

ANTI-CORRUPTION EFFORTS IN MYANMAR

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I. INTRODUCTION

After the Second World War, there had been poverty in Myanmar. So, the Government supplied the facilities to the public, and theft and corruption cases relating to those facilities emerged. In order to prevent such cases, the Government formed the Civil Supplies Thefts Preventive Committee on 23 December 1947. Moreover, the Public Property Protection Police (P-4) was also formed and had done investigations.

A. The Public Property Protection Police

P-4 took action on cases relating to bribery, corruption and failing to serve dutifully of public servants in accordance with the section 161 to 165 of chapter (9) of Penal Code, 1861.

1. The Provisions of the Penal Code, 1861

The provisions of section 161 to 165 of chapter (9) of the Penal Code, 1861 are as follows:

- (a) **Section 161.** Whoever, being or expecting to be a public servant, accepts or obtains, or agrees to accept, or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or for bearing to show, in the exercise of his official functions, favor or disfavor to any person, or for rendering or attempting to render any service or disservice to any person with the Union Parliament or the Government or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.
- (b) **Section 162.** Whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favor or disfavor to any person, or to render or attempt to render any service or disservice to any person with the Union Parliament or the Government or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.
- (c) **Section 163.** Whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by the exercise of personal influence, any public servant to do or to forever to do any official act, or in the exercise of the official function of showing favor or disfavor to any person, or to render or attempt to render any service or disservice to any person with the Union Parliament or the Government or with any public servant, as such, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, with both.
- (d) **Section 164.** Whoever, being a public servant, in respect of whom either of the offences defined in the last two preceding sections is committed, abets the offence, shall be punished with imprisonment of either description of a term which may extend to three years, or with fine, or with both.

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- (e) **Section 165.** Whoever, being a public servant, accepts or obtains, or agrees to accept or attempts to obtain, for himself, or for any other person, any valuable thing without consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be, concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

2. The Suppression of Corruption Act of 1948

The Government of Myanmar enacted the Suppression of Corruption Act of 1948 separately in order to prevent corruption effectively. There are six sections in the Act, and it had been amended four times in total. According to section 4(1) of the Anti-corruption Law, 1948:

- (a) "If public servants always accept any gratifications, other than legal remuneration from any person"
- (b) "If a public servant takes any valuable thing for himself or any other person from any proceeding or business to be transacted by him or his superior"
- (c) "If a public servant takes any valuable thing or money for him or any other person against the law in misuse of his position"
- (d) "If a public servant is guilty of fraud, harming public interest or misuses public property entrusted to him, he commits malpractices punishable by criminal law"

Such offenders shall be punished with imprisonment extending up to seven years and the proceeds of the crime shall be confiscated according to section 4(2).

B. The Bureau of Special Investigation

In 1951, the Special Investigation Administrative Board and the Bureau of Special Investigation Act were promulgated and the Bureau of Special Investigation was formed with 31 staff members. The Bureau was placed under the direct control of the Prime Minister at this time.

C. The Special Investigation Department

In 1963, the Special Investigation Administrative Board was abolished and the Bureau was moved under the supervision of the Ministry of Home Affairs. The name of the Bureau was also changed to the Special Investigation Department in 1972.

II. SPECIAL LAWS RELATING TO ANTI-CORRUPTION

In Myanmar, there are 23 special laws in total which contain provisions relating to anti-corruption:

- (a) Provisions relating to bribery in the Penal Code, 1861
- (b) The Commercial Tax Law, 1990
- (c) The Forest Law, 1992
- (d) The Narcotic Drugs and Psychotropic Substances Law, 1993
- (e) The Myanmar Police Force Maintenance of Discipline Law, 1995
- (f) The Fire Services Law, 1997
- (g) The Control of Money Laundering Law, 2002

- (h) The Anti-Trafficking in Person Law, 2005
- (i) The Criminal Code of Procedure, 1898
- (j) The Myanmar Official Secrets Act, 1923
- (k) The Public Property Protection Act, 1947
- (l) The Amendment Act of the Criminal Law, 1951
- (m) The Defense Services Act, 1959
- (n) The Protection of Public Properties Law, 1963
- (o) The Law Taking Action against the Ownership of Sale of Property
Obtained by Illegal Means, 1986
- (p) The Myanmar Financial Institutions Law, 1990
- (r) The Saving Bank Law, 1992
- (s) The Law Amending the Law Relating to the Fishing Rights of Foreign Fishing Vessels, 1993
- (t) The Law Amending the Myanmar Marine Fisheries Law, 1993
- (u) The Central Bank of Myanmar Law, 2013
- (v) Anti-Corruption Law, 2013 (The Suppression of Corruption Act, 1948 was repealed)

III. CURRENT SITUATION OF CORRUPTION

Even though every Government in Myanmar has conducted the fight against corruption, it has not disappeared. Some of the public servants have been committing the offence by neglecting their own dignity as public servants and the State and disregarding the laws. Therefore, corruption is now expanding as a culture. Misappropriation of power and bribery are of key interest to the public. Corruption hinders administration and human rights and degenerates the economy, the political process and the dignity of countries affected by it. Moreover, it spreads to all countries. So, corruption is now a serious problem. Nowadays, the global economy is rapidly developing, and thus corruption is evolving and growing as well. It is committed as a transnational and organized crime. It is said that combating corruption is impossible by one country because it is committed not only in our country but also in other foreign countries.

According to the Corruption Perception Index (CPI) issued by Transparency International (TI), a monitoring and evaluating NGO organization, the rank of Myanmar is 170 among 176 countries. Therefore, it is now required to emphasize the fight against corruption. Moreover the new Government is now trying to develop domestic business in order to improve the national economy and also inviting foreign direct investment. So, the Government is working to improve the rank of the State in the CPI. Myanmar is now enhancing regional and international cooperation in fighting against corruption.

IV. ACTION COMMITTEE AGAINST BRIBERY

Myanmar's President's Office had formed an action committee against bribery with the following members.

- (a) Dr. Sai Mauk Khan
Vice — President
- Chairman

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(b) Lieutenant Gen Ko Ko Union Minister For Home Affairs	Member
(c) U Thein Nyunt Union Minister for President Office (1)	Member
(d) U Soe Maung Union Minister for President Office (2)	Member
(e) U Soe Thein Union Minister for President Office (3)	Member
(f) U Tin Naing Thein Union Minister for President Office (4)	Member
(g) Dr. Tun Shin Union Attorney-General	Member
(h) U Than Kyaw Legal Advisory Board to the president	Member
(i) U Hla Tun Director-General for President Office	Secretary

A. Objectives of the Action Committee against Bribery

The Action Committee against Bribery was formed in order to eliminate bribery as national duty to strive for the eradication of bribery and corruption in public organizations, to create good governance and clean government, to upgrade integrity and accountability in public administration, to take effective action of corrupted offenders to make law enforcement and administrative sector to be transparent and to sustain economic development and to achieve economic development by domestic and foreign investments.

B. Receiving Complaints and Assigning Duty to Investigate

The bribery and corruption cases can be reported to the relevant departments by individual or group wide. After scrutinizing, the complaint letters required to take departmental actions are transferred to the relevant departments. The letters for which no action is needed are filed. The letters for which legal action is required are investigated in line with the provisions of laws with the approval of higher authority.

We have also to scrutinize accuracy of the above complaint letters by conducting preliminary investigation. According to the findings, we take legal action, if it is required. Whenever we find fraudulent complaints, the person who sent it would be taken legal action. The investigation processes are as follows:

- (a) Planning the investigation process and arrangement
- (b) Collection and confirmation of information
- (c) Interviewing witness
- (d) Interrogating the accused

- (e) Search and seizure by way of evidence, including documents, money and property
- (f) Taking expert opinion and taking handwriting expert opinion if required
- (g) Giving advice of the legal opinion
- (h) Prosecution

The bureau is always trying to recover the public properties that were lost in corruption cases and also reports vulnerabilities to relevant departments.

C. Status of Taking Action

The Ministry of Home Affairs has declared rapidly in daily newspapers that any victim can complain to the Ministry in order to be a clean Government and to eliminate the bribery and corruption of public servants by the cooperation of public. After the above announcements had been issued, the Ministry of Home Affairs has received 212 complaint letters in total. Among them, 18 are relating to civil cases, 93 are relating to administration, 2 are relating to social affairs, 47 are relating to criminal cases and 52 are relating to bribery. Also, 450 offenders have had action taken against them under the supervision of the action committee as follows:

- (a) Taken action under the State Service Personal Law, 2013 (362) persons
- (b) Transfer to other department (69) persons
- (c) Force to retired (18) persons
- (d) Order of the sentence of imprisonment (1) person

V. INTERNATIONAL AND REGIONAL COOPERATION INCLUDING UNCAC

A. UNCAC

The United Nations Convention against Corruption (UNCAC) was adopted in New York by Resolution No. (58/4) of the United Nations General Assembly (UNGA) that was held on 31 October 2003 and enter into force on 14 December 2005 in accordance with article 68(1). Myanmar signed the Convention on 2 December 2005 and was the 137th member.

According to the decision done at the Workshop on Pre-Ratification of the United Nations Convention against Corruption for Myanmar sponsored by UNDP that was held at Aureum Palace Hotel from 24 to 25 September 2013, UNODC and UNDP asked the legal advice on anti-corruption bill from legal experts relating to anti-corruption. According to the records of the UNODC, Myanmar is one of the UNCAC's States Parties which performed the anti-corruption tasks immediately.

B. IAACA

The International Association of Anti-Corruption Authorities (IAACA) was formed on 22 October 2006 in order to implement the United Nations Convention against Corruption (UNCAC). The senior officials from Union Attorney-General Office and Bureau of Special Investigation have regularly attended the IAACA's annual meetings. Myanmar delegation including three members of Legal Drafting Committee of the Parliament, have attended the 6th annual meeting of the (IAACA) held from 4 to 7 October 2012 in Kuala Lumpur, Malaysia.

C. SEA-PAC

Countries of South East Asia also formed the South East Asia Parties against Corruption (SEA-PAC) on 15 December 2004 to eliminate Corruption in the region. Nine countries of the region are now members. Myanmar is now trying to join as a member in November 2013.

VI. EFFORTS TO ENACT MODERNIZED LEGISLATION

The Suppression of Corruption Act, 1948 had existed till July 2013 in Myanmar. The Government decided to draft a new law in line with international standards in order to suppress the corruption for the development of the country. Those standards are as follows:

- (a) To emerge as a clean government and good governance;
- (b) To prevent corruption;
- (c) To provide the procedures for the public servants;
- (d) To have international cooperation; and
- (e) To get the technical assistance and exchange information from foreign countries.

A. The Anti-Corruption Law

The Bureau of Special Investigation started drafting an anti-corruption bill in 2005 with the intention of international standards and had submitted it to the Attorney General's Office through the Ministry of Home Affairs for legal advice. After the new Government was formed, a new anti-bribery bill drafted by the relevant legal drafting committee had been submitted to the Parliament and announced in newspapers. The Union Attorney-General's Office coordinated and informed the Ministry of Home Affairs that there would not be any action taken on the bill submitted by the Ministry of Home Affairs.

The above anti-bribery bill had been endorsed by *Amyotha Hluttaw* and sent to the *Pyithu Hluttaw*, and the *Pyithu Hluttaw* ratified the bill with amendments including the title of the bill. The bill had been submitted to the sixth regular session of first *Pyidaungsu Hluttaw* Meeting and ratified it. After that, the Speaker of the *Pyidaungsu Hluttaw* sent it to the President to enact the law in line with section 105 of the Constitution and Rules of *Pyidaungsu Hluttaw*. The President sent it back with his (12) recommendations. The *Pyidaungsu Hluttaw* had discussed it and only agreed to two recommendations and the rest were rejected, and sent it again to the President.

The President signed and enacted **the anti-corruption law** on 7 July 2013. It is included (11) Chapters and (73) Sections. The Chapters are as follows:

- (a) Chapter (1) Title, come into Force, Jurisdiction and Definition
- (b) Chapter (2) Objective
- (c) Chapter (3) Formation of Commission, Duties and Functions thereof
- (d) Chapter (4) Formation of Preliminary Scrutiny Body relating to Money and Property obtained by bribery
- (e) Chapter (5) Formation of Investigation Body and Functions thereof
- (f) Chapter (6) Formation of Secretariat of the Commission
- (g) Chapter (7) Information relating to bribery, Performed by the President, Speakers of *Pyithu Hluttaw* and *Amyotha Hluttaw*
- (h) Chapter (8) Declaration of money, properties, liability and right owned by authorized persons.
- (i) Chapter (9) Confiscation the Money and Property obtained bribery
- (j) Chapter (10) Offences and Penalties

(k) Chapter (11) Miscellaneous

The name of the new anti-corruption law is the anti-corruption law and the law shall have jurisdiction over any person who commits any offence cognizable under this Law in the territory of the Union of Myanmar, or over Myanmar citizens or any person residing permanently in the Union of Myanmar who commits the said offence outside the country.

B. Anti-corruption Commission

I would like to explain the new anti-corruption law briefly. According to the law, an anti-corruption commission would be formed and organized consisting of 15 members, of whom five persons are selected by the President, Speaker of the *Pyithu Hluttaw* and *Amyotha Hluttaw*. When the members of the commission are assigned, they must disclose money, property, assets and liabilities of their family headed by them including beneficial ownership, to the President. The term of the commission is like the term of the President and no member of the commission has the right to serve for two terms. The age of a member of the commission must be between 45 and 70 years old. He or she shall not be an official or servant of a government organization.

The duties and functions of the commission are forming of a preliminary scrutiny body and investigation body, forming the department by assigning the Chief Investigator, specifying the authority, cooperating with the government departments and agencies and State-owned enterprises in laying plans and programmes in order to dispel corruption, implementing the suitable programmes for public cooperation. It also has power to examine the records of banks and financial institutions, issue an order to responsible persons of banks and financial institutions to allow the seizure of evidence if necessary, issue a prohibitory order not to transfer, conceal, and disguise the accounts and money, order to do prosecution, pass and order confiscation the money and property with the recommendation of preliminary scrutiny body, give protection and set rewards for witnesses.

The president and speakers of relevant *Hluttaw* can assign the duty to investigate corruption cases, and the complaints of victims or relevant government departments and agencies those are sent to the commission or investigation bodies organized by the law will be investigate. The commission shall not investigate the cases in which there is no evidence and the repeated cases in which there is no new sound evidence. Any person who is related to the complaint case shall not be assigned as an investigation authority. The accused person has a right to defend the accusation by himself or through an agent.

The chairperson of the commission shall call a meeting to make a decision on the investigated case within 30 days from the date on which the investigation report is received. The commission can reject or prosecute the case depending on the findings of the investigation. It is required to get the prior agreement of the Government whenever prosecuting a person who has a political position. The approval of required the commission is for the prosecution on any other person except the representative of the *Hluttaw* and persons who have political post and to make a prosecution on the representative of the *Hluttaw*.

According to the investigation report or other information, the preliminary scrutiny body shall be formed to scrutinize in order to confiscate the money and property obtained by corruption. At this time, the accused person has also right to defend the accusation by himself or through an agent. The preliminary scrutiny body shall submit a report on its finding by taking the other statements and evidence. The commission revises again the report and confiscates the money and property if it was committed. If it is not, the money and property shall be paid back.

A person in a political post who commits a corruption offence shall, on conviction, be punished with imprisonment for a term which may extend to 15 years and may also be liable to a fine. An authority other than a person in a political post shall, on conviction, be punished with imprisonment for a term which may extend to 10 years and may also be liable for a fine. Other persons shall, on conviction, be punished with imprisonment for a term which may extend to 7 years and may also be liable to a fine.

The offences relating to intentional failure to submit ownership documents within the required time

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frame or submitting of false documents or omissions or refusing of any bank and financial institution to grant permission to the investigation body to carry out official duty, releasing or transferring the prohibited money and property without the permission of the commission, obliterating, altering and amending the financial records or concealing or obliterating of money and property relating to any offence under the law, so that action may not be taken, making false complaints, giving false statements shall be punished on conviction with imprisonment for a term which may extend to 5 years and may also be liable to a fine.

Any person who fails to comply with any order issued by the commission shall be punished on conviction with imprisonment for a term which may extend to 6 months or with a fine or with both.

Whoever incites, attempts, conspires or administers or abets in committing any offence contained in this Law shall be liable to the punishment provided in this Law for such offence.

The offences under the law are cognizable offences and no criminal, civil, or administrative proceedings shall lie against the commission and organization formed under the commission and any other persons who performs on behalf of the commission and the organization who in good faith implements the provisions of the law.

VII. ENTER INTO FORCE OF NEW ANTI-CORRUPTION LAW

After enacting the Anti-Corruption Law, 2013, according to the law, the President has issued an order which states that law is enforced on 17 September 2013. So, other required actions including formation of the Anti-Corruption Commission are undergoing.

VIII. CONCLUSION

Corruption is frequently encountered in every sector of life including public and private circles. Corruption is a sad thing for our Myanmar Society as a rooted culture as well as ignorance of existing laws, self-dignity, dignity of the State and dignity of public servants. Corruption is spreading all over the world and is related to the fields of good governance, such as transparency, accountability, supervision, quality, law and order. Corruption is an issue not only related to the working mechanism, income, salary and gratuity, individual ethics and capacity but also related to legal and historical background. That is why the corruption problem is very wide and deep-rooted. When we look at the past events, the leading sector had been criticized that the government did not understand absolute power can deteriorate management abilities. The current government must inherit good things and bad things. After forming the new government in Myanmar, it is now decentralizing by practicing public-based policy instead of centralization.

Whenever we discuss corruption, the salaries of service personnel should be considered. In the past, most of the public servants have rarely taken bribes because of salaries, prices of commodities, cost of living, gratuities after pension. Nowadays, most of the public servants have so many difficulties and deterrence to take the pride of public servant. Recently, the Union of Myanmar hosted the World Economic Forum (WEF). In this forum, most of the experts and technicians discussed that corruption plays a vital role for economic development, least Foreign Direct Investment (FDI) and standing as a Least Developed Country (LDC). The occurrence of corruption has many reasons such as freedom of expression, freedom of forming organization, freedom of media, freedom of expression by the citizens, easily access to enacted laws, rules and regulations.

Corruption cannot be rooted out by reforming only one person or group because of it has already occurred in so many decades. Every citizen has a duty to create a country in which there is no place for corruption and should try to avoid it because it can destroy the future of our country. That is why we have to be free from corruption not only in the economic sector but also in the political sector. Combating corruption has to be participated in by every strata of life such as administration, legislation, jurisdiction and participation of the public. Right now, our government has been trying to combat corruption.

As for our country, the Union of Myanmar has already tried to combat corruption since 1948, as the 137th member of UNCAC, as well as to be a member of SEA-PAC in November 2013. Our country is trying to transform to democratic process and to update our existing laws by means of renewal and amendments. As the new Anti-Corruption Law is enacted, the Union of Myanmar is ever trying to protect human rights for our citizens as well as to become the least corrupt country in our region in line with the provisions of law.