, he and his accomplices were convicted of the crimes of "Deliberately violating the State's regulations on economic management, causing serious consequences" [1] and "Violating regulations on lending in business activities". activities of credit institutions",[2] "Lack of responsibility causing serious consequences",[3] the Procuracy prosecuted all 46 defendants, including the accused who is the Deputy Governor of the State Bank, the Chairman of the State Bank of Viet Nam. Director General of Management Board of Dai Tin Commercial Joint Stock

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[1] Article 165 of the revised 2009 Penal Code.

[2] Article 179 of the revised 2009 Penal Code (Article 206 of the revised 2017 Penal Code).

[3] Article 360 of the revised 2017 Penal Code.

Bank (TrustBank) and many other companies. Or the case of offender Vu Huy Hoang and his accomplices were convicted crime of "Violating regulations on the management and use of state assets, causing loss and waste"[4] and the crime of "Violating regulations on land management",[5] which occurred at the Ministry of Industry and Trade and in Ho Chi Minh City in relation to the land No. 2-4-6 Hai Ba Trung, District 1, Ho Chi Minh City, the Procuracy has prosecuted the accused, who are the Minister, Deputy Minister of Industry and Trade, Vice Chairman of the People's Committee of Ho Chi Minh City and leaders of relevant departments. For corruption related to state assets, finance, and banking, in the past 10 years, Viet Nam's criminal justice agencies have prosecuted 6 ministers and former ministers, 13 general officers in the armed forces, a number of deputy ministers, former deputy ministers, provincial chairmen, provincial vice-chairmen; many leaders of banks and companies.

Regarding the subjective consciousness: the main purpose of the accused and defendants is self-interest expressed in receiving material benefits (taking bribes, embezzlement of property) or causing losses, damage of property of the State, the bank to benefit themselves or other defendants. For example, in the case of Phan Van Anh Vu committing the crime of "abusing positions and powers while performing official duties",[6] the defendants took advantage of their assigned positions and powers to transfer the ownership and the use of land owned by the State to companies established and operated by the defendant at a cheap price and then sold the land to third parties for profit and causing damage to State assets.

Regarding objective behaviour: in these cases, the accused and defendants performed many different acts, not only infringing upon many relationships protected by law such as: the proper functioning of state agencies, organizations and units; ownership relationship; order of economic management and in some cases even infringed upon administrative management order. For example, in the case of Pham Cong Danh, the defendants violated the administrative management order (regulations on state management of economic management), infringed on economic management relations (regulations on lending activities of credit institutions) to cause damage to the bank. Objective acts that the accused and defendants perform are often interlaced and consecutive, in which there are acts performed with the nature of the preceding acts, creating conditions for the performance of specific acts specified in the composition of that type of crime. In the case of offender Nguyen Bac Son, he and his accomplices were convicted of the crimes of "Violating regulations on management and use of public investment capital, causing serious consequences",[7] "Giving bribes",[8] "Bribery",[9] which occurred at Mobifone Telecommunications Corporation, Global Audiovisual Joint Stock Company (AVG), Ministry of Information and Communications, defendants Nguyen Bac Son, Truong Minh Tuan, Le Nam Tra has taken bribes to decide and direct Mobiphone company to buy AVG company at a price many times higher than the real value, causing loss of state property.

B. Modus Operandi

Corruption cases typically involve similar tactics. The accused and defendants establish many legal entities to use as tools to commit crimes. In order to establish these legal entities, the accused and defendants ask or direct their relatives and/or subordinates to provide

[4] Article 219 of the revised 2017 Penal Code.
[5] Article 229 of the revised 2017 Penal Code.
[6] Article 356 of the revised 2017 Penal Code.
[7] Article 220 of the revised 2017 Penal Code.
[8] Article 364 of the revised 2017 Penal Code.
[9] Article 354 of the revised 2017 Penal Code.

identification documents to complete the dossier and act as their legal representative. In fact, these companies have no business activities, are only used to sign their names in economic contracts, open bank accounts, carry out procedures to legalize loans, act as intermediaries in financial transactions, disbursing, receiving money from the bank and then transferring it back to the defendants or opening securities accounts in order to perform acts of manipulating the stock market and earning illicit profits.

1. False Identity Documents

In the case of offender Pham Cong Danh and his accomplices, Pham Cong Danh directed his subordinates to use 12 legal entities belonging to Thien Thanh Group Company, owned by Danh, to sign fake lease contracts with his own companies; Prepare documents for purchase and sale of building materials, develop a debt repayment plan to borrow money from VNCB Construction Bank. After being disbursed, Danh continued to direct the transfer of more than 644 billion VND (29,272,000 USD) to personal accounts and then withdrew money to pay debts for six companies of Thien Thanh Group with Danh as Chairman of the Management Board in the name of customer care money but actually transferred money to Danh. Or the case of stock market manipulation related to the FLC Group Joint Stock Company, which the Vietnamese legal proceedings agencies are currently dealing with. According to the initial investigation results, it was determined that Trinh Van Quyet directed his younger sister Trinh Thi Minh Hue to borrow the citizen identity cards of 26 individuals who are relatives of Quyet's family to establish 20 enterprises, and she then opened 450 securities accounts at 41 securities companies to perform acts of manipulating stock prices in order to create fake supply and demand with six securities codes of companies established or directed by Quyet, to gain illicit profits of initially estimated at VND 975 billion (44.3 million USD), causing especially great losses to investors.

2. Using Established Legal Entities, Subordinates and Relatives to Sign Economic Contracts, Buy and Sell a Property to Inflate the Value and Then Collude with the Bank to Mortgage or Resell that Property to the Bank, Earning an Amount Many Times Higher Than the Real Value of the Property

In the case of Hua Thi Phan and her accomplices, convicted of "Abusing trust to appropriate property" and "Deliberately violating state regulations on economic management, causing serious consequences", after buying house No. 5 Pham Ngoc Thach, Ward 6, District 3, Ho Chi Minh City, Hua Thi Phan instructed her subordinates to buy and resell many times to increase the value of the house to 8 times higher and then sell the house to Dai Tin Joint Stock Commercial Bank for 1,256 billion VND (57,000,000 USD), appropriated from the Bank 1,105 billion VND (50,200,000 USD).

3. Colluding with the Bank's Leaders, Using an Asset, Then Overstating its Value, Mortgaging It at Different Banks to Borrow Money, and Then Legally Appropriating It, Leading to the Inability to Repay the Debt, Causing Damage to the Bank

In the case of Pham Cong Danh who used some real estate in Ho Chi Minh City and Da Nang City to mortgage at many banks to appropriate 2,095 billion VND (US$ 95,227,000).

4. Making False Documents, Validating the Investment, Payment to Withdraw Money from Enterprises and Banks

For example, in the case of offender Ha Van Tham, he and his accomplice were convicted of "intentionally violating State regulations on economic management, causing serious consequences", "embezzlement of property", "abuse of positions and powers to appropriate assets". Ha Van Tham, as Chairman of Ocean Commercial Joint Stock Bank (Ocean Bank),

and his accomplices made 45 false contracts to withdraw money for personal use, causing damage to the bank in the amount of 118 billion dong (US$ 5,336,000). In Dinh La Thang's case, defendant Trinh Xuan Thanh, as Chairman of the Vietnam Oil and Gas Construction Corporation (PVC), set out a policy and colluded with a number of other defendants by making false documents to withdraw 13 billion dong (about US$ 59,000) from the Vung Ang - Quang Trach Project Management Board for personal use.

5. Intentionally Violating the State's Regulations on Economic Management to Appropriate Property or Cause Damage to the Bank or the Company in which the Offender Holds a Leadership and Management Position

For example, in the case of offender Ha Van Tham, with the position of Chairman of OceanBank, Ha Van Tham directed to pay bank deposit interest rates exceeding the ceiling rate prescribed by the State Bank, to pay extra interest, collect other fees in contravention of regulations. In order to legalize and withdraw the differences of amount (interest rate exceeding the ceiling rate and illegal fees) out of the bank, Tham and his accomplices required customers who borrowed capital or bought foreign currency to sign a service contract with BSC Vietnam Joint Stock Company (founded by Tham) and transferred the differences to this company. In the case of offender Dinh La Thang, former Chairman of the Membership Board of the Vietnam Oil and Gas Group (PVN), despite knowing that the Vietnam Oil and Gas Construction Joint Stock Corporation (PVC) is incompetent and has a financial imbalance but still set out guidelines and decided to appoint contractors, allowing PVC Corporation to perform many bidding packages in the Construction Project of Thai Binh 2 Thermal Power Plant in contravention of regulations, and at the same time directed subordinates to advance more than 66.2 million USD for PVC, causing damage to the State of nearly 120 billion VND (5.4 million USD).

6. The Consequences of Crime

The appropriated amount of money, the value of damaged property caused by the criminal acts of the accused and defendants in these cases are very huge. In the case that happened at Mobifone Telecommunications Corporation, Audiovisual Global Joint Stock Company (AVG), the Ministry of Information and Communications, defendant Nguyen Bac Son received a bribe of 3 million USD, and the defendants caused damage to state property of 6,500 billion VND (more than 300 million USD). In the case of offenders Ha Van Tham and Nguyen Xuan Son, the defendants embezzled state assets with an amount of more than 2.5 million USD, and at the same time caused damage to Ocean Bank of more than 1,300 billion VND (more than 72 million USD). In Vu Huy Hoang's case related to the land at No. 2-4-6 Hai Ba Trung Street, the defendants caused damage to the State amounting to VND 2,700 billion (more than USD 130 million).

II. EXPERIENCES IN THE PROCESS OF EXERCISING THE PUBLIC PROSECUTION AND SUPERVISING INSTITUTIONS: INVESTIGATION, PROSECUTION AND ADJUDICATION OF CORRUPTION CASES RELATED TO STATE ASSETS, FINANCE AND BANKING

The Procuracy plays an important position and role in the process of solving criminal cases. It is the agency that exercises the public prosecution and supervises judicial activities, and the Procuracy has taken many measures to ensure the resolution of criminal cases in general, and corruption cases in particular, to which the offender shall be charged, investigated, prosecuted and adjudicated in a prompt, strict, accurate, fair and lawful manner. The Procuracy must

neither let injustice be done against the innocent nor omit offences and offenders. As discussed further below, the Procuracy pursues the maximum recovery of corrupt assets.

The Procuracy has the following roles and responsibilities in handling criminal cases: Supervising 100 per cent of crime information and denunciations, petitions for institution of proceedings, ensuring that the institution of the case is grounded, and the case is handled according to its competence; strictly supervise the receipt and preparation of casefiles to handle crime information; proactively set out requirements of inspection and verification to clarify the facts, orient the inspection and verification by the investigating agency; resolutely request or directly issue decisions to annul the unlawful decisions to open or refrain from opening criminal cases by the investigating bodies; directly inspect and verify when detecting serious violations of the law or signs of omission of crimes which the Procuracy has requested in writing but the investigating agency does not correct accordingly etc; ensure 100 per cent of corruption-, position- and economics-related cases must be instituted and investigated according to law as soon as there are sufficient grounds.

The Prosecutor General of the Procuracy at all levels directly directs the exercise of public prosecution, supervision of the investigation, prosecution and adjudication of corruption and position cases. Prosecutors firmly grasp the progress of the investigation of the case, proactively make investigation requirements to orient and support investigators in collecting evidence and documents to clarify circumstances in the case, accurately identify the offender and appropriated or lost properties; being cautious in considering and approving procedural orders and decisions submitted by the investigating agencies; directly interrogate the defendant before approval in cases where the arrested person, the defendant does not admit or has a conflict between documents and evidence; strictly and fully perform direct supervision when investigators conduct investigative activities such as: search, confrontation, voice recognition etc; implement and strictly supervise the interrogation of the accused, taking testimonies with audio or video recording; strictly supervise the transfer of investigation documents; closely supervise the decision to suspend the investigation, especially the suspension of exemption from criminal liability or because of acts that do not constitute a crime; strictly manage the case file and the defendant in temporarily suspension in order to request recovery of the case when there are sufficient grounds, to avoid omitting criminals, offenders etc.

During the prosecution stage, the prosecutor carefully studies the case file, obtains the defendants' testimony to examine and assess their prior statements, documents, incriminating evidence and exculpatory evidence in a comprehensive and objective manner before deciding to prosecute, ensuring that the prosecution is performed in an accurate, fair and lawful manner.

In the process of adjudicating corruption-, position- and economic-related cases, the Prosecutor collects both incriminating and exculpatory evidence, fully anticipates issues to be questioned, develops a plan for arguments and response at the trial, and drafts accusation right from the trial preparation stage. At the trial, the Prosecutor actively interrogates and argues to clarify the circumstances of the case, present documentary evidence and arguments to fully respond to the opinions of the accused, defence counsels and participants in the proceedings, and closely supervises the adjudication activities of the Trial Panel.

Regarding recovery of corrupt assets, the Procuracy proactively sets out investigation requirements, requests for inspection and verification of assets; closely coordinates with the investigating agency to apply measures to seize or distrain assets, freeze bank accounts of those suspected of crimes relating to corruption and position right from the stage of denunciation,

crime information; promptly applies measures to prevent the suspected from transferring, dispersing, concealing or legalizing assets; encourages offenders to voluntarily hand over the appropriated property, to voluntarily recover the damage caused. Prosecutors directly participate in interrogation activities of the defendant, request agencies and organizations to provide documents related to the assets of the defendant in the case in order to promptly detect the assets coming from the criminal, assets owned by the defendant, assets of the defendant but transferred to his/her relative's name with signs of property dispersal, and on that basis, request the investigating agency to apply measures to distrain assets and freeze bank accounts.

III. DIFFICULTIES FACED BY VIETNAMESE CRIMINAL JUSTICE AGENCIES IN DEALING WITH CORRUPTION CASES

Viet Nam's legal system is constantly being improved, creating a legal basis to detect and handle corruption and abuse of position cases quickly and promptly. However, some regulations related to land, state property management, economy, finance and banking are still unclear and unspecific. A number of regulations are still inconsistent with the provisions of the Criminal Procedure Code, causing difficulties for criminal justice agencies in the process of resolving corruption and abuse of position cases.

To determine the amount of appropriated money and the value of damaged property caused by the criminal acts of the accused or defendants in cases related to state property, finance, banks, criminal justice agencies must have the ability to assess and value cases like a specialized agency. However, many cases happened many years ago in which books and documents were lost and destroyed; construction works were damaged or still in the process of construction, leading to incomplete collection of documents, difficulties in assessment and valuation, and even some cases could not be assessed and valued.

Corruption and position-related crimes are often accompanied with money-laundering and transnational crimes. Therefore, to solve and clarify the whole case and ensure that no offenders are omitted requires mutual legal assistance and international cooperation. However, the cooperation in the fight against crime between countries still does not meet the requirements. In some cases, the defendant flees to other countries, and Viet Nam's investigative agency has made an international arrest but to no avail.

Because the assets appropriated by defendants are typically quite large, especially in cases related to state assets, bank and finance, the assets are often transferred abroad for dispersal or money-laundering. Therefore, verification and recovery of these assets are often difficult, depending on the cooperation of the country where the assets are located:
https://lsvn.vn/tuong-tro-tu-phap-hinh-su-asean-va-thuc-tien-thuc-hien-cua-viet-nam.html

IV. NEW AND EMERGING TRENDS OF CORRUPTION IN VIET NAM

The recent practice of dealing with corruption and position cases related to State property, finance and banks has shown that corruption and position-related crimes related to State assets, finance, and banks tend to be increasingly serious. A large number of defendants and the accused participate in sophisticated schemes infringing upon many social relations and, at the same time, appropriate property and its damage is serious and involves close collusion between the defendants, the accused, holding positions and powers in State agencies. The defendants and the accused also work in banks and private companies, and many cases involve foreign elements. Along with the development of the economy and the policies promoting development,

creating favourable conditions and business environment for enterprises, corrupt acts are expected to increase in number and in the seriousness of their nature in the near future.

The speed of urbanization and the rapid development of the real estate and financial markets is the driving force for economic and social development, but these markets also become the targets of corruption. Besides new and innovative forms of investment and business to optimize profits, increase quality and efficiency, corruption related to State assets, finance and banks are also planned. Corruption will appear in more forms, employing sophisticated schemes. The stricter degree of collusion requires criminal justice agencies to continuously update knowledge and information, have an accurate and appropriate approach to identify all criminals, but not criminalize business relationships to ensure a stable business environment, protect legitimate businessmen.

Corruption involving position-related crimes involving state property, finance, and banks are not only limited to the territory of Viet Nam but are gradually expanding to many foreign individuals and organizations.

The development of science and technology also creates conditions to commit corruption, conceal their criminal acts, organize, connect with accomplices, launder money, disperse corrupt assets and flee when discovered.

V. SOLUTIONS AND RECOMMENDATIONS

A. Legislative Activities

Amending and perfecting the law on state asset management, finance and banks, ensuring to fill legal gaps in accordance with international treaties that Viet Nam has signed and international practices while minimizing violations and crimes; create a clear and transparent legal corridor in the management and handling of crimes. Administrative reform, improving the efficiency of public service performance, limiting and ending the "ask-give" mechanism of administrative agencies and state management.

B. International Cooperation

Strengthening the negotiation and signing of mutual legal assistance agreements; strengthening cooperation between law enforcement agencies in different countries, first of all in the ASEAN region, regularly exchange practical experiences, closely coordinate in crime prevention and control, especially in corruption, position-related crimes and money-laundering; quickly and promptly providing mutual legal assistance, extradition and recovery of criminal assets.

C. Activities of Exercising of Public Prosecution and Supervising Institutions: Investigation, Prosecution and Adjudication of Corruption and Position-related Cases

Leaders of procuracies at all levels must uphold their responsibilities, especially the heads; regularly direct, guide and inspect the professional activities of the prosecutor, directing the settlement of problems in the process of exercising public prosecution and supervising investigation and adjudication. For cases of corruption and position-related crime, the Chief Prosecutor must direct and assign experienced and capable prosecutors to perform the task of exercising public prosecution, supervising investigation and adjudication; must directly examine documents and evidence in order to promptly detect violations and shortcomings in the process of handling crimes information and denunciations, petitions for institution and

investigation. Leaders need to promote collective wisdom through roundtable meetings among members of the Procuracy Committee at the provincial level, internal meetings at the district level to assess evidence for complicated cases and to discuss solutions; to establish expert working groups to assist the Prosecutor in the process of settling the case.

Focusing on the evaluation, arrangement, use and appointment of Prosecutors in order to select the prosecutors with sufficient qualities, capabilities and qualifications to meet the requirements of performing their assigned responsibilities and tasks on the basis of responsibility, quantity and efficiency, sense of professional discipline; ability to research, grasp, propose and handle situations arising in practice.

D. Innovating and Improving Training

Training institutions of the Procuracy need to invest in building curriculum and invite experienced and qualified lecturers to train in-depth skills in receiving and handling crimes information, denunciation and proposing to institute cases of corruption and position-related crimes; make investigation requirements, request collection of evidence and documents, develop expertise in solicitation and interrogation of the accused; interrogation skills at court; argumentative and debating skills. Focusing on summarizing practice, developing topics to draw experience to organize specialized training courses or in-depth training to equip Prosecutors and legal officials with knowledge and skills; organize annual intensive training courses to draw experience, exchange and update knowledge and skills in dealing with corruption, positions, and economics related to position cases.

APPENDIX
SIXTEENTH REGIONAL SEMINAR ON GOOD GOVERNANCE
PARTICIPANTS' LIST

Name	Title and Organization
Mr. Md Khairol Faizal Rizal Paijan	Chief Special Investigator Anti-Corruption Bureau Brunei Darussalam
Mr. Md Qamarul Affyian Abdul Rahman	Deputy Public Prosecutor Attorney General's Chambers Brunei Darussalam
Mr. Soy Chanvicheth	Assistant to ACU Anti-Corruption Unit (ACU) Kingdom of Cambodia
Mr. Ros Saram	Prosecutor Prosecution office of Koh Kong Ministry of Justice Kingdom of Cambodia
Mr. Suyanto Reksasumarta	Head of Regional Section II Directorate of Investigation Attorney General's Office Republic of Indonesia
Mr. Titto Jaelani Agis	Head of the Prosecution Task Force IX Corruption Eradication Commission (Komisi Pemberantasan Korupsi) Republic of Indonesia
Ms. Kienthong Namkhalak	Senior Anti-Corruption and Investigation Officer State Inspection Authority Lao People's Democratic Republic
Mr. Yuhafiz Bin Mohd Salleh	Deputy Director of Investigation (Public Sector) Department of Investigation Malaysian Anti-Corruption Commission (MACC) Headquarters Malaysia
Mr. Law Chin How	Deputy Public Prosecutor Attorney General's Chambers Malaysia
Ms. Luanne Ivy Montano Cabatingan	Graft Investigation and Prosecution Officer Office of the Ombudsman Republic of the Philippines

Mr. Hu Youda Eric	Deputy Public Prosecutor / State Counsel Attorney General's Chambers Republic of Singapore
Mr. Yongyoot Srisattayachon	Executive Director Office of the Attorney General Kingdom of Thailand
Ms. Panyakorn Amonpanyapakomol	Corruption Prevention Officer Professional Level Office of the National Anti-Corruption Commission Kingdom of Thailand
Mr. Matias Soares	Prosecutor of the Republic General Prosecution Office Democratic Republic of Timor-Leste
Mr. Luis de Oliveira Sampaio	Deputy Commissioner for Prevention and Public Awareness Raising Anti-Corruption Commission Democratic Republic of Timor-Leste
Ms. Hoang Thi Thuy Hoa	Head of Division Department of International Cooperation and Mutual Legal Assistance in Criminal Matters Supreme People's Procuracy Socialist Republic of Viet Nam
Mr. Nguyen Trung Kien	Prosecutor Department of Practicing Public Prosecution and Supervising over Investigation of Corruption Cases Supreme People's Procuracy Socialist Republic of Viet Nam

Sixteenth Regional Seminar on Good Governance for Southeast Asian Countries
– *New and Emerging Forms of Corruption and the Effective Countermeasures* –

SEMINAR SCHEDULE

14-16 December 2022

Host
United Nations Asia and Far East Institute
for the Prevention of Crime and the Treatment of Offenders (UNAFEI)

Tuesday, 13 December
Registration

Wednesday, 14 December
9:30-9:40 Opening Ceremony
Opening Remarks by Mr. MORINAGA Taro, Director, UNAFEI
9:40-10:40 Presentation by Specialist Lecturer
10:40-11:00 Break
11:00-12:00 Presentation by Visiting Expert
12:00-13:30 Lunch Break
13:30-14:10 Country Presentation by Brunei
14:10-14:50 Country Presentation by Cambodia
14:50-15:10 Break
15:10-15:50 Country Presentation by Indonesia
15:50-16:10 Break
16:10-17:10 Presentation by Specialist Lecturer
18:00- Welcome Reception co-hosted by ACPF and UNAFEI

Thursday, 15 December
9:30-10:10 Country Presentation by Lao PDR
10:10-10:50 Country Presentation by Malaysia
10:50-11:10 Break
11:10-11:50 Country Presentation by Philippines
12:00-13:30 Lunch Break
13:30-14:10 Country Presentation by Singapore
14:10-14:50 Country Presentation by Thailand
14:50-15:10 Break
15:10-15:50 Country Presentation by Timor-Leste
15:50-16:30 Country Presentation by Viet Nam
16:30-16:50 Break
16:50-17:30 Country Presentation by Japan

Friday, 16 December
9:50-10:20 Courtesy Visit to Vice Minister of Ministry of Justice
10:30-12:00 Study Trip to Tokyo District Court
12:00-13:00 Lunch Break at Ministry of Justice
13:00-14:30 Return UNAFEI
14:30-15:00 Photo Session

15:00-15:40 Discussion & Chair's Summary
15:40-16:00 Break
16:00-17:30 Closing Ceremony
Evaluation Session
Presentation of Certificates
Closing Remarks by Mr. MORINAGA Taro, Director, UNAFEI
18:00- Farewell Dinner co-hosted by ACPF and UNAFEI

End of the Seminar

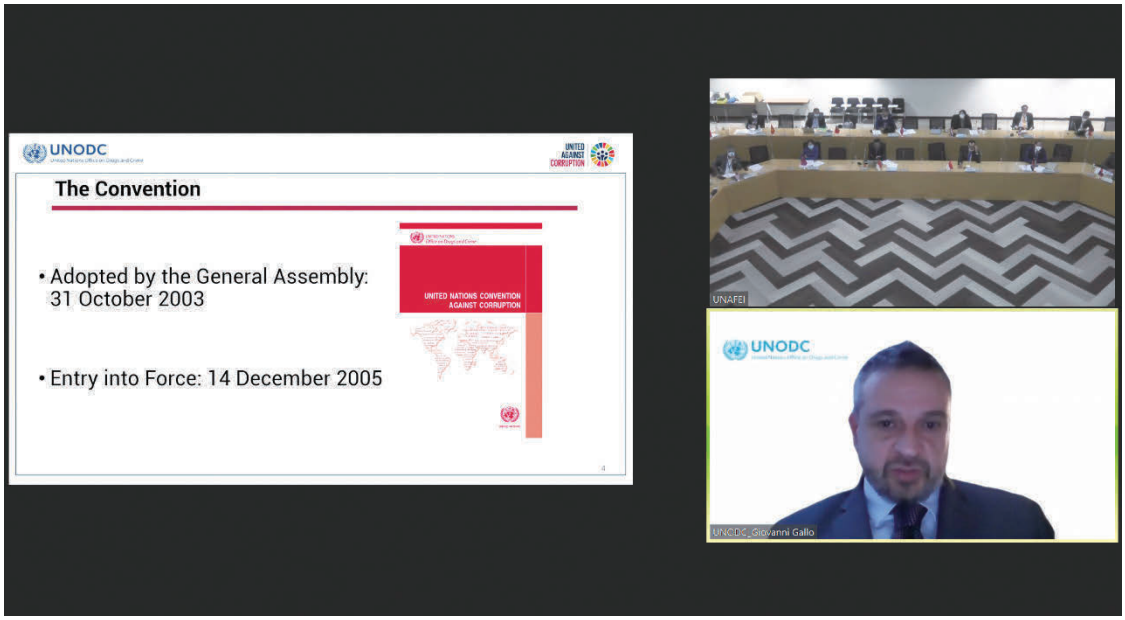
Saturday, 17 December
Leave from UNAFEI for the airport by bus

PHOTOGRAPHS

- *Opening Remarks by Director Morinaga*

- *Lecture by Mr. Cheung*

- *The Seminar (Presentation)*



- *Lecture by Mr. Gallo*

- *The Seminar (Participants)*

- *Presentation by Participants*

● *Visit to the Vice Minister of Justice*

● *Group Photo in Front of UNAFEI*

- *Closing Ceremony*

GOOD GOVERNANCE SEMINAR INDEX				
No.	**Seminar Theme**	**Venue**	**Seminar Date**	**Publication Date**
1	Corruption Control in the Judiciary and Prosecutorial Authorities	Bangkok, Thailand	Dec 2007	Sep 2008
2	Corruption Control in Public Procurement	Bangkok, Thailand	Jul 2008	Dec 2008
Regional Forum	Strengthening of Domestic and International Co-operation for Effective Investigation and Prosecution of Corruption	Tokyo, Japan	Dec 2008	Dec 2009
3	Measures to Freeze, Confiscate and Recover Proceeds of Corruption, Including Prevention of Money-Laundering	Manila, Philippines	Dec 2009	Oct 2010
4	Securing Protection and Cooperation of Witnesses and Whistle-Blowers	Manila, Philippines	Dec 2010	Nov 2011
5	Preventing Corruption: Effective Administration and Criminal Justice Measures	Tokyo, Japan	Dec 2011	Aug 2012
6	International Cooperation: Mutual Legal Assistnace and Extradition	Tokyo, Japan	Dec 2012	Nov 2013
7	Enhancing Investigative Ability in Corruption Cases	Kuala Lumpur, Malaysia	Dec 2013	Nov 2014
8	Current Issues in the Investigation, Prosecution and Adjudication of Corruption Cases	Kuala Lumpur, Malaysia	Nov 2014	Jun 2015
9	Current Challenges and Best Practices in the Investigation, Prosecution and Prevention of Corruption Cases – Sharing Experiences and Learning from Actual Cases	Jakarta, Indonesia	Nov 2015	Mar 2016
10	Contemporary Measures for Effective International Cooperation	Yogyajakarta, Indonesia	Jul 2016	Jan 2017
11	Best Practices in Anti-Corruption: A Deceade of Institutional and Practical Development in Southeast Asia	Hanoi, Viet Nam	Oct 2017	Mar 2018
12	The Latest Regional Trends in Corruption and Effective Countermeasures by Criminal Justice Authorities	Da Nang, Viet Nam	Nov 2018	Mar 2019
13	Effective Financial Investigation and Anti-Money-Laundering Measures for Confiscation and Asset Recovery to Counter New and Emerging Threats	Tokyo, Japan	Dec 2019	Oct 2020
14	Integrity and Independence of Judges, Prosecutors and Law Enforcement Officials	Tokyo, Japan	Mar 2021	Jul 2021
15	Effective International Cooperation for Combating Corruption	Tokyo, Japan	Dec 2021	Oct 2022
16	New and Emerging Forms of Corruption and the Effective Countermeasures	Tokyo, Japan	Dec 2022	Aug 2023