



*United Nations Asia and Far East
Institute for the Prevention of Crime
and the Treatment of Offenders*



Prosecution Service of Japan

**REGIONAL FORUM ON GOOD GOVERNANCE
FOR EAST ASIAN COUNTRIES**

**STRENGTHENING OF DOMESTIC
AND INTERNATIONAL CO-OPERATION
FOR EFFECTIVE INVESTIGATION
AND PROSECUTION OF CORRUPTION**

**Co-hosted by UNAFEI and the Supreme Public Prosecutors Office of Japan
10-11 December 2008, Tokyo, Japan**

UNAFEI

**UNITED NATIONS ASIA AND FAR EAST INSTITUTE
FOR THE PREVENTION OF CRIME
AND THE TREATMENT OF OFFENDERS**



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The views expressed in this publication are those of the respective presenters and authors only, and do not necessarily reflect the views or policy of UNAFEI, the Supreme Public Prosecutors Office of Japan, or other organizations to which those persons belong.

Masaki Sasaki
Director

United Nations
Asia and Far East Institute
for the Prevention of Crime and
the Treatment of Offenders
(UNAFEI)

1-26 Harumi-cho, Fuchu, Tokyo 183-0057, Japan

<http://www.unafei.or.jp>

unafei@moj.go.jp

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FOREWORD

It is my great pleasure and privilege to present this report of the Regional Forum on Good Governance for East Asian Countries which was held at the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI), Tokyo on 10 and 11 December 2008, and co-hosted by UNAFEI and the Supreme Public Prosecutors Office of Japan. We were delighted to welcome to our institute friends old and new.

The main theme of the Forum was “Strengthening of Domestic and International Co-Operation for Effective Investigation and Prosecution of Corruption”, and it was attended by high-ranking officials from 13 East Asian countries: Brunei Darussalam, Cambodia, China, Indonesia, Japan, the Republic of Korea, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam.

UNAFEI has held two Regional Seminars on Good Governance for Southeast Asian Countries in Bangkok, Thailand; the first in 2007 and the second in 2008. Through those Seminars, UNAFEI made a valuable contribution to both the mutual understanding of the present issues facing respective countries, and the capacity building of criminal justice officials. However, corruption is an insidious and deep-rooted issue, and to achieve good governance will require more than Seminars at practitioner level. Therefore, we decided to provide an opportunity for senior criminal justice officials from East Asian countries to exchange perspectives, to reaffirm the recognition that the achievement of good governance is the common goal in the region, and to show their commitment to strengthening their good governance strategies, including the establishment of co-operation systems based upon mutual understanding.

Two new aspects of corrupt behaviour have been identified in recent years.

The first such aspect is the involvement of the private sector in corruption. Along with economic development, the relationship between the public sector and the private sector has changed, leading to greater interaction and closer relationships between the two. Corruption emerges through such close and familiar relationships and corruption in the private sector has effects on the administration of the public sector. To detect corruption and impose effective criminal sanctions on corrupt persons, investigations should involve not only traditional law enforcement authorities but also competent administrative agencies with the function of supervising the private sector. For criminal justice authorities, it is vital to foster co-operation with those administrative authorities and with private companies and corporations, especially financial institutions.

The second new aspect is the globalization of corruption. Corrupt activities can now easily and instantly cross borders, and money-laundering of the proceeds of corruption can be committed outside the jurisdiction where the initial offence was perpetrated, making this crime more complicated and diversified. Under these circumstances, international society has begun to take a combative attitude towards corruption. One of the remarkable outcomes of this determined mindset is the adoption of the United Nations Convention against Corruption (UNCAC). Among the efforts that each country can make at the domestic level, introduction of legislation for effective anti-corruption measures is fundamental, and the promotion of a good working relationship among investigative authorities is also critical. However, even if those objectives are achieved domestically, the globalization of corruption necessitates international co-operation. In such a situation, a co-operative attitude towards requests for mutual legal assistance from foreign countries is sometimes, in reality, not sufficient to solve the problem. Differences in legal systems and ineffective and inflexible practices in respective countries lead to delays in legal assistance and/or extradition. In order to deal with this situation, it is critically important to elicit more practical and more continuous co-operation from not only investigative authorities but also financial authorities and institutions, both domestic and foreign.

With a view to addressing these issues, it was our intention that this Forum would be an opportunity for senior criminal justice officials from East Asia to develop a common awareness of anti-corruption matters through the lively exchange of opinions, and to enhance co-operation among East Asian countries

to fight corruption.

Finally, on behalf of UNAFEI, I would like to express my deepest appreciation the Supreme Public Prosecutors Office of Japan for its support and commitment to the realization of the Forum.

December 2009

Handwritten signature in Japanese calligraphy, reading "佐々木 昌之" (Sasaki Masaki).

Masaki Sasaki
Director, UNAFEI

FORUM SCHEDULE

10 December	<p>Opening Ceremony Opening Remarks by Mr. Keiichi Aizawa, Director, UNAFEI Address by Mr. Hiroshi Obayashi, Superintending Prosecutor, Tokyo High Public Prosecutor’s Office, Japan Address by Mr. Yoshinobu Onuki, President, Research and Training Institute, Ministry of Justice, Japan</p>
	<p>Keynote Speeches Keynote Speech by Mr. Kunihiko Sakai, Director, General Affairs Department, Supreme Public Prosecutors Office, Japan Keynote Speech by Mr. Masato Higuchi, Director, Second Investigation Division, Criminal Investigation Bureau, National Police Agency, Japan Keynote Speech by Visiting Expert, Mr. Ricky Shu-chun Yau, Assistant Director, Operations Department, Independent Commission Against Corruption, (ICAC), Hong Kong, China</p>
	<p>Presentation Session Country Report by Pengiran Nina Jasmine binte PLKDR Pg Hj Bahrin, Counsel and Deputy Public Prosecutor, Attorney General’s Chambers, Brunei Darussalam Country Report by Ms. Pen Somethea, Director, Research and Training Department, Ministry of Justice, Cambodia Country Report by Dr. Xu Daomin, Deputy Chief, Division of Procuratorial Department for Duty Crime Prevention, Supreme People’s Procuratorate, China Country Report by Mr. Jhoni Ginting, Head of Legal Bureau, Attorney General’s Office, Indonesia Country Report by Mr. Yuichiro Tachi, Director, Research and Training Institute, Ministry of Justice, Japan Country Report by Dr. Kyung-Joon Jin, Director, International Criminal Affairs Division, Ministry of Justice, Republic of Korea Country Report by Mr. Khamphet Somvolachith, Deputy Director, Treaties and International Co-operation Division, Supreme People’s Prosecutor Office, Lao PDR Country Report by Mr. Lai Yong Heng, Assistant Commissioner of Police, Royal Malaysian Police, Malaysia Country Report by Mr. Han Nyunt, Deputy Director General, Office of the Attorney General, Myanmar Country Report by Mr. Severino H. Gaña Jr., Assistant Chief State Prosecutor, National Prosecution Service, Department of Justice, the Philippines Country Report by Mr. Bala Reddy, Principal Senior State Counsel, State Prosecution Division, Attorney General’s Chambers, Singapore Country Report by Mr. Sirisak Tiyapan, Director General, International Affairs Department, Office of the Attorney General, Thailand Country Report by Ms. Lai Thu Ha, Legal Expert, Institute for Prosecutorial Science, Supreme People’s Prosecution Office, Vietnam</p>

11 December	Discussion and Delivery of Chairman’s Statement
	Closing Ceremony Closing Remarks by Mr. Yutaka Nagashima, Public Prosecutor, Supreme Public Prosecutors Office, Japan
	Courtesy Visit to the Minister of Justice Courtesy Visit to the Prosecutor General

LIST OF PARTICIPANTS, VISITING EXPERTS & SECRETARIAT

A. Participants

Pengiran Nina Jasmine binte PLKDR Pg Hj Bahrin	Counsel and Deputy Public Prosecutor Attorney-General's Chambers Brunei Darussalam
Ms. Pen Somethea	Director Research and Training Department Ministry of Justice Cambodia
Dr. Xu Daomin	Deputy Chief Division of Procuratorial Department for Duty Crime Prevention Supreme People's Procuratorate China
Mr. Jhoni Ginting	Head of Legal Bureau Attorney-General's Office Indonesia
Mr. Yutaka Nagashima	Public Prosecutor Supreme Public Prosecutors Office Japan
Ms. Tomoko Akane	Public Prosecutor Tokyo High Public Prosecutors Office Japan
Mr. Yuichiro Tachi	Director Research Department Research and Training Institute Ministry of Justice Japan
Mr. Keiichi Aizawa	Director UNAFEI Japan
Mr. Takeshi Seto	Deputy Director UNAFEI Japan
Mr. Motoo Noguchi	Professor UNAFEI Japan

Dr. Kyung-Joon Jin	Director International Criminal Affairs Division Ministry of Justice Republic of Korea
Mr. Khamphet Somvolachith	Deputy Director Treaties & International Co-operation Division Supreme People's Prosecutor Office Lao PDR
Mr. Lai Yong Heng	Assistant Commissioner of Police Royal Malaysian Police Malaysia
Mr. Han Nyunt	Deputy Director General Office of the Attorney General Myanmar
Mr. Severino H. Gaña, Jr.	Assistant Chief State Prosecutor National Prosecution Service Department of Justice Philippines
Mr. Bala Reddy	Principal Senior State Counsel State Prosecution Division Attorney General's Chambers Singapore
Mr. Sirisak Tiyanpan	Director General International Affairs Department Office of the Attorney General Thailand
Ms. Lai Thu Ha	Legal Expert Institute for Prosecutorial Science Supreme People's Prosecution Office Vietnam

B. Visiting Expert and Keynote Speakers

Mr. Ricky Shu-chun Yau	Assistant Director Operations Department Independent Commission Against Corruption (ICAC) Hong Kong, China
Mr. Kunihiko Sakai	Director General Affairs Department Supreme Public Prosecutors Office Japan

Mr. Masato Higuchi
Director
Second Investigation Division
Criminal Investigation Bureau
National Police Agency
Japan

C. Secretariat

UNAFEI

Mr. Shintaro Naito	Professor
Mr. Junichiro Otani	Professor
Mr. Jun Oshino	Professor
Mr. Haruhiko Higuchi	Professor
Ms. Tae Sugiyama	Professor
Mr. Ryuji Tatsuya	Professor
Mr. Koji Yamada	Professor
Mr. Tetsuya Sugano	Professor
Mr. Sakumi Fujii	Chief of Secretariat
Mr. Hitoshi Nakasuga	Deputy Chief
Mr. Masato Fujiwara	Deputy Chief
Mr. Etsuya Iwakami	Senior Officer
Mr. Yuichi Kitada	Officer
Ms. Grace Lord	Linguistic Adviser

RAPPORTEUR'S REPORT & CHAIRMAN'S STATEMENT

December 10:

- A. Opening Session**
- B. Keynote Speeches**
- C. Presentation Session**

December 11:

- D. Discussion Session**
 - (a) Measures to strengthen co-operation of investigative, prosecutorial and administrative authorities at the domestic level.*
 - (b) Measures to strengthen co-operation and co-ordination between the public sector and the private sector at the domestic level.*
 - (c) Measures to strengthen international co-operation and co-ordination.*
- E. Chairman's Statement**
- F. Closing Ceremony**
- G. Courtesy Visits**

Chairman's Statement

OPENING CEREMONY, KEYNOTE SPEECHES, AND PRESENTATION SESSION OF 10 DECEMBER

A. Opening Ceremony

1. Opening and Congratulatory Addresses

The Regional Forum on Good Governance for East Asian Countries, focusing on “Strengthening of domestic and international co-operation for effective investigation and prosecution of corruption”, commenced on 10 December 2008 in Tokyo, Japan. After the arrival of the distinguished guests and participants, the Forum began with opening remarks by Mr. Keiichi Aizawa, Director of UNAFEI, and temporary Chair of the Forum, who welcomed all of the participants, and noted the timeliness of the Forum, beginning just one day after Anti-Corruption Day, which commemorates the signing of the United Nations Convention against Corruption. Director Aizawa noted the great importance of the work of criminal justice officials in fighting corruption and outlined some of UNAFEI’s anti-corruption activities over the past year. Director Aizawa also expressed his hope that the Forum would provide an opportunity for the participants to exchange views, experiences and information on the practical challenges facing the countries of the region.

Mr. Hiroshi Obayashi, Superintending Prosecutor, Tokyo High Public Prosecutors Office, Japan then made a congratulatory address. Mr. Obayashi recalled his own days at UNAFEI, when he served as Deputy Director. He outlined the pressing reasons for which the Forum was convened: the obligation which prosecutors must fulfill to fight corruption on behalf of the people, freely and without political interference, and the increasing reliance of all national prosecution services on their foreign counterparts in investigating and prosecuting cases of corruption with international elements. Mr. Obayashi expressed his belief that the Forum would solidify the relationships between the participating countries.

The final congratulatory address was made by Mr. Yoshinobu Onuki, President, Research and Training Institute, Ministry of Justice, Japan, who began by thanking all of the participants and the visiting expert for attending. Mr. Onuki then outlined the work of the Research and Training Institute. Mr. Onuki remarked that, in its work in Overseas Development Assistance, the Research and Training Institute of the Ministry of Justice attaches the utmost importance to strengthening the rule of law and good governance. He expressed both his support for the Forum as a continuation of such efforts and his hope that it would be productive, strengthening a useful network of experts and facilitating co-operation in transnational cases of corruption.

2. Election of Forum Officers

Director Aizawa resumed the meeting under Agenda Item 1, the Election of the Forum Officers. Following earlier informal consultations with all of the participants, Director Aizawa tabled the names of prospective candidates for the positions. The participants endorsed by acclamation the candidates tabled by Director Aizawa and the Forum Officers were thus elected:

Bureau Members

Chair:	Mr. Keiichi Aizawa, Director, UNAFEI
First Vice-Chair:	Mr. Sirisak Tiyanan Director General of the International Affairs Department, Office of the Attorney General of Thailand
Second Vice-Chair:	Mr. Severino H. Gaña Assistant Chief State Prosecutor, Department of Justice, the Philippines
General Editor:	Mr. Takeshi Seto, Deputy Director, UNAFEI
Extended Bureau Member Editor:	Ms. Grace Lord, Linguistic Adviser, UNAFEI

The Officers so elected, the Chair then asked the participants to consider the provisional agenda of the Forum. There being no objections, the provisional agenda became the agreed Agenda of the Forum.

The opening session concluded with a group photo of the organizers, participants, and the visiting expert.

B. Keynote Speeches

Three papers were presented in this session. The first was by Mr. Kunihiro Sakai, Director, General Affairs Department, Supreme Public Prosecutors Office, Japan. The second presentation was made by Mr. Masato Higuchi, Director, Second Investigation Division, Criminal Investigation Bureau, National Police Agency, Japan. The final presentation for this session was made by the Visiting Expert, Mr. Ricky Shu-chun Yau, Assistant Director, Operations Department, Independent Commission Against Corruption, (ICAC), Hong Kong, China. Mr. Yau presented a paper entitled “Strengthening of Domestic and International Co-operation for Effective Investigation and Prosecution of Corruption – The Hong Kong Experience”.

Mr. Sakai began by informing the participants that global bribery is estimated at one trillion US dollars, and that it most affects the poorest one billion people in the world. Mr. Sakai explained that corruption undermines democracy and good governance, distorting influence in policymaking, and hence the equitable distribution of a nation’s wealth, which depends upon the ‘one man, one vote’ principle. As an example of the terrible effects of distortion of that principle, Mr. Sakai commented that the current global financial crisis can be attributed in part to the influence of lobbyists in the USA preventing the financial authorities from taking proper action in regard to the over-leveraged financial system operating outside the purview of the regulators to the benefit of special interest groups. Regarding corruption’s negative effects on economic growth, Mr. Sakai asked the participants to remember that corruption drives up the cost of private enterprise and also distorts the free market by denying fair competition.

Mr. Sakai noted that corrupt governments cannot adequately respond to natural disasters and other calamities and can undermine food security, even when harvests are good. He explained that first democracy falls, then the economy falls, and then people wonder why something was not done to prevent the disintegration of the social infrastructure. Mr. Sakai offered some answers to the latter question. Firstly, there is no apparent victim; secondly, corruption is notoriously difficult to investigate; and thirdly, sophisticated offenders make use of the loopholes existing in neighbouring jurisdictions and acquire the assistance of other professionals in their clandestine operations. Finally, criminals tend to try to justify their corrupt acts, and those in power with a mandate to prevent corruption are often corrupt themselves. In explaining the importance of suppressing corruption, Mr. Sakai cited the growth of Botswana since its independence in 1966, when it was one of the world’s poorest countries. As it has become less and less corrupt and increasingly well-governed, the standards of living and the GDP have improved dramatically.

In his final remarks, Mr. Sakai spoke of the ‘Iron Triangle’ of administrators, general contractors and politicians. The ‘Iron Triangle’ is extremely difficult to break, and Mr. Sakai stated that to break it will require a multi-agency approach involving all of the relevant authorities, a cap on political donations, and comprehensive whistleblower protection. Mr. Sakai concluded by stating that without top-down political will, it is almost impossible to suppress corruption, as almost all effective measures will depend upon the executive for their implementation. He urged the countries of the region to realize their close and intertwined relationships and to work together to fight the scourge of corruption.

Mr. Higuchi firstly explained the organization of the police system in Japan, highlighting the Public Safety Commissions, National and Prefectural, which were established to ensure independence of the police forces from political influence, and that police power is exercised only in accordance with the law. Mr. Higuchi gave a comprehensive description of the functions and organizations of the National Police Agency (NPA) and the prefectural police.

Moving on to his second topic of address, Mr. Higuchi outlined the defined duties of the Second Investigation Division, Criminal Investigation Bureau, NPA. The Second Investigation Division is responsible for investigating forgery, fraud, breach of trust, embezzlement and other intellectual crimes.

It is also responsible for crimes related to political funds, public election, referenda and other voting, and direct petition from residents. It conducts undercover probes to root out corruption and its targets are high-handed operators who improperly use four powers: money, authority, intellectual ability, and force. This means that the Second Investigation Division is charged with investigations requiring the utmost political neutrality.

Finally, Mr. Higuchi addressed the relationship between the police and the domestic and international prosecution services in the investigation of corruption. With regard to the former, Mr. Higuchi explained the scope of police and prosecution authority in the investigation, arrest and detention of suspects. The co-operation of public prosecutors in police investigations is particularly important in corruption cases. For this reason the police generally establish a close partnership with the public prosecutor's office, and other organs such as the National Tax Agency and the Securities and Exchange Surveillance Commission. With regard to ties between domestic and overseas agencies, because Japan's police organization functions primarily at the prefectural level, it has been slow to address cases of international corruption. To date, the NPA is not aware of any instances of international co-operation in the investigation of corruption. However, Mr. Higuchi noted that he has been made aware on several occasions of the need for investigative work outside of Japan and for co-operation with overseas agencies, and explained that it would be more effective if the Second Investigation Division could partner with overseas agencies, which heretofore has not been possible. Increasingly, however, the police have had occasion to request the co-operation of overseas agencies in apprehending suspects and witnesses who have fled Japan in connection with business fraud and other economic crimes. And since an increasing number of bribery suspects are expected to flee the country in the years ahead, Mr. Higuchi believes the need for stronger partnerships with overseas agencies can only likewise increase.

Mr. Yau began his presentation by giving the Forum a brief background of the set-up and functions of the ICAC, the Independent Commission Against Corruption, as well as its current human and financial resources. Its independence is enshrined in Article 57 of the Basic Law of Hong Kong and further set out in the ICAC Ordinance. Mr. Yau explained that although the ICAC carries out its mission by adopting a holistic and co-ordinated three-pronged approach of enforcement, prevention and education, for the purpose of this Forum, he will focus only on the aspect of law enforcement.

One of the major duties of the Commission is to investigate offences under the Prevention of Bribery Ordinance (POBO), which sets out corruption offences and penalties, as well as providing the ICAC with special powers of investigation. Mr. Yau noted that corruption is difficult to investigate because it is by nature secretive and conspiratorial, a crime often committed amongst mutually satisfied parties with no readily identified victims, and against this backdrop, the ICAC turns to the vital part of its strategy in investigating corruption – partnership.

Partnership at home includes an Operational Liaison Group (OLG) with the police. Its charter is to review operational and legal issues of mutual concern, to review joint cases or cases of interest, to monitor and review police related corruption and major crime trends, and to review and improve the existing liaison channel between the two departments. At the operational level, ICAC officers dealing with police corruption cases also maintain close and regular contact with their counterparts in the Complaints and Internal Investigations Bureau of the police. The extent of such co-operation and mutual trust can be reflected in the success of some major corruption investigations. A major partner of the ICAC is the Department of Justice which has responsibility for all public prosecutions in Hong Kong. In practice, the Commission seeks the advice of the Department of Justice before commencing any prosecution on corruption and corruption related offences. Another important "partner" of the ICAC is the Operations Review Committee, the oversight committee which receives reports from the Commissioner of ICAC on various aspects of its investigative work.

In the matter of international co-operation, Hong Kong has signed extradition agreements pursuant to the Fugitive Offenders Ordinance with 18 countries (with three yet to take effect), and MLA agreements with 25 countries (with seven yet to take effect). Apart from formal MLA, law enforcement co-operation relies on inter-agency liaison, involving invariably the sharing of crime information and intelligence. Such co-operation sometimes develops into joint investigations, invoking where necessary

the deployment of special investigative techniques. Mr. Yau gave examples of real cases, both successful and challenging, with the USA, Australia, the Philippines and Macau SAR.

Mr. Yau emphasized that effective law enforcement is impossible without highly skilled and professional investigators of good integrity, and that training and capacity is an indispensable process through which we create these professionals. The ICAC particularly values and encourages cross-jurisdictional exchange which fosters closer ties among agencies and provides a platform for discussion and achieving the common goal. For this reason, it has for many years opened up its training and command courses for law enforcement personnel overseas. In the opposite direction, it regularly sends officers overseas for training, development and exchange. The ICAC also organizes regional and international conferences, focusing on pertinent issues of corruption. To enhance international co-operation, the ICAC has in its establishment a dedicated unit to handle international liaison. The Unit acts as the focal point to deal with all incoming requests for investigative assistance from overseas law enforcement agencies.

Mr. Yau concluded his presentation by remarking that by virtue of China's ratification of the UNCAC in February 2006, this important instrument was extended to Hong Kong, providing the ICAC with the extra momentum and responsibility to contribute to the anti-corruption cause, and that ICAC will be celebrating its 35th birthday in February 2009 and shall continue its mission of fighting corruption without fear or favour.

C. Presentation Session

Thirteen papers from the representatives of the participating countries were presented in this session. In alphabetical order of their countries, each participant delivered a paper relating to the main theme of the Forum, based on their experience of the challenges facing practitioners in combating the problem, and suggested solutions. A summary of each report follows.

Pengiran Nina Jasmine binte PLKDR Pg Hj Bahrin, Counsel and Deputy Public Prosecutor, Attorney General's Chambers, Brunei, gave a presentation entitled "Strengthening of Domestic and International Co-operation for the Effective Investigation and Prosecution of Corruption". Pengiran Jasmine began her presentation by outlining Brunei Darussalam's legislative framework on corruption, the Prevention of Corruption Act, which is used by the enforcement agency, the Anti Corruption Bureau, to investigate potential offenders. The Public Prosecutor then decides whether or not there is sufficient evidence to prosecute and if there is, they will charge accused persons in court. Pengiran Jasmine also outlined the court system in Brunei Darussalam. Brunei Darussalam also co-operates with foreign countries for effective investigation and prosecution of corruption and signed and ratified the UNCAC on 2 December 2008. In order to facilitate and oversee the implementation process exercise, His Majesty the Sultan and Yang Di-Pertuan has consented to the forming of a National Committee on the Implementation of UNCAC. Pengiran Jasmine gave a comprehensive outline of Brunei's response to UNCAC's Article 38, (co-operation between national authorities) and Chapter IV (international co-operation) comprising Articles 43-48. Other relevant legislation includes the Extradition (Malaysia and Singapore) Act, Cap 154; the Summonses and Warrants (Special Provisions Act), Cap 155; the Reciprocal Enforcement of Foreign Judgements Act, Cap 177; the Mutual Assistance in Criminal Matters Order 2005; and the Extradition Order 2006.

Pengiran Jasmine read the statement of His Majesty the Sultan and Yang Di-Pertuan expressing his commitment to creating a corruption free government and further explained that His Majesty's wish was translated into Legislation: the Emergency (Prevention of Corruption) Order 1981 (now known as The Prevention of Corruption Act (PCA)) which came into force on 1 January 1982. The PCA is an Act to prevent corruption and bribery and to establish the Anti Corruption Bureau. Since its establishment, it has been updated and amended to suit the current needs of the public and interests of justice in ensuring that corruption is kept under legal scrutiny.

The Anti Corruption Bureau was established by command of His Majesty the Sultan and Yang Di-Pertuan on 1 February 1982. The ACB has identified two main functions which are the focus of its undertaking: firstly, to undertake preventive works and secondly, to conduct investigation into

information and complaints received by ACB. Anonymous letters remain the top source of information received by the bureau, with 54 received in 2007. Once investigation papers are completed by the Anti Corruption Bureau, they are passed to the Public Prosecutor to review the facts of the case and ascertain whether there is sufficient evidence to prosecute accused persons in Court. Pengiran Jasmine explained that the Anti Corruption Bureau also conducts studies based on cases that have been investigated in order to identify areas of weaknesses or loopholes in the management, administration or procedures within the ministry/department or organization and forwards the results to organizations for implementation. Other ACB activities include educational programmes to inculcate anti-corruption attitudes and a sense of integrity and honesty in the youth of Brunei Darussalam.

Ms. Pen Somethea, Director, Research and Training Department, Ministry of Justice, Cambodia stated at the outset of her presentation, entitled “Strengthening of Domestic and International Co-operation for the Effective Investigation and Prosecution of Corruption”, that corruption is widely discussed and debated in Cambodia at present. She noted a World Bank report of 10 May 2000 which revealed that corruption among civil servants is one of the most serious obstacles for the public and private sectors in Cambodia. The Royal Government of Cambodia (RGC) will, as soon as possible, ensure the adoption of the draft anti-corruption law, which provides for the establishment of a much-needed autonomous Supreme National Council Against Corruption equipped to investigate allegations of corruption and receive complaints. It also includes essential disclosure rules and whistleblower protection. The RGC will also promote the implementation of the multi-and-cross-sectoral governance reforms, especially those guided by the Governance Action Plan, which has been developed with broad participation from various government ministries and institutions, civil society and development partners.

With the collaboration of the relevant authorities, the RGC is promoting anti-corruption reform at the investigation, prosecution and adjudication stages of the legal system. Ms. Pen outlined the existing laws relating to corruption and good governance and explained that recently, the parliament passed three important codes, the Civil Procedure Code, the Civil Code and the Criminal Procedure Code, which ensure more transparency in court processes. It is commendable that the RGC is now engaged in a follow-up effort to disseminate the new codes and to teach professionals, conducted by the Ministry of Justice, how the codes should influence their practice. The government has also established centres for legal services in a number of provinces and districts in order to institutionalize dispute resolution mechanisms outside of the backlogged court system.

Ms. Pen outlined the public authorities with responsibility for anti-corruption activities. These exist at the legislative, ministerial and municipal level. Two of the most important authorities are the Ministry of National Assembly-Senate Relations and Inspection and the Anti-Corruption Unit in the Council of Ministers. The latter in particular plays an important role in fighting corruption. It is comprised of an Investigation Section, a Law Enforcement Section and an Education, Prevention, Protection and Cooperation Section.

Development partners, the media and various NGOs are among the civil society organizations which are involved in the fight against corruption. The private sector is also involved as it continues to implement government policies and legal and regulatory frameworks to ensure fair competition and to safeguard the balance between the rights and interests of the public and private sectors in contracts between the two.

In the matter of international co-operation, Ms. Pen explained that Cambodia signed the UNCAC on 25 September 2007, and signed an MOU on Cooperation for Preventing and Combating Corruption with eight ASEAN member countries on 11 September 2007.

Ms. Pen concluded by stating that fundamental change requires commitment from the top and a willingness to follow through as anti-corruption efforts unfold in Cambodia.

Dr. Xu Daomin, Deputy Chief, Division of Procuratorial Department for Duty Crime Prevention, Supreme People’s Procuratorate, China explained that since the adoption of reform and opening policies, China has made tremendous progress in economic and social development. The government is paying close attention to anti-corruption measures in order to establish a transparent social environment.

Dr. Xu outlined “post crime”, which refers to the behaviour of those government officials or public servants who take advantage of their position to engage in illegal activities, those who grossly neglect their work, and those who fail to perform their duties or who fail to perform them correctly, and in so doing, undermine the proper order of national management activities as well as the integrity of public duties. All of these offenders are punished in accordance with the Penal Code, which stipulates 53 separate “post crime” acts. These have been divided into three categories: embezzlement or bribery (Chapter VIII), dereliction of duty (Chapter IX), and infringing upon citizens’ personal or democratic rights.

China’s prosecutorial organs are responsible for the prosecution of corruption and Dr. Xu stated that the Chinese procuracy has a zero-tolerance policy towards those engaging in corruption. Some recent cases involve the abuse of power in grass-roots level government bodies while others involve government officials in high positions, such as Cheng Kejie, former vice-chairman of the Standing Committee of the National People’s Congress, was sentenced to death for bribery.

Dr Xu explained that through the investigation and handling of these cases, the procuracy can identify why such crimes occurred and which management or system weaknesses were exploited in the execution of the crimes, and can then develop countermeasures. China’s prosecutorial organs have devoted more attention to preventing “post crime” in recent years. The Supreme People’s Prosecution established the Post Crime Prevention Bureau and each provincial, municipal, and county attorney also established a “post crime” prevention organization. Dr. Xu outlined the methods by which the objectives of the bureau. They are criminal analysis; preventive investigation; the establishment and improvement of the “post crime” prevention system; crime prevention counselling and effective “post crime” prevention activities; and strengthening of awareness and transparency.

In the matter of international co-operation Dr. Xu commented that China must participate in active international exchanges and co-operation, and gain useful scientific experience from other countries to effectively investigate, try, and punish those engaging in corruption. He stated that the Chinese agencies are willing to actively participate in international co-operation in the field of “post crime” prevention; to carry out professional training and personnel exchanges; and to share with others our achievements and experiences related to combating and preventing “post crime”.

Mr. Jhoni Ginting, Head of Legal Bureau, Attorney General’s Office, Indonesia gave a presentation entitled “Indonesian Legal Frameworks and Experiences in Stolen Asset Recovery”. In it, he emphasized the importance of the recovery of proceeds of corruption, and spoke of Indonesia’s experiences in pursuing same, both treaty-based and non-treaty based. Mr. Ginting admitted that corruption is a serious problem in Indonesia and that the government is strengthening all efforts to combat it.

Firstly, Mr. Ginting outlined Indonesia’s legislation pertaining to corruption, mentioning the Act No. 31/1999 as amended by Act 20/2001 on the Eradication of Corruption Offences; and Act No. 15/2002 as amended by Act No. 25/2003 Concerning the Crime of Money Laundering. In relation to mutual assistance in criminal matters, Indonesia passed Act No. 1/2006, to respond to international needs in transnational cases. He also outlined Indonesia’s legal and investigative agencies and bureaus, including the Attorney-General’s Office, the Indonesian National Police (Criminal Investigation Division) and the Commission on Eradication of Corruption (KPK). Multi-agency meetings are convened for specific cases. There is also co-ordination and co-operation with the National Audit Agency (BPK), the National Audit Agency on Finance and Development (BPKP), and the Financial Intelligence Unit (PPATK). Domestically, prosecutors also work with the police, FIU, Immigration, Tax Offices and Auditors.

In 2004, a team was set up, chaired by Vice Attorney-General, to go after fugitive corruptors, including their assets. Mr. Ginting noted that while retrieving assets remains difficult, it has been made easier through anti-money laundering awareness and FIU regional/international networks. To speed up international legal co-operation, some agencies have also designed a special unit for such cases. Indonesian experience in international co-operation in the recovery of stolen assets includes the *Pertamina-Kartika Taher* case, in which millions of US dollars were recovered in Singapore, through civil litigation. Based on the Indonesian MLA treaty with Australia and the assistance of the Australian government, more than A\$650,000 was recovered in the *Hendra Rahardja* case. Currently, the Indonesian

and Swiss governments are co-operating on the basis of reciprocity to block around US\$15 million in alleged stolen assets. The government is also trying to recover suspected stolen assets amounting to EUR36 million, using civil litigation, in Guernsey.

Regarding Indonesia's experiences in pursuing the proceeds of corruption, Mr. Ginting stated that political will to strengthen good governance is pivotal. A multi-agency approach, as outlined above, will also help, as will sufficiently funded specialized units for asset recovery. MLA and civil litigation can be implemented simultaneously, even though the latter is more effective and efficient. Moreover, Mr. Ginting recommended that MLA and informal co-operation be executed simultaneously to recover cross-jurisdiction stolen assets. Civil litigation can be used when effective, as long as it fulfills the cost/benefit principle. Mr. Ginting also told the Forum that an important lesson of Indonesia's experiences in retrieving stolen assets is that such recovery increases public support for anti-corruption measures.

Mr. Yuichiro Tachi, Director, Research Department, Research and Training Institute, Ministry of Justice, Japan gave a presentation entitled "Investigation and Prosecution of Corruption in Japan from the Viewpoint of the Relationship between Public Prosecutors Offices and Other Organizations".

Mr. Tachi outlined four cases which were successfully investigated through such co-operation. Organizations with investigative power are police agents in the National Police Agency and Prefectural Police Headquarters; national tax investigators in the National Tax Administration Agency and Regional Taxation Bureaus; investigators in the Securities Exchange Surveillance Commission; and investigators in the Fair Trade Commission. They have responsibility to investigate cases related to their fields. Public prosecutors also carry out investigations, and can investigate independently.

The first example of co-operation, the *Taisho Life* case, involved the FIU. The FIU may disseminate information to authorities in charge of investigating criminal cases. In the *Taisho Life* case, this is what happened. The FIU alerted the Special Investigation Department, Tokyo District Public Prosecutors Office, of a suspicious transaction at the Taisho Life insurance company and the Department investigated. The perpetrators were indicted and convicted of infiltration of a legitimate business enterprise via money laundering.

The second case involved co-operation with the Regional Tax Bureau. In 2004, the Special Investigation Department of the Osaka District Public Prosecutors Office investigated a bribery case involving two public officials. It uncovered the case through the documents of a tax evasion case in which the suspect was the president of a company. During that investigation, the tax investigator took statements from the president's wife regarding a large amount of money sent to the above-mentioned public officials in the form of their salaries for services rendered to the company. The tax investigator suspected that the large salaries as stated in the company's documentation could not be the officials' legitimate earnings and instead disguised a bribe. Hence, the wife's statements gave the public prosecutors cause to begin a corruption investigation.

The third example was a case of a Japanese citizen giving a bribe to a Vietnamese official. In the course of the investigation, public prosecutors requested assistance from the Vietnamese government, through the comity of nations and via the diplomatic channel. The co-operative international relationship was vital in this case, which is under trial at the time of writing.

The fourth example of co-operative relationships concerned a case of bribery involving the Mayor of the City of Wakayama which was investigated with the help of an administrative agency, the Agricultural Co-operative Department in the Osaka prefectural government. The case led to the conviction of the Mayor and others, which caused a public sensation.

Mr. Tachi concluded by saying that effective inter-agency co-operation, both domestic and international, is vital, and will become even more essential as bribery, and concealing bribery, become increasingly sophisticated.

Dr. Kyung-Joon Jin, Director, International Criminal Affairs Division, Ministry of Justice, Republic of Korea, gave a presentation entitled "Experience in Effective Investigation and Prosecution of Corruption in Korea". Dr. Kyung-Joon divided his presentation into three sections.

Firstly, he addressed Korea's domestic legal system and policies with regard to corruption. Notable

features of this system include special task forces on corruption. A Task Force has been established under the Central Investigation Division at the Supreme Prosecutors' Office in an effort to respond effectively to corruption related offences, including large-scale economic corruption and political corruption. The Task Force comprises competent authorities such as the Prosecutors' Office, the National Police Agency, the National Tax Service, the Korea Customs Service, the Financial Supervisory Commission and the Korea Deposit Insurance Corporation. In addition, there is an Anti-Money Laundering and Redemption of Criminal Proceeds Task Force, composed of ten experts. It is responsible for tracing laundered money and recovery of illegal proceeds and for preserving confiscated property before trial. Another notable organization is the Anti-Corruption & Civil Rights Commission (ACRC). It was launched on 29 February 2008 by integrating several units including the Ombudsman of Korea, the Korea Independent Commission against Corruption, and the Administrative Appeals Commission into one anti-corruption unit, to protect people's rights and to provide compensation when necessary. The ACRC assesses the levels of integrity of public sector organizations each year by surveying citizens who have had firsthand experience with public services. The commission also evaluates the anti-corruption initiatives taken by public organizations on a regular basis. The fundamental objective of these assessments is to encourage public organizations to make voluntary efforts to tackle corruption.

Secondly, Dr. Kyung-Joon addressed international mutual co-operation. Korea ratified the UNCAC on 26 April 2008. At the same time, the Ministry of Justice enacted the Act on Recovery of Stolen Assets, which describes permissible measures in international mutual co-operation in combating corruption crimes and recovery of corruption-related properties. In addition, Korea has signed extradition treaties with 29 nations (23 of which have come into effect) and Mutual Legal Assistance treaties with 25 nations (18 of which have come into effect). It is also pushing to join the Council of Europe Conventions on Extradition and MLA.

Thirdly, and in conclusion, Dr. Kyung-Joon made a suggestion for the improvement of cross-border anti-corruption efforts in Asia. He recommended the establishment of an organization for Asia similar to the EU's Eurojust. This unit, "Asiajust", could provide a vital forum for cross-border collaboration in fighting corruption across the Asian continent.

Mr. Khamphet Somvolachith, Deputy Director, Treaties and International Cooperation Division, Supreme People's Prosecutor Office, Lao PDR presented a paper entitled "Strengthening Domestic and International Co-operation for Effective Investigation and Prosecution, in the Lao Perspective". Mr. Khamphet stated that in the Lao PDR, corruption arises in areas including finance (i.e. tax and customs collection), land management, business licensing, import and export trade (i.e. vehicles), forestry (i.e. illegal exporting of timber), state owned enterprises and banking. Government officials are involved in much of this corruption. He explained that while Laos is now in a position to reduce unnecessary public expenditure and improve government service and general living conditions, there are still many obstacles to overcome. Laos has just entered the free market from a centrally planned economy characterized by a severe lack of laws. Against this background, the country has become a breeding ground for corruption. The government understands that corruption poses a major threat to its poverty reduction plan and the nation's development. It has caused major losses of state properties and created a general public disrespect towards the government.

Mr. Khamphet outlined the general anti-corruption strategy, national and international, of the Lao PDR and anti-corruption co-operative mechanisms.

With regard to the former, the national strategy encompasses legislative, agency and administrative initiatives. Mr. Khamphet listed the most important pieces of Lao anti-corruption legislation, including the Law on Anti-Corruption 2005, the Law on State Inspection 2007, the Party Resolution on 14 Prohibitions, the Set of Civil Service Regulations, and the Decree No 95/PM (5 December, 1995). He also listed the anti-corruption agencies of the Lao PDR, including the Party Control Committee (PCC), the State Inspection Authority (SIA), the State Audit Office (SAO), the Organ of the People's Prosecutors of the Lao PDR, and the National Assembly. With regard to administrative reform, notable initiatives include the improvement of salaries and other compensations of civil servants to ensure that civil servants can maintain a decent standard of living. International anti-corruption strategies of the Lao PDR include

becoming a signatory to the UNCAC, ratifying the UNTOC and its three protocols, the conclusion of extradition treaties with four neighbouring countries, an MLA treaty with North Korea, ratification of the ASEAN convention on the mutual legal assistance in criminal matters, and the non legally-binding declarations of The China-ASEAN Prosecutors General Conference.

Regarding anti-corruption co-operative mechanisms, Mr. Khamphet explained that there is a lack of understanding of the role of the prosecutors as a whole and the lack of legislation and legal texts has led to poor co-operation between prosecutors and police. With the help of international organizations, work is underway to deal with this problem. Mr. Khamphet gave an outline of these efforts. He also elaborated on measures to increase citizen participation in improving government and international co-operative mechanisms, including bilateral meetings and joint training with prosecutors from both China and Vietnam.

Concluding, Mr. Khamphet expressed his hope that the Forum would be a successful step forward in a co-operative Asian effort against corruption.

Mr. Lai Yong Heng, Assistant Commissioner of Police, Royal Malaysian Police, Malaysia, began his presentation, entitled “Anti-Corruption: A Malaysian Approach and Advances”, by expressing the hope of the Malaysian authorities that the commissioning of the Malaysian Anti Corruption Commission (MCAC), the reformed and restructured Anti-Corruption Agency, would lead to increased effectiveness in Malaysian anti-corruption efforts. The MCAC is modelled after world class anti-corruption agencies such as the Independent Commission Against Corruption (ICAC) in Hong Kong and the Independent Commission Against Corruption in Australia. The MCAC is supplemented by an Advisory Board comprising individuals appointed by the King on the advice of the Prime Minister, while a Special Committee on Corruption made up of Members of Parliament will receive and scrutinize the annual report submitted by the Commission. The cabinet has also agreed on the proposed formation of two more panels: the Operations Evaluation Panel, which would determine actions and decisions on investigations; and the Consultation and Anti-Corruption Panel, which would assist efforts to educate the public to oppose corruption.

Mr. Lai noted the distinction drawn by Mohd Nizam Mohd Ali, Director, Private Sector, Malaysia Institute of Integrity that while public service has always worked on the basis of public trust for the public good, private enterprises, in contrast, work on the basis of limited selective trust. Mr. Lai stressed that the provisions of the UNCAC can guide private sector activities as well as public sector work and that public-private partnership is possible. As per Article 38 of the UNCAC, the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 - Act 1208 allows the Malaysian government to take measures as may be necessary to encourage, in accordance with its domestic law, co-operation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with the UNCAC. With regard to Article 39 of the UNCAC, co-operation between national authorities and the private sector, section 55 of the Anti Corruption Act 1997 (Act 575) broadens the territorial application of Malaysian instruments on the prevention and prosecution of corruption and corrupt offenders respectively.

Mr. Lai noted that trust is an essential element of public-private co-operation, and also that effective corporate governance is vital. He noted that the success of voluntary regulatory codes depends on both attitude and behaviour, and that good corporate behaviour requires good individual behaviour too. In Malaysia, the Government has entrusted the oversight of such corporate and individual behaviour to the Ministry of Domestic Trade and Consumer Affairs, which in turn enforces a Code of Ethics for Directors via the Companies Commission of Malaysia. There is also a legislative instrument, the Companies Act 1965, which is invoked whenever a director acts against the principles of good faith, due diligence and fiduciary duty. Mr. Lai stated that the human factor is therefore an important element that must be squarely addressed whenever corporate governance is debated and is to yield good and sound results.

Concluding, Mr. Lai stressed that to promote good governance in a thriving civil society, one has to look at issues pertaining to integrity when tackling the issue of corruption, and that only those who are capable, responsible and scrupulously honest be allowed to serve in positions of leadership. Those who are inefficient, incompetent, and most importantly, corrupt, should be held in absolute contempt.

Mr. Han Nyunt, Deputy Director General, Office of the Attorney General, Myanmar, presented a paper entitled “Strengthening of Domestic and International Co-operation for Effective Investigation and Prosecution of Corruption: Country Report of the Union of Myanmar”.

Mr. Han’s presentation included an account of Myanmar’s laws against corruption; its investigation and prosecution of corruption cases; and the need for regional and international co-operation to fight corruption. In Myanmar’s laws, corruption is defined not only as taking, accepting, or obtaining bribe money, property, narcotic drugs or pecuniary benefit, or agreeing or attempting to do so, but includes undue service, disservice, favour or disfavour in relation to a public servant’s work or his or her superior’s work done or being done or likely to do be done. Moreover, communicating, using, illegally retaining or failing to guard official secrets or unauthorized disclosing of bank secrecy also falls under the definition of corruption.

Mr. Han listed 15 pieces of legislation or administrative regulations which combine to provide comprehensive anti-corruption protection in Myanmar. The most important of these is the Prevention of Corruption Act, 1948, which defines corruption in wide terms and allows for a presumption of guilt if a person has wealth or assets exceeding his or her lawful income. Besides, all benefits obtained by accused by committing such offence shall be confiscated. Punishment under this act is more severe and effective than punishment under the Penal Code, so serious corruption cases are prosecuted under the Prevention of Corruption Act. The act also authorizes an investigating police officer to make necessary inspections of the bank accounts or registers of the accused and/or his or her dependants. However, the act requires the prior sanction of the relevant appointing authority of the accused before taking action under its provisions.

Mr. Han also outlined investigative and prosecution procedures as they apply to corruption cases. Corruption cases are cognizable under the provisions of the Code of Criminal Procedure. Therefore, those cases may be investigated by Bureau of Special Investigation officers, or police officers, without a court warrant. Usually, the BSI investigates serious corruption cases and refers other corruption cases to the police. If the case is not strong enough for indictment, it is referred to the Government department concerned for departmental action. Under section 197 of the Code of Criminal Procedure, if an accused who is a judge, magistrate or any public servant who is not removable from his or her office save by or with the sanction of the President or relevant Ministry, is accused of any offence alleged to have been committed by him or her while acting or purporting to act in the discharge of his or her official duty, no Court shall take cognizance of such offence except with such previous sanction. When such cases are sent up before the Courts, BSI prosecutors or Law Officers conduct the prosecution.

Regarding international co-operation, Mr. Han stated that the Mutual Assistance in Criminal Matters Law is the main law in Myanmar for bilateral, multilateral, regional and international co-operation for effective investigation and prosecution in criminal matters, including corruption cases.

Mr. Severino H. Gaña Jr., Assistant Chief State Prosecutor, National Prosecution Service, Department of Justice, Philippines, gave a presentation entitled “Recovery and Repatriation of the Marcoses’ Ill-gotten Wealth”. Mr. Gaña began by explaining that when Ferdinand and Imelda Marcos fled the Philippines, they took with them significant assets and left behind papers, known as the “*Malacañang Documents*”, detailing huge deposits held in their names in Swiss banks. Mr. Gaña gave a detailed account of the legal struggle that ensued as the Philippine government sought to retrieve the vast sums illegally accumulated by the Marcoses. The process engendered several legal precedents in the Philippines and abroad. Besides the efforts of the Philippine government to recover stolen assets, victims of the Marcos regime’s human rights violations also sought financial compensation from the Marcoses via the courts.

Following the flight of the Marcoses, President Corazon Aquino, in her first Executive Order, created the Presidential Commission on Good Government (PCGG), a quasi-judicial body mandated to investigate the Marcoses’ wealth; file civil and criminal cases to recover same; and preserve the assets until such time as the cases were resolved. A second Executive Order froze all of the Marcos’ assets in the Philippines. The Swiss Federal Council imposed a temporary but unprecedented and unilateral freeze on the Marcoses’ assets in Swiss banks which was followed by a request from the Philippine

government for a regular freeze order, on the basis of the Malacañang documents, invoking the Swiss Law on International Mutual Assistance on Criminal Matters (IMAC) (because there was then no mutual legal assistance treaty on criminal matters between the two countries). The request was met with strong resistance but in December 1990, the Swiss Federal Supreme Court approved the freezing request and admitted that in principle, the frozen assets should be returned to the Philippines. On 21 December 1990 the Swiss Federal Supreme Court issued an order, the first of its kind, that Swiss banking documents pertaining to Marcos deposits be transmitted to the Philippine Government, provided that, *inter alia*, there was a final judgment of conviction by the *Sandiganbayan* or another Philippine court. This condition was later amended, when on 10 December 1997 the Swiss Supreme Court delivered a landmark decision transferring around US\$693 million to the *Sandiganbayan*, stating that the facts are sufficiently clear to allow the assumption of the illegal origin of the seized funds. The court ruled that under the IMAC agreement of 1995 a civil proceeding in the Philippines and a final judgment in favour of the Republic would suffice instead of a criminal conviction, as noted above. On 15 July 2003 the Supreme Court of the Philippines reversed an earlier dismissal by the *Sandiganbayan* of the forfeiture case against the Marcoses. It ruled that the US\$683 million is ill-gotten and is forfeited to the Republic. On 18 November 2003 the Supreme Court denied with finality several petitions filed by the Marcos heirs to set aside its decision of 15 July 2003, and also rejected worldwide injunctions on the Marcos funds issued by Judge Manuel Real of the District Court of Hawaii.

Mr. Gaña also outlined the lawsuits filed by victims of human rights abuses. In September 1992 a class-action suit filed by such victims went to trial in the Hawaii District Court. The court ruled that Ferdinand Marcos had committed gross human rights violations and that his estate was liable for damages to the victims. The court attempted to fulfill the award with the funds held in Swiss bank accounts, but this was denied because the Marcos deposits were funds stolen from the Philippines and were frozen on account of legal assistance given by the government of Switzerland to that of the Philippines. In December 1996 the US Court of Appeals denied an appeal by Imelda Marcos against the decision of the lower that the Marcos estate was liable for damages to the victims of human rights abuses. The US Supreme Court sustained this decision in March 1997, creating a legal precedent in international human rights jurisprudence. According to the judgment of the Hawaii court, the human rights victims are to be compensated from the estate of Ferdinand Marcos. However, the sums which were held in the Swiss banks are not considered his estate; rather they are considered sums stolen from the Philippines.

Mr. Gaña concluded by stating that the long and difficult saga of the recovery and repatriation of the Marcoses' ill-gotten wealth is not over. Of some US\$683 million forfeited in favour of the Philippine government, US\$20 million is still in litigation in Singapore due to the worldwide injunctions issued by the Hawaii court, but this US\$20 million is not the only remaining recoverable assets. Imelda Marcos has admitted that there is "\$800 million kept in various international banks". According to Mr. Gaña, the PCGG knows the source of this \$800 million. The Marcoses' Swiss agents withdrew \$400 million from a Swiss bank on 23 March 1986, on the eve of the freeze order issued by the Swiss Federal Council. Marie Gabrielle Koller, a Canadian lawyer of the Swiss bank, gave a full account of the incident and said the amount must have by now have doubled due to interest.

Mr. Bala Reddy, Principal Senior State Counsel, State Prosecution Division, Attorney General's Chambers, Singapore, gave a presentation entitled "Strengthening Domestic and International Cooperation for Effective Investigation and Prosecution of Corruption". Mr. Reddy noted that Singapore is consistently ranked among the least corrupt nations in various international surveys and studies, such as Transparency International's Corruption Perceptions Index and the Political and Economic Research Consultancy. However, following the Second World War, and during Singapore's colonial era, corruption was rife. Inflation, low salaries and poor general living conditions provided an environment in which corruption could thrive. The government recognized this problem and realized that it had to act. Mr. Reddy outlined the steps taken by the Singaporean government to create one of the least corrupt nations in the world.

In 1960, Singapore passed the Prevention of Corruption Act, which remains the most important piece of anti-corruption legislation in Singapore. It was targeted at preventing corruption more effectively

through the empowerment of investigative, prosecutorial and administrative agencies. The Act defines gratification very widely, targeting basically any “advantage of any description”. It also empowers investigators to order public officers under investigation to furnish sworn statements specifying properties belonging to them, their spouses and children, and creates a legal obligation to provide information to investigators. The Act also ensures that informants remain anonymous. It empowers the Courts to mete out strong penalties for offenders and provides for an offender to disgorge whatever benefits he or she derived from his or her corrupt act. By virtue of a specific presumption clause in the Act, any form of gratification paid to a government employee by someone seeking to deal with the government will be deemed to be a corrupt inducement. Mr. Reddy explained that the effect of this clause is that the prosecution is only required to show that a government employee received such gratification. Thereafter, the burden of proving that the gratification was not corruptly received shifts to the government employee. Mr. Reddy told the Forum that the Prevention of Corruption Act is presently being revamped to tackle the new age in corruption. As a supplement to the Prevention of Corruption Act, the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act was enacted to criminalize the laundering of benefits derived from corruption and allows for the confiscation of any benefits derived from such activities.

Regarding effective enforcement efforts, a team of officers from the Corrupt Practices and Investigation Bureau (CPIB) specialize in investigating corrupt activities in Singapore. They also work with officials abroad in respect of corrupt activities occurring overseas, with effects in Singapore. Established in 1952, the CPIB functions as an independent body and works closely with prosecutors from the Attorney-General’s Chambers. In 2004, the Computer Forensic Unit was formed to perform forensic examinations of computer-related evidence.

The public authorities in Singapore have actively engaged the financial sector in the fight against corruption. The Monetary Authority of Singapore has issued guidelines on Prevention of Money Laundering to financial institutions. The Suspicious Transaction Reporting Office of the Commercial Affairs Department, which investigates commercial and financial crime, also conducts dialogue and feedback sessions with the financial institutions. The criminal justice authorities in Singapore also actively engage other stakeholders from the private sector.

Singapore strongly supports international efforts to fight corruption, like the United Nations Convention against Corruption, and has demonstrated this support by becoming a signatory to the UNCAC on 11 November 2005.

The Prosecution and the CPIB meet regularly to update each other about the respective legal and enforcement challenges that either side faces. Prosecutors must be in tune with the new avenues that offenders utilize to carry out corrupt activities, and investigators need to be educated on the legal challenges that the Prosecution faces in bringing cases to the Courts. Both the Prosecution and the CPIB have worked successfully towards eradicating corruption from all sections of society. This collaboration will continue. On a global level, it is imperative to replicate such levels of co-operation.

Mr. Sirisak Tiyapan, Director General, International Affairs Department, Office of the Attorney General, Thailand gave a presentation entitled “Domestic Measures and International Co-operation for Effective Investigation and Prosecution of Corruption in Thailand”.

Mr. Sirisak explained that Section 157 of the Thai Penal Code applies to all state officials for misconduct such as unduly performing or not performing his or her official function to gain undeserved advantages. Certain provisions, such as Section 201, relate to malpractice by judges, public prosecutors, and inquiry officials. Mr. Sirisak noted that investigation and prosecution of the Penal Code offence of corruption was ineffective in cases of sophisticated corruption committed by politicians or high-ranking public officials. Prior to reforms contained in the 1997 Constitution, which entered into force in 1999, only one politician was convicted of corruption. It was difficult for the police to successfully investigate powerful officials and politicians. Mr. Sirisak also noted various problems at the prosecutorial stage. Like all offences under the Thai Penal Code, ordinary corruption proceedings rely upon the Criminal Procedure Code. According to the Criminal Procedure Code, investigation and prosecution are strictly separate processes, causing difficulty for the prosecutor who is excluded from the process of truth-finding

from the outset.

Mr. Sirisak explained that the Thai authorities realized that the normal framework was no longer sufficient to contain corruption by public officials and in 1997 new countermeasures were introduced. Anti-corruption authorities were established with the specific purpose of tracing, investigating, prosecuting and adjudicating corruption committed by politicians and high-ranking officials. These authorities enjoy some privileges under special immunity to guarantee their independence and discretion. Asset declaration, prohibitions on conflict of interest and professional ethics regulations are some features of the new framework.

Unlike the ordinary corruption offence, tried under the Penal Code, corruption committed by high-ranking public officials and politicians is investigated by the National Counter Corruption Commission (NCCC), an independent body comprised of one Chairperson and eight members selected from among prominent persons of integrity, who cannot be removed except for reasons of malpractice. The NCCC is authorized to designate the Investigative Sub-commission, comprised of one member of the NCCC and other investigative officers, including public prosecutors and private sector experts, to investigate any case. After the completion of investigation and if the NCCC is of the view that the alleged person is guilty, the investigation file as well as supporting documents and evidence will be submitted to the Attorney General for institution of proceedings in the Supreme Court's Criminal Division for Persons Holding Political Position.

On the subject of international co-operation, Mr. Sirisak explained that the Mutual Assistance in Criminal Matters Act of 1992 designates the Attorney General as the Central Authority for rendering requested assistance to foreign countries. Thailand is now in the process of amending the Act to accommodate more convenient measures for assistance in line with the UNCAC and the Treaty on Mutual Legal Assistance in Criminal Matters of ASEAN countries. Thailand can provide assistance in the absence of a treaty, provided that the requesting state commits to the reciprocity principle. Regarding extradition, the Extradition Act of 2008 and treaties concluded between Thailand and other countries will be the principal sources of guidance. The Attorney General is the Central Authority to accommodate requests for extradition as well as to request extradition of fugitives of corruption cases back to stand trial or serve punishment in Thailand. Thailand can extradite fugitives found in Thailand back to the foreign requesting state on the basis of reciprocity alone.

In conclusion, Mr. Sirisak urged that domestic measures and international co-operation for more effective investigation and prosecution of corruption should not be restricted to co-operation among government authorities and the private sector, or be concentrated merely on mutual assistance in corruption case proceedings or extradition processes. Co-operation among national authorities and international organizations to strengthen technical assistance and capacity-building is equally or possibly more crucial. The sharing of information, knowledge and experiences regarding anti-corruption techniques, in particular with regard to asset-tracing and recovery, through seminars, conferences, or workshops, either at domestic or international level, is in fact a countermeasure itself.

Ms. Lai Thu Ha, Legal Expert, Institute for Prosecutorial Science, Supreme People's Prosecution Office, Vietnam, gave a presentation entitled "Preventing and Combating Corruption in Vietnam". Ms. Lai explained that the Vietnamese Penal Code 1999 criminalizes corruption in its Section A-Chapter 21. In 2005, Vietnam enacted the Act of Preventing and Combating Corruption which includes provisions regarding the prevention, discovery and combating of corruption and also regulates individual and organizational responsibility in the field. This Act established the Steering Committees for Anti-Corruption at national and provincial levels, led by the Prime Minister and the Chairman of the People's Committee respectively. In addition, the Specializing Bodies for Anti-Corruption were established in State Bodies such as Governmental Inspection, Ministry of Public Security, and the Supreme People's Prosecution Office. Vietnam has encouraged the participation of residents and social organizations in preventing corruption through the Act of Organizing National Assembly; the Act of Organizing People's Councils and Committees 2003; the Act of Fatherland Front of Vietnam 1999; and the Complaining and Denouncing Act 1998.

Ms. Lai listed some prominent corruption cases involving public officials, some very senior,

uncovered in Vietnam, including the land corruption case in Dason, Haiphong City; the bribery case involving the Ministry of Trade (Currently Ministry of Industry and Trade); the bribery case involving the Management Board of Project 18; the case involving the Management Board of Project 112 of the Government; and the corruption case in Laocai province.

Ms. Lai told the Forum that her office has identified six crucial elements which require special attention in Vietnamese anti-corruption efforts. These are: 1) corruption is often committed by high ranking officials of state bodies who are sophisticated in their *modus operandi* and knowledge of the law and legal loopholes. They also have the ability to induce and embroil many others in different bodies, even in law protection offices, to create a "closed mechanism" in conducting criminal activities, deterring the discovery of the crime; 2) corrupt offenders utilize their financial resources and power to abuse the prosecution process by bribing competent persons and threatening witnesses; 3) the independence and the effectiveness of anti-corruption offices may not be secure; 4) there are legal loopholes which must be closed; 5) sophisticated technology is often used to commit and conceal corrupt crimes, making detection difficult; 6) individuals wishing to complete projects quickly have often used corrupt means to do so.

In response to these difficulties Ms. Lai suggested the following measures be implemented comprehensively: 1) the Steering Committees for Anti-corruption must have a special position in the system of state bodies and their officials must be elected pursuant to special standards to ensure their independence and effectiveness; 2) state bodies must be transparent in their operation by publicly declaring their activities and financial resources; 3) the legal system must be perfected and a law-abiding spirit must be inculcated in all organizations and individuals; 4) anti-corruption education must be promoted to encourage civil society to participate in the struggle against corruption; and 5) strengthening international co-operation to enhance capacity in preventing and combating corruption, becoming a party to regional and international treaties containing progressive anti-corruption measures and strictly applying the provisions of same.

DISCUSSION SESSION, CHAIRMAN'S STATEMENT AND CLOSING CEREMONY OF 11 DECEMBER

D. Discussion Session

Topic:

Strengthening of domestic and international co-operation for effective investigation and prosecution of corruption.

Subtopics:

(a) Measures to strengthen co-operation of investigative, prosecutorial and administrative authorities at the domestic level;

(b) Measures to strengthen co-operation and co-ordination between the public sector and the private sector at the domestic level;

(c) Measures to strengthen international co-operation and co-ordination.

Beginning the Discussion Session, Director Aizawa noted that the countries of East Asia have diverse systems of investigation and prosecution, and that various modes of co-operation between investigators and prosecutors are employed across the region. These various methods of co-operation and assistance demonstrate numerous models of co-operation and may inspire practitioners to establish new systems or adapt the existing systems in their respective countries.

Since criminal justice practitioners are not lawmakers, they must work within the existing legal frameworks of their countries or regions. Understanding the different systems in place in other countries can generate ideas on how criminal justice practitioners of various disciplines can interact with each other to the benefit of the fight against corruption.

Director Aizawa suggested that the subtopics for discussion be considered with regard to the following two categories:

1. The role, responsibility and function of investigators and prosecutors;
2. The mode of co-operation of investigators and prosecutors.

The Chairman addressed these subtopics as follows.

1. The Role, Responsibility and Function of Investigators and Prosecutors

(i) *The situation in countries of a common law tradition*

(a) Myanmar

Mr. Han noted in his presentation that criminal prosecution is conducted by a prosecutor retained by the investigating officials.

(ii) *The situation in countries of a civil law tradition*

(a) Korea

Dr. Kyung-Joon stated in his presentation that the public prosecutor is responsible for directing and supervising criminal investigations, which are carried out by the police.

(b) Japan

Mr. Tachi explained that the police and public prosecution service are independent of each other. The relationship between the two is one of co-operation. He also mentioned that the Japanese police must forward all investigated cases to prosecutors as police are not authorized to terminate investigations.

(c) China

In China public prosecutors are responsible for the investigation of corruption involving public officials, whereas for other offences it is the responsibility of the police.

(d) Thailand

Mr. Sirisak explained that the responsibility for investigation is vested solely in the police. The police may decide how to conduct an investigation and may also decide when an investigation ought to be concluded. However, the police must forward all investigated cases to prosecutors. The prosecutor is then responsible for deciding whether or not to indict the case.

(iii) *Others*

(a) Cambodia

As the Cambodian legal system is based on the French tradition, the investigating judge has significant responsibility for gathering evidence, particularly statements.

2. The Mode of Co-operation of Investigators and Prosecutors

(i) *Co-operation on a case-by-case basis*

(a) Hong Kong

Mr. Yau stated that in Hong Kong there is day-to-day consultation between investigators and public prosecutors to facilitate their respective work.

(b) Korea

In Korea, joint investigations (known as task forces) are carried out by the relevant persons from the investigating authorities and the prosecutorial authorities when circumstances require such an approach. The task force is dissolved at the conclusion of the investigation.

(ii) *Co-operation in a general sense*

(a) Hong Kong

As noted above, Mr. Yau told the Forum of the open channels of communication between police and prosecutors in Hong Kong, which allow co-operation to flow easily.

(b) Laos

Mr. Khamphet explained that there is a regular judicial community where representatives from many authorities, including investigative and prosecutorial authorities, can get together and discuss judicial matters.

(c) Singapore

Mr. Reddy informed the participants that the relationship between the Corrupt Practices Investigation Bureau (CPIB) and the Attorney General's Chambers is one of co-operation and co-ordination.

(d) Vietnam

Ms. Lai mentioned that prosecutors have the authority to supervise the investigative process so there is close co-ordination between the police and the prosecution service.

Mr. Aizawa commented that there appeared to be similarities between the Vietnamese and Laotian systems, wherein prosecutors have a wider range of authority which includes inspection and supervision of government agencies.

Following this summary, the floor was opened for comments, suggestions and questions.

Subtopic (a): Measures to strengthen co-operation of investigative, prosecutorial and administrative authorities at the domestic level

Mr. Reddy gave an example of the type of **co-operation and co-ordination** that occurs between the CPIB and the Attorney General's Chambers of Singapore. In cases of bribery involving a public official the CPIB seeks to focus the investigation on the public official as the person with greater responsibility.

Therefore, they may seek permission from the Attorney General's Chambers to offer immunity from prosecution to the briber in exchange for his or her assistance with their investigation. The CPIB do not have the authority to offer immunity from prosecution and therefore must seek the co-operation of the Attorney General's Chambers in such cases. Professor Naito commented that this example is of great value in illustrating the importance of co-ordination and consultation between investigators and prosecutors.

Dr. Xu expanded on the **responsibility of the Chinese prosecution service** in the investigation and prosecution of corruption cases. The prosecution must ensure that there is sufficient evidence for trial and must also protect the human and legal rights of the suspect under investigation. This responsibility has been accorded much importance in recent years. The prosecution service and the police co-operate in investigations into official corruption; the police will execute the warrant for arrest obtained by the prosecutors.

Dr. Xu commented that the Corruption Division, while still under the control of the Supreme Prosecutorial Authority of China, has become increasingly independent.

Mr. Gaña offered an outline of the **Philippine system**. In the civil law system of the Philippines, there are two law enforcement agencies: the police and the National Bureau of Investigation under the Department of Justice. Both agencies can investigate corruption offences and file cases with the office of the ombudsman or with the public prosecution service. The ombudsman is a constitutionally created body with the sole authority to investigate corruption by public officials. It has a limited number of its own investigators, who are also lawyers. The ombudsman can also request the assistance of the police and the deployment of public prosecutors to its investigations. Cases involving public officials of Grade 26 or higher are filed in the *Sandiganbayan*. The office of the ombudsman has its own prosecutors to handle cases in the *Sandiganbayan*.

Public prosecutors act as quasi-judicial officers in the investigation of corruption cases; they cannot conduct their own investigations and instead must wait for a case to be filed by the police or NBI. However, both the police and the NBI consult with prosecutors. The prosecutor with whom the police of NIB consults cannot later be assigned responsibility for the prosecution of the case.

Mr. Ginting added that in **Indonesian practice** is similar to that of the Philippines. All prosecution is handled by the Attorney-General's Office. There is no other prosecution service.

Police investigate common crimes. Revenue, immigration and intellectual property violations are investigated separately by specialist units but these units will consult with the AGO.

There are three agencies with investigative power: the Attorney-General's Office (AGO), the police, and the Corruption Eradication Commission. Each time one of the agencies initiates an investigation it will immediately notify the other two agencies in order to avoid overlap. Corruption and human rights violations are the only crimes investigated by the AGO.

Mr. Yau commented that while inter-agency co-operation is vitally important in the fight against corruption, it is essential that the **independence** of each arm of the criminal justice system is respected and upheld. For example, in Hong Kong, the ICAC cannot handle prosecution and the prosecution service cannot order the ICAC to investigate a particular case. Mr. Yau emphasized that no one agency should be permitted to amass too much power.

Pengiran Jasmine explained that in **Brunei Darussalam**, once an investigation is completed, the Attorney General's Chambers will review the file to ascertain whether or not there is enough evidence on which to proceed. The Attorney General's Chambers does not interfere in investigations conducted by the Anti-Corruption Bureau and respects the independence of that agency. Methods to ensure co-operation and co-ordination include the requirement of legal training and examination in subjects such as criminal

procedure and evidence on the part of the ACB officials to ensure that their investigations are legitimate and effective.

Mr. Aizawa remarked that, on the matter of **independence** of investigating agencies, such as those in Brunei and Hong Kong, the independent investigative authority sends cases to the prosecution service for review. The prosecutor then decides on indictment and does the subsequent necessary work. Bearing in mind that the case will eventually reach the prosecutors, who will take the case to trial, Mr. Aizawa noted that there is room for both organizations to study the same case, evidence and legal issues.

Mr. Yau remarked that **ICAC investigators** are trained in law, as are those in Brunei. They understand the evidential rules and if they recover *prima facie* evidence they contact prosecutors when necessary to seek continuing advice. The prosecutor will have control of the case at trial but the investigator will sit behind the prosecutor and provide support and back-up. If there is no *prima facie* evidence the ICAC does not send the case to the Department of Justice. The Operations Review Committee (ORC) is the sole body with the authority to close cases. All cases investigated by the ICAC will be forwarded to either the prosecution service or the ORC.

Pengiran Jasmine stated that **Brunei** follows the Hong Kong standard. It also has an Operations Review Committee to review each complaint that comes to the ACB. The committee is made up of senior members of the ACB. They decide whether or not an investigation should be initiated. If an investigation is opened, its file must be passed to prosecutors, regardless of the kinds of evidence gathered. Once an investigation is opened the file must be passed to prosecutors. If the case is indicted the ACB officer will provide support in terms of preparing witnesses, further investigation and the other matters as mentioned by Mr. Yau. A decision to take no further action is the sole remit of the Attorney General.

Mr. Lai clarified the situation in **Malaysia**, which he described as similar to Brunei and Hong Kong. The Malaysian Anti Corruption Commission (MACAC) investigates and passes the file to the Attorney General's Chambers. The Attorney General then decides whether or not to prefer charges. If there is any shortcoming in the file passed to the Attorney General's Office then it will return the file to the MACAC for clarification. The MACAC has no power to institute indictment proceedings.

Mr. Reddy added that the situation in **Singapore** is similar, with the added requirement that the Attorney General must personally consent to all indictments.

Mr. Sirisak added that in **Thailand**, in cases of political corruption, similar to Singapore, Malaysia and Brunei, the National Counter Corruption Commission (NCCC) must send all investigated cases to the Office of the Attorney General (OAG). If the OAG disagrees with any of the contents or conclusions of the file they must set up a Working Group comprised of equal numbers of NCCC members and prosecutors. If the Working Group cannot agree on whether or not to file criminal charges the NCCC can hire a private lawyer to do so. Regarding conventional corruption, that is, corruption not committed by politicians and high-ranking public officials, the Thai legal framework is currently in a period of transition. Mr. Sirisak stated that all cases of corruption should be handled by specific agencies, in the same way that political corruption is handled by the NCCC. Legislation to that effect has not yet entered into force. Mr. Sirisak further noted that, similar to Malaysia and the Philippines, prosecutors in Thailand have no part in the process of fact-finding.

Mr. Sirisak further added that when discussing co-operation between investigators and prosecutors it should be remembered that investigators apply **different techniques** to their work than do prosecutors. This is the reason why some countries separate the two processes. One solution is to have representatives of both groups in the same meetings and allow them to learn each other's techniques and policies and the concepts of their work. This can be done in the domestic or international sphere.

Mr. Khamphet remarked that fighting corruption is a difficult task for all those involved, no matter the system employed. In the **Lao PDR** it is handled by the anti-corruption authorities; however, it is supervised by public prosecutors. According to the Criminal Procedure Law, the public prosecution service must be notified of all reports of criminal incidents within 24 hours of the report being made. In important cases, the report must be made immediately. This requirement is necessary because the prosecution service must be informed of the initiation of an investigation. The two branches of the criminal justice system must work together. Mr. Khamphet stated that while supervision of investigations is a difficult task for prosecutors, as investigators can sometimes feel some resistance to being supervised by outside agencies, co-operation between investigators and prosecutors has been improving in recent years.

Subtopic (b): Measures to strengthen co-operation and co-ordination between the public sector and the private sector at the domestic level

On the topic of public-private co-operation, Mr. Aizawa noted the comments made in Mr. Reddy's presentation regarding the **exchange of valuable information** between investigating authorities and financial institutions. Financial institutions are in a position to provide prosecutorial authorities with information of vital importance, such as abnormal transactions on the part of public officials. Information on the size, frequency and direction of such transactions can be notified to the investigative or prosecutorial authorities.

Mr. Noguchi mentioned the significance of **prevention** and noted that it can be incorporated into the context of partnership with private sector entities and outreach by relevant authorities in the private sector. Mr. Aizawa agreed that prevention is very significant, but that as the main topic of the Forum was investigation and prosecution, the discussion and Chairman's Statement should focus on the law enforcement aspect of combating corruption.

Subtopic (c): Measures to strengthen international co-operation and co-ordination.

Possible **measures** to strengthen international co-operation and co-ordination as mentioned by the participants include the signing and ratification of the UNCAC; bilateral or regional treaties on matters such as mutual legal assistance and extradition; international conferences, seminars and training initiatives; enhancement of international law enforcement co-operation; repatriation of illegally obtained proceeds of corruption; and regional mechanisms to strengthen mutual co-operation and extradition.

Examples of such regional treaties include the **Treaty on Mutual Legal Assistance in Criminal Matters** signed by the ASEAN member countries on 29 November 2004 in Kuala Lumpur.

Regarding regional mechanisms to strengthen mutual extradition and co-operation, Dr. Kyung-Joon from Korea suggested the establishment of an organization for Asia, "**Asiajust**", similar to the European initiative Eurojust, which allows quick and easy communication and close co-operation and co-ordination of criminal justice investigations across EU member states.

E. Chairman's Statement

Following the morning's discussion session, Director Aizawa, in his capacity as Chairman of the Forum, delivered a Statement reflecting the reasons for convening the Forum, the content of

its discussions, and the expressed intentions of the participants with regard to the Forum's theme, "Strengthening of domestic and international co-operation for effective investigation and prosecution of corruption".

F. Closing Ceremony

The Closing remarks were delivered by Mr. Yutaka Nagashima, Public Prosecutor, Supreme Public Prosecutors Office, Japan. Mr. Nagashima, a former professor of UNAFEI, commended the participants for their enthusiastic commitment to the Forum and praised the work of the Forum as an important first step in cultivating lasting and mutually beneficial relationships between criminal justice personnel of the represented countries. He emphasized that for international agreements and assistance to function effectively, the practitioners concerned must feel united by a common purpose and have full confidence in each other. Mr. Nagashima also expressed his thanks, on behalf of all participants, to all UNAFEI personnel for their preparatory work and their hospitality over the period of the Forum.

G. Courtesy Visits

Accompanied by Director Aizawa and Professor Naito, the participants and visiting expert made a courtesy call to the Minister of Justice, Mr. Eisuke Mori, and the Prosecutor General, Mr. Toshiaki Hiwatari.

CHAIRMAN'S STATEMENT

I, as Chairman of the Regional Forum on Good Governance for East Asian Countries, deliver the following statement as a summary of the Forum's discussion:

1. We, senior-level officials from thirteen East Asian countries responsible for law enforcement and policy-making in the field of corruption control, met in Fuchu, Tokyo, to participate in the Regional Forum on Good Governance, jointly organized by the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) and the Supreme Public Prosecutors Office of Japan, and discussed the issue of "Strengthening of domestic and international co-operation for effective investigation and prosecution of corruption".
2. We affirmed that the fight against corruption is one of the most solemn obligations of all criminal justice practitioners in the pursuit of our common goal of promoting the rule of law and good governance.
3. We reaffirmed the importance for all of the represented countries to ratify and fully implement the United Nations Convention against Corruption in order to strengthen our individual and collective response to corruption.
4. Having exchanged views and shared experiences on the matter, we recognized the great significance of enhancing collaboration between investigative agencies and prosecutorial authorities in terms of investigation and prosecution of corruption cases, as such collaboration, utilizing the skills and expertise of these organizations, would maximize effective enforcement of the law in such cases. We are united in our commitment to continue our efforts to establish and strengthen the co-operative relationship between both branches of criminal justice administration within the existing frameworks of the respective countries.
5. We declare a common recognition that the enhancement of co-operation and co-ordination between law enforcement agencies and public authorities is vital in an effective criminal justice response to corruption. In particular, we reaffirmed the value of fully utilizing information on suspicious transactions provided by the Financial Intelligence Unit (FIU) as useful data in identifying acts of corruption.
6. We also exchanged opinions on the significance of co-operation between public law enforcement authorities and the private sector, and we share a clear recognition that the information and expertise of private entities, including financial institutions, is of paramount importance to the successful investigation and prosecution of corruption cases; we thereby confirm the need to strengthen the co-operation between the two.
7. Taking into account the rapid globalization of corruption crime, we are in complete accord that international co-operation is highly important in accomplishing our duty to successfully investigate and prosecute corruption cases. We exchanged views and shared experiences in pursuing co-operation from foreign countries in various situations, including cases of transnational laundering of the proceeds of corruption. We reaffirm our commitment to be proactive in the continuation of our efforts to provide assistance to our counterparts by applying the relevant co-operation mechanism as flexibly as possible.
8. We are convinced that an international network of criminal justice practitioners is of great importance for the authorities of this region to effectively discharge their duty to control corruption; therefore, we acknowledge the significance of the opportunities afforded by international training courses, seminars

and conferences such as the Regional Forum to create, strengthen and expand such networks.

OPENING CEREMONY

Opening Remarks by
Mr. Keiichi Aizawa
Director, UNAFEI

Address by
Mr. Hiroshi Obayashi
Superintending Prosecutor,
Tokyo High Public Prosecutors Office

Address by
Mr. Yoshinobu Onuki
President,
Research and Training Institute,
Ministry of Justice

OPENING ADDRESS

Mr. Keiichi Aizawa
Director, UNAFEI

Distinguished participants, honourable guests, ladies and gentlemen,

It is a great privilege and pleasure for me to have organized the Regional Forum on Good Governance for East Asian Countries, in collaboration with the Supreme Public Prosecutors Office of Japan. On behalf of UNAFEI, I would like to extend my heartfelt welcome to all of the distinguished participants and honourable guests who come to join this significant event.

As the Director of UNAFEI, I am truly pleased to meet high-ranking officials from thirteen East Asian countries, including Japan, who play a leading role in the administration of criminal justice in their respective countries. I am particularly happy to see among you some UNAFEI alumni, to whom I would like to say most warmly “Welcome back”. For other participants who are new to UNAFEI, this forum provides an excellent opportunity for us all to meet and become acquainted in the family-like atmosphere that we strive to maintain here at UNAFEI.

This meeting coincides with the United Nations’ International Anti-Corruption Day which was designated to commemorate the historical High-level Political Conference for the Purpose of Signing the United Nations Convention against Corruption, convened from 9 to 11 December 2003 in Merida, Mexico.

Distinguished participants,

Ensuring the rule of law and good governance is of vital importance to East Asian countries, including Japan, for maintaining law and order, and securing the stability and development of society, as well as ensuring the rights and interests of the people. One of the most significant tasks for us criminal justice officials in the pursuit of this common goal is to effectively and proactively fight against corruption. With a view to contributing to the enhancement of the capacity of criminal justice practitioners to successfully conduct criminal investigation and prosecution of corruption cases, UNAFEI has been conducting various international training activities here in Fuchu, Tokyo for many years.

In addition to those endeavours, UNAFEI has organized two Regional Seminars on Good Governance for Southeast Asian Countries. The seminars were held in Bangkok, one in 2007 and one in 2008, and both were conducted with the participation of criminal justice officials of eight of the ASEAN member countries. These seminars were held in conjunction with the Office of the Attorney General of Thailand and the United Nations Office on Drugs and Crime (UNODC) Regional Centre for East Asia and the Pacific. In the regional seminars, we tackled the issues of “Corruption control in the judiciary and prosecutorial authorities”, and “Corruption control in public procurement”, respectively.

As a further step forward, UNAFEI determined to organize this Regional Forum as a joint activity with the Prosecution Service of Japan. Today, the prosecutorial authority of this country is represented by the Honourable Mr. Hiroshi Obayshi, Superintending Prosecutor, Tokyo High Public Prosecutors Office, who holds the second highest position in the entire Prosecution Service of Japan.

The objective of this forum is to provide an opportunity for the senior criminal justice practitioners from the ASEAN+3 countries, who have real influence in criminal justice administration and policy making in their respective countries, to get together and exchange views, experiences, and the most up-to

date information about the current situation of corruption in this region, as well as the legal and practical challenges we are facing in our struggle with corruption and workable solutions to eliminate these difficulties.

The topic to be discussed at this Forum is the “Strengthening of Domestic and International Co-operation for Effective Investigation and Prosecution of Corruption”.

Due to the continuing sophistication of *modi operandi* and the rapid globalization of crimes of corruption, the enhancement of co-ordination and collaboration between law enforcement and other relevant agencies or organizations, including financial institutions and other private sector authorities, has become more essential than ever before. It is essential because such co-operation allows the authorities to effectively investigate and prosecute corruption cases. Furthermore, strengthening the international co-operation of law enforcement authorities is of utmost importance in order to successfully address the above-mentioned challenges.

It is my real hope that the mutual co-operative ties among the criminal justice agencies of the represented countries will be further augmented by the exchange of views and experiences, and the sharing of best practices in the relevant areas, which we aim to achieve through active debate among the high level practitioners of those participating East Asian countries.

Distinguished participants,

With these few words, and in my capacity as temporary chairman representing one of the co-hosting organizations of this conference, I wish to hereby declare this Regional Forum open. I am looking forward to fruitful and mutually beneficial discussion over the next two days.

Thank you very much for your attention.

ADDRESS

Mr. Hiroshi Obayashi
Superintending Prosecutor, Tokyo High Public Prosecutors Office

Distinguished participants, honourable guests, ladies and gentlemen,

It is a great pleasure for me to deliver, on behalf of the Prosecution Service of Japan, headed by the Supreme Public Prosecutors Office, a congratulatory address on this significant occasion: the opening of the Regional Forum on Good Governance for East Asian Countries. It is a real honour and privilege for me to welcome you all to this conference, particularly those who have come from overseas.

I am particularly delighted to be invited to this august gathering, co-organized and hosted by UNAFEI, because of my own relationship with this Institute, which I served as Deputy Director from 1993 to 1995. I am truly pleased to meet here some of the most senior UNAFEI alumni, and I equally look forward to establishing similarly close and friendly ties with those of you who are visiting for the first time.

Distinguished participants,

One of the most important responsibilities of Japanese public prosecutors is their work in corruption control. It is a mission they must execute most assiduously, as it is vital to maintaining both the rule of law and good governance. The investigation and prosecution of corruption cases is given close and careful attention by the Japanese general public, and we public prosecutors continuously strive to meet the high expectations held of us by the people of Japan to effectively contain acts of corruption.

Entrusted with this solemn obligation, Japanese public prosecutors are vested with special legal status and tools. Firstly, public prosecutors are entitled not only to determine whether or not to indict a case, but also to investigate any type of crime, including corruption cases, by themselves, or with the help of their own assistant investigative officers. Secondly, public prosecutors enjoy a legal guarantee of independence similar to that of judges. These outlined tools and privileges enable prosecutors to fulfil their obligations, including the duty to fight corruption, free from fear of political pressure or unjust influences.

In the context of such a system, the Japanese prosecution authorities have recorded significant achievements, including the successful investigation and prosecution of large-scale and high-profile corruption cases involving politicians and high-ranking government officials, and thus continue to play the pivotal role in the Japanese criminal justice response to corruption.

At the same time, Japanese prosecutors always endeavour to reinforce their collaborative ties with other investigative authorities, such as the National Police Agency and the prefectural police forces, the National Tax Agency, the Fair Trade Commission, and the Securities and Exchange Surveillance Agency, in order to ensure that corruption cases are investigated and prosecuted effectively.

Distinguished participants,

Our recent experiences show us that acts of corruption with international implications are increasing day by day. These cases include transnational money laundering of the proceeds of corruption offences, and bribery of foreign public officials. We are faced with the increasing necessity of relying upon international assistance from foreign counterparts in conducting criminal investigation and prosecution

of corruption cases. No single country can successfully fight against corruption by itself. We recognize the pressing need for all of us, criminal justice practitioners, to strengthen mutual co-operation with the relevant foreign authorities.

In recognition of all of the foregoing, the Prosecution Service of Japan determined to co-organize this significant Regional Forum in collaboration with UNAFEI. I eagerly anticipate productive discussion in this conference, and am confident that this meeting will solidify relationships among the countries represented here.

Thank you very much for your attention.

ADDRESS

*Mr. Yoshinobu Onuki
President, Research and Training Institute,
Ministry of Justice, Japan*

Distinguished participants, honourable guests, ladies and gentlemen,

It is a great honour and privilege for me to deliver congratulatory remarks at the opening ceremony of the Regional Forum on Good Governance for East Asian Countries, on behalf of the Research and Training Institute of the Ministry of Justice, Japan. It gives me great pleasure to welcome all of you who have taken valuable time from your busy schedules to attend this conference.

The Research and Training Institute is an organization attached to the Ministry of Justice. Its work is composed of three major pillars; firstly, the empirical study and research of the criminal justice administration of Japan, the outcome of which is reported to the cabinet, and published as the White Paper on Crime; secondly, practical training for Ministry of Justice personnel, including public prosecutors; and thirdly, the provision of international co-operation within the mandates of the Ministry of Justice.

In the sphere of the third task, the Research and Training Institute divides its work into two broad categories. The first one is to provide necessary logistical support to UNAFEI in order that it can fulfil its important mission as entrusted to it by agreement between the United Nations and the Government of Japan. The second one is to provide technical assistance, mainly in the field of civil and commercial law, to some of the Asian countries represented here. This work is part of Japan's Official Development Assistance.

In all of the work that we do, we strive to assist our partner countries in enhancing the rule of law and good governance. With a view to achieving this common goal, I am confident that efforts should be made, not only to strengthen the function of criminal justice mechanisms, but also in the broader areas of vitalization of the judicial system, as well as capacity building of its personnel, including judges, prosecutors and investigators. The International Co-operation Department of our Institute has been working very closely with some of your countries in developing practical training activities for judges and prosecutors, and in other relevant areas, for many years.

As such, in conducting our duties, our Institute attaches utmost importance to the realization of the rule of law and good governance. In this connection, we recognize the significance of this Regional Forum, aiming at contributing to East Asian countries, including Japan, in their efforts to strengthen the rule of law and good governance through effective investigation and prosecution of corruption cases.

I have high hopes that, through candid debate and exchange of information, expertise and best practices, this conference will provide a most valuable opportunity for the represented countries to reinforce their mutual co-operative relationships in terms of their struggle with corruption. I am looking forward to an informative and productive forum.

Thank you very much for your attention.

KEYNOTE SPEECHES

Keynote Speech by
Mr. Kunihiko Sakai
Director,
General Affairs Department,
Supreme Public Prosecutors Office,
Japan

Keynote Speech by
Mr. Masato Higuchi,
Director,
Second Investigation Division,
Criminal Investigation Bureau,
National Police Agency,
Japan

Keynote Speech by Visiting Expert
Mr. Ricky Shu-chun Yau
Assistant Director,
Operations Department,
Independent Commission Against Corruption (ICAC),
Hong Kong,
China

KEYNOTE SPEECH

*Kunihiko Sakai**

Thank you for your introduction. Good morning, distinguished guests, participants, and ladies and gentlemen. It is my great honour to have the opportunity to deliver a speech at this forum.

I served as director of this institute several years ago, and this is my second home. I am very pleased to see my friends, old and new.

My time is very limited: twenty minutes. Twenty minutes for me is just the blink of an eye, I am afraid. But today I would like to address the issue of corruption in general terms.

Bribery around the world is estimated at about US\$1 trillion. That is equivalent to one-third of the annual budget of the United States. The burden of corruption falls disproportionately on the bottom billion people living in extreme poverty. Why is corruption so intolerable? In the political realm, it undermines democracy and good governance. Corruption in elections in legislated bodies reduces accountability and distorts representation in policymaking. Democracy is a process of ensuring fairness by which social wealth is redistributed for the good of all members of society. The “one man, one vote” principle—that is, rich and poor have equally one vote—is crucial for that end. If corruption hurts this domestic process, then wealthy individuals and special interest groups can buy influence under the guise of democracy. The rich become richer; the poor become poorer.

This is the dark side of the market economy. We are now facing a very serious world financial crisis. This morning, I listened to NHK news, and the headline news was that Sony announced its layoff of quite a few employees for the first time in the company’s history. So we are now in the midst of a very serious financial crisis. Of course, the collapse of so-called subprime loans is responsible for this crisis, but so is the very complex overleveraged financial system, and its use of products like credit derivatives, which are traded under the counter, outside the purview of regulators; this kind of activity is also responsible for this financial crisis. If the financial authorities had successfully regulated such trade, the crisis would not be so serious. But lobbyists successfully kept regulators from taking proper action on these high-risk financial transactions, for the sake of special interest groups. This is not a crime in the United States, but certainly this is against the “one man, one vote” principle, and therefore betrays the will of the majority of people.

Let us look at another area: corruption in the judiciary compromises the rule of law. Corruption of public administration results in the unfair provision of services. Corruption erodes the institutional capacity of government, as procedures are disregarded, resources are siphoned off, and public offices are bought and sold. Ultimately, corruption undermines the legitimacy of government, and such democratic values as trust and tolerance.

Let us turn our attention to the economic impact of corruption. Corruption undermines economic development by generating considerable distortions and inefficiencies. In the private sector, corruption increases the cost of business through the price of illicit payments, the management cost of bribing public officials, and the risk of breached agreements or detection. Where corruption inflates the costs of business, it also distorts the playing field, shielding companies with political connections from competition.

* Director, General Affairs Department, Supreme Public Prosecutors Office, Japan.

Let us look at the world global situation. Many developing countries are suffering from starvation. As the Nobel Prize-winning economist Amartya Sen has observed, “There is no such thing as an apolitical food problem.” While drought and other naturally occurring events may trigger famine conditions, it is government action or inaction that determines its severity, or often even determines whether or not a famine will occur. Corrupt government can undermine food security, even when harvests are good. Democracy falls; then the economy falls.

Then, the question comes, why do we fail to stop corruption? There are some explanations for this.

First, there seemingly is no victim, no bloodshed. No one seemingly is hurt. Secondly, corruption is regarded as one of the most difficult crimes to investigate. There is often no crime scene, no fingerprints, and no eyewitness to follow up. It is by its nature a very secretive crime and can involve just two satisfied parties, so there is no incentive to divulge the truth. In this modern age, sophisticated corrupt offenders will take full advantage of the loopholes in cross-jurisdictions and acquire the assistance of other professionals, such as lawyers, accountants, and computer experts, in their clandestine operations. Thirdly, the crime of corruption provides some excuses for criminals. They tend to justify their wrongdoing by reason of necessary evil, like a low salary or a pressing household economy. Lastly, persons in power, who are supposed to prevent corruption, are corrupt themselves.

But do not let these excuses stand and do not let these situations remain rampant. There are victims. There are victims in corruption. Corruption kills our economy, our society, our homeland, and kills people’s minds. The burden of corruption falls disproportionately on people living in poverty.

Some corrupt people argue that they commit corruption because they are poor; but this is not true. The truth is that they are poor because their policymakers, public officials, and businessmen are corrupt. We can find one good example in the case of one African country; that is, the Republic of Botswana. I am not sure if you are familiar with the name of that country, Botswana. But Botswana was the 10th poorest country in the world at the time of independence in 1966. But since independence, Botswana has had one of the fastest growth rates and has transformed itself from one of the poorest countries in the world to a high-income country with a per capita GDP of US\$29,000 in 2008, just because it is a very democratic and well-governed corruption-free country.

Now I want to turn our attention to the Japanese situation. Japan is not free from corruption. I personally took charge of the trial against a very influential politician from 1994 to 1995. He was the deputy prime minister and the second most powerful politician in Japan. He received a lot of money from a general contractor - a big construction company - a huge amount of money, in the name of “campaign contributions.” But he failed to return tax; then he was arrested and prosecuted for the crime of tax evasion. Why could he receive such a huge amount of money from a general contractor? The diagram on the next page shows why money passes from construction companies to politicians. The scheme involves administration, politicians, and the general construction contractors. This is the typical way of corruption in Japan. We call this relationship the “iron triangle.” In this way, politicians give administrators a budget or make the necessary laws. The general constructor gives the politicians campaign funds for elections in the form of campaign contributions. The administration gives them a construction contract for information on where the construction offer is.

Major construction companies are routinely involved in so-called bid-rigging to win a big bid at the highest price. That is the so-called “iron triangle” scheme. The parties equally benefit from this corrupt practice. They want more construction, more dams, and more roads because construction generates revenue for them. There is a famous joke in Japan: “There are many nice roads which only animals use.”

So how can we break this corrupt iron triangle relationship? From the Japanese experience, it seems that first, it should be realized that there is no single solution to fight corruption. You need a

comprehensive approach. Later, Mr. Yau, the Visiting Expert from the Hong Kong ICAC will give some advice regarding a comprehensive approach.

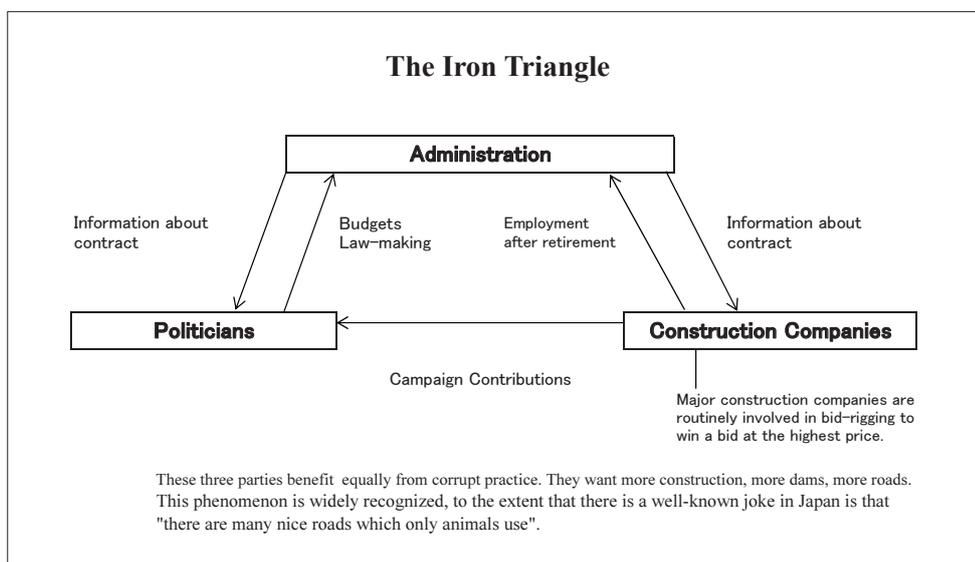
Second, it should also be realized that we cannot rely on a single agency to combat corruption. Apart from the police or the prosecutor's office, there should be a coalition of all partners in society to put up a joint effort. From my experience and observation in a number of countries which have serious corruption problems, I have come to the conclusion that the most important element in an effective anti-corruption strategy is political will. Without the top official political will, it is almost impossible to combat corruption effectively in a corrupt country.

Law enforcement must be able to conduct investigations free from political influences. If these functions were controlled by political influence, then the whole criminal justice system would be jeopardized. In Japan, the public prosecutor's office can investigate independently because the Minister of Justice cannot directly control an individual public prosecutor's investigation or disposition of cases.

Also, an effective prevention strategy and an effective legal framework are necessary. There are many examples of how we introduced preventive measures and legal frameworks to combat and break this iron triangle; for example, we introduced the Political Funds Control Law, which caps political donations and requires politicians to report donations. We introduced the comprehensive Whistleblower Protection Act, enacted in 2004. The Act provides civil remedies to protect from dismissal or mistreatment employees who come forward in the public interest. So we have introduced some measures to break this so-called iron triangle.

Finally, a partnership approach is necessary. For example, when the Japan Fair Trade Commission (JFTC) is involved in criminal investigations, before the JFTC files a criminal accusation in a concrete case to the prosecutor-general, the JFTC and the prosecutor's office gather and exchange views on the sufficiency of evidence, and whether the interpretation and application of the Act is appropriate. Through these meetings or consultation, we have reached a common understanding of the case.

In closing, we are from Asia, the region of promise in the 21st century. The economy is not a zero-sum game; on the contrary, it is a win-win game. For example, Japan suffered a severe recession after the burst of the bubble economy and Chinese economic growth helped us out of that recession. I believe the countries in this region depend on each other and have enough capacity for achieving the common goal of prosperity without crime. We would like to move forward hand-in-hand into the bright future.



KEYNOTE SPEECH

*Masato Higuchi**

The theme of this forum is “Strengthening of Domestic and International Co-operation for Effective Investigation and Prosecution of Corruption,” but I would like to begin my keynote speech by explaining the organization of Japan’s police system.

Japan’s police organization features the National Public Safety Commission and the National Police Agency at the national level and the prefectural public safety commissions and prefectural police headquarters in each of the country’s 47 prefectures (including the Metropolitan Police Department in Tokyo).

The use of the public safety commission system is a key characteristic of Japan’s police organization. The system of public safety commissions was adopted as part of the reform of the police system after World War II. The main objective in instituting the system was to ensure the democratic operation and political neutrality of the police by means of oversight commissions made up of people of sound judgment.

The National Public Safety Commission has oversight over the National Police Agency. Although the National Public Safety Commission is under the jurisdiction of the prime minister, the prime minister has no authority to command or supervise the commission directly. This ensures the independence and political neutrality of the National Public Safety Commission.

The National Public Safety Commission establishes basic national police policies and regulations and preserves the consistency of nationwide standards and practices in police training, police communications, criminal investigation, crime statistics, and police equipment.

The National Public Safety Commission appoints the commissioner general of the National Police Agency and the chiefs of the prefectural police headquarters. The National Public Safety Commission has indirect oversight over the prefectural police organizations through the National Police Agency.

The National Public Safety Commission is composed of a chairman and five members. The chairman holds the rank of minister of state and presides over the commission’s business. Members are each appointed for a five-year term by the prime minister, with the approval of both houses of the Diet. Appointees must be citizens who have not served in the police or a public prosecutor’s office within the previous five years. To ensure the commission’s political neutrality, no more than two of its members may belong to the same political party.

To perform its duties, the commission holds regular once-weekly meetings, as well as extraordinary meetings as necessary.

The head of the National Police Agency is the commissioner general, whose appointment must be approved by the prime minister. Operating under the oversight of the National Public Safety Commission, the commissioner general of the NPA supervises the work of the agency, appoints and dismisses personnel, and directs and supervises the prefectural police in their execution of the NPA’s work.

Each prefectural public safety commission is under the jurisdiction of the prefectural governor. The prefectural public safety commission oversees the prefectural police.

* Director, Second Investigation Division, Criminal Investigation Bureau, Japan.

The prefectural public safety commission is also entrusted with the authority to issue licenses for the operation of businesses offering food and entertainment, for possession of firearms, and for the operation of motor vehicles. However, neither the Prefectural Public Safety Commission, the governor, nor the prefectural assembly may supervise specific activities of the prefectural police.

Large prefectural public safety commissions consist of five members, while all others have three members. Members of each prefectural public safety commission are appointed for a term of three years by the prefectural governor with the approval of the prefectural assembly. Appointees must be citizens who are eligible to run for the corresponding prefectural assembly and who have not served in the police or a public prosecutor's office within the past five years.

To ensure political neutrality, a majority of the members may not belong to the same party.

The basic functions of the National Police Agency are:

- Planning and research on police systems;
- Review of national policies on police;
- Police operations in time of large-scale disasters and disturbances;
- Measures against trans-prefectural organized crime.

These functions do not involve the exercise of direct police power but are limited to policy research, planning, management, supervision, and co-ordination.

The basic function of the prefectural police is respond to police matters and exercise police powers within its jurisdiction.

The National Police Agency is headed by the Commissioner General. Under the Commissioner General and the Deputy Commissioner General are the bureaus, departments, and regional agencies (regional police bureaus). The NPA's attached organizations are the National Police Academy, the National Research Institute of Police Science, and the Imperial Guard.

Each prefectural police force has its own headquarters. Under each prefectural police headquarters are the local police stations. As of April 1, 2008, there were 1,206 police stations nationwide. Each of the prefectural police headquarters and local police stations has various departments in charge of specialized areas, such as community safety, criminal investigation, security, and traffic.

In addition, each police station sets up multiple *koban* (police boxes) and *chuzai* (residential police boxes) that work to maintain law and order within their jurisdictions. These are the arms of the police system that are most directly involved in the lives of community residents. At the *koban* and *chuzai* uniformed police officers are on the lookout 24 hours a day, 365 days a year, and conduct activities in response to all police situations.

The *koban* are stationed in urban areas, while the *chuzai* are situated in rural communities. Officers stationed in *chuzai* perform their duties while living there with their families.

Now I will explain the duties of the Second Investigation Division. The Second Investigation Division is part of the NPA's Criminal Investigation Bureau. Its duties involve detection and investigation of criminal activity lurking in the shadows of politics and government, including bribery, election violations, and violations of the Political Funds Control Law.

It is said that in some countries, people arrested for bribery are most often apprehended in the act. I have heard that in some countries where it is common for public servants to solicit bribes, a citizen thus solicited will go to the police, and the police will proceed by having the citizen hand over the money to the official and apprehending the latter in the act of taking the bribe.

In Japan, however, such corruption is latent in our social, economic, and political institutions,

lurking beneath the surface, and generally speaking, is not easily detectable by the police.

For this reason the Second Investigation Division performs a proactive, aggressive role, by conducting undercover probes to root out problems and at times using various special laws to apprehend perpetrators and clamp down on this sort of latent criminal activity.

As we see it, moreover, the targets of the Second Investigation Division are high-handed operators who use the four powers - money, authority, intellectual ability, and force - not in a legitimate manner, but improperly or illegally.

With such people as our targets, we handle the proactive, aggressive side of law enforcement.

This means that the Second Investigation Division is charged with investigations requiring the utmost political neutrality.

In terms of Japan's police organization, the system of Public Safety Commissions also deserves special mention in the context of the investigation of corruption.

The Japanese police have strong enforcement powers, and it must never be permitted to operate in a self-interested manner or be used for political ends.

For this reason, as noted previously, the National Public Safety Commission is established at the national level to oversee the NPA, and the prefectural safety commissions are established at the prefectural level to oversee the prefectural police, as a means of ensuring the democratic operation and political neutrality of the police.

In addition to arrests for malfeasance in politics or public administration, we also apprehend a large number of public servants for other crimes, such as misappropriation of public funds, fraudulent use of public funds, breach of trust, and so forth. Many arrests are also made for violations of the Public Office Election Law. In terms of specific cases, last year the Miyazaki Prefectural Police arrested the governor of Miyazaki Prefecture on suspicion of accepting bribes.

Funding for the prefectural police is appropriated from the budget for the governor's office and its departments, giving the governor the authority to adjust police appropriations. However, in addition to the role of the Prefectural Public Safety Commission mentioned previously, personnel matters are carried out independently of the governor, with the National Public Safety Commission responsible for appointing or dismissing all regional officers, which includes everyone at or above the level of chief of prefectural police headquarters and senior superintendent.

Thanks to this system, it has been possible to preserve a high degree of political neutrality when investigating cases and making arrests.

As another example of a politically sensitive case, this year the Tokyo Metropolitan Police Department arrested the top of technical official of the Ministry of Education, Culture, Sports, Science and Technology for accepting bribes.

This case was also indicative of the neutrality of the police on the national level.

Now we move on to the subject of co-operation between domestic and overseas agencies in the investigation of corruption. At the domestic level, co-operation between police and public prosecutors is essential. As part of the police reforms implemented after World War II, the Japanese police were given the authority to conduct investigations independently of public prosecutors.

However, even when the police make an arrest with a court warrant, they can only detain a suspect for 48 hours, and a public prosecutor must ask a judge for an extension order to hold a suspect longer than 48 hours without an indictment. In addition, it is the public prosecutor who makes the decision to indict or not to indict. Moreover, under law governing criminal prosecution, unsworn witness statements recorded by a police officer cannot be used as evidence when the accused and the attorney for the

defence do not consent. Depositions taken by the prosecution, on the other hand, can be used under the law's stipulated conditions. For this reason, co-operation between police and public prosecutors in investigations is vital for successful prosecution.

The co-operation of public prosecutors in police investigations is particularly important in corruption cases, where the subjects of investigation, as mentioned previously, are often powerful people of high social status. For this reason the police generally establish a close partnership with the public prosecutor's office and receive legal advice on the case from the prosecutor before arresting a suspect.

The police also maintain the necessary co-operative relationships with such organs as the National Tax Agency and the Securities and Exchange Surveillance Commission.

Now we will move on to the subject of ties between domestic and overseas agencies.

Because Japan's police organization functions primarily at the prefectural level, it has been slow to address cases of international corruption. To date, the National Police Agency is not aware of any instances of co-operation with overseas agencies in the investigation of corruption.

Nonetheless, in cases in which I myself have been involved, I have been made aware on several occasions of the need for investigative work outside of Japan and for co-operation with overseas agencies.

For example, I have made arrests in several corruption cases in which businesspeople took public officials with them on trips overseas. Needless to say, once overseas they also wine and dine the officials and pay for their lodgings, but we have not made these outlays part of our case, because doing so would involve conducting an investigation overseas.

Instead, our cases are built solely on the payment of travel-related expenses made within Japan, including fees paid to domestic travel agencies on the official's behalf and spending money given to the official prior to flying overseas.

There was also a bribery case in which improper inspection was conducted on a material that was extracted and produced overseas and consumed and used in a public works project within Japan.

One issue that arose during the investigation was the process by which the business charged with bribery purchased the material overseas. Here again, however, the case was investigated and evidence assembled using only those documents and witnesses that could be found within Japan.

From the standpoint of proving such cases, I have had occasion to think that it would be more effective if the Second Investigation Division could partner with overseas agencies, but in the event, time constraints and budgetary factors have always prevented me from requesting such co-operation.

Increasingly, however, we have had occasion to request the co-operation of overseas agencies in apprehending suspects and witnesses that fled the country in connection with business fraud and other economic crimes. And since we can expect an increasing number of bribery suspects to flee the country as well in the years ahead, I believe the need for stronger partnerships with overseas agencies can only increase.

In addition, in connection with Japanese statutes against offering bribes to foreign public servants (Law Against Unfair Competition), prosecutors have already made a few arrests (e.g., PCI-Vietnam bribery case), but we are aware of the need to pursue this kind of case more aggressively going forward. I hope we can look forward to your co-operation when the occasion arises.

This concludes my presentation.

STRENGTHENING OF DOMESTIC AND INTERNATIONAL CO-OPERATION FOR EFFECTIVE INVESTIGATION AND PROSECUTION OF CORRUPTION – THE HONG KONG EXPERIENCE

*Mr. Ricky Shu-chun Yau**

Good morning distinguished delegates, ladies and gentlemen,

First of all, I would like to thank the organizers, the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) and the Supreme Public Prosecutors Office of Japan, for inviting me to this important forum to share with you the experience of Hong Kong Independent Commission Against Corruption (ICAC) (www.icac.org.hk) in the area of “Strengthening Domestic and International Co-operation for Effective Investigation and Prosecution of Corruption”. It is indeed my pleasure to have this opportunity to address this distinguished audience of senior criminal justice officials from the Region, and I hope what I say in the following hour will provide you with some food for thought and provoke further exchange of ideas in achieving the common goal of fighting corruption.

I. THE HONG KONG ICAC

By way of background, I would first like to give you a brief overview of the set-up and the work of the ICAC. As the name suggests, the Independent Commission Against Corruption is an independent agency dedicated to fighting corruption in Hong Kong. We were set up in February 1974, at a time when corruption was rampant and affecting every fabric of the society. Our sole mandate is to fight corruption, and to do that at all costs. Our independence is enshrined in Article 57 of the Basic Law of Hong Kong and further set out in the ICAC Ordinance. The Commissioner of the ICAC is to report only to the Chief Executive of the Hong Kong Special Administrative Region, but no one else. Such independence ensures that we are to fight corruption without fear or favour. Over the years, the ICAC has grown in size, and is currently about 1,200 strong, with an annual budget of about US\$90 million, roughly 0.3% of the total Government spending. The level of resources that we have been enjoying is an indication of the Government’s determination to root out corruption in order to keep the Government clean and to build a level playing field for business.

Since inception, we have been pursuing our mission by adopting a holistic and co-ordinated three-pronged approach of enforcement, prevention and education. From a global perspective, surveys conducted by regional and international organizations have consistently rated Hong Kong as one of the cleanest places in the world. For the purpose of this Forum, I will focus only on the aspect of law enforcement.

II. CRIMINALIZATION OF CORRUPT CONDUCT

One of the major duties of the Commissioner is to investigate offences under the Prevention of Bribery Ordinance (POBO), which set out the corruption offences and the penalty, as well as providing the ICAC with special powers of investigation.

Section 3 POBO prohibits a prescribed officer from soliciting and accepting gifts, loans, discounts and passages without the general or special permission of the Chief Executive. This offence means that

* Assistant Director, Operations Department, Independent Commission Against Corruption, Hong Kong, China.

a government official cannot accept any gift at all without permission. Failure to seek that permission would render him liable for criminal prosecution and punishment by a fine and a term of imprisonment. Section 3 is a very demanding provision as there is no requirement to prove a corrupt motive on the part of the official who accepts the gift. As mitigation, the Government has promulgated clear guidelines setting out the circumstances under which the solicitation and acceptance can be made with general or special permission from the relevant departmental authorities. There is also clear policy and criteria in the prosecution of Section 3 cases. The usefulness of the provision lies in it being a preventive section, since it is well recognized that corruption often involves an initial “softening-up” process which must be “nipped in the bud”.

Section 4 makes it an offence for any person to offer an advantage to a public servant, and for a public servant to solicit or accept an advantage, as an inducement to or reward for or otherwise on account of his doing or abstaining from doing acts in relation to his official duties.

Section 8 establishes the offence of offering advantages to a public servant by a person having dealings with that officer’s public body. This offence does not require proof of a specific reason for offering the advantage. This is because the act of offering the advantage itself is viewed as having the intention of potentially compromising the public servant to facilitate future corrupt acts.

Section 9 is the private sector counterpart of Section 4, which criminalizes corrupt transactions with agents involving the affairs or business of his principal.

Section 10 offence is committed if a prescribed officer maintains a lifestyle or is in possession of assets disproportionate to his official income without giving a satisfactory explanation. The offence, once described as draconian, has successfully survived the challenge under the Hong Kong Bill of Rights, as it was held meeting the required the standard of “proportionality” and “rationality”.

III. POWERS OF INVESTIGATION

The criminalization of corrupt acts alone is not sufficient in combating corruption. To be effective, the ICAC requires the necessary powers of investigation. The ICAC Ordinance provides ICAC officers with the general power of arrest, detention, search and seizure. The POBO on the other hand provides the ICAC with the following special powers of investigation:

1. Power to examine bank accounts held by a suspect, his family members or associates.
2. Power to require a suspect to provide certain information, or a witness to provide information and to produce documents.
3. Power to require a suspect to surrender his travel documents.
4. Power to obtain tax records of a suspect or his associates.
5. Power to restrain properties suspected to be related to corruption.

IV. NATURE OF CORRUPTION

For those of you who have experience in dealing with corruption, I am certain you will agree with me that few crimes today are as complex and as difficult to investigate as corruption.

Corruption is difficult to investigate because it is by nature secretive and conspiratorial, a crime often committed amongst mutually satisfied parties with no readily identified victims. The deal often

takes place under the table.

It is complex in that other than itself being a serious crime, corruption is invariably used as a facilitator of other crimes, including terrorist financing, drug and human trafficking, money laundering and a host of other vice activities.

It is against this background that I now turn to the vital part of our strategy in investigating corruption – Partnership.

V. PARTNERSHIP AT HOME

While it is the mandate of the ICAC to combat corruption, the ICAC is aware that we cannot do the job successfully if we rely solely on our own efforts. We see the importance of a partnership approach in our fight against corruption in both the public and the private sectors.

I will take the case of the Hong Kong Police as example. When ICAC was first formed in 1974, over 40% of our complaints related to the Police. Over the years, the percentage has dropped continuously and significantly. In 2007, the figure was 8%. There are a host of contributing factors which account for this welcoming change, but the close liaison and co-operation between the ICAC and the Police is without doubt a major one.

As part of our liaison effort, the ICAC has established an Operational Liaison Group (OLG) with the Police. Its charter is to review operational and legal issues of mutual concern, to review joint cases or cases of interests, to monitor and review police-related corruption and major crime trends, and to review and improve the existing liaison channel between the two departments. The Police/ICAC OLG, like those with the other four local disciplinary forces (i.e. Correctional Services, Customs and Excise, Immigration, and Fire Services), meets twice a year and are attended by directorate and senior staff from both sides. At the operational level, our officers dealing with police corruption cases also maintain close and regular contacts with their counterparts in the Complaints and Internal Investigations Bureau of the Police. The extent of such co-operation and mutual trust can be reflected in the success of some of our major corruption investigations.

This partnership approach takes the form of an effective division of labour between the ICAC and Government departments in dealing with corruption and malpractice in the civil service. If an ICAC investigation results in sufficient evidence and prosecution, then we will see to the end of the case. If the investigation does not end up with a prosecution, the case will be referred back to the relevant department for consideration of disciplinary or administrative action over malpractice or other irregularities that might have been revealed in the course of the investigation. In 2007, we have so referred 123 government servants to various Government departments for follow up action.

As the years go by, the corruption pattern in Hong Kong has changed, shifting from the public sector to the private sector. In the 1970s, only 18% of all corruption reports were made in the private sector. By 2007, two-thirds of the corruption reports were in the private sector. The rise in private sector complaints is indicative of the intolerance of corruption in our society and reflects the continued confidence of the public in the ICAC. These reports affect every sector of the society, notably building management, finance and insurance, and catering and entertainment, which attracted the highest numbers of corruption complaints. In the finance and insurance sector, the reports mainly relate to improper approval of loans and letters of credit, fraudulent insurance claims, misuse of company funds and abuse in the award of contracts. In the past few years, there has been a growing concern over reports involving publicly listed companies in Hong Kong, with the majority of the investigations concerning corruption-facilitated illicit activities in connection with listing fraud, theft, false statements, false accounting and fraudulent share manipulation, placement and allotment. These cases are invariably complicated in nature, not

least because we are dealing with crooked professionals. The successful investigation of many of these cases demands a high level of professionalism and huge efforts and resources, as well as a close working relationship with the regulators, and where necessary professional bodies and industry stakeholders.

The ICAC is a law enforcement agency responsible for the investigation of corruption, which entails the collection of evidence and the arrest of offenders. A major partner of the ICAC is the DoJ which has the responsibility for the conduct of all public prosecutions in Hong Kong. As a check-and-balance measure, the consent of the Secretary of Justice is required, by law, for the prosecution of any POBO offences. In practice, the Commission seeks the advice of the DoJ before commencing any prosecution on corruption and corruption-related offences. Within the DoJ, two teams of prosecutors, each headed by a Senior Assistant Director of Public Prosecutions, specializes in providing legal advice in ICAC cases. Apart from day-to-day discussions and conferences at the working level, the ICAC directorate also holds regular high level liaison meetings with the prosecutors to discuss issues of mutual concern with a view to enhancing the interface between the investigation and prosecution processes.

Another important “partner” of the ICAC is the Operations Review Committee, the oversight committee which receives reports from the Commissioner of ICAC on various aspects of its investigative work. The Committee, comprising 14 civilian members of high standing and four ex-officio members, meets eight times a year to receive these reports and to provide advice to the Commissioner. The Committee also publishes and submits an annual report to the Chief Executive on the work of the Operations Department. As our watchdog, the Committee lends credibility to our enforcement work, particularly since all ICAC investigations are conducted in the strictest confidence.

VI. INTERNATIONAL CO-OPERATION

International law enforcement co-operation is vital in ensuring that perpetrators of transnational crimes have zero opportunity to escape investigation and justice. The ICAC in Hong Kong is no strangers to such kind of co-operation. The case which led to the setting up of the ICAC concerned a Chief Superintendent of Police, who whilst under investigation for corruption by the Police’s then Anti Corruption Unit, fled the jurisdiction to return to Britain. The event led to a public outcry, and eventually the corrupt officer was brought back to Hong Kong, by way of extradition, to face prosecution. This was made possible only after the ICAC had received valuable assistance from the Royal Canadian Mounted Police and Interpol in gathering the necessary evidence. Since then, 37 fugitives had been returned or extradited back to Hong Kong to face prosecution on corruption and related criminal charges. To date, Hong Kong has signed extradition agreements pursuant to the Fugitive Offenders Ordinance with 18 countries (with three to take effect), which provide the legal basis for the surrender of fugitives, either for prosecution or for imposition of sentence, with the signatory countries.

Mutual legal assistance (MLA) concerns the use of legal processes to gather evidence in another jurisdiction. It may involve the obtaining of depositions from witnesses, the production of banking or other documentary evidence, the execution of requests for search and seizure, the restraining of properties, and the enforcement of confiscation orders. In Hong Kong, we pursue these matters in accordance with the provisions of the Mutual Legal Assistance in Criminal Matters Ordinance, and the MLA agreements Hong Kong has signed with 25 countries (with seven to take effect).

Apart from the formal setting of MLA, a fundamental part of the spirit of law enforcement co-operation relies on inter-agency liaison, involving invariably the sharing of crime information and intelligence as the first step. Such co-operation sometimes would develop into joint investigations, invoking where necessary and justified the deployment of special investigative techniques. Such techniques are crucial to effect detection of syndicated corruption and organized crime.

One of our most successful cases in recent times was an investigation into a syndicate engaged

in the business of selling diplomatic passports and corruption-facilitated money laundering. The investigation deployed a Russian speaking agent from the USA, who posed as a member of the Russian Mafia interested in purchasing genuine diplomatic passports from corrupt immigration officials and in seeking assistance from organized crime figures in Hong Kong to assist his money laundering business. The undercover operation, aided by covert surveillance and monitoring, was extremely successful in infiltrating the syndicate and getting evidence required for prosecution. After a series of strenuous legal battles at court, six syndicate members were convicted variously for offences of conspiracy, corruption, immigration fraud, and money laundering. They included three serving officers from the disciplinary services, an immigration official from an African country who came to Hong Kong to sell his country's diplomatic passports, and two organized crime figures. All of them were given lengthy terms of imprisonment. The syndicate had been operating for a long period of time and very little could be done by the law enforcement agencies, simply because they refused to deal with local people. It was through the introduction of the US undercover agent that the ICAC was able to put these major players behind bars.

In 2002, the Australian Federal Police referred to the Hong Kong ICAC a case where an official from the Department of Immigration and Multicultural Affairs and a Hong Kong based emigration consultant had corruptly assisted ineligible applicants in Hong Kong to obtain Australian citizenship. Shortly afterwards, the consultant and a number of applicants were arrested by the ICAC for corruption and related offences. When the ICAC was set to lay charges against the consultant, he absconded from ICAC bail and fled Hong Kong. He was made subject of an international arrest warrant and subsequently located in the USA. In 2003, ICAC requested extradition, and following discussions and negotiations among the three jurisdictions, the consultant was extradited to Australia, instead of Hong Kong. He was charged together with the Australian official for offences of bribery and defrauding the Australian Government. In 2007, for the purpose of the prosecution in Australia, the Australian authority made an MLA request to Hong Kong to gather the necessary evidence from the applicants, as well as the banking and documentary evidence in Hong Kong, which was taken up by the ICAC. In the end, both defendants were found guilty – the official was sentenced to nine months of imprisonment and the consultant five years and five months. This is yet another vivid example of how law enforcement agencies from different jurisdictions can join hands together to effectively investigate a cross-border crime and pursue the transnational criminals. At the end of the day, it matters not who has the prosecution, as long as justice is done.

Sometimes, an MLA request may not proceed as smoothly as we would like. In February 2006, the ICAC received an MLA request from the Philippines concerning the suspected corruption and unlawful activities of a number of senior government officials in connection with the construction of a terminal in an international airport. The Philippines investigation found that the bank accounts of two British Virgin Islands companies which were registered through a Hong Kong corporate services company were used to transfer millions of corrupt funds to a person to bribe officials in the Philippines. The MLA request concerned, among other things, the application for and execution of a search warrant on the corporate services company. The office premises of the corporate services company was shared by a registered foreign law firm, which was operated by the same group of people. Documents that were seized were sealed pending legal challenge by way of a judicial review, on the ground that the search warrant was unlawful as the documents sought were in a lawyer's office and protected by Legal Professional Privilege. A series of legal battles then ensued, with the latest Court of Appeal decision handed down in February 2008 in favour of the ICAC. The Appeal Judges ruled that there was no prejudice in the case because the ICAC officers had taken the necessary steps to safeguard the privileged documents and had sought legal advice over the matter. In this case, we will go the extra mile by rigorously pursuing the validity of our search warrants. It is unacceptable to us that the corrupt could use the premises of Hong Kong based law firms and the veil of Legal Professional Privilege a means to conceal corrupt proceeds and evidence.

Yet on other occasions, cross-jurisdictional co-operation can proceed even without the existence

of an MLA agreement. In late 2006, the ICAC commenced an investigation into a corrupt Principal Official of the Macao Special Administrative Government, who was responsible for public works and transport. He was suspected to be laundering corrupt proceeds in Hong Kong by controlling a number of bank accounts, using relatives and friends as the fronts, with a total balance of US\$45 million. The information was passed to our Macao counterpart, the Commission Against Corruption, which after a full-scale corruption investigation and prosecution, convicted the official of 57 counts of corruption, money laundering and other offences. Earlier this year he was sentenced to 27 years of imprisonment. On our part, the suspected corrupt proceeds of US\$45 million have been restrained in Hong Kong under the POBO.

Originally, there was some difficulty as to how Hong Kong could pass to Macao the vital banking evidence for use in trial, as our MLA law has no application here given that both Hong Kong and Macao are Special Administrative Regions of the one country – China. In the end, the Letter of Request procedure was invoked whereby the Macao court made a direct application to the Hong Kong court that, through the DoJ, instructed ICAC to respond. Through the procedure, the ICAC was able to arrange for various bankers to appear before the court in Hong Kong to produce the bank statements and to make depositions, which were then sent to the Macao court to facilitate the trial.

This is also a fine example of cross-jurisdictional co-operation where one jurisdiction prosecutes and sanctions the corrupt official, while the other cut his life-line by depriving him of his ill-gotten gains.

Effective law enforcement could not be possible without highly skilled and professional investigators of good integrity. Training and capacity is an indispensable process through which we create these professional people. The ICAC provides comprehensive training and development opportunities to all its personnel to ensure they have the necessary professional knowledge, skills and competence to discharge their duties in the ever changing environment. In particular, we value and encourage cross-jurisdictional exchange which fosters closer ties among agencies and provides a platform for discussion and achieving the common goal. For this reason, we have for many years opened up our training and command courses for law enforcement personnel overseas. For instance, our Chief Investigators' Command Course, which was the 28th in the series, was only concluded earlier this month in Hong Kong. It saw a record high of 10 participating overseas agencies – the Federal Bureau of Investigation, the European Anti-Fraud Office, the HM Revenue and Customs from the UK, the ICAC New South Wales, Australia, the Western Australia Corruption and Crime Commission, the Singapore Corrupt Practices Investigation Bureau, the Singapore Police Force, the Indonesia Corruption Eradication Commission, the Malaysian Anti-Corruption Agency, and last but not least, the World Bank. The four-week course, which focused on leadership and management in a law enforcement context, also included a one-week study tour to Yunnan Province, China to enable participants to gain insight into the anti-corruption work and institutions there. Such cross-fertilization of ideas and networking opportunities form an important building block in international co-operation.

In the opposite direction, we regularly send officers to prestigious institutions and law enforcement agencies overseas for training, development and exchange.

Apart from training, the ICAC also organizes regional and international conferences, focusing on pertinent issues of corruption. In 2003, we co-organized an international symposium with Interpol. The last international symposium, held in 2006, with the theme of Corporate Corruption – Integrity and Governance, was attended by 440 delegates from 41 jurisdictions. These are all important forums for corruption fighters to get together to share experiences and best practices and for networking, which often goes a long way to foster inter-agency co-operation.

To enhance international co-operation, the ICAC has in its establishment a dedicated unit to handle international liaison. The Unit acts as the focal point to deal with all incoming requests for investigative

assistance from overseas law enforcement agencies. It is responsible for arranging tailor-made programmes for the large number of delegations and visitors which visit ICAC from all over the world each year. The Unit also publishes a quarterly, online international anti-corruption newsletter, which provides yet another handy platform for graft fighters from different jurisdictions to share their success stories as well as their difficulties.

The subject of international co-operation would not be complete without the mention of the United Nations Convention Against Corruption (UNCAC), which sets a milestone in the global fight against corruption. The UNCAC is a powerful instrument which assists in creating a framework of laws that would enable the law enforcement fraternities to work closer as partners in the fight against transnational corruption, in the areas of law enforcement co-operation, joint investigations, special investigation techniques, mutual legal assistance, extradition, and training and capacity building. By virtue of China's ratification of the UNCAC in February 2006, this important instrument was extended to Hong Kong, providing the ICAC with the extra momentum and responsibility to contribute to the anti-corruption cause.

VII. CONCLUDING REMARKS

ICAC will be celebrating its 35th birthday in February 2009. We shall continue our mission of fighting corruption without fear or favour. To this end, we shall continue to adopt, consolidate and enhance this strategy of "Partnership Against Corruption", both domestically and internationally, one which has contributed much to our success.

PRESENTATION SESSION

Country Report by Pengiran Nina Jasmine binte PLKDR Pg Hj Bahrin
Counsel and Deputy Public Prosecutor
Attorney General's Chambers
Brunei Darussalam

Country Report by Ms. Pen Somethea
Director, Research and Training Department
Ministry of Justice
Cambodia

Country Report by Dr. Xu Daomin
Deputy Chief, Division of Procuratorial Department for Duty Crime Prevention
Supreme People's Procuratorate
China

Country Report by Mr. Jhoni Ginting
Head of Legal Bureau
Attorney General's Office
Indonesia

Country Report by Mr. Yuichiro Tachi
Director, Research Department, Research and Training Institute
Ministry of Justice
Japan

Country Report by Dr. Kyung-Joon Jin
Director, International Criminal Affairs Division
Ministry of Justice
Republic of Korea

Country Report by Mr. Khamphet Somvolachith
Deputy Director, Treaties and International Cooperation Division
Office of the Supreme Public Prosecutor
Lao PDR

Country Report by Mr. Lai Yong Heng
Assistant Commissioner of Police
Royal Malaysian Police
Malaysia

Country Report by Mr. Han Nyunt
Deputy Director General
Office of the Attorney General
Myanmar

Country Report by Mr. Severino H. Gaña, Jr.
Assistant Chief State Prosecutor, National Prosecution Service
Department of Justice
Philippines

Country Report by Mr. Bala Reddy
Principal Senior State Counsel, State Prosecution Division
Attorney General's Chambers
Singapore

Country Report by Mr. Sirisak Tiyyapan
Director General, International Affairs Department
Office of the Attorney General
Thailand

Country Report by Ms. Lai Thu Ha
Institute for Prosecutorial Science
Supreme People's Prosecution Office
Vietnam

*Please note that the following papers have not been edited for publication.
The opinions expressed therein are those of the authors, and
do not necessarily reflect the position of the departments they represent.*

COUNTRY REPORT FOR BRUNEI DARUSSALAM

STRENGTHENING OF DOMESTIC AND INTERNATIONAL CO-OPERATION FOR EFFECTIVE INVESTIGATION AND PROSECUTION OF CORRUPTION

*Pengiran Nina Jasmine binte PLKDR Pg Hj Bahrin**

I. INTRODUCTION

Distinguished colleagues, Ladies and Gentlemen.

I would like to convey my gratitude to the Director of UNAFEI, Mr. Keiichi Aizawa for inviting Brunei Darussalam to attend and contribute to this forum. I would also like to take this opportunity to thank the hosts, the United Nations Asia Far East Institute for the prevention and treatment of offenders and the Supreme Public Prosecutor's Officer of Japan for all the excellent arrangements.

A. Domestic Investigation and Prosecution of Corruption

Brunei Darussalam has moved towards a corruption free society by putting in place a legislative framework in the form of the Prevention of Corruption Act, which is used by the enforcement agency Anti Corruption Bureau to investigate potential offenders. The Public Prosecutor then decides whether or not there is sufficient evidence to prosecute and if there is, they will charge Accused persons in Court.

The Anti Corruption Bureau has also implemented several prevention methods to combat Corruption which I will also touch on briefly in this paper, including the implementation "Corruption Prevention Education", introduced into the National curriculum.

B. Co-operation with Countries for Effective Investigation and Prosecution of Corruption

Brunei has signed and ratified the United Nations Convention Against Corruption on 2 December 2008. It has been sent to the United Nations in New York to be deposited.

Brunei Darussalam has legislation in place to provide the widest possible assistance to countries seeking Brunei's assistance in criminal matters. These legislations include:-

- Extradition (Malaysia and Singapore) Act, Cap 154
- Summonses and Warrants (Special Provisions) Act, Cap 155
- Reciprocal Enforcement of Foreign Judgements Act, Cap 177
- Mutual Assistance in Criminal Matters Order 2005
- Extradition Order 2006

* Legal Counsel/Deputy Public Prosecutor, Attorney General's Chambers, Brunei Darussalam.

II. DOMESTIC INVESTIGATION AND PROSECUTION OF CORRUPTION CASES: BRUNEI DARUSSALAM'S “COMMITMENT OF THE HIGHEST LEVEL” TO PREVENT CORRUPTION

A. Statement of His Majesty the Sultan and Yang Di-Pertuan

His Majesty the Sultan and Yang Di-Pertuan stated on 21 December 1981, of his intention to create in government an efficient, honest and trustworthy Government, a government which its officers are prohibited to practice any form of corruption and also to prevent any sort or form of corruption.

“I wish to emphasize once again that it is my intention to create in My Government an efficient, honest and trustworthy administrative system. An efficient, honest and trustworthy Government can only be created and guaranteed of its existence if the officers at all levels in My Government can perform their respective duties and responsibilities with competence, honesty, trustworthiness and sincere in the name of Allah, for the welfare of Brunei Darussalam and its people. Therefore I wish to remind all the officers at all levels in My Government that they practice a competent, honest and trustworthy working attitude with full dedication. With this regard, I wish to emphasize to the Heads of Government Departments and officers who are directly entrusted in the dealings with due consideration in connection with the public. As for the public, they should compromise in their communication with the Government officers with regard to their daily dealings, so that our courteous Bruneian attitude will always be maintained.

In effort to create an efficient, honest trustworthy and sincere administrative system which I previously mentioned, I strictly emphasize that an honest and trustworthy attitude should be forested based on the teachings of Islam, that is, [] I totally prohibit the officers in My Government to practice any form of corruption. Insyah-Allah, I will take strict action in preventing any sort or form of corruption among the officers in My Government.”

B. The Prevention of Corruption Act

The wish of His Majesty the Sultan and Yang Di-Pertuan was translated into Legislation being passed, being the Emergency (Prevention of Corruption) Order 1981 [now known as The Prevention of Corruption Act (PCA)] which came into force on 1 January 1982. The PCA is an Act to prevent corruption and bribery and to establish the Anti Corruption Bureau, its main sections are as follows:-

- PART I – deals with mainly interpretation and definition
- PART II – Administration of the Prevention of Corruption Act. A key section 3 (1) states that the Director of ACB is independent, and not subject to the direction or control of any person other than HM
- PART III – List out the various offences under the Act such as offence of corruption of any person, offence of gratification committed by agents, offence of bribery to a public body, These offences carries a maximum sentence of B\$30000 and imprisonment up to 7 years.
- PART IV – Give the powers of investigation to the ACB which includes power to search and seizure, power to order every person to give information which is being inquired by the ACB, and so on.
- PART V – deals with the evidential aspect of the Act such as providing presumption of corruption in certain cases.
- PART VI – deals with the prosecution and trial of offences. It is stated in this Part, that prosecution under this Act shall NOT be instituted ACCEPT by or with the consent of the Public Prosecutor. This Part also empowers the High Court of the Court of a Magistrate to try any offence under this Act.

- PART VII – deals with other miscellaneous aspects of the Act such as frivolous, false or groundless complaints are to be reported to the Public Prosecutor, offence of making a false report and so on.

The Prevention of Corruption Act is a very important tool used to prevent corruption in Brunei Darussalam. Since its establishment, it has been updated and amended to suit the current needs of the public and interests of justice in ensuring that corruption is kept under legal scrutiny from time to time.

C. The Anti-Corruption Bureau

The Anti Corruption Bureau was established by command of His Majesty the Sultan and Yang Di Pertuan on 1 February 1982. The primary vision and mission of the ACB is to uphold the integrity of the Public Service by means of eradicating and abolishing corruption, and to bring those involved in corruption to justice. In its effort to attain the above-mentioned vision/mission, ACB has identified two main functions which would be the focus of its undertaking, firstly, to undertake preventive works and secondly, to conduct investigation into information and complaints received by ACB. In investigating corruption, the ACB’s role is summarized as follows:-

- i) Receiving information on corrupt activities;
- ii) Conducting Investigation
- iii) Compiling evidence
- iv) Forwarding IP to Attorney General’s Chambers.

A press release on 4 January 2008 by the Director of ACB, the Director noted that corruption cases “are very much under control in the Sultanate”.

“Even though the number of corruption cases has shot up to 76 last year compared to 57 in 2006, corruption cases are very much under control in the Sultanate. I hope to see Brunei ranked in the top ten of “clean” countries in the world. At the moment Brunei is not included in the index of Transparency International because to be included a country needs data from at least three surveys. Brunei at the moment has data from only one survey by the World Bank. Thus, the bureau is working with Transparency International to be ranked along with other countries in the world.”

Despite the advances in technology, anonymous letters remain the top source of information received by the bureau, as 54 were received in 2007.

D. Information and Investigation

Statistics from the Data and Record Unit, ACB Brunei show that the ACB receives between about 142-244 informations from members of the public annually.

YEAR	INFORMATION RECEIVED (January 1998-September 2008)	INVESTIGATION PAPERS (January 1998-September 2008)
1998	146	37
1999	142	61
2000	149	119
2001	243	80
2002	230	87
2003	214	55
2004	200	67
2005	203	63

2006	244	54
2007	189	84
2008	150	49

Once Investigation papers are completed by the Anti Corruption Bureau, they are passed to the Public Prosecutor to review the facts of the case and ascertain whether there is sufficient evidence to prosecute Accused person's in Court.

The Public Prosecutor is empowered by section 374(1) of the Criminal Procedure Code to have the general direction and control of criminal prosecutions and proceedings under the Criminal Procedure Code or any other written law.

In 2006, the Attorney General's Chambers received 19 IP's from ACB out of a total 2,557 IP's received from enforcement agencies. This is compared to the year 2007 where the Attorney General's Chambers received 14 IP's from ACB out of a total 2,522.

E. The Court System

The Judiciary of Brunei Darussalam is divided broadly into four courts. The Magistrates court is the court of the first instance in Brunei, and it has jurisdiction in criminal matters for cases where the sentence does not exceed 7 years. As a Court of First Instance, the Magistrates Court has power to issue remand during investigation of up to 2 weeks, issue court bail, issue subpoenas for witnesses, hear cases and sentence or acquit defendants.

The Intermediate Court has jurisdiction in criminal matters for all criminal cases except those cases where the death penalty is imposed which remains the exclusive jurisdiction of the High Court. The Court of Appeal is the highest appellate court in Brunei Darussalam.

Typically, corruption cases are brought in the Magistrates Court. However, where a Defendant is a Senior Public servant, where a Defendant is charged with multiple offences or where the gravity of the offence charged is severe, the matter can be brought in the Intermediate or High Court.

F. Studies on Corruption Cases

The Anti Corruption Bureau conducts studies based on cases that have been investigated in order to identify areas of weaknesses or loopholes in the management, administration or procedures within the ministry/department or organization and forward the results or organizations for implementation.

G. Promoting Anti-Corruption Attitudes

Amongst the Malay community, it is widely believed that if we are to mould a person to become a good citizen, it is easier to do so whilst he or she is still in the process of learning to become one. A widely known Malay proverb "Kalau Hendak Melentur Beluh Biarlah Dari Rebong" is literally translated as "To bend a Bamboo should be done whilst they are still young shoots". In this vein, the ACB run an active education programme "Prevention Education". In this vein, further preventive measures ACB include:

- publication and distribution of corruption prevention leaflets to government employees and members of the public
- Anti Corruption essays and posters competition
- Use of Government media;
- Visit to government ministries / department – to know the workings and procedures.
- Talks to Government Ministries / Departments, Schools, Public Bodies and Private Sector
- Cooperation with the religious authorities – Friday prayer sermon emphasizing on the evils of corruption and good moral values, Publication and distribution booklets containing Islamic

teachings/articles

- With the cooperation of the State's Tenders Board, Ministry of finance, a 'Gift Clause' has been incorporated into all Government and Public Bodies contract documents.
- Blacklisting companies which were involved in giving bribes to government employees from taking part in government contracts.
- Banning foreign nationals who have committed corruption offences in Brunei from re-entering the country.
- Updating the law by increasing the penalties under the PCA corresponding current needs.
- Publishing in the local newspaper the names of those brought to Court for corruption offences / and those convicted afterwards.
- Imposing deterrent sentences for those convicted of the offence(s).

III. UNITED NATIONS CONVENTION AGAINST CORRUPTION

A. Brunei Darussalam and the UNCAC

Brunei Darussalam has signed and ratified the United Nations Convention against Corruption on 2 December 2008. It has been sent to the United Nations in New York to be deposited.

Brunei Darussalam has already begun the process of ensuring compliance of its national policies and domestic legislation with all the mandatory provisions of UNCAC.

In order to facilitate and oversee the implementation process exercise, His Majesty the Sultan and Yang Di-Pertuan has consented to the forming of a National Committee on the Implementation of UNCAC.

The following Paragraphs set out Brunei's response to Article 38, Cooperation between national authorities and Chapter IV, International Cooperation comprising of Article 43-48.

1. Article 38: Cooperation between National Authorities

This article details measures designed to enhance cooperation between national authorities.

Essential to the overall anti-corruption effort is collaboration of officials and agencies with authorities in charge of enforcing the relevant laws.

Article 38 requires States parties to take any necessary measures to encourage, in accordance with their domestic law, cooperation between:

- a) Their public authorities and public officials; and
- b) Their authorities responsible for investigating and prosecuting criminal offences.

Such cooperation may include –

- a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of the Convention has been committed; or
- b) Providing, upon request, to the latter authorities all necessary information.

There is already an existing framework for cooperation between national enforcement agencies in Brunei Darussalam. Joint operations and investigations are conducted more frequently now than before. The level of cooperation between the agencies concerned can always be enhanced especially to effectively combat complex crimes.

2. Article 43: International Cooperation

Ease of travel from country to country provides offenders with a way of escaping prosecution and justice. Processes of globalization allow offenders to more easily cross borders, to break up transactions and obscure investigative trails, to seek a safe haven for their person and to shelter the proceeds of crime.

Prevention, investigation, prosecution, punishment, recovery and return of illicit gains cannot be achieved without effective international cooperation.

In essence, the convention codifies the extensive current practice regarding dual criminality. Related legislations in Brunei Darussalam include:-

- Extradition (Malaysia and Singapore) Act, Cap 154
- Summonses and Warrants (Special Provisions) Act, Cap 155
- Reciprocal Enforcement of Foreign Judgements Act, Cap 177
- Mutual Assistance in Criminal Matters Order 2005
- Extradition Order 2006

3. Article 44: Extradition

The Extradition Order 2006 allows ad hoc extradition on a case-by-case basis in any event.

4. Article 45: Transfer of Sentenced Persons

There is no corresponding law in Brunei Darussalam

5. Article 46: Mutual Legal Assistance

Brunei is a party to the Treaty on Mutual Legal Assistance in Criminal Matters which Brunei signed on 29 November 2004 and later ratified. Under this treaty, parties agree to render to each other the widest possible measures of mutual legal assistance in criminal matters. The enabling legislation, Mutual Assistance in Criminal Matters Order 2005 has been enacted and enforced since 1 January 2006.

6. Mutual Assistance in Criminal Matters Order

This Order enables Brunei Darussalam to facilitate the provision and obtaining of mutual legal assistance to and from other countries in criminal matters and related purposes, including but not restricted to:-

- i) the obtaining of evidence, documents, articles or other things;
- ii) the making of arrangements for persons, including detained persons, to give evidence or assist an investigation;
- iii) the confiscation of property in respect of an offence;
- iv) the service of documents;
- v) the identification and location of persons;
- vi) the execution of requests for search and seizure; and
- vii) provisions of originals or certified copies of relevant documents and records, including Government, bank, financial, corporate or business records

The provisions of the Order are applicable subject to any treaty entered into by Brunei and another Country or parties. It also does not prevent the provision or obtaining of international assistance in criminal matters to or from the International Criminal Police (Interpol) and any other international organization.

7. Mutual Legal Assistance Secretariat

The Attorney General's Chambers has set up, within its Chambers, a Mutual Legal Assistance Secretariat to consider and deal with requests to and from other jurisdictions when such requests are made under this Order.

8. Foreign Country Requests

Foreign Country Requests to Brunei must be made through the Central Authority being the Attorney General, and is subject to the Attorney General's complete discretion. In the event that the Requesting Country is a non-treaty or convention country, the Attorney General will consider assurances of reciprocity, the seriousness of the offence, if the request listed is in the legislation and any other matter.

The form of Foreign Country requests are as follows:-

- English
- In written form
- Specify type of assistance requested
- Identify person/authority initially requesting
- Description of the criminal matter
- Details of any procedure to follow
- Statement of confidentiality
- Statement of reciprocity
- Details of time limits
- Details of allowances / accommodations arrangements (if applicable)

If a Foreign Country requests for evidence to be obtained, the Attorney General will authorize in writing and a magistrate will take evidence. A Magistrate will take the evidence of the witness, record it, certify and send it to the Attorney General. The Central Authority will then transmit the evidence to the requesting authority.

If a Foreign Country requests for a Production order, a Court order will be obtained to give to an authorized officer a document etc within 7 days of the order. It is an offence not to comply with the Production Order. Production Orders can be made in respect of government records publicly available, at the Attorney General's discretion, copies of government records not publicly available, documents of financial institutions and information contained in any data equipment.

If a Foreign Country requests for a written statement to be taken, the person whose statement is being taken must consent to do so. The recorder of the statement must be authorized to take a statement in accordance with the requirements of section 116 of the Criminal Procedure Code. Such statement is made after an oral examination, is reduced into writing and transmitted to the Attorney General.

If a Foreign country requests for attendance of a person residing in Brunei Darussalam, the person must consent to the transfer. If that person is a prisoner, he must continue to be in legal custody whilst attending a foreign country pursuant to the request. The Attorney General's direction is sufficient to release the prisoner.

If a Foreign country requests for search and seizure, an authorized officer has to apply for the search warrant. The Court needs to be satisfied that a Production order had not been complied with and such search is necessary for the purposes of the foreign criminal matter.

If a Foreign country requests for assistance in locating and identifying persons, the Attorney General

shall request assistance from the appropriate agency. The appropriate agency will use its best endeavors to locate or identify the person and advise the Attorney General on the outcome who will then in turn inform the requesting country the result.

If a Foreign country requests for service of process on a person in Brunei, the Attorney General shall direct an authorized officer to:-

- i) Serve process with procedure within request;
- ii) Otherwise, in accordance with the Rules of the Supreme Court; and
- iii) Inform the Attorney General once the document is served or not.

9. Refusal of Assistance

Brunei can refuse assistance if it is found that the request:-

- i) is not compliant with the treaty;
- ii) is a military offence in Brunei;
- iii) if it is Prosecution based on colour, race, religion, etc;
- iv) the offence is of insufficient gravity;
- v) has no consent from the transferred person; or
- vi) the assistance would prejudice a criminal matter in Brunei Darussalam.

Brunei has the discretion to refuse assistance if the request:

- i) is pursuant to any other treaty;
- ii) would prejudice the safety of any other person;
- iii) fails to satisfy dual criminality;
- iv) is an excessive burden on Brunei's resources
- v) in the transfer of persons, it is not in the public interest and not in the person's interest; or
- vi) the request does not comply with prescribed form in legislation.

10. Article 47: Transfer of Criminal Proceedings

This article addresses an issue frequently arising in cases involving transnational crime, including those involving corrupt practices, the operation of offenders in or through several jurisdictions.

There is no corresponding legislation in Brunei Darussalam

11. Article 48: Law Enforcement Cooperation

Article 48 established the scope of the obligation to cooperate. State parties are required to work closely with one another in terms of law enforcement cooperation in a number of areas set forth in subparagraphs a) to f).

This general obligation is to be conducted consistent with respective domestic legal and administrative systems.

The ACB has a bilateral agreement with their counterpart, the Anti-Corruption Agency in Malaysia.

In addition, the ACB has concluded a Memorandum of Understanding with the Corrupt Practice Investigations Bureau (Singapore) and the Anti-Corruption Agency (Malaysia). This MOU is open to the anti-corruption agencies in other ASEAN member States, which all have signed with the exception of

Myanmar.

12. Article 49: Joint Investigations

Article 49 urges State parties to consider concluding bilateral or multilateral agreements or arrangements in relation to matters that are subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned to establish joint investigative bodies, or in the absence of such agreements and arrangements, joint investigations to be undertaken on a case-by-case basis.

The present MoU concluded by the ACB with their counterparts in Singapore and Malaysia (and signed by all ASEAN member States except for Myanmar) provide for joint investigations – technical assistance in operational activities.

Above and beyond this, recourse would have to be made to the respective MLA arrangements in each State’s jurisdiction.

13. Article 50: Special Investigative Techniques – “Controlled Delivery”, Electronic Surveillance and Interception of Funds

Article 50 requires States parties to establish the special investigative technique of controlled delivery, provided that this is not contrary to the basic principles of their respective domestic legal system.

According to Article 2 subparagraph (i), the term “controlled delivery” means the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence.

Article 50, paragraph 3, provides that in the absence of an agreement or arrangement, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis. This formulation requires a State party to have the ability to cooperate on a case-by-case basis at least with respect to controlled delivery, the establishment of which is mandatory pursuant to paragraph 1, where this is not contrary to the basic principles of the legal system of the State concerned.

“Controlled delivery” is one of the investigative techniques already in place in the working procedure of the ACB. The admissibility of intercepted communication is not tested in the Brunei Courts. Electronic surveillance equipment is deployed mainly for the purposes of monitoring.

In Brunei, the admissibility of evidence is determined on its relevance, regardless of how it was obtained.

IV. CONCLUSION

An ancient official once said that “corruption is the product of bad men and bad laws”. Brunei, in its continuing efforts to rid itself of corruption, has worked towards implementing laws and to eradicate corruption on a national level and assist in combating corruption globally.

It is hoped that Forums such as these will foster international cooperation between Brunei and other nations in the effort to combat corruption on both a domestic and international front.

APPENDIX

INTRODUCTION TO BRUNEI DARUSSALAM

A. Brunei Darussalam in Brief

Brunei Darussalam is located in South East Asia, bordering the South China Sea and Malaysia.

The estimated population of Brunei Darussalam in July 2008 is 381, 371, the median age is 27.5 years.

Brunei Darussalam is divided into four districts namely Brunei/Muara, Tutong, Belait and Temburong. Bandar Seri Begawan is the capital of Brunei Darussalam with an area of about 16 sq. km.

Brunei Darussalam is still very much dependent on revenues from crude oil and natural gas to finance its development programmes. Aside from this, Brunei Darussalam also receives income from rents, royalties, corporate tax and dividends. Due to the non-renewable nature of oil and gas, economic diversification has been in Brunei Darussalam's national development agenda.

B. Brunei Darussalam: System of Government

Brunei is an independent sovereign Sultanate which is governed on the basis of a written Constitution.

His Majesty The Sultan and Yang Di-Pertuan is the supreme executive authority in Brunei Darussalam. His Majesty has occupied the position of Prime Minister since resumption of independence in 1984.

Brunei's administrative system is centered on the Prime Minister's Office which has provided the thrust behind His Majesty's aim to introduce greater efficiency in the Government. In his National Day speech in 1987, His Majesty pointed out that it was essential to keep the country's administrative machinery up-to-date in line with the development of Brunei as an independent nation. His Majesty has followed a combination of traditional and reforming policies, moving away from a structure of a Chief Minister and State Secretary to a full ministerial system with specified portfolios.

COUNTRY REPORT ON CAMBODIA

"STRENGTHENING OF DOMESTIC AND INTERNATIONAL CO-OPERATION FOR EFFECTIVE INVESTIGATION AND PROSECUTION OF CORRUPTION"

*Pen Somethea**

I. INTRODUCTION

In recent year corruption is a hot topic discussed among students, professors, workers, officials, policymakers, and intellectuals/academics in Cambodia.

The corruption in Cambodia seems to be habitual, starting from the top level to the grassroots. The report issued by the World Bank on 10 May 2000, revealed that corruption among civil servants is one of the most serious obstacles for public and private sectors in Cambodia. These sectors include the court, tax offices, customs officers, licensing agencies, police stations, and agencies checking standards and quality.

Good governance is the most important pre-condition to economic development with sustainability, equity and social justice. Good governance requires wide participation, enhanced of information, accountability, transparency, equality, inclusiveness and the rule of law. In this regard, good governance will ensure that corruption is reduced to the minimum, the view of minorities and the voices of the most vulnerable in society are fully heard and considered in decision making processes. Indeed, the attainment of good governance is crucial to the proper functioning of society both in the present and the future.

The key thrust of the Royal Government of Cambodia's (RGC) strategy to fight corruption is to take concrete actions that attack the roots of corruption. The implementation of the anti-corruption strategy will be supported with enough tools and resources to prevent and to substantially crack down on corrupt entities. Implementation is crucial because laws, regulations and codes of conduct are not sufficient to successfully fight corruption. Indeed, there must be efforts and mechanisms to strengthen the effectiveness of law enforcement.

In fighting corruption, the Royal Government of Cambodia will, as soon as possible, ensure the adoption of the anti-corruption law and now has been created an independent body to fight corruption. The Royal Government of Cambodia will also promote effectiveness, transparency and accountability in the management of public finances, especially through the strengthening of audit processes and public procurement.

The Royal government shall also promote the implementation of the multi-and cross-sectoral governance reforms, especially those guided by the Governance Action Plan, which has been developed with broad participation from various government ministries and institutions, civil society and development partners. The vast majority of initiatives in the first Governance Action Plan (GAP) directly involve the abolishment of the root causes of corruption. Now, the RGC is implementing its GAP II 2005-2006, which is followed the Government Rectangular Strategy. The core of Rectangular Strategy is Good Governance, concerning to (i) combating corruption, (ii) law and judicial reforms, (iii) public administration reform, and (iv) military reforms. The paper mainly focuses on investigating and prosecuting level, public authorities, the entities of the private sector and international co-operation.

* Director, Research and Training Department, Ministry of Justice, Cambodia.

II. THE COLLABORATION OF RELEVANT AUTHORITIES

A. Investigating and Prosecuting Level

Strengthening the rule of law provides an important structural foundation for the development in Cambodia and is a key area of Governance reform (as recognized in the Rectangular Strategy Phase II and National Strategic Development Plan (NSDP)). The Royal Government of Cambodia (RGC) is respecting and promoting the independence and neutrality of the judiciary as stated in the Constitution. This also includes reforms which ensure the independence of Supreme Council of the Magistracy (SMC). Indeed, legal and judicial system reform of the RGC has a detailed action plan derived from vision and strategy appropriate for Cambodia.

1. Legal

Laws existing: The Royal Government of Cambodia (RGC) of the third legislature has taken numerous practical measures to tackle corruption. In this regard, even in the absence of the Anti-Corruption Law, the RGC has vigorously combated corruption through the introduction of Governance Action Plan and the adoption and implementation of a number of measures such as law on United Nations Transitional Authorities in Cambodia/UNTAC law 1992, Law on Public Financial System, Law on Customs, Law on Fisheries, Law on Forestry, Sub-decree on Public Procurement, Order on the Management of Non-tax Revenues, and Code of Conduct and Ethics for Customs Officials. These laws are defined to include both the offer of bribes to officials and the acceptance of bribes by them. For instant, the provisions of the 1992 UNTAC law apply to acts of corruption. Crimes related to corrupt practices are covered by provisions on Embezzlement by Public Officials (Article 37), Corruption (Article 38) and Bribery (Article 58). Other provisions on perjury, forgery, receiving and concealing stolen goods, breach of trust are also relevant.

Recently, the Parliament passed three important codes: the Civil Procedures Code, the Civil Code and the Criminal Procedures Code which ensure more transparent in the court processes. It is commendable that the RGC is now engaged in a follow-up effort to disseminate the new codes and to teach professionals, conducted by the Ministry of Justice, how the codes should influence their practice. Even these achievements, there are some priorities need to be done to succeed in moving forward the legal and judicial reforms agenda.

Draft on Anti-Corruption Law: This law provides for the creation of a much-needed autonomous Supreme National Council Against Corruption (SNCAC) equipped to investigate allegations of corruption and receive complaints. It also includes essential disclosure rules and whistleblower protection. With regard to penalty clauses, the draft subjects practices of corruption involving judges to the most severe punishments when compared with similar crimes committed by ordinary public servants and perpetrators in the private sector. These practices are defined to include both the offer of bribes to judges and the acceptance of bribes by them. This is undoubtedly the Royal Government's intention to ensure the highest integrity of judges which is indispensable for dealing with such complicated crime as corruption. The draft also makes statement of assets by senior officials of the three branches and a certain categories of other public servants imperative upon their assumption of public office. The statement will be renewed every two years. The last statement shall be made in the year when these officials retire, resign or are removed from office. Any omission or falsification in the statement will result in imprisonment and penalty fine.

Draft on Criminal Code: This Code is a fundamental law relates to other laws that promulgated and practiced already and it talk about general crime which is importance for Anti-Corruption law also. Draft on Criminal Code is now proposed to the national assembly for adoption since last three month which includes essential disclosure rules and whistleblower protection. Criminal Code applies to acts of corruption. Crimes related to corrupt practices are covered by provisions on Embezzlement, Corruption and Bribery, etc.

2. Judicial

- (i) Strengthening the authority of the Supreme Council of the Magistracy (SMC) to effectively

discipline judges and prosecutors is central to achieving progress in curbing corruption – a key task in the Legal and Judicial Reform Strategy’s ‘Plan of Action’. The process that is implemented to discipline judges and prosecutors should be open, fair and transparent.

(ii). Improvement of training for Judges, Prosecutors and Court Clerks at the Royal Academy of Judicial Professions (RAJP), with the cooperation and assistance of development partners, has been a significant development which provides for the practical implementation and application of the new codes. Continued and sustained efforts are required to assure that the recruitment and appointment of judges is based upon an impartial, merit-based selection process. There is a continuing need to increase the number of qualified legal and judicial trainers at both the RAJP and the Lawyers Training School based on a clearly articulated strategy.

The establishments of the Royal School for Training Judges, Prosecutors, Court Clerk and the Centre for Training Lawyers are positive developments which could have a marked effect on the quality of the judiciary in the longer term.

The Royal Government has established centers for legal services in the number of provinces and the district in order to institutionalize dispute resolution mechanisms outside the court system in Cambodia in order to reduce the backlog at the courts also.

III. PUBLIC AUTHORITIES

A. Legislative Level

There are two commissions in the Senate and National Assembly namely Commission on Interior, National Defense, Investigation, Anti-corruption and Public Function and Commission on Human Rights Reception of Complaints Investigation and National Assembly-Senate Relation who carry out the important task for fighting corruption. The commission control and take action all complaints from public and Assembly member, so complaints has been reviewed and sent to the concerned Ministries.

B. The Ministry of National Assembly-Senate Relations and Inspection (MoNASRI)

The Ministry of National Assembly-Senate Relations and Inspection (MoNASRI) carry out some task such as:

- Initiate and assign the inspectors to inspect all public establishments such as ministries, municipal and provincial, general secretariats, public administrative institution and public institution that assure the law enforcement and other provisions,
- Take measure against the illegal commitment and corruption that commit by the government official, military, police that those act cause a negative effect on the society,
- Invite the concerned person to explain through the concerned authority to give the explanation to the inspectors,
- Temporary suspend of the action of the public or private institution that affects the negative effect on the national interest and submit this case to the head of the government,
- Submit the head of the government of adoption for the sentences of any individual or legal entity that found out that cause a severe damage to the national interest.

C. The Anti-Corruption Unit in the Council of Ministers (CoM)

The Anti-Corruption Unit in the Council of Ministers (CoM) was created on 22 August 2006 and plays a very important role for curbing corruption such as:

1. Investigation Section

- Receive complaint and find information concerning to the corruption,
- Research and collect information related to the corruption and report to top management,
- Cooperate with the concerned authority in order to investigate at the place related to the fraud, state

embezzlement, lose of national budget and other corruption activities,

- Review the document and activities of revenue and expenses of national budget and the use of national and international aid at the ministries, general secretariats, institutions, municipal and provincial authority and public establishment, administration, public procurement and state company for evaluate, conclude and raise mechanism to the top management.

2. Law Enforcement Section

- Study and analyze complaint concerning to the corruption with ministries, concerned institution in order to determine the offense and suggest for making decision by top management,
- Cooperate with the investigation section and concerned sections as well as the judicial police for the preparation of the case and send offenders to the court through the procedure,
- Follow and control the law enforcement and act authenticated of the Royal Government and the Ministries, institutions for the guarantee the moral transparency, efficiency and accountability.

3. Education, Prevention, Protection and Cooperation Section

- Build the action plan on the work of anti-corruption through the vision, political policy, rectangular strategy and national development plan,
- Cooperate with the ministries, concerned ministries in order to hold meeting as a national and international seminar and establish the others program for the disseminate to the public of the corruption flaw or consequences,
- Educate ethic to government officials, authority, students, police and public.

D. The Municipal and Provincial CS-Fund Accountability Working Group

In 2005, National Commune Committee established The Municipal and Provincial CS-Fund Accountability Working Group in all Municipals and Provincial in order to resolve the complaints concerning to the irregularities of the utility of commune budget. The members of the Municipal and Provincial CS-Fund Accountability Working Group composts of as following: Government representative, Commune Council and public representative.

IV. THE ENTITIES OF CIVIL SOCIETY AND THE PRIVATE SECTOR

A. Development Partner

Royal Government has been enacted and promoted the implementation of strategic framework on the management of the development cooperation to strengthen the partnership between the government and the development partner and strengthens the institution for financing cooperation as well as determine the direction, direction of management and other supports that concern to the effectively utility of those financing cooperation. Therefore, if someone know there are corruptions on the project of the Royal Government that received budget from the donor countries, he/she can contact and report directly to them. The development partners always do their best to find out the improper use of their budget and they will be happy about reports.

B. Media

The media often wrote about cases related to the corruption. Therefore, if someone know about the act of corruption affected the majority of the people, he/she can contact the radio and press concerning to those investigation. There are many examples that has been investigated by the media and they have been broadcasted and then officially investigation on those corruption cases.

C. Civil Society

Anti-corruption is an area of concern to many NGOs, especially to those who work closely with the government. A few NGOs have made monitoring or research into corruption the focus of their activities.

NGOs are also trying to address the need for better governance and transparency within their own programs. There are some NGOs who carry out important duties for combating corruption such as:

- The Center for Social Development has assisted the government in the drafting of the anti-corruption law. It has also conducted studies on the attitudes of Cambodians to corruption.
- LIDHEE Khmer has conducted a survey on corruption under a technical assistance grant from the World Bank. The study became the background paper for preparation of the anti-corruption reform.
- The Khmer Human Rights and Anti-Corruption Organization educate the public about corruption, and seek to expose corruption wherever it occurs.
- The Cambodian Independent Watch Committee on Corruption (CIWCC) is composed of local NGOs which have a strong will to help to reduce corruption in Cambodian society.

The members of CIWCC are: (i) ADHOC, (ii) ANLWC, (iii) CC, (iv) CCPCR, IDA, (v) CHRTF, (vi) CLO, (vii) DFKSI, (viii) IDA, (ix) LICADHO, (x) KID, (xi) KHEMARA, (xii) KHRACO, (xiii) KKKHRA, (xiv) KKKHRDA, (xv) LCJ, (xvi) LINKG, (xvii) USG (xviii) VIGILENCE, and (xix) WFP. The purpose of the committee is to discuss issues related to legal aspects as well as practical issues in anti-corruption reform. It issues statements related to anti-corruption in Cambodia. The group is monitoring the government in processing the anti-corruption law.

The biggest concern of the CIWCC is the lack of transparency and corruption in public procurement in Cambodia. It is concerned that the problem is related not only to the government's own budget, but to external assistance such as ADB and World Bank funds as well.

D. Private Sector

Starting from 1999 until now the Royal Government has held the Government Forum and Private Sector that is the thirteenth meetings of the Council of Ministers which has 8 working groups of the forum proceed the meeting for solving the internal issue of the working group and through the inter working group as a base. Every forum solved every difficulty of the private sector as well as taking measure and the direction for the development of the private sector that the government gives the role as the mechanism to grow the national economy. Private development in Cambodia refers to the competition for success in the globalization. In this respect, the government tries to integrate the economic in the region and the world.

The Royal Government will continue to develop and pursue implementation of policies, legal and regulatory framework and procedures to protect fair competition between private companies/enterprises by ensuring proper behavior, honorable conduct and dignity in all business transactions. The Royal Government will safeguard the balance between the rights and interests in the contracts made between the public and private sector.

V. INTERNATIONAL CO-OPERATION

Cambodia has been signed the United Nations Convention against Corruption on 25 September 2007, signed MOU on Cooperation for Preventing and Combating Corruption with Eight ASEAN Countries on 11 September 2007 and Cambodia is a member of the OEDADB also. On the draft Anti-Corruption Law talk about extradition and legal assistance that compliance to the international standard. Moreover, Cambodia has the laws and criminal procedure code that stated of extradition and legal assistance concerning to send prisoners and documents. For example, the laws on the control of drugs, law on counter terrorism and criminal procedure code mention about tracing, freezing, seizure and confiscation of the proceeds of crimes.

VI. CONCLUSION

To sum up, as the above mentioned different countries use different strategies to combat corruption. Both theory and practice suggest that there is no simple response that should be adopted across the board once the basic anticorruption statutes are in place. To be precise here, fundamental change requires commitment from the top and a willingness to follow through as the anticorruption efforts unfolds in the Cambodian context.

REFERENCES

Anti-CORRUPTION, http://www.ngoforum.org.kh/Development/DOCS/ngo_recommendation/atic_corruption.htm , accessed: November 28 2008.

Governance Action Plan II 2005-2006. “Accelerating State Reform: Strengthening Good Governance and Improving Public Service Delivery”, Supreme Council for State Reform, Commissary General.

International Training Course on Corruption Control in Criminal Justice, http://www.unafei.or.jp/english/pages/Corruptioncontrol_cj.htm, accessed: October 22, 2008.

Note on Legal and Judicial Reform for the Mid-Term Consultative Group of Donors Meeting January 2003.

Report on Essential Achievement of Royal Government for Fourth Year 2004-2007, Council of Minister, May 2008.

Royal Government of Cambodia, addressed by Samdech Akka Moha Sena Padei Techo HUN SEN, Prime Minister of the Kingdom of Cambodia, on “Rectangular Strategy: For Growth, Employment, Equity and Efficiency” Phase II, First Cabinet Meeting of the Fourth Legislature of the National Assembly, Phnom Penh, 26 September 2008

Royal Government of Cambodia, addressed by Samdech HUN SEN, Prime Minister of Cambodia, on “Rectangular Strategy: For Growth, Employment, Equity and Efficiency”, First Cabinet Meeting of the Third Legislature of the National Assembly at the Office of the Council of Ministers, Phnom Penh, 16 July 2004.

Samdach Hun Sen, Prime Minister of Cambodia: ‘Remarks at the Opening Ceremony of the Seminar on the Draft Law on Anti-Corruption in Cambodia and International Standards’, 17-18 August 2005.

The Center for Social Development, Our country-Our future, Phnom Penh, September 2006.

United Nations Convention against Corruption, <http://www.unodc.org/unodc/en/treaties/CAC/index.html> , accessed: October 23, 2008.

BRIEFING ON COMBATING CORRUPTION IN RECENT YEARS IN CHINA

*Xu Daomin**

Respected Director Aizawa, ladies and gentlemen,

I am very grateful to the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) for the invitation to participate in this international seminar on the topic of Strengthening Countermeasures for Combating Corruption. What will follow is my brief description of the effort to combat and prevent corruption in recent years in China.

As we all know, many countries are plagued by the problem of corruption, which has become a widespread social phenomenon. Since the adoption of the reform and opening policies, China has achieved world-renowned, tremendous progress in economic and social development. The Chinese people's welfare and living conditions have been significantly improved. While making great efforts to develop the economy, our government is paying close attention to anti-corruption measures in order to establish a transparent social environment. We persist in our anti-corruption policy, "to seek both temporary and permanent solutions, integrated governance, concurrent punishment and prevention, with a focus on prevention", and to firmly implement the strategy of governing the country by the rule of law. In China, "post crime" refers to the behaviour of those government officials or public servants who take advantage of their position to engage in illegal activities, those who grossly neglect their work, and those who fail to perform their duties or who fail to perform them correctly, and in so doing, undermine the proper order of national management activities as well as the integrity of public duties. All of these offenders must be punished in accordance with the Penal Code. The legal principles regarding crime were clearly defined in the revised Penal Code of 1997. Regarding "post crime" committed by government officials, the Penal Code stipulates 53 separate criminal acts. These criminal acts have been divided into three categories: embezzlement or bribery (Chapter VIII), dereliction of duty (Chapter IX), and infringing upon citizens' personal or democratic rights.

China's prosecutorial organs are responsible for the prosecution of corruption. Many corruption cases involving government officials have been investigated and processed in recent years. We have a zero-tolerance policy towards those engaging in corruption. We will prosecute anyone who seeks to use their power or position illegally to gain personal benefits, regardless of who they are or of what post they hold. Under the Penal Code, we will gather evidence, build a solid case which brings clear facts to light, present the criminal charges in court, and ensure that the offenders are justly punished.

Some of these recent cases involve the abuse of power in grass-roots level government bodies or in organizations of self-management in rural areas that violate the rights of farmers, and therefore constitute corruption. Other corruption cases involve government officials with large power bases and high positions, which include former government ministers or even higher posts. For example, Cheng Kejie, former vice-chairman of the Standing Committee of the National People's Congress, was sentenced to death for bribery. Chen Liangyu, former Mayor of Shanghai, was sentenced to 18 years in prison at his first instance trial for taking bribes and abusing his power. The court also confiscated 300,000 yuan of his personal assets.

* Deputy Chief, Division of Procuratorial Department for Duty Crime Prevention, Supreme People's Procuratorate, China.

Through the investigation and handling of these cases, we can identify why these crimes occurred and which management or system weaknesses were exploited in the execution of the crimes. We will then adopt countermeasures to avoid repetition of similar problems. Towards that end, China's prosecutorial organs have devoted more attention to preventing “post crime” in recent years. The Supreme People's Prosecution established the Post Crime Prevention Bureau. Each provincial, municipal, and county attorney also established a “post crime” prevention organization. The following methods have been adopted to carry out these objectives:

A. Understanding “Post Crime”

We must strengthen criminal analysis to acquire an accurate understanding of the characteristics and features of “post crime”.

Criminal analysis is an important method for exploring the crucial points of the crime as well as the factors which lead to the crime. It is also an important method for determining the regularity of the crime, by studying typical “post crime” cases that have been investigated and processed, focusing on the cause and effect sequence of the crime. It is vital that we devote our resources to preventive measures which fully reflect the prosecutorial organs' professional characteristics of prevention functions. Criminal analysis which is deep and concrete, not hollow, ambiguous, or superficial, must be conducted. In connection with the specific case or patterns of “post crime”, we analyse the status of the exercise of power, objective opportunities for corruption, and subjective psychological motivation, etc. We also examine specific cases to identify the reasons for and roots of the problem; carry out crime pattern studies to understand the characteristics and features of the crime; and research “post crime” by each region and industry in order to understand variation trends.

B. Preventive Investigation

We must promptly strengthen preventive investigation and determine the hidden dangers and precipitating causes of “post crime”.

Preventive investigation is a functional activity for seeking precautionary countermeasures. It is a fundamental process for understanding crime trends. The goal of preventive investigation is to determine the hidden dangers of “post crime” and to identify the macro and micro factors that may cause “post crime”. In order to carry out extensive preventive investigations, we must focus on the concerns of the public, the problems that have been publicly identified as most salient, and the industries and fields with capital-intensive projects and highly concentrated power, which make “post crime” more likely to occur. The prosecutorial organs can implement preventive investigations independently or, as required, together with related industries, departments, or units. At higher levels the prosecution should strengthen the coordination and supervision of preventive investigations to ensure the quality of the investigation.

C. Countermeasures and Prevention

We must strengthen and encourage countermeasure proposals and positively promote the establishment and improvement of the “post crime” prevention system.

The main targets for providing preventive proposals are the competent departments of those units where “post crime” has been committed and those industries and fields where “post crime” is more likely to occur. The purpose is to promote the establishment and improvement of the “post crime” prevention system. It is the chief means for realizing the professional prevention functions of the prosecutorial organ. The prophase research for preventive proposals should be implemented solidly in order to accurately identify the factors which lead to a crime and to actively propose well-directed operational countermeasures. Communication with these units should be strengthened during the process. We should pay close attention to the follow-up and administration of the proposals to ensure that the preventive proposals will be accepted.

D. Crime Prevention Counselling

We must strengthen crime prevention counselling and actively promote effective “post crime”

prevention activities.

Crime prevention counselling is an effective means for spreading crime prevention knowledge, introducing crime prevention methods, and providing crime prevention assistance. We provide daily counselling to teach common sense concerning crime prevention in order to raise awareness among government officials as well as the public, and to enhance their ability to prevent “post crime”. We carry out site counselling for stages where the post crime is more likely to occur during the exercise of power. This includes briefings on the risk of crime, explanation of crime prevention points, and providing crime prevention methods to promote standards for the exercise of power and effective controls. If required by the relevant parties, we also carry out review counselling to participate in reasoning activities for establishing policies and legislation as well as rules and regulations to propose advisory proposals on “post crime” prevention.

E. Awareness and Transparency

We must strengthen awareness campaigns and promote the development of a transparent government.

By using typical cases of “post crime”, we vigorously promote crime prevention campaigns and awareness raising programmes in order to make government officials more aware of the need for strict observation of all laws and make the public more aware of supervision issues as well as the salience of “post crime”. We must strengthen strict professional morality, develop patterns of behaviour and professional practice which work in accordance with the law, and carry forward integrity-based social virtues.

In summary, a focus on crime prevention is the trend and indeed, the consensus for fighting against corruption in the world today. It is an important aspect of the United Nations Convention against Corruption. We must participate in active international exchanges and co-operation, and gain useful scientific experience from other countries to effectively investigate, try, and punish those engaging in corruption. In the meantime, we should also base our efforts on current realities in China, including the actual situation of our prosecutorial organs, as we strive to keep up with the international trends and practices in combating corruption. In addition, we are willing to actively participate in international co-operation in the field of “post crime” prevention and to carry out professional training and personnel exchanges. We are also willing to share with others our achievements and experiences related to combating and preventing “post crime”.

Thank you for listening!

INDONESIAN LEGAL FRAMEWORKS AND EXPERIENCES IN STOLEN ASSET RECOVERY

*Jhoni Ginting**

Distinguished colleagues,
Ladies and Gentlemen;

First of all, I would like to convey my gratitude to Director of UNAFEI, Mr. Keiichi Aizawa and professor Shintaro Naito, for inviting and for the excellent arrangement. I also would like to thank the organisers and UNAFEI Staff for convening this Regional Forum.

In this opportunity, I would like present a country report paper of Indonesia. As we understand, the main theme of this Forum is “Strengthening of Domestic and International Cooperation for Effective Investigation and Prosecution of Corruption”. Nowadays, we realize the need of the countries to strengthening their works and cooperation in combating transnational crimes, including corruption. Indonesia has concerns in particular on the efforts of asset recovery. Therefore, the focus of my paper is the legal frameworks to pursue the corruption asset through strengthening the domestic and international cooperations.

This presentation consists of three parts as follows: First, Legal Frameworks in fighting corruption, both Legislative and Practical Approach; Second, The links between good governance, corruption and money laundering; Third, Experiences in pursuing the corruption asset, both treaty-based and non-treaty based.

Distinguished ladies and gentlemen,

As one of the largest democratic countries in the region, Indonesia is in the middle of a process, to enhance good governance in every sector. This country with 220 million people and more than 17 thousand islands, have done some reforms in the bureaucracy. These include promulgations of laws and regulations in combating corruption. We develop legal frameworks to be able to cope with challenges of modern corruption.

In the UNCAC, it is mentioned that asset recovery is a fundamental principle. In order to get better implications, we need to expand our capacity, not only to prevent corruption, but also to recover the stolen asset. Indonesia puts corruption asset recovery in the top priority. The duties to trace and recover assets can be extremely difficult. Illegal assets can be hidden all over the world, in any safe heaven countries.

In fighting corruption, Indonesia has statutes or acts. Among the most important are Act number 31/1999 as amended by Act 20/2001 on eradication of Corruption Offences; Act number 15/2002 as amended by Act number 25/2003 concerning The Crime of Money Laundering. In relation to mutual assistance in criminal matters, we passed Act number 1/2006, to respond international needs for transnational cases.

These legal bases are very important in fighting corruption, because the political legitimacy must be

* Head of Legal Bureau, Attorney-General’s Office of the Republic of Indonesia.

strengthened for sustainability of efforts to fight the corruption, including corruption asset recovery.

Distinguished ladies and gentlemen,

Besides legislations, as legal basis to deal with corruption, we establish multi agencies meeting in dealing with specific cases (inter-departments coordinative meeting). These meetings discuss complicated matters in cases, to seek advises and assistances from relevant agencies. In 2004, we set up a team, which is responsible to go after the fugitive corruptors, including their assets. The team exists until now, and is chaired by Vice Attorney-General. In order to speed up international legal cooperation, some agencies also design a special unit to deal with it.

Indonesia has declared an era of reforms. We have strong political will from the Government, to eradicate corruption. Good governance is instructed and monitored across the public sector. We admit that corruption is a serious problem in Indonesia, therefore, the Government strengthens all efforts to combat corruptions.

However, in recovering the stolen assets, we face difficulties, because in most typical high-profile corruption cases, the money were laundered and hidden, often in overseas financial center. In the past, it was very difficult to trace the corruption asset, but now, it is far better for having the anti-money laundering regimes, through FIU and Regional/International networks. We continue developing this network to build strong domestic and international network in fighting corruption.

Speaking about the structures of law enforcements, there are 3 (three) investigating agencies: Attorney-General's Office, Indonesian National Police (Criminal Investigation Division) and Commission on Eradication of Corruption (KPK). All prosecution is done by Public Prosecutor of AGO and one who seconded in KPK. Prosecutors who work for KPK will bring cases through special court on corruption offences.

Based on adequate legal frameworks, then we need the adequate legal enforcer to fight the corruption. One important thing must be mentioned in the institutional law enforcement that is what called as integrative law enforcement.

In developing investigation and prosecution of corruption cases, we work together with relevant agencies. Coordination and Cooperation is done with National Audit Agency (BPK), National Audit Agency on Finance and Development (BPKP), Financial Intelligence Unit (PPATK). As society demands more action to prevent economical damages of public funds, now the aim of prosecuting corruption is not only to punish corruptors, but more important to recover the corruption asset.

Distinguished ladies and gentlemen,

The fight against corruption is not easy. Our country has done some strategies to cope with it. In dealing with high-profile cases, the relevant agencies will work each other, share information and discuss the best way to handle it. This multi-agency approach is more effective, because the complexity of cases, including ways to recover the stolen asset.

To build our capacity, we need to know the basic steps in recovering the stolen asset. Those are: tracing the assets, including identifying ones, freezing, seizing, confiscating/forfeiting and repatriating the corruption asset, if the assets are located abroad.

Collecting information and intelligence is important to support investigations and prosecutions of corruption. Domestically, we will work with relevant agencies, such as the Police, FIU, Immigration, Tax Offices and Auditors, to gather evidence. In transnational cases, this cooperation also helpful to establish

the links with the stolen asset transferred abroad.

We have some experiences in looking at international cooperation in recovering the stolen asset. In the past, in Singapore, millions of US \$ recovered in Pertamina-Kartika Taher case, through civil litigation. In Australia, based on our MLA Treaty, in Hendra Rahardja Case, there had been a success of recovering more Aust. \$ 650,000 with the assistance of Australian Government.

One important lesson of Indonesia experiences is that, the recovery of corruption asset will increase the public support. Public aspiration about fighting against corruption not limited on pursuing the corruptors but also pursuing the stolen asset. Recovered stolen asset then could be reallocated for public benefits.

Distinguished ladies and gentlemen,

Currently, we are having cooperation with Swiss Government, based on reciprocity, to block around US \$ 15 millions, for allegedly being the stolen asset. In Guernsey, the Government is trying to forfeit the suspected to be the stolen asset amounts Euro 36 million, using civil litigation.

The proceeds of transnational corruption must be hard to detect. Even if we can detect those, it is harder to repatriate the stolen assets. Therefore, we need to understand to process of recovering the stolen asset, through exchange of knowledge and experiences.

In our experience, going through mutual legal assistance (MLA) channel can be difficult. It has long procedures and requirements. Sometimes it takes a long time to able to finalize the requests. Another difficulty is that often they require a final judgment on the assets, which sometimes extremely difficult because lack of evidence.

Distinguished ladies and gentlemen,

Why there has been a rapid development of MLA? As we know, the crimes occur tend to have transnational aspects. The cross-jurisdiction problems have increased. Among those problem is the differences in legal systems. Criminals are clever to abuse and manipulate it for their own benefits.

As we witness the growing efforts on handling cross-border criminal cases, we trust that assistance from other jurisdiction is central. The facts show, at least in our country experience, that many stolen funds were trasferred accross the jurisdicition. In this regards, we need to cooperate with other countries, using mutual legal assistance in criminal matters mechanism.

Another channel to recover the stolen asset is through civil litigation. In Indonesia, the Government Attorney (AG Office) has the power to sue corruptors or their families using civil litigation method. However, to deal with cross-border cases, we must hire local lawyers, which costly. Usually we also assign Indonesian officials/experts to work with the lawyers.

In comparing MLA and civil litigation, it is understood that often civil litigation is more effective than MLA. Civil method also sometimes does not require criminal conviction or final judgment. However, civil litigation is more expensive, although sometimes is quicker. The good thing about MLA is that it is cheaper and it is a form of Government to Government cooperation, which is more formal.

Distinguished ladies and gentlemen,

I would like to mention some lessons to be learnt from Indonesia experiences in recovering the stolen asset. First is that political will by the Government to strengthen “good governance” is pivotal.

Multi-agencies approach, including cooperation and coordination with National Audit Agency, FIU and Interpol networks, will help the efforts to eradicate corruption and to build deterrent factor. Special unit in asset recovery and sufficient budget to support the unit, are crucial.

MLA and civil litigation could be implemented simultaneously, even though the implementation of civil litigation is more effective and efficient, but we realize that MLA is still important and could be improved to become the more effective instrument in the future.

Moreover, MLA and informal cooperation should be done simultaneously to recover cross-jurisdiction stolen asset. In the context of civil litigation, we might use it because sometimes is more effective, as long as it fulfils the cost and benefit principle.

Next, I would like to make conclusions from my presentation. Firstly, in recovering the stolen asset, we must understand the concept of: tracing, freezing, seizing, confiscating/forfeiting and repatriating. Secondly, ICPO (Interpol) Networks, Egmont Group (FIUs) and other association or networks of law enforcement and judicial authorities are high-valued resources. Thirdly, there should be a more informal international cooperation in recovering the stolen asset, by empowering the role of government lawyers and Fourthly, the effectiveness of MLA or Civil Action depends on the legal frameworks of a country.

Distinguished ladies and gentlemen,

We have seen some developments in global association, group or networks, such as ICPO, Egmont group, and International Association of Prosecutors (IAP). The emerging of IAACA (International Association of Anti-Corruption Authorities) and the Conference of the State Parties to the UNCAC are also productive in strengthening the networks.

The other lesson of Indonesia experiences in fighting against corruption is what we called “intermestic factors” or influence of the international factors to domestic matters and influence of domestic factors to international cooperation.

To conclude, I hope this Regional Forum is productive. I am confident that all participants wishes to bring knowledge, information and others’ experience to their workplace. With some hard works done by UNAFEI, I am optimistic that we can learn how to resolve our common problems to combat corruption, through domestic and international cooperation.

Thank you for your attention.

**INVESTIGATION AND PROSECUTION
OF CORRUPTION IN JAPAN
FROM THE VIEWPOINT OF THE RELATIONSHIP
BETWEEN PUBLIC PROSECUTORS OFFICES AND OTHER
ORGANIZATIONS**

*Yuichiro Tachi**

**I. THE RELATIONSHIP BETWEEN PUBLIC PROSECUTORS OFFICES
AND THE OTHER INVESTIGATIVE ORGANIZATIONS IN JAPAN**

In Japan we have several investigative organizations. Police agents in the National Police Agency and Prefectural Police Headquarters; national tax investigators in the National Tax Administration Agency and Regional Taxation Bureaus; investigators in the Securities Exchange Surveillance Commission; and investigators in the Fair Trade Commission have responsibility to investigate cases related to their fields. Public prosecutors also carry out investigations. Public prosecutors in Japan investigate cases by themselves. This means that public prosecutors may initiate and complete investigations without police assistance, and may do so in complicated cases, such as bribery or large-scale financial crimes involving politicians, senior government officials, or executives of large corporations.

In three major cities, Tokyo, Osaka, and Nagoya, the public prosecutors offices have special investigation departments where a considerable number of well trained and highly qualified public prosecutors and assistant officers are assigned to initiate investigations. The special investigation departments of the public prosecutors offices have special units for self-investigation where well-trained assistant officers keep an eye on department officials, in particular, by analysing their bank account activity. When the department has reason to suspect an official of corruption, members of the special unit start tracing the official's bank accounts. Once investigators have identified the accounts they track transactions to check for suspicious activity.

When the public prosecutors decide to start their investigation into a corruption case, they sometimes investigate not only the crime of corruption but also other related crimes, such as: violations of the Law for Oaths, Testimony, etc. of Witnesses at the Diet; violations of the Political Funds Control Law; obstruction of an auction; fraud; breach of trust; and so on, all of which are stipulated in the Penal Code. They do this because an investigation into corruption is probably the most difficult of crimes to investigate due to the fact that it is by nature a secretive crime, which often involves only two satisfied parties. Therefore, they investigate other related crimes which are easier to prove and prosecute. During the investigation, they try to find evidence of corruption, e.g. a confession of bribery, material evidence which is found in the suspect's dwelling, and so on.

The special investigation departments in the Tokyo, Osaka and Nagoya offices have investigated many cases (involving not only bribery but also tax evasion, securities exchange violations, and the circumvention of laws such as those governing the prohibition of private monopolies and the maintenance of fair trade) with tax investigators, investigators in the Securities Exchange Surveillance Commission and investigators in the Fair Trade Commission.

* Director of the Research Department, Research and Training Institute of the Ministry of Justice, Japan.

The co-operative relationship between public prosecutors offices and the above related investigative organizations helps in the investigation of corruption. For example, during a tax evasion investigation with the tax investigators, public prosecutors in the Special Investigation Department of the Osaka Office seized some receipts to use as evidence at trial; however, close examination of the receipts revealed that they had been doctored, and this led to the investigation being extended to a bribery offence, in addition to tax evasion.

Even though public prosecutors' investigations are effective in bribery cases and white collar crimes, etc. the importance of police investigation is equally esteemed. The police are primarily responsible for criminal investigations and carry out the initial investigations of more than 99 percent of criminal cases. However, following their investigation they must refer cases to a public prosecutor together with relevant documents and evidence, even when the police believe that the evidence gathered is insufficient. The police have no power to finalize cases, except for minor offences.

The relationship between the police and public prosecutors in Japan can be characterized as a relationship based on co-operation, in general. However, the police and public prosecutors belong to different organizations independent of each other. They maintain a competitive relationship, especially with regard to the detection of corruption cases. However, public prosecutors have their own power to investigate and monopolize the decision to prosecute over all criminal cases, and, in addition, they have the important function, or rather duty, of checking on police investigations.

Table 1 shows the number of public officials newly received and finally disposed by public prosecutors offices for acceptance of bribes in 2005. The number of those indicted was highest for staff of local governments (51.6%).

Table 1: Numbers of public officials newly received and finally disposed by public prosecutors offices for acceptance of bribes (2005)

Category	Newly received			Final disposition							
	Total	Reported or received directly by public prosecutors	By police officers	Total	Prosecuted			Not prosecuted			Referred to family courts
					Sub-total	Indictment	Summary trial procedure	Sub-total	Suspension of prosecution	Others	
Total	131	27	104	143	95	95	-	48	23	25	-
National Diet members	-	-	-	1	-	-	-	1	-	1	-
Local assembly members	28	3	25	26	21	21	-	5	-	5	-
Court officials	3	3	-	3	-	-	-	3	-	3	-
Employees of the Ministry of Justice	5	5	-	5	-	-	-	5	2	3	-
Police officers	7	-	7	8	6	6	-	2	-	2	-
National public officials (excluding all those mentioned above)	11	8	3	11	9	9	-	2	1	1	-
Staff of local governments (excluding police officers)	68	6	62	72	49	49	-	23	13	10	-
Quasi-public officials	9	2	7	17	10	10	-	7	7	-	-

Note:

1. All cases with "acceptance of bribes" in its crime name were counted.
2. "Police officers" means staff of the National Police Agency and of prefectural police forces.
3. "Quasi-public officials" means persons who are regarded as engaging in official duties pursuant to acts and ordinances.
4. Heads of local governments are included in the term "officials of local governments".

Source: The Criminal Affairs Bureau, Ministry of Justice

Table 2 shows the terms of sentences of imprisonment with work rendered in the court of first instance for the giving and acceptance of bribes in the last five years. 87.1% of those sentenced to imprisonment with work were granted suspension of execution of their sentences.

Table 2: Terms of sentences of imprisonment with work rendered in the court of first instance for the giving and acceptance of bribes (2001-2005)

Year	Term of imprisonment with work				Suspension of execution of sentence in the total	Suspended execution rate
	Total	1 year or more	6 months or more	Less than 6 months		
2001	146	121	25	-	138	94.5
2002	187	159	27	1	169	90.4
2003	139	117	22	-	124	89.2
2004	121	109	12	-	113	93.4
2005	124	110	14	-	108	87.1

Source: Annual Report of Judicial Statistics

Eventually, in 2005, 131 public officials were newly received by the public prosecutors offices and 95 were prosecuted for receiving bribes. 124 public officials were convicted and among them 108 public officials were given a suspension of execution of their sentences.

As I mentioned above, public prosecutors, especially the Special Investigation Department of the Tokyo District Public Prosecutors Office, have been endeavouring to combat corruption committed by politicians. The Department was established in May 1949 to investigate the theft or concealment of Government property. Soon after that the purpose of the Department was changed to the investigation of corruption, its related crimes, and white collar crimes. It has been a challenge for the public prosecutors of the Department to investigate so many corruption cases. As a result of these investigations, new laws have been enacted and some laws have been revised to prevent corruption.

II. SUCCESSFUL INVESTIGATIONS AND A GOOD RELATIONSHIP BETWEEN PUBLIC PROSECUTORS OFFICES AND RELATED ORGANIZATIONS

A. Co-operation with the FIU

In Japan, although suspicious transaction reporting was made obligatory by the Anti-Drug Special Law in July 1992, the system did not centralize the information under the law. Japan's first FIU was established within the Financial Supervisory Agency (reorganized into the Financial Services Agency in July 2000), when the Organized Crimes Punishment Law came into effect in February 2000. In order to use information on suspicious transactions for investigation, the FIU may disseminate information to authorities in charge of investigating criminal cases, such as a public prosecutor or a police officer, etc.

In 2000, the FIU was informed that Taisho Life Insurance Company had paid out billions of yen and had received an injection of a similar amount of money via a huge purchase of its stocks. This transaction was very suspicious. Therefore, the FIU notified the Special Investigation Department in the Tokyo District Public Prosecutors Office of this fact. The prosecutors of that Department initiated an investigation and revealed that the money paid out by the Company was the result of a fraud perpetrated against the Company, and thereafter arrested a number of suspects for this fraud offence. Moreover, the prosecutors discovered that it was the intention of those who returned the money to the Company

through the purchase of its stocks to acquire influential positions within the Company. In this way, the suspects had succeeded in becoming president and controlling officers of the Company. This kind of infiltration of a legitimate business enterprise via money laundering is indictable under the Organized Crimes Punishment Law; therefore, the suspects were re-arrested for that crime and were subsequently prosecuted. The leader was sentenced to ten years' imprisonment with work and a ten million yen fine.

B. Co-operation with the Regional Taxation Bureau

In 2004, when I was the Deputy Director of the Special Investigation Department of the Osaka District Public Prosecutors Office, we investigated a bribery case which was committed by two public officials. They worked for the office of public sanitation in a certain area at Funai County in Kyoto Prefecture. A company which wanted to work in that area decided to bribe these public officials in order to receive beneficial treatment from the public office. The president of the company gave them bribes until just before their arrest. The total amount of the money the two suspects received was over 40 million yen. We arrested the two public officials and the president of the company in September 2004. Soon after the arrest, the bribe-giver and the receivers confessed to their crimes in detail, and we obtained enough evidence to prosecute them.

How did we uncover the case? We found out about this case from the documents of a tax evasion case in which the president of the company was the suspect. During the investigation of the tax evasion case, the tax investigator took statements from the president's wife regarding a large amount of money sent to the above mentioned public officials in the form of their salaries for services rendered to the company. The tax investigator suspected that the large salaries as stated in the company's documentation could not be the officials' legitimate earnings and instead disguised a bribe. Hence, the wife's statements gave the public prosecutors cause to begin a corruption investigation.

The two public officials were tried, and they were sentenced respectively to two and three years' imprisonment. But the trial of the president of the company was dismissed, because he was released on bail and committed suicide before he was convicted.

C. Co-operation with Foreign Governments

In Japan it is prohibited to give a bribe to a public official even if he/she is a foreign public official. It is stipulated in the Unfair Competition Prevention Law. Until recently this provision was used very little. If we consider prosecuting a Japanese for committing this violation, we need to collect the statements or testimony of the foreign official who received the bribe. It has not been easy for us because of the difficulties in identifying the crime in its entirety before requesting assistance from a foreign country.

However, I will outline a successful investigation which was revealed by the public prosecutors to be a case of giving a bribe to a Vietnamese official. An official of a Vietnamese organization that oversaw a multibillion yen highway construction project in Ho Chi Minh City received bribes paid by Pacific Consultants International (hereinafter 'PCI') to secure the contract for the project, which was funded with Japanese official development assistance (hereinafter ODA).

The cross-city highway was a massive project that involved tunneling under the Saigon River in the city. The total project cost was about 80 billion yen. PCI received about 1.1 billion yen in fiscal 2001 for consultancy work on a project to build a highway traversing Ho Chi Minh City from east to west. In fiscal 2003, a consortium that included PCI and other firms won a contract worth about 2 billion yen. Both were for ODA works funded with yen loans.

The investigation of the Tokyo Public Prosecutors Special Investigation Department, which began about a year ago, revealed that PCI, a leading player in the overseas consulting business, had engaged in illicit deals concerning overseas projects funded by large amounts of Japanese ODA, and in a project dealing with the destruction of chemical weapons in China. Public prosecutors were looking into whether

PCI violated the Unfair Competition Prevention Law by bribing an overseas public official.

During the above investigation, the public prosecutors uncovered other crimes which were committed by the former PCI president and his subordinates, that is, tax evasion in connection with an official government development assistance project in Southeast Asia. Then the former president, his subordinates and PCI has been charged with violating the Corporate Tax Law for unlawfully raising funds to use as bribes for winning ODA-related contracts. PCI evaded corporate tax payments in order to raise money for its bribery, including the use of a dummy company in Hong Kong. PCI repeatedly gave bribes to foreign public officials to land orders from foreign governments through the company's local offices. However, knowing that the practice stood a good chance of being exposed, the former PCI President ordered his subordinates in 2002 to think about less conspicuous ways to operate. As a result, PCI decided to establish a dummy company in Hong Kong to pool off-the-book funds for use as bribe money. Eventually PCI transferred about 260 million yen in total to the dummy company and evaded about 80.92 million yen in corporate tax over two years until the business year ending in September 2004, by hiding about 252.72 million yen in income. The income was covered by false budgeting for the fictitious outsourcing of designs.

Meanwhile, PCI received orders in 2001 and 2003 from a Ho Chi Minh City office, known as PMU (the project management unit), for a highway construction project in the city and promised a PMU executive bribes totaling US\$2.6 million (about 286 million yen). Based on the promise, PCI offered two bribes—US\$600,000 in December 2003 and US\$540,000 in September 2004. Finally the public prosecutors of the Special Investigation Department in Tokyo indicted the former PCI president and his subordinates, four persons in total, and the company PCI for violation of the Unfair Competition Prevention Law by giving a bribe, in the amount of 90 million yen, on 25 August this year. The case is now under trial.

In the course of the investigation, public prosecutors had been requesting assistance from the Vietnamese government, through the comity of nations and via the diplomatic channel. Because of the confession by the suspects of PCI, public prosecutors were able to prove the above mentioned crimes. However, if they had obtained the Vietnamese official's confession or testimony, it would have been perfectly sufficient to establish guilt. Therefore, the co-operative relationship between Japan and Vietnam was very important to ensure the success of this investigation.

D. Co-operation with Administrative Organizations

About ten years ago, when I was a member of the Special Investigation Department of Osaka District Public Prosecutors Office, I investigated a case of bribery involving the Mayor of the City of Wakayama, a city of some 400,000 people and a renowned tourist destination, and the former chairman of the Wakayama Municipal Assembly.

The first clue was an item in a newspaper that reported that the Sennan City Agricultural Co-operative (SCAC) in Osaka had gone bankrupt. This is unusual for an agricultural co-operative. We knew that the SCAC had a bad reputation because it had too many bad loans on its books. Furthermore, Mr. X was one of the debtors, and we also knew him by reputation and had previously suspected him of giving bribes to local government officers and members of the local assembly. We therefore concluded that some breach of trust had occurred in the SCAC in relation to its loans and that Mr. X was probably involved, along with the head of the SCAC.

We started by asking for the co-operation of the Agricultural Co-operative Department in the Osaka prefectural government. This organization is responsible for supervising agricultural co-operatives in Osaka by periodically reviewing co-operatives' management and keeping track of their performance by means of reports and other documents. We received these various documents and reports and analysed the SCAC's loans. We also interviewed some SCAC staff. Eventually we determined that we had sufficient evidence to prosecute the head of the SCAC and Mr. X for a breach of trust of 500 million yen. We arrested the head of the SCAC, another SCAC staff member who was in charge of accounting, Mr. X, and a subordinate of Mr. X. A few days later they all confessed.

During the investigation we searched Mr. X's office and seized a certificate made by the Wakayama Land Development Agency. The certificate stated that the agency guaranteed to buy Mr. X's land. At first glance it was an ordinary certificate, but careful examination revealed some irregularities. One of these was the signature. Normally the head of the issuing agency signs a certificate of this kind, but in this case the signature was that of a significantly lower-ranking official. Another irregularity was that the land was not as valuable as cited on the certificate. This led us to believe that Mr. X had bribed someone at the agency.

With this information in hand we interrogated Mr. X's subordinate. After an initial denial he confessed to giving a bribe of five million yen to Mr. Y, the former chairman of the Wakayama Municipal Assembly, to pressure the head of the Wakayama Land Development Agency, also the Mayor of Wakayama, to issue the certificate, because Mr. X and his subordinate thought that the certificate would significantly boost the value of the land.

After confronting Mr. X with his subordinate's confession, Mr. X also eventually confessed to giving the five million yen bribe to Mr. Y. Thus we eventually also obtained a confession from Mr. Y. However, at this stage, we could not arrest the Mayor of Wakayama, because he had ordered a subordinate to make the certificate and sign it, and we had insufficient evidence to prove that the Mayor had committed a crime. We did, however, have sufficient grounds to search the Mayor's office. We examined his daily work records and found a reference to a meeting with his subordinate, Mr. Z, early one weekend morning in his office, which was unusual. We had also learned from Mr. Y about a scheme whereby parents could get their children employed at the Wakayama Administrative Office by giving the Mayor one million yen. An investigation of Mr. Z found that his daughter had gained entry to the office even though she had not performed as well on the entrance examination as other candidates who had not been employed by the office.

Following further investigation we arrested the Mayor, his secretary, and Mr. Z. We also interviewed Mr. Z's wife, who was familiar with the whole story. They all confessed to the recruitment scheme and were indicted. The arrest and indictment of a mayor of a city of this size is rare and caused quite a sensation. At the trial, all the defendants admitted their guilt and received appropriate sentences.

This case underscores the importance of co-operation with the administrative organization and analysing material evidence. If we had not had the co-operation of the organization and noticed the irregularities in the certificate or found the reference to a meeting between the Mayor and Mr. Z, we would not have discovered the second crime, i.e. the recruitment scheme.

III. CONCLUSION

I have outlined in this paper four cases which were successfully investigated and I hope that I have made clear the importance of co-operation between public prosecutors offices and other related organizations. Now and in the future, the concealment of giving and receiving bribes will become increasingly sophisticated. In such a situation, for the purpose of maintaining social stability and trust in a fair government, investigative organizations, including public prosecutors offices, should maintain a close and co-operative relationship, in both domestic and overseas investigation, to combat corrupt politicians and high-ranking officials.

EXPERIENCE IN EFFECTIVE INVESTIGATION AND PROSECUTION OF CORRUPTION IN KOREA

*Kyung-Joon Jin**

I. INTRODUCTION

My presentation will include the following features; (1) Korea's legal system against corruption; (2) domestic policies; (3) introduction to international cooperation. I want to share Korea's experiences in fighting against corruption and addressing the challenges of establishing an international body for corruption prevention and eradication.

In the 21st century corruption has become a global phenomenon, being called a social cancer that worries the international community. It is corroding the culture and ethos of democracy at all levels.

It can be safely said that the degree of integrity determines the future of a nation and its compatibilities. And a corruption-free country is considered as an advanced country.

Each country is allocating astronomical amount of money to eradicate the corruption. Nevertheless, we can not expect that one country alone can fight against the corruption. Global issues require global cooperation and interests.

II. DOMESTIC SYSTEM AND POLICIES

A. Overview

The Republic of Korea has established various legal and institutional systems in order to prevent the corruption and bribery and to make compensation to possible infringement caused by corruption in both public and private sectors.

In particular, the establishment of the Korea Financial Intelligence Unit, the comprehensive agencies like Anti-Corruption and Civil Rights Commission and the enactment of AML-related laws are showing Korea's efforts to advance nation's anti-corruption system.

B. The Ministry of Justice and the Prosecutors' Office

1. Joint Investigation TF

(i) Background

Based on the principle of specialization and cooperation, Korea recognized the necessity of the government-level comprehensive countermeasures for the effective combat against the major corruption such as any conduct or behavior in relation to persons entrusted with responsibilities in public office and large scale economic corruption.

(ii) Details

The joint investigation TF has been established under the Central Investigation Division at the

* Supervisor Prosecutor, Director of International Criminal Affairs Division, Korea.

Supreme Prosecutors' Office in an effort to respond to corruption related offences including large-scale economic corruption and political corruption effectively.

Competent authorities including the Prosecutors' Office, National Police Agency, National Tax Service, Korea Customs Service, Financial Supervisory Commission and Korea Deposit Insurance Corporation are participating in the TF.

In case where the major offenses are under investigation, competent authorities are dispatching sufficient number of personnel to form a TF, which is dissolved after the investigation closes.

Usually competent authorities are sending one liaison officer to the Supreme Prosecutors' Office, and additional officers in urgent cases.

2. 'Anti Money Laundering and Redemption of Criminal Proceeds' TF

(i) Background

'Proceeds of Crime Act' and 'Act on Special Cases concerning Forfeiture for Offenses of Public Officials' define the proceeds from corruption-related crime as illegal proceeds, which can be subject to the forfeiture.

These acts are enacted on the grounds that confiscation of the proceeds from corruption-related crimes may uproot the motive of a crime and make justice reality.

(ii) TF Composition

Anti-Money Laundering and Redemption of Criminal Proceeds TF is composed of 10 experts in the two teams which have been set up under the High-tech Crime Investigation Division of the Supreme Prosecutors' Office.

In particular, one prosecutor and three prosecution investigators as well as experts in finance and accounting dispatched by National Tax Service, Financial Supervisory Service and Korea Deposit Insurance Corporation are specializing in tracing the origin of the fund and the cooperation between competent authorities.

(iii) TF Mission

Regarding the investigation of the Central Investigation Division of the Supreme Prosecutors' Office and the district prosecutors' office, the Anti-Money Laundering and Redemption of Criminal Proceeds TF mainly takes responsibilities of tracing the money laundered for the recovery of the illegal proceeds and of preserving the confiscation of property before the prosecution.

To this end, the team is carrying out the investigation on the money laundered, property of the suspect and related persons, foreign exchange transaction for asset drain overseas, and it is identifying the confiscation-targeted property.

(iv) Performance

Classification Year	Number of Cases of Forfeiture, Confiscation and Freezing	Amount of Forfeiture, Confiscation and Freezing
2005	73	2.9 billion
2006	472	238.3 billion
2007	507	54.1 billion
2008.1~9.	422	95.2 billion

No. of cases and amount of money forfeiture, confiscation and freezing is gradually increasing. The amount of money in 2006 was extraordinary due to some special investigation.

(v) Future Plan

Currently, Anti-Money Laundering and Redemption of Criminal Proceeds TF has been established only under the Supreme Prosecutors' Office. However, this kind of TF should be set up at every district prosecutors' office or at the central district prosecutors' office.

3. Concurrent Punishment for Bribery

A draft revision which will make a bribee or bribe taker concurrently punishable by physical imprisonment and by a monetary fine is now under deliberation in Congress.

(i) Background

Relatively low imprisonment rates for bribery, systematic lack of compulsory execution measures of confiscation and forfeiture have posed stumbling block to the effort to eradicate the bribery.

(ii) Details

In order to strengthen the effectiveness of the punishment on the bribery offender and of the asset recovery of the illegal proceeds, provision of the aggravated punishment for bribery of the public officials will be added to the 'Act on the Aggravated Punishment, etc. of Specific Crimes'. Public officials who receive bribe shall be punished by physical imprisonment and by a monetary fine 2 to 5 times as much as the amount of the received bribery.

To prevent misconduct by insiders of financial institutions, Korea is seeking the revision of the 'Act on the Aggravated Punishment, etc. of Specific Economic Crimes'. The legislative intent, content of the Act and the statutory punishment will be similarly revised so that the bribery of insiders of financial institutions would be dealt with as the bribery of the public officials.

Under the revised law, if any officer or employee of a financial institution receives, demands or promises any money or other benefit, in connection with his or her duties, he or she shall be punished by the penalties of physical imprisonment and a monetary fine concurrently.

C. Anti-Corruption & Civil Rights Commission

1. Background and Progress

- As the Anti-corruption Act came into effect on January 25, 2002, the Korean Independent Commission against Corruption was established with comprehensive and systematic tools to fight against corruption.
- The Anti-Corruption & Civil Rights Commission (ACRC) was launched on February 29, 2008 by integrating several units including the Ombudsman of Korea, the Korea Independent Commission against Corruption and the Administrative Appeals Commission into one to prevent corruption, to protect people's right and to make a compensation.

2. Anti-Corruption Functions

The Anti-Corruption & Civil Rights Commission (ACRC) performs the following five functions;

- Receiving Corruption Report, protecting and rewarding whistle-blowers,
- Developing measures against corruption in the public sector and making recommendation to help government agencies to amend ambiguous corruption-prone laws and institutions,
- Confirming the implementation of ACRC's recommendations,
- Raising public awareness on corruption issues,
- Promoting public-private partnership to anti-corruption, and joining global efforts to fight against corruption.

3. Major Policies

(i) Operation of Anti-corruption Assessment System

- Assessment of Integrity of Public Agencies

ACRC assesses the levels of integrity of public sector organizations each year by surveying citizens who have had firsthand experience with public services. The commission also evaluates the anti-corruption initiatives taken by public organizations on a regular basis. The fundamental objective of these assessments is to encourage public organizations to make voluntary efforts to tackle corruption

- Surveys are conducted on 11 items such as experiences of providing and receiving gifts, rationality of the administrative system, impartiality of administrative dealing and related agencies' efforts to prevent corruption. Analysis on corruption-prone sectors of each agency and its corruption-causing factors are being presented.

At the beginning, assessment subjects were mostly government agencies, but the targets have been broadened to cover other corruption-prone public agencies.

- Confirming the implementation of ACRC's recommendations

ACRC encourages the administrative agencies to make voluntary efforts, by evaluating the implementation and anti-corruption initiatives taken by these agencies. The fundamental objective of the evaluation is to encourage those agencies to make voluntary efforts to tackle corruption and to provide an exemplary case in order to rally people against corruption.

- Conducting Corruption Impact Assessment

The Corruption Impact Assessment is an analytical mechanism designed to identify and remove corruption-causing factors in acts, presidential decrees, ordinances of the Prime Minister and Ministries and related directives, established rules, public notices, public notifications, municipal ordinances and regulations.

Under this system, every proposed enactment and amendment as well as existing legislation is screened for any factor that could contribute to the occurrence of corrupt practices.

(ii) Strict Handling of the Corruption Report and Strengthening of Whistle-blower Protection

- Strict handling of the Corruption Report

Any person may report an act of corruption to ACRC. The commission refers the case to the Board of Audit and investigative authorities and the other agencies concerned.

If a prosecutor does not institute public prosecution against vice minister-level high ranking public officers, mayors of Seoul or metropolitan cities and governors, superintendent generals-level police officers, judges and public prosecutors and lawmakers after he conducts investigation on the cases reported, ACRC may apply for a court review on whether the decisions not to institute public prosecutions are legitimate or not with the competent High Court pertaining to the high prosecutors' office to which the prosecutor in charge belongs.

Prosecutors' Rulings on ACRC's Complaints

(No. of Cases)

Index Year Agency		no. of report	Ruling				on Investigation
			total	prosecution	non- prosecution	suspended prosecution	
2003	Korean Independent commission against Corruption	24	24	13	11		
2004	Korean Independent commission against Corruption	12	12	8	4		
2005	Korea Independent Commission Against Corruption	29	29	9	20		
2006	Korea Independent Commission Against Corruption	17	17	4	13		
2007	Korea Independent Commission Against Corruption	30	26	12	13	1	4
2008. 1~11.	Anti- Corruption & Civil Rights Commission	19	6	2	3	1	13

- Protection and Financial Rewards for those who report Acts of Corruption

When whistle-blowers have suffered or are expected to suffer any disadvantages in their employment or discrimination in their working conditions due to the reporting of corruption, they can ask ACRA for measures to guarantee their continued employment, including reinstatement to their original position, arrangement of a transfer to a different post, and deferment of disciplinary measures against them.

ACRC may ask the head of the competent police authority to take relevant steps to protect whistle-blowers, their collaborators, relatives, or cohabitants when they are in danger as a consequence of reporting corruption.

ACRC will provide whistle-blowers with rewards if their reports of corruptions have contributed directly to recovering revenues. Also, ACRC may grant or recommend awards up to approximately 50,000 USD if the whistle-blowing has increased the public asset.

D. Korea Finance Intelligence Unit

(i) Background

- In order to prevent corruption, illegal proceeds from crimes must be confiscated completely, preventing them from occurring in the first place. To do this, money laundering which disguises corruption-related

money as legal one should be prevented.

- The Korean government established the Korea Financial Intelligence Unit (KoFIU) in November 2001 under the Financial Services Commission in accordance with the Financial Transaction Reports Act.

(ii) Anti-money Laundering System of KoFIU

- Suspicious Transaction Reporting (STR) system

If financial institutions, or other businesses or entities subject to anti-money laundering obligations, suspect or have reasonable grounds to suspect that funds are linked or related to illegal proceeds, or are to be used for terrorism, terrorist acts or by terrorist organizations, they should be required to report promptly their suspicious transaction report to KoFIU.

When KoFIU is suspicious of illegal financial transactions or money laundering practices after reviewing and analyzing information on suspicious transactions provided by financial institutions, it transmits the results of such analyses to law enforcement agencies such as the prosecutors' office, National Tax Service, National Police Agency, Customs Service, and National Election Commission. The law enforcement agencies then analyze and investigate the provided information, and take necessary legal actions.

- Currency Transaction Reporting (CTR) System

CTR system requires financial institutions to report on the big volume financial transactions they engage in, in accordance with a set of standards. (Now all the transactions that exceed approximately 30,000USD) This system allows KoFIU to review and analyze big volume currency transactions based on objective information given.

When the total amount of currency transactions made by the same person at the same financial institution (received and/or paid) exceeds 30,000USD, the financial institution should report the person's CTR.

- International Mutual Cooperation on Money Laundering Crimes

International cooperation among the FIUs is crucial in order for the effective address of the international money laundering crimes.

(iii) Performance by the Prosecutors on Financial Transaction Details

(No. of cases)

class year	Received	processed					under investigation
		total	prosecuted	Not prosecuted	prosecution suspended	others	
2002	31	31	9	17	2	3	0
2003	146	146	44	80	20	2	0
2004	146	146	24	105	15	2	0
2005	220	215	84	101	27	3	5
2006	282	272	86	149	34	3	10
2007	277	224	78	129	14	3	53
2008.1~11.	193	72	14	51	6	1	121

III. INTERNATIONAL MUTUAL CO-OPERATION

A. Ratification of United Nations Convention against Corruption

(i) Background

On October 31, 2003, the UN General Assembly adopted 'United Nations Convention against Corruption' as part of the international efforts to eliminate corruption.

The Republic of Korea actively pushed for ratification of the Convention to join the international anti-corruption efforts, as well as to lay the foundation for successful implementation of anti-corruption policies.

(ii) Progress

After being signed on December 10, 2003, the Convention has undergone the ratification process at the Korean National Assembly. With deposit of the instrument of ratification, the Convention went into effect in Korea on April 26, 2008.

At the same time, the Ministry of Justice enacted 'Act on Recovery of Stolen Asset', which describes the international mutual cooperation in combating corruption crimes and redemption of corruption-related properties.

(iii) Ratification Effect

By ratifying the Convention, the Republic of Korea declared our commitment to eradicating corruption at home and abroad. And the nation has firmly established an international cooperation system in prevention and prosecution of corruption crimes, as well as confiscation of illegal proceeds from crimes.

B. Strengthening of Cooperation in Extradition and Mutual Legal Assistance in Criminal Matters

(i) Overview

In an effort to eliminate corruption crimes, to facilitate international mutual legal assistance in criminal matters and extradition, the Republic of Korea is persistently working on expanding countries which concluded the treaties.

The Republic of Korea has close and cooperative ties with nations that are commonly chosen as safe havens by the criminals who engaged in the major economic crime for better response to individual crimes.

(ii) Current Situation on MLA and Future Plan

Korea has signed extradition treaties with 29 nations (23 of them came into effect) and Mutual Legal Assistance treaties with 25 nations (18 of them came into effect). The Republic of Korea is continuously making efforts to expand such networks across the globe.

In particular, the Republic of Korea is pushing for joining the Council of Europe Conventions on Extradition and MLA, which have 63 memberships.

(iii) Statistics on Extradition and MLA

Statistics on Extradition of Criminals to Korea

(No. of persons)

Year	2003	2004	2005	2006	2007	2008.1~11.	Total
Total (Japan)	8	5	6 (1)	4	15	14 (1)	52 (2)

Statistics on Extradition of criminals from Korea

(No. of persons)

Year	2003	2004	2005	2006	2007	2008.1~11.	Total
Total (Japan)	2 (1)	4 (1)	2 (2)	1	7 (4)	6 (5)	22 (13)

Statistics on MLA (requested by Korea)

(No. of persons)

Year	2003	2004	2005	2006	2007	2008.1~11.	Total
Total (Japan)	31 (2)	13 (2)	33 (4)	31 (4)	38 (12)	57 (7)	203 (31)

Statistics on MLA (requested by other countries)

(No. of persons)

Year	2003	2004	2005	2006	2007	2008.1~11.	Total
Total (Japan)	47 (11)	28 (4)	45 (11)	53 (6)	61 (14)	53 (14)	287 (60)

IV. CONCLUSION AND PROPOSAL

A. Effects Created by Domestic Institutional Reform

As mentioned earlier, the Republic of Korea has been continuously making institutional reform in order to ensure efficient corruption prevention and eradication. We have also established close ties with competent authorities including the Prosecutors' Office, Ministry of Justice, National Tax Service, National Police Agency and Anti-corruption and Civil Rights Commission.

As a result, the Republic of Korea is scoring high on 'Transparency International Corruption Perceptions Index', an index released by TI (Transparency International). This shows that Korea's efforts to eradicate corruption are being recognized by TI.

Korea's ranking on Transparency International Corruption Perceptions Index

Year	2003	2004	2005	2006	2007	2008
Total (Ranking)	4.3 (50)	4.5 (47)	5.0 (40)	5.1 (42)	5.1 (43)	5.6 (40)

B. Suggestion on the Establishment of a Law Enforcement Agency in Asia: 'AsiaJust'

With rapid growth in economic exchanges in the Asian region, cross-border corruption crime, organized crime, as well as drug related crimes are becoming very common. While the techniques involved in money laundering and criminal acts are getting ever more sophisticated, an efficient intra-regional cooperation system is not yet in place.

I propose that an intra-regional law enforcement agency similar to the 'Eurojust' should be established to eradicate corruption-related crimes in Asia through effective international cooperation.

The 'Asiajust', composed of prosecutors and law enforcement officers from every country in the region, may discuss and adopt common policies on mutual legal assistance in criminal matters and share the information on the crimes by establishing the information network between the member countries in the criminal justice field. As for each case, the 'Asiajust' could function as a mechanism where a country can request an investigation to the other member countries, or conduct joint investigation.

STRENGTHENING DOMESTIC AND INTERNATIONAL CO-OPERATION FOR EFFECTIVE INVESTIGATION AND PROSECUTION, IN THE LAO PERSPECTIVE

*Khamphet Somvolachith**

I. INTRODUCTION

“Corruption hurts the poor disproportionately by diverting funds intended for development, undermining a government’s ability to provide basic services, feeding inequality and injustice, and discouraging foreign investment and aid”¹.

Corruption is, in simplest term, the abuse of the entrusted power for the personal gain and benefit of a group to which one owes allegiance. The word corruption is commonly applied to situation of dishonesty in general, but for the purposes of this paper, “corruption” involves behaviors on the part of the officials in the public sector, whether politicians or civil servants, in which they improperly unlawfully enrich themselves or those close to them by the misuse of the public power entrusted to them.

Corruption occurs in all countries regardless of the levels of the social and economic development. In general, it is most likely to occur where public and the private sector meet, and especially where public officials have a direct responsibility for the provision of services or the application of the specific regulation or levees. This includes, for example, public procurement and contracting, licensing activities, such as the granting of exports or imports permits, and the rezoning of the land and the collection of revenue, whether through taxation or customs duties.

Corruption results in serious and social concern, it: erodes the rule of law; undermines good governance; hampers economic growth; inhibits property reduction; impinges upon competitive and fair business conditions, and, undermine democracy and human rights. Fighting and eliminating corruption is a very necessary, difficult and complex process. Fighting corruption requires determination and persistence from political leadership; support from citizens; and co-operation and support from the region, international community and international organizations.

The trend of globalization and the open policy of economic integration, means that corruption has developed rapidly across the world. Although the levels and types of corruption differ between countries there are many similarities. We all need to work together- international cooperation and coordination is necessary in stamping out worldwide epidemic of corruption.

Laos is among of other countries in the world that is experiencing the serious problem of some negative activities within the bureaucracy. While striving for economic excellence and rapid infrastructure development, we are not immune from corruption. Malpractice within government offices, especially when poorly supervised and controlled, is a real concern for any government. In Lao PDR, corruption arises in areas, including (but not exclusively to): finance (i.e. tax and customs collection), land management, business licensing, import and export trade (i.e. vehicles), forestry (i.e. illegal exporting of timber), state owned enterprises and banking. Government officials are involved in much

* Deputy Director, Treaties and International Cooperation Division, Office of the Supreme Public Prosecutor of the Lao PDR.

¹ Kofi Annan, Former United Nations Secretary-General, in his statement on the adoption by the General Assembly of the United Nations Convention against Corruption.

of this corruption. The Lao PDR government has undertaken many actions to prevent corruption within bureaucracy.

II. OVERALL ANTI-CORRUPTION STRATEGY OF LAO PDR

Over recent years the implementation of new policies has achieved great results; the economy has developed; foreign relations have greatly improved; there has been an increase in domestic and foreign investment; and the GDP has increased by 7%. Under Lao PDR's comprehensive reform, the society has stabilized and striving to reach the national goals of: "rich people, a strong nation, and an equal and civilized society". We are now in a position where we can reduce unnecessary public expenditure, improve government service delivery to citizens and improve the living conditions of the population. However, achieving our national goals remains difficult. There are still many obstacles to overcome. Laos has just entered the free market economy, from a traditional centrally planned economy (which is characterized by a severe lack of laws). Because of the previous economic model and simultaneous lack of regulations, the country has become a breeding ground for corruption. The government understands that corruption poses a major threat to Lao PDR's poverty reduction plan and the nation's development. Corruption has caused major losses of state properties and created a general disrespect from the public towards the government.

A. National Strategy

Recognizing the damage caused by corruption, the government has issued various decrees, orders, regulations, instructions and law in order to prevent and eliminate malpractice within government offices.

1. Legal Instruments

At the national level, three of the priority key measures taken are: issuing rules and orders (i.e. the law on anti-corruption in 2005), establishing anti-corruption authorities and the public administration reform.

Important legal instruments have been adopted:

(i) Law on Anti-Corruption 2005

This law has been applied as a basic legal instrument for combating and preventing fraud and corruption.

The Law on Anti Corruption clearly regulated measures for prevention of corruption. However, the implementation of this law is not effective. The coordination between the prosecutor offices and the state inspection authority at the central and local level is very poor. Only few and small cases of corruption reach the court. Many cases are solved by using the disciplinary measures.

(ii) Law on State Inspection 2007

Law on State Inspection (2007) is newly adopted by the National Assembly and is an instrument for the implementation of the activities of State Inspection Authority to successfully carry out the inspection and investigation of corruption, including the creating rule on asset re-declaration.

(iii) Party Resolution on 14 Prohibitions

This is for high ranking officials - outlining activities that they must not be involved in corruptions; defining their responsibilities; and, specifying the accountability that falls under their political leadership.

(iv) Set of Civil Service Regulations

This is a set of clearly defined certain practices to combat corruption.

For the rest of civil service a set of civil service regulations, clearly defined certain practices to combat corruption. For example, Article 32 states that civil servants can not partake in any business

activities that represent a conflict of interest (i.e. a civil servant's member running a business in the sector under the civil servants management).

(v) The Prime Minister's Instruction No 016/PM (31 August 1998) on More Thrifty and Cost Effective Practices

The Prime Minister's Instruction No 016/PM (31 August 1998) informed the Ministers, the Governors of the Province and Mayor of the Vientiane Municipality, that they must educate public servants and Lao citizens on more thrifty and cost effective practices. The instruction included but was not exclusive to: saving time, saving money, saving labour and material.

(vi) The Decree No 95/PM (5 December, 1995)

This decree and the instruction from Minister of Finance have to be followed by civil servants when procuring items or services (i.e. construction maintenance or repairing services).

2. Institutions Involved in Fighting Corruption

The main aim of the institutions involved in preventing and combating corruption is to increasingly strengthen the effectiveness of financial law and regulation; and improve State management through monitoring and controlling process. In the long run the government believes these organizations will help increase government revenue and improve internal auditing processes.

The government has indicated its commitment to strengthen its policies, regulations and practices in order to improve integrity within the government, this includes: ensuring the rule of law, improving the efficiency, effectiveness, accountability of the public service; and ensuring accountability of the management of foreign aid.

In order to achieve the above-mentioned goals the party and the government decided to establish the following organizations.

Today the main organizations in charge of auditing, inspection, monitoring, investigating and prosecuting corruption activities in Laos are: The Party Control Committee (PCC), The State Inspection Authority (SIA), the State Audit Office (SAO), the Department of Finance Inspection, the ministry of Finance and the Offices of the People's Prosecutor at the central and local level and National Assembly. The Department of Inspection exists in various ministries and the departments understate and party control, at the provincial and district levels. In the central level the National Assembly supervises and monitors the executive and judiciary organization. The Office for Business Promotion supervises state owned enterprises and joint ventures.

(i) Party Control Committee (PCC)

As Lao PDR is a one party system, all organizations are under the leadership of the Lao People's Revolutionary Party. The PCC was formerly the main inspection agency in Laos. It operates across all levels and branches of government, often with assistance of the State Inspection Authority. After the creation of the State Inspection Authority (SIA), and State Audit Office (SAO) the role of PCC changed its focus onto the party's activities. However, some legal and regulatory provisions still provide this organization with a dominant role.

(ii) State Inspection Authority (SIA)

The State Inspection Authority was established on May 30, 2001 by the decree of the Prime Minister No. 98/PM but was replaced by the new decree No 10/PM.

The State Inspection Authority (Anti-Corruption Authority) is attached to the Prime Minister Office and report directly to the Prime Minister and responsible for:

- fighting corruption in the bureaucracy;
- ensuring transparency and fairness in the management of public resources and;

- prevention and investigation of the corruption.

So far, The State Inspection Authority and other involved organizations have recorded great success in their duties and responsibility to combat corruption. Many serious cases of corruption have been discovered and sanctioned, primarily in the area of tax collection, wood extraction and import of vehicles. Those public servant's involved have been sanctioned/prosecuted accordingly.

In 2007-08 investigations in the fields of forestry, procurement, immigration, Business Bank and so on were undertaken and found that some organization and officials have misused the power and function more than the law is allowed and issued illegal permission for cutting trees 61, 184.92 m³ without the permission from the government, issued permission on exporting woods 5,263.381 m³ and violated so with the order and the pre-regulation. There was an implementation of an invalid permission for last year in coming year. There were also found that woods of totally 21,973.664 m³ were illegal cut and smuggled. And there were 19,087.393 m³ were confiscated. Some officials have corruption behaviors, swindle and embezzle State revenues. There were found that illegal Identification Card (ID) for the Foreigners were issued and renewed the Labor ID without the consultation with the State Employment Agency. At the Ministry of Public Security there were officials with accomplices violated the procurement regulation and caused harm for the State revenues. After conducting investigations of the targets mentioned above at the central and local level corruptions were found, corruptors were arrested and prosecuted. 25 persons were accused of corruption and sentenced; and 10 persons are standing under investigation.

(iii) State Audit Office (SAO)

SAO was set up by the Prime Minister's Decree No 174/PM (dated 5 August 1998). This was considered a major step towards strengthening the supreme audit function in Lao PDR. The SAO is responsible for auditing the accounts and certifying the appropriateness of the accounts of the organizations under State administration, in addition to, state owned enterprises, joint ventures and projects funded by the state budget or international grants and loans. It also inspects the implementation of State Budget that the National Assembly has adopted. This organization is also attached to the Prime Minister's Office and report directly to the Prime Minister.

(iv) Organ of the People's Prosecutors of the Lao PDR

The Organ of the People's Prosecutors of the Lao PDR is a Supervisory State Organ and responsible for monitoring and inspecting the proper and uniform adherence to laws by all ministries, ministry-equivalent organizations, government organizations, Lao Front For National Construction, mass organizations, social organizations, local administrations enterprises, and citizens and for exercising the rights of prosecution².

(v) National Assembly

The National Assembly is theoretically a legislative body, and oversees the executive and judiciary organizations. The Commission on Economic and Financial Affairs oversees the preparation and implementation of the State budget. The National Assembly adopts, revises and oversees the implementation of the national annual budget.

3. Administrative Reform

The government, with the support of various international organizations, has undertaken many reform initiatives aimed at restructuring the state apparatus; improving government mechanisms, working conditions and administrative procedures; and minimizing the steps involved in granting licenses. The introduction of new reform initiatives are helping to minimize administrative paper work. The reduction of the extensive paperwork trail or number of "doors that people have to go through" is helping to minimize and eventually, eliminate conditions in which corruption can exist. Another major area of reform is the introduction of new mechanisms, such as auditing and inspection, which demand more open

² Art. 2 of the Law on the Organ of the People's Prosecutor of Lao PDR.

and accountable work practices.

The aim of the fore mentioned measures is to combat and eliminate corruption in across the bureaucracy efficiently. During the process reform, the government intends to build a bureaucracy of good and honest civil servants. New civil service recruits will be selected fairly through open examinations. Civil service managers will be elected and appointed through more open, equitable and democratic processes.

A major issue that currently exists is the poor salary, compensation and benefits for civil servants. To improve the overall administrative reform, the government intends to reform salaries and other compensations of civil servants to ensure that civil servants can maintain a decent standard of living.

B. International Strategy

1. International Legal Instruments

At the Intentional level, relevant legal instruments have been ratified or signed:

- The convention on anti-corruption has been signed in 2003.
The Lao government has undertaken major efforts to improve the country's situation. The document compiled after the convention has been translated and disseminated amongst civil servants to create awareness and understanding of the convention. In conjunction with this, The Lao government has amended the domestic legal system to enable more international and regional integration. In the near future, the government will submit the convention to the National Assembly for ratification and disseminate the proposal to the donor community to gain support for ratification and implementation of this important convention.
- Convention on transnational organized crime and the three related protocols have been ratified.
- Follow up the implementation of the TOC, extraditions with neighboring countries such as Vietnam, Cambodia, Thailand and Myanmar have been signed.
- The mutual legal assistance in criminal and civil matter between Laos and The North Korea has been also signed.
- The Lao government has ratified the ASEAN convention on the mutual legal assistance in criminal matters.
- There are also none legally binding declarations of The China-ASEAN Prosecutors General Conference that has been agreed among other things on the international cooperation to fight transnational crimes.

III. ANTI-CORRUPTION CO-OPERATIVE MECHANISMS

A. Overview

The Lao government takes important the international and domestic cooperation to fight corruption. Fighting corruption is still very complex, challenging and difficult to detect, and it is not only the work of single anti-corruption or of the public prosecutors alone, and it requires, first of all, determination and persistence of the political leadership and participation from citizens, including the cooperation and coordination with of relevant organizations involved in the anti-corruption. Although the Law is a major step forward, there is still a poor implementation of the law.

By strengthening the institutions the improving coordination amongst those organizations involved in monitoring corruption (i.e. the Audit Office, The State Inspection Authority for investigation and the People's Prosecutor's Offices for prosecution) we will be in a better position to discover and sanction corrupt people, and return public assets back to the state and Lao PDR citizens.

The service that public prosecutors deliver is standing in a chain with the work of investigation agencies, including anti-corruption agency. Investigation agencies and the public prosecutors need each other to exercise the right of investigation and prosecution. Without the cooperation from the investigation agencies our work can not effective be done.

The Organ of the People's Prosecutor of Lao PDR, compared to other organization such as of the police, it is a young organization and it is only 18 years old (9 January 1990-9 January 2008). In practices many investigating officers of the investigating agencies in the local level don't accept the role of prosecutors as supervisory state organ and exercising the rights of prosecution and make so with the cooperation between them difficult.

In the past after establishment of the Organ of the People's Prosecutor of Lao PDR in 1990 the coordination and cooperation between prosecutor and the police have been very poor. The reason is because of the lack of understanding on the role of the prosecutors at a whole and also because of the lack of law books. If they really have the laws there are only laws in old version.

B. Cooperative Mechanisms

Recognizing this situation, and with the support of the international organizations, a work to tighten the cooperation and coordination between prosecutors and the investigating Agencies has been started.

1. Mechanisms among Relevant Anti-Corruption Institutions

There are following cooperative mechanisms among the relevant anticorruption institutions:

(i) The important cooperative mechanism is a so called, "Annual Justice Conference" of the relevant institutions organized at the central, provincial and district level. There are representatives from the National Assembly, office of the supreme people's prosecutor of Lao PDR, people's supreme court, the justice ministry, the public security ministry and senior officials from these organizations. The meeting provides and creates opportunities or all to raise issues and comments on how the law can be effectively implemented and their relations be improved. There is a place to discuss issues regarding the prevention, investigations, court trial and implementation of the judgments or sentence in civil and criminal matter. Importantly it is also that concerned ministries and institutions have to explain and to answer the questions and critics of the public and of the members of the National Assembly about the implementation of law and they have to explain how they will and plan to do it better. This kind of the conference will be organized annually in the future and we will invite the state inspections authority to attend in order to strengthen the coordination and cooperation in combating corruption in the country.

(ii) Importantly it is a Joint training or seminar of the all relevant parties. A Joint training or seminar of the all relevant parties from prosecutors, investigating agencies, justice department, court and national assembly is organized to create an opportunity that they lean to know and to understand the role of each others, and at the same time build personal contact with each other. This kind of training is helping very well to strengthen the cooperation between public prosecutor and the investigating agencies.

(iii) Joint Agreements or Joint Statements are sometime needed to facilitate or to tighten our cooperation.

There are for examples:

- A Joint Agreement between the Supreme People's Prosecutors, the Minister of Public Security, and the Minister of the Public Health on the Medical Treatment for the sick Prisoners.
- A Joint Agreement between the Supreme People's Prosecutors and the Minister of Public Security on the Amnesty for Prisoners.
- A Joint Agreement between the Supreme People's Prosecutors and the Minister of Public Security on Juvenile Justice.

4) Printing and disseminating the laws books for the prosecutors and the investigating agencies have been

started.

5) Awareness raising activities on the role of the prosecutors is part of all seminars and meeting when the prosecutors are invited to attend or when we organized such a seminar or workshop.

2. Participation of the Citizens

There are:

- Hot line during the ongoing session of the National Assembly is set up to create an opportunity for all to say their political opinion and issues regarding the implementation of the duties of governments and the government has to answer it officially;
- Opinion box of all state institutions has been created for the people that they can say and claim about the work of the government or of a specific official of a state institution.

The result of the implementation of the cooperative measures by the Lao government set above, the cooperation between prosecutors and the investigating agencies and with the public are improved and it make our easier and more effective.

3. International Cooperation Mechanisms

For international cooperation, there are following mechanisms:

The Lao government has attended:

- International conferences and meetings and a lot of seminars organized by the Association on Anti Corruption of International Corruption Authorities (IAACA)
- Five China-ASEAN Prosecutors General Conferences
- conferences organized by the Asia Crime Prevention Foundation (ACPF) and by Association of International Prosecutors (AIP)
- And other important international conferences in the field of crimes prevention and criminal justice.

The main objective of such mentioned above conferences and meetings and also the conference what we do at UNAFEI today are not only to share our opinions on good governance and anti-corruptions, but importantly it aims at developing and strengthening the relations and cooperation between them to combat transnational crimes and of course, including international anti-corruption.

The five China-ASEAN Prosecutors General Conferences have been a great success. On the basis of the Joint Declaration signed in Kunming, People's Republic of China on 9 June 2004 the basically cooperation mechanism between Prosecutorial Organs of China and ASEAN Countries in cracking down transnational crimes have been established and effectively developed step by step.

Since the first conference, the judicial and prosecutorial cooperation, Bilateral meeting mechanism and The Cooperation on training has been broadly developed. On the basis of respecting state sovereignty and judicial independence, according to the principle of equality and reciprocity, the prosecutorial organizations of Lao PDR at the Central and Local Levels have initiated judicial cooperation with Central Prosecutorial Organization and some Prosecutorial organizations in the border to Socialist Republic of Vietnam, People's Republic of China (the People's Procuratorate of Yunan Province), and in the border to Thailand and have assisted neighbouring prosecutorial organizations to investigate crimes and to arrest suspects escaping into the border of Lao PDR. Many Lao Prosecutors have received a short term prosecutorial training in the Socialist Republic of Vietnam and in Yunan Province, People's Republic of China. The training of our prosecutors is very important to learn the legal system of foreign countries. It is not only helpful to deepen the friendship, but also helpful for our cooperation.

The multi-channelled communication, study and exchange of delegation with prosecutorial organizations of other countries was enhanced and developed. The delegations exchange has furthered the understanding, enhanced the friendship, so as to lay the good foundations for establishing the cooperation mechanism.

Based on the declarations of the conferences which it is aimed among other thing to facilitate the direct cooperation between prosecution services of the China and ASEAN prosecutorial organizations at the provincial levels that shared the border with each other and also according to the judicial cooperation conventions between the Lao government and the government of P.R of China and Vietnam a direct cooperation between them are established. There are exchange of the delegations and training of the prosecutors all country and also the joint training of the prosecutors at the orders of Laos and Vietnam is planning and we have discussing this issue with the Attorney General of the Kingdom of Thailand while a high ranking delegations of Thailand visited Laos in September this year.

IV. CONCLUSION

Ladies and gentlemen,

For my conclusion, that for Strengthening Domestic and International Cooperation for Effective Investigation and Prosecution of Corruption are Legal instruments, anti-corruption authorities, the way we meet and discuss to strengthen our cooperation (effective cooperative mechanisms) and the good will of cooperation of relevant institutions or countries and the public without any reason and prejudice a basic foundation for the domestic international cooperation and I believe that my country would do so.

I hope that the way we meet and discuss here today is a part of initiation and contribution to strengthen our international cooperation of anti-corruption in our countries and in the region.

That is the end of my presentation and I wish the Forum great success.

Thank You.

COUNTRY REPORT

ANTI-CORRUPTION: A MALAYSIAN APPROACH AND ADVANCES

*Lai Yong Heng**

I. PREAMBLE

Corruption is a source that has long contributed as a factor which contributes to poor branding image of a particular country. It undermines good governance, fundamentally distorts public policy, leads to misallocation of resources, and particularly hurts the poor. We can only win the fight against corruption if each and every one of us has zero tolerance for it.

In conjunction with the United Nations' efforts and agreeing in principles of the convention against corruption which states all the concerned issues, convinced facts, determined efforts, acknowledged principles, bearing in mind responsibility and commending the work of the commission on Crime Prevention and Criminal Justice and The United Nations Office on Drugs and Crime (UNODC) in preventing and combating corruption.

The general provision of the United Nation Convention against Corruption is always perceived as the basic foundation of all effort towards establishing the objectives:

1. To promote and strengthen measures to prevent and combat corruption more effectively;
2. To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery;
3. To promote integrity, accountability and proper management of public affairs and public property¹.

Malaysia became signatory to the convention on 9 December 2003 and is progressively rectifying the convention.

The seriousness of problems and treats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law have been hovering like a plague in many country.

Give and take in corrupt practise will undermine the human principles and integrity. This is especially so when in the current dynamism of good governance regimes worldwide, a great deal of emphasis has been given to combating corruption in an extrinsic avenue rather foundational bases that build lasting and practical one. A legislative measures and as well as voluntary disclosures-based report has been the regime of good governance in many developed country.

The veil which has hung over Malaysia's anti-corruption efforts for decades will be lifted by commissioning the Malaysian Anti Corruption Commission (MCAC).

As part of the measures to enhance and restructure the Anti-Corruption Agency (ACA), efforts had

* Assistant Commissioner of Police, Public Affairs, Royal Malaysian Police.

¹ Extract – United Nation Convention against Corruption. pg1-pg2. General Assembly resolution 55/25 annex 1.

been taken to ensure that the proposed MCAC would be truly effective and capable of meeting the needs and aspirations of the people².

The MCAC, modelled after anti-corruption agencies which are recognised as among the best in the world such as the Independent Commission On Anti-Corruption (ICAC) in Hong Kong and Independent Commission Against Corruption in Australia, would be supported by several “check and balance” mechanisms which were perceived to be more accountable, transparent and effective in carrying out their tasks.

An Advisory Board would comprise individuals, appointed by the Yang di-Pertuan Agong (The King) on the advice of the Prime Minister, who had demonstrated exemplary service and with integrity while the Special Committee on Corruption would be made up of Members of Parliament who would receive and scrutinize the annual report, which must be submitted by the commission.

The cabinet had also agreed on the proposed formation of two more panels - the Operations Evaluation Panel which would determine the action and decision on the investigation carried out, and the Consultation and Anti-Corruption Panel which would assist efforts at educating the public to oppose corruption, he said.

The cabinet had also considered allowing the MCAC to handle matters concerning service, particularly those involving the processes of appointment and termination of service for its officers.

This paper seeks to manoeuvre into the perspective of the Public sector principle together with the Private sector where all the convention of the United Nation against corruption has been and will be enlighten.

II. THE PUBLIC SECTOR

In a paper presented by Mohd Nizam Mohd Ali, Director, Private Sector, Malaysia Institute of Integrity stated that public and private partnership can exist where there is trust and it must be emphasized that this trust must be equitably upheld by all parties concerned. Whilst public service has always worked on the basis of public trust for public good, private enterprise in contrast, work on limited selective trust³.

The public trust in the public service domain eventually can be trace to the respective individual citizen that gives rise to the mandate, both political and social, to the executive body.

Through the legislative exercises, each citizen gives their conscious and voluntary trust to the respective representatives in the legislative bodies, upon which the majority mandate holders will then form the executive body that will continue ruling the good governance regime within the public services.

The cycle continues when the executive body work hand in hand with the civil service that have been in existence as executing bodies and implementation agencies to ensure any national plans are realized within the capacity and capability of the available resources at hand.

The acid test as to whether or not such mechanism works can be found and tested by citizens themselves when they ask or demand their rights for any services due to them by this service provider. When the time frame of the existing executive body and legislative bodies expire, the currency of trust is sought yet again.

United Nation Convention against Corruption

Article 15 – Bribery of National Public Officials states that each state party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

² KUCHING, Nov 7 - Datuk Seri Abdullah Ahmad Badawi today announced the Cabinet's agreement on the formulation of the Malaysian Anti-Corruption Commission (SPRM) Bill 2008 in a move to further strengthen the national integrity agenda. News extract Nov 7. NSTP.

³ Mohd Nizam Mohd Ali, -Director, Private Sector, Malaysian Institute of Integrity, “Building Synergies for Public-Private Partnership in Combating Corruption”. 2007.pp.1

- (a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties:
- (b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her duties⁴.

III. THE PRIVATE SECTOR

In contrast, the private sector enterprises do not engage in such massive and tiring exercises of convincing these citizens of their existence. This is purely because the trust that gave rise to its existence is limited in nature by virtue of the shareholding as well as ownership of its core business. These entrepreneurs and shareholders or owners of such business agenda have private interest at heart in promoting and building their enterprises. Hence in their mind public good and private gain is constantly seeking a mutually satisfying equilibrium, compared to the public sector environment. Yet in totality, the public as a body is still a factor in their enterprises, by virtue of them being the ultimate market users of the product or services that such enterprises promote and engage in.

Corporate governance structure come into play when there is a transition of trust from these select groups of share holders and owners to the directors, who then form a board or panel of governors or directors to govern the corporate according to the wishes and the resolutions expressed and passed by the annual general meetings or the extra ordinary general meetings audience.

When this transition of trust passes on to the board of director or governors, again, the similar mechanism that we've mentioned in the public sector environment exists where the board of directors will have to rely their decisions to be executed by the management teams just like the executives body of the government rely on the civil service to deliver it services. At the end of the supply chain, the board of directors and the shareholders will have to continue plowing all their positive energy in ensuring that their initial self-interest in such enterprises are recognized and supported by the public at large in consuming its products or seeking for their services.

While article 21 on Bribery in Private Sector state that each state party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed internationally in the course of economic, financial or commerce activities.

- (a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;
- (b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting⁵;

A. Bank Negara Malaysia -Anti-Money Laundering and Anti-Terrorism Financing Act 2001

Apart from rectifying the convention Malaysia have move much earlier to curb this menace by implementing the Anti Money Laundering and Anti Terrorism Act 2001.

The Act A1208 - An act to provide for the offence of money laundering, the measures to be taken for

⁴ Extract UNCAC, pp11-Chapter III Criminalization and Law Enforcement Article 15.

⁵ Extract UNCAC, pp12-13-Chapter III Criminalization and Law Enforcement Article 21.

the prevention of money laundering and terrorism financing offences and to provide for the forfeiture of terrorist property involved in, or derived from, money laundering and terrorism financing offences, and for matters incidental thereto connected therewith⁶.

In the act “money laundering” means the act of a person who:

- (a) engages, directly or indirectly, in a transaction that involves proceeds of any unlawful activity;
- (b) acquires, receives, possesses, disguises, transfers, converts, exchanges, carries, disposes, uses, removes from or brings into Malaysia proceeds of any unlawful activity; or
- (c) conceals, disguises or impedes the establishment of the true nature, origin, location, movement, disposition, title of, rights with respect to, or ownership of, proceeds of any unlawful activity,

where ;

- (a) as may be inferred from objective factual circumstance, the person knows or has reason to believe, that the property is proceeds from any unlawful activity; or
- (b) in respect of the conduct of a natural person, the person without reasonable excuse fails to take reasonable steps to ascertain whether or not the property is proceeds from any unlawful activity;

(1) This Act shall apply to any serious offence, foreign serious offence or unlawful activity whether committed before or after the commencement date.

“Serious offence” means (a) any offences specified in the Second Schedule and one part of it above all quote the Anti Corruption Act 1997 (Act 575)⁷.

Section 10: Offence of accepting gratification;

Section 11: Offence in giving or accepting gratification by agent;

Section 12: Acceptor or giver of gratification to be guilty notwithstanding that purpose was not carried out or matter not in relation to duty;

Section 13: Corruptly procuring withdrawal of tender;

Section 14: Bribery of officer of public body;

Section 15: Misuse of position;

Section 18: Dealing with, using, holding, receiving or concealing gratification or advantage in relation to any offence;

Section 20: Attempts, preparations, abetments and criminal conspiracies punishable as offences.

As per Article 23 – Laundering of proceeds of crime under UNCAC

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:
 - (a) (i) The conversion of transfer of property, knowing that such property is the proceed of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offences to evade the legal consequences of

⁶ Bank Negara Malaysia -Anti-Money Laundering and Anti-Terrorism Financing Act 2001-Act A1208.

⁷ Anti Corruption Act 1997 (Act 575).

his or her action:

- (ii) The concealment of disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceed of crime.
 - (b) Subject to the basic concepts of its legal system:
 - (i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime.
 - (ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating, and counselling the commission of any of the offences established in accordance with this article.
2. For purposes of implementing or applying paragraph 1 of this article:
- (a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;
 - (b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this convention;
 - (c) For the purpose of sub paragraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of if the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;
 - (d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary- General of the United Nation;
 - (e) If required by fundamentals principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence⁸.

B. Article 38– Cooperation with National Authorities

Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:

- (a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any offences established in accordance with articles 15,21 and 23 of this Convention has been committed: or
- (b) Providing, upon request, to the latter authorities all necessary information⁹.

Bank Negara Malaysia -Anti-Money Laundering and Anti-Terrorism Financing Act 2001- Act 1208 eventually have given the mandate for Malaysia in implementing or for see the needs for each state party to take measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institution, relating to matters involving the commission of offences established in accordance with this Convention.

C. UNCAC Article 39 – Cooperation between National Authorities and the Private Sector

1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the

⁸ Extract UNCAC, pp 13-14-Chapter III, Criminalization and Law Enforcement, Article 23.

⁹ Extract UNCAC, pp 19 Chapter III, Criminalization and Law Enforcement, Article 38.

private sector, in particular financial institution, relating to matters involving the commission of offences established in accordance with this Convention.

2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention¹⁰.

Adding to the co existing law that regulates and bind all parties, section 55 Anti Corruption Act 1997 (Act 575) broaden up the territory of the prevention and prosecution of offenders on corruption which states that:

1. The provision of this Act shall in relation to citizens and permanent residents of Malaysia, have effect outside as well within Malaysia, and when an offence under this Act is committed in any place outside Malaysia by any citizen or permanent resident, he may be dealt with in respect of such offence as if it was committed at any place within Malaysia.

2. Any proceeding against any person under this section which would be a bar to subsequent proceedings against such persons for the same offence if such offence was committed in Malaysia shall be a bar to further proceedings against him under any written law relating to the extradition of persons, in respect to the same offence, outside Malaysia

The provision under this Act is the key element instilling the concept of far reaching by the long arm of the law that if rectify by all member country will benefit the course further enhance the effectiveness of preventing cross border corrupt practise and repatriation of offenders and proceeds of crime.

IV. PUBLIC – PRIVATE PARTNERSHIP

To enhance effectiveness, transparency and public accountability the structure of public – private partnership will include a system of effective checks and balances and fervent hope that its effectiveness, transparency and accountability will be considerably raised while public trust in its integrity and independence will be quickly renewed.

Trust is the synergy between public and private partnership. This currency is non-material nor tangible but without which the whole house of card will collapse. Hence, the very essence of synergy build-up in such engagement must bear this fact in mind, otherwise the whole agenda and mechanism put forth in it to succeed will miss the mark.

There is another dimension that we have to bear in mind. That is, this trust, both in private and public exist in a framework. It doesn't simply remain in someone else's mind or in isolation without proper space of time and place. Looking around globally as well as nationally, we can find a lot of modalities of such framework: one which is the Organization of Economic Cooperation and Development (OECD) ethical infrastructure, the UNODC itself and closer to home, anti corruption legislature and Malaysia National Integrity Plan. Due diligence and conscious assessment of the environment that will take priority its acceptability should drive such codified documents.

Public service delivery system is to facilitate the private sector, rather than frustrate itself. In the private sector by definition, there are so many players involved in making sure that its relevance will be sustained over time.

A. Corporate Governance Dimension

Whilst the articles by Margit Osterloh in Corporate Governance for Crooks ? The case for corporate

¹⁰ Extract UNCAC, pp 20 Chapter III Criminalization and Law Enforcement Article 39.

virtue¹¹ has been arguing on exorbitant salaries and scandalous fraud found in the United States, infiltration of malpractices, greed and distrust.

Be that the Confucian philosophy golden rule of “do not do to others what you do not want others do to you” often cited as the major factor determining the Chinese approach to business and Paul Robins, in his *Corruption in Asia- a bottom-up approach to its resolution*¹² together with what Sheikh Ghazali Abod wrote in his article “Towards an Islamic Corporate Governance”¹³ which argued that the codes of upholding trust, maintaining integrity, exercising transparency and accountability, prudent management of resources, maximizing returns, caring and concern of the environment are but would remain as mere noble codes if the issues of values, ethics and moral conduct are not tackled in the first instance.

Governments instead have approached governance, be it public or corporate, more within the balance of regulatory and non-regulatory codes. The United States has fully embraced the legislative approach with its Sarbanes-Oxley Act (2002) while the United Kingdom has promoted non-voluntary approach characterized by voluntary codes of conduct with its Cadbury Report (1992) and the Hampel Report (1997) which basically operate on the basis of comply and explain. The success of voluntary codes depends on both attitude and behavior, i.e. which naturally dictates that good corporate behavior means good individual behavior as well¹⁴.

In Malaysia, the Government entrusted the overseeing of such corporate and individual behavior to the Ministry of Domestic Trade and Consumer Affairs, which in turn enforce a Code of Ethics for Directors via the Companies Commission of Malaysia mechanism. A legislative instrument, the Companies Act 1965, which statutory power will be invoked whenever a director behaves against the principles of good faith, due diligence and fiduciary duties. With specific reference to the matter of corporate governance, the Bursa Malaysia attempted to upgrade the quality of all serving directors by putting together a Mandatory Accreditation Programme for Directors of Public Listed Companies, in accordance to the requirements of the Practices Note No.5/2001 and Guidance Notes 9 of the Bursa Securities Listing Requirements¹⁵.

The burning question remains throughout these deliberations, by both academics and regulators, whether the issue is about the self or the systemic governance, or both. If one take organizations as corporate citizens, and people within such organization as its soul, then the metaphor that their directors defined as the top echelon, the ‘controlling mind’ and the ‘conscience’ of the corporation¹⁶ seems fittingly descriptive. For the mind and conscience to be operative, both have to have a soul to call home. For the corporation to remain true to its *raison d’etre* and the initial promoter’s promise, the *bona fide* and *benefits test*¹⁷ needs a personal body to be attached to and conducted on.

Thus in both soul and body is what constitute a man is, and then it follows logically the human factor is an important core that must be squarely addressed whenever the debate of corporate governance is to be properly facilitated to yield good and sound results. Failure to understand the self in its vocabulary and understanding what virtues¹⁸ really would be a fatal mistake indeed.

¹¹ Anna Gandaori, ed. *Corporate Governance and Firm Organization: Microfoundations and Structure Forms*. Oxford University Press, New York 2004. p.p. 194-211.

¹² *Ibid*, pp. 210-224.

¹³ Nik Mustapha Nik Hassan, ed. *Corporate Governance from the Islamic Perspective*. IKIM Kuala Lumpur:2002. pp. 93-109.

¹⁴ Neil Cowan, *Regional Benchmarks: Corporate Governance in Asia-Pacific in Corporate Governance that works*. Prentice Hall, Singapore: 2004. pp. 155-164.

¹⁵ Mohd Nizam Mohd Ali, -Director, Private Sector, Malaysian Institute of Integrity, “Building Synergies for Public-Private Partnership in Combating Corruption”. 2007. pp 6-7.

¹⁶ Phillip H. Phan, *Taking Back the Boardroom: Better Directing for the New Millenium*, McGraw-Hill Singapore: 2000, pg 17.

¹⁷ Loh Siew Phang, *Corporate Powers: Controls Remedies and Decision Making*, Malayan Law Journal Kuala Lumpur: 1996. pp. 56-68.

¹⁸ James Hastings ed., *Encyclopedia of Religion and Ethics*, Vol XI, Charles Scribner’s Sons, New York: (1911). 430-432

V. CONCLUSION

It is apparent that the role of Royal Malaysian Police has been shaped by the changing needs of the society and the nation. When we sat down to chart the future course of the Royal Malaysian Police which is in line with the prescient of Sun Tzu's philosophy in his art of war which is "know yourself, know your enemy and know your terrains than you will win a thousand battles", we scanned, we analyzed, we reviewed current local and international workplace environment as the basis to fight corruption.

In promoting good governance in a thriving civil society, one has to look at issues pertaining integrity when tackling the issue of corruption. We have set up a unit which looks at all issues pertaining integrity. This is in line with the call made by our peers, that is only those who are capable, responsible and scrupulously honest will be allowed to serve in position of leadership. Those who are inefficient, incompetent and most importantly, corrupt should be held in absolute contempt.

On the international front, to remain a step ahead of criminal syndicates, a better trans-jurisdictional coordination will be essential because many of the hi-tech corruption activities, are no longer bound by geographical boundaries. External linkages and a broader cooperative framework will have to be forged beyond national boundaries.

The Royal Malaysian Police involvement as a member of the Interpol group of experts on corruption is yet another example of our efforts to fight corruption. With its objective to ensure that each of its members have high standard of honesty, Integrity and ethical behavior in and in connection with the performances of their policing future.

The cost of corruption restrains economic growth. Corruption is a global phenomenon, which requires global efforts, and it is the responsibility of everyone to help inculcate a culture of integrity.

APPENDIX

A. Thomson Financial News

Malaysian prime minister steps up anti-corruption battle

04.21.08, 4:52 AM ET

KUALA LUMPUR (Thomson Financial) - Malaysian Prime Minister Abdullah Ahmad Badawi will boost the powers of his country's anti-corruption agency in a bid to step up the battle against graft, the prime minister said Monday.

Abdullah's announcement comes amid growing calls to clamp down on corruption, one of the issues that led many voters to switch sides in recent elections.

'My government will restructure the anti-corruption agency ... to become a full-fledged Malaysian Commission on Anti-Corruption,' Abdullah said.

'To enhance its effectiveness, transparency and public accountability the new commission structure will be set up to include a system of effective checks and balances,' he said.

'It is my fervent hope that by restructuring the (agency), its effectiveness, transparency and accountability will be considerably raised while public trust in its integrity and independence will be quickly renewed.'

The agency, now under Abdullah's office, will report to a new parliamentary committee on corruption prevention.

The prime minister said the committee would enhance transparency and public accountability because it can seek clarification of the new body's annual reports.

Abdullah said a new whistle-blower's act would also be introduced to give better protection to those who come forward to testify against corrupt practices.

The prime minister won a landslide victory in 2004 on an anti-corruption ticket, but opposition leaders and observers say progress has been slow, with few meaningful reforms.

Unprecedented losses for the governing coalition in the general election in March saw Abdullah come under pressure to quit, but the embattled prime minister says he has a mandate and has pledged to implement all his past promises in his second term in office.

The government has been hit by numerous scandals in recent years with a minister, judges and several politicians facing corruption charges.

Prime Minister's Proposal on ACA

The Prime Minister Datuk Seri Abdullah Ahmad Badawi has announced far-reaching reforms to the Anti-Corruption Agency (ACA) to give it independence and more bite.

The reforms include turning the Anti-Corruption Agency into a "full-fledged" Malaysian Commission on Anti-Corruption (MCAC), setting up an independent advisory board and a parliamentary committee, as well as tripling the size of the force and providing comprehensive protection for whistleblowers.

Datuk Seri Abdullah Ahmad Badawi said the reforms were a priority and he wanted them in place before the year's end.

"It is my fervent hope that by restructuring the ACA, its effectiveness, transparency and accountability will be considerably raised while public trust in its integrity and independence be quickly renewed," he said yesterday in his keynote address at the Asean Integrity Dialogue 2008 at the Malaysian Institute of Integrity.

Elaborating on the four key reforms, Abdullah said the restructured MCAC would table its annual report to a soon-to-be set up parliamentary committee on the prevention of corruption which would have the power to seek clarification and explanation on the report.

Another core element, he said, was the setting up of an independent corruption prevention advisory board comprising "prominent and upstanding" members of the community appointed by the King, on the Prime Minister's advice, to advise the MCAC on administrative and operational matters and on cases of

public interest.

“The board can enquire or recommend that certain measures be undertaken. More importantly, the board will act to assure the public that public interest cases are dealt with appropriately and adequately,” he said.

However, the ultimate decision to prosecute would lie with the Attorney-General although the board could ask him to take another look at cases he had decided not to pursue.

On whistleblowers, Abdullah said the public perception was that enforcement agencies often went after the whistleblower instead of investigating the charges.

He announced that there would be a law in place to give whistleblowers and witnesses “comprehensive protection”.

“It is our hope that with better protection, more people will come forward to report corruption, thereby allowing justice to run its course,” he said, adding, however, this was not “unfettered freedom” for people to say or write anything about anybody without proof.

“I expect them to be responsible for the allegations they make,” he said.

Abdullah also announced that the anti-corruption force would triple in size over the next five years, with a further 5,000 officers added to its existing 2,000 members.

The MCAC would also have new terms of service and remuneration to attract talented and dedicated individuals, and the power to hire and fire, he added.

The head of the MCAC would be appointed by the King on the Prime Minister's advice.

Abdullah said he expected the MCAC to be “fully independent”.

“I am not here to interfere. They can independently decide how to run the organisation and how they want to operate,” he said, adding that even in the current set-up, he had never interfered with the work of the ACA.

Asked whether the MCAC would report to the Prime Minister or to Parliament, Abdullah said: “The report would ultimately go to Parliament.”

When contacted, Attorney General Tan Sri Abdul Gani Patail said he would have no problem working with the advisory panel to be set up by the MCAC.

B. The Star - April 22, 2008

Move to set up MCAC seen as major breakthrough

KUALA LUMPUR: The setting-up of the independent Malaysian Commission on Anti-Corruption (MCAC) is a major breakthrough and shows the Prime Minister's seriousness in fighting corruption, said Transparency International (Malaysia) president Tan Sri Ramon Navaratnam.

“I'm impressed. Pak Lah has gone beyond my expectations. I did not expect a parliamentary committee set up,” he said yesterday.

“No doubt Pak Lah has shown great political will in getting this matter across which has been the aspiration of the rakyat.”

Navaratnam said that with three levels – the commission, the advisory board and the parliamentary committee – it would be very exciting to see how it operates.

“It will without doubt increase transparency and enhance integrity of the whole system,” he said, adding that the reforms would remove public perception that the Anti-Corruption Agency was not independent.

He believed MCAC would work provided the right people were in it.

Navaratnam said it was important for the parliamentary committee to comprise both Barisan Nasional and Pakatan Rakyat MPs.

“Ultimately, the Prime Minister cannot stop anything or interfere because MCAC is subject to scrutiny and answerable to parliament,” he said.

He also applauded the move to give MCAC the power to hire and fire and set up its term of services and remuneration for its officers.

He said the anti-corruption reforms coming just days after reforms in the judiciary encouraged the public to believe that the “Government means business in wanting reforms” and to strengthen institutions that had been weakened over the years.

MCA president Datuk Seri Ong Ka Ting, who also welcomed the change, said MCA wished to see the performance of the ACA strengthened, and a new political will being forged to ensure the independence of the agency truly upheld.

“We want the rakyat to understand that the Barisan Nasional Government is serious about tackling corruption in the country, both in the public and private sectors,” he said in a statement issued yesterday.

The Civil Movement against Corruption (Gerak) called the setting-up of the MCAC a pivotal move.

Its chairman Mohamad Ezam Mohd Nor said the decision was one of the “most-significant moves ever taken by the government in ensuring reforms.

DAP adviser Lim Kit Siang in a statement said he hoped the new commission would not end up like Suhakam “that is tasked to be an independent body to protect and promote human rights, but is completely unable to do so without the necessary powers and means”.

C. Going for Full Transparency, ACA to become MCAC

PM invests significant powers and proper oversight in new and improved anti-graft agency
Abdullah speaking at the launch of the Asean seminar on integrity. — Picture by Choo Choy May

KUALA LUMPUR, April 21 — The veil of secrecy which has hung over Malaysia’s anti-corruption efforts for decades should be lifted by the year end. And then Malaysians will know why some ministers were never charged in court or the status of other high profile investigations.

Prime Minister Datuk Seri Abdullah Ahmad Badawi today announced changes to the Anti-Corruption Agency (ACA), saying that it will be known as the Malaysian Commission on Anti-Corruption (MCAC). It will have the power to hire and fire its own personnel and will grow from 2,000 to some 7,000.

The commission will be assisted by an advisory board of eminent Malaysians who will be able to have oversight over important cases and assure the public that there is no hanky-panky in a probe.

Abdullah, who has been battered by criticisms for not walking the talk in the fight against corruption in his first term, also said that a parliamentary committee on the prevention of corruption will be set up.

This panel can scrutinise the annual report on corruption. Laws will also be passed to protect whistle blowers and those who come forward with evidence of any wrongdoing.

He said: “I have always believed that, given the weight and importance of its work, the ACA must be given freedom to carry out its responsibilities. In fact, one of the first pronouncements I made on anti-corruption was to direct the ACA to carry out its duties 'without fear or favour'. I remain true to this conviction and have never interfered with the work of the ACA.

“It is my fervent hope that by restructuring the ACA, its effectiveness, transparency and accountability will be considerably raised, while public trust in its integrity and independence will be quickly renewed.”

Speaking at the launch of the Asean seminar on integrity, he admitted that his government had fallen

short of public expectations in the fight against corruption.

Public feedback suggests that Malaysians feel that the institutional and legal framework for anti-corruption remains structurally weak, and prone to abuse.

“They point to the need for a clear separation of powers between the institutions of government as well as a higher degree of transparency and public accountability from enforcement agencies,” he said.

Also, the perception is that anti-corruption enforcement is slow and inconsistent.

“Some say that so-called 'big fish' are protected, while the 'small fry' face the full brunt of the law. Whistleblowers are also said to be inadequately protected. In fact, the perception goes so far as to say that enforcement agencies often go after the whistleblower instead of focusing on investigating the actual charges,” said Abdullah.

He noted that many Malaysians also feel that the existing public procurement system and procedures for awarding government contracts are rife with opportunities for corruption.

To tackle corruption effectively, he said that the government will:

- restructure the ACA to become a full-fledged “Malaysian Commission on Anti-Corruption”. A key element of this system will be an independent “corruption prevention advisory board”. The board will consist of prominent, upstanding members of the community appointed by the King on the advice of the prime minister.

Board members will advise the commission on administrative and operational matters. The board will also be briefed on cases that involve public interest and can act to assure the public that these public interest cases are being dealt with appropriately and adequately.

- set up a “parliamentary committee on the prevention of corruption”. The commission will table its annual report to this committee.

- increase 5,000 officers to the current total of just under 2,000. In addition, the commission will have new terms of service and remuneration in order to attract talented and dedicated individuals to sign up.

- introduce legislation to provide comprehensive protection for whistleblowers and witnesses.

- **take immediate steps to improve the public procurement process and reduce opportunities for corruption.**

D. Cabinet Agrees on Setting Up of Malaysian Anti-Corruption Commission

PM: Cabinet agrees to formulation of the Malaysian Anti-Corruption Commission.

KUCHING, Nov 7 - Datuk Seri Abdullah Ahmad Badawi today announced the Cabinet's agreement on the formulation of the Malaysian Anti-Corruption Commission (SPRM) Bill 2008 in a move to further strengthen the national integrity agenda.

The setting up of the proposed SPRM, to replace the Anti-Corruption Act 1997, would be tabled for first reading in Parliament very soon, said the Prime Minister who arrived here after chairing the cabinet meeting this morning.

“The current Parliament session will also be extended to Dec 18 to enable the Bill to be debated and once it is passed, it will become the basis for the formation of a more effective anti-corruption commission and subjected to external monitoring via a comprehensive check-and-balance system,” he said.

He said this in his speech at the National Integrity Day and National Integrity Convention 2008 themed 'Integrity, the Catalyst to Sustainable Development', which was also held in conjunction with the 45th anniversary of Sarawak's progress under Malaysia.

As part of the measures to enhance and restructure the Anti-Corruption Agency (ACA), Abdullah said all efforts had been taken to ensure that the proposed SPRM would be truly effective and capable of meeting the needs and aspirations of the people.

The SPRM, modelled after anti-corruption agencies which are recognised as among the best in the world such as the Independent Commission On Anti-Corruption (ICAC) in Hong Kong and

Independent Commission Against Corruption in Australia, would be supported by several “check and balance” mechanisms which were perceived to be more accountable, transparent and effective in carrying out their tasks, he said.

He said the Advisory Board would comprise individuals, appointed by the Yang di-Pertuan Agong on the advice of the Prime Minister, who had demonstrated exemplary service and with integrity while the Special Committee On Corruption would be made up of Members of Parliament who would receive and scrutinise the annual report, which must be submitted by the commission.

The cabinet had also agreed on the proposed formation of two more panels - **the Operations Evaluation Panel** which would determine the action and decision on the investigation carried out, and **the Consultation and Anti-Corruption Panel** which would assist efforts at educating the public to oppose corruption, he said.

Abdullah said the cabinet had also considered allowing the SPRM to handle matters concerning service, particularly those involving the processes of appointment and termination of service for its officers.

On corruption, he said several studies and censuses carried out on the issues recently showed that the people strongly supported the national integrity and anti-corruption agenda and wanted to see stern and instant action taken towards strengthening the anti-corruption institution as well as the legal framework pertaining to corruption. - Bernama

E. Instant Fix For Corruption?

2008-11-11 19:06

The 2008 Malaysian Commission on Anti-Corruption Bill will be tabled in the Parliament soon. If passed, the Malaysian Commission on Anti-Corruption (MCAC)--once described by our leaders as having higher efficiency and better framework than Hong Kong's ICAC--will most likely be established next year.

In the midst of all the cheers and anticipation, it seems that MCAC is going to be a panacea that will instantly fix the country's corruption problems.

The efficiency of existing ACA leaves much to be desired, and therefore a more independent and accountable anti-corruption mechanism is essential to reverse the people's perception and negative impression of the government's counter-corruption efforts.

ACA deputy director-general Abu Kassim Mohamed is flushing with confidence that the new commission will be able to do just that.

ACA director-general Ahmad Said Hamdan holds very similar opinions, stressing that once the new anti-corruption mechanism is passed, the problems currently encountered by the ACA will all be resolved, including greater empowerment of ACA officials, more attractive remunerations and perks, as well as more definite duty and rank distinctions.

From what Ahmad Said Hamdan has said, we can anticipate a new lease of life that the new anti-corruption commission is going to deliver--enhanced independence, transparency, professionalism and efficiency.

In our stereotyped impression, these qualities are what the ACA badly lacks, while ACA officials are themselves feeling dejected because of unclear job functions.

Having said that, I believe many are still not so sure how independent ACA could go: whether the MCAC will still come under the jurisdiction of the Prime Minister's Department, or be answerable to the King or the Parliament.

From what we have heard from Abu Kassim, the new committee will be overseen by four external supervisory bodies, namely the anti-corruption consultation board, the special commission on corruption issues, the action evaluation task force, and the consultation and corruption prevention task force. However, we are still unsure whom the MCAC will eventually have to answer to.

If the MCAC continues to come under the administration's hand, it may not fix the corruption problems instantly.

Another determinant factor that will dictate whether the corruption issue could be fixed immediately is the resolution of our leaders to fight corruption.

It has been reported that even during the current preliminary rounds in UMNO's party elections, the party's disciplinary bureau has received more than 900 counts of money politics complaints, the most severe in the party's history.

This disclosure is shocking enough. Being the country's most predominant political entity, how could UMNO set up an incorrupt role model if money politics still has its day?

There have been calls from within the party urging for stern actions against money politics, the implementation of systematic reforms and prevention of vote soliciting and bribery. However, it takes a lot of political will to uproot money politics planted so deeply over the past two decades owing to a ramification of interests and relationships.

UMNO delegates the power of rewarding government contracts as well as offering "proposals" in specific matters to divisional and branch leaders, and this has been singled out as the root cause of rampant money politics within the party.

The removal of this power will therefore help wipe out money politics. However, if the rewarding of government projects is reverted back to government officials, and money transactions is still seen as a channel for "speeding up the process" or "enhancing efficiency," then corruption will remain very much alive and uncurbed.

To check the propagation of the corruption virus, we need counteraction and close monitoring, as well as administrative transparency and judicial independence. Not only must the anti-corruption mechanism function this way, the entire country must also be instilled with such a conviction in order to completely overhaul the systems and implementing sound value systems.

What we hate to see is that some of the uncompleted plans are rushed to completion to meet specific deadlines with the help of bills that have been drafted, tabled and passed all in a rush, without instilling the right values and philosophies into the systems. We have simply seen too many instances in which hurriedly implemented measures and mechanisms have not produced the desired effects and results. (By CHONG LIP TECK/Translated by DOMINIC LOH/Sin Chew Daily)

STRENGTHENING OF DOMESTIC AND INTERNATIONAL COOPERATION FOR EFFECTIVE INVESTIGATION AND PROSECUTION OF CORRUPTION

COUNTRY REPORT OF THE UNION OF MYANMAR

*Han Nyunt**

I. INTRODUCTION

Corruption is a major crime affecting administration of justice, administrative and law and order in the whole world and also in Myanmar. It is a serious social disease and wide spreads all over the world today. Generally, not only government officials involve in bribery and corruption, but also private individuals and corporations. Even though every country is endeavoring to wipe out that malpractice, it can be said that no country all over the world is free from corruption. Furthermore, the network of corruption, including money laundering cases arising from corruption, has extended beyond the borders of a country, so that no country can combat it singly. As such, it has become evident that countries need to cooperate and coordinate their activities in combating corruption. The sources of corruption may vary from country to country. Likewise, countermeasures taken against corruption may be different in some respects.

This paper is intended to present a brief account of Myanmar laws against corruption, investigation and prosecution of corruption cases, national, the need of regional and international cooperation to fight against corruption.

II. MYANMAR LAWS RELATING TO PREVENTION OF CORRUPTION

Corruption links with every field in any form and manner. So, Myanmar enacted so many laws containing provisions concerning prevention of corruption as follows:-

- (a) The Penal Code, 1868,
- (b) The Code of Criminal Procedure, 1898,
- (c) The Criminal Law Amending Act, 1951,
- (d) The Defence Services Act, 1959,
- (e) The Law Taking Action against the Ownership or Sale of Property Obtained by Illegal Means, 1986,
- (f) The Pyithu Hluttaw Election Law, 1989,
- (g) The Commercial Tax Law, 1990,
- (h) The Forest Law, 1992,
- (i) The Narcotic Drugs and Psychotropic Substances Law, 1993,
- (j) The Myanmar Police Force Maintenance of Discipline Law, 1995,
- (k) The Fire Services Law, 1997,
- (l) The Control of Money Laundering Law, 2002,

* Deputy Director General, Office of the Attorney General, Union of Myanmar.

- (m) The Mutual Assistance in Criminal Matters Law, 2004 and
- (n) Administrative Measures against Corruption
- (o) The Prevention of Corruption Act, 1948.

A. The Penal Code

The Penal Code provides, under sections 161 to 171, corruption offences by or relating to public servants. Taking gratification by public servant other than legal remuneration in respect of an official act; taking gratification in order, by corrupt or illegal means, to influence public servant; taking gratification for exercise of personal influence with public servant, without consideration, from person concerned in proceeding or business transacted by such public servant; disobeying direction of the law by public servant, with intent to cause injury to any person; framing an incorrect document by public servant with intent to cause injury to any person; unlawfully engaging in trade by public servant; are corruption offences punishable with imprisonment ranging from one year to three years, or with fine, or with both.

B. The Code of Criminal Procedure

The Code of Criminal Procedure is the procedural law which provides, inter alia, procedures for making investigation, prosecution and trial of the corruption cases.

C. The Criminal Law Amending Act

The Criminal Law Amending Act is the more effective procedural law in taking action against corruptions. If the Government has reasons to believe that an accused of corruption case obtained money or property by committing such offence, it may direct to submit an application to the District Administrative Officer for the attachment of warrant on such money or property. These speedy actions may deter or freeze the exhibit money or property obtained by the accused in timely manner.

D. The Defence Services Act

The Defence Services Act has provisions, i.e. sections 51 and 66, who commits corrupt acts; dishonestly receiving or retaining government property and directly or indirectly accepting or obtaining bribes. The accused may be, on conviction by Court-Martial, punishable with imprisonment for 7 years to 10 years.

E. The Law Taking Action against the Ownership or Sale of Property Obtained by Illegal Means

The Law Taking Action against the Ownership or Sale of Property Obtained by Illegal Means authorizes Government to confiscate moveable or immovable property of a person who obtained such property by illegal means or from illegal business or bought with money evaded from income tax.

F. The Pyithu Hluttaw Election Law

The Pyithu Hluttaw Election Law prohibits, under sections 49 and 50, violation of a person's right to stand for election and to vote by means of, inter alia, taking or giving of bribes to any person. Moreover, it also prohibits obtaining the electoral right by unlawful means or after obtaining such right committing, giving and taking bribes by way of money, goods, foodstuff, position or service transfer.

G. The Commercial Tax Law

The Commercial Tax Law prohibits, under section 23, giving and taking of bribes; attempting to give and take bribes; abetting to give and take bribes; misusing, with a dishonest or fraudulent intention, any of the powers conferred by such Law. Breach of which is punishable with imprisonment from 3 years to 7 years.

H. The Forest Law

The Forest Law prohibits, under its section 46, any forest staff not to accept cash or kind from any person, by reason of his power, and in a corrupt manner in contravention of the Forest Law and participates and conspires in extracting, moving or unlawfully having in possession of forest produce in

a wrongful manner. The offender violating such prohibitions shall be punished with imprisonment which may extend from a minimum of 1 year to a maximum of 7 years.

I. The Narcotic Drugs and Psychotropic Substances Law

The Narcotic Drugs and Psychotropic Substances Law has particular provisions for taking action against investigating officers who commits corrupt acts. Section 18 of the Law provides, inter alia, that a person authorized to search, arrest, seize exhibits and investigate in respect of any offence under that Law shall be, on conviction, punished with imprisonment for a term which may extend from 5 years to 10 years, if he is guilty of asking and accepting any money and property as gratification either for himself or for another person, or accepting a narcotic drug or psychotropic substance unlawfully.

J. The Myanmar Police Force Maintenance of Discipline Law

The Myanmar Police Force Maintenance of Discipline Law has wide provisions concerning corruptions. Especially, its sections 17 and 18 provide various kinds of corruptions. Section 17 prohibits a person subject to that Law not to commit; unnecessarily detaining of a person against the law; failing to bring his case before the proper authority for investigation; taking in or bringing in or allowing to be taken in, due to his negligence, articles which are prohibited from being taken in or brought into the prison or police custody; causing or allowing a prisoner or a person in custody strike or otherwise ill-treat another person subject to that Law or any prisoner under custody; striking or ill-treating his subordinate; allowing to escape any person for whom he has duty to keep or guard; and demanding or accepting cash or kind in a corrupt manner from any person. The offender who violates any of such prohibitions, on conviction by Police Court, may be punished with imprisonment up to 3 years or less punishment as prescribed in that Law. Section 18 of the Law further prohibits a person subject to that Law not to do; committing theft of any property belonging to the Myanmar Police Force or any person subject to that Law; dishonestly misappropriating or converting to his own use of such property; committing criminal breach of trust in respect of such property; dishonestly receiving or retaining any such property; will fully destroying or injuring or causing loss through negligence any such property; dishonestly misappropriating, obliterating, destroying, injuring or causing loss through negligence, any exhibit; or does any other thing with intent to defraud or to cause wrongful gain or wrongful loss. The violation of any of such prohibitions shall be punishable with imprisonment up to 3 years or such less punishment as prescribed by that Law.

K. The Fire Services Law

The Fire Services Law also provides, under its sections 31 and 37, that no member of the fire brigade, auxiliary fire brigade or reserve fire brigade shall, without the consent of the owner, acquire any property, gift or money by way of bribe or by dishonest means, while discharging his duty during an outbreak of fire. The breach of such provisions is punishable with imprisonment for a term which may extend to 7 years and may also be fined.

L. The Control of Money Laundering Law

The Control of Money Laundering Law prescribes, under section 25, members of the investigation body not to commit; demanding or accepting money or property either for himself or for any other person as a gratification; substitution of an offender with any other person so that action can not be taken against him or misprision of an offender without taking action against him. The breach of such prohibitions may be punishable with imprisonment for a term which may extend from a minimum of 3 years to a maximum of 7 years and may also be liable to fine.

M. The Mutual Assistance in Criminal Matters Law

The Mutual Assistance in Criminal Matters Law and its rules provide for rendering legal assistance among states in investigation, prosecution and trial of criminal matters in accordance with regional agreements, bilateral agreements, multilateral agreements and the conventions accepted by Myanmar. It also includes rendering of mutual legal assistance in investigation, prosecution and trial of corruption

cases. One of the aims of this law is to enable communication with international organizations, regional organizations and foreign countries in carrying out criminal matters.

N. Administrative Measures against Corruption

All civil service personnel in Myanmar are responsible to abide by the Fundamental Rules and Supplementary Rules. Those Rules prescribes that Government servants shall not, except with the prior sanction of the Government, accept directly or indirectly on his own behalf or on behalf of any other person, or permit any member of his family so to accept any gift, gratuity or reward.

III. THE PREVENTION OF CORRUPTION ACT AND ITS DEFINITION

A. The Prevention of Corruption Act

This act is the main law in taking action against corruption. This Law provides special rules of evidence that the burden of proof relies on accused, if the acceptance of bribe by accused was proved. The Law also provides that the Court may presume an accused guilty of corruption case if he owns or owned too much money or properties beyond his income, where the accused can not prove his lawful ownership of such money or properties. Any person convicted under section 4(1)(c) / 4(2) of this Law is punishable with imprisonment for a term which may extend to 7 years. Besides, all benefits obtained by accused by committing such offence shall be confiscated. The punishment under this Law is more severe and effective than the punishment prescribed under the Penal Code. So, practice in Myanmar serious corruption cases are prosecuted with that law. The Law also authorizes investigating police officer to make necessary inspections on the bank accounts or registers of the accused and / or his dependants. However, the Law requires to obtain prior sanction from the relevant appointing authority of the accused before taking action under this Law.

B. Definition of Corruption

As mentioned above, there are various legislations in Myanmar providing for taking action against corruption. However, the Prevention of Corruption Act is the main law and it provides more effective measures. The Act, under its section 4, defines corruption widely as follows:

"A public servant is said to commit culpable corruption if he commits any of the following acts dishonestly or with intention to deceive in performing his duties:

- (a) habitually accepting, obtaining, agreeing to accept or attempting to obtain any bribes other than his legal remuneration for himself or for any other person from any person with intention as mentioned in section 161 of the Penal Code or expectation for benefit;
- (b) habitually accepting, obtaining, agreeing to accept or attempting to obtain valueable property for himself or for any other person without consideration or without adequate consideration from any person whom he knows connected or being connected or likely to connect with the case he has done or is about to do; or any person whom he knows connected with his or his superior's official duties or his relatives;
- (c) obtaining any valuable property or pecuniary benefit for himself or for any other person dishonestly, corruptly or by unlawful means or by misusing his position as public servant;
- (d) deceiving so as to injure the public interest or misappropriating entrusted public property."

According to the definition of corruption defined in Myanmar laws, corruption means not only taking, accepting, obtaining of any bribe money, property, narcotic drug or pecuniary benefit or agreeing or attempting to do so, but includes undue service, disservice, favour, disfavour in concern with his or his superior's work done or being done or likely to do. Moreover, communicating, using, illegally retaining or failing to take care of the official secrets or unauthorized disclosing of bank secrecies falls under the definition of corruption.

IV. INVESTIGATION AND PROSECUTION PROCEDURES FOR TAKING LEGAL ACTION AGAINST CORRUPTION CASES

A. Investigation

In Myanmar, corruption case is cognizable case under the provisions of the Code of Criminal Procedure. Therefore those cases may be investigated by Bureau of Special Investigation officers or police officers without obtaining warrant of a court.

Bureau of Special Investigation (BSI) is conferred authority to investigate corruption cases under the provisions of the Bureau of Special Investigation and the Investigation Department Act, and Myanmar Police Force is authorized to do so under the provisions of the Code of Criminal Procedure.

Being the cognizable case, BSI officers and Police Officers may book the case against the accused at the respective police station, request for sanction to prosecute against the accused from the relevant Ministry, arrest the offender, examine the accused and witnesses, seize the exhibits, construct the case, ask expert opinions on the exhibits if necessary, ask for legal advice from the Office of the Attorney General or various Law Offices for sound construction of the case and reconstruct the case in accordance with the legal advice of the Office of the Attorney General or respective Law Office, and file the case before a competent and relevant Court. Usually, Bureau of Special Investigation investigates serious corruption cases and refers other corruption cases to Myanmar Police Force for investigation. . If the case is not strong enough for sending it up to the Court, and it is necessary to take some other action, such corruption case is referred to the Government department concerned for taking departmental action.

B. Prosecution

Under section 197 of the Code of Criminal Procedure, if an accused who is a Judge, Magistrate or any public servant who is not removable from his office save by or with the sanction of the President or relevant Ministry, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with such previous sanction.

When such cases are sent up before the Courts, BSI prosecutors or Law Officers conduct prosecution in those cases. Throughout the prosecution period, prosecutors consult with the relevant Investigation Officers of the case to construct the case strongly. If necessary, the Law Office concerned files appeals or revisions against the order and judgment of original or appeal Court for enhancing punishment so as to obtain effective and deterrent punishments. BSI may request relevant Law Office to file revision in those cases. If the accused is acquitted by the Court, Office of the Attorney General may file for appeal against acquittal order to the Supreme Court. BSI or Myanmar Police Force may apply to relevant Law Office or Office of the Attorney General to file appeal against acquittal.

Office of the Attorney General and Law Offices at different levels under its guidance and supervision render legal advices not only for sound construction of corruption cases, but also provides other legal advice in legal matters.

Law Officers of the Office of the Attorney General and Law Offices at different levels conduct the prosecution as Government Advocates in all Courts at different levels up to the Supreme Court.

V. DOMESTIC AND INTERNATIONAL COOPERATION FOR EFFECTIVE INVESTIGATION AND PROSECUTION OF CORRUPTION

A. Domestic Cooperation

As mentioned above, BSI, Myanmar Police Force and Law Office cooperate for sound construction of the corruption cases at the pre-trial stage and during trial period under the guidance of the relevant Ministries and Peace and Development Councils.

The Courts at various levels pass effective and deterrent punishments against the offenders of corruption cases. The Supreme Court instructs all Courts at all levels to pass effective and deterrent punishments, on conviction, against the accused of corruption cases.

Under section 4(2) of the Prevention of Corruption Act, an accused may be punished, on conviction, with imprisonment for a term which may extend to seven years. Moreover, the benefits found to be obtained by the accused by commission of corruption case are liable to be confiscated.

B. International Cooperation

The Mutual Assistance in Criminal Matters Law is the main law in Myanmar for bilateral, multilateral, regional and international cooperation for effective investigation and prosecution in criminal matters including corruption cases.

Under the provisions of the Law, the Central Authority for Rendering Assistance among States in Criminal Matters was formed with Ministers for Ministry of Home Affairs, Ministry of Foreign Affairs, Ministry of Finance and Revenue, Ministry of Immigration and Population, Deputy Chief Justice, Deputy Attorney General, a representative from the Ministry of Defence, Director General of the General Administration Department as members. The Director General of Myanmar Police Force is secretary and Chief of Police General Staff of Myanmar Police Force is joint secretary of the Central Authority.

The Law provides for requesting assistance and refusal; search, seizure, control, issuing restraining order and confiscation of exhibits, sending a person who is in Myanmar abroad to give testimony and statement, requesting assistance by Myanmar, bearing of costs and miscellaneous.

The Ministry of Home Affairs made the Mutual Assistance in Criminal Matters Rules under its Notification No. 5/2004 for the procedural matters in implementing the Law.

VI. CONCLUSION

Corruption is undesirable and it needs to be suppressed effectively. In taking action against corruptions, regional and international cooperation should be strengthened for effective investigation and prosecution of corruption cases. Furthermore, various measures should be implemented simultaneously. Though legal and judicial measures are effective instruments in doing so, public awareness measures and educative measures should also be made increasingly. Moreover, the needs of the public servants should be met as much as possible so as to get their cooperation in fighting against corruption. Regional countries should meet regularly, exchange their views and experiences and discuss how corruption can be handled and what should be done for doing so.

RECOVERY AND REPATRIATION OF THE MARCOSES' ILL- GOTTEN WEALTH

*Severino H. Gaña, Jr.**

In various forums on corruption and money laundering, I have been asked quite a few times on the subject about the subject of the assets looted from the coffers of the Philippine government by former President Ferdinand Marcos and his family. This is an opportune time for me to discuss the efforts of the Philippines on the recovery and repatriation of said assets, specifically the Marcos Swiss bank deposits.

As a background, Ferdinand Marcos was elected as president of the Philippines in 1965 and was re-elected in 1969. He declared martial law in September 1972. In 1981, opposition groups boycotted the presidential elections so he won again but there was widespread social unrest and protest over allegations of corruption, cronyism and violations of civil rights on his part. Opposition leader Benigno Aquino, Jr. was assassinated in 1983. In 1986, his widow Corazon Aquino ran for president against Marcos and the latter was declared the winner again. But a peaceful civilian military uprising forced Marcos to step down from office. On February 25, 1986, Corazon Aquino was sworn in as president and on the same day, Marcos and his family hurriedly fled the country. Upon their arrival in Hawaii, the customs service conducted an inventory of their personal properties that included suit cases of jewelry, twenty four (24) gold bricks and certificates of billions of dollars and gold bullion.

In their haste, the Marcoses left some documents in the Presidential Palace of Malacañang. The "Malacañang documents" revealed the huge deposits of Ferdinand and Imelda Marcos in Swiss banks, using pseudonyms and dummy foundations.

President Aquino issued Executive Order No. 1 dated February 28, 1986 creating the Presidential Commission on Good Government (PCGG). The PCGG is a quasi-judicial body mandated to:

1. Investigate, gather and evaluate information regarding the ill-gotten wealth of the Marcoses;
2. File and prosecute criminal and civil cases for the recovery of the ill-gotten wealth;
3. Pursue sequestration, hold and or freeze orders or lift such orders and;
4. Preserve and maintain the sequestered assets.

From its investigation, the PCGG discovered that the Marcos ill gotten wealth mostly came from diverted foreign economic aid, government military aid and kickbacks from public works contracts.

The PCGG ordered the Central Bank of the Philippines to freeze all the assets in the Philippines of the Marcoses and their cronies. President Aquino issued Executive Order No. 2, freezing all Marcos assets in the Philippines.

In Switzerland, a Filipino banker with a power of attorney from Ferdinand and Imelda Marcos, requested for the transfer of the Marcos assets to an Austrian bank belonging to the banker and other cronies of Marcos. In anticipation of the claims of Philippine government, the Swiss Federal Council

* Assistant Chief State Prosecutor, Department of Justice, Philippines.

imposed an unprecedented and unilateral freeze on the Marcos assets in the Swiss banks. But this was a temporary measure. The Philippine government must make a request for the issuance of a regular freeze order.

On the basis of the Malacañang documents, the PCGG made the request in April 1986, invoking the Swiss Law on International Mutual Assistance on Criminal Matters (IMAC). At that time, there was no mutual legal assistance treaty on criminal matters between Switzerland and the Philippines. That treaty between the two countries came about only in December 2005. At this point, it must be mentioned that both countries are signatories to the United Nations Convention against Corruption.

The request was met with strong resistance. The Marcoses through their lawyers, the Swiss banks and the account holders argued that the protection and remedies under the IMAC is not available to the Philippine government; that the accounts were not established as belonging to the Marcoses and; that the secrecy and confidentiality of bank deposits would be violated. Moreover, the fact that the freeze order came before the request led to a controversy in Switzerland.

Initially, there were various suits at different cantonal courts where the Marcoses were represented by more than thirty lawyers. The PCGG was assisted by only three Swiss lawyers Salvioni, Fontanat and Leuenberger.

In another development, the Society of Ex-Detainees for Liberation from Detention and for Amnesty (SELDA), a group of around 10,000 victims of human rights violations by the Marcos regime or their families filed a case against Marcos in the United States District Court of Hawaii on April 7, 1986. The case was dismissed and their lead counsel Robert Swift appealed to the Court of Appeals and secured a reversal.

In December 1990, the Swiss Federal Supreme Court rendered a favorable judgment on the request for assistance by the Philippine government and admitted that in principle, the frozen assets should be returned to the Philippines. On December 21, 1990 the Swiss Federal Supreme Court issued an order for Swiss banking documents pertaining to Marcos deposits be transmitted to the Philippine Government, provided that: 1) there is a final judgment of conviction by the Sandiganbayan (the Philippine special anti-graft court) or another court having jurisdiction over criminal matters; 2) there is an executory decision of the Sandiganbayan or another competent Philippine Court concerning restitution to those who are entitled and; 3) there is due process of law for Imelda Marcos.

The decision is significant because the Philippines was the first country to get the Swiss banks to open their documents. However, the conditions pose gave difficulties. No criminal case was filed against the Marcoses because they were then in Hawaii. Philippine criminal laws require the presence of the accused during arraignment. To compound the problem, Ferdinand Marcos died on September 28, 1989. It must also be added that at that time, the anti-plunder law and the anti-money laundering law of the Philippines have not been enacted yet.

Just a few days after Imelda Marcos and her children came back to the Philippines and before the December 21, 1991, deadline imposed by the Swiss Federal Supreme Court in its judgment dated December 21, 1990, the PCGG filed Civil Case No. 141 before the Sandiganbayan for the forfeiture of Marcos properties and assets. The delay was partially caused by Swiss review of banking documents, to protect non-participating third parties. Moreover, the Swiss lawyers hired by the PCGG were not permitted to gather evidence in behalf of foreign clients thus they were stalled.

Under R.A. 1379, otherwise known as the Forfeiture Act, whenever a public officer or employee has acquired during his incumbency an amount of property which is manifestly out of proportion to his salary as public officer or employee and to his other lawful income and income from legitimately

acquired property, said property shall be presumed prima facie to have been unlawfully acquired. If the public officer is unable to show to the satisfaction of the court that he has lawfully acquired the property in question, the court shall declare such property forfeited in favor of the State.

Meanwhile, on September 1992, the class action suit filed by human rights victims went to trial in the Hawaii District Court together with other cases consolidated with it. The case is dealt with in three parts addressing liability, exemplary damages and compensatory damages. The Court subsequently ruled that Marcos committed gross human rights violations and held his estate liable to pay damages to the victims.

On the basis of the United Nations Convention against Torture and on Alien Tort Claims Act or Alien Tort Statute of the United States, on February 23, 1994, the jury in the SELDA case heard in Hawaii awarded US\$ 1.2 billion to the complainants as exemplary damages. On January 18, 1995 the jury awarded approximately US\$ 750 million in compensatory damages. Imelda Marcos appealed but the United States Court of Appeals for the Ninth Circuit Court upheld the judgments. No funds are available to fulfill the award, so the Court attempted but failed to fulfill it with the frozen Marcos funds in Swiss bank accounts through the branches of the Swiss banks located in America.

In August 10, 1995, the PCGG filed a petition for the modification of the Swiss Federal Supreme Court judgment that required criminal conviction against Marcos so that the frozen Marcos accounts in Swiss banks may be transferred to a Philippine bank under an escrow agreement, during the pendency of the forfeiture case. The petition is anchored on the recognition of the Swiss courts that the Philippine courts have the jurisdiction to rule whether or not the money in the accounts were stolen or not. The petition was prompted primarily by other claims to the Marcos Swiss accounts, registered with the proper Swiss authorities, for the purpose of satisfying court judgments. One of these is the award to human rights victims by the Hawaii court in the SELDA case. Another claim came from a court in London, pertaining to several promissory notes issued by Ferdinand Marcos while in exile in Hawaii. These notes were dishonored and subsequently indorsed to a London based company that filed the suit and was awarded US\$ 600 million, excluding interest.

The Marcos lawyers employed all sorts of dilatory tactics to prevent a hearing on the merits of the forfeiture case before the Sandiganbayan. Furthermore, the case could not move because of a Compromise Agreement in December 1993 between then PCGG Chairman Magtanggol Gunigundo and the Marcos family, a secret accord which came to light on April 5, 1995 because a petition for its approval was filed in the Sandiganbayan. In the Compromise Agreement, the government would get seventy five percent (75%) and the Marcos family twenty five percent (25%) of the ill-gotten wealth. The latter would get criminal and the tax immunities as well.

In 1995 Imelda Marcos was elected congresswoman and her son Ferdinand Jr. as congressman in separate districts. There is still political support for the Marcos family in their region in northern Philippines and from the elite who benefited from their corrupt system.

On August 21, 1995, the Swiss authorities issued an unprecedented order partially modifying December 21, 1990 judgment and ordered the "anticipatory transfer" of assets sought in the aforementioned petition. In the same year, the IMAC was amended by the Swiss Parliament. Under the amendment, there is no more need for a final judgment of criminal conviction against the Marcoses in the Philippines. Even a civil proceeding and a final judgment for the Philippine government would suffice.

As then President Fidel Ramos adopted the policy of reconciliation, in September 1995, PCGG chairman Magtanggol Gunigundo and lawyer Robert Swift signed a memorandum of agreement for a compromise with Philippine government, accepting US\$ 100 million - US\$ 50 million from Marcoses and US\$ 50 million from government's claim on Swiss deposits- in exchange for dropping the class suit

filed by the human rights victims. In the SELDA case, the victims disowned the act of their lawyer. The Sandigan also found the agreement to be illegal and contrary to public policy. Moreover, there is no legal basis for proposed mode of funding. Consequently, President Ramos did not sign the agreement.

Robert Swift, the lawyer for the human rights victims requested for the release of Swiss deposits based on the award by the court in Hawaii. It was denied because the civil attachment he obtained cannot prevail over the criminal attachment of the stolen assets in favor of the Philippine government. His claim was not considered because the Marcos deposits were funds stolen from the Philippines and were frozen on account of international legal assistance by Switzerland to the Philippine government.

The US Court of Appeals, in December 1996, denied the appeal of Imelda Marcos and affirmed the decision in favor of the 10,000 human rights victims. In March 1997, the US Supreme Court sustained the decision of the appeal court. This final decision is a legal precedent in international human rights jurisprudence.

In December 10, 1997, the Swiss Supreme Court rendered a landmark decision transferring around US\$ 540 million of the Marcos Swiss deposits that later became US\$ 658 million because of interest to the custody of the Sandiganbayan, via an escrow account in the Philippine National Bank. The decision states that the facts are sufficiently clear to allow the assumption of the illegal origin of the seized monies. It is contrary to the interest of Switzerland if it turns into a haven for fugitive capital or criminal monies. It is the duty of the legislators, the banks and the banking organizations to insure that the heads of dictatorial regimes cannot - as has happened in the present case - deposit millions of obviously criminally-acquired monies in Swiss bank accounts. It also ruled that under the IMAC amendment of 1995, there is no more need for a final judgment of criminal conviction against the Marcoses in the Philippines. Even a civil proceeding in the Philippines and a final judgment in favor of the Republic would suffice, since the acts took place in the Philippines. The Swiss Federal Supreme Court held as well that the decision to seize the monies must be taken in the Philippines where the acts were committed.

In the same decision, the Swiss Federal Supreme Court stated that although there is much concern in Switzerland for the human rights victims, "there is no connection between the crimes which caused the Marcos assets in Switzerland to be frozen in 1986 and the claims of the human rights victims." While the Philippines is a signatory to the United Nations Treaty protecting victims of human rights from torture and the other dehumanizing punishment, the Treaty does not give these victims priority rights over the Marcos assets in Switzerland. But they are entitled to a fair hearing in the Philippines where they can enforce their claims for compensation. Therefore, the victims of the Marcos regime were obliged to participate in the probate proceedings to assert Ferdinand Marcos' responsibility for the human rights violations committed during his tenure if they have to claim damages from the Philippine government for the wrongs committed by its organs. The decision only required that the Philippine government informs the Swiss authorities of the substantive developments concerning provisions and procedures for the payment of reparations to the victims of human rights violations under the Marcos regime. It must also be noted that according to Hawaii Court judgment, the human rights victims are to be compensated from the Marcos estate. The funds in the Swiss bank accounts are not deemed to be part of the Marcos private estate as these are funds stolen from the Philippines.

For its part, the Republic of the Philippines guaranteed the restitution of the assets to the entitled parties including the human rights victims, through judicial proceedings and to satisfy human rights principles, procedural guarantees in the International Covenant on Civil and Political Rights and other relevant international obligations of Switzerland and the Philippines. In this respect, the decision closed the gap in the interpretation of national and international legal norms that blocked the Marcos case for years.

Joseph Estrada was elected President of the Philippines in May 1998. Imelda Marcos previously

withdrew her presidential bid in favor of Estrada, her friend. Soon there were also allegations of cronyism and corruption against Estrada. In October 2000, he was accused of taking millions of pesos in illegal gambling business payoffs. The impeachment proceedings against him in the Senate broke down. There were massive street protests against him and the Armed Forces withdrew their support for him. He is forced to leave his office in January 2001. Vice-President Gloria Macapagal-Arroyo succeeded him. Subsequently, Estrada was charged and convicted of plunder but that is another story.

In December 1998, the Philippine Supreme Court invalidated the Compromise Agreement of December 1993 between the PCGG and the Marcos family on a 75%-25% split of the money held on the escrow account. The Compromise Agreement was null and void, on at least four grounds: (1) Under the law, criminal immunity cannot be granted to the Marcos's, who are the principal defendants in the spate of ill-gotten wealth cases now pending in the Sandiganbayan; (2) Exemption from taxes of the properties to be retained by the Marcos heirs is a clear violation of the Constitution since the power to tax and to grant tax exemption is vested in Congress alone; (3) The dismissal of all cases pending against the Marcoses in the Sandiganbayan and the other courts, is a direct encroachment on judicial powers particularly with regard to criminal jurisdiction; (4) The stipulation that the Government waives all claims and counterclaims, past, present, and the future, is not only a violation of the Civil Code which says that an action for future fraud may not be waived, but also a virtual warrant for all public officials to amass public funds illegally, since there is an open option to compromise their liability in exchange only for a portion of the ill-gotten wealth.

Back to the forfeiture case against the Marcoses, the Sandiganbayan rendered a decision in September 9, 2000 adjudicating the Marcos Swiss deposits in favor of the government. The Marcoses filed a motion for reconsideration. In January 31, 2002, the Sandiganbayan reversed said decision and dismissed the forfeiture case citing as its basis the technicality that the PCGG failed to present authenticated translations of the decisions of the Swiss Federal Court.

The Supreme Court of the Philippines, in its decision dated July 15, 2003, reversed the earlier dismissal by the Sandiganbayan of the forfeiture case against the Marcoses. The Supreme Court ruled that Marcos deposits in Swiss banks amounting to US\$ 658 million is ill-gotten and forfeited the money in favor of the Philippine government. Their only known income is over US\$ 304, 372.00. The Swiss deposits were out of proportion to their known income therefore there is legal and fair basis to conclude that said deposits were unlawfully acquired. In their defense, the Marcoses claim the funds were lawfully acquired and thus necessarily acknowledged the existence and ownership of the deposits yet they failed to particularly state the ultimate facts surrounding the lawful manner of acquisition of the subject funds. Their defenses are sham and calibrated to compound and confuse the issues.

For their part, the Swiss Federal Office of Justice issued a press statement and pertinent portions of which are quoted:

“Satisfaction with the positive conclusion of the Marcos case was expressed by the Swiss and Philippine authorities at a meeting in Zurich on Tuesday. Following the confiscation (forfeiture) ruling of the Supreme Court in Manila, the Philippines may now dispose of the Marcos assets that were deposited in a frozen account in 1986 and have grown to approximately US\$ 683 million..... The Marcos case began in 1986 when the Federal Council ordered bank accounts to be frozen. In 1990, the Swiss Federal Supreme Court approved the handover to the Philippines of bank documents relating to the Marcos family, but ruled that the actual return of assets would be conditioned upon a final and absolute judgment of conviction by a Philippine court. In 1997, the Court established that the majority of the Marcos foundation assets were of criminal origin and permitted their transfer to an escrow account in Manila, even though no Philippine court ruling had yet been issued. The Swiss Federal Supreme Court set two conditions for this advance transfer, however, the Philippines had to provide an assurance that the confiscation (forfeiture) of the assets in question would be handled through judicial proceedings. as

well as the precautions and procedures pertaining to compensation for victims of violation of human rights under the Marcos regime. Following the confiscation (forfeiture) ruling of the Philippine Supreme Court on 15 July 2003, which confirmed the view of the Swiss Federal Supreme Court with regard to the criminal origin of the monies seized, the Philippine Government may now dispose of the monies, now worth some US\$ 683 million. No further decisions are due on the part of the Swiss authorities. The Philippine parliament is currently debating legislation under which the Marcos assets would be used for land reform and compensate the victims of human rights violations.”

On November 18, 2003, the Supreme Court denied with finality several petitions filed by the Marcos heirs to set aside its July 15, 2003 decision declaring the US\$ 683 million as ill-gotten and in favor of the government. The Supreme Court also rejected the worldwide injunctions on the Marcos funds issued by Judge Real of the Hawaii Court. The decision came a week after the US Circuit Court of Appeals turned down a last-ditch attempt by the Marcoses to stop the release of the US\$683million to the Philippine Government by seeking mediation by the US Court “for possible settlement” of the disputed funds.

Despite the decision forfeiting the Marcos ill-gotten wealth, problems still beset the Philippine government.

A District Court of Hawaii through Judge Manuel Real issued a freeze order on the Marcos assets all over the world. The Philippine Government appealed the freeze order but the appeal was dismissed on December 28, 2004.

Because of the global freeze order, the Philippine National Bank was constrained to ask the US Ninth Circuit Court of Appeals for a writ of mandamus to prevent the district court from pursuing contempt and discovery proceedings against the bank because it previously transferred funds in the escrow account to the treasury of the Philippine government, pursuant to the decision of the Philippine Supreme Court. The appellate court ruled that the order of the district court violated the act of state doctrine and thus issued the writ.

On December 27, 2006, a Singapore court dismissed an application filed by the Philippine Government to stay other claims to the US\$ 23 million deposited in the West LB Bank in Singapore. The amount is part of the Marcos accounts forfeited in favor of the Philippine government. It was initially deposited in a Swiss bank but was later transferred to Singapore. Asserting that the amount has been awarded to the Philippine government by the Philippine Supreme Court in the decision in the forfeiture case, the Philippine government appealed the decision of the Singapore court. The appeal is pending.

The issue payment to the human rights victims in the Marcos regime is not yet totally resolved. Under the Comprehensive Agrarian Reform Law, the Marcos’ ill-gotten wealth forfeited in favor of the government cannot be used for any purpose other than agrarian reform programme to benefit many poor farmers in the Philippines, except through an amendment of the Comprehensive Agrarian Reform Law.

In February 27, 2007, the Bicameral Committee of the Congress of the Philippines approved the consolidated bill amending the Comprehensive Agrarian reform Law and providing compensation of USD 200 million to human rights victims under the Marcos regime. The House of Representatives thereafter approved the consolidated bill before it went into recess. The bill will become a law after the Senate approves it. The bill has been certified as a priority bill by President Gloria Macapagal Arroyo.

The long and difficult saga of the recovery and repatriation of the Marcos ill-gotten wealth has definitely not ended. Of the US\$ 683 million forfeited in favor of the Philippine government, US\$20 million is still in litigation in Singapore due to the world-wide injunctions issued by Hawaii court. This is not the last amount that can be recovered from the Marcos family. A much bigger amount can be recovered. Marcos made the following unsolicited admission. Imelda Marcos said:

“There is more money that the government is not yet aware of, but for the time being, I can only admit that there is only \$800 million kept in various international banks, if you know how rich you are, you are not rich. I am not aware of the extent of my wealth. That's how rich we are.”

The PCGG knows the source of this \$800 million. Marcos Swiss agents withdrew the \$400 million from a Swiss bank on March 23, 1986, the eve of the freeze order issued by the Swiss Federal Council on March 24, 1986. Canadian lawyer Marie Gabrielle Koller, a lawyer of the Swiss bank, gave a full account of the incident and said the amount must have already doubled because of interest.

In a recent development, the PCGG has become an agency under the Department of Justice. There is a continuing effort for the repatriation of the Marcos ill gotten wealth. More than money is at stake. Jovito Salonga, the first PCGG Commissioner and a highly respected leader who is also a human rights victim for having been imprisoned in the Marcos regime, said:

“There are certain fundamental questions of right and wrong, including the crucial questions of responsibility for the plunder of the nation's wealth, that must be resolved by our people, no matter how long and how much it takes. These questions and their resolution define who we are as a people-our essential character, our integrity, our tenacity and courage and our sense of right and wrong.”

STRENGTHENING OF DOMESTIC AND INTERNATIONAL CO-OPERATION FOR EFFECTIVE INVESTIGATION AND PROSECUTION OF CORRUPTION

*Bala Reddy**

I. INTRODUCTION

I wish to first of all express my great pleasure to be here, and to thank the United Nations Asia and Far East Institute for inviting me to deliver this presentation. The theme for this year's conference is a crucial one, and I am very glad that UNAFEI has chosen to focus on the topic of corruption.

Corruption has the potential of permeating a society and festering within it like an insidious seed. If corruption is allowed to thrive, it will take root within a society and can be virtually impossible to eradicate.

A. Singapore's Record

At a very early stage itself, Singapore recognised the evil that corruption represented. The Government of Singapore understood that it was inevitable that a tough stance must be taken. To do this, we needed to put in place a system that was fortified enough to weather the problem of corruption. We needed legislation that had teeth and a dedicated team of investigators.

Today, I am honoured to share with you some of the measures Singapore has implemented to enhance the investigation and prosecution of corruption. I am proud to say that Singapore's anti-corruption efforts have ensured that we have been consistently ranked among the least corrupt nations in various international surveys and studies, such as Transparency International's Corruption Perceptions Index¹ and the Political and Economic Research Consultancy. These rankings are important, as they provide an indication as to which are the most competitive, and facilitative places in which to conduct business.

B. Singapore's Early Years

Today Singaporeans take pride in the fact that they live in a virtually corruption free society. However, in the early years, this was not the case. Following the Second World War, and during Singapore's colonial era, corruption was rife amongst all sectors of society. In those days, inflation, low salaries and poor general living conditions provided an environment in which corruption could thrive. Then, we did not have a dedicated team of investigators who specialised in dealing with corruption. Corrupt activities were instead investigated by a small arm of the Singapore Police Force. We did not even have legislation that targeted the problem of corruption. This was a simply inadequate position to be in.

The Government of Singapore recognised this problem and realised that it had to embark on a robust anti-corruption strategy. Failing to do so would result in foreign investors having a lack of confidence in Singapore. Additionally, it was necessary to weed out the corrupt section of the population, and to send a message to all Singaporeans that core values such as honesty and hard work will bear reward.

* Principal Senior State Counsel, Head, State Prosecution Division, Attorney-General's Chambers, Singapore.

¹ http://www.transparency.org/policy_research/surveys_indices/cpi

II. LEGISLATION

To achieve these goals, Singapore needed to legislate for strong anti-corruption measures. In 1960, Singapore passed the Prevention of Corruption Act,² the prime anti-corruption legislation in Singapore even till today. The Act was drafted as a comprehensive piece of legislation that was aimed at the jugular of corruption. It was targeted at preventing corruption more effectively through the empowerment of our investigative, prosecutorial and administrative agencies.³

A. Empowerment

The effectiveness of our anti-corruption law enforcement agency was greatly enhanced by the wide investigative powers it enjoyed under the Prevention of Corruption Act. Amongst other things, the Prevention of Corruption Act contains a wide definition of what constitutes gratification. The legislation targeted not just monetary gratification, but also gifts, valuable securities, and basically any “advantage of any description”.⁴

The Act also empowers investigators to order public officers under investigation to furnish sworn statements specifying properties belonging to them, their spouses and children.⁵ It also made one legally obliged to provide information to investigators.⁶

B. Protecting Informants

On another note, to encourage people to come forward with information on corrupt activities, the Act ensures that these informants remain anonymous. Special rules are put in place to prevent the identities of these informants from being revealed.⁷

C. Penalties and Disgorgement

Finally, to drive home the message that corruption does not, and will not, pay, the Prevention of Corruption Act empowers the Courts to mete out strong penalties for offenders. Additionally, the Act also provides for an offender to disgorge whatever benefits he had derived from his corrupt act.⁸

As a supplement to the Prevention of Corruption Act, the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act was enacted to criminalise the laundering of benefits derived from corruption and allows for the confiscation of any benefits derived from such activities.

In line with the Government’s position, the Singapore judiciary has adopted a stern punishment policy against corruption offenders. The then Chief Justice Yong Pung How clearly enunciated this policy in a Court of Appeal⁹ verdict he delivered in 2002, in which he stated that he had “no doubt that a more severe punishment was warranted to emphasise the courts’ as well as society’s disapproval and abhorrence of [the corrupt offender’s] actions”.

² Please refer to Annex A for the Prevention of Corruption Act.

³ Please refer to Annex B for an overview of some of the more pertinent aspects of the Prevention of Corruption Act.

⁴ Section 2, Prevention of Corruption Act.

⁵ Section 21, Prevention of Corruption Act.

⁶ Section 27, Prevention of Corruption Act.

⁷ Section 36, Prevention of Corruption Act.

⁸ Section 13, Prevention of Corruption Act.

⁹ The Court of Appeal is Singapore’s final appellate court.

D. Dealing with Corruption in the Public Sector

Recognizing that anti-corruption efforts would come to naught if the Government itself is corrupt, a tough stance is taken to deal with the danger of corruption in the civil service. By virtue of a specific presumption clause in the Prevention of Corruption Act,¹⁰ any form of gratification paid to a Government employee by someone who seeks to have dealings with the Government will be deemed to be a corrupt inducement.

The effect of this clause is that the Prosecution is only required to show that a Government employee had received such gratification. Thereafter, the burden of proving that the gratification was not corruptly received shifts to the Government employee.

E. Revamping the Prevention of Corruption Act

These are but only a few examples of how the Prevention of Corruption Act aids in Singapore's fight against corruption. Today, much of our successes in tackling corruption can be attributed to the legislative framework that is currently in place. It has been a long process, but one that is well worth the effort. Singapore will not stop at this. The Prevention of Corruption Act is presently being revamped to tackle the new age in corruption. Corrupt practices are evolving with the times. Offenders are finding new ways and means to get around our legislative framework. We must stay a step ahead and ensure that our laws are relevant and adequate enough to deal with these new challenges.

III. THE CORRUPT PRACTICES INVESTIGATION BUREAU

Of course, these powerful anti-corruption tools under the Prevention of Corruption Act would be futile if they were not buttressed by effective enforcement efforts. In our battle against corruption, we have, at the frontline, a team of officers from the Corrupt Practices and Investigation Bureau, also known as the CPIB. These officers specialise in investigating into corrupt activities in Singapore. They also work with officials abroad in respect of corrupt activities occurring overseas, but which have effects that are felt in Singapore.

Established in 1952, the CPIB functions as an independent body dedicated to the prevention of corruption in Singapore. The CPIB works closely with prosecutors from the Attorney-General's Chambers in investigating corrupt activities, and in bringing cases before the Courts for their determination.

Before the CPIB was established, corruption cases were investigated by a small unit in the Singapore Police Force known as the Anti-Corruption Branch. Given the clandestine nature of corrupt activities, this was not the most effective way to combat them.

Thus, the CPIB was established to address the need for an enforcement body solely dedicated to investigating and prevent corrupt activities in Singapore. While CPIB officers exercise powers similar to that of officers from the Singapore Police Force, it is an independent body and functions independently from the Singapore Police Force.

The establishment of CPIB sent a clear signal to offenders and would-be offenders that Singapore was taking a firm stance against corrupt activities. Since its inception, public confidence in the CPIB and its work is high and the CPIB has proven to be an effective deterrent force in eradicating corruption in Singapore.

The CPIB continues to take steps to remain relevant and continues to make progress in eradicating

¹⁰ Section 8, Prevention of Corruption Act.

corruption in Singapore. In 2004, the Computer Forensic Unit was formed to perform forensic examinations of computer-related evidence. Rapid advances in information technology and transportation have brought new challenges and we must ensure that we are equipped to meet them.

IV. CO-OPERATION BETWEEN THE PUBLIC SECTOR AND THE PRIVATE SECTOR

Modern technology and increasingly sophisticated banking methods can lead to serious difficulties in tracing the proceeds of corruption. To guarantee the effective investigation and prosecution of corruption, it is critical that the criminal justice authorities have the full cooperation of financial institutions.

Very often, financial institutions hold first-hand information which could potentially reveal criminal schemes. Unusual financial transactions (whether by size or pattern) are the most obvious indicators of corruption and corruption-related crimes but will remain undetected by the investigative authorities unless flagged out by the financial institutions handling them.

The public authorities in Singapore have actively engaged the players in the financial sector in its fight against corruption. In dealing with money laundering, the Monetary Authority of Singapore has issued guidelines on Prevention of Money Laundering to financial institutions (such as banks, finance companies, insurers and money changers) to guide them in implementing measures, such as best practices of due diligence and record-keeping in line with the anti-money laundering legislation.

The Suspicious Transaction Reporting Office of the Commercial Affairs Department, an outfit within the Singapore Police Force which investigates into commercial and financial crime, also conducts a series of dialogue and feedback sessions with the financial institutions in Singapore to discuss the reporting of suspicious transactions, to obtain feedback on the reporting process and address any related concerns or queries. This ensures that on top of being cooperative, the financial entities are also competent to effectively assist in the discovery, investigation and prosecution of such offences.

Without the generation and retention of financial information by these entities, the investigation and prosecution of corruption would be greatly crippled. Without the means to track the gratification paid or received, which itself could come in multifarious forms, it would be impossible to bring the criminals to justice.

Besides working with financial institutions, the criminal justice authorities in Singapore also actively engage other stakeholders from the private sector. CAD, for example, has institutional industry dialogue forums and conducts regular outreach programmes with members of the business, legal and auditing and accounting community as part of its regime against money laundering and other economic crimes.

The exchange of knowledge and information facilitated through these open lines of communication allows our investigative authorities to leverage on the specialised expertise of these industry stakeholders in bettering our investigative capabilities. This approach also reduces the dependency on limited government resources by enabling public authorities to tap into the private sector's knowledge, expertise and resources to complement the government's efforts.

V. CO-OPERATION AT THE INTERNATIONAL LEVEL

In an increasingly globalised world, it may no longer be sufficient to focus efforts in preventing corruption within our own borders. We recognize that the effects of corrupt activities in one country can easily spillover to another, and new strategies must be developed to engage with this threat.

Singapore strongly supports international efforts to fight corruption like the United Nations Convention against Corruption and has demonstrated this support by becoming a signatory to the UNCAC on 11 November 2005.

Another important measure to strengthen and facilitate international co-operation and co-ordination is through international conferences and meetings. Important networks between anti-corruption officials are developed at such events and opportunities are provided to share information and strategies to combat corruption.

While Singapore has made substantial progress over the past few decades, we are not content to rest on our laurels. Instead, we remain committed to eradicating corrupt activities and will explore different ways to continue our efforts effectively both locally and internationally.

VI. CONCLUSION

In Singapore, we have recognized the extent to which corruption can permeate a society. We know that the efficiency and international standing of a country can be undermined by the advent of corruption. To this extent, in Singapore, the Prosecution and the CPIB meet regularly to update each other about the respective legal and enforcement challenges that either sides face. Prosecutors must be in tune with the new avenues that offenders utilize to carry out corrupt activities, and investigators need to be educated on the legal challenges that the Prosecution faces in bringing cases to the Courts.

Both the Prosecution and the CPIB have worked successfully towards eradicating corruption from all sections of society. This collaboration will continue.

On a global level, it is imperative to replicate such levels of cooperation. We should come together regularly to update each other about our respective fights against corruption. This Conference is one such platform. We must work together to cull the cancer of corruption from our borders, and send a message that corruption will never be rewarded.

Thank you once again, and I hope that you will have many fruitful discussions in the course of this Conference.

ANNEX A

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PREVENTION OF CORRUPTION ACT (CHAPTER 241)

History	Ordinance 39 of 1960	→	Reprint 27 of 1966	→	1970 Ed. Cap. 104	→	REVISED EDITION 1993
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An Act to provide for the more effectual prevention of corruption.

[17th June 1960]

Arrangement of Provisions [Jump to: Front Page / Arrangement of Provisions / Actual Provisions]

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PREVENTION OF CORRUPTION ACT (CHAPTER 241)

An Act to provide for the more effectual prevention of corruption.
[17th June 1960]

PART I

PRELIMINARY

Short title

1. This Act may be cited as the Prevention of Corruption Act.

Interpretation

2. In this Act, unless the context otherwise requires —

"agent" means any person employed by or acting for another, and includes a trustee, administrator and executor, and a person serving the Government or under any corporation or public body, and for the purposes of section 8 includes a subcontractor and any person employed by or acting for such subcontractor;

"CPIB officer" means a public officer in the Corrupt Practices Investigation Service (Junior) Scheme of Service or in the Corrupt Practices Investigation Service (Senior) Scheme of Service;

"Director" means the Director of the Corrupt Practices Investigation Bureau appointed under section 3;

"gratification" includes —

- (a) money or any gift, loan, fee, reward, commission, valuable security or other property or interest in

- property of any description, whether movable or immovable;
- (b) any office, employment or contract;
 - (c) any payment, release, discharge or liquidation of any loan, obligation or other liability whatsoever, whether in whole or in part;
 - (d) any other service, favour or advantage of any description whatsoever, including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary or penal nature, whether or not already instituted, and including the exercise or the forbearance from the exercise of any right or any official power or duty; and
 - (e) any offer, undertaking or promise of any gratification within the meaning of paragraphs (a), (b), (c) and (d);

"INVEST Fund" means the INVEST Fund established under Part III of the Home Affairs Uniformed Services Superannuation Act (Cap. 126B);

"member" means a member of the Scheme established under this Act;

"principal" includes an employer, a beneficiary under a trust, and a trust estate as though it were a person and any person beneficially interested in the estate of a deceased person and the estate of a deceased person as though the estate were a person, and in the case of a person serving the Government or a public body includes the Government or the public body, as the case may be;

"public body" means any corporation, board, council, commissioners or other body which has power to act under and for the purposes of any written law relating to public health or to undertakings or public utility or otherwise to administer money levied or raised by rates or charges in pursuance of any written law;

"Scheme" means the Occupational Superannuation Scheme established by regulations made under section 4A;

"service" means regular service (whether part-time or full-time) as a CPIB officer;

"special investigator" means a special investigator of the Corrupt Practices Investigation Bureau.

25/81.

PART II

APPOINTMENT OF STAFF AND PERSONNEL MATTERS

Appointment of Director and officers.

3. —(1) The President may appoint an officer to be the Director of the Corrupt Practices Investigation Bureau.

Provided that the President acting in his discretion may refuse to appoint or revoke the appointment of the Director if he does not concur with the advice or recommendation of the Cabinet or a Minister acting under the general authority of the Cabinet.

(2) The President may appoint a Deputy Director of the Corrupt Practices Investigation Bureau and such number of assistant directors and special investigators of the Corrupt Practices Investigation Bureau as he may think fit.

(3) Any powers conferred on and duties to be performed by the Director under this Act may, subject to the orders and directions of the Director, be exercised or performed by the Deputy Director or an assistant director of the Corrupt Practices Investigation Bureau.

(4) The Deputy Director and an assistant director of the Corrupt Practices Investigation Bureau may exercise the powers conferred by this Act on a special investigator.

(5) The President may create such different grades for assistant directors and special investigators as he may think fit.

25/81
11/91.

Director and officers deemed to be public servants.

4. —(1) The Director, Deputy Director, assistant directors and special investigators of the Corrupt Practices Investigation Bureau shall be deemed to be public servants within the meaning of the Penal Code.

(2) A certificate of appointment signed by the Director shall be issued to every officer of the Corrupt Practices Investigation Bureau and shall be evidence of his appointment under this Act.

Cap. 224.
25/81.

Establishment of Occupational Superannuation Scheme

4A. —(1) The Minister shall, by regulations, establish an Occupational Superannuation Scheme for the benefit of all CPIB officers appointed on or after 1st November 2001, who will be the members of the Scheme.

(2) The regulations made under subsection (1) shall provide for the payment of —

(a) any gratuity, allowance, superannuation or other like benefit to members of the Scheme, or to their legal personal representatives or dependants, on the death of the members in the service or on the resignation, retirement or discharge of the members from the service;

(b) any pension, gratuity, allowance, compensation or other benefit in respect of the death of or injuries received by any member of the Scheme in and which are attributable to service; and

(c) any allowance, subsidy or other benefit to such former members of the Scheme as may be prescribed after their retirement from the service.

(3) The regulations made under subsection (1) may provide for —

(a) the payment of contributions in respect of each member;

(b) the age or ages at which a member may retire or be required to retire from the service;

(c) the appointment of award officers to assess, award and pay pensions, gratuities and allowances and other like benefits under the Scheme and to otherwise administer the Scheme; and

(d) the bringing of appeals against decisions of award officers and the appointment of one or more persons to hear such appeals and review the decisions of award officers.

(4) In making regulations under subsection (1), the Minister shall also provide for —

(a) every CPIB officer who is appointed before 1st November 2001 and who, immediately before that date, is eligible (whether on retirement or in respect of death or injury in or attributable to service) for any pension, gratuity or other allowance under the Pensions Act (Cap. 225); and

(b) every CPIB officer who is appointed before 1st November 2001 to the service on a contract for a term and who, immediately before that date, is eligible for any gratuity or other like benefit under the contract, an option to join the Scheme as a member and for the terms and conditions of such an option.

(5) The regulations made in relation to CPIB officers referred to in subsection (4) shall provide —

(a) in the case of an officer referred to in subsection (4) (a), that any such officer who opts to join the Scheme shall cease to be eligible to benefits under the Pensions Act but shall remain eligible under the Scheme to benefits not less in value than the amount of any pension, gratuity or other allowance for which he would have been granted under the Pensions Act if he retired from the service, or was injured or died in service, on the date immediately before his joining the Scheme; and

(b) in the case of an officer referred to in subsection (4) (b), that any such officer who opts to join the Scheme shall remain eligible to benefits not less in value than the amount of any gratuity or other like benefit for which he would have been granted under his contract if he had completed his term of service under the contract on the date immediately before his joining the Scheme.

(6) Any option exercised by any CPIB officer before 1st November 2001 to join or not to join the Scheme shall be deemed to be exercised in accordance with the regulations made under subsection (1) in relation to CPIB officers referred to in subsection (4).

Benefits not as of right, etc.

4B. —(1) No member shall have an absolute right to compensation for past services or to any pension, gratuity, allowance or other benefit under the Scheme.

(2) Nothing in this Act shall limit the right of the Public Service Commission, or any of its delegates, to

dismiss any CPIB officer who is a member from the service without compensation.

(3) Subject to Article 113 of the Constitution, where it is established to the satisfaction of an award officer that a member has been guilty of negligence, irregularity or misconduct, it shall be lawful for the award officer to reduce or altogether withhold the pension, gratuity, allowance or other benefit for which the member would but for this section have become eligible under the Scheme.

Non-assignability or attachment of benefits, etc.

4C. —(1) No payments, allowance or other benefit payable under the Scheme (whether on death, retirement or resignation of a member or otherwise), and no contribution by the Government made under the Scheme, and no interest thereon shall be assignable or transferable, or liable to be garnished, attached, sequestered or levied upon for or in respect of any debt or claim, other than —

(a) a debt due to the Government; or

(b) an order of court for the payment of periodical sums of money towards the maintenance of the wife or former wife or minor child (whether legitimate or not) of the member to whom the payment, allowance or other benefit has been granted.

(2) Subject to the provisions of any regulations made under section 4A, all moneys paid or payable under the Scheme on the death of a member thereof —

(a) shall be deemed to be subject to a trust in favour of the persons entitled thereto under the will or intestacy of such deceased member;

(b) shall not be deemed to form part of his estate or be subject to the payment of his debts; and

(c) shall be deemed to be property passing on his death for the purposes of the Estate Duty Act (Cap. 96).

Recovery of benefits granted in ignorance of disqualifying facts

4D. It shall be a condition of the grant of every pension, gratuity, allowance or other benefit under the Scheme that the Government may recover, cancel or reduce the grant if it is shown to have been obtained by the wilful suppression of material facts or to have been granted in ignorance of facts which, had they been known before the retirement or resignation of the member, would have justified his dismissal or a reduction of his salary.

Effect of bankruptcy and conviction on Scheme benefits

4E. —(1) No contribution by the Government made under the Scheme and no interest thereon shall be subject to the debts of any member thereof, nor shall such contributions and interest pass to the Official Assignee on the bankruptcy of the member.

(2) If a member is adjudicated a bankrupt or is declared insolvent by a court of law, such contributions and interest shall be deemed to be excluded from the property of the bankrupt for the purposes of the Bankruptcy Act (Cap. 20).

(3) If, at the date of his retirement or resignation from the service, any member has been adjudged a bankrupt by judgment of a court of competent jurisdiction, whether in Singapore or elsewhere, and he has not obtained his discharge from such adjudication or declaration, it shall be lawful for an award officer to refuse to grant any pension, gratuity or other allowance which would, if not for this subsection, be granted.

(4) If any person to whom a pension or other allowance has been granted under this Act —

(a) is adjudicated a bankrupt by judgment of a court of competent jurisdiction, whether in Singapore or elsewhere; or

(b) is sentenced to death or penal servitude or any term of imprisonment, by any court of competent jurisdiction, whether in Singapore or elsewhere, for any crime or offence,

the Minister may direct that such pension or allowance shall forthwith cease, and thereupon such pension or allowance shall cease accordingly.

(5) Where, by reason of bankruptcy of a member or former member, a pension, gratuity or allowance is not granted or where a pension or allowance ceases by virtue of a direction under subsection (4)

(a), it shall be lawful for the Minister to cause all or any part of the moneys to which such person would have been entitled by way of pension, gratuity or allowance, had he not become a bankrupt or

sentenced for any crime or offence, as the case may be, to be paid to, or applied for the maintenance and personal support or benefit of, all or any (to the exclusion of the others) of the following persons in such proportions and manner as the Minister thinks proper:

- (a) the member or former member himself; and
- (b) his spouse, child or children.

(6) The Minister may exercise his power under subsection (5), from time to time, during the remainder of the member's or former member's life, or during such shorter period or periods, either continuous or discontinuous, as the Minister thinks fit.

(7) When a person to whom a pension or allowance has not been granted or whose pension or allowance has ceased under this section obtains a full and proper discharge from his bankruptcy, his pension or allowance shall be restored to him with effect from the date of such discharge.

(8) For the purposes of subsection (5), moneys applied for the discharge of the debts of the member or former member, as the case may be, shall be regarded as applied for his benefit.

(9) Notwithstanding subsection (4), any pension or allowance that has ceased by virtue of a direction under subsection (4) (b) shall be restored with retrospective effect in the case of a person who, after conviction, at any time receives a free pardon.

(10) Where a pension or allowance ceases by virtue of a direction under subsection (4) (b), it shall be lawful for the Minister to cause all or any part of moneys to which the person would have been entitled by way of pension or allowance to be paid to or applied for the benefit of his spouse, child or children, or after the expiration of his sentence, also for the benefit of himself, in the same manner precisely and subject to the same qualifications and restrictions as in the case of bankruptcy provided in subsection (5).

Scheme to be met out of INVEST Fund

4F. —(1) There shall be paid into the INVEST Fund —

(a) such sums appropriated from the Consolidated Fund and authorised to be paid into the INVEST Fund by or under any written law to enable that Fund to meet its liabilities under this Act; and

(b) such sum from the Pension Fund established by the Pension Fund Act (Cap. 224A) as the Minister for Finance may determine as the value of that part of the Pension Fund relating to all those CPIB officers referred to in section 4A (4) (a) who exercise an option in favour of joining the Scheme in accordance with the regulations under section 4A.

(2) The INVEST Fund comprising moneys referred to in subsection (1) shall be applied to meet the following purposes only:

(a) the payment of any pension, gratuity, allowance, compensation or other like benefit granted under the Scheme; and

(b) such other expenses relating to the granting of any pension, gratuity, allowance, compensation or other like benefit under the Scheme and expressly provided by regulations made under this Act to be met from the INVEST Fund.

(3) The moneys referred to in subsection (1) shall be paid into the INVEST Fund as capital money, and shall not be used to make payment of any dividend under the Scheme.

PART III

OFFENCES AND PENALTIES

Punishment for corruption.

5. Any person who shall by himself or by or in conjunction with any other person —

(a) corruptly solicit or receive, or agree to receive for himself, or for any other person; or

(b) corruptly give, promise or offer to any person whether for the benefit of that person or of another person,

any gratification as an inducement to or reward for, or otherwise on account of —

- (i) any person doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed; or
- (ii) any member, officer or servant of a public body doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which such public body is concerned, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 5 years or to both.

29/89.

Punishment for corrupt transactions with agents.

6. If —

- (a) any agent corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business;
- (b) any person corruptly gives or agrees to give or offers any gratification to any agent as an inducement or reward for doing or forbearing to do, or for having done or forborne to do any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or
- (c) any person knowingly gives to an agent, or if an agent knowingly uses with intent to deceive his principal, any receipt, account or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 5 years or to both.

29/89.

Increase of maximum penalty in certain cases.

7. A person convicted of an offence under section 5 or 6 shall, where the matter or transaction in relation to which the offence was committed was a contract or a proposal for a contract with the Government or any department thereof or with any public body or a subcontract to execute any work comprised in such a contract, be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 7 years or to both.

29/89.

Presumption of corruption in certain cases.

8. Where in any proceedings against a person for an offence under section 5 or 6, it is proved that any gratification has been paid or given to or received by a person in the employment of the Government or any department thereof or of a public body by or from a person or agent of a person who has or seeks to have any dealing with the Government or any department thereof or any public body, that gratification shall be deemed to have been paid or given and received corruptly as an inducement or reward as hereinbefore mentioned unless the contrary is proved.

Acceptor of gratification to be guilty notwithstanding that purpose not carried out, etc.

9. —(1) Where in any proceedings against any agent for any offence under section 6 (a), it is proved that he corruptly accepted, obtained or agreed to accept or attempted to obtain any gratification, having reason to believe or suspect that the gratification was offered as an inducement or reward for his doing of forbearing to do any act or for showing or forbearing to show any favour or disfavour to any person in relation to his principal's affairs or business, he shall be guilty of an offence under that section notwithstanding that he did not have the power, right or opportunity to do so, show or forbear or that he accepted the gratification without intending to do so, show or forbear or that he did not in fact do so, show or forbear or that the act, favour or disfavour was not in relation to his principal's affairs or business.
- (2) Where, in any proceedings against any person for any offence under section 6 (b), it is proved that he corruptly gave, agreed to give or offered any gratification to any agent as an inducement or reward for

doing or forbearing to do any act or for showing or forbearing to show any favour or disfavour to any person having reason to believe or suspect that the agent had the power, right or opportunity to do so, show or forbear and that the act, favour or disfavour was in relation to his principal's affairs or business, he shall be guilty of an offence under that section notwithstanding that the agent had no power, right or opportunity or that the act, favour or disfavour was not in relation to his principal's affairs or business.

Corruptly procuring withdrawal of tenders.

10. A person —

(a) who, with intent to obtain from the Government or any public body a contract for performing any work, providing any service, doing anything, or supplying any article, material or substance, offers any gratification to any person who has made a tender for the contract, as an inducement or a reward for his withdrawing that tender; or

(b) who solicits or accepts any gratification as an inducement or a reward for his withdrawing a tender made by him for that contract,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 7 years or to both.

29/89.

Bribery of Member of Parliament.

11. Any person —

(a) who offers any gratification to a Member of Parliament as an inducement or reward for such Member's doing or forbearing to do any act in his capacity as such Member; or

(b) who being a Member of Parliament solicits or accepts any gratification as an inducement or a reward for his doing or forbearing to do any act in his capacity as such Member,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 7 years or to both.

29/89.

Bribery of member of public body.

12. A person —

(a) who offers any gratification to any member of a public body as an inducement or reward for —

(i) the member's voting or abstaining from voting at any meeting of the public body in favour of or against any measure, resolution or question submitted to that public body;

(ii) the member's performing, or abstaining from performing, or his aid in procuring, expediting, delaying, hindering or preventing the performance of, any official act; or

(iii) the member's aid in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person; or

(b) who, being a member of a public body, solicits or accepts any gratification as an inducement or a reward for any such act, or any such abstaining, as is referred to in paragraph (a) (i), (ii) and (iii),

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 7 years or to both.

29/89.

When penalty to be imposed in addition to other punishment.

13. —(1) Where a court convicts any person of an offence committed by the acceptance of any gratification in contravention of any provision of this Act, then, if that gratification is a sum of money or if the value of that gratification can be assessed, the court shall, in addition to imposing on that person any other punishment, order him to pay as a penalty, within such time as may be specified in the order, a sum which is equal to the amount of that gratification or is, in the opinion of the court, the value of that gratification, and any such penalty shall be recoverable as a fine.

(2) Where a person charged with two or more offences for the acceptance of gratification in contravention of this Act is convicted of one or some of those offences, and the other outstanding offences are taken into consideration by the court under section 178 of the Criminal Procedure Code for the purpose of passing sentence, the court may increase the penalty mentioned in subsection (1) by an amount not exceeding the total amount or value of the gratification specified in the charges for the offences so taken

into consideration.

Cap. 68.
25/81.

Principal may recover amount of secret gift.

14. —(1) Where any gratification has, in contravention of this Act, been given by any person to an agent, the principal may recover as a civil debt the amount or the money value thereof either from the agent or from the person who gave the gratification to the agent, and no conviction or acquittal of the defendant in respect of an offence under this Act shall operate as a bar to proceedings for the recovery of that amount or money value.

(2) Nothing in this section shall be deemed to prejudice or affect any right which any principal may have under any written law or rule of law to recover from his agent any money or property.

PART IV

POWERS OF ARREST AND INVESTIGATION

Powers of arrest.

15. —(1) The Director or any special investigator may without a warrant arrest any person who has been concerned in any offence under this Act or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been so concerned.

(2) The Director or a special investigator arresting a person under subsection (1) may search such person and take possession of all articles found upon him which there is reason to believe were the fruits or other evidence of the crime, provided that no female shall be searched except by a female.

(3) Every person so arrested shall be taken to the Corrupt Practices Investigation Bureau or to a police station.

27/72.
25/81.

Provisions as to bail or bond.

16. —(1) A person who has been arrested by the Director or any special investigator may be released on bail or on his own bond granted by the Director or any special investigator or any police officer.

(2) The provisions of Chapters XXXV and XXXVI of the Criminal Procedure Code shall apply to any bail or bond granted under this section; and for this purpose —

Cap. 68.

(a) any reference to “officer”, “police officer” or “police officer not below the rank of sergeant” shall be read to include the Director or any special investigator;

(b) the reference to the Commissioner of Police in section 351 of the Criminal Procedure Code shall be read to include the Director.

[15A
29/89.

Powers of investigation.

17. —(1) In any case relating to the commission —

(a) of an offence under section 165 or under sections 213 to 215 of the Penal Code, or of any conspiracy to commit, or of any attempt to commit, or of any abetment of such an offence;

(b) of an offence under this Act; or

(c) of any seizable offence under any written law which may be disclosed in the course of an investigation under this Act,

the Director or a special investigator may, without the order of the Public Prosecutor, exercise all or any of the powers in relation to police investigations into any offence given by the Criminal Procedure Code:

Cap. 68.

Provided that an investigation into an offence under the Penal Code shall be deemed to be a police

investigation to which section 122 of the Criminal Procedure Code shall apply in the same manner and to the same extent as if the Director or the special investigator concerned were a police officer.

Cap. 224.

(2) For the purposes of sections 58 (1) and 122 (5) of the Criminal Procedure Code, the Director or a special investigator shall be deemed to be an officer not below the rank of inspector of police.

[16

27/72;25/81; 29/89.

Cap. 224.

Special powers of investigation.

18. —(1) Notwithstanding anything in any other law, the Public Prosecutor, if satisfied that there are reasonable grounds for suspecting that an offence under this Act has been committed, may, by order, authorise the Director or any police of or above the rank of assistant superintendent named in such order or a special investigator so named to make an investigation in the matter in such manner or mode as may be specified in that order. The order may authorise the investigation of any bank account, share account, purchase account, expense account or any other account, or any safe deposit box in any bank, and shall be sufficient authority for the disclosure or production by any person of all or any information or accounts or documents or articles as may be required by the officer so authorised.

(2) Any person who fails to disclose such information or to produce such accounts or documents or articles to the person so authorised shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding one year or to both.

[17

27/72;25/81.

Powers of investigation authorised by Public Prosecutor.

19. The Public Prosecutor may by order authorise the Director or a special investigator to exercise, in the case of any offence under any written law, all or any of the powers in relation to police investigations given by the Criminal Procedure Code.

29/89.

[18

Public Prosecutor's power to order inspection of bankers' books.

20. —(1) The Public Prosecutor may, if he considers that any evidence of the commission of an offence under this Act or under sections 161 to 165 or 213 to 215 of the Penal Code or of a conspiracy to commit, or an attempt to commit, or an abetment of any such offence by a person in the service of the Government or of any department thereof or of a public body is likely to be found in any banker's book relating to that person, his wife or child or to a person reasonably believed by the Public Prosecutor to be a trustee or agent for that person, by order authorise the Director or any special investigator named in the order or any police officer of or above the rank of assistant superintendent so named to inspect any book and the Director, special investigator or police officer so authorised may, at all reasonable times, enter the bank specified in the order and inspect the books kept therein and may take copies of any relevant entry in any such book.

(2) For the purpose of this section —

"bank" means any company carrying on the business of bankers in Singapore incorporated or licensed under any written law;

"banker's book" includes any ledger, day book, cash book, account book or other book or document used in the ordinary course of the business of a bank.

[19

27/72

25/81.

Public Prosecutor's powers to obtain information.

21. —(1) In the course of any investigation or proceedings into or relating to an offence by any person in the service of the Government or of any department thereof or of any public body under this Act or under sections 161 to 165 or 213 to 215 of the Penal Code or a conspiracy to commit, or an attempt to commit, or an abetment of any such offence, the Public Prosecutor may, notwithstanding anything in any other

written law to the contrary, by written notice —

Cap. 224.
29/89

(a) require that person to furnish a sworn statement in writing enumerating all movable or immovable property belonging to or possessed by that person and by the spouse, sons and daughters of that person, and specifying the date on which each of the properties enumerated was acquired whether by way of purchase, gift, bequest, inheritance or otherwise;

(b) require that person to furnish a sworn statement in writing of any money or other property sent out of Singapore by him, his spouse, sons and daughters during such period as may be specified in the notice;

(c) require any other person to furnish a sworn statement in writing enumerating all movable or immovable property belonging to or possessed by that person where the Public Prosecutor has reasonable grounds to believe that the information can assist the investigation;

(d) require the Comptroller of Income Tax to furnish, as specified in the notice, all information available to the Comptroller relating to the affairs of that person or of the spouse or a son or daughter of that person, and to produce or furnish, as specified in the notice, any document or a certified copy of any document relating to that person, spouse, son or daughter which is in the possession or under the control of the Comptroller;

(e) require the person in charge of any department, office or establishment of the Government, or the president, chairman, manager or chief executive officer of any public body to produce or furnish, as specified in the notice, any document or a certified copy of any document which is in his possession or under his control;

(f) require the manager of any bank to give copies of the accounts of that person or of the spouse or a son or daughter of that person at the bank.

(2) Every person to whom a notice is sent by the Public Prosecutor under subsection (1) shall, notwithstanding the provisions of any written law or any oath of secrecy to the contrary, comply with the terms of that notice within such time as may be specified therein and any person who wilfully neglects or fails so to comply shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding one year or to both.

[20

Powers of search and seizure.

22. —(1) Whenever it appears to any Magistrate or to the Director upon information and after such inquiry as he thinks necessary that there is reasonable cause to believe that in any place there is any document containing any evidence of, or any article or property relating to —

(a) the commission of an offence under this Act, or under sections 161 to 165, or 213 to 215, of the Penal Code; or

(b) a conspiracy to commit, or any attempt to commit, or an abetment of any such offence, the Magistrate or the Director may, by warrant directed to any special investigator or police officer not below the rank of inspector empower the special investigator or police officer to enter that place by force if necessary and to search, seize and detain any such document, article or property.

(2) Whenever it appears to any special investigator or any police officer not below the rank of inspector that there is reasonable cause to believe that in any place there is concealed or deposited any document containing any evidence of, or any article or property relating to —

(a) the commission of an offence under this Act, or under sections 161 to 165, or 213 to 215, of the Penal Code; or

Cap. 224.

(b) a conspiracy to commit, or an attempt to commit, or an abetment of any such offence, and the special investigator or police officer has reasonable grounds for believing that by reason of the delay in obtaining a search warrant the object of the search is likely to be frustrated, he may exercise in and in respect of that place all the powers mentioned in subsection (1) in as full and ample a manner as if he were empowered to do so by warrant issued under that subsection.

[21
25/81.

PART V
EVIDENCE

Evidence of custom inadmissible.

23. In any civil or criminal proceeding under this Act evidence shall not be admissible to show that any such gratification as is mentioned in this Act is customary in any profession, trade, vocation or calling.

[22

Evidence of pecuniary resources or property.

24. —(1) In any trial or inquiry by a court into an offence under this Act or under sections 161 to 165 or 213 to 215 of the Penal Code or into a conspiracy to commit, or attempt to commit, or an abetment of any such offence the fact that an accused person is in possession, for which he cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income, or that he had, at or about the time of the alleged offence, obtained an accretion to his pecuniary resources or property for which he cannot satisfactorily account, may be proved and may be taken into consideration by the court as corroborating the testimony of any witness in the trial or inquiry that the accused person accepted or obtained or agreed to accept or attempted to obtain any gratification and as showing that the gratification was accepted or obtained or agreed to be accepted or attempted to be obtained corruptly as an inducement or reward.

(2) An accused person shall, for the purposes of subsection (1), be deemed to be in possession of resources or property or to have obtained an accretion thereto where those resources or property are held or the accretion is obtained by any other person whom, having regard to his relationship to the accused person or to any other circumstances, there is reason to believe to be holding those resources or property or to have obtained the accretion in trust for or on behalf of the accused person or as a gift from the accused person.

[23

Evidence of accomplice.

25. Notwithstanding any rule of law or written law to the contrary, no witness shall, in any such trial or inquiry as is referred to in section 24, be presumed to be unworthy of credit by reason only of any payment or delivery by him or on his behalf of any gratification to an agent or member of a public body.

[24

PART VI
MISCELLANEOUS

Obstruction of search.

26. Any person who —

- (a) refuses the Director or any officer authorised to enter or search, access to any place;
- (b) assaults, obstructs, hinders or delays him in effecting any entrance which he is entitled to effect under this Act, or in the execution of any duty imposed or power conferred by this Act;
- (c) fails to comply with any lawful demands of the Director or any officer in the execution of his duty under this Act; or
- (d) refuses or neglects to give any information which may reasonably be required of him and which he has it in his power to give,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding one year or to both.

[25

25/81; 29/89

Legal obligation to give information.

27. Every person required by the Director or any officer to give any information on any subject which it is the duty of the Director or that officer to inquire into under this Act and which it is in his power to give, shall be legally bound to give that information.

25/81.

[26

False statements, information, etc.

28. Any person who knowingly —

(a) gives or causes to be given any false or misleading information relating to the commission of any offence under this Act or under section 165, 213, 214, or 215 of the Penal Code;

Cap. 224.

(b) gives or causes to be given to the Director or a special investigator any other false or misleading information,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding one year or to both.

[26A

29/89.

Abetment of offences.

29. Whoever abets, within the meaning of the Penal Code —

(a) the commission of an offence under this Act; or

(b) the commission outside Singapore of any act, in relation to the affairs or business or on behalf of a principal residing in Singapore, which if committed in Singapore would be an offence under this Act, shall be deemed to have committed the offence and shall be liable on conviction to be punished with the punishment provided for that offence.

[27

Attempts.

30. Whoever attempts to commit an offence punishable under this Act shall be deemed to have committed the offence and shall be liable on conviction to be punished with the punishment provided for that offence.

[28

Conspiracy.

31. Whoever is a party to a criminal conspiracy, within the meaning of the Penal Code, to commit an offence under this Act shall be deemed to have committed the offence and shall be liable on conviction to be punished with the punishment provided for that offence.

[29

Cap. 224.

Offences to be seizable.

32. —(1) Every offence under this Act shall be deemed to be a seizable offence for the purposes of the Criminal Procedure Code.

(2) A public officer to whom any gratification is corruptly given or offered shall arrest the person who gives or offers the gratification to him and make over the person so arrested to the nearest police station and if he fails to do so without reasonable excuse he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 6 months or to both.

[30

Cap. 68.

29/89.

Prosecutions to be instituted with consent of Public Prosecutor.

33. A prosecution under this Act shall not be instituted except by or with the consent of the Public Prosecutor.

[31

District Court to have jurisdiction to try offences under this Act.

34. Notwithstanding the provisions of any written law to the contrary, a District Court shall have jurisdiction to try any offence under this Act and to award the full punishment for that offence.

[32]

Examination of offenders.

35. —(1) Whenever two or more persons are charged with any offence under this Act or under sections 161 to 165 or 213 to 215 of the Penal Code or with a conspiracy to commit, or an attempt to commit, or an abetment of any such offence, the court may require one or more of them to give evidence as a witness or witnesses for the prosecution.

(2) Any such person who refuses to be sworn or to answer any lawful question shall be dealt with in the same manner as witnesses so refusing may by law be dealt with by a Magistrate's Court or District Court, as the case may be.

(3) Every person so required to give evidence, who in the opinion of the court makes true and full discovery of all things as to which he is lawfully examined, shall be entitled to receive a certificate of indemnity under the hand of the Magistrate or Judge, as the case may be, stating that he has made a true and full discovery of all things as to which he was examined, and that certificate shall be a bar to all legal proceedings against him in respect of all those things.

[33]

Protection of informers.

36. —(1) Except as hereinafter provided, no complaints as to an offence under this Act shall be admitted in evidence in any civil or criminal proceeding whatsoever, and no witness shall be obliged or permitted to disclose the name or address of any informer, or state any matter which might lead to his discovery.

(2) If any books, documents or papers which are in evidence or liable to inspection in any civil or criminal proceeding whatsoever contain any entry in which any informer is named or described or which might lead to his discovery, the court before which the proceeding is had shall cause all such passages to be concealed from view or to be obliterated so far as is necessary to protect the informer from discovery, but no further.

(3) If on a trial for any offence under this Act the court, after full inquiry into the case, is of the opinion that the informer wilfully made in his complaint a material statement which he knew or believed to be false or did not believe to be true, or if in any other proceeding the court is of the opinion that justice cannot be fully done between the parties thereto without the discovery of the informer, the court may require the production of the original complaint, if in writing, and permit inquiry and require full disclosure concerning the informer.

[34]

Liability of citizens of Singapore for offences committed outside Singapore.

37. —(1) The provisions of this Act have effect, in relation to citizens of Singapore, outside as well as within Singapore; and where an offence under this Act is committed by a citizen of Singapore in any place outside Singapore, he may be dealt with in respect of that offence as if it had been committed within Singapore.

(2) Any proceedings against any person under this section which would be a bar to subsequent proceedings against that person for the same offence, if the offence had been committed in Singapore, shall be a bar to further proceedings against him, under any written law for the time being in force relating to the extradition of persons, in respect of the same offence outside Singapore.

[35]

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ANNEX B

THE PREVENTION OF CORRUPTION ACT

Strengthening the Legislative Framework

In 1960, Singapore passed the Prevention of Corruption Act (“the PCA”), acknowledging that we needed to overhaul our laws on corruption. Even till today, this piece of legislation has been the prime mover behind Singapore’s zero-tolerance policy in respect of corrupt practices. In establishing this legal framework, Singapore decided not to take a ‘wait-and-see approach’ to deal with corruption. The PCA was drafted as a comprehensive piece of legislation that was aimed at the jugular of corruption. The legislation was aimed at weeding out opportunities for corrupt practices, and introduced serious consequences if one was found guilty of corrupt conduct. Some of the more pertinent aspects of the PCA are highlighted below:

- a) Gratification is widely and non-exhaustively defined. The PCA addresses both the giver and taker of bribes, imposing liability on both parties. The provisions are also wide enough to embrace situations of agreeing or attempting to give or receive a gratification. The PCA extends to all persons, including corporations, where the offence is committed in Singapore.
- b) There is a presumption of corruption in cases where government employees are involved. So long as the prosecution can prove that the government employee received the gratification from a person with whom he has had dealings, the corrupt intent to make out the offence will be presumed. Section 8 of the PCA provides that where it is proved that any gratification has been paid or given to or received by a person in the employment of the Government or any department thereof or of a public body by or from a person or agent of a person who has or seeks to have any dealing with the Government or any department thereof or any public body, that gratification shall be deemed to have been paid or given and received corruptly as an inducement or reward as hereinbefore mentioned unless the contrary is proved.
- c) The acceptor of gratification can be guilty notwithstanding that the purpose for which the gratification was made was not carried out.
- d) In sentencing a person convicted of corruption, the court can impose a penalty equal to the amount or value of the bribe, in addition to any other punishment. This allows for disgorgement of benefits of the crime by the receiver of the bribe. Under s 4 of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act, the court can make a confiscation order, where an application is made by the Public Prosecutor in relation to an offender who is charged with one or more corruption offences. Such orders may be made where a defendant has been convicted of an offence under the PCA or under sections 161 to 165 of the Penal Code or any conspiracy to commit, any attempt to commit or any abetment of such offences.
- e) A principal may recover the amount of the bribe from the giver or receiver by way of a civil suit and a criminal conviction is no bar for such a recovery.
- f) Offences under the PCA are seizable, ie there is no need to obtain warrants of arrests from the Court before effecting arrests.
- g) The identity of informers is protected. Any information that might lead to the disclosure of the informer’s identity is prohibited under the PCA.
- h) Singapore citizens are liable for offences under the PCA committed outside Singapore.

i) Heavy penalties are imposed to act as deterrence. Offences under the PCA carry fines of up to S\$100 000 and imprisonment of up to 5 years (or 7 years in cases involving government contracts). This is on top of the imposition of penalties equal to the value of the bribe. Additionally, under the Corruption Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act, Chapter 65A, provides the court with powers to confiscate assets which a person convicted of a corruption offence cannot satisfactorily account for.

j) An abetment or attempt to commit an offence under the PCA is deemed to be committing the offence and renders the guilty party liable to the same penalties on conviction.

ANNEX C

THE CORRUPT PRACTICES INVESTIGATION BUREAU

Independence and Professionalism in Investigations

Prior to 1952, all corruption cases were investigated by a unit in the Singapore Police Force known as the Anti-Corruption Branch. In 1952, CPIB was set up as an independent organization. In its early days, the CPIB faced problems of inadequate anti-corruption laws, thus hindering the gathering of evidence. With internal self-government, Singapore embarked on firm action against corrupt officials, dismissing many from the service. Public confidence in the CPIB grew with the realization that the government was sincere in its anti-corruption drive.

Over the years, the Prevention of Corruption Act underwent extensive revision to enhance the investigative powers of CPIB officers. Organizationally, the CPIB was revamped with the creation of Staff Officers' posts, the development of in-house training capabilities and the introduction of polygraph testing as an investigative tool.

The CPIB has come a very long way since its inception, achieving the following milestones:

- 1997 - ISO9000 certification for investigation procedures
- 1998 - the Singapore Quality Class (SQC)
- 1999 - the People Developer Standard
- 2003 - the People Excellence Award
- 2004- the Singapore Innovation Class and Singapore Service Class awards
- July 2004 - it formed its own Computer Forensic Unit to perform forensics examinations of computer-related evidence.

These benchmarks have been critical in achieving organizational excellence. The continual investment in and development of its people and processes has allowed the CPIB to keep abreast of crime trends and explore the use of technology in investigations. Today, the CPIB is committed to forging networks and partnerships, internationally and domestically, to enhance its capabilities.

DOMESTIC MEASURES AND INTERNATIONAL CO-OPERATION FOR EFFECTIVE INVESTIGATION AND PROSECUTION OF CORRUPTION IN THAILAND

*Sirisak Tiyapan**

I. INTRODUCTION

Thailand has for long been aware of the far-reaching and adverse effect of corruption towards the stability and security of national socio-economic settings and incessantly made every effort to seek for the most vital countermeasures to enable concerned authorities to attain more effective suppression of corruption. Strengthening of domestic and international cooperation for effective investigation and prosecution of corruption is a crucial strategic plan under the national scheme of criminal justice.

II. INVESTIGATION AND PROSECUTION OF CORRUPTION AS ORDINARY OFFENCE

Traditionally, corruption is viewed as an offence where a public official abuse his or her function to gain undue personal benefit. The Thai Penal Code has, by many provisions, categorized various undue conducts of public officials with dishonest intention to seek or gain undue benefit as the offence punishable by criminal penalty ranging from one year to lifetime imprisonment or even execution if such corruption causes serious damages. Apart from Section 157 which is a fundamental provisions applicable to all state officials in general for misconducts as to unduly perform or not perform his or her function in order to dishonestly gain undeserved advantages or to cause injury to any person, certain provisions relating to malpractice of justice officials which include judges, public prosecutors, and inquiry officials have been exclusively stipulated so as to impose the more severe penalty for corruption related to the performance of justice function. For example, Section 201 of the Thai Penal Code provides that “Whoever, being an official in a judicial post, a public prosecutor, an official conducting cases or an inquiry official, wrongfully demands, accepts or agrees to accept a property or any other benefit for himself or the other person in order to exercise or not to exercise any of his functions, whether such exercise or non-exercise is wrongful to his duty or not, shall be punished with imprisonment of five to twenty years or imprisonment for life, and fine of thousand to forty thousand baht, or death”

Like that of other offences under the Thai Penal Code, proceeding of the said conventional corruption is relied upon the Criminal Procedure Code whereby the case is initiated by the investigation conducted by the police and then prosecuted in the court by the public prosecutor and adjudicated by the Criminal Court as an ordinary crime.

Although the measure under the Criminal Procedure Code as such have worked out quite well in the deterrence of corruption committed by government officials in many cases, in particular when the idea to cut down the incentive for commission of corruption by confiscation of illegally gained assets of the corrupt officials under the framework of the Anti-Money Laundering Act of 1999 has been brought in to

* Director General of International Affairs Department, Office of the Attorney General, Thailand.

enhance the efficiency of the procedure to suppress corruption, it still has some weakness. Unlike that of certain countries such as Japan, Korea, and U.S.A. whereby investigation and prosecution of corruption cases seems to be more successful because their justice officials have been more strongly supported by the public, in particular the prosecutors are usually overwhelmingly encouraged to prosecute any corrupt politician or public official without any restriction even the accused is the Prime Minister of Korea, Japan, or the President of the United States of America, investigation and prosecution in Thailand is less effective or even totally useless when dealing with sophisticated corruption committed by politicians or high ranking public officials.

According to the record, there was only one successful case regarding the corruption committed by the Minister of Agriculture around 30-40 years ago, and no report of politicians or high ranking public officials ever convicted again until after the entering into force of the new approach against corruption in 1999. The reason for the non-existent of such report was not because no politician or high-ranking public official committed corruption during that period, but because the then existing laws and measures, in particular the process of investigation and prosecution could not cope with the sophisticated corruption and shrewd politicians or high-ranking officials who, having learnt the lesson from the first case, developed themselves for the even more complex tactic to commit the crime which was more difficult to detect and prosecute.

It is not too difficult to imagine difficulty of the normal investigating police when he has to deal with the politicians or high ranking public officials suspects who are usually in a very much higher position or powerful than him. Although this may not totally be the case since, in principle, the case can be supervised by the higher-rank police authorities, but as experiences usually show us it is more vulnerable to the failure than success whenever investigation and further proceeding is made against the politicians or high-ranking officials. Another problem related to the investigation is the less or totally lack of public confidence in the police investigators, which is sometime not because of the question of their integrity but instead their tendency to compromise with the politicians. Cooperation from other governmental and private agencies having control over information, records, or indication of corruption is also problematic to the investigation because personnel in the agencies usually reluctant to give information regarding the corruption or malpractice of their superior authorities to the police investigator for fear of bad result which might occur to them.

There are various problems at the prosecutorial stage, as well. According to the Criminal Procedure Code of Thailand which is applicable to all criminal offences in general, the investigation and prosecution is dramatically separated process. Investigation is totally responsible and conducted by the inquiry officials who are mostly the police while the public prosecutor is excluded to step in until the filing of investigation is finished under the sole discretion of the police investigator and submitted to the prosecutor for review and issue prosecution or non-prosecution order. The prosecutor is generally bound by the facts and evidences as appeared in the case file. Although the prosecutor may instruct the investigator to conduct additional investigation should he is not satisfied with the sufficiency of the evidence or the completeness of the file, but this can be carried out only under certain restrictions. Not only the question of the quality and trustworthy of the work done by the police who is often criticized by the public as being tarnished by political influence, thus, having tendency to assist the politician offender rather than really need to resist him, but the practical process whereby the prosecutor has no part in the investigation is also the question that renders difficulty to the prosecutor who has direct responsibility to prove the guilt of the accused in the court upon the reliable facts but is excluded from the process of truth finding from the outset.

III. COUNTERMEASURES AGAINST CORRUPTION COMMITTED BY HIGH-RANKING PUBLIC OFFICIALS OR POLITICIANS

Increasingly suffering from corruption committed by politicians and high-ranking public officials, Thailand began to realize that the anti-graft mechanism under the normal framework was no longer sufficient and effective enough to counter the more sophisticated forms of corruption committed by these influential and powerful offenders. Some specific countermeasures to react more effectively in dealing with corruption committed by politicians and high-ranking officials under the new framework have, therefore, been established in 1997.

Countermeasures under this new framework are specific in the sense that the authorities to handle the matters of corruption were set up with specific purpose to exclusively tracing, investigating, prosecuting and adjudicating corruption committed by politicians and high-ranking officials. The authorities enjoy some privileges under special immunity to guarantee their independence and free discretion in doing their jobs. The methodology used by them is also set up under special procedure.

Such package approach to deal exclusively with corruption committed by the politicians and high-ranking officials was set up firstly by the 1997 Constitution and passed down to the current Constitution of 2007. According to the principle set forth in the Constitution, which is confirmed and supplemented by the Counter Corruption Act of 1999 and the Act on Criminal Procedure for Persons Holding Political Position of 1999, various prominent measures to cut down incentive as well as to lessen opportunity for politician or high-ranking public official to commit corruption have been set up, namely: assets declaration, prohibition of conflict of interests, and professional ethic.

“Assets Declaration” is to impose obligation upon persons holding political position and high-ranking officials to declare all assets and debts belonging to them including those belong to their spouses and minor children through submission a detailed assets inventory to the National Counter Corruption or NCCC, which is an independent body set up by the 1997 Constitution, firstly within 30 days upon the commencement of their position and secondly within 30 days upon the cessation of position. As for the persons holding political position, one more final declaration within 30 days after one year of the cessation of position is required. Failure to declare the assets or purposely make a false declaration will lead to the removal of position and the deprivation of right to hold any political position for 5 years. The declaration of assets seems to be one of the effective tools because it enables the NCCC to access to the information which is once undisclosed under the principle of bank confidentiality, thus, could scrutinize, review, and cope with the change or movement of the assets of those persons more conveniently. Upon finding intensive increasing or decreasing of the assets with a reasonable belief to be irregular movement, the NCCC will conduct inquiry and has a resolution whether there are adequate grounds indicating that the suspect is “unusually wealthy”. If so, the President of the NCCC will transfer all evidence and enquiry reports to the Attorney General to initiate litigation in the Supreme Court’s Criminal Division for Persons Holding Political Position with a view to seeking a judicial judgment for assets confiscation and returning to the state.

The prohibition from engaging in conflict of interest is the measure applicable to all public authorities, which includes persons holding political position and high-ranking officials as well as their spouses. This means that those persons are not permitted to be a party, partner or share holder of any partnership or company which is the party to any contract with the government agency or to engage in any of government concession award, or to involve as a director, consultant, agency, personnel, or employee of any private firm, or in any manner, to have related interest where such persons are in charge of official functions to supervise, control, review or institute litigation concerning thereto. Furthermore, all public authorities are also prohibited from receiving property or benefit from any person beyond what is deserved by law, regulation, or permission of the NCCC.

Last but definitely not least, professional ethic obedience is the requirement set forth by the Constitution upon all public authorities including persons holding political position to strictly obey and behave themselves conforming to the Codes of Professional Ethics defined by the respective government agencies and concerned units. Failure to comply with this requirement will lead to the disciplinary sanction and removal from position.

Apart from being removed from position, prohibited from holding any political position for 5 years and subject to assets confiscation, any person holding political position or high-ranking state official who is alleged by the victim or found by the NCCC as being unusually wealthy, committing an offense relating to his or her duty, or dishonestly performing of function under the Penal Code or any other legislation will also face with criminal penalty. In this regard, the cases will be submitted to the Attorney General to institute criminal proceeding in the Supreme Court's Criminal Division for Persons Holding Political Position.

IV. INVESTIGATION AND PROSECUTION OF CORRUPTION COMMITTED BY POLITICIANS AND HIGH-RANKING OFFICIALS

Unlike the practice for conventional corruption whereby investigation is conducted solely by the police, investigation of corruption committed by politicians and high-ranking officials is designed to be the responsibility of National Counter Corruption Commission or NCCC in order to respond to weakness from the past. As a specific mechanism, NCCC is considered to be strong and powerful enough to resist political or other influence for the effective proceeding of corruption cases for at least two reasons. First, NCCC is an independent body comprises of one Chairman and other 8 members selected from the prominent integrity persons who also have other qualifications through a very strict selection process of the House of the Senate and approved by the King to maintain a one-term position for a period of nine years. Once assuming position, the Chairman and all other members of NCCC could not be removed except for the reason of malpractice. (The Counter Corruption Act of 1999, Article 6, 7, 8, 12, and 13.) This is to provide NCCC with a strong support and guarantee to carry out their function independently and honestly without any fear or concern to render a favor to anybody in order to receive assistance for re-selection. The second reason for NCCC's strongness is because it is authorized to designate the Investigative Sub-commission comprises of one member of NCCC and other investigative officers from various agencies including public prosecutor and private sector to conduct investigation in any case. (The Counter Corruption Act of 1999, Article 45.) This is to establish transparency and to obtain the most complete information and evidence, as well as to encourage cooperation among various government agencies and private sectors in fighting against corruption.

Investigation will be conducted in the following cases (The Counter Corruption Act of 1999, Article 45):

1. Removal from position of the persons holding political position and high-ranking officials;
2. Unusually wealthy;
3. Abuse of official function under Penal Code;
4. Malpractice or dishonesty under other laws;
5. Confiscation of assets.

After the completion of investigation and NCCC is of the view that the alleged person is guilty, the investigation file as well as supporting documents and evidences will be submitted to the Attorney General for institution of proceeding in the Supreme Court's Criminal Division for Persons Holding Political Position. However, if the Attorney General disagrees with the opinion of NCCC or of the view that the existing evidences are inadequate for prosecution, then the Attorney General shall inform NCCC to designate representatives of NCCC in equal number to the prosecutors designated by the Attorney

General to form up a working group to gather additional evidences and submitted to the Attorney General for prosecution. If the working group could not agree on the matter, then NCCC is authorized to employ private lawyer to prosecute the case themselves.

It is obvious that the prosecutor charged with the function in this regard is the Attorney General himself. This is to guarantee that the process will be carried out by the prosecutor who is more reliable than any other prosecutors in terms of professionalism and accountability, as well as to be more expeditious because the process is run directly by the supreme authority of the prosecutors. However, in practice the Attorney General is of course not absolutely prevented from assigning other prosecutors as the assistants to discharge his function which is normal practice by every organization, but he has to sign the indictment and be responsible the process himself.

V. INTERNATIONAL COOPERATION FOR MORE EFFECTIVE INVESTIGATION AND PROSECUTION OF CORRUPTION

Under the globalization world of today, corruption is no longer a problem of one single state alone or of any person individually but of international community as a whole. Like those many of other crime, offenders of corruption could also take advantages from the advance technology and communication to flee away from one country after committing corruption to another or many other countries in order to escape prosecution or conviction. They may conceal illicit proceeds of corruption in foreign countries, as well as to combine their corruption with other transnational crimes, or participate in the immense corruption of transnational corporations. Tracing of proceeds of corruption hiding abroad, as well as taking person's statement or gathering of evidences for the purpose of criminal case proceeding against the corrupt public officials is, therefore, extremely difficult without assistance from foreign authorities.

Since we could not rely only upon internal mechanisms and ignore the reality that jurisdiction of our authorities is ended at the border line, we need international vital coordination to force corruption to be retreated and under control. To this end, we must realize how significant international cooperation, which includes mutual assistance, and extradition, is if we need to deal more effectively with the fugitive of corruption cases who flees away to a foreign land or conceals his illicit enrichment in another country. Tracing and recovery of assets stolen from one country and hidden it somewhere in another country will not be carried out successfully if there existed no mutual assistance between concerned countries. In Thailand the Mutual Assistance in Criminal Matters Act of 1992 designated the Attorney General to be the Central Authority for rendering assistance upon requested by foreign countries. It works quite well; however, we need something more advance and effective for regional and international cooperation so we are now in the pipeline of amending the Act to accommodate more convenient measures for assistance that in line with the United Nations Convention against Corruption and the Treaty on Mutual Legal Assistance in Criminal Matters of ASEAN countries.

According to Section 4 of the Act on Mutual Assistance in Criminal Matters of 1992, "assistance" means assistance regarding investigation, inquiry, prosecution, forfeiture of property and other proceedings relating to criminal matters. Forms of assistance regarding investigation is clarified in Section 12 (1) of the Act that "The request for taking statement of persons, or providing documents, articles, and evidence out of Court, the request for serving document, the request for search, the request for seizure documents or articles, and the request for locating persons shall be transmitted to the Director General of the Police Department (the Police Commissioner)". It is also noticeable that Thailand can provide assistance to the foreign requesting state even the requesting state has no treaty with Thailand, provided that the requesting state commits to assist Thailand in return upon reciprocity principle.

As for the fleeing away to another country of the offenders committing corruption, Extradition

Act of 2008 and treaties concluded between Thailand and those countries will be the principle rule and guidance of the extradition process. The Attorney General is the Central Authority to accommodate the request for extradition from the foreign state as well as to request foreign state to extradite the fugitive of corruption cases back to stand trial or serve punishment in Thailand. In this regard, Thailand could extradite the fugitive found in Thailand back to the foreign requesting state even no extradition treaty existed between them, provided also that reciprocity is committed by the requesting state.

VI. CONCLUSION

With the measures and mechanisms as just mentioned, it is hopeful that prevention and suppression of corruption will meet more efficiency and success. However, domestic measures and international cooperation for the more effective investigation and prosecution of corruption should not be restricted or end up only at the cooperation among government authorities and private sectors in handling of the case, or merely concentrate on mutual assistance in corruption cases proceeding, or extradition process. Cooperation among the authorities of various countries and international organizations to strengthen up technical assistance and capacity building is equally or even more crucial in the long run. Therefore, the sharing of information, knowledge and experiences regarding the techniques to deal with corruption more efficiently and successfully, in particular with regard to the measures of assets tracing and recovery through the seminar, conference, or workshop, either at domestic or international level, is in fact a form of countermeasures and cooperation to set up common awareness and capacity building to combat corruption, as well.

PREVENTING AND COMBATING CORRUPTION IN VIETNAM

*Lai Thu Ha**

Ladies and Gentlemen,

Let me take a moment to thank everyone who has worked so hard to organize this event. In particular, I would like to express my deep gratitude to the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) and the Supreme Public Prosecutors Office of Japan for giving me a precious opportunity to participate in this important Forum.

Corruption is a negative social phenomenon affecting almost all nations in the world. It destroys seriously public resources, violates effective operations of State Bodies and also falsifies justice, undermines social fairness and public trust on the State and Law. In the context of globalization, corruption appears to be no boundary, thus, anti-corruption becomes a very important and urgent duty that requires coordinated efforts of the international community.

Similar to other countries, Vietnam has boosted up its policy to fight effectively against corruption. In this regard, Vietnam's legislation shows tremendous effort to fend off corruption. The Penal Code 1999 criminalizes corruption activities in a separate section (Section A- Chapter 21) with many strict sanctions. In 2005, Vietnam enacted the Act of Preventing and Combating Corruption (amended in 2007). This Act provides provisions of anti-corruption in terms of prevention, discovery and tackling corruption criminals, and also regulates responsibility of individuals and organizations in the field. Under this Act, the Steering Committees for Anti-Corruption have been established at national and provincial level, led by the Prime Minister and the Chairman of People's Committee respectively. In addition, the Specializing Bodies for Anti-Corruption are established in State Bodies such as Governmental Inspection, Ministry of Public Security, and the Supreme People's Prosecution Office.

In order to enhance transparency and integrity of the management of public financial resources, Vietnam has employed many Laws such as the Act of State's Budget 2002, the Act of Accounting 2003, the Act of Auditing 2005 and the Act of Practicing Thrift against Waste 2005.

To standardize public personnel, the Decree of Personnel and Civil Servants provides a special mechanism of voting, recruiting, and managing state's officials. At the same time, we have adopted measures to reform regime of salary in order to enhance living standards for people, who enjoy salary from the State Budget, and to build up a separate regime of salary for administrative public officials.

In order to ensure the effectiveness of the struggle on preventing and combating corruption, it is necessary to require responsibilities not only from Judicial Bodies, but also from entire political system, State Bodies and all citizens. Vietnam has encouraged the participation of residents and social organizations in supervising and impeaching corruption activities by practicing the Act of Organizing National Assembly, the Act of Organizing People's Councils and Committees 2003, the Act of Fatherland Front of Vietnam 1999, the Complaining and Denouncing 1998 Act (amended in 2004 and 2005).

Corruption is a global and transnational criminal issue. In this regard, anti-corruption measures also require international co-operations, to which Vietnam has been an active member. In fact, Vietnam

* Legal Expert, Institute for Prosecutorial Science, Supreme People's Prosecution Office, Vietnam.

has participated to the anti-corruption programs in the Asia-Pacific and APEC. The Law on Judicial Assistance 2007 regulates responsibility of State Bodies on judicial assistances in terms of civil, criminal, extradition, and transferring of prisoners, of which there are corruption offenders.

Although in recent years, corruption crimes in Vietnam have been increased both quantity and degree of seriousness, Specializing Bodies for Anti-Corruption have closely coordinated with each other in inspecting, investigating, prosecuting, and adjudicating crimes of corruption in the fields of basic construction, land management, import-export management, insurance, and in the area of judicial activities etc...

Vietnam has determined on dealing with many serious and complicated cases of corruption in which public's agreement has been achieved:

- The Case of Land corruption in Doson, Haiphong City, in which many high ranking officials were convicted with criminal charges, for instance the Secretary of the Doson authority, the President of the People's Committee;
- The Case of Receiving and Offering Bribes at Ministry of Trade (Currently Ministry of Industry and Trade), in which a Deputy Minister and many other related officials were brought to trial;
- The Case of Gambling, Offering and Receiving Bribes at the Management Board of Project 18 (PMU18), in which the General Director of the Management Board and his accomplices were convicted and sentenced with strict sanctions...
- Currently, we are focusing on investigating and dealing with other serious cases, such as the Corruption Case at the Management Board of Project 112 of the Government; The Case of Smuggling, Offering, and Receiving Bribes at Laocai Province.

Having the function of exercising the right to public prosecution and supervision of law observance in the judicial area, Prosecution Offices have focused on practicing these duties upon the handling of corruption crimes, have actively coordinated with Investigation Offices right at the beginning, to determine grounds for the institution of a criminal case and the institution of a criminal case against the suspects; have strictly supervised the whole legal proceedings to ensure the prosecution on the right persons, right offence, in accordance with the law provisions, and to ensure that wrongdoings and punishing innocent persons would not be occurred.

Besides that, we have concentrated on the retrieving of appropriated property. Upon the discovery of corruption activities, the Prosecution Office and the Investigating Body closely co-operate, promptly apply deterrent measures such as strip search, seizure, and disable the defendant and his/her relatives to disperse or rationalize the appropriated properties. At the same time, we apply the clemency toward offenders who make honest declaration, compensate for damages they have caused, recover economic consequences, and have cooperative attitude toward competent bodies. By handling corruption crimes, the Prosecution Offices have discovered many shortcomings, weakness in economic and personnel management, in mechanism and legal policy to make petition for repair.

In general, the struggle against corruption is very challenging. We have identified six crucial elements which require special attention to the operation of anti-corruption in Vietnam.

Firstly, a corruption case normally involves many defendants who are usually high ranking officials of State Bodies, who are well equipped with knowledge and experiences in terms of state management, professional skills and legal knowledge. Therefore, they have deep understanding about the duties taken, loopholes in the legislation, and the shortcomings in the management. As a result, they could conduct sophisticated criminal behaviors, including committing crime, erasing criminal traces, and concealing criminal activities. They also have the ability to induce and embroil many others in different bodies, even in law protection offices, to create a "closed mechanism" in conducting criminal activities, to make a deterrent for discovering and handling the crime.

Secondly, the nature of corruption is the link between "money" and "power". Upon being investigated, alleged corruption offenders utilize their money resources and power to abuse the prosecution process by bribing competent persons and threatening witnesses.

Thirdly, similar to some other countries, the Steering Committees for Anti-Corruption of Vietnam belong to the executive branch, which holds most of public resources, is highly in danger of being abused by corruption – This may cause some problems in the independence and the effectiveness of these offices.

Fourthly, the system of law has not been perfected. This leads to loopholes for corruption crimes abusing. In amendment of the Penal Code 1999, some people propose abolishing the capital punishment of 17 crimes, a lot of which are corruption offences. This does not mean that the handling corruption is belittled. This is due to a trend of employing economic measures to treat economic crimes.

Fifthly, high-tech and modern devices are usually utilized to conduct and conceal activities of corruption. This causes obstacles in exposing and dealing with criminals.

Sixthly, some people who wish all their works are resolved quickly have assisted unintentionally or intentionally crimes of corruption.

Through the practice, we realize that the struggle against corruption gains glorious victories only if the following solutions are comprehensively employed:

The First, the Steering Committees for anti-corruption must have a special position in the system of state bodies and their officials must be elected pursuant to special standards to ensure their independence, and effectiveness of supervising, exposing and handling crimes of corruption. In addition, a closed supervising mechanism must be established to guarantee any state body supervised by another one to dominate power because the root of corruption is power.

The Second, there must be transparency in the operation of all state bodies by publicly declaring their activities and financial resources.

The Third, the system of law must be perfected to make a mechanism of prevention at the law's provisions themselves, together with building consciousness of well obeying law in all organizations and individuals.

The Fourth, promoting education of anti-corruption to encourage the role of entire society in the struggle against corruption and to build a culture that "Say no to corruption".

The Fifth, strengthening international co-operation to enhance the capacity on preventing and combating corruption, joining and strictly applying provisions of regional and international treaties, which have progressive contents in anti-corruption.

Ladies and Gentlemen,

Corruption is a "national disaster" and also a "global disaster". The elimination of corruption is a desire of the whole global community and carrying out the struggle against corruption is a spiritual duty of all persons in the world. Together with great efforts of each nation, close and effective coordination among nations in the region as well as in the world, Vietnam strongly believes that crimes of corruption will be fended off. "The Regional Forum on Good Governance for East Asian Countries" on the theme of "Strengthening of Domestic and International Co-operation for Effective Investigation and Prosecution of Corruption" will open the door for that bright prospect.

Allow me to finish my statement by wishing our Forum the utmost success.

Thank you for your attention.

CLOSING CEREMONY

Closing Remarks by
Mr. Yutaka Nagashima
Public Prosecutor, Supreme Public Prosecutors Office
Ministry of Justice, Japan

CLOSING REMARKS

*by Mr. Yutaka Nagashima
Public Prosecutor, Supreme Public Prosecutors Office
Ministry of Justice, Japan*

Distinguished participants, ladies and gentlemen,

In closing this significant Regional Forum, let me first of all express my sincere appreciation, on behalf of one of the co-hosting organizations, the Supreme Public Prosecutors Office of Japan, to the distinguished participants and visiting expert for their participation in this conference despite their busy schedules and for their great contribution to the substantive debate in this conference.

This Forum has provided a rare opportunity for us all, officials from thirteen East Asian countries, including Japan, who are responsible for law enforcement and policy-making in the field of corruption control, to get together and share views and experiences regarding the challenges of corruption control and practical solutions to enhance domestic and international co-operation for effective investigation and prosecution of corruption cases. From your informative presentations and candid discussion, we have learned a great deal about the present situation of corruption in our region, legal and practical challenges faced by us all in the fight against corruption, and some of the best practices for overcoming these problems. Without your enthusiastic commitment to all parts of this meeting, this Regional Forum would not have been such a great success.

I would also like to take this opportunity to thank all of the UNAFEI personnel for their initiative in organizing this Forum, and for their tremendous efforts in making the necessary preparations for this conference. I would like to particularly commend the unselfish work and dedication of many people who have worked behind the scenes to make this meeting happen. Furthermore, I know that I speak for all when I express my appreciation to all UNAFEI faculty and staff for their kind hospitality throughout this Forum.

Distinguished participants,

In my experience as a public prosecutor and a former faculty member of UNAFEI, I am always of the belief that a solid human network and strong confidence among criminal justice practitioners across national borders are absolute prerequisites for effective international co-operation in criminal matters, including mutual legal assistance and extradition. Various international mechanisms for mutual co-operation can function only when the criminal justice officials of each country know their counterparts in foreign countries, and when those people are united by their shared responsibility, common mission and firm confidence. In order to create and maintain such a favourable environment, we should steadily continue our efforts to cultivate relationships, creating channels of communication, and keep in contact with each other.

In this connection, I am confident that this Regional Forum provided us with an opportunity to take a meaningful first step, upon which we can continue to work to build a strong human network among the represented countries. I would like to express my deepest appreciation once again to everybody joined here for their participation in this meeting and their great contribution to its success.

With these few words, I now have the duty and honour to declare the Regional Forum closed.

Thank you very much.

APPENDIX

COMMEMORATIVE PHOTOGRAPH

Regional Forum on Good Governance for East Asian Countries

UNAFEI

Regional Forum on Good Governance for East Asian Countries



Left to Right

Fourth Row

Ms. Ono (Staff)

Third Row

Mr. Kosaka (Staff), Mr. Takagi (Staff), Mr. Matsumoto (Chef), Mr. Nakayasu (Staff), Mr. Fujiwara (Staff), Prof. Sugiyama, Prof. Oshino, Mr. Fujii (Staff), Prof. Tatsuya, Prof. Sugano, Prof. Yamada, Prof. Otani, Mr. Nakasuga (Staff), Mr. Kojitani (Staff), Ms. Usuki (Staff), Ms. Ota (Staff), Mr. Kitada (Staff)

Second Row

Mr. Koiwa (Staff), Mr. Iwakami (Staff), Prof. Naito, Mr. Mikio Yamaguchi (MOJ), Mr. Yuichiro Tachi (MOJ), Mr. Yutaka Nagashima (Supreme PPO), Dr. Kyung-Joon Jin (Korea), Dr. Xu Daomin (China), Mr. Jhoni Ginting (Indonesia), Mr. Khamphet Somvolachith (Lao PDR), Mr. Han Nyunt (Myanmar), Ms. Tomoko Akane (High PPO), Prof. Noguchi, Deputy Director Seto, Ms. Lord (LA)

First Row

Ms. Lai Thu Ha (Vietnam), Mr. Bala Reddy (Singapore), Mr. Severino H. Gaña, Jr. (Philippines), Mr. Masato Higuchi (NPA), Mr. Kunihiko Sakai (Supreme PPO), Mr. Yoshinobu Onuki (MOJ), Mr. Hiroshi Obayashi (High PPO), Director Aizawa, Mr. Ricky Shu-chun Yau (Hong Kong), Mr. Sirisak Tiyanpan (Thailand), Mr. Lai Yong Heng (Malaysia), Pengiran Nina Jasmine binte PLKDR Pg Hj Bahrin (Brunei Darussalam), Ms. Pen Somethea (Cambodia)

