KNOWLEDGE COMMITMENT ACTION

AGAINST CORRUPTION IN ASIA AND THE PACIFIC

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for Asia and the Pacific

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Abbreviations and Acronyms

ABA	American Bar Association
ACA	Anti-Corruption Agency (Malaysia)
ADB	Asian Development Bank
APEC	Asia-Pacific Economic Co-operation
art.	article
ASEAN	Association of Southeast Asian Nations
ATF	arrêts du tribunal fédéral (court decisions) (Switzerland)
AusAID	Australian Agency for International Development
BAPEL	Supervisory Board and Executing Agency of the Rehabilitation and Reconstruction Agency for Aceh and Nias (Indonesia)
BRR	Badan Rehabilitasi dan Rekonstruksi (Rehabilitation and Reconstruction Agency) (Indonesia)
CEO	chief executive officer
CIABOC	Commission to Investigate Allegations of Bribery or Corruption (Sri Lanka)
CNY	Chinese Yuan
COPA	Committee on Public Accounts (Sri Lanka)
COPE	Committee on Public Enterprises (Sri Lanka)
CP	code pénal (penal code) (Switzerland)
CPC	Communist Party of China
CPI	Corruption Perception Index
CSO	civil society organization
DAD	Development Assistance Database
DFID	Department for International Development (UK)
EBRD	European Bank for Reconstruction and Development
ECHR	European Convention on Human Rights
EIMP	loi fédérale sur l'entraide internationale en matière pénale ([Swiss] federal law on mutual legal assistance in criminal matters)
EITI	Extractive Industries Transparency Initiative
FATF	Financial Action Task Force on Money Laundering
GDP	gross domestic product
GSDMA	Gujarat State Disaster Management Authority (India)

HAP	Humanitarian Accountability Partnership
HDR	Human Development Report
HKSAR	Hong Kong Special Administrative Region
IAG	International Advisory Group
ICAC	Independent Commission Against Corruption (Hong Kong, China)
IGEC	International Group of Experts on Corruption
IIM	Integrity Institute of Malaysia
IMF	International Monetary Fund
IT	information technology
KICAC	Korea Independent Commission Against Corruption
K-PACT	Korean Pact on Anti-Corruption and Transparency
KPK	Komisi Pemberantasan Korupsi (Corruption Eradication Commission) (Indonesia)
LDCs	least developed countries
LTTE	Liberation Tigers of Tamil Eelam
MDG	Millennium Development Goal
MDTFANS	Multi Donor Trust Fund for Aceh and North Sumatra
MLA	mutual legal assistance
MOU	memorandum of understanding
NGO	nongovernmental organization
NIP	National Integrity Plan (Malaysia)
NPC	National People's Congress
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
OECD	Organisation for Economic Co-operation and Development
PBC	People's Bank of China
PBEC	Pacific Basin Economic Council
PGRI	Partnership for Governance Reform in Indonesia
PHP	Philippine Peso
PIRR	Centre for Rehabilitation and Reconstruction Information (Aceh, Indonesia)
PRC	People's Republic of China
PWYP	Publish What You Pay
RM	Malaysian ringgit
Rs	Indian rupee
SAARC	South Asian Association for Regional Cooperation
SAFE	State Administration of Foreign Exchange (People's Republic of China)
SCPC	Service Central de Prévention de la Corruption (Central Bureau for the Prevention of Corruption) (France)
SEAPAC	South East Asian Parliamentarians Against Corruption

SOE	state-owned enterprise
SPC	Supreme People's Court (People's Republic of China)
SPP	Supreme People's Procuratorate (People's Republic of China)
TAFREN	Task Force for Rebuilding the Nation (Sri Lanka)
TI	Transparency International
TISL	Transparency International Sri Lanka
UK	United Kingdom
UN	United Nations
UNCAC	United Nations Convention Against Corruption
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
USD	US Dollar
WCO	World Customs Organization
WTO	World Trade Organization

Foreword

Recent years have seen significant progress in the fight against corruption in the Asia-Pacific region. Only a few years ago, had Asian and Pacific countries wished to call for an open, constructive discussion of the difficulties they faced because of corruption, no international forum would have been available to them. Government officials would not have been able to share their experiences candidly or brainstorm together about possible solutions to the problems common to them all. There was no venue where governments, the private sector, civil society, international organizations, and donor agencies could contemplate strategic anti-corruption reforms and ways to work together for change. There would have been no opportunity to reflect on how best to manage humanitarian aid to prevent corruption in relief and rebuilding operations, or to consider the ways governments can work together to close the avenues of escape for the corrupt to hide their profits and evade detection and prosecution by crossing borders. Yet, these and other matters crucial to improving social welfare, reducing poverty, and boosting economic development in the region were the focus of the Fifth Regional Anti-Corruption Conference for Asia and the Pacific, held in Beijing, People's Republic of China, on 28–30 September 2005.

The conference was organized with the support of the Government of the People's Republic of China, in close partnership with its Ministry of Supervision, which graciously hosted the conference. The event was the fifth in a series of conferences held in the framework of the Asian Development Bank (ADB)/Organisation for Economic Co-operation and Development (OECD) Anti-Corruption Initiative for Asia and the Pacific, within which Asia-Pacific leaders have committed to undertake actions essential to the development of their economies for the benefit of their people. This conference reinforced coordinated action across the region and cultivated exchange and debate around designing and implementing effective policies to curb corruption. The enthusiastic participation at this event of nearly 250 representatives of government, the business community, and civil society from 28 Asian and Pacific countries—joined by senior government representatives of 11 OECD countries—reaffirmed the commitment of regional and global stakeholders, and most particularly

the steadfast determination of the group of countries that have endorsed the Initiative's Anti-Corruption Action Plan for Asia and the Pacific, to prevent, detect, and prosecute corruption. The group, now composed of 25 committed countries in Asia-Pacific, has grown steadily over the six years since the launch of the Initiative, and each conference has brought with it new participating countries and first-time observers.

Advances in the Asia-Pacific region's fight against corruption have been hard-won, and the potential for further progress is great. However, obstacles remain, and in the ever-evolving context of an increasingly globalized society, new challenges surface constantly. The analyses and discussions that unfolded at this event, together with the conclusions and recommendations that arose during the two-and-a-half-day conference, assembled in this publication, provide guidance for future work to meet these challenges. We are confident that this volume, produced jointly by ADB's Regional and Sustainable Development Department and the OECD's Directorate for Financial and Enterprise Affairs, will be an important resource for countries in the Asia-Pacific region, and beyond, in their fight against corruption.

GEERT VAN DER LINDEN
Vice-President
Asian Development Bank

RICHARD HECKLINGER
Deputy Secretary General
Organisation for Economic Co-operation and Development

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The ADB/OECD Anti-Corruption Initiative for Asia and the Pacific would like to express its sincere gratitude to the Ministry of Supervision of the People's Republic of China for its expertise, guidance, and cooperation in the preparations for the Fifth Regional Anti-Corruption Conference for Asia and the Pacific and the Initiative's Seventh Steering Group Meeting and especially for its warm welcome and gracious hospitality during the Beijing Conference.

Special thanks are also due to the participants of the Conference, most particularly to the authors of the papers in this volume, whose insight and ideas enriched the discussions and outcome of this event. The Fifth Regional Anti-Corruption Conference for Asia and the Pacific was directed and coordinated by Frédéric Wehrlé, Coordinator for Asia-Pacific at the OECD Anti-Corruption Division, and Jak Jabes, Director, Capacity Development and Governance Division, ADB, and managed by Gretta Fenner, Consultant, Project Manager of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific. Joachim Pohl of the Anti-Corruption Initiative for Asia and the Pacific, Anti-Corruption Division, OECD, oversaw the preparation of this publication and Helen Green, also of the OECD's Anti-Corruption Division provided editorial support. Organizational support and assistance by Marilyn Pizarro, consultant with the ADB, and Frances Mooney of the OECD are gratefully acknowledged.

The Initiative's work is supported by the ADB, the OECD, the Australian Agency for International Development, the Pacific Basin Economic Council, the Swedish Agency for International Development Cooperation, Transparency International, the United Kingdom Department for International Development, the United Nations Development Programme, and the World Bank.

Keynote Addresses

Welcome Remarks

Hua Jianmin
State Councillor and Secretary General of the State Council
People's Republic of China

The ADB/OECD Anti-Corruption Initiative for Asia and the Pacific's Seventh Steering Group Meeting and Fifth Regional Anti-Corruption Conference for Asia and the Pacific are now open in Beijing. On behalf of the Chinese Government and the Chinese people, I would like to extend our congratulations on the convening of the conference and a warm welcome to all delegates.

The theme of the conference, "Reducing Inequality and Promoting Growth: Driving Down Corruption", is of great significance. It is an important guarantee for equality and growth, and the common choice of governments across the region in reducing corruption to the lowest possible level by conducting effective management and supervision and enhancing government integrity and efficiency. At this conference, delegates will focus on issues of common concern, exchanging experiences and discussing ways to prevent and fight against corruption. Doing so, I believe, will further promote the anti-corruption drive in the region and exchanges and cooperation in combating corruption.

As a member of the large Asia-Pacific family, China has always pursued peace, development, and cooperation, concentrating all its efforts on construction and development. Since we adopted the policy of reform and opening up, China's economic growth has been fast and sustainable, national strength has been enhanced, and the standard of living has improved. The development of China has also created new development opportunities for other countries, and made positive contributions to peace and development in the region and the world.

While focusing on reform, opening up, and economic construction, the Chinese Government attaches great importance to promoting administrative restructuring and government building. We have been working hard to build a law-based, accountable, clean, and service-oriented government by transferring government functions, instituting

scientific and democratic decision making, innovating new management methods, opening up government affairs, and intensifying administrative supervision. We have endeavored to build a clean and diligent government and combat corruption, continuously increasing our efforts to prevent corruption and exploring ways to prevent and address problems at the source. We have adhered to and improved the anti-corruption leadership structure and work mechanisms to form a joint force against corruption. Focus has also been given to outstanding problems that infringed on public rights and interests, and efforts have been made to address wrongdoings that harmed public rights and interests. We persist in conducting government administration according to law, managing government affairs strictly and improving the government work style, and dealing severely with violations of the law and discipline. We use reform as a tool for addressing deep-rooted problems that lead to corruption, and create and improve new structures, mechanisms, and systems. China, after years of great endeavor, has scored and continues to score outstanding achievements in countering corruption. This has ensured China's economic growth and promoted democratic and legal development and social justice.

China is now at a critical juncture of reform and development. While pushing forward the reform, opening-up, and modernization drive, we will intensify the campaign against corruption and the building of a clean government. We will continue to follow the strategic approach of tackling both the symptoms and the root causes, taking comprehensive measures that combine punishment and prevention, with emphasis on the latter. We will build and strengthen a system for punishing and preventing corruption with equal emphasis on education, institution building, and supervision, in conformity with China's socialist market economy. After some years of work we will complete an effective long-term mechanism for ideological and ethical education, an institutional system of anti-corruption and government integrity, and mechanisms for the control of power operations.

Against a backdrop of growing economic globalization and regionalization, increased international cooperation in the fight against corruption is urgently needed. The Chinese Government has always attached importance to international anti-corruption cooperation and the exchange of successful experiences and effective practices. The Government has signed the UN Convention Against Corruption and actively explored with many countries ways to combat transnational and transregional corruption and strengthen law enforcement cooperation. The Ministry of Supervision has conducted fruitful cooperation with the

UN Development Programme (UNDP) on the Integrity in Government in China programme. We would like to strengthen cooperation with all the other countries of the world, including those in the Asian region, in the fight against corruption. I would like to propose the following suggestions for promoting anti-corruption cooperation in the Asia-Pacific region.

First, respect sovereignty, equality, and mutual benefit. All countries should respect each other's sovereignty and choose their own anti-corruption structures, mechanisms, and systems, as well as specific strategies and measures. On that basis, we can conduct mutually beneficial cooperation.

Second, respect differences and share achievements. The differences between countries in state conditions and political and legal systems in particular, as well as the inherent characteristics of anti-corruption work, should be recognized and respected. Countries should exchange and learn from each other's useful experiences and effective practices, and share anti-corruption information and results.

Third, follow a step-by-step approach and be pragmatic. Attention should be paid not only to the need but also to the feasibility of cooperation with focus on effectiveness. Priorities should be identified in the scope, content, and method of cooperation and developed step by step. Currently, priorities could be given to capacity building, prosecution of cases of corruption, and seizure, confiscation, and recovery of the proceeds of corruption with the aim of achieving concrete results.

The Asia-Pacific region is our common home. It is our common aspiration to create a corruption-free region. Let's all join hands to deepen cooperation and exchange, prevent and fight corruption, and work together for the social and economic development and common progress of our region.

I wish the conference a complete success.

Opening Remarks

Geert van der Linden
Vice-President
Asian Development Bank

On behalf of the Asian Development Bank, it is my privilege to welcome you to the 5th Regional Anti-Corruption Conference. I would like to begin by commending all of you for your commitment to eradicate the scourge of corruption in Asia and the Pacific.

I would like to take the opportunity today to talk about the progress and challenges related to the region's anti-corruption efforts, and what ADB is doing to support these efforts. My main message this morning is that, while progress is being made, it is slow progress. It is our hope that the information and knowledge shared through this conference will strengthen everyone's resolve and ability to tackle this crucial challenge.

Anti-Corruption Consensus

In December 2003, the United Nations opened its Convention Against Corruption, or UNCAC, for signature. One hundred twenty-nine countries, including many in our region, have now signed on to UNCAC. This is a clear indication of how seriously the world community takes the issue of corruption.

It is estimated that, in many Asian and Pacific countries, fully one third of public investment is being wasted because of corruption. Corruption has a devastating effect on the poor, robbing them of needed services and depleting their assets and incomes through scandalous rents.

Corruption also increases the cost of doing business, and keeps countries from achieving their economic growth and employment potential. The World Bank's investment climate survey shows that more than 36% of firms with interests in East Asia and the Pacific see corruption as a major or severe obstacle to the operation and growth of their business. In South Asia, the proportion is more than 40%. These high levels of concern are confirmed by ADB's country-specific studies in Indonesia and the Philippines.

Progress and Challenges

There are, of course, encouraging signs. For example, the number of countries endorsing the regional action plan to fight corruption has grown from 17 in 2001, to 25 this year. In the two years since we last met in Kuala Lumpur, the People's Republic of China, the Republic of Palau, Thailand, and Vietnam have agreed to work with their regional partners in instituting anti-corruption reforms. We welcome their participation in this important effort.

It is also encouraging to see that a growing number of countries in the region are implementing new anti-corruption measures. Other countries have taken on the issue with resolve and concrete action, building on the trends already clear in the People's Republic of China; Hong Kong, China; and the Republic of Korea.

Bangladesh, for example, has set up a national anti-corruption commission. Nepal has established a National Vigilance Center. And an anti-corruption commission is now functional in Indonesia. These initiatives, and those of many other countries in the region, show that we are moving in the right direction.

However, despite significant efforts, legal gaps, loopholes and institutional weaknesses remain as barriers to progress. Legislation in many countries does not yet extend to areas like foreign bribery or political corruption, and regulations are too often ambiguous. Furthermore, not enough attention has been paid to reforming the law enforcement agencies, whose cooperation is essential to the success of anti-corruption agencies. And, although the contributions of civil society in raising public awareness, encouraging reforms, and monitoring progress are well known, some countries remain wary of fully engaging civil society as a partner in fighting corruption. Building capacities and partnerships across the region is crucial in addressing these ongoing challenges.

The Role of the Asian Development Bank

ADB remains staunchly committed to this task. Allow me to illustrate our approach by citing some concrete contributions.

For several years now, we have been working with the Indonesian Government in setting up institutions to combat corruption. In 2004, ADB approved technical assistance to strengthen the capacity of the Commission for Eradication of Corruption. We are also providing extensive support to improve public procurement, accounting and auditing, corporate governance, and legal and judicial reform.

In Bangladesh, we are working with the Government in designing and implementing an integrated anti-corruption strategy for both the private and public sectors. This initiative is focused primarily on the secured financing[1] sector of private credit markets, which is considered potentially one of the most dynamic segments of the Bangladesh economy. Working with both the private and public sectors to prevent corruption in these markets could have a significant, positive impact on economic growth and poverty reduction, since many small and medium-sized businesses rely on secured financing to expand their operations.

In recent years, the battle against money laundering and financing of terrorism has risen steadily on the global agenda. In 2004, ADB established a trust fund to help countries in the region fight this battle. And we have engaged full-time staff with specific expertise in money laundering.

Thailand is one country that is taking advantage of ADB's assistance to stamp out money laundering and the associated financing of terrorism. We are working with Thailand to ensure that it meets the international cooperation requirements of the Financial Actions Task Force on Money Laundering. And we are supporting training sessions for officials in the Mekong region to establish effective legal and institutional frameworks to deal with cross-border issues, among other things.

When the tsunami hit Asia in December 2004, ADB mobilized its human and capital resources to support the countries devastated by this tragedy. We established a special tsunami trust fund, with an initial contribution of USD 600 million,[2] mostly in grant funds, and immediately joined our development partners in assessing the damage. But we were aware that the complex reconstruction would increase the risks of corruption.

To minimize these risks, ADB, together with OECD and Transparency International, brought together more than 60 participants from affected and donor countries to agree on a set of principles for preventing corruption during reconstruction. These included transparency and accountability, particularly of financial flows; independent oversight of projects; inclusion of affected people and civil society in decision making; and close coordination among all parties to avoid duplication and increase effectiveness. A book summarizing the workshop discussions is now available.

Finally, we are well aware that we must also guard against corruption in all ADB operations. Over the last year, we have extensively reviewed our governance and anti-corruption policies. Recommendations on how to better harness the insights of civil society, strengthen project monitoring

and oversight, and mitigate corruption risks in project design are now under consideration.

The Way Forward: Effective Partnerships and Continued Resolve

Given the complexities of the global age, corruption cannot be handled through stand-alone efforts. This battle requires state-of-the-art knowledge and tools and, above all, firm resolve. Judging by the commitment of the 25 member countries, we can be optimistic that progress will continue.

On behalf of ADB, I would like to express our appreciation to the OECD for its strong and ongoing partnership in and contributions to the Initiative. I would also like to thank all the development partners, who have provided their strong support.

In particular, I want to recognize our host country, the People's Republic of China. Since 2000, the Government of PRC has participated as an observer in the Anti-Corruption Initiative. PRC experts aided in drafting our Action Plan, and the Government endorsed it earlier this year. By holding this conference, it has yet again shown leadership in tackling corruption in the region.

We deeply appreciate the Government's efforts to make this important event a success. The proceedings and outcomes of this conference will further cement coordination among member countries, and with international governance and anti-corruption experts. We are confident that this will be a milestone in the journey towards a transparent Asia that is free of poverty and corruption.

Notes:

1 Secured financing means financing against movable property collateral like equipment, vehicles, shares, software, and other property that is not land.

2 ADB news release, 17 February 2005. This amount does not include an additional USD 175 million to be redirected from ongoing projects.

Opening Remarks

Richard Hecklinger
Deputy Secretary General
Organisation for Economic Co-operation and Development (OECD)

Working Together for Change

It is a great pleasure for me to join Mr. He Yong, Member of the Secretariat of the Communist Party of the People's Republic of China (CPC) and Executive Deputy Secretary of the Central Commission of Discipline Inspection of the CPC, Mr. Hua Jianmin, Vice Prime Minister/ State Councillor, Mr. Jia Chunwang, General Prosecutor of the Supreme People's Procuratorate, Mr. Li Zhilun, Minister of Supervision, and Mr. Geert van der Linden, Vice-President of ADB, in welcoming you to Beijing for the Fifth Regional Conference of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific. On behalf of the OECD and its member countries, I would like to express our sincere thanks to Mr. He Yong and the ministers of the Government of the People's Republic of China for hosting this important event. The leadership and commitment of China in the fight against corruption—in Asia and worldwide—is crucial for its success.

I also wish to express my sincere gratitude to ADB and its staff. ADB has been an outstanding partner from the very start of the Anti-Corruption Initiative six years ago. My thanks go as well to the many other institutions that support us in carrying forward this ambitious initiative. These include the Australian Agency for International Development, the Pacific Basin Economic Forum, the Swedish International Development Cooperation Agency, Transparency International, the United Kingdom Department for International Development, the United Nations Development Programme, and the World Bank.

Our goal is clear. Countries from all parts of the world have agreed that corruption undermines economic development, and undermines trust in government and the stability of our societies. Governments need to devise solutions

- to guarantee integrity in the public administration and business,
- to make the public-private interface fully transparent, and
- to consolidate the legal and institutional framework for international judicial cooperation.

This conference, with so many of you present, from governments and civil society, demonstrates the desire of Asia-Pacific governments and societies to continue working together under the ADB/OECD Initiative to advance in their fight against corruption to promote development, raise standards of living, and ensure fairness and equity.

OECD Anti-Bribery and Integrity Instruments in the Global Fight Against Corruption

The OECD anti-bribery instruments also have their origins in a dynamic collaboration between governments and civil society. Thirty-six countries have joined forces under the OECD Convention on Combating Bribery of Foreign Public Officials. Through cooperation, they can accomplish far more than they could as countries acting alone.

Since the entry into force of the OECD Convention in 1999, the parties have met regularly to address common problems and identify solutions. To ensure the implementation of the Convention, the parties have adopted a rigorous and comprehensive monitoring process. At the start, they closely examined the legislation that the 36 parties had adopted to fulfill the Convention obligations. Now they are evaluating the measures of each country to prevent, detect, prosecute, and ultimately sanction the bribery of public officials. The evaluations are public—on the Internet. Each party must report how it is implementing the recommendations of the group.

In all these activities the parties work closely with the business community and with civil society. Their support was crucial for building the momentum to negotiate the Convention. Their continued support and involvement strengthens our work. And we, governments, are accountable to civil society for achieving the anti-corruption goals that we have set.

But law enforcement is not the only—or even perhaps the most important—means of fighting corruption. The guarantee of integrity in public life is the basis for public trust and the foundation of good governance. OECD countries have developed guidelines on how to modernize their legal, regulatory, and procedural systems to promote integrity in the public service and thereby also prevent corruption. The OECD has also undertaken extensive work on regulatory reform, which is one of the most effective ways to reduce the incidence of corruption.

Finally, the OECD supports this Anti-Corruption Initiative here and similar efforts elsewhere, by sharing the expertise we have gained though the implementation of the OECD anti-corruption instruments, and by

helping to integrate regional initiatives into the wider network of anti-corruption efforts around the world.

The ADB/OECD Anti-Corruption Initiative: Dynamics and Purpose

The ADB/OECD Anti-Corruption Initiative for Asia and the Pacific has pursued an ambitious agenda since it began in Seoul, Korea, in 2000, and since 17 countries endorsed the Anti-Corruption Action Plan in Tokyo, Japan, in 2001. The Initiative is driven by the determination of countries in the region

- to lead the region's fight against corruption, and
- to use internationally agreed standards to guide their actions.

Today 25 Asian and Pacific countries and jurisdictions participate in the Initiative. Since the People's Republic of China joined us in April 2005, the Initiative now covers more than half of the world's population, giving it an even more prominent role in today's global anti-corruption architecture.

A promising sign for the future is that, in joining the ADB/OECD Initiative, China's highest authorities have committed to a strong reform under the three pillars of the Initiative's Anti-Corruption Action Plan. Like other members of the Initiative, they will regularly review progress in implementing the Action Plan—so that we can learn from their experiences and successes. In this context, the OECD stands ready to cooperate with China and support China's efforts to play a strong role in the global fight against corruption.

Conference Objectives: Advancing Anti-Corruption Reform and Strengthening Capacity in Corruption Risk Zones

Since the last conference in Kuala Lumpur, Malaysia, in 2003, Asia-Pacific countries have examined their laws and institutions to prevent and combat corruption in public procurement, a key area where the risk of corruption is high. Many governments have adopted comprehensive anti-corruption strategies, improved their anti-corruption legislation, and increased the resources, both financial and human, of their law enforcement agencies.

Later this morning, we will learn more about these recent measures undertaken by Asia-Pacific countries, about good, effective approaches, and about the difficulties we encounter.

The agenda of the Initiative has expanded in the past years to keep up with changes in the global economy and the region, as well as the evolving character of corruption. During the conference, which will guide countries in their anti-corruption efforts until the next regional conference in two years' time, six workshops will look at measures to strengthen the effectiveness of domestic anti-corruption strategies.

An important starting point is to understand the weaknesses in a country's anti-corruption infrastructure. Public opinion surveys can be a useful tool for gaining insight into these weaknesses.

Stakeholder involvement in the design and implementation of anti-corruption strategies is very important. The conference will therefore look at ways to enhance cooperation between governments and donors, and between governments and the private sector.

We also need to pay special attention to certain sectors or activities of public administration that are particularly susceptible to corruption. The conference will thus examine the corruption risks and remedies in humanitarian relief operations, and ways to better regulate the public-private interface to prevent potential abuse.

Finally, we all agree that one of the key challenges is the growing financial complexity and internationalization of corruption cases. Success in prosecuting corruption depends on our ability to strengthen international cooperation among judicial authorities. We need to make optimum use of the network of experts from the region and beyond to make progress in this area.

Conclusion

I am confident that the outcomes of this conference will lay a firm foundation for strengthening anti-corruption efforts. I hope we can contribute together to economic development and a better quality of life for all citizens from Asian and Pacific countries. I wish you all a very successful conference.

Opening Remarks at the 7th Steering Group Meeting

Li Zhilun
Minister of Supervision
People's Republic of China

First of all, on behalf of the Ministry of Supervision of the PRC, I would like to express my heartfelt congratulations on the convening of the 7th Steering Group Meeting of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific and the Fifth Regional Anti-Corruption Conference for Asia and the Pacific in Beijing and extend a warm welcome to all the distinguished guests and friends present here.

Countries and regions in Asia-Pacific are linked by mountains and rivers. We have no reason not to become good friends and neighbors, and deepen exchange and cooperation in various fields. A major issue facing all countries and regions is to build and maintain a clean and efficient government during the entire process of economic development. The fight against corruption is an internal concern of a country, and each country should work out its own anti-corruption strategies and measures on the basis of its realities. At the same time, countries and regions need to learn and support each other, and join forces in countering corruption. The ADB/OECD Anti-Corruption Initiative for Asia and the Pacific, with its Steering Group, is a joint achievement of Asian countries and regions and international and regional organizations, aimed at strengthening exchange and cooperation in the fight against corruption. In the past years, the Steering Group, taking into consideration the characteristics of the region, has made great efforts and played a positive role in helping members exchange experiences in the fight against corruption, organizing personnel training, providing specific and practical assistance, and promoting the implementation of the Initiative to combat corruption in this region. As a regional anti-corruption action plan, the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific advocates the reform of systems and mechanisms with pragmatic measures. This is of crucial significance in guiding and promoting the elimination of corruption in Asia-Pacific countries and regions and in conformity with the requirements of the international community in combating corruption. It is also in line with the Chinese Government's efforts to develop a complete and effective mechanism for combating corruption. China formally became a member of the Initiative at the Sixth Steering Group Meeting of the ADB/OECD

Anti-Corruption Initiative for Asia and the Pacific in Hanoi, Vietnam, last April. It showed the willingness of the Chinese Government to play an active role in the regional anti-corruption drive. We will, on the basis of equality and mutual benefit, respect for differences, and pursuit of tangible results, conduct active and pragmatic cooperation with other members, exchange and learn from each other's experiences, and strive to minimize corruption.

The Chinese Government has always attached great importance to the work of anti-corruption, made it a top priority, and taken measures to tackle it. We have adhered to the principle of "doing two jobs at the same time and attaching equal importance to both" advocated by Mr. Deng Xiaoping. This means that we conduct both reform and opening up and the fight against corruption at the same time to guarantee the sound interaction between socio-economic development and the work of anti-corruption and the building of a clean government. We have adhered to the concept of putting people first and governing for the people, and focused our efforts on solving the problems detrimental to the interests of the people, thus truly safeguarding those interests. We have persisted in administering according to law and managing the government strictly, seriously handling corruption cases and severely punishing corrupt elements to curb the spread of corruption. We have made full use of the fundamental role of education in fighting against corruption and building a clean government, and establishing an ethical defense line to resist corruption and degeneration. We have carried out the strategic policy of addressing corruption from both its symptoms and root causes in a comprehensive way and combining both punishment and prevention, with emphasis on the latter, deepening reform and institutional innovation to prevent and solve the problem at its very source. We have strived to strengthen the leadership structure and work mechanisms and bring into full play the role of various supervision elements to form a joint force in the fight against corruption. After years of efforts, we have found an effective way of tackling corruption suited to the current situation in China and have scored great achievements in this field.

We are very pleased to have this conference held here in Beijing. We are from different countries and regions and have different professional backgrounds. I believe that all of us will make full use of this opportunity to exchange and explore ways to curb corruption and promote social justice and development. It is also a good chance for us to strengthen our friendship and further promote the implementation of the Initiative in the Asia-Pacific region.

The Chinese Government is paying close attention to this conference. Mr. He Yong, secretary of the Central Committee Secretariat of the Communist Party of China (CPC) and vice-chairman of the Central Commission for Discipline Inspection, Mr. Hua Jianmin, State Councillor and Secretary General of the State Council, and Mr. Jia Chunwang, Procurator General of the Supreme People's Procuratorate, will attend tomorrow's opening ceremony of the Fifth Regional Anti-Corruption Conference for Asia and the Pacific. Mr. Wu Guanzheng, member of the Standing Committee of the Political Bureau of the CPC Central Committee and chairman of the Central Commission for Discipline Inspection, will meet with the heads of the delegations. The Ministry of Supervision, as the host of the conference, will do its utmost to provide the best service to ensure the success of the conference.

I wish the conference a complete success and hope all of you enjoy your stay in Beijing.

Closing Remarks

Huang Shuxian
Vice-Minister of Supervision
People's Republic of China

The three-day Fifth Regional Anti-Corruption Conference for Asia and the Pacific has completed all the items on the agenda, thanks to the common efforts of all the delegates, and is now coming to its conclusion. On behalf of the organizing committee and the Ministry of Supervision, I would like to congratulate you on the success of the conference and express our heartfelt gratitude to all the delegates and friends for your support and cooperation.

The Chinese Government attaches great importance to this conference. During the conference, Mr. Wu Guanzheng, member of the Standing Committee of the Political Bureau of the Central Committee of the Communist Party of China (CPC) and Secretary of the Central Commission for Discipline Inspection, and Mr. He Yong, Secretary of the CPC Central Committee Secretariat and Deputy Secretary of the Central Commission for Discipline Inspection, had a cordial meeting with heads of delegations. Mr. Hua Jianmin, State Councillor and Secretary General of the State Council, attended and addressed the opening ceremony. Mr. Jia Chunwang, procurator of the Supreme People's Procuratorate, was also present at the opening ceremony. Mr. Li Zhilun, Minister of Supervision, delivered the speech welcoming the delegates to the conference. They all praised highly the work of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific, clearly expounded the principles and policies followed by the Chinese Government in building a clean government and countering corruption, and expressed China's sincere aspiration to participate in anti-corruption exchange and cooperation in Asia and the Pacific. During the conference, delegates from China's supervisory institutions had broad contacts with participants from other countries and regions. They exchanged experiences, deepened understanding, and increased cooperation.

Delegates at the conference focused on the theme "Reducing inequality and promoting growth: Driving down corruption", reviewed recent anti-corruption work in Asia and the Pacific, and discussed strategies for expanding anti-corruption efforts in the region. We conducted in-depth exchanges and discussions on the following six topics: the role of public opinion surveys in preparing anti-corruption reform,

effective donor support for anti-corruption reform in developing countries, prevention of corruption in humanitarian relief operations, conflicts-of-interest typologies, a supportive environment for business integrity, and regional and worldwide judicial cooperation to deny safe havens. The conference reached consensus on many issues. At the same time, officials of the Bureau of Policy Development of the United Nations Development Programme made constructive suggestions concerning support and donations for anti-corruption reforms in the region. Transparency International and other non-governmental organizations expressed their views on curbing corruption and promoting equality and development. I believe this conference will play a positive role in strengthening anti-corruption activities and cooperation in the region and developing friendship among oversight agencies of all countries.

Resolutely curbing corruption is a strategic task for all countries and regions in Asia and the Pacific, as well as an important responsibility of their governments. The Ministry of Supervision is willing to work together with its counterparts throughout the region to strengthen exchange and cooperation, strive to build clean, pragmatic, and efficient governments, and promote social justice and development.

I take this opportunity to wish you all a pleasant trip back home.

Conference Conclusions and Recommendations

Systems to fight corruption are vital elements to reduce inequality and nurture and sustain economic growth and prosperity. Conference participants commended Asian and Pacific societies for the important efforts undertaken since the previous conference to enhance legal and institutional mechanisms and strengthen capacity to prevent, investigate and prosecute corruption and bribery. They welcomed the opportunity provided by the Beijing conference to discuss issues of key concern to the Asia-Pacific region with experts from all involved sectors, and expressed the wish to further advance this multi-stakeholder dialogue over the coming years.

They agreed that continuous and targeted efforts to implement the standards and principles of the ADB/OECD Anti-Corruption Action Plan for Asia-Pacific and other relevant international instruments are required to progress on the region's anti-corruption agenda. Discussing such future reform efforts, participants acknowledged that the focus of anti-corruption reform must be unique to every country and reflect the countries' distinct needs, level of economic development, and administrative, social and political structures. At the same time, they agreed that certain trends are prevalent throughout the region and that certain problems require equal attention by all Asian and Pacific countries and should be addressed as a priority to further advance the region's fight against corruption over the next two years:

Priority Measures

1. Designing effective anti-corruption reform

Participants agreed that anti-corruption reforms are most effective if they are the result of an overall strategic approach, properly sequenced and coordinated, and if all involved stakeholders, including donor organizations, work in close coordination.

Public opinion surveys

Considering the importance of a comprehensive anti-corruption strategy and public support for it, participants recognized that:

- Public opinion surveys conducted by governments, while not a substitute for policy, have proved to be useful tools to advance reforms and frame key policy issues, raise awareness and foster public support for and discussion of anti-corruption reform;
- Surveys provide for a degree of public participation and can be an element of participatory democracy;
- Public opinion polls are used to gather views about all aspects of administration but they are rarely systematically coordinated by governments; a key aspect to their effectiveness is that results be clearly communicated to politicians and senior officials;
- Public opinion surveys conducted by non-government actors such as academia or citizen groups can motivate the public discussion of corruption and of potential remedies, and as such may serve to increase pressure for change and trigger reform; and
- Challenges remain in the use of public opinion surveys, including increasing knowledge of available opinion survey tools and developing capacity in their use; converting research results into concrete policy recommendations; strengthening research in diagnostic indicators; and supporting the use of survey tools over time.

Donor support

Given the need to deepen anti-corruption capacity in the region, the role of the donor community remains crucial. Participants:

- Recognized the value of establishing joint recipient-donor vision and partnership structures involving the government, civil society, private

sector and the donor community for the sharing of diagnostics, knowledge and analysis, the promotion of policy development, and to foster donor coordination and independent project implementation;
- Emphasized the role of NGOs and civil society to complement donor assistance in anti-corruption reform;
- Urged donors to take into account local contexts and challenges in developing responses to countries' development assistance needs, and to make use of domestic capacity in anti-corruption reform; and
- Encouraged the ADB/OECD Initiative to discuss the concepts of multi-stakeholder development partnership structures and of independent audit and monitoring mechanisms for project implementation at the next regional conference or in a capacity building workshop.

2. Focusing on corruption risk zones

Participants agreed that, depending on the degree of interaction between public and private actors or the potential level of bribery, certain sectors or activities within a public administration are by their very nature more vulnerable to corruption than others.

Corruption in humanitarian relief operations

In light of the recent experience with the tsunami relief operations, participants agreed that humanitarian relief and reconstruction following natural disasters is particularly vulnerable to corruption and in this context suggested that

- Guidelines and tools to curb corruption in humanitarian relief operations should be developed, building on the *Conclusions and Framework for Action for Preventing Corruption in Humanitarian Relief Operations*, developed at the expert meeting on corruption prevention, organized by the ADB/OECD Initiative and Transparency International in April 2005 in Jakarta, Indonesia;
- Specific work is needed to develop lighter and swifter instruments for financial management, administrative procedures and anti-corruption safeguards;
- Donors and NGOs should both enable and reward transparency, quality management and fraud reporting; and

- Stakeholders should consider the establishment of independent and adequately resourced monitoring facilities.

Conflicts of interest

Preventing and managing conflicts of interest is increasingly becoming a priority throughout the Asia-Pacific region and worldwide, as the emergence of new models of public-private cooperation and increased mobility of personnel between the public and private sectors have multiplied grey zones where conflicts of interest situations may arise. While the level of regulation of conflict of interest varies from country to country, participants agreed that certain challenges are similar in each country and therefore suggested that:

- Every country should, in accordance with its own domestic jurisdictional and other basic legal principles, and in line with relevant international standards and guidelines, establish ethical and administrative codes of conduct that proscribe conflicts of interest and provide for an appropriate framework to identify, manage and resolve conflict of interest situations where they may arise;
- Given the difficulties and controversies related to the definition of conflict of interest, instruments such as the *OECD Toolkit for Managing Conflict of Interest in the Public Sector* may be useful to help overcome difficulties in the application of conflict of interest policies in daily practice; and
- Measures should be taken by countries to enable the assessment of the actual impact of conflict of interest policies.

3. Working together for change

As corruption impacts all groups of society, and because criminals increasingly exploit systemic weaknesses to hide proceeds of corruption in foreign jurisdictions and escape from prosecution, working together across sectors and borders is central to effectively combating it.

A supporting environment for business integrity

Recognizing the role of the private sector both in acts of corruption as in the prevention of such acts, participants highlighted the urgent necessity to ensure that businesses operate with the highest level of integrity and implement effective anti-corruption measures through:

- The development and enforcement of accounting standards prescribing transparent public and private corporate accounts and prohibiting practices such as accounting omissions, falsification and fraud for the purpose of bribery of public officials or of hiding it, as well as the strengthening of independent external auditing controls;
- The promotion, development and adoption of adequate internal company controls, including standards of conduct prohibiting the giving of bribes;
- Education and training programs on business ethics, conducted in close cooperation with professional organizations and community based organizations, and civil society monitoring of corporate compliance with business integrity standards;
- Systems ensuring that all areas of government, identified by the respective governments as presenting a potential for abuse through bribery or attempted bribery of public officials, are transparent and that information is made readily available to the public in a manner that would serve the purpose of ensuring fairness and compliance with rules and standards; and
- The strengthening of banking practices and banking supervision.

Denial of a safe haven for officials and individuals guilty of corruption

Given the vital importance of effective international judicial assistance to effectively prosecute corruption, and recognizing that international cooperation in terms of asset recovery is a time consuming procedure albeit that ultimately it produces results, participants agreed that:

- International judicial assistance requires a holistic approach and the cooperation of all countries;
- The exchange of information on investigative procedures, and the establishment of a compendium of legislation and rules relevant to seizure, confiscation and recovery of illegal assets and extradition, can help overcome difficulties in international judicial assistance caused by the differences in legal systems and cultures;
- Countries should ensure the existence of bilateral and multilateral treaties and agreements for the mutual provision of judicial assistance; and
- regional mechanisms such as the ADB/OECD Anti-Corruption Initiative for Asia-Pacific, the OECD Anti-Bribery Initiative, and other international initiatives may be used by countries for mutual legal assistance in criminal matters.

Follow-Up Action

To support the implementation of the conclusions of the 5th regional anti-corruption conference for Asia-Pacific, participants called upon the conference organizers, in the framework of the ADB/OECD Anti-Corruption Initiative for Asia-Pacific and, where appropriate, in coordination with other international and regional anti-corruption initiatives such as the United Nations, the OECD Working Group on Bribery, the Financial Action Task Force on Money Laundering, and the Asia-Pacific Economic Council (APEC) Anti-Corruption Task Force, to:

- Assist countries in identifying weaknesses in their domestic anti-corruption framework with respect to the findings of the Beijing conference and in formulating and implementing corresponding reform measures; and
- Support capacity building efforts of endorsing countries in areas identified by the Beijing conference as being of particular concern to the region.

Participants urged that another conference be held within two years in the framework of the ADB OECD Anti-Corruption Initiative to review progress in advancing the priority anti-corruption reform measures identified in the present conclusions of the Beijing anti-corruption conference.

Chapter 1
Achievements and new challenges in the fight against corruption in Asia and the Pacific

Gretta Fenner
ADB/OECD Anti-Corruption Initiative for Asia and the Pacific
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The fight against corruption remains high on the political agendas of Asian and Pacific countries. Citizens are increasingly aware of the evils of corruption and alert to the necessity of taking effective action against it, and at elections, they attentively scrutinize their governments' actions and they call for adherence to and active participation in international initiatives like the ADB/OECD Initiative and, more recently, the UN Convention against Corruption.

Since the Initiative's last regional conference in Malaysia two years ago, countries have in this spirit engaged in important reform projects with a view to strengthening anti-corruption measures and enhancing good governance, transparency, and accountability in public service. Since the beginning of cooperation among Asian and Pacific governments under the umbrella of the ADB/OECD Initiative, these projects have considerably gained in sophistication, specialization, and comprehensiveness. They have also revealed that major legal gaps and

loopholes continue to exist, and that the capacity of anti-corruption institutions often remains insufficient in many countries.

This paper seeks to summarize the Initiative's member countries' efforts against corruption over the past two years and to highlight major achievements as well as regional trends. It also addresses key challenges that countries continue to face and that will need to be addressed more vigorously in the time to come.

A Strategic Approach to Combating Corruption and Promoting Governance

Looking at the type of anti-corruption reform programs that countries have engaged in over the past two years, one can observe that more and more countries understand corruption and governance as cross-cutting issues and consequently seek to address them through a holistic approach. This means that individual reform projects are increasingly embedded in long-term anti-corruption strategies, which are seen as integral parts of national development and poverty reduction programs. They also usually encompass both preventive and repressive measures or alternatively provide for close coordination between different projects in the areas of prevention and prosecution. Furthermore, they increasingly seek support and "buy-in" from concerned non-governmental stakeholders.

National anti-corruption programs seeking to meet such a level of comprehensiveness were, for instance, developed recently in Indonesia, Kazakhstan, Malaysia, Mongolia, Nepal, and Pakistan. In Korea, to state another example, various stakeholders from government, political parties, business, and civic groups have recently adopted a joint action plan that defines the specific goals and roles of each of these stakeholder groups in promoting transparency and combating corruption. The fact that a growing number of countries are seeking to streamline their legislation with a view to replacing formerly separate pieces of relevant legislation with a comprehensive anti-corruption law is a further indicator of this trend.

This holistic approach is also reflected in the Anti-Corruption Action Plan's three pillars—Pillar I outlines preventive measures in the public sector; Pillar II addresses issues related to law enforcement and to private sector accountability; and Pillar III promotes cooperation with non-state actors from civil society, the media, and the private sector. The Action Plan consequently enjoys high popularity and growing recognition in the region and beyond for its ability to guide and foster anti-corruption reform. Since the last conference, four countries—the People's Republic of China,

Palau, Thailand, and Vietnam—have endorsed the Action Plan, and the Initiative's Steering Group has further welcomed Brunei Darussalam and Sri Lanka as new observer countries.

Like the Action Plan, the UN Convention against Corruption addresses the full scope of institutional and legal settings that need to be in place to effectively combat corruption, ranging from prevention and criminalization to international cooperation and asset recovery. At the start of 2006, 16 member countries of the ADB/OECD Initiative had signed the UN Convention, and many were actively preparing ratification by reviewing the compliance of their anti-corruption structures with the UN Convention.

Achievements and Challenges in Asia and the Pacific

Despite this general trend towards a more strategic and integrated approach to anti-corruption and governance reform, differences can be observed in the level of attention that is paid to certain aspects of the fight against corruption. Preventive measures in the public sector, and reform efforts that seek to enhance the effectiveness of corruption prosecution, receive generally high attention at the disadvantage of government efforts involving or targeting non-state actors. This trend, already observed two years ago at the time of the previous conference, has not altered to a great extent.

Prevention of Corruption in the Public Sector

Enhancing integrity and transparency in public procurement has been identified by all of the Initiative's member countries as being crucial in successfully preventing and combating corruption in the public sector. At least five countries—Bangladesh, the People's Republic of China, the Kyrgyz Republic, Pakistan, and the Philippines—have entirely overhauled their procurement frameworks since 2002, and many others are working on similar reforms. The analytical process on this issue, which is ongoing among the Initiative's member countries in the context of their thematic reviews project, seeks to support these reforms.

Measures to bolster public officials' integrity and competence also remain a focus of many countries' efforts to strengthen the public sector against corruption. Certain countries, such as the People's Republic of China and Papua New Guinea, have reinforced merit-based recruitment systems. Other countries have adopted or revised codes of conduct for public officials or other special categories of staff, for instance, the judiciary.

These codes are accompanied by significant changes in the regulatory environment and by staff training, to ensure that they are thoroughly implemented. Finally, ways to better manage potential conflict-of-interest situations are being sought in many countries; in this context, new rules are being set up to regulate post-service employment, or to define reporting obligations for public servants regarding economic or other interests that may impede their proper conduct in office.

Another important area of reform where progress can be reported covers measures to enhance the quality and accountability of public service delivery. A growing number of countries make extensive use of modern information technology to provide access to public service, especially in public procurement or tax administration and other sectors considered to be particularly prone to corruption. With the same objective, many countries continuously strive to simplify their regulatory environment: Malaysia, for instance, is implementing a program that seeks to install a systematic and regular review of all its administrative procedures; the People's Republic of China is reviewing its licensing system; and Mongolia has made similar efforts to streamline its tax administration procedures to reduce opportunities for discretionary decision making.

Promotion and Enforcement of Private Sector Integrity

Compared with reforms to strengthen integrity in the public service, corruption prevention in the private sector has been significantly lower on governments' reform agendas. Although most countries have enacted, or are enacting, regulations for company accounting, internal control, and disclosure of information, enforcement remains a problem. As audit mechanisms and regulations for companies have been enacted only recently in most countries, the situation could evolve in the coming years. However, many loopholes and ambiguities remain, and, therefore, this type of preventive anti-corruption measure clearly requires more attention by governments.

As regards legal means to enforce private sector integrity, the anti-corruption legislation of Asian and Pacific countries provides for much softer sanctions for active bribery by employees of a private sector company or for the concerned legal persons, compared with sanctions applicable to public officials who accept or solicit bribes. As sanctions can be an important deterrent to corruption in the private sector, it may be worth considering whether active and passive bribery should be treated more equally. In particular, introducing the liability of legal persons for

bribery, which is not yet provided for in most countries' legislation, should in this context be considered.

More Effective Law Enforcement

While the above-mentioned areas will require further attention by most countries in the region in the near future, significant progress has been achieved over the past two years with regard to anti-corruption legislation and law enforcement. Many countries are reviewing their anti-corruption legislation to ensure that the laws comply with international standards, and plan to amend existing laws or draft new pieces of legislation where necessary. Particular attention has further been paid to strengthening anti–money laundering systems and laws. As a result, none of the Initiative's member countries any longer feature on the list of non-cooperative countries and territories of the Financial Action Task Force on Money Laundering.

Countries are further dedicating important resources to strengthening capacity and enhancing knowledge within their law enforcement authorities to enable them to deal with the growing complexity of corruption and related crimes. The restructuring of law enforcement institutions thus enjoys high priority in Action Plan countries. At the same time, reform approaches to this common preoccupation vary, depending largely on a country's institutional structure and resources. Quite a large number of countries have opted for the establishment of a specialized anti-corruption body similar to those of Malaysia or Hong Kong, China. Bangladesh and Indonesia are just two examples where such institutions have most recently been established. In other countries, a number of different authorities are involved in the prosecution of corruption. In such a setting, attention has to be paid to ensuring coordination between these institutions, and responsibilities need to be clearly defined. In both approaches, the training of law enforcement officials is of high importance and is likely to remain a priority area for anti-corruption efforts in the region in the coming years. Particular capacity-building needs exist in new investigative techniques, such as forensic accounting and engineering, and—triggered by the entry into force of the UN Convention Against Corruption—with regard to international judicial cooperation and asset recovery.

Involvement of Non-State Actors in the Fight Against Corruption

It is generally acknowledged that non-governmental actors, especially the private sector, media, or anticorruption non-governmental organizations (NGOs), can play an important role in further advancing the anti-corruption agenda. In the Asia-Pacific region, some private sector associations and companies have played a significant role in spreading business ethics and corporate governance and responsibility standards. Awareness-raising campaigns by non-state actors have contributed in an important way to putting the fight against corruption at the top of the political agenda. Grassroots advocacy work, for instance, has had a major impact on the development of access to information legislation.

However, policies in some countries in the region still reflect caution about the extent of civil society involvement in anti-corruption reform. Some encouraging examples have been reported over the past two years, however. In a growing number of countries, governments have admitted NGOs to the monitoring of certain government activities, especially in public procurement. In other countries, independent actors are employed to conduct public perception surveys; in still other countries financial support for anti-corruption NGOs is provided by governments.

Conclusion

Overall, significant reform efforts in the fight against corruption have taken place in Asian and Pacific countries over the past two years. Legal gaps and loopholes continue to exist, however, and the capacity of anti-corruption institutions often remains largely insufficient. There is clearly no room for lethargy. Countries will need to continue and further strengthen their commitment to the fight against corruption.

In this they will need to ensure that anti-corruption strategies involve and commit all concerned stakeholders more systematically, thus acknowledging the valuable contribution of non-state actors in the fight against corruption. On the other hand, countries also need to better consider the potential role that such non-state actors, especially from the private sector, can play in committing corruption and reflect this in legislation and strategy. In all this, valuable knowledge can be gained through exchange of experience with counterparts from other countries. To further advance in the fight against corruption and pursue this struggle in a determined way, cooperation with partners from around the world, and above all from within the region, will remain a crucial factor.

Pushing forward anti-corruption work in the People's Republic of China to meet the needs of a market economy

Huang Shuxian
Vice-Minister of Supervision
People's Republic of China

In the ADB/OECD Anti-Corruption Action Plan for Asia and the Pacific, governments of the region agree to take concrete and meaningful priority steps to deter, prevent, and combat corruption at all levels, and also to take concrete steps under the three pillars of action—developing effective and transparent systems for public service; strengthening anti-corruption actions and promoting integrity in business operations; and supporting active public involvement. We believe these specific actions are in line with the common requirements of the international community to combat and prevent corruption, and that they can be done. Since the implementation of reform and the opening-up program in the late 1970s, the Chinese Government has paid great attention to anti-corruption work. Measures to combat corruption have been taken in the context of a developing socialist market economy, many of them in line with the objectives of the Action Plan. I would like to take this opportunity to brief you on the measures China has adopted in the fight against corruption.

Innovating Systems, Mechanisms, and Institutions for Preventing Corruption at the Source

An old Chinese saying goes, "an ounce of prevention is worth a pound of cure". To effectively curb corruption, measures should look into the source and stress prevention, addressing the deep-rooted problems that lead to corruption. In combating corruption, the Chinese Government has attached great importance to prevention, trying to establish long-term effective mechanisms that can address problems at the source. This can be done through institutional innovations.

Establishing an open, equal, and effective civil service system

In 1993, the State Council promulgated the Provisional Regulations on the Civil Service, creating the civil service system at all levels of administration. In 2005, the Standing Committee of the National People's

Congress passed the Civil Service Law, which has further regulated the systems for entry, appraisal, reward and penalty, promotion, avoidance, etc., thus providing a legal basis for promoting government integrity and efficiency. Now, China's civil service system has become more comprehensive. We have adopted an exam-based recruitment system to select the best candidates into civil service through open exams. The central government departments held 11 examinations in a row that were open to everyone, and nearly 30,000 were recruited. The training of civil servants has expanded. Over the past 10 years, more than 17 million civil servants have participated in training programs. In recent years in particular, about 2.5 million people every year have been trained, and the participation rate continues to rise. The promotion and placement system for civil servants has improved. Between 1999 and 2004, nearly 500,000 official positions in provincial government departments were filled through competition. Since the restructuring of the government departments under the State Council in 1998, more than 2,000 positions in over 30 departments, commissions, and bureaus have been filled through competition. With the development of the civil service system, civil service management has become more scientific, and government administrative capacity and public service quality have been further enhanced.

Establishing codes of ethical conduct for public office holders to avoid conflict of interest

Targeting the key areas and positions that may give rise to conflict of interest in a socialist market economy, the Chinese Government has established and implemented a package of rules and codes of conduct for civil servants with the code of ethical conduct at the core, covering nearly all possible unethical behaviors of civil servants. First, the rules regulate the exercise of official powers by civil servants. They may not seek money or materials from persons or organizations under their management or service jurisdiction, or receive gifts or attend dinners that may affect their appropriate performance of official duties. Second, the rules regulate the public expenses incurred by civil servants in performing their duties. They may not purchase and own cars or houses in violation of relevant regulations. Third, the rules prohibit civil servants from seeking illegal benefits by taking advantage of their official powers. They may not use public funds to send a spouse, children, relatives, or friends overseas for study or training, and may not provide favorable

conditions for the business of a spouse, children, relatives, or friends. An income declaration system and a major personal affairs reporting system have been implemented. Inspections by government and supervision organs at all levels to ensure strict compliance with those regulations by civil servants have effectively deterred the abuse of power for personal gain, extravagance and waste, and conflict of interest.

Intensifying the reform of the financial and investment system

The following have been done in recent years. First, on the basis of the requirements of a socialist public finance system, we have further reformed budget management and widely promoted comprehensive budgeting, departmental budgeting, and centralized revenue and expenditure by the State Treasury to strengthen the management of public funds. Second, we have vigorously worked on investment reform, recognizing the fundamental role of enterprises in investment, reducing the improper interference of government in microeconomic activities, and limiting the role of government to the approval of major or restrictive projects to protect the public interest. Third, on the basis of the Government Procurement Law and the Bidding Law, we have instituted transparent government procurement procedures, strictly implemented the bidding and auction system for the transfer of commercial land use rights, and strengthened the management of construction projects to prevent the loss of public investments. Fourth, according to the Audit Law, we have intensified the audit of government administrative organs and other public service organizations and disclosed the audit outcomes to the public. All the above-mentioned reforms are important measures to prevent and combat corruption at the source and help greatly to ensure the accountability and transparency of public service.

Seriously Dealing with Cases of Corruption to Promote Integrity and Justice

Under the current conditions of system reform and restructuring in China, corruption can easily occur in certain areas. Therefore, the resolute investigation of violations of laws and discipline and a serious crackdown on corrupt behavior is important in containing the occurrence and spread of corruption and winning public confidence in the fight against corruption.

Strengthening anti-corruption legislation and law enforcement

The Chinese Government attaches great importance to anti-corruption legislation. Efforts have been made to accelerate relevant legislation. Some substantive and procedural laws such as the Criminal Law and the Criminal Procedure Law, as well as laws on criminal penalty, have been amended and improved, laying down a fundamental legal basis for the punishment of corruption. The Law on Civil Service, the Law on Judges, the Law on Public Prosecutors, the Law on Administrative Supervision, and the Law on Auditing and their implementation rules have been passed, as have the accountability system and regulations on sanctions against violations of laws and discipline. Now, we are drafting supplementary rules for the Regulations on Administrative Sanctions for Civil Servants in Government Administrative Organs, revising rules holding leading officials responsible for violating the public interest, rationalizing the reporting of major affairs and income declaration by leading officials. The implementation of those laws and regulations has made us better able to investigate and correct unhealthy practices, and effectively combat and prevent bribery and other corrupt methods.

Intensifying the fight against bribery, money laundering, and other economic crimes

In recent years, the Chinese Government has seriously investigated and prosecuted a number of big cases, and brought corrupt persons to justice. Focus has been on those cases involving power abuse and rent seeking by leading officials. Since last year in particular, the Chinese Government has restructured the anti–money laundering mechanism, dealing a heavy blow to the crime. The law against money laundering is being drafted. China has strengthened international anti-corruption cooperation through international conventions and bilateral treaties. The country has joined the UN Convention against Transnational Organized Crime and the UN Convention Against Corruption. We are now working to establish international anti-corruption cooperative mechanisms with relevant countries in law enforcement, legal assistance, and repatriation and recovery of corrupt proceeds.

Strengthening Citizen Participation in the Fight against Corruption

The public is an important force in the drive against corruption and in the evaluation of the effectiveness of anti-corruption measures. In combating corruption, we have combined government supervision with public scrutiny, encouraged public involvement, and widened the channels of supervision.

Perfecting the whistle-blower system and protecting people's legal right to complain

China's constitution stipulates that citizens are entitled to criticize government entities and civil servants and make recommendations to them, and to complain or accuse government organs or civil servants of unlawful behaviors in the pursuit of their official duties. It also prohibits retaliation for complaints or accusations lodged. Statistics reveal that in 2004, 1,209,159 accusations and complaints were written or phoned in (through a telephone hotline) or made in person before administrative supervisory organs nationwide; of the total, 637,881 were against persons or organizations under our supervisory jurisdiction. Supervisory organs have dealt with all of them carefully, using legal procedures. To protect the legitimate rights and interests of the whistle-blowers, many local governments have come up with measures to protect and reward them. Those who can successfully expose major violations of laws and discipline will be rewarded. Supervisory organs are strictly prohibited from releasing information on any complaint or accusation, or from transferring relevant documents or information to the person or organization accused.

Promoting transparency in government and public involvement in preventing and combating corruption

Regarding the openness of government affairs as a fundamental mechanism of governance, the Chinese Government has worked hard to ensure the public right to be informed and to participate in and have oversight of government, and to make public authorities operate in an open environment. Now, openness in government affairs is being widely introduced at the township level. More than 85% of administrative organs at the county level and 80% at the city level have opened their affairs to the public. Hospitals, schools, and other public services that are closely tied to the welfare of the public are gradually making their operations

more open to the public. With regard to public involvement in the fight against corruption, we have set up public complaint and press release systems. Supervisory bodies and prosecution institutions have specially appointed part-time supervisors and prosecutors. These systems can support in different ways orderly public involvement in countering corruption.

Conducting society-wide ethics education to create an ethical social climate

We pay close attention to combining education in ideology and discipline with education in social morality, professional ethics, family values, and the law, and vigorously promote an ethical culture. We make major efforts to bring an ethical culture into communities, households, schools, enterprises, and the rural areas, making full use of newspapers, magazines, television, radio, and the Internet to guide public opinion and increase awareness of anti-corruption measures so as to create a desirable social climate where honesty is esteemed and corruption brings disgrace. Last April, the Ministry of Supervision and the Ministry of Education jointly held the Seminar on Bringing Ethical Culture into Schools and Ethical Education of the Youth, which officially launched the ethical culture and anti-corruption project. The implementation of such projects will definitely help create an ethical social climate.

The Chinese Government has always attached importance to international anti-corruption cooperation and mutual exchange of experience with other countries including the Asia-Pacific countries and regions. The Steering Group meetings of the Initiative have been very fruitful and have drawn worldwide attention. As an endorsing country of the Action Plan, China will continue to strengthen exchange and cooperation with other member countries (jurisdictions) of the Anti-Corruption Initiative for Asia and the Pacific. We are ready to contribute to the realization of the Action Plan's objectives, and the promotion of government integrity.

Promoting growth by preventing corruption: The strategy of Vietnam

Tran Quoc Truong
Vice-Minister and Deputy Inspector General
Government Inspectorate of Vietnam

On behalf of the Leaders of the Government Inspectorate of Vietnam, I would like to thank the Ministry of Supervision of the People's Republic of China for hosting this important conference under the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific. I would also like to thank ADB and OECD for starting, developing, and managing the Initiative, which gave rise to this dialogue and regional forum on the control and elimination of corruption for the sustainable development of not just one country but the whole region.

After having being an observer for a period of time, Vietnam became the 23rd country to endorse the Anti-Corruption Action Plan for Asia and the Pacific on 16 June 2004. The endorsement of the Action Plan attests to Vietnam's determination and political commitment to control and gradually drive corruption out of social life. Before endorsing the Action Plan, in December 2003 Vietnam also signed the UN Convention Against Corruption. The endorsement of the Anti-Corruption Action Plan and the participation of Vietnam in various activities of the Initiative constitute a significant step towards the ratification and efficient implementation of the UN Convention Against Corruption.

You may already know from the mass media that since the establishment of the country, the Government of Vietnam has always paid ample attention to strengthening its inspection, investigation, and examination functions to prevent, uncover, and eliminate corruption and malpractices. We regard this as a regular and continuing task through which administrative discipline and social order are strengthened, and administrative barriers to social and economic development are thereby gradually eliminated. We have made considerable achievements recently. Awareness of the consequences of corruption is increasing among our leaders at different levels and the public at large. We are aware that combating corruption depends on internal strength, but external support is also very important—especially the valuable experience shared among regional and international communities. These positive developments are partly a result of Vietnam's participation in and endorsement of the Anti-Corruption Action Plan for Asia and the Pacific.

I would now like to inform you briefly about some recent innovations in the laws and policies against corruption in Vietnam.

General System of Anti-Corruption Laws and Policies

The National Assembly designated the year 2005 as the year for preventing wastefulness in infrastructure investment throughout the country and issued a specific resolution regarding this matter. To set the legal basis for preventing, uncovering, and handling cases of corruption and malpractice, the National Assembly made the Law on Anti-Corruption and the Law on Thrift Practices part of the law and ordinance legislation program for 2005, which is to be adopted by the end of 2005 and to take effect in 2006.

We have brought forward the draft Law on Anti-Corruption for comment by the public, government agencies, and domestic and international organizations. The draft law has seven major parts: scope, subject matter, and general provisions; methods of preventing corruption; methods of detecting corruption; sanctions for corruption; institutional structure and coordination mechanisms among anti-corruption agencies; role and responsibility of society in the anti-corruption campaign; and international cooperation in the fight against corruption. The bill also contains new regulations for the effective prevention, detection, and punishment of corrupt practices. To ensure transparency, openness, and accountability among the heads of public agencies the regulations require public servants to disclose their assets and to follow a code of conduct. The regulations should strengthen cooperation among authorities and the active participation of the public in preventing and combating corruption.

The draft Law on Anti-Corruption reflects, in a comprehensive manner, the recommendations of the Anti-Corruption Action Plan for Asia and the Pacific under its three pillars of developing effective and transparent systems for public service; strengthening anti-bribery actions and promoting integrity in business operations; and supporting active public involvement in anti-corruption efforts. We thus believe that the Law on Anti-Corruption will become an effective tool and a basis for significantly improving the mechanisms and policies for anti-corruption work and reinforcing economic growth in Vietnam.

Specific Anti-Corruption Policies and Laws

Pillar 1: Developing effective and transparent systems for public service

Along with building ethical and administrative codes of conduct in the Anti-Corruption Bill to ensure the ethical conduct, integrity, and accountability of public servants, one of the main outcomes of our Master Program of Public Administration Reform for 2001–2010 is promoting a culture of public service. Specific measures to realize this goal are also found in Vietnam's legal documents. This is considered an important step forward in facilitating the reform efforts of the Vietnamese administration in the near future and in preventing malpractice and corruption in the state machinery.

Pillar 2: Strengthening anti-bribery actions and promoting integrity in business operations

Vietnam strictly punishes bribery; but more than that, Vietnam has also developed and implemented policies and regulations to create a clean and stable investment environment. The drafting of the General Law on Investment and a series of other laws and regulations on business transactions—some of which have already been passed while others are still pending—will certainly facilitate the development of a good and attractive investment climate in Vietnam. Some of these laws are the Law on Competition, the Law on Anti-Dumping, the Unified Law on Enterprises, the Law on Bidding, and the Law on E-Transactions. At the same time, efforts to remove administrative barriers to business transactions have also been given priority and will remain high priorities in the coming years. In fact, reform in administrative procedures related to business transactions, especially licensing and preferential investment treatment, among others, is being implemented widely in some areas of state management. We affirm that the Vietnamese Government has been very successful in reducing trade and investment barriers and instances of corruption.

Pillar 3: Supporting active public involvement in anti-corruption efforts

As is the case in almost all fields of socio-economic life, active public involvement in state management in general, and in anti-corruption efforts in particular, has clearly increased in Vietnam. The draft Law on

Anti-Corruption contains a separate section on this issue. In its strategy outlining the projects for legislation and regulation until 2010, Vietnam considers the task of amending and supplementing important legal documents that support public involvement and access to information in state and social management. On this basis, the role of the general public in Vietnam's anti-corruption strategy has been promoted through the consistent implementation of Democratic Regulations (approved by the Vietnamese Government in 1997, 1998, and 1999) in local authorities and public service agencies.

Through the great efforts and determination of the Government to fight against corruption, along with precious support from international organizations, especially ADB and OECD, manifested in regional and international dialogues and forums, we believe that the damage and detrimental effects of corruption on the development of our country and all over the world are gradually being contained and eradicated.

Once again, on behalf of the Government Inspectorate of Vietnam, may I thank ADB and OECD for initiating forums on policies and regulations on anti-corruption in the Asia-Pacific region.

Punishing and preventing corruption to ensure comprehensive socio-economic development in the People's Republic of China

Huang Shuxian
Vice-Minister of Supervision
People's Republic of China

I am greatly honored to have this opportunity to exchange views with delegates and friends attending this conference titled "Reducing Inequality and Promoting Growth: Driving Down Corruption". Equality and development is the common goal pursued by any responsible government. Facts have shown that corruption harms democracy and social justice, disturbs the rule of law, hampers economic development, and is the enemy of humankind. It is the common task facing all countries and regions including countries and regions in Asia to fight against corruption, safeguard smooth economic development, and promote social justice and social progress. The Chinese Government takes equality and development as important goals. It has clearly indicated its intent to build a harmonious society of equality and justice, honesty and love, vitality, and safety. It is striving to push forward its economy, political life, and culture. While persisting in focusing its efforts on economic construction, China always pays great attention to countering and preventing corruption, which affects the success or failure of socialist modernization and the long-term stability of the country. Over the years, we have worked hard to combat corruption and build a clean government, thus providing a solid basis for economic development and social justice.

"Doing Two Jobs at the Same Time and Attaching Equal Importance to Both"

The Chinese Government believes that socio-economic development requires countering and preventing corruption constantly throughout the process of reform, opening up, and economic development. At the beginning of reform and opening up, Mr. Deng Xiaoping put forward his famous argument of "grasping reform and opening up with one hand while grasping anti-corruption with another", "doing two jobs at the same time and attaching equal importance to both". Ever since then, the Party and the Government have taken these ideas as the guideline for combating corruption and building a clean government, persisting in

making the struggle against corruption obey and serve the core task of economic development, and making these tasks support and promote each other.

Government at all levels has consistently incorporated anti-corruption work into the overall work of economic and social development. Every year the State Council holds a working conference on government integrity to study the major issues in economic and social development and to arrange anti-corruption work for the executive sector. All government departments take the job of combating corruption and building a clean government into consideration in formulating policies for economic, social, and cultural development, as well as major reform measures and laws, rules, and regulations. On the principle that "an ounce of prevention is worth a pound of cure" they make decisions so as to prevent corruption. In the process of developing a market economy, corruption often occurs when new things are created, and it is tied up with economic activities. Corruption can easily occur in financial securities, real estate, the futures market, and contracting of projects. Supervisory organs therefore check and inspect those areas to put a stop to interference and sabotage caused by corruption, and thus maintain market fairness and the effectiveness of state laws and regulations. Since reform and opening up, China's economy has developed in a healthy, fast, and sustainable way, the society remains stable, and the people are fairly well-off, while anti-corruption work has made healthy progress. This shows that the drive against corruption has provided a powerful guarantee for the coordinated development of the socialist material, political, and spiritual spheres.

Putting People First and Focusing Our Anti-Corruption Efforts on Major Infringements of the Public Interest

The key to building a clean government is to maintain a close bond between the government, on the one hand, and the general public, on the other. The Chinese Government advocates the view that development should be people-oriented, coordinated, and sustainable. In the struggle against corruption, we always take the protection, realization, and development of the fundamental interests of the people as the starting point, resolutely curbing unhealthy practices that infringe on the rights of the people.

In recent years we have concentrated our efforts on rectifying the unauthorized collection of educational fees and improper practices in the purchase and sale of medicines and medical services, reducing the

burden on farmers, and redressing instances of incompetent or corrupt administration. Maladministration in land requisition and land use infringed on the interests of local farmers; maladministration in city resettlement infringed on the interests of local residents; maladministration in enterprise reorganization and bankruptcy infringed on the legal rights and interests of the employees. Initial progress was made in resolving major problems that caused intense resentment among the people. Thanks to the effective measures taken by all levels of government and supervision organs, in 2004 alone the fees for students were reduced by CNY 3.9 billion. Medical workers handed over cash worth CNY 49.47 million, which they had received as kickback. And the burden on farmers was reduced by CNY 44.6 billion through the reduction of agricultural taxes.

Government at all levels is promoting improvement in government work through appraisal by the people. Many local authorities set up telephone hotlines or conduct "online appraisal" to get comments from the people on the work of government entities. Most governments at and above the county level have set up one-stop "administrative service centers" and "administrative complaint centers", where citizens can submit applications or lodge complaints in one place. This has greatly improved the quality and efficiency of public service.

Bringing into Full Play the Fundamental Role of Ethics Education and Setting Up a Defense Line to Resist Corruption

We have an old saying "A man of integrity keeps evils away". Strengthening education in ways of combating corruption and building a clean government is an important basic task in the effort to prevent and control corruption. The Chinese Government is severely cracking down on a very small number of corrupt officials while educating the vast majority of public servants on how to avoid corruption, how to resist corruption, and how to refuse temptation. For many years we have extensively taught employees of government organs, especially leading cadres, about ethics in government, respect for the law, and the overall objective of total dedication to service to the people. Public officials are constantly urged to work truly for the people, to be practical, and to stay honest. We promptly adjusted, expanded, and strengthened relevant rules and regulations in response to the new situation of reform and opening up, thus establishing a complete set of norms and ethical standards for leading cadres. We have incorporated ethics education into the selection, management, use, and training of leading cadres. We combine self-discipline with external supervision, education with management, to make

education more focused and effective. We conduct ethics training, integrity workshops, and counseling, all of which constitute effective mechanisms for ethics education.

Government at all levels has incorporated ethics education into overall arrangements for the development of the socialist culture, and continuously expanded the coverage of such education. The education combines ideological training and discipline with training in social morality, professional ethics and family values, and the culture of ethics is brought into communities, homes, schools, enterprises, and the countryside. Full use is made of radio, television, and the Internet to spread anti-corruption education, introduce advanced models, correctly guide public opinion, increase the awareness of anti-corruption measures in the society as a whole, and help establish the social tendency to celebrate integrity and regard corruption as shameful.

Carrying Out Structural, Mechanical, and Institutional Reforms, and Preventing and Controlling Corruption at the Source

In addition to resolutely punishing corruption, we need to take a development perspective and use reforms to solve the problem of corruption, starting with structural, mechanical, and institutional reforms. We gradually put in more efforts to resolve the root causes of corruption, striving to get rid of the soil that breeds it. This is one of our important experiences.

In recent years we have carried out reforms of the administrative examination and approval system, the public finance management system, the investment system, and the personnel system, and these reforms have been very effective in reducing corrupt practices in those areas. By the end of 2004, departments under the State Council had eliminated or streamlined 1,806 items for administrative examination and approval, representing 50.1% of all items that originally needed examination and approval. In the provinces (autonomous regions and municipalities directly under the central Government), 22,220 items were reduced or streamlined, representing over half the former total. These reforms greatly reduced the number of items requiring examination and approval and standardized approval procedures. The use and management of public funds is being gradually standardized. Departmental budgeting, the revenue and expenditure centralization in the State Treasury, and centralized government procurement are being practiced. The State Council's decision restructuring investments marked the beginning of a new investment structure. One of the principles we follow in restructuring is

to make full use of the market mechanism in distributing public resources, and reduce the direct interference of the government in microeconomic activities. We have introduced public bidding in construction project contracting, transfer of land use rights, property transactions, and government procurement. A total of 325 cities and prefectures across the country have now set up tangible construction markets and made almost all transfer of land use rights for profit-making ventures subject to bidding or auction. The scope and scale of items subject to government procurement are expanding.

The Chinese Government views openness in government affairs as fundamental and effective in improving the efficiency of government and preventing corruption. Government at all levels is now trying to open up its affairs as much as possible. Openness in government affairs is gradually being standardized at the township (town) level and is being introduced on a wider scale at the city and county levels. Government departments and public services that are closely tied to the well-being of the general public, such as schools, hospitals, water and power utilities, environmental protection organs, and public transportation, are all gradually making their operations more open to the public. The democratic rights of the public, such as the right to know, the right to participate, and the right to oversee, have been guaranteed by making administrative affairs more open and government work more transparent, and by streamlining the channels of communication between the people and the government.

Administering Government Affairs According to Law, and Severely Punishing Corrupt Acts

The emergence of corruption in government entities and government officials is largely due to the loss of control over administrative authority. To standardize and restrain administrative authority, the administration of government affairs according to law must be vigorously promoted, and government departments and their employees must be strictly managed. The central Government formulated the Implementation Outline for Comprehensively Promoting Administration of Government Affairs in Accordance with the Law, which clearly defines the objectives and tasks involved in putting government on a legal footing. It also once again revised the State Council Work Regulations, emphasizing the need for democratic decision making, calling for the administration of government affairs according to the law, and strengthening administrative oversight. Supervision organs at all levels intensified their oversight of government departments. In cooperation with other departments, they

checked the enforcement of laws such as the Law on Architecture, the Law on Urban Planning, the Law on Statistics and the Law on Bidding, and the Law on Administrative License, resolutely dealing with instances of misconduct like non-compliance with laws, lax enforcement of the law, non-compliance with government orders, and persistence of prohibited activities.

The investigation and prosecution of violations of law and discipline is an important means of preventing corruption and maintaining social justice. Supervision organs, under the leadership of the government, have in recent years made great efforts to investigate cases of power abuse, illegal gains, graft, bribery, embezzlement of public funds, loss of state assets, and other violations of law and discipline in construction, finance, land management, procurement, enterprise reorganization, and transfer of property rights, especially in leading government entities. Cases that are uncovered are severely dealt with, without exception. The political, economic, and social outcomes have been very good.

China is now at a critical period of socio-economic development and a difficult stage of reform when many social challenges are interconnected, systems, structures, and mechanisms in some areas are still imperfect, conditions that favor corruption still exist, and acts damaging to social justice and development happen from time to time. To cope with new requirements and new anti-corruption goals, we will work harder, persist in tackling both the symptoms and the root causes, take comprehensive measures, and combine punishment and prevention with emphasis on the latter. We will strive to build and strengthen the system for punishing and preventing corruption with equal emphasis on education, institution building, and supervision, in conformity with the socialist market economy. We will strive to establish an effective long-term ethical mechanism, an institutional system for combating corruption and building a clean government, and mechanisms for controlling power operations, so as to better promote China's economic development and social justice, and provide a solid guarantee for a thriving society.

Performing anti–money laundering functions and promoting anti-corruption work in the People's Republic of China

Cai Yilian
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People's Bank of China

The Chinese Government has always attached great importance to anti-corruption work. It has taken effective measures to mobilize the force of the whole society in launching an anti-corruption campaign and in formulating and strengthening mechanisms for preventing and curbing corruption. As the country's administrative body for anti–money laundering functions, the People's Bank of China (PBC) plays an important role in the anti-corruption campaign.

It has been proved that most corrupt acts are closely related to economic activities and accompanied by illegal money transfers. Illegal transactions associated with corruption can be detected through the supervision of illegal money flows. This is an effective way of preventing and fighting against the crime of money laundering, and ultimately checking corruption and safeguarding state property.

The drive against money laundering is a new duty of PBC. In 2003, the State Council decided to transfer the duty of coordinating the state's anti-money laundering work to PBC from the Ministry of Public Security. On 17 December 2003, the Sixth Session of the Standing Committee of the Tenth National People's Congress revised the PBC Law and declared the PBC "responsible for instruction and deployment of anti–money laundering work of the financial industry and [in] charge of capital monitoring for anti–money laundering purposes." To perform this duty as required, PBC has established the Anti–Money Laundering Bureau to organize and coordinate the State's anti–money laundering work, study and work out the financial institution's anti–money laundering plan and policy, undertake international cooperation and exchange in anti–money laundering activities, and consolidate, trace, and analyze information on suspicious CNY and foreign currency payment transactions provided by relevant departments. In April 2004, PBC established the China Anti–Money Laundering Monitoring and Analyzing Center to collect, analyze, monitor, and provide anti–money laundering intelligence, and to provide technical support for anti–money laundering activities.

Establishing and Improving Anti–Money Laundering Laws

The Criminal Law, as revised by the Standing Committee of the National People's Congress in 1997, explicitly defined the crime of money laundering in Article 191, which traces it to drug-related crimes, organized crime, and smuggling. In a further revision of the Criminal Law, dated 29 December 2001, the Standing Committee of the National People's Congress approved the revision of the "Revised Act of Criminal Law (III) which provides that terrorist activity and its financing are predicate offences for the purpose of money laundering crime, and "the crime of financing terrorist activity" was added to Article 120.

With the intensification of anti–money laundering work, the legislative body and the administrative authorities of the Government have reached a consensus on a special Anti–Money Laundering Law, which is on the legislative agenda of the Tenth National People's Congress. In March 2004, a body was created to draft the law. It was headed by the PBC Budget Working Commission. As a member unit, PBC conducted surveys and investigations, collected information and data, and made suggestions in the drafting process. The draft Anti–Money Laundering Law has been completed and will be submitted to the Standing Committee of the National People's Congress for review and comment.

In January 2003, PBC issued the Regulations on Anti–Money Laundering Initiatives for Financial Institutions, Rules on Control of Large and Suspicious CNY RMB Transactions, and Rules on Reporting Large and Suspicious Foreign Exchange Transactions by Financial Institutions. These regulations specify the basic anti–money laundering measures including identifying clients, reporting large and suspicious transactions, keeping transaction records, and establishing and strengthening an internal control system for banking and financial institutions to prevent money laundering. PBC is now working with relevant financial supervisory authorities to revise the above-mentioned three regulations and formulate anti–money laundering rules and systems for securities and insurance institutions, which are expected to be issued this year.

Establishing an Anti–Money Laundering Coordinating Mechanism

As the authority appointed by the State Council to organize and coordinate the State's anti–money laundering work, PBC has actively participated in the establishment and operation of the coordinating mechanism at different levels. In May 2004, it presided over the establishment of a coordinating mechanism for financial supervisory bodies,

involving China Banking Regulatory Commission (CBRC), China Securities Regulation Commission (CSRC), China Insurance Regulatory Commission (CIRC), and the State Administration of Foreign Exchange (SAFE), to facilitate the planning and coordination of the anti–money laundering work of the financial industry; to harmonize the anti–money laundering duties of the financial supervisory bodies for banking, securities, insurance, and foreign exchange; to minimize supervisory duplication; and to avoid overlooking supervision areas. The mechanism is intended to study and analyze the general situation of anti–money laundering activities in the financial industry, to exchange findings and share supervision information, to promote cooperation between financial supervisory bodies, and to coordinate and carry out anti–money laundering work.

In August 2004, with State Council approval, PBC organized an Inter-Ministerial Anti–Money Laundering Conference with more than 20 ministerial units participating, including the Supreme People's Court, the Supreme People's Procuratorate, and the Ministry of Supervision. Following this conference, PBC has been working closely with judicial and supervisory bodies on a system for monitoring corruption-related funds, to empower anti-corruption work by making full use of the resources of these bodies.

Strengthening Anti–Money Laundering Supervision and Law Enforcement

To carry out its anti–money laundering duties and further promote anti-corruption work, PBC actively supervises the anti–money laundering campaign and works with law enforcement agencies to investigate and handle cases. From April to December 2004, PBC set up 752 inspection groups staffed with 3,906 inspectors to conduct the first special inspection of compliance with anti–money laundering regulations by commercial banks throughout the country. The results showed that most commercial banks had established internal control systems to guard against money laundering, and were performing acceptably the obligations to identify clients, keep transaction records, and report large and suspicious transactions. By July 2004, all local commercial banks had anti–money laundering steering teams and functioning organizations. Throughout the country, there are 91,313 anti–money laundering posts staffed with 92,743 full-time or part-time anti–money laundering personnel. For weaknesses in internal control systems or the failure to report suspicious transactions or to report these on time, PBC has imposed penalties amounting to CNY 1.7 million on 72 main reporting offices of commercial banks. The

inspection allows PBC to find out how banks are implementing the anti–money laundering rules and systems, and prods commercial banks to pay more attention to anti–money laundering issues. It has also built up valuable experience for future anti–money laundering supervision in the financial sector and even in the sectors most vulnerable to money laundering like real estate, sales of precious metals and stones, private sector, and relic auctions. In 2005, PBC continues the special inspection of commercial banks' implementation of anti–money laundering regulations in the provinces.

At the start of 2004, the Ministry of Public Security, PBC, and SAFE jointly issued the Circular on Joint Efforts Against Illegal and Criminal Activities of Underground Private Banks. In light of the circular, local police, PBC, and local offices of SAFE have made joint efforts to ban the illegal and criminal activities of underground private banks and have had significant achievements. There has been a major crackdown on underground private banks. In 479 special actions from April to December 2004, 155 underground private banks and illegal foreign exchange dealers with cases involving CNY 12.5 billion were closed down CNY 110 million in cash was seized, 460 bank accounts with CNY 42 million were frozen, and 274 criminal suspects were arrested. Through these anti–money laundering supervision and law enforcement actions, authorities were able to detect corruption-related crimes, intercept illegal money transfers, and control the rise in corruption.

Enhancing International Cooperation in the Drive Against Money Laundering

The anti–money laundering campaign calls for extensive and in-depth cooperation among all the regions and countries of the world. As the representative of the Chinese Government, PBC is actively engaged in international cooperation to intensify and widen anti–money laundering work. Through the joint efforts of PBC member units and the Ministries of Foreign Affairs, Public Security, and Finance, China worked with Russia to form the Eurasian Group on Combating Money and Financing of Terrorism (EAG) in October 2004. In January 2005, the 33 members of the Financial Action Task Force on Money Laundering (FATF) unanimously agreed to accept China as an observer, marking an important step by China in international cooperation in the fight against money laundering. In April 2005, China successfully hosted the Second Plenary Session of EAG in Shanghai, adding to the country's international prestige in the anti–money laundering field.

Building clean and efficient customs authorities in the People's Republic of China

Yao Sai
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Stationed with the General Administration of Customs
People's Republic of China

To build a clean, diligent, pragmatic, and highly efficient government and comply with the basic principles and methods of the United Nations Convention Against Corruption, the Arusha Declaration, and the World Customs Organization (WCO) Integrity Self-Assessment Guide, China Customs is dedicated to building a clean, efficient, and modern customs, and focuses on the three key links of education, institution, and supervision while using risk management methods and modern information technology. It is concerned with both punishment and prevention, with emphasis on the latter, to reduce and eventually eliminate the risks involved in customs law enforcement and build a clean government.

Continuous Anti-Corruption Education

China Customs attaches great importance to the education of its staff in clean government, including professional awareness education with the theme "Lawful administration: Holding the fort for the State, serving the national economy, and promoting economic development"; professional ethics education with the theme "Integrity and fairness: Holding the fort in a civilized manner"; and education in laws, regulations, and working discipline, to reinforce the ideological and moral defences of customs clerks against corruption.

China Customs brings education in clean and honest administration to all aspects of the training, management, reward, and punishment of customs clerks. All new recruits and those to be promoted undergo centralized training in clean and honest administration, and outstanding models of integrity are selected and rewarded from time to time. In 2004, remarkable results were achieved by the educational program with the theme "Law enforcement for the people: Creating a new style of work with joint efforts to build a clean customs" and the educational activity Five-Year Summary of Customs Work with the theme "A retrospective look at the past and precautions for the future". China Customs has launched a cautionary education for customs clerks through a case study

of a particularly serious case of smuggling and corruption in Xiamen, from which the customs staff can learn lessons to combat corruption.

Systems for Fighting Corruption and Promoting Integrity

China Customs regards institution building as fundamental to fighting corruption and promoting integrity in customs work. It has established a well-defined system of clean and honest administration and professional discipline, and has made efforts to restrict the use of authority, to prevent customs clerks from abusing it, and to ensure the success of anti-corruption efforts.

So far, China Customs has issued 80 systems for clean and honest administration, classified into three categories. In the first category are standards of administrative behavior for customs clerks, such as Behavioral Codes for Directors of Customs Directly under General Administration, and Regulations for Clean and Honest Customs Administration. In the second category are systems for punishing customs clerks who violate discipline or the laws, such as the Rules on Administrative Punishment for Violations of the Regulations on Customs Law Enforcement and Discipline for Clean and Honest Administration, and the Six Injunctions to Customs Clerks. The third category includes systems to strengthen internal and external supervision and control, especially the supervision and control of the behavior of officials, such as the Responsibility of Officials for Building a Clean Customs, and the Audit of the Customs Director's Economic Accountability in Office to strengthen administrative supervision. The General Administration of China Customs and the customs units directly under General Administration uncover violations of the law and discipline through cases of impeachment and prosecution brought before them and through other channels, and the special supervisory body investigates the cases using specified procedures. Administrative punishment is imposed on persons found guilty of misconduct, while cases involving violations of the criminal law are handed over to the judiciary.

Since 2000, China Customs has carried out a policy of open customs service (police service) by making public through various channels the customs organization, responsibilities and authority, workflow, service timetables, and customs policies; facilitating consultation and the filing of complaints; and accepting supervision. China Customs signs memoranda of understanding with import and export enterprises for the building of a clean customs to strengthen communication and cooperation with these enterprises and to obtain their support and assistance in building a clean and honest customs administration.

Supervision and Control

Customs law enforcement is closely associated with economic activities and the interests of the parties concerned. Therefore, preventing and eliminating corruption in law enforcement is a key aspect of customs anti-corruption work. China Customs supervises and controls the use of law enforcement authority. The supervision mechanism works whenever and wherever the authority operates.

The first means of supervision and control is an independent supervision system and a flexible and effective working mechanism. The central Government provides the first level of supervision. Below it, the Supervision Bureau of the Ministry of Supervision that is stationed with the General Administration of China Customs inspects and supervises the implementation and enforcement of laws, regulations, and central government decisions and orders by the General Administration within the framework of state law. At the lowest level of supervision, the Auditing Bureau of the National Audit Office stationed with the customs and the special offices of the National Audit Office in the localities conduct yearly audits of the General Administration of China Customs and the customs units directly under General Administration, particularly their use of customs funds.

Customs declaration is also undergoing comprehensive reform through three levels of authorization of General Administration decisions, business management of the customs units directly under General Administration, and supervision of customs at the grassroots level, as well as a new business supervision and management system with mechanisms for rational decision making, implementation, and supervision. Supervision moreover comes from within the customs system itself. The General Administration of China Customs has established a branch office in Guangdong and special offices in Tianjin and Shanghai to coordinate regional customs affairs and supervise law enforcement by the customs units directly under General Administration and the integrity of customs officials within their jurisdiction. The General Administration of China Customs has established the Supervision and Internal Audit Department, and the customs units directly under General Administration also have equivalent organizations to conduct routine and special audits of financial systems and the collection of taxes and duties, as well as customs directors' economic responsibility at different levels. A supervisory organization has been set up in each customs unit directly under General Administration, and the highest-ranking supervisor is appointed for a four-year term by General Administration. The customs units directly under

General Administration also send 200 special supervisors to subsidiaries for a two-year tenure.

The second means of supervision and control is strict implementation of the system of responsibility for building a clean and honest customs administration. China Customs has incorporated this responsibility system into annual work plans and management targets. The top managers at various levels are given the responsibility in their localities and are subject to periodic audits. Managers who fail to prudently carry out the responsibility or to bear the leader's responsibility for major violations of discipline and law are investigated and, if found guilty, subjected to administrative punishment, criticism, and education. The purpose is to ensure the thorough implementation of the system of responsibility for building a clean and honest administration in each customs unit. Since 2002, China Customs has investigated the leadership responsibility of 107 leaders and imposed disciplinary or institutional punishment on the leaders found to be at fault.

Full Use of Technology and the Internet in Preventing and Handling Corruption

We have been adapting international models of customs management to the situation in China. Risk control centers have been established in General Administration and in the customs units directly under it. A risk management program, which incorporates risk management techniques in customs operations, has been developed and implemented. Risk awareness is being created in customs units throughout the country through the introduction of a risk-oriented management model. By making full use of modern information technology and scientific management methods, we are identifying the areas that are vulnerable to smuggling and loopholes in enterprise, commodities, and customs management. These are the key targets of customs management, and we deal with them through the rational allocation of management resources. We have introduced a customs management system of unified participation, coordinated prevention, and risk control to help improve overall management efficiency by combining effective supervision with efficient operation.

E-Customs is a customs management information system that covers all operations of China Customs, links all customs departments and regions, and features networked customs declaration and rationalized logistics monitoring. E-Customs has unified customs declaration management through networked operation and monitoring across posts,

departments, and regions. The system extends the scope and duration of supervision, effectively expands and at the same time controls law enforcement authority, prevents arbitrary law enforcement in a timely manner, places the exercise of authority under strict supervision, and makes supervision more timely and effective. The risks of law enforcement and customs administration are prevented and minimized through subsystems for function management, document audit, logistics monitoring, law enforcement evaluation, and taxation management.

E-Port is a public data center and data exchange system for all departments, regions, and industries. It is backed by the national telecommunication network, which provides electronic data switching and networked examination functionality to the State's administrative and law enforcement bodies. At the same time, it provides enterprises with real-time online services such as online customs declaration, inspection application, foreign exchange settlement/payment/write-off, export tax refund, and online payment. E-Port plays an important role against smuggling and corruption and improves the overall efficiency of the port authority's law enforcement. Smuggling and tax swindling by taking advantage of government connections have been largely controlled in recent years.

E-General Administration is a virtual information system comprising applications on the confidential OA network, intranet, and Internet designed for the monitoring, analysis, and management of customs operations throughout the country. E-General Administration computerizes auxiliary decision making by evaluating nationwide data on customs law enforcement, thus improving customs administration and function management, and strengthening the supervision of law enforcement. The law enforcement supervision system developed by China Customs has been implemented in 16 supervision agencies that are directly under General Administration and have a larger business volume. The system has greatly improved the accuracy and timeliness of analysis and monitoring for law enforcement. High-tech tools, such as container inspection equipment, electronic pit scale, electronic eye, electronic document dispatching, post arrangement, and control deployment, have been extensively used in supervision.

Severe Punishment for Corrupt Elements

China Customs insists on investigating each case and correcting each mistake. It investigates cases that involve bribe taking in exchange for leniency towards smugglers, participation in and concealment of

smuggling, breach of duty and misconduct, leaders' abuse of power, and misuse of authority for personal ends. We never condone violations of discipline and the law, and try our best to nip problems in the bud. Cases of corruption that violate discipline and criminal law, especially those involving middle and high-ranking officials, are investigated and fully dealt with. For instance, in the especially serious case of smuggling in the Guangdong region in February last year, the 48 persons involved in bribery were severely punished. Forty customs clerks found to have seriously violated the law were expelled from the customs team; 11 of them were handed over to the courts. The leadership responsibility of high-ranking officials of the units where the offenders worked was investigated, and good results were achieved.

China Customs will continue to carry out the basic principles and methods set forth in the UN Convention Against Corruption, the Arusha Declaration, and the WCO Integrity Self-Assessment Guide; effectively control and prevent corruption related to customs law enforcement; enhance international cooperation and exchange in clean and honest customs administration; and continuously promote the building of clean customs.

Chapter 2
The role of international organizations and donors in the region's fight against corruption

Agencies whose goals include advocating, catalyzing, and supporting sustainable action to reduce poverty in the Asia-Pacific region have clearly recognized the importance of integrating anti-corruption elements into development work. In some areas, cooperation among like-minded entities is well under way. For example, the OECD Development Assistance Committee is a unique forum where bilateral donors work alongside multilateral donors, increasing the effectiveness of their efforts. The Committee's Network on Governance has established principles that outline how donors can help ensure that corruption is systematically addressed in partner countries. As another example, the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific provides an excellent platform for government representatives to work together with stakeholders from international organizations and donor agencies in identifying and formulating ways to cooperate in fighting corruption.

However, cooperation among donor agencies and international organizations can still be improved. Indeed, a lack of coordination persists in many countries—at times there is a failure to recognize the need for a holistic approach to fighting corruption. Donors' support for anti-corruption reforms in the Asia-Pacific region is sometimes perceived by recipient countries as limited in its effectiveness by competing priorities

within the donor community. Increasingly, weak cooperation and coordination among donors and piecemeal approaches have also been seen to undermine the effectiveness of aid.

This chapter focuses on how support for anti-corruption reform from donors and international organizations is conceived, channeled, and used in developing countries. The fundamental principles of the strategy of the UK Department of International Development (DFID) in supporting effective anti-corruption action in poor and middle-income countries are presented by Fiona Lappin. As part of this strategy, DFID works on improving public financial management, developing civil service management reform, addressing judicial corruption, and supporting civil society to promote transparency and accountability. Important principles, including the necessity for national ownership and for reliance on national systems and structures, underpin this strategy.

A realistic approach to donor cooperation and coordination in support of anti-corruption efforts in partner countries takes into account the diversity of donors, and recognizes that different donors may have different missions, strategies, and goals. The Indonesian Commission for Eradication of Corruption (CEC) has developed such an approach through an open and transparent process that aims to maximize the effectiveness of donor support and to create positive competition among them based on transparency and information sharing. Amien Sunaryadi, Commissioner and Vice-Chairman of the CEC, also stresses the value of an independent, multi-stakeholder body to oversee and coordinate anti-corruption work. Such an entity exists in Indonesia—the Partnership for Governance Reform. Established jointly by the Government, civil society, private sector, and the donor community, the Partnership helps build competence in governance reform, functions as a central clearing house for information on governance reform in Indonesia, and coordinates the support of the international community in this reform process. Coordination and oversight agencies are needed in many countries, but consideration must be given to exploring how such an entity could be implemented in various national contexts.

International organizations are also active in the region's fight against corruption. For example, a comprehensive anti-corruption reform project was undertaken by the United Nations Development Programme and has been ongoing in China since 1997. Edward Xiaohui Wu, Programme Manager of UNDP's Strengthening Integrity Project in China, describes the first donor-supported project to address corruption in China, which includes measures to counter corruption, legal frameworks, and administrative supervision. Patrick Keuleers of the UNDP Regional Centre

in Bangkok expounds on elements of the organization's work in the region, which encompasses access to information, human rights perspectives, salary reform, and participatory monitoring in approaches to anti-corruption work. These efforts take into account institutional frameworks including the OECD Anti-Bribery Convention, the UN Convention Against Corruption, and the Millennium Development Goals.

Corruption, poverty, and development

Patrick Keuleers
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Introduction

"On present trends, most poor countries will miss almost all the Millennium Development Goals,[1] in some cases by 'epic margins'. Extreme poverty will not be halved in any region except East Asia. The latest UNDP Human Development Report[2] concludes that by 2015, 380 million poverty-stricken people will remain in the condition from which the UN's member states promised to liberate them."

There are many reasons for these sobering projections. One of them is undoubtedly the significant distributional implications that widespread corruption has on growth, equity, and poverty. Effective democratic governance aimed at achieving sustainable and equitable human development thus requires a comprehensive attack on corruption as a factor of social disintegration and distortion of the economic systems. Because corruption endangers the stability of democratic institutions, discriminates in the delivery of government services, and thus violates the human rights of the people, and the poor in particular, UNDP considers its activities in the area of anti-corruption essential to the strengthening of democratic governance in support of poverty alleviation and human development in its program countries.

There is no doubt that important progress has been made, in particular since the wave of democratization that characterized the post-war period. Public awareness and advocacy campaigns about the detrimental effects of corruption have been mounted at global and national levels. Anti-corruption networks have been established, national integrity systems have been tested in a number of countries, toolkits have been developed and implemented, and regional and international legal instruments have been forged, such as the OECD Convention Against Bribery, the Inter-American Convention Against Corruption, and, most recently, the United Nations Convention Against Corruption (UNCAC).

But despite new legislation and the establishment of more anti-corruption and integrity institutions, the overall results remain disappointing, intentions still outnumber accomplishments, and tangible successes

remain sparse. The current wave of decentralization raises additional concerns that corruption will further spread to, and deepen at, the local levels. According to the World Bank, the total amount of bribes paid around the world amounts to USD 1 trillion per year,[3] nearly twice the annual GDP of Africa and more than 10 times the total annual amount of development aid. By comparison, the latest Human Development Report estimates that about USD 300 billion is needed to lift 1 billion people out of their extreme poverty.

The international donor community has indicated that it is willing to increase its aid to developing countries to support the war on poverty. But given the above-mentioned figures on bribes and money laundering, the impact of these efforts may be limited unless more attention is paid to corruption leakages. It requires efforts on the recipient side, but also on the donor side. Indeed, the fight against corruption starts at home, and the donor community has an equal responsibility to remain vigilant against any form of corrupt and unethical conduct in the management of development funds.

The situation in the Asia-Pacific region is raising particular concerns. Indeed, while the region can celebrate important achievements in democratic development, the accountability and transparency record in many Asian countries is less than encouraging. While the anti-corruption policies of Hong Kong, Singapore, and New South Wales continue to be cited as model approaches, today, of the 10 worst performers on the Transparency International Corruption Perception Index, six are in Asia—three in Central Asia and three in South and South-East Asia. This month, the auditor general of one Asian country estimated that corruption in state-related projects alone would cost the country more than USD 9 billion every year.

At a time when many Asian countries are experiencing worsening inequality, the issue of corruption has acquired an even greater salience. It is therefore positive to witness the growing success of this ADB/OECD Anti-Corruption Initiative for Asia and the Pacific, which involves 25 countries in the region that have voluntarily committed to combating corruption and bribery in a coordinated and comprehensive manner, thus contributing to development, economic growth, and social stability in the region.

It is also promising to see a much stronger focus on good governance by the members of the Association of Southeast Asian Nations (ASEAN). While ASEAN and the South Asian Association for Regional Cooperation SAARC have so far retained sensitivity about the principles of sovereignty and non-interference in the domestic affairs of member states, ASEAN's latest Plan of Action for 2004–2020, signed in Vientiane, pays increased

attention to governance issues, human rights, the strengthening of the rule of law, judiciary systems, ethical civil services, and good governance in the public and private sectors. Combating corruption was explicitly mentioned as a governance issue that requires special attention.

At the global level a landmark achievement was made this month when Ecuador deposited the thirtieth ratification, which moved the UNCAC from concept to reality in record time. In its eight chapters and 71 articles, the Convention obliges the state parties to implement a wide and detailed range of anti-corruption measures affecting their laws, institutions, and practices. The convention provides countries with international standards to which to adapt their legislation and institutional frameworks. It not only provides benchmarks that allow civil society to hold their governments accountable for anti-corruption efforts, it also includes a mechanism that provides for international cooperation in the recovery of assets illicitly acquired by corrupt officials. It is hoped that these assets can be made available for future development. The UNCAC is unique, compared with other conventions, not only in its global coverage but also in the extensiveness and detail of its provisions.

Corruption and current development challenges

There is a broad consensus in the international community that good governance is essential to achieving sustainable development and poverty reduction, and that better policies and institutions can double aid effectiveness. But while there are indicators to measure results in certain areas, such as the status of education and health in a given country or region, there exist today no "objective" standards to decide, in a given political and socio-economic context, exactly what types of governance efforts will bring about the kind of progress needed towards the achievement of the MDGs.[4] In the past, the Asian region has shown diverse approaches and routes to democratization[5] and societal change, depending on the different stages of economic, social, political, and administrative development of the countries concerned.

The Economist recently noted that "of all the ills that kill the poor, none is as lethal as bad governance". It is therefore not surprising that heads of state and government, gathered in New York in September 2005, emphasized the importance of good governance, rule of law, solid democratic institutions, respect for human rights, including the right to development, and transparency and financial discipline in public sector management as essential for sustained economic growth, sustainable development, and poverty reduction. The primacy of governance as a

model concept for adjusting state-society relationships was also stressed by UNDP's new administrator Kemal Dervis at the latest Executive Board meeting of UNDP in September this year, citing evidence that "aid stimulates growth in countries with good institutions and policies". It explains why 60% of UNDP's resources are spent on fostering democratic governance in developing countries.

Corruption in particular remains one of the main obstacles to achieving sustainable pro-poor development.[6] High levels of corruption significantly aggravate poverty, which is considered the most crucial denial of human rights as it implies discrimination and injustice and disrespect for human dignity and human security. "There will be no fair world and no abolition of extreme poverty as long as corruption undermines education, health, trade and the environment."[7] If we want to improve the lives of the millions of people who live in extreme poverty, then the fight against corruption has to be made a top priority at all levels, and the responsibility of poor and wealthy nations alike.

This also explains the increased emphasis on human rights as a key element in the strategy to achieve the MDGs (Human Development Report 2003). States need to take the necessary steps to ensure that there is no discrimination in the efforts of their citizens to exercise their rights to development, employment, food, health, education, and other basic human rights. Corruption in all its forms constitutes a violation of this obligation. It creates a vicious circle in which the state quickly loses its authority and ability to manage for the common good. Corruption makes it possible for critics to be silenced, for justice to be subverted, and for human rights abuses to go unpunished. When corruption reigns, basic human rights and liberties come under threat and social and economic contracts become unpredictable.[8]

Corruption thus affects both civil and political rights,[9] as well as economic, social, and cultural rights.[10] This statement is in line with the conclusions made at the Eleventh International Anti-Corruption Conference in Seoul, May 2003, which condemned corruption as immoral, unjust, and repugnant to the ideals of humanity enshrined in the Universal Declaration of Human Rights and confirmed the conviction that all human beings have a basic human right to live in a corruption-free society.[11] There is also a lot of common ground between the struggles to uphold human rights and the fight against corruption.[12] A corrupt government that obstructs transparency and accountability is probably not inspired to protect the human rights of its citizens. UNDP recognizes the importance of democratic governance in the promotion of human rights and democracy and works closely with other partners, including civil society

organizations, to facilitate the exchange of lessons learned and best practices for promoting and consolidating democracy. UNDP's activities in the field of democratic governance aim at supporting the strengthening of legislatures, electoral processes, access to justice, the promotion, protection, and fulfillment of human rights, access to information and e-governance, decentralization and local governance, and public administration reform and anti-corruption. Interventions in each of these service lines contribute in a holistic manner to the strengthening of national integrity systems.

The human rights–based approach, which will be discussed further in the next section, is changing the way UNDP and its sister UN organizations are addressing the development challenges.

Governance and Corruption: A Snapshot of Emerging Approaches in the Region

Participatory monitoring of service delivery

The UN General Assembly in its Resolution 57/277 asserted that "an efficient, accountable, effective and transparent public administration, at both the national and international levels, has a key role to play in the implementation of internationally agreed goals, including the MDGs".

But until recently, state capacity has been addressed merely from the internal perspective of politicians and public servants, with little regard for the expectations of external stakeholders. As a result, while the period of "democratic learning" has shown some interesting developments in key areas of political governance, the more traditional governance sectors of the state (i.e., the civil service, judiciary, police) continue to resist changes. As a result, many countries in the region still have low scores for the efficiency of government services, the decentralization of government structures, and the transparency and accountability of their civil service. The predominance of the executive that characterizes many Asian polities, while effective in a number of countries, also poses constraints on the emergence of a true democratic culture.

The recent wave of anti-corruption projects and the coming into force of the UNCAC has triggered a renewed attention to the public service and its relationships with the citizenry. In the context of responsive governance, the public administration needs to subject itself to the key principles and values on which the performance of the public sector is to be measured—transparency, accountability, responsiveness, efficiency and efficacy, participation, and accessibility.

In a number of countries (e.g., Cambodia, Indonesia, Mongolia, Pakistan, Philippines, Thailand, Vietnam) UNDP is supporting the government with the implementation of participatory performance or social audit systems, allowing the closer involvement of the citizens in the monitoring and evaluation of the delivery of public services. Such approaches appear to be attractive to politicians in search of quick-fix solutions to respond to declining public confidence in government and growing demands for accountability by a more educated public. But while there are certainly examples of social audit methodologies that resulted in an increase in citizen satisfaction and a decline in budget leakages and corruption, there are also reasons to retain a degree of skepticism.[13] First, the cost of some of these participatory performance audits may outweigh the benefits, which often remain uncertain.[14] Greater care should thus be given to calculating those probable costs[15] before deciding on a methodology. Second, given these participatory monitoring systems (mounting in some cases—e.g., Pakistan—to several million dollars) are donor-driven, their sustainability as a mechanism to inform policy making remains doubtful. Third, although the aim is to make the bureaucracy leaner and more service-oriented, paradoxically there is a risk for increased bureaucratization. Pilot testing is thus recommended before embarking on a full-scale participatory monitoring exercise. These pilots need to address three key issues: the selection of the appropriate assessment methodology, the right quality measures and indicators, and the involvement of the right stakeholders.

Salary reforms to curb "survival corruption"

Low-income countries continue to struggle with the problem of low wages in the public sector and see salary reforms as the panacea for many corruption problems. There is no doubt that these reforms are necessary. While increasing pay does not automatically translate into improvements in the effectiveness and efficiency of the public service, there is little likelihood of achieving sustainable reforms without fair public wages able to attract and retain the requisite skills. But there is also no doubt that these salary reforms will fail to enhance integrity if they are not backed by strong political commitment, inspiring leadership, and a coherent system of positive and negative incentives that is consistently applied at all levels of the governing institutions. Without these, enhanced salaries will simply mean higher cost for delivering inadequate and poor-quality services. Many options have been discussed and tested (salary decompression, top-ups paid by donor-funded projects, special pay scales

for the senior civil service or for core functions or special-purpose agencies) but successes have remained sparse. Some of the reforms are even causing serious distortions in the overall salary policy of the government.[16] Reducing the size of the civil service is one possible option for sustaining the financing of a better-paid civil service over time, but efficiency gains can also have a very negative impact on service delivery, as witnessed recently in some Pacific Island states.[17] Moreover, while downsizing was the major theme of the Structural Adjustment Programmes in the 1980s, a number of countries, in particular the least-developed ones (LDCs), are now forced to increase their workforce to achieve the MDGs and related objectives spelled out in their Poverty Reduction Strategy Papers (PRSPs) or to enhance the capacity of the local administrations in support of their decentralization policies.

Although repeated endlessly, the example of Singapore remains a case in time. Singapore did not curb corruption by increasing public wages. High salaries are one of the main outcomes of Singapore's dedicated fight against corruption, rather than an explanatory factor of its success.[18]

Strengthening of integrity systems at the local levels

So far, the focus of most anti-corruption programs has been very much on the development of national strategies, legal frameworks, and national integrity institutions (anti-corruption agency, ombudsman, auditor general, and others). The recent focus on decentralization and local governance (UNDP's service line that is currently highest in demand in the region, together with access to justice and human rights) explains the trend to enhance integrity systems and anti-corruption alliances at the local levels. Lao PDR is exploring the feasibility of establishing a provincial office of the Auditor General. P.R. China is developing strategies to address integrity challenges that are emerging at the regional level. As mentioned, UNDP is also supporting a number of countries piloting the participatory monitoring of service delivery at the local levels. These trends respond to a rising concern that decentralization could lead to increased corruption and state capture at the local levels, where supervision is often reduced, and the pressures of family and kin might be felt more closely. The experiences from our projects around the world indicate that targeting local accountability can also be an effective place to start and build momentum for integrity reforms. Indeed, when high-profile activities fail, particularly those lacking in political commitment, alternative bottom-up approaches that could deliver concrete results must be considered.

A human rights–based approach to combating corruption

Upholding human rights is crucial for securing a humane and non-discriminatory society, and, hence, for eradicating poverty. The principles of non-discrimination, empowerment, transparency, participation, and accountability, which are at the centre of a human rights–based approach to poverty reduction and at the heart of UNDP's prioritization in achieving the MDGs, are the same principles that motivate the anti-corruption drive. UNDP therefore strongly advocates the need to strategically integrate anti-corruption initiatives in the national poverty reduction strategies, to address corruption as a major obstacle that prevents poor people from securing their livelihoods.

The linkages between corruption, respect for human rights, and MDGs were discussed earlier. As UN Secretary-General Kofi Annan mentioned in his recent report *In Larger Freedom*: "We will not enjoy development without security, we will not enjoy security without development, and we will not enjoy either without the respect for human rights."

The UN's rights-based approach to development[19] integrates human rights principles and human rights obligations in development policies and programs, to strengthen (1) the capacities of rights holders to claim and exercise their rights, as well as (2) the capacities of duty bearers to fulfill human rights obligations. The rights-based approach not only puts governance at the centre of attention, it also puts the poor and the marginalized groups at the core of policy and at the focus of development strategies.

UNDP Sri Lanka has just launched a pilot application of the human rights–based approach in its anti-corruption program. One expected outcome will be a strengthened and well-functioning Commission to Investigate Allegations of Bribery and Corruption (SIABAC), able to fully carry out its mandate as a duty bearer. The second outcome would be increased awareness among citizens—as right holders—about corruption and its effects, and ability to act as a lobby group against corruption. Achievement of the second outcome also includes the development of a strong media regularly reporting on corruption issues.

MDG 9: Setting an innovative target for democratic governance

The MDGs represent a firm commitment to a broader and more inclusive process of human development. But while good governance is generally considered one, if not the most important, factor in eradicating

poverty and promoting development, no specific goals or governance-related targets have been defined in the MDGs, except to a limited extent in Goal 8, which calls for the development of an open trading and financial system that is rule-based, predictable, and non-discriminatory. It is the Millennium Declaration that refers explicitly to the fundamental values of freedom, equality, justice, tolerance, and solidarity, with member countries committing themselves to sparing no effort to promote democracy and strengthen the rule of law, as well as respect for all internationally recognized human rights, including the right to development. Promoting good governance is seen as a goal in itself and as a key element of the enabling environment for achieving the MDGs.

With UNDP's support, Mongolia has been the first country to translate the commitment contained in the Millennium Declaration into a tangible additional Millennium Development Goal. After preparatory work conducted by the parliamentary working group on anti-corruption, in April 2005, the State Great Hural of Mongolia adopted a historic resolution on MDGs and announced a Mongolia-specific MDG 9, "Fostering Democratic Governance and Strengthening Human Rights". This Millennium Development Goal has three country-specific targets: (1) respect and abide by the Universal Declaration of Human Rights and ensure freedom of media and access to information, (2) mainstream democratic principles and practices into daily life, and (3) create an environment of zero-tolerance for corruption. A working group composed of academics, public officials, and civil society representatives is now developing a set of national governance indicators to allow progress with the implementation of this MDG 9 to be measured. Some other countries in the region (Samoa and Timor Leste) also envision similar initiatives.

Disaster management and governance reforms

The tsunami disaster exposed critical weaknesses in governance in the affected countries. In addition, media spotlights on the management and mismanagement of development programs have accelerated the global call for reforms to enhance accountability, transparency, and integrity in development operations. With the post-tsunami assistance programs, the importance of responsive, accountable, participative, and transparent governance has come to the forefront. The unprecedented relief, recovery, and reconstruction needs faced by the tsunami-affected countries are resulting in greatly increased international support. National aid coordination systems are therefore facing a huge growth in the volume of assistance being received and the number of organizations requiring

coordination. At the High Level Coordination Meeting on Rehabilitation and Reconstruction of Tsunami-Affected Countries, hosted by ADB on 18 March 2005, the representatives of tsunami-affected countries and their partners proposed that a consolidated, transparent database be developed. UNDP was approached by the Governments of the Maldives, Sri Lanka, and Thailand, requesting support for establishing a Development Assistance Database (DAD) to track financial and technical assistance, as well as results related to tsunami recovery work. Meanwhile, nationally owned tracking systems have been established in the Maldives, Sri Lanka, and Thailand under the guidance of the respective governments. Work has started with Indonesia and India as well. The databases have a twin goal of serving as a coordination tool to help line up resources more closely with country needs and provide an instrument of accountability. This initiative underlines the joint commitment made by UN agencies, bilateral donors, international financial institutions, and international and national non-governmental organizations to foster transparency. The UN system also signed memoranda of agreement with PricewaterhouseCoopers and Deloitte. Both consultancy firms are offering a number of days of pro bono auditing and consultancy work to the five tsunami-affected countries.

Access to information as a powerful tool in the fight against corruption

Access to information and freedom of expression are basic human rights that are considered prerequisites for empowering people and ensuring voice and participation and thus a key weapon in the fight against poverty and corruption.[20] Indeed, of the 10 best performers in the Transparency International Corruption Perception Index, eight countries have good legislation in place for access to information. On the contrary, of the 10 worst performers in the Transparency Corruption Perception Index, few countries, if any, have effectively enacted or implemented legislation to secure citizens' right to information. This would indicate a link between effective anti-corruption policies and an environment conducive to media involvement and access to information. Unfortunately, and despite the emergence of the media as a strong and vibrant institution for civic engagement and informed debate on policy issues, the transparency record of the LDCs in the Asia-Pacific region is not encouraging. Many restrictions remain on basic civil liberties—the rights to free speech, assembly, and information. Although the constitutions of most countries in the region guarantee the right to information, the denial of such right remains widespread. Over the past

years, the Asian region has seen more journalists killed, threatened, or imprisoned than any other region in the world, with such acts often associated with elections, corruption, and other topics of critical importance to a democratic culture. It is therefore not surprising that many journalists in the region still practice a degree of self-censorship and are reluctant to criticize politically influential persons either in the government or in the opposition.

Freedom-of-information laws may be premature for certain countries, but a more vigorous culture of openness, a strong civil society, and government-supported public information campaigns can produce real advances even without a law being in place.

The UNCAC invites states to take the necessary measures to enhance access of the general public to information and to promote the active participation of individuals and groups outside the public sector. For UNDP also, access to information is a key underpinning of our work in democratic governance. It is vital for strengthening accountability, transparency, participation, and rule of law. Our support in this area has therefore increased significantly over the past three years, from 69 projects in 2003 to 91 in 2005. We have 22 projects in 15 countries in the Asian region and one regional initiative in the Pacific region.

UNDP's Anti-Corruption Initiatives in the Asia-Pacific Region

As the UN agency that takes the lead in governance issues within the UN family, UNDP will collaborate closely with the United Nations Office on Drugs and Crime, as well as with other national, bilateral, and international organizations to support capacity development in support of UNCAC implementation. Efforts are ongoing for the preparation of a legislative guide to support UNCAC implementation. Comparative studies on institutional arrangements for combating corruption and on anti-corruption legislation are also being finalized, and a series of events will soon be organized to advance the UNCAC agenda in the region. In addition to codifying our corporate knowledge on fighting corruption in the different regions, we are also finalizing a source book on accountability, transparency, and integrity to support our programming efforts in the area of anti-corruption. UNDP is also working on a strategy to improve our work in the area of procurement, both internally and as part of our support for developing countries. Under the guidance of the Office for Audit and Performance Review, UNDP is also enhancing its internal control mechanisms to strengthen accountability at the corporate and country office level. A UNDP fraud policy has been adopted to prevent, detect,

and investigate fraud involving UNDP staff members, consultants, contractors, and other parties with a business relationship to UNDP.

To enhance its effectiveness in the region, UNDP has decentralized its policy advisory support, and a UNDP Regional Centre for Asia and the Pacific has been operational in Bangkok since May 2005. Several regional projects throughout the region have been consolidated into one regional governance team, located in Bangkok. Following the success of our regional Access to Justice Community of Practice, the Regional Governance team is now launching another regional community of Practice on "Integrity in Action in Asia Pacific", the aim of which is to bring together UNDP practitioners to share experiences and strengthen our capacities in the area of anti-corruption programming.

Most of our work in the area of accountability and transparency remains targeted directly at the country level, through our UNDP country offices in the region. UNDP is currently supporting anti-corruption initiatives in Afghanistan, Bhutan, Cambodia, China, Cook Islands, Indonesia, Laos, Malaysia, Mongolia, the Philippines, Sri Lanka, and Vietnam, and projects with a few other countries (e.g., Bangladesh) are in the pipeline.

- UNDP Cambodia is implementing a preparatory assistance project to support the Cambodian Government in finalizing its draft anti-corruption law, and in strengthening the advocacy network for advancing transparent and accountable government. The preparatory assistance will result in a longer-term multi-donor assistance project.
- UNDP Vietnam is supporting the Government in drafting a law on anti-corruption and formulating a project on the implementation of the UNCAC and is closely collaborating with the Swedish International Development Agency (SIDA) on these policies.
- In Sri Lanka, UNDP has launched a pilot rights-based approach to combating corruption while strengthening the capacities of the Commission to Investigate Allegations of Bribery and Corruption (CIABAC).
- In Mongolia, UNDP's "National Integrity Systems Enhancement" project is supporting the anti-corruption parliamentary working group and the National Anti-Corruption Council with the preparation of the enabling environment to implement the National Program for Combating Corruption and related action plan.
- In Malaysia, UNDP has launched an initiative to assist the new National Integrity Institute in building its capacity.

- UNDP Bhutan is helping to strengthen the capacity of the Royal Audit Authority to implement performance audits in the public sector.
- UNDP China is assisting the Ministry of Supervision in implementing a comprehensive anti-corruption program and is planning to enhance its cooperation in light of the UNCAC implementation.
- In the Cook Islands, UNDP supported a review of legislation in relation to the UNCAC.
- UNDP Philippines provided assistance to key independent integrity bodies such as the Office of the Ombudsman, the Civil Service Commission, and the Commission on Audit, as well as the Presidential Committee on Effective Governance. These initiatives triggered initial dialogue for key anti-corruption agencies to establish an anti-corruption framework under the leadership of the Office of the Ombudsman, which is the lead anti-corruption agency in the country. The UNDP Regional Centre in Bangkok also sponsored the first-ever meeting in Manila of the South East Asian Parliamentarians Against Corruption (SEAPAC).
- In Indonesia, the National Development Planning Agency developed e-Aceh (www.e-aceh.org), a one-stop-information portal accessible to the general public. One component of the website is a resource-tracking system showing resources pledged, committed, and disbursed by government, donors, and NGOs. UNDP has seized on the reconstruction process as an opportunity to promote transparent and accountable governance in Aceh. This is done through the Partnership for Governance Reform in Indonesia (PGRI) (see http://www.kemitraan.or.id).
- UNDP Afghanistan supported the Government in conducting an anti-corruption needs assessment (March 2005). The report will serve as a basis for further prioritization, in close collaboration with other national and international stakeholders. UNDP is working in partnership with ADB and a project document is being developed.
- Lao PDR has just adopted a new Law on Anti-Corruption and is looking for UNDP support to strengthen the capacity of its State Inspection Authority.
- UNDP Bangladesh is partnering with bilateral development partners to undertake a program that will, among others, foster awareness among the masses to support the fight against corruption. One of the objectives of the program is to reverse the current climate of social intolerance and public cynicism resulting from years of endemic corruption at all levels. Civil society organizations, the media, and the academe will play central roles in the program.

The Regional Centre in Bangkok is launching a Regional Youth and Governance Initiative that will kick off in November 2005 with a Governance Leadership Course for Young Leaders in Asia. The program aims to enhance the capacity of young Asian leaders in recognition of their roles as powerful agents of change. Transparency, integrity, and accountability are key components of the program. In addition, the governance and communications teams in the Regional Centre in Bangkok are working on a series of media announcements calling for action against corruption in the region. We are also organizing communication training for UNDP governance practitioners to improve their media skills in the area of democratic governance.

Our interventions in other governance-related areas such as parliamentary reforms, electoral reforms, access to justice, e-governance and access to information, local governance, and public administration reform all contribute in a holistic manner to the strengthening of national integrity systems.

Conclusion

Because of the diligence of civil society organizations and inspired change agents in various governing institutions, supported by international organizations and initiatives such as the ADB-OECD Anti-Corruption Initiative for Asia and the Pacific, the discussion on the fight against corruption has become much more relevant over the last few years, and more and more governments have upped their commitment to stamping it out. But the pace of reforms remains slow, with an overemphasis on the package, the legal provisions, and the formal structures. Implementation and enforcement, particularly with regard to political corruption, remain problematic.

The challenges are daunting but the stakes are high. Income disparities in South Asia are among the highest in the world. Also, in a number of countries in the region there are signs that a more competitive political system is coinciding with an increase in the importance of money and violence as instruments of electoral gains, the emergence of a highly confrontational parliamentary culture, and progressive degeneration in the morality of the political system. Rahman Sobhan,[21] in his comprehensive review of governance in South Asian countries, even concludes that there is no evidence that exposure to plural democracy over the past decade has noticeably improved the quality of governance, accelerated development, encouraged more equitable distribution of its benefits, or reduced corruption.

With 1.8 billion people living in Asia and the Pacific, what happens in the region will matter greatly for the eradication of poverty and the achievement of global prosperity. The fight against corruption, which requires the active involvement of the public and private sectors and civil society at large, is only one step, but a very important one, on that long and difficult journey.

Notes:

The views and opinions presented in this paper are those of the author and do not necessarily reflect the position of the United Nations Development Programme.

1 The eight MDGs are a 50% reduction in poverty and hunger, universal primary education, a two-thirds reduction in child mortality, a 75% drop in maternal mortality, gender equality, environmental sustainability, reversal of the spread of HIV/AIDS, malaria, and other diseases, and global partnership for development between the rich and poor.

2 International Cooperation at a Crossroads: Aid, Trade and Security in an Unequal World. UNDP, 2005.

3 Nguyen, L. 2005. Poor Victimized by Extortion, Large and Small. Inter Press Service News Agency, 20 September. See also http://www.worldbank.org/wbi/governance/mediamentions-current.html

4 Keuleers, P. 2004. Governance in the Least Developed Countries in Asia-Pacific. Bangkok, March.

5 At the UN Summit in September 2005, the heads of state and government reaffirmed that democracy is a universal value based on the freely expressed will of people to determine their own political, economic, social, and cultural systems and their full participation in all aspects of their lives. They also reaffirmed that while democracies share common features, there is no single model of democracy and it does not belong to any one country or region, and that respect for sovereignty and the right of self-determination is a necessity.

6 For UNDP, corruption is essentially a governance issue—a failure of institutions and a lack of capacity to manage society by means of social, judicial, political, and economic checks and balances.

7 Transparency International (quoted by the Inter Press Service News Agency, Tuesday, 20 September 2005).

8 UNDP. 2004. Practice Note: Anti-Corruption. February. See also UNDP Discussion Paper: Corruption and Good Governance: http://magnet.undp.org/Docs/efa/corruption3/corruption3.htm

9 International Covenant on Civil and Political Rights, which entered into force on 23 March 1976.

10 International Covenant on Economic, Social and Cultural Rights, which entered into force on 3 January 1976.

11 Kumar even argues that if the right to corruption-free services could be made enforceable under the constitution, it could be harnessed into an effective guarantor of accountability and good governance (Kumar, R. 2004. Corruption and Human rights: Promoting Transparency in Governance and the Fundamental Right to Corruption-Free Services in India).

12 Cocksroft, L. 1998. Corruption and Human Rights: A Crucial Link. Transparency International Working Paper.

13 Halachmi, A. Performance Measurement: Test the Waters Before You Dive. (Arie Halachmi is a professor at Zhongshan University, China, and Tennessee State University, USA.)

14 Despite successful social audit initiatives in Bangladesh and Pakistan, recent reports still indicate high levels of popular dissatisfaction in certain sectors. Forty-seven percent of the girls enrolled in primary school in a Pakistani province reported unofficial demands for money (Inter Press Service News Agency, 20 September 2005).

15 Cost should also include the labor-intensive efforts of collecting, analyzing, and compiling periodic performance reports.

16 In Cambodia**,** there is a risk that the Primary Mission Group initiative triggers a series of pressures for additional top-ups in other sectors (e.g., police and military). Given the emergence of other parallel donor-funded incentive schemes, there is also a risk that income inequality within the civil service will exacerbate, even between various incentive systems. In the post-conflict countries like Timor Leste and Afghanistan, where competition for qualified human resources is even harsher, the excess of demand over supply is driving up remuneration levels and inconsistencies between wages paid within government and donor-funded government programs.

17 In the Cook Islands, public sector employment was reduced by 57% in 1996–1998, in Solomon Islands the payroll was reduced by 9% between 1998 and 2000, Vanuatu shed 10% of its government workforce in 1996, and even in tiny Niue the public service was slashed by half in 1995. Contracting out was promoted to improve efficiency and effectiveness in government spending. But the overall situation in the South Pacific is one of a few successes (Samoa). Service delivery has been overlooked in the quest for greater efficiency in central fiscal management and an externally promoted push for the substitution of the private for the public sector (*Trends and Challenges in Public Administration Reform in Asia and the Pacific*, UNDP Regional Centre Bangkok, June 2005, 42–43).

18 In 1959, when the anti-corruption strategy was launched, GNP per capita in Singapore was only USD 443. Thirty-eight years later, that figure had grown by more than 11% annually, mainly because of gains in revenue and productivity that resulted from the anti-corruption policy and from rapid growth-oriented development policies, including high investments in human development. By 1994, the public sector wages ranked among the highest in the world, nearing private sector wage levels.

19 The key elements of the UN Common Understanding are:

(a) All programs of development cooperation, policies, and technical assistance should further the realization of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments.

(b) Human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other human rights instruments guide all development cooperation and programming in all sectors and in all phases of the programming process.

(c) Development cooperation contributes to the development of the capacities of duty bearers to meet their obligations and rights holders to claim their rights.

20 Article 19 of the International Covenant on Civil and political Rights protects the "freedom to seek, receive and impart information". It is notable that during its first session in 1946, the UN General Assembly adopted resolution 59(1) which stated: "freedom of information is a fundamental human right and … the touchstone of all the freedoms to which the UN is consecrated".

21 Sobhan, Rahman. 2004. Reprioritizing South Asia's development agenda: Role of governance. In *Governance: South Asian Perspective*. Edited by Hasnat Abdul Hye. Dhaka: UPL, pp. 341–365 (quoted in Salahuddin Aminuzzaman, Regional Overview report on National Integrity System in South Asia, Transparency International Regional Workshop, Karachi, December 2004.)

DFID's approach to effective donor support for anti-corruption reform

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The United Kingdom Department for International Development (DFID), through its Financial Accountability and Anti-Corruption Team, works to develop and promote effective policies and capacity to stimulate other parts of the UK Government, the international community, and developing countries to tackle corruption and improve accountability, thereby facilitating the reduction of poverty. There are several strategic objectives of DFID's approach to anti-corruption work. First, DFID supports effective anti-corruption action in poor and middle-income countries. It provides advice and support within countries, for example, in cooperation with country-level anti-corruption commissions in Malawi, Pakistan, Sierra Leone, Uganda, and Zambia. DFID also works in the area of governance, which includes improving public financial management, developing civil service management reform, addressing judicial corruption, and supporting civil society to promote transparency and accountability.

For every demander of a bribe there is a supplier; DFID also concentrates efforts on addressing this "supply side" of bribery and corruption. In this context, DFID seeks to (1) drive out bribery from international trade and business; (2) reduce money laundering of funds corruptly acquired in developing countries; and (3) help developing countries recover stolen assets. Important questions that must be raised in working towards these objectives include: Who is paying the bribes? Are they being punished? Are adequate deterrents in place? Where are stolen funds going? How can they be returned? The United Nations Convention Against Corruption (UNCAC) and the OECD Anti-Bribery Convention are key tools for donors to tackle these issues and to implement anti-corruption actions within ministries in their own governments. For example, trade ministries can be instrumental in addressing bribery committed by national companies abroad. Ministries of justice can strengthen domestic anti-corruption legislation, including laws that cover international corruption. Law enforcement agencies are the main actors in investigations and prosecutions and, hence, are also another important focus of anti-corruption efforts. Ministries of treasury or finance are well poised to contribute to reducing the extent to which banking systems can be safe havens for laundered money.

Another important objective of DFID's anti-corruption work is to protect development assistance and aid flows from corruption. An important institutional guide in this area can be found in the OECD Development Assistance Committee's (DAC's) anti-corruption principles. The DAC Principles for Donor Action in Anti-Corruption describe key activities that donors are, or could be doing, to assist partner countries with the implementation of the main anti-corruption conventions and legal instruments. The principles also raise issues of alignment and harmonization among donors and point out the linkages needed in anti-corruption work within a country, between donor headquarters and country offices, with the private sector, to build collective knowledge on how best to fight corruption. Through these principles, donors agree to collectively foster, follow, and fit into the local vision; acknowledge and respond to the supply side of corruption; and note that knowledge and lessons should be marshalled systematically and progress needs to be measured.

DFID's Work in Asia

DFID has had a strong focus on anti-poverty measures in Asia since 1997. In the Asia-Pacific, poverty reduction work is modelled to deliver on the Millennium Development Goals, and innovative approaches have been developed to access the most difficult-to-reach groups, or those who suffer most from exclusion. Depending on the country and the social context, the forms of exclusion vary—social or economic marginalization can be a function of gender, religion, ethnicity, caste, or political conviction or can be a result of conflict or change of leadership regime. For example, in some countries, gender and social exclusion assessments, which provide an analytical framework and in-depth analysis of exclusion, barriers, and opportunities, inform DFID's programming. In Nepal, DFID has begun to implement the Livelihoods and Social Inclusion Monitoring System. This system monitors the benefits of DFID investment to poor and excluded groups, and provides improved data, reporting, and analysis. Poverty Reduction Strategy Papers (PRSPs) have been developed or are being developed in several countries. PRSPs are based on a holistic analysis of the multiple dimensions of poverty, which in turn contribute to setting sector, program and budget priorities. The development of PRSPs reflects an increased emphasis on mainstreaming poverty reduction through improved inter-agency and inter-sectoral coordination, and through participatory consultation, consensus building, and planning. These and other DFID processes stress country ownership and country-led initiatives, such as through budget support in Vietnam.

DFID's Work to Improve Donor Support in the Asia-Pacific Region

DFID encourages and contributes to developing easier and more transparent ways of transferring resources from donors to governments, thereby improving the effectiveness of the entire aid effort. For example, in Vietnam, DFID is part of an influential partnership group on aid effectiveness that helps implement the Government's harmonization action plan. Partnerships with governments and international organizations have broken new ground in harmonizing donor support in Vietnam and building government capacity to manage donors. DFID also works in close coordination with other donors, multilateral development banks, and international organizations in joint donor programming. For example, in Cambodia, the background analysis for DFID's Country Assistance Plan, which focuses on maximizing the impact of development resources in the country, was jointly developed with ADB and the World Bank. Increasingly, development aid is being channelled in the form of budget support at national or sectoral level in a number of countries. This makes better use of existing government systems, while building capacity within the government.

In addition to these specific measures, DFID takes a broad-based approach to anti-corruption work. This approach prioritizes wide-range improvements in governance and accountability to citizens. DFID's programs are adapted to local circumstances and designed with a long-term vision. Projects encourage and are reinforced by systematic peer review and mutual evaluation.

Conclusion

In DFID's experience in fighting corruption in Asia-Pacific and beyond, there are a number of areas where enhanced efforts on the part of donors would increase the effectiveness of their support for anti-corruption reforms, as well as in other overall matters. Harmonization of interventions and shared views concerning the main drivers of corruption are essential for effective donor action. This requires clear and open communication with governments and among donor agencies. Donors must also recognize the important role of civil society in anti-corruption work, and should work in cooperation with non-governmental organizations. With respect to the UN Convention Against Corruption, donors should address the supply side of bribery, in accordance with the Convention and should support countries in their efforts to implement the Convention.

Support for anti-corruption reform: UNDP in the People's Republic of China

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The negative impact of corruption on development is clear. In the words of Kofi Annan, United Nations Secretary-General, "Corruption is an insidious menace. It debases democracy, undermines the rule of law, distorts markets, stifles economic growth, and denies many their rightful share of economic resources or life-saving aid. Corruption is, therefore, a major obstacle to economic and social development." As the United Nations' global development network, UNDP advocates change and connects countries to knowledge, experience, and resources to help their people build a better life. For UNDP, reducing poverty is the fundamental justification for the fight against corruption. The principles of empowerment, transparency, participation, and accountability motivate UNDP's anti-corruption drive and are at the heart of UNDP's work towards achieving the Millennium Development Goals.

Since 1997, UNDP has been involved in accountability, transparency, and integrity programs as part of its interventions to strengthen democratic governance. A 1998 corporate policy paper, "Fighting Corruption to Improve Governance", highlighted the importance of addressing corruption as a development phenomenon. Over the last few years, UNDP's anti-corruption interventions have evolved from principally supporting awareness raising and advocacy, to advising national partners aided by more holistic approaches.

UNDP's Anti-Corruption Approach

Fighting corruption is politically sensitive and extremely complex. UNDP country offices have adopted different strategies for anti-corruption programs. These programs and activities relate mainly to five areas: prevention, enforcement, public participation and coalition building, strengthening of national integrity institutions, and work with the international community.

There is no one solution for combating corruption. A country's reform effort may contain all of the five areas or a combination of some,

depending on the established needs, agreed priorities, available resources, and timing of the anti-corruption program. The key to effectiveness lies in strong political commitment and public participation in a coherent, comprehensive strategy that attacks on several fronts, involving the widest possible range of stakeholders.

Over the past few years, UNDP's accountability, transparency and integrity programs and anti-corruption interventions have evolved significantly. In a recent mapping exercise, some 70 country offices reported accountability, transparency, and integrity initiatives, either as a priority component of a governance program or as an explicit effort to fight corruption. The types of activities funded recently include:

- Strengthening transparency and accountability through coalition building and national consultations for anti-corruption strategy-setting;
- Building the capacity of independent anti-corruption commissions;
- Developing specific anti-corruption legislation and codes of conduct;
- Improving access to information;
- Strengthening specific independent oversight institutions and processes;
- Conducting financial management and transparent budgeting;
- Conducting monitoring and enforcement; and
- Developing e-government to improve public service delivery.

The Situation in China

Corruption is a widely recognized development challenge facing China. The huge losses caused by corruption are not only an economic issue, but have also become a serious social and political issue. Corruption is viewed by most Chinese people, including government officials and the public, as a serious issue that hinders the country's development.

The official China Survey Report (2000–2001) noted that "corruption is the primary cause of contradictions between officials and the public" and ranked corruption fourth among the country's top development issues. The Social Stability Studies survey of urban and rural citizens showed that corruption was the second most important concern of citizens in 2002.

Box 2.1: Perception of Top Development Issues in the People's Republic of China

Official View	Citizens' View
1. Unemployment 2. Poverty 3. Crime 4. Corruption 5. Environmental pollution 6. Mobile population 7. Education 8. Income distribution 9. Labor-enterprise relations 10. Gender issues	1. Worker layoffs and unemployment 2. Corruption 3. Overburdening of farmers 4. Widening gaps and disparity (income, urban/rural, regional, sectors/industries) 5. Environment 6. Social ethics
Source: 2000–2001 China Survey Report, Central Compilation and Translation Press	Source: Guo Yong, "Social Stability Studies" survey, 2002

Corruption has caused heavy economic losses in China. The economic costs of corruption in 1996–2000 are estimated at nearly RMB 100 billion (USD 12 billion) yearly.[1] This is about 15% of China's annual GDP.

According to reports submitted to the National People's Congress by the Supreme People's Court and the Supreme People's Procuratorate, between 1998 and 2002, the court systems and the prosecution services in China handled 1.6 million corruption cases involving 1.5 million persons and CYN 22 billion (USD 2.7 billion) (these figures exclude cases handled by administrative institutions through disciplinary measures.).[2]

The Chinese Government has undergone a paradigm shift in its approach to addressing corruption. Corruption was less problematic under the centrally planned economy. After China initiated economic reforms and the opening-up policy, corruption increased. From 1978 to 1996, the Government focused on investigation, discipline, and criminal punishment. However, this approach had unsatisfactory results.

Gradually, since the early 1990s, a consensus has been reached in the country that there is no one single solution to corruption. In the mid-1990s, the Government launched institutional reforms and system innovations to improve accountability, transparency, and integrity and combat corruption. It became more and more clear that improving accountability, transparency, and integrity and fighting corruption require

a well-planned, holistic approach that gives equal emphasis to education, prevention, prosecution, and supervision.

UNDP–Ministry of Supervision Strengthening Integrity Project

Since 2000, the UNDP office in China has engaged in a dialogue with the Government about the possibility of assisting China in its anti-corruption campaign. In January 2003, a development project in cooperation with the Ministry of Supervision, on strengthening integrity in governance, was formally launched. The Strengthening Integrity Project was the very first international cooperation program with the Government of China that specifically targeted corruption. It was a breakthrough at that time, indicating that the Government had increased its commitment to fighting corruption by all means, including international cooperation. The main reasons that the Government of China chose to work with UNDP was UNDP's political impartiality, partnership, governance focus, and global knowledge networks. In the past two years, the Ministry of Supervision and the UNDP China Office have attached great importance to the project, which is being implemented very smoothly.

The project involves UNDP–Ministry of Supervision cooperation in developing comprehensive anti-corruption strategies and systems, and training anti-corruption officials. The Ministry of Supervision heads the project task force in partnership with 15 other line ministries and 11 provinces and municipalities. Each is assigned a specific area of work. The project covers three areas of anti-corruption work: general countermeasures, legal framework, and administrative supervision. The project has contributed to the overall efforts to build integrity in government, prevent corruption at its roots, and reduce economic and social losses.

Among the project's outcomes is the publication of three important policy reports in 2005: the General Strategy on the Prevention and Dealing of Corruption by Addressing the Root Causes; Strengthening Administrative Supervision and Improving Civil Services According to the Law; and The Legal Framework on Building a Clean Government and Anti-Corruption. The last-named document will be submitted to the National People's Congress. The first two reports will be submitted to the State Council.

At the local level, branches of the Ministry of Supervision in 11 provinces have been involved in studies on specific corruption issues and produced 12 reports summarizing local situations and their experience in anti-corruption work. Under the project, nine theme-based task forces

were established. They have conducted in-depth studies on such issues as administrative licensing, supervision of public finance, and administrative supervision systems.

Anti-corruption system innovations making use of information and communication technologies were piloted in five localities. In Suzhou, a city in east China that attracts much foreign investment, the project supported the pilot implementation of an electronic supervision system for administrative licensing. With the system, the Suzhou Municipal Bureau of Supervision can monitor administrative licensing in other government departments in real time.

Training is also part of the Strengthening Integrity Project. More than 200 anti-corruption officials were trained under the project. About half of them are from the poor regions in west China. Anti-corruption officials have been trained in the areas of administrative supervision, checks and balances, and codes of conduct. Eight study tours have so far been organized for officials of the Ministry of Supervision, to both developed and developing countries in Asia-Pacific, North America, and Europe.

In addition to this project, UNDP also works with the Supreme People's Procuratorate, China's top public prosecution agency, to prevent duty crimes by officials and support the UN Convention Against Corruption.

Lessons Learned

Many important lessons have been learned through UNDP's experience worldwide and cooperation with the Chinese Government. Clearly, there is no one model for fighting corruption, and although "best practices" exist and can provide guidance, they are not automatically applicable to all countries. Development experience indicates three fundamental determinants of effective donor support for improving accountability, transparency, and integrity.

First, capacity development should be one of the core aims of development assistance, as successful development must come from within the country itself. Issues of national capacity need to be addressed at the levels of individuals, institutions, and societies.

Second, donors and international organizations can provide the impetus for reforms but these reforms need to be "home grown" and "locally driven". Our experience in China conforms to UNDP's policy that development policies and interventions promoting human development must be nationally owned. Only if people view a policy as their own will they act to ensure that it is implemented well. In countries like China, strong, committed leadership from government, civil society, and the

public is fundamental to any effective reform program.

Finally, strong capacity and a high sense of ownership still may not yield results. The third crucial determinant is a policy environment conducive to effective reform, complete with appropriate laws and regulations.

In summary, it is necessary to have an integrated and holistic approach that targets key institutional reforms, and culture change. These may involve a combination of implicit as well as explicit reform programs, grounded in principles and efforts to strengthen democratic governance. In many countries including China, fighting corruption is a central part of the institutional reform and democratic governance agenda, which require long-term, constant effort. Reform must also integrate the efforts of the judicial, legislative, and executive branches into a holistic approach that is actually implemented and applied.

Future Steps

UNDP will continue to cooperate with the Chinese Government to further improve accountability, transparency, and integrity in governance. Anti-corruption work is included in the new UNDP Country Programme in China for the next five years, which identifies "Development of anti-corruption legislation and codes of conduct to strengthen transparency and accountability within the civil services" as a key output.

Meanwhile, the General Framework of Anti-Corruption of the Government envisages the establishment of a preliminary anti-corruption system by 2010. Top anti-corruption officials have made it clear that the Government is willing to scale up cooperation with donors.

As such, UNDP looks forward to working with relevant government institutions and other stakeholders to assist China in anti-corruption work and accountability, transparency, and integrity.

Notes:

1 Hu Angang. Corruption: China's Biggest Social Pollution, p. 60.

2 Supreme People's Procuratorate, Supreme People's Court reports at the Tenth National People's Congress, March 2003.

Donor support for anti-corruption efforts: The Indonesian perspective

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A Historical Perspective

Indonesia has a long history of fighting corruption. As early as 1957, operations against corruption were carried out under military leadership. In 1967, a Corruption Eradication Team that focused on prevention and repression of corruption was created by presidential decree. Disciplinary anti-corruption operations were undertaken, under presidential instruction, in 1977. And in 1987 a special anti-corruption operation on taxation was initiated by the Minister of Finance.

More recently, in 1999, the Wealth Report Commission, focusing on the prevention of corruption was established by Law Number 28 of 1999 and a Joint Investigation Team, which concerns itself primarily with curbing corruption, was created by government regulation. The Corruption Eradication Commission (Komisi Pemberantasan Korupsi) was formed in 2003, under Law Number 30 of 2002. It coordinates with and supervises institutions working to wipe out corruption, takes action to prevent and contain corruption, and conducts system reviews. In 2005, the President's Team for Fighting Corruption was created by presidential decree to coordinate the work of the President's teams.

After nearly 50 years of fighting corruption, several observations can be made. First, preventive measures, although identified as a priority, have not been entirely satisfactory. Second, while programs and institutions were often effective at the start, with time, they themselves were affected by corruption. Third, many anti-corruption measures were aimed solely at punishment, and not enough attention was given to tracing the proceeds of corruption. Finally, neither the human resource management systems nor the financial management systems in place were adequate for managing performance.

Fighting Corruption

The fight against corruption can be conceptualized as a three-part strategy: repression, prevention, and public participation. Repression

includes investigation, prosecution, court examination, and execution of penalties. Prevention is based on making systemic improvements that eliminate opportunities for corruption. Public participation is the active involvement of actors from all parts of the population, to rally support for and scrutinize anti-corruption efforts.

To combat corruption effectively, various entities dedicated to addressing a wide range of issues and responsibilities must work together. The role of each entity must be clear: each political and governmental agency, private entity, and community organization should work to fight corruption according to its mandate and authority. To optimize cooperation among these agencies, each entity should have a clear understanding of its mandate, anti-corruption objectives, and limitations, and should be aware that its activities might duplicate or come in conflict with those of other entities. These actors should take into account the detrimental effects of wasting resources, including time. They should realize that a collaborative approach to their common goals is in the best interest of all.

Donor Support for the Fight Against Corruption

Donors are among these important stakeholders and have a clear interest in fighting corruption to help ensure that aid reaches the projects and populations for which it was intended. Donor support for the fight against corruption can take several forms; every donor is different. A donor's mission depends on its mandate, and can focus on advancing a variety of issues such as democracy, governance, anti-corruption work, economic growth, or human rights. Donors' priorities and activities (e.g., technical assistance, information exchange, provision of training or equipment) also differ with respect to the resources they have at hand, the time frame in which they function (short, medium, or long term), and the scale of their operations (small, medium, or large).

The channels through which donors deliver support also vary. In Indonesia, some donors channel aid directly to the implementing entity or other appropriate agency. In other instances, donors provide support through ministries, which, in turn, deliver aid or support to the appropriate entities. In other cases still, donors make grants to the Partnership for Governance Reform in Indonesia (PGRI), a unique entity that disburses funds directly to Indonesian agencies active in the national governance reform effort, through its Trust Fund. This function is carried out within the broader context of the PGRI's long-term process of improving governance in Indonesia in a sustainable way. The Partnership also acts

as a catalyst in building competence in governance reform, functions as a central clearinghouse for information on governance reform in Indonesia, and coordinates support from the international community for this reform process. (The complex dynamics of delivery of donor support and aid channels are shown in Figure 2.1.)

Each recipient of donor support is different; each has different needs. It is incumbent upon aid recipients to formulate and articulate their specific needs accurately. However, needs are dynamic and ever-changing; and donor support should be flexible accordingly. To maximize donor effectiveness in supporting anti-corruption efforts, it should be widely known, among both providers and recipients of support, who is giving aid to whom, for what activities, towards which objectives. It should also be borne in mind that each donor, intermediary, and recipient has its own identity and pride. Finally, it is important to remember that the donor support available does not necessarily correspond to the needs of potential recipients.

Learning from the Indonesian Experience

A number of lessons can be drawn from the Indonesian experience.

- An independent agency, such as the PGRI, whose mission is to promote governance reform where decision making and resource allocation are based on the inclusion of all stakeholders, is an effective and efficient way to combine the strengths of the public sector, the private sector, and civil society.
- Donors and recipients should decide together on the most appropriate channel for delivering donor support.
- Transparency among donors, intermediaries, and recipients creates positive competition among them and will help prevent negative competition.
- The public sector, the private sector, and civil society must combine their anti-corruption resources and strengths, to enhance exchange and cooperation and to capitalize on their respective areas of expertise.
- To achieve optimal transparency, communication, and cooperation and to make anti-corruption efforts more effective, donor coordination meetings must be held twice a year for all entities involved in anti-corruption work and for selected key agencies, and information sharing and communication must be constant.

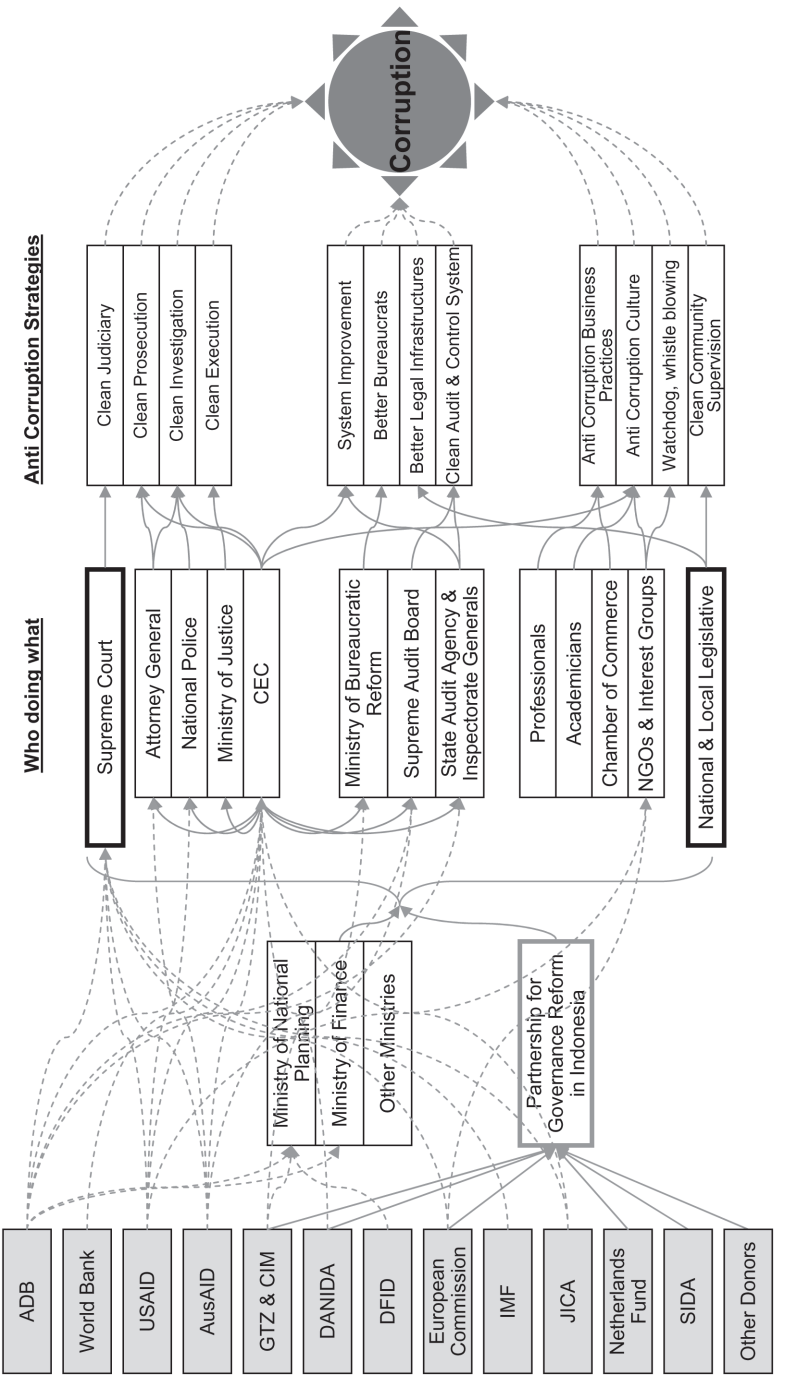

Figure 2.1: Dynamics of Donor Support and Aid

Chapter 3
How the business sector can contribute to the fight against corruption

At least two clear factions are involved in a corruption pact: the bribe taker (e.g., a public official) and the bribe giver (e.g., a company). The fight against corruption will not succeed if it is one-sided—both of these parties must be addressed in any anti-corruption effort that aspires to be successful. Clearly, governments, donors, civil society organizations, and individuals all have a role to play. Likewise, businesses must also take responsibility for the potential risks of corruption in their activities and transactions, and can take measures to enhance private sector ethics to prevent and detect corruption.

This chapter explores how governments, on one hand, can impose more stringent controls on companies to prevent the giving of bribes to public officials, and the corporate sector, on the other hand, can take action to prevent the offering of bribes. In addition, civil society groups can catalyze the involvement of the corporate sector in the battle against corruption.

Lester Ross, a lawyer active in counseling foreign companies operating in and from the People's Republic of China and those who seek to do so, describes the process of obtaining a public contract, a license, or customs clearance from Chinese authorities. Situations where companies might be inclined to give bribes, despite the risk of severe punishment of companies and corporate individuals found guilty of giving bribes to Chinese public

officials, are brought out. Ross cites strengthened corporate accountability and improved auditing standards as ways to help prevent accounting omissions and fraud that could hide bribes given to public officials in corporate accounts.

Legal frameworks developed in Korea to heighten transparency in corporate management and promote ethical business practices are discussed by So-yeong Yoon, Deputy Director of the International Cooperation Division of the Korean Independent Commission against Corruption (KICAC). She gives examples of the Korean Government's efforts to tackle corruption through public-private partnerships via the Korean Pact on Anti-Corruption and Transparency (K-PACT). In Korea, government and business sector efforts to fight corruption go hand in hand with the general public's awareness about corruption and action to promote further efforts on the part of their leaders and the businesses they patronize. Indeed, it can be said that a virtuous circle—private sector efforts to practice ethical business and the public's ensuing demand for more transparency around private sector activities—has been created by programs undertaken in Korea.

In another example of how the demand for transparency on the part of the general public contributes to private sector momentum in the fight against corruption, Henry Parham, International Coordinator of the UK-based NGO Publish What You Pay, explains how his organization advocates transparency in business practices, particularly among international corporations. The NGO promotes voluntary disclosure of payments made to governments (in taxes, fees, royalties, bonuses, etc.) by companies active in mining and other extractive industries and voluntary disclosure of governments' receipt of these payments. With easy access to this information, citizens can verify for themselves whether the profits from the natural resources of their countries are being disbursed and received in a fair, equitable way. Such programmes, he says, are beneficial for business as they contribute to a stable and transparent investment climate.

Korea's business ethics programs

So-yeong Yoon
Deputy Director, International Cooperation Division
Korea Independent Commission Against Corruption

Corporate corruption threatens sustainable development, as it hinders just distribution and efficient use of resources. In the end, it will undermine national credibility and competitiveness. At the moment, major advanced economies are making sincere efforts to strengthen business ethics by setting and meeting global standards. As Korean companies are in the initial stage of ethical management, the Government has been improving the legal and institutional frameworks for heightening transparency in corporate management and promoting ethical business practices. Corruption in the corporate sector will not be wiped out without eliminating public sector corruption, as the two areas are invariably interlinked. So the Government is now focusing its efforts on public-private partnership to tackle corruption, especially through the implementation of the Korean Pact on Anti-Corruption and Transparency (K-PACT). The business sector is also stepping up its efforts to enhance business ethics, involving itself actively in the anti-corruption drive of Korean society as a whole.

Legal Frameworks to Ensure Ethical Management

Disqualification of candidates for financial institution officer

Current finance-related acts, such as the Banking Act, Securities and Exchange Act, and Insurance Business Act, contain provisions on the disqualification of candidates for officer positions at a financial institution. These disqualification standards are stricter than those applied to public servants, since financial institutions have an obligation to serve the public interest, establish order in the financial market, and contribute to the growth of the national economy.

According to these acts, financial institutions must prohibit the employment of a person who has been sentenced to imprisonment or to a fine or heavier punishment under finance-related acts and for whom five years have not elapsed since the execution of such punishment has completed, and has been serving a suspended sentence. These acts disqualify any person who was an employee of a company and who is

directly responsible for the cancellation of license or authorization of business pursuant to finance-related acts, and for whom five years have yet to elapse from the date on which the license or authorization of such company was cancelled; and a person who was dismissed from a financial institution, and for whom five years have not elapsed since the date of such dismissal under finance-related acts.

Internal accounting management system

The internal accounting management system was introduced in August 2001 under the Corporate Restructuring Promotion Act to ensure the accuracy of accounting information. As part of accounting reforms, the National Assembly passed the External Audit of Stock Companies Bill and the Securities and Exchange Bill in December 2003.

The External Audit of Stock Companies Act requires stock companies to have in place an internal accounting management system. It includes, among others, regulations on discrimination, classification, recording, and disclosure of accounting information, and handling of incorrect accounting information. The internal accounting management system also necessitates an organization that enforces these regulations.

According to this act, the head of a company shall designate a permanent director to be in charge of the system as the internal accounting manager. Every six months, the internal accounting manager shall give a report on the operation of the internal accounting management system to the board of directors and auditors. The auditors, in turn, shall evaluate the system and submit a report on it to the board of directors every fiscal year.

Government's Efforts to Promote Business Ethics

Business Ethics Center

Domestic businesses are well aware of the necessity of ethical management but lack information on how to effectively translate their determination into action. Under these circumstances, the Korea Independent Commission Against Corruption (KICAC), a national anti-corruption body, established the Business Ethics Team in November 2003 and opened the Business Ethics Center in June 2004:

- To provide companies with useful information on anti-corruption methods and ethical management;

- To support their ethics training and corruption prevention activities; and
- To conduct exchange and partnership programs with businesses to promote ethics in the private sector.

Separately, KICAC has built a website called the Digital Business Ethics Center (http://ethics.kicac.go.kr), which accommodates wide-ranging and comprehensive information regarding trends in business ethics, related news and best practices of ethical management, educational support for ethical management, on-line counseling, etc.

Business Ethics Pact for Public Corporations

The Business Ethics Pact is aimed at promoting business ethics and efficiently supporting ethical management through a joint effort of the public and private sectors. Drawing lessons from the public-private partnership projects implemented by the Service Central de Prévention de la Corruption (SCPC) of France, KICAC designed the pact, which contains provisions on entrenching ethics and preventing corruption in the business sector.

The major contents of the pact include:

- Formulation or revision of corporate codes of ethics;
- Training and education in ethical management;
- Establishment and management of the compliance monitoring system;
- Mutual cooperation in implementing the pact; and
- Dissemination of best practices.

From May to July 2004, KICAC signed separate business ethics pacts with the Korea Rail Network Authority and 13 government-financed institutions including the Korea Electric Power Corporation, the Korea Land Corporation, and the Korea National Housing Corporation. The pact requires the signing companies to develop and carry out their own business ethics plans and submit a progress report to KICAC every six months. KICAC, for its part, gives support for and assesses the implementation of the pact.

K-PACT and corporate integrity

The K-PACT is a common pledge of Korean society to overcome corruption and advance towards a transparent society. The landmark pact was signed by the leading figures of the public, political, business, and civilian sectors in March 2005. In accordance with its provisions, the K-PACT Council was established to enhance cooperation among the signatories of the K-PACT and play a fundamental role of monitoring, assessing, disseminating, and renewing K-PACT implementation.

The K-PACT is now being widely disseminated throughout the country and across sectors. In the public sector, 10 central government agencies, 18 public corporations, and the metropolitan governments of Busan, Chungbuk, and Gyeongnam have so far signed the K-PACT.

In the political sector, a Special Committee for K-PACT was established in May 2005 to perform relevant legislative actions and raise transparency in the political area. Eight laws have been amended thus far to substantively implement the K-PACT. They include the Anti-Corruption Act, National Assembly Act, Political Fund Act, and External Audit of Stock Companies Act.

The business sector established the K-PACT Business Council in April 2005, vigorously implementing its action plans including the entrenchment of ethical business practices, reinforcement of the corporate ethics committee, elimination of malpractices in subcontracting, and fulfillment of corporate social responsibility. As to the lines of business, the K-PACT was endorsed in the construction and health/medical service areas. The education and finance areas are making preparations for taking part in this movement.

Civil society groups are focusing on the implementation of the K-PACT locally. They are monitoring how the K-PACT is being implemented in local areas and promoting citizens' involvement and transparency education through the nationwide anti-corruption network.

K-PACT Business Council

The business sector was the first of the four signatories to set up a council for K-PACT implementation. Korea's five major business organizations inaugurated the K-PACT Business Council in April 2005 and announced three core principles to implement the K-PACT: ethical management, transparent management, and social service.

To realize these three principles, the Council plans to draw up an "ethical management map" for each stakeholder, designed to eliminate

corruption factors within the enterprise and develop various programs aimed at disseminating best practices of ethical management such as managing the board of directors, employing outside directors, and ensuring transparent accounting practices. To educate CEOs and senior managers on ways to introduce ethical management to their companies, the Council will create a CEO Corporate Ethics Forum and a Corporate Social Responsibility Research Group.

To promote social integration, the business sector will conduct various social service programs including support programs for the less fortunate, community development, relief aid, environmental protection, and promotion of art and culture.

K-PACT for Public Corporations

In June 2005, 18 public corporations including the Korea Electric Power Corporation, the Korea Land Corporation, Korea Highway Corporation, and Korea National Housing Corporation signed the K-PACT for Public Corporations and inaugurated the Public Corporations' Council for K-PACT dedicated to monitoring and evaluating K-PACT implementation. The K-PACT for Public Corporations is aimed at eradicating malpractices and corruption, ensuring transparency and fairness in public corporations, and heightening national competitiveness.

On 15 September 2005, the Council met for the first time to finalize work plans for 2005. To meet the increased need for greater transparency and integrity in the management of public corporations, the Council plans to develop a standard procedure for assessing the integrity of senior officials in each company by the end of October 2005 and a public corporation will conduct the integrity assessment no later than the end of November 2005.

The signatory public corporations will also seek practicable measures, to be applied to both contractors and subcontractors, to heighten transparency in bidding and contracting. These measures are expected to be implemented in the second half of 2006.

The anti-corruption movement spurred by the K-PACT has significantly contributed to eliciting the voluntary efforts of Korean society as a whole to fight corruption and enhance integrity. Although the Pact is a social commitment, which is not legally binding, the private sector of Korea is aggressively engaging in this movement lest it should be a vague statement. Businesses are mapping out their own plans to substantially implement the K-PACT, taking concrete actions to realize ethical management. This kind of public-private partnership is expected to go a

long way towards disseminating integrity and transparency in Korean society.

K-PACT for Public Corporations

Ethical Management

Public corporations shall build adequate mechanisms for implementing ethical management by establishing codes of ethics, operating an organizational unit that is responsible for ethical management, and doing away with institutions incompatible with ethical management. It shall strive to raise their employees' awareness on corruption through strengthened training on ethics and fulfill corporate social responsibility by supporting the underprivileged in society and engaging in relief work and environmental protection.

Transparent Management

Public corporations shall identify and improve areas with possibilities of improper use of discretionary powers that leads to corrupt practices. It shall enhance managerial transparency by making relevant standards and procedures clear, increasing the public disclosure of information, and ensuring accounting accuracy and transparency.

Prevention of Corruption and Enhancement of Integrity

Public corporations shall operate a sustainable corruption prevention system that can eliminate corruption-causing factors in advance and tackle the occurrence of corruption cases immediately. It shall ensure disciplinary efficacy by imposing stiffer punishment against and applying stricter standards to corrupt employees and encourage the act of reporting corruption by providing substantial support for corporate whistleblowers and protecting them against retaliation. To increase integrity of society as a whole, public corporations shall not offer, solicit or accept bribes, and shall impose sanctions against bribers by barring them from applying for a bid for a certain period of time.

The Public Corporations' Council for K-PACT

A workgroup committee shall be established under the Public Corporations' Council for K-PACT to monitor and assess the implementation of the Pact on a regular basis. The committee will consist of the heads of the ethical management units in each public corporation.

Combating corruption through law in the People's Republic of China

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Corruption has been recognized as an emerging challenge to China's economic and social reform, at the highest levels of the country's leadership. It threatens both the country's economic development and its political and social stability. As in all other countries, data on the magnitude of corruption are elusive. Statistics, where available, are inevitably approximate and most likely underestimate the true extent of the phenomenon. Since 2002, the Supreme People's Procuratorate has uncovered more than 30,000 cases of corruption, including 3,000 cases involving leading officials at or above the county level, and 100 cases at or above the level of director-general. Media reports have suggested that more than 4,000 corrupt officials have fled abroad with more than USD 600 million in illicit funds. In addition to these monetary losses, corruption also costs citizens' lives and well-being, as corrupt practices can, for example, jeopardize the safety of workplaces or diminish the quality of public health services or medical care.

Sources of Corruption

The sources of corruption and the factors that can worsen the problem are numerous and diverse. In China, many key assets, including land use rights and access to credit, are still controlled primarily by the State. Where good governance is lacking, close relationships between party or government officials and businesses can create opportunities for favoritism in awarding contracts or granting use of these assets. Such situations may also give rise to inappropriate protection of local business interests or administrative monopolies. A weak rule of law can also increase the potential for corruption, as it may diminish capacity and engender other shortcomings in judicial, procuratorial, and public security entities. The reliance of some traditions or cultural values on relationships or social networking (*guanxi*), for instance, may further encourage corruption. Finally, constraints on the press may inhibit the public exposure and awareness of corruption.

Recent Action to Fight Corruption

Efforts to combat corruption have increased in recent years. New legislative and regulatory developments include amendments to the criminal law. The law, as it stands today, states that any public official who takes advantage of his or her office to accept bribes is punishable by up to five years of imprisonment or criminal detention. If the crime results in serious losses to the interests of the State or citizens, the sentence will be at least five years. It also stipulates that anyone who offers or introduces a bribe to a public official is punishable by up to three years of criminal detention.

On 17 February 2004, the Communist Party of China published internal supervision regulations to intensify the country's anti-corruption campaign. These Internal Supervision Rules of the Communist Party represent a step forward in institutionalized anti-corruption efforts, and place emphasis on the supervision of high-ranking officials, especially in making major decisions that involve the distribution of public resources. The regulations are intended to replace strict hierarchical controls with "inner-Party democracy", and set forth an elaborate system under which Party leaders at all levels are expected to accept the supervision of the larger pool of Party members that they represent. For example, Article 13 requires that important decisions, including hiring and firing, be debated by the entire group and put to a vote. This voting exercise is designed to reduce the unilateral power of Party "bosses", who have been able to use their powers in the past to both amass riches and create broad umbrellas of influence. The following day saw the release of Disciplinary Punishment Rules of the Communist Party, a 178-article set of regulations on disciplinary penalties that complements the Internal Supervision Rules described above. These rules specify penalties for acts including bribe taking, embezzlement of public funds, and dereliction of duty. Disciplinary measures include warnings, severe warnings, removal from office, probation within the Party, and expulsion.

Administrative reforms have also been part of China's efforts to combat corruption more effectively. The Administrative Licensing Law, which took effect on 1 July 2004, streamlines administrative licensing procedures. Administrative licensing—the formal granting of legal permission for individuals, corporations, or other organizations to engage in special activities—is a major government function exercised by authorities at all levels. The new law reduces the number of activities that require government approval (e.g., international trade rights are now subject only to registration). It states that only the National People's

Congress, the State Council, and local people's congresses have the right to determine whether an activity requires an administrative license; departments under the State Council no longer have the right to do so. For those activities that continue to require administrative licensing, the government approval procedures have been simplified (e.g., for distribution—domestic trade—rights).

These are important steps to curb corruption, as excessive or abusive licensing can create opportunities for unfair licensing conditions, abuse of power, bribery, and other corrupt practices. For example, some companies that seek to obtain a license or a public contract or customs clearance from Chinese authorities may be tempted to resort to bribery despite the threat of severe punishment. In addition, weak corporate accountability and auditing requirements can facilitate accounting irregularities and even outright fraud for the purpose of hiding bribery of public officials. Other administrative reforms currently under consideration include the elimination of the distinction between urban and rural residency permits and a pending anti-monopoly law that focuses in part on administrative monopolies.

China's accession to the World Trade Organization may also affect levels of corruption. Advocates of economic liberalization believe that accession to the WTO will inevitably further reduce the opportunities for bribery, as one of its impacts is to liberalize trade and deregulate industry and commerce. Yet, others argue that economic liberalization policies may actually encourage corruption if, in reducing the size and role of government, it also reduces the capacity of government to identify and combat corruption.

Outlook for the Future

China's full membership in the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific, as of April 2005, and its consequent commitment to implement the Anti-Corruption Action Plan for Asia-Pacific in matters related to both the prevention and prosecution of corruption, are expected to foster new initiatives and further promote this ongoing reform process through experience sharing and policy dialogue. Nevertheless, success in combating corruption depends on more thorough and comprehensive effects to address structural problems.

Promoting revenue transparency in the extractive industries

Henry Parham
International Coordinator, Publish What You Pay

Natural Resources, Corruption, Conflict, and Poverty

Lack of transparency in the management of natural resource revenues is widely recognized to exacerbate corruption, fuel many devastating civil wars, and undermine efforts to alleviate poverty in many oil-, gas-, and mineral-rich developing countries around the world. Around 50 countries depend on natural resources for their annual income. It is this dependency on resource revenues that has led many countries to experience greater political authoritarianism, corruption, and weak economic growth—a phenomenon often described as the "resource curse".

One only has to look at the Transparency International Corruption Perceptions Index, where a large number of oil- and mineral-dependent developing countries sit at the bottom, to understand the links between natural resource wealth and corruption. Conversely, Norway, the third-largest oil exporter in the world, features at the top of the TI Index, indicating that it is perceived as one of the least-corrupt countries in the world. Norway has been able to harness its oil wealth for social and economic development through responsible revenue management practices based on clear transparency rules and openness in decision making by the Government. Indeed, Norway ranks first on the UNDP Human Development Index. As the example of Norway demonstrates, natural resources do not automatically lead to greater corruption or economic harm; it is the governance arrangements around oil, gas, and mining industries that determine the impact of those resources on a country.

Publish What You Pay

The international Publish What You Pay campaign (PWYP) was launched in June 2002 by a coalition of NGOs to work towards greater transparency over the payment, receipt, and management of revenues from the extractive sector. Transparency is essential so that resource revenues are used more effectively to promote national development and economic growth in developing countries. Promoting revenue transparency is consistent with international objectives to combat

corruption, reduce poverty, improve corporate social responsibility, and ensure a stable and secure supply of energy to markets around the world.

Revenue transparency means that:

- Companies extracting resources publish what they pay to the government (taxes, fees, royalties, signature bonuses, etc.),
- The government publishes what it receives from the companies, and
- Information is audited and discrepancies are investigated and reconciled

so that citizens can track the money from their natural resources into the national budget and government reserves. If citizens do not know how much money their government is receiving and how it is being spent in the budget, they cannot know whether the money is being properly used or not. In this circumstance, trust in the government is weakened and corruption by officials is made much easier.

Institutional investors and pension fund managers from Europe and the United States, representing some USD 8.3 trillion, have come together to call for greater transparency in the extractive industries. They state:

> Legitimate, but undisclosed, payments to governments may be accused of contributing to the conditions under which corruption can thrive. This is a significant business risk, making companies vulnerable to accusations of complicity in corrupt behavior, impairing their local and global "license to operate", rendering them vulnerable to local conflict and insecurity, and possibly compromising their long-term commercial prospects in these markets.[1]

Extractive companies themselves have supported calls for greater transparency. BP, the oil giant, for instance, states:

> [We are] committed to the principle of transparency, in the belief that improving accountability in the societies where we operate strengthens governance and reduces corruption, conflict, and poverty. This is good for society, and good for business. It reflects responsible business.[2]

Mining major RioTinto states:

> Without a high level of transparency, accountability is well nigh impossible. Civil society and other observers wish not only to be

> able to see what is going on, but also who is responsible for what. Transparency and accountability are the pre-requisites of an enabling environment into which long term extractive investment can be made. Such an environment is based on political stability, the rule of law and good governance. This benefits civil society, government and business together.[3]

PWYP was founded by Global Witness, Save the Children UK, Catholic Agency for Overseas Development (CAFOD), Transparency International, and George Soros' Open Society Institute. The campaign is now backed by more than 290 NGOs worldwide from over 50 countries. National PWYP coalitions in Indonesia, West Africa, Europe, Central Asia, the United States, and elsewhere have been formed to pressure national governments, companies, and financial institutions to take action to improve revenue transparency.

To ensure that multinational and state-owned companies disclose payments to governments for every country of operation, and that governments disclose receipts of this income, the PWYP coalition calls for simple and logical adjustments in existing company law, accounting standards, stock market disclosure rules, and the lending conditions of international financial institutions (IMF, World Bank, EBRD, and regional development banks including ADB), export credit agencies and banks, such that companies individually publish what they pay and governments publish what they receive. This proposed package of mandatory solutions seeks to ensure a level playing field, whereby all resource companies would be required to disclose and progressive companies would be protected from having their contracts terminated by corrupt governments if they disclose information voluntarily. A level playing field would also prevent companies from being undercut by less transparent competitors.

Publish What You Pay seeks to ensure that investments in resource-rich countries and in extractive industry projects take place only within a coherent policy framework that ensures that such investments contribute to poverty reduction and sustainable development.

Extractive Industries Transparency Initiative

In response to pressure from the Publish What You Pay coalition of NGOs for greater transparency in the extractive industry, the Extractive Industries Transparency Initiative (EITI) was announced by UK Prime Minister Tony Blair at the World Summit on Sustainable Development in Johannesburg in September 2002. The EITI is an international multi-

stakeholder initiative that aims to increase the transparency of payments by companies to host country governments for the extraction of oil, gas, and mineral resources, and of government receipts of this income.

EITI encourages resource-dependent developing countries to voluntarily sign up to a set of principles and implement reporting guidelines to make public information on company payments and government revenues in consultation with local civil society and extractive companies. Once a host government commits to implement the Initiative, all companies (including state-owned enterprises) in that territory must comply. EITI implementation is carried out with the active support and financial assistance of donor agencies and international financial institutions. Members of the PWYP international coalition and national civil society platforms are actively engaged in the EITI process.

The United Kingdom, through the Department for International Development (DFID), and the World Bank have been the main drivers of the EITI process at the international level. Recently, however, there have been encouraging signs of other governments coming on board to support the Initiative. At the 2005 Gleneagles Summit, the G8 countries committed to supporting the EITI. Norway also recently announced that it was committing significant amounts of money to assist governments in implementing EITI and to support civil society groups in monitoring it.

The host governments that have committed to implement EITI are: Azerbaijan, Congo-Brazzaville, Democratic Republic of Congo, Kazakhstan, Kyrgyz Republic, Nigeria, Peru, Timor-Leste, and Trinidad and Tobago. Given the importance of natural resources to many countries in the region, donor governments, international financial institutions, and civil society organizations must capitalize on the significant momentum behind the EITI at an international level and actively push for implementation by host governments. Support should be provided to governments in the form of financial and technical assistance, and action plans for implementation should be developed in line with the internationally agreed EITI principles and criteria.

The EITI criteria for implementation were agreed at the High-Level Conference in March 2005 in London. They are:

- Regular publication of all material oil, gas, and mining payments by companies to governments ("payments") and all material revenues received by governments from oil, gas, and mining companies ("revenues") to a wide audience in a publicly accessible, comprehensive, and comprehensible manner.

- Where such audits do not already exist, payments and revenues are the subject of a credible, independent audit, applying international auditing standards.
- Payments and revenues are reconciled by a credible, independent administrator, applying international auditing standards and with publication of the administrator's opinion regarding that reconciliation including discrepancies, should any be identified.
- This approach is extended to all companies including state-owned enterprises.
- Civil society is actively engaged as a participant in the design, monitoring, and evaluation of this process and contributes towards public debate.
- A public, financially sustainable work plan for all the above is developed by the host government, with assistance from the international financial institutions, where required, including measurable targets, a timetable for implementation, and an assessment of potential capacity constraints.

At the international level, concerns have been raised as to how to recognize those countries that are making concrete progress towards full EITI implementation (e.g., Azerbaijan, Nigeria), as compared with countries that have simply indicated their willingness to participate and yet have made little genuine progress in complying with the criteria (e.g., Congo-Brazzaville, Equatorial Guinea). An International Advisory Group (IAG), comprising representatives of different stakeholder groups, is drawing up a proposal for the validation of EITI implementation across all participating countries. The IAG will also develop proposals for future governance arrangements of the Initiative at an international level. At the recent Gleneagles Summit, the G8 endorsed EITI and welcomed the development of such measures to help validate implementation.[4]

It is critical to the credibility and effectiveness of the EITI that local civil society organizations and independent observers are actively involved in the design and implementation of the Initiative, as well as in the development of relevant laws and regulations, from an early stage. Local NGOs should also be helped by donors and international NGOs to improve their capacity so that they can effectively monitor the management of resource revenues and their allocation in national and local government budgets.

External and independent auditing of resource revenues is fundamental. The auditing process should be subject to legislation

stipulating that the auditor will be chosen through a competitive tender with transparent procedures, and that the conclusions of the auditor will be published in an accessible form, without omissions. The model used in Azerbaijan for the selection of the EITI auditor could provide a useful basis for such a process in other countries. None of this would constrain the right of the government and parliament to allocate revenues for public purposes via the national budget. It would simply ensure that the sources and uses of petroleum revenues are clear to citizens.

The rewards for making significant progress towards full EITI implementation could potentially include greater foreign investment and poverty reduction through sound economic growth and sustainable development.

Critical Time to Seize the Initiative

It is a critical time for the oil, gas, and mining industries globally. As oil prices continue to soar and the world's thirst for energy grows ever stronger, huge amounts of revenue are being generated. Such windfalls from the extractive industries could be an enormous threat to global stability and development if revenues are not managed with transparency and accounted for openly by companies and governments.

The international community must take advantage of the momentum generated by revenue transparency initiatives and other complementary efforts. Political and business leaders should seize the initiative and commit to implement revenue transparency reforms. This is critical in order to deliver real change for the people living in poverty in resource-rich countries in the Asia-Pacific region.

Revenue transparency is only part of wider reforms. Transparency by itself will not address corruption overnight, but it is

- Critical in resource-rich countries that depend on resource revenues;
- Good for business and for sustainable development because it promotes a more stable investment climate;
- Key to energy security objectives—to reduce risks to businesses and threats to supply of resources; and
- Fundamental to meet the Millennium Development Goals, given that two-thirds of the world's poorest people live in resource-dependent countries.

Notes:

1 F&C Asset Management et al. Investors Statement on Transparency in the Extractive Sector.
2 www.bp.com
3 Extractive Industries Transparency Initiative Conference, London, March 2005.
4 See www.eitransparency.org/iag

Chapter 4
The role of surveys in anti-corruption reform

Surveys to gauge public perceptions and opinions about corruption can generate essential input for the formulation of effective anti-corruption strategies. They are an important means to detect weaknesses that call for reform, and allow users to ascertain the general public's view, raise awareness, and facilitate public involvement in anti-corruption reforms. Where surveys have been widely used, citizens' viewpoints inform the formulation and implementation of policies and practices to fight corruption. In addition, surveys conducted at regular intervals give policymakers and the general public an indication of progress and trends. This chapter highlights how surveys can contribute to progress towards anti-corruption reform.

Surveys can be conducted by government, media, academe, and non-governmental organizations. Cobus de Swardt of Transparency International, a major NGO active both in assessing public opinion about corruption and advocating anti-corruption action, presents the diverse array of international and national survey instruments that have been developed and used over the last decade by the organization. These surveys are constantly being refined, improved, and adapted to meet specific needs. The introduction of national integrity studies has provided further assistance to governments in improving administrative systems to eradicate corruption.

Public opinion surveys can help define and frame the issue of corruption, advance reforms, raise awareness, and encourage public debate around corruption, as illustrated by David Zussman. The survey

instruments themselves are the fruit of careful research and planning. The conception and the creation of the survey instrument are challenging areas: the utility of the survey results depends on coherent formulation of the issues and questions to be raised and the target audience of the survey. Research into diagnostic indicators is essential to ensure an effective survey tool.

Many available instruments offer insight into public opinion about corruption and bribery, and the measures that should be taken to fight them. Abdul Rahman Embong, a scholar from Malaysia, shares recent experience where cabinet committees on government management were established to study public attitudes related to fighting corruption. A very large majority of those surveyed reported that they disapproved of bribery and neither gave nor received bribes; and that they would be willing to participate in a corruption control plan. These government-led surveys resulted in cabinet approval of a national integrity plan and generated public and political commitment for a set of interrelated reform measures. Other countries are considering this model in the medium term.

Another consideration in exploring public opinion about corruption is how the survey tool is to be applied. The Internet has greatly enhanced the range of methods to elicit and exchange views. In one innovative example, the supervision department in Liaoning, a province in the northeast of China, has developed an online tool that canvasses public views, opinions, and complaints about public services. This input is managed, and complaints are addressed and, where possible, resolved. The process and the results are posted on the website, and the issues raised and the agencies cited by citizens are analyzed as a basis for improvements in administration and management.

No one instrument or method can provide a complete picture. Each survey tool has its utility and its limitations. For instance, perceptions of corruption most often do not keep pace with the reforms and improvement in curbing corruption. Thus, perception indices may not reflect the most current state of progress. On the other hand, public perception surveys can be used by foreign investors to gauge the prevalence of corruption and public confidence in governance structures. Survey results can also be used by governments, civil society, and aid agencies in planning their anti-corruption work. Several member countries indicated strong commitment to developing or improving perception surveys and expanding their use as a part of efforts to fight corruption.

Transparency International's public opinion surveys

Cobus de Swardt
Global Programmes Director, Transparency International

Transparency International (TI) develops and conducts a variety of international survey instruments and studies related to corruption and to public opinion and perceptions of corruption. These surveys include the Corruption Perceptions Index (CPI), the Bribe Payers Index (BPI), the Global Corruption Barometer (GCB), and National Integrity System (NIS) Country Studies. In addition, several of the 70 national chapters of TI carry out other types of research and investigations. Among these are national household surveys, indices of public institutions, public sector diagnostics, political party financing monitoring studies, and private sector assessments. This chapter gives an overview of TI's main survey tools, highlighting their objectives, methodologies, and major achievements.

Corruption Perceptions Index

The Corruption Perceptions Index (CPI) measures the degree to which corruption is perceived to exist among public officials and politicians. The CPI is a composite index, drawing on 18 different polls and surveys from 12 independent institutions, carried out among business people, country analysts, and local experts. Source surveys cover the three previous years; and a minimum of three surveys are used per country. In 2004, 146 countries were listed in the CPI.

This international survey tool offers a snapshot of the views of business people, academics, risk analysts, and other decision makers who influence trade and investment decisions. It also creates public awareness of corruption and breaks taboos around corruption. The CPI contributes to creating a climate for change, putting corruption at the center of public debate. In addition, it stimulates the development of research into the relation between corruption and other issues such as foreign direct investment, gender issues, and economic growth. It is important to note, however, that the CPI is neither a diagnostic tool nor a tool for tracking changes over time.

In 2004, the countries perceived to be the least corrupt in the CPI were Finland, New Zealand, Denmark, and Iceland (Table 4.1). Bangladesh, Haiti, Nigeria, Myanmar, and Chad, on the other hand, were perceived to be the most corrupt.

Table 4.1: Corruption Perceptions Index 2004 (Extract)

Rank	Country	Score	No. of Surveys Used
1	Finland	9.7	9
2	New Zealand	9.6	9
3	Denmark	9.5	10
	Iceland	9.5	8
⋮	⋮	⋮	⋮
142	Chad	1.7	4
	Myanmar	1.7	4
144	Nigeria	1.6	9
145	Bangladesh	1.5	8
	Haiti	1.5	5

Bribe Payers Index

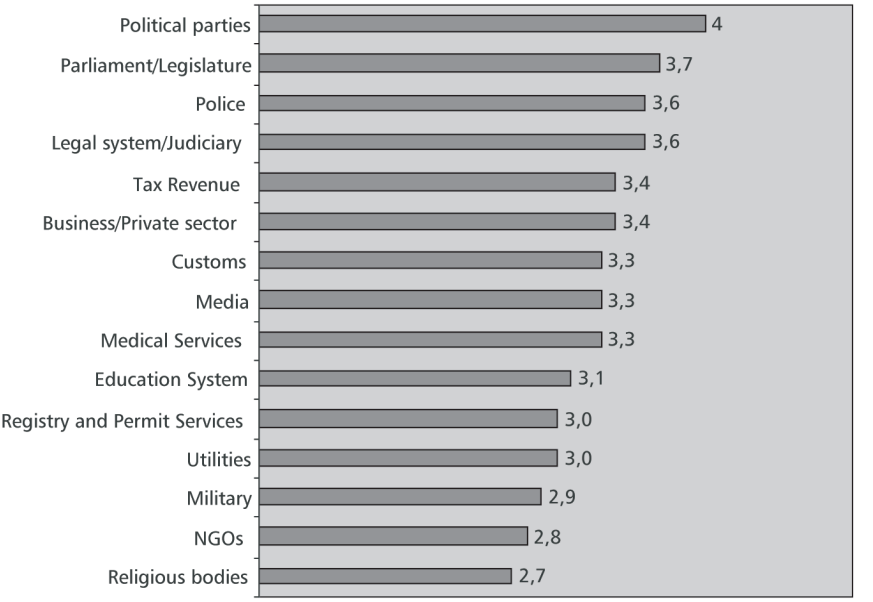
The Bribe Payers Index (BPI) ranks the 21 leading exporting countries according to the degree to which their companies are perceived to pay bribes to senior foreign public officials. It is based on answers to a questionnaire from over 770 respondents in 14 key emerging market countries. The BPI provides detailed reports on views of the propensity of multinational corporations to bribe and the business sectors that are considered to be most contaminated by bribery. It also illustrates the extent of awareness of the landmark OECD Anti-Bribery Convention among executives of major international corporations; the degree to which these firms are perceived to be acting in compliance with the Convention; and perceptions of the range of unfair business practices used by firms to gain contracts.

Global Corruption Barometer 2004

The Global Corruption Barometer 2004 is a public opinion survey that was carried out in 64 countries among more than 50,000 people to assess perceptions about corruption, experience of corruption, and expectations concerning corruption levels in the future. It compares petty and grand corruption and compares corruption with other problems in society. It evaluates the extent to which public and private institutions are considered corrupt, determines where the public believes corruption's impact is greatest, and inquires about prospects for future levels of corruption. The Barometer is based on household surveys conducted by Gallup International as part of the Voice of the People Survey. This survey instrument is to be conducted yearly, allowing for an overview of trends

and changes over time. As a tool that focuses on the general public, it supplements expert views on corruption, by providing feedback on the credibility of anti-corruption efforts and on public perception of the extent of corruption across key institutions, as illustrated in Table 4.2.

Table 4.2: Global Corruption Barometer 2004 (1 = not corrupt, 5 = extremely corrupt)



National Integrity System Country Studies

National Integrity System country studies examine the interrelated structures and systems in place to fight corruption and maintain accountability and integrity of public, private, and civil society organizations in a country and how they work in practice. These structures and systems include legislature, executive, judiciary, audit institutions, ombudsman, independent anti-corruption agencies, public service, local government, media, civil society, private sector, and international institutions. These studies provide baseline, factual assessments of national integrity systems, facilitating cross-country comparisons and comparisons over time.

Within each study, an exploration of the formal framework is followed by an assessment of what actually happens, highlighting deficiencies in

the formal framework itself or in its implementation. The studies therefore reflect both the formal ("legal") position and what actually happens in practice. This "theory and practice" approach is a key aspect of the National Integrity System country study methodology.

The study consists of a narrative report and a questionnaire and the study design is uniform across all countries. Country studies are conducted by local organizations—mainly TI national chapters or independent researchers with the contacts and knowledge to reveal what formal elements of the NIS are in place, as well as how they work in practice. The studies therefore represent the experience and assessments of those researchers who are ideally placed to comment on the state of the fight against corruption, and are meant to reflect their unique voice. These studies enable a diagnosis of the overall state of integrity and provide anti-corruption stakeholders with points of entry for further efforts in several countries.

Country Examples

Important work in the development and use of public opinion surveys to guide and support anti-corruption reform is taking place in many countries. The TI Mexico Index of Corruption and Good Governance maps the general public's perception of corruption among institutions in Mexico. The Index of Corruption and Good Governance (ICGG) is calculated on the basis of the data given by households, who are users of the public service. The ICGG is calculated at the national level, and lists results by federal entity and by each of the 38 services (see Table 4.3). It distinguishes variations in the levels of corruption according to the demographic, social, and economic characteristics of the population. As a result, the ICGG has spurred healthy competition among the 32 Mexican federal states.

Table 4.3: TI Mexico: Index of Corruption and Good Governance Results 2003

Place in Table	Service Type	ICGG
36	Parking in public spaces controlled by particulars	45.90
37	Avoid being fines by a transit agent	50.32
38	Avoid the towing of a vehicle or get it out of storage	53.25

In Kenya, the Kenya Bribery Index, based on a survey conducted since 2001, captures the bribery experiences of the general public in both private and public institutions. The 2004 survey, conducted among 2,398 individuals, isolated six bribery indicators: incidence, prevalence, severity,

frequency, financial cost, and bribe size. It created an aggregate index based on an unweighted average of these indicators and ranked 34 organizations. The Kenya Bribery Index has allowed an assessment of trends of bribery over time and has had a strong impact on the public sector and sparked the creation of partnerships with some public institutions (Kenya Port Authority, traffic police, etc.). It generates public awareness about corruption and provides data that can be used to advocate and support reform in sectors perceived to be the most corrupt. It is also a tool for setting performance targets and monitoring reforms.

In Colombia, the Integrity Index for Public Entities provides solid information about the performance of a large range of public institutions yearly. The 2004 survey was conducted among 182 public entities (executive, legislative, and judiciary branches, and autonomous entities) and isolated 12 indicators in three categories: transparency, investigation and sanctioning, and institutionalization and efficiency. An index as the weighted average of the three categories was constructed and five levels of corruption risk according to index score were established. The Integrity Index for Public Entities provides the Colombian Government with a tool for assessing its anti-corruption performance and identifies areas at risk of corruption within each entity.

Challenges and Future Directions in Measuring Public Opinion about Corruption

In order for survey instruments to be used optimally, the right tool must be selected for the right purpose. Knowledge and familiarity with the available tools should be promoted, capacity to use the tools should be developed, and resources to process and communicate survey results and analyze the impact of the tool should be increased.

To improve the survey instruments themselves, research into diagnostic indicators needs to be strengthened. Action is also called for in the application of these tools: capacity to repeat survey tools over time so that performance targets can be set and anti-corruption efforts can be measured should be increased. The use of tools to measure perceptions of corruption should be extended to cover countries where data research has not been conducted so far.

Many available instruments offer insight into public opinion about corruption and bribery, and the measures that should be taken to fight them. Civil society, aid agencies, and governments should make the best possible use of this information and take public opinion survey results into account in formulating policy recommendations.

How public opinion surveys can assist in the preparation of anti-corruption reform

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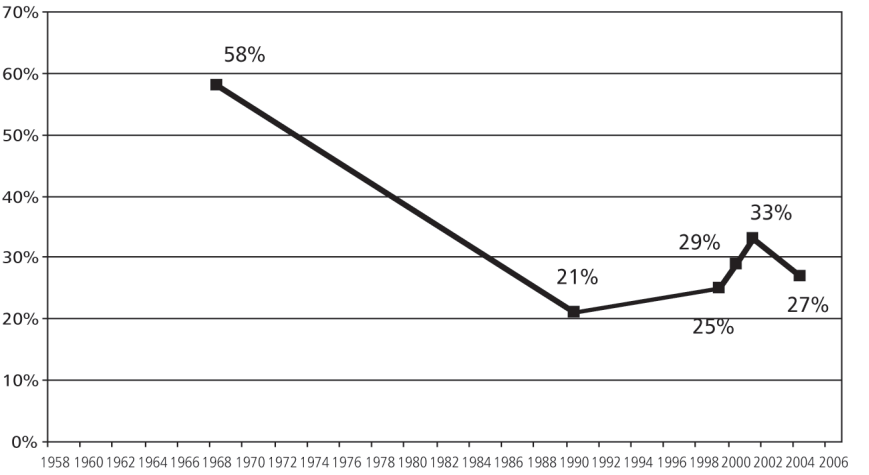
Corruption can take many forms. Recently, in Canada, corruption has been identified in the form of procurement fraud, improper outsourcing of government services, and the use of public funds for personal gain. The abuse of power and favoritism in hiring has also been observed. In Canada, and in countries around the world, anti-corruption efforts are fuelling major reform initiatives. These initiatives to fight corruption involve the entire range of stakeholders in a country—for example, in drafting legislation and developing measures for prevention and prosecution, some of the most essential elements of anti-corruption work. In order to be effective, these and other reforms require active public involvement. Understanding public opinion about policy reforms can be decisive in securing this involvement and mobilizing public support.

Public Opinion Research

When launching new policies or pursuing old ones, reforming institutions or governmental delivery mechanisms, transforming public services or programs, or abolishing or creating agencies, governments can often benefit from citizen feedback. Surveys are important tools because governments need information on how their initiatives are perceived. People have opinions not only on what governments do but also on what governments should do. Not only do people express their views in the voting booth, but they are also willing to provide them to pollsters. Citizens have developed views about the economy and conditions of employment, about social programs and political institutions that influence and shape their lives. They trust certain institutions more than others, prefer certain social policies over others, have views on the extent to which they find the educational and health systems satisfactory. For example, views expressed about Canadians' trust in government and public institutions through surveys conducted by the Government of Canada are shown in figures 4.1 and 4.2 below.

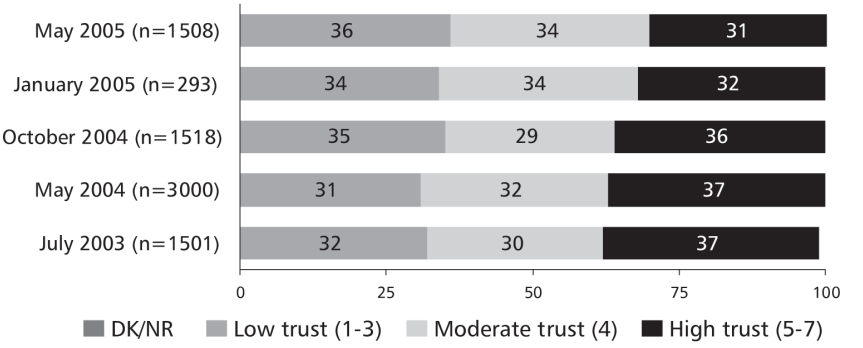
Figure 4.1: Trust in Government

Question: "How much do you trust the government in Ottawa to do what is right?"



Source: Zussman (2005)

Figure 4.2: Trust in Public Institutions



Source: Zussman (2005). DK/NR = Don't know/no response.

Surveys help governments make the right policy choices. In conceiving and carrying out anti-corruption reform, opinion surveys can help to frame the issue, advance ongoing reforms, raise awareness, and encourage public debate on corruption issues. In researching public opinion and in developing a survey instrument, there are three fundamental issues: what to measure, whom to ask, and how to gather the data.

What to measure

Governments conduct surveys when they require information on people's attitudes, beliefs, perceptions, and behaviors. While individuals differ in their beliefs, social science methods allow us to study opinions to find out whether, in the various groups to which they belong, people demonstrate similar views. Analysis of such data highlights the degree to which these opinions are shared (or not) by different socio-demographic groups. Over recent years, survey research has significantly developed, aided by the advent of information technology to store, analyze, and carry out empirical tests on massive amounts of opinion data. By repeating surveys at regular intervals, it can be determined whether such attitudes and beliefs change over time, and if so, how.

Whom to ask

Public opinion surveys include surveys that address the public in general, employees of public organizations, and the higher echelons or "elite" level within public administration. They can also be designed to address specific publics (e.g., clients of particular services). For instance, while some reforms touch all citizens, many of the changes proposed by governments have effects only on certain groups, which willingly or unwillingly become targeted by changes. Feedback from such interest groups is very important to government in designing or reframing policy.

How to gather the data

There are many ways of obtaining feedback. Citizens can be encouraged in diverse ways to participate in decision making. Governments use participatory mechanisms such as formal consultations and town meetings. However, opinion surveys have the advantage of being a more rapid, and often a less costly, means of gathering information. Opinion surveys allow the government to reach a broader audience, and if sampled correctly, to extrapolate the findings to the population. When additional feedback mechanisms are coupled with a survey, this often provides a better opportunity to delve deeper into issues and to further test some of the findings of the survey. Opinion surveys can be conducted using a variety of means, including using the telephone or the Internet.

Challenges in Public Opinion Research

In order for public opinion surveys to be accurate, they must be scientifically sound: the sampling method must be correct and the sample must be representative. The questionnaire and interview design and the data collection and analysis are of utmost importance. When conducting a public opinion survey, one always samples from the larger population. There is always a margin of statistical error in the data obtained, which must be factored into explanations of results.

Given the great strides that have been made in social and behavioral sciences, it is very easy to guard against flaws in survey design and the interpretation of results. However, when faced with results of an opinion poll, the reader should try to glean information on the study design, sampling method, and data analysis.

Whether a government commissions its own poll or takes note of a poll published in the media, it needs safeguards to ensure that sound polling practices have been used. Some governments put in place central units, often staffed by social science advisers, who can comment on the accuracy of a poll and, hence, on the validity of the information. Special units established in the office of the prime minister or another central agency to analyze poll results, comment on accuracy, and provide the government with updated poll information are not very costly investments when compared with the advantages they bring. Governments may establish special units to ensure that data are well collected, or to assess the degree to which independently collected data are useful. This is all the more important when using surveys to help in administrative reform.

Conclusion

Public opinion surveys are a flexible instrument that can be used for various purposes. They can result both in learning from the public and informing the public. Their use and design should be guided by established social science methodology. Surveys can and should be used in all phases of reform, anti-corruption reform, to name only one example. Before undertaking reforms, surveys can indicate citizens' perception of corruption and provide views on their degree of acceptance of proposed changes. During implementation, the opinions of those for whom changes are designed can tell the public administration how satisfied or dissatisfied they are. Once a reform is accomplished, opinion data serves as the basis for evaluating success and allows the government to plan further changes. Given the difficulties involved in attempting to reform complex systems,

it is always important to assess the views of clients (citizens, public servants, or enterprises) as the information can help to improve on delivery and reduce costs associated with reform. Well-collected data help to orient reforms before start-up, and facilitates the management of progress both during and after the reform. It must be noted, however, that while public opinion surveys can be very useful, they are not the answer to every political and organizational problem and are not a substitute for good policy.

Public opinion surveys and anti-corruption reform in Malaysia

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Introduction

Malaysia—currently with a population of about 25 million people—has been transformed over the last three decades from an economic backwater to an ASEAN powerhouse. Its economy has been changed from a primary producer to an industrialized one, whilst its society transformed from a rural-traditional to a modern urbanized society with 67% of the population living in urban areas. In terms of human development, Malaysia stands at number 59, measured on the UN Human Development Index (HDI) in 2004, achieving what is considered as medium human development, occupying second place in ASEAN after Singapore. In 2002, Malaysia's literacy rate was 94%, while primary school enrolment stood at 97.8%.

Despite the economic downturns during various periods of its recent history, Malaysia has been able to record fairly strong growth, averaging 7.8% per year in the 1970s, 5.9% in the 1980s, and 6.1% in the 1990s despite the 1997/98 Asian crisis. In the first few years of the 21st century, it has been able to record around 5% growth despite the volatility of the international environment. With such growth, Malaysia has been able to increase its GDP dramatically. Malaysia's GDP stood at RM 21.5 billion in 1970. It increased to RM 140.7 billion by 1990, RM 209.3 billion by 2000, and was projected to reach RM 299.8 billion by 2005[1] (USD 1 = RM 3.80). This means that in the three decades after 1970, GDP increased almost tenfold, and by 2005, it would have expanded almost fourteenfold. With such growth, Malaysia today has become a second-generation "economic tiger", an upper-middle-income developing country, and the 17th-largest trading nation in the world. It is moving confidently towards becoming a developed nation by 2020.

Of course, rapid growth and development is both boon and bane; it has indeed opened up greater avenues and opportunities for corruption to take place. Recognizing the dangers of corruption to economic growth and to the nation's progress generally, the Malaysian Government has

set itself the task of fighting corruption. In 1961, the Prevention of Corruption Act 1961 was passed by Parliament to replace the British-created Prevention of Corruption Ordinance 1950. Six years later, in 1967, the Anti-Corruption Agency (ACA) was set up. A decade later, the Prevention of Corruption Act 1961 was revised, and subsequently repealed and replaced with the Prevention of Corruption Act 1997. With the repeal, the ACA—under the Prime Minister's Office—has been strengthened, and has contributed significantly towards combating corruption in the country.

Whilst strengthening the ACA, the Government had taken other steps to strengthen and reform the public sector. In 1998, it restructured the Special Cabinet Committee on Government Management, and renamed it the Special Cabinet Committee on Government Management Integrity, to reflect the renewed focus on integrity. The function of the Committee, which has been chaired by Dato' Seri Abdullah Ahmad Badawi, previously as Deputy Prime Minister, and now Prime Minister, is to ensure the integrity of government management, enhance the awareness of public servants of the dangers of corruption and abuse of power, and strengthen their resolve for, and commitment to, integrity. To ensure the fight against corruption reaches the grass roots and has their support, similar Management Integrity Committees have been established at all levels, from the federal ministry to the state government, and right down to the district office.

Malaysia's Ranking on the Corruption Perception Index

However, the fight against corruption is an arduous, long-term task and cannot rely on the Government's efforts alone. Despite the work of the ACA and steps taken by the Special Cabinet Committee on Government Management Integrity to eradicate corruption, this evil practice continues apace, leading to the public perception, particularly among foreign investors and risk analysts, that corruption is endemic in the country. A look at how Malaysia ranks on the Corruption Perception Index (CPI) set up by Transparency International gives a not-so-happy picture.

TI's Corruption Perception Index (CPI) over the last 10 years shows that whilst Malaysia was ranked 23 with a score of 5.28 in 1995, when the CPI was first introduced, it slipped to 33 with a score of 4.90 in 2002, 37 in 2003 (5.20), and 39 (5.00) in 2004. To enhance its global competitiveness, Malaysia clearly has to intensify its efforts to curb corruption and change such perception so that it would not only achieve a much higher ranking in the future but also improve the well-being of society.

Table 4.4: TI Corruption Perception Index Ranking for Malaysia, 1995–2004

Year	Score (max. score: 10)	Rank	No. of Assessed Countries
1995	5.28	23	41
1996	5.32	26	54
1997	5.01	32	52
1998	5.30	29	85
1999	5.10	32	99
2000	4.80	36	90
2001	5.00	36	91
2002	4.90	33	102
2003	5.20	37	133
2004	5.00	39	146

Source: Transparency International (various years); www.transparency.org.

Public Opinion Survey

It was against such a backdrop of increased awareness and concern about the prevalence and dangers of corruption, as well as the negative perception, that the Special Cabinet Committee commissioned a study titled "Public Perception of Corruption in Malaysia" in 2001.[2] This was the first comprehensive nationwide study of its kind, which built on a study conducted 10 years earlier by a research unit in the Prime Minister's Department. This study of 2001, which was coordinated by the ACA and conducted by a group of five academics[3] from Universiti Kebangsaan Malaysia and Universiti Utara Malaysia, was a very strategic first step towards formulating a benchmark for the public perception of corruption; assessing the level of corruption in various sectors; identifying attitudes, values, readiness, and willingness of the public to fight corruption; and formulating action plans to push forward the anti-corruption reform agenda.

Success factors

From our experience, the success of the survey in contributing towards anti-corruption reforms depends on a number of important factors. These include:

- Clear and realizable objectives;
- A good theoretical framework;
- Operationalizable definitions of key concepts (such as corruption and perception);

- Robust methodology and research instruments;
- An expert research team that is experienced and committed;
- A properly trained group of assistants at different levels, equipped with the necessary computer and social skills;
- Sufficient funding;
- Coordination and support by the relevant government agency, namely, the ACA; and
- Strong political will on the part of the Government to bring about reforms.

Whilst most of the factors that relate to the research team above are necessary to ensure the survey can be carried out successfully, they are not in themselves sufficient to ensure the latter will serve as catalyst for reform. Thus coordination and support by such agencies as the ACA, and, very importantly, the strong political will on the part of the Government, are extremely critical to pave the way for reform.

Methodology and sample

The main instrument used in the study was a survey conducted from October 2001 to March 2002. The survey used a set of structured questionnaires with both closed and open-ended questions, to capture, among others: attitudes, values, knowledge, and experiences of corruption, willingness and readiness to fight against corruption, and perception of corruption in a number of identified agencies and companies. To enrich the data, the study also used the qualitative method, namely, in-depth interviews with key informants and focus group discussions. Besides the field work, library research was also conducted to sift through the necessary literature and to obtain secondary data on socio-economic, demographic, and other variables.

In terms of sampling, whilst it is recognized that a proper randomized sample selection throughout the country is ideal, this study opted for a quota-stratification, multi-stage sampling method as it had to take into consideration important variables, namely, ethnicity, gender, age, area of residence (urban-rural), and the sectors the targeted respondents came from. To do so, the country was first divided into six zones suited to the geography and demography of Malaysia. These zones were: Central, Northern, Southern, and Eastern in Peninsular Malaysia, and Sabah and Sarawak in East Malaysia.

A purposive decision was made on the size of the sample by taking only those aged 21 and above as respondents. This methodology was

used because it was considered to be more robust and better suited to the objectives of the study. Whilst the targeted sample was 7,000, the actual sample exceeded the figure. The respondents and the sectors they were drawn from were as follows:

Table 4.5: Respondents by Sector

Sector	No. of Respondents	% of Total Respondents
General public	2,510	33.1%
Public sector – middle-level employees	2,032	26.8%
Private sector – middle-level employees	2,089	27.5%
Political parties – leaders and members	231	3.0%
NGOs – leaders and members	237	3.1%
University students	495	6.5%
Total	7,594	100.0%

The respondents from the general public were selected at random using Malaysia's regularly updated electoral roll provided by the Election Commission as the sampling frame. However, the selection of respondents from the public and private sectors was a bit more complicated. For the public sector, 46 agencies identified as frontline agencies (such as the Police, Customs, Road & Transport Department, Immigration, Licensing Boards) were selected, and respondents were then chosen randomly from their list. Those from the private sector were taken from companies identified as those with regular dealings with the authorities (namely, those involved in such activities as construction, supply, entertainment, chemical and toxic discharge). To ensure that the objectives of the study were met, the list of these agencies and companies was drawn up with inputs from the ACA. Respondents from political parties were drawn from membership lists of both ruling and opposition parties, whilst the NGO sample was drawn from among the major NGOs in the country.

The survey was conducted as follows:

- Visiting households, in the case of members of the public;
- Visiting workplaces, for employees of both public and private sectors;
- Visiting the offices of political parties and NGOs, for party and NGO leaders and members; and
- Visiting the universities, in the case of university students.

The sample was skewed towards urban areas, which made up 80% of the sample from the general public. This was purposively done, as it is assumed that corruption is higher in urban than in rural areas.

Study team, research assistants, supervisors, and enumerators

The study team consisted of five scholars: two senior development sociologists, two criminologists, and one psychologist who is also an expert in methodology and statistical analysis. The team employed two graduate students as research assistants, four field supervisors (also graduate students), and 238 trained enumerators recruited from among university students. To ensure that the desired quality of the data would be achieved, a compulsory training workshop was conducted for all supervisors and enumerators. Further debriefing and supervision were also made during the actual fieldwork.

Accuracy and reliability of data

All the necessary measures were taken by the study team to ensure that the data collected were accurate and reliable. For this purpose, an internal consistency reliability test was conducted, using the Cronbach Alfa and Kuder Richardson formula. The validity of the questionnaire was also examined with the use of correlation procedures in the components (sub-scales) used to measure perception.

Some survey results

Some of the main findings that can be highlighted here are as follows:

- 85.1% did not give or receive bribes (thus not involved in corruption)
- 86.8% were opposed to using bribes to get things done
- 80.0% were willing and ready to cooperate to eradicate corruption
- 84.4% were prepared to give information on corruption
- 81.3% were prepared to be witnesses in court*
- 81.8% were prepared to be informants of the ACA*

* The last two sets of responses were contingent on the proviso that the respondents would be accorded protection.

Two important conclusions can be drawn from the overall survey results:

- There is a "critical mass" in society consisting of citizens who maintain strong noble values, do not indulge in corruption, and in fact strongly oppose it. They are also prepared to work with the ACA in the fight against it. It is important, therefore, that this critical mass of citizens be strengthened and expanded, and their support mobilized in the fight against corruption.
- There is a small segment of the population who condone and indulge in corruption, and are not prepared to cooperate in the fight against it. Respondents from the private sector have a higher percentage of those in this second category. It is this small proportion that must constitute the main target of anti-corruption reforms.

Recommendations of the Public Opinion Survey

The study "Public Perception of Corruption in Malaysia" was completed by the end of 2002, and a three-volume final report was submitted to the Special Cabinet Committee in January 2003. The study team also made two presentations before the Special Cabinet Committee in early 2003. Among the highly significant conclusions with serious policy implications that were highlighted in the report and the presentations were:

- The integrity of front-line agencies must be enhanced, and their capability and capacity strengthened.
- The fight against corruption cannot be left to the Government alone. It is the responsibility of all sectors as stakeholders.
- To ensure the full participation of the public as stakeholders, a culture of whistle-blowing has to be developed, and protection provided to whistle-blowers.
- The fight against corruption cannot be addressed in a piecemeal and ad hoc manner. The Government needs a holistic, comprehensive, and long-term plan to address not just corruption per se but the all-encompassing problem of ethics and integrity, as corruption is a manifestation of the decline of ethics and integrity.
- There must be a mechanism to coordinate and monitor the implementation of the anti-corruption reform agenda in which all stakeholders, irrespective of their ideological and political inclinations, can participate.

Impact on Public Policy

The conclusions and recommendations synthesized above have been adopted by the Government and a number of reforms have thus been initiated and are bearing fruits. We shall highlight below some of these important reforms.

Formulation of the National Integrity Plan (NIP)

In response to the recommendation to formulate a holistic plan to enhance integrity, the Government entrusted the same study team[4] with the task of formulating the National Integrity Plan (NIP). The work towards formulating the NIP went into high gear following the Prime Minister's directive in November 2003 and was completed by April 2004. As stated by the Prime Minister in his foreword to the NIP, Malaysia's problem is that of "managing success". For Malaysia to be more successful, it must manage its success effectively, openly admit its weaknesses and shortcomings, and overcome them so that the country does not become a victim of its own success.

The approach used to formulate the NIP was consultative. Views from stakeholders representing various branches of the public service, the private sector, civil society organizations, media, political parties (ruling and opposition), religious groups, women's groups, trade unions, youth and student groups, minority groups, and the poor and low-income groups in both urban and rural areas were solicited. Seminars and workshops were organized to gather the views and suggestions from representatives of these various sectors. At the same time, study visits to countries that scored high on the CPI, namely, Finland, Sweden, and Australia, were made in order to study their best practices in ethics and integrity. A special visit was also made to the headquarters of Transparency International in Berlin to exchange views and obtain feedback on Malaysia's plan to formulate the NIP.

The NIP was launched by Prime Minister Abdullah Ahmad Badawi on 23 April 2004 in the presence of the whole Cabinet, members of the diplomatic corps, top government administrators, leaders of the private sector, political parties, NGOs, students, and members of the public. The NIP's overall objective is to realize the aspirations of Vision 2020, which are "to establish a fully moral and ethical society whose citizens are strong in religious and spiritual values and imbued with the highest ethical standards".[5] The NIP will be implemented in five-year stages, with the

first phase being the period 2004–2008. For the first phase, the NIP has set to achieve five targets, known as Target 2008:

- Effectively reduce corruption, malpractice, and abuse of power;
- Increase the efficiency of public service delivery and overcome bureaucratic red tape;
- Enhance corporate governance and business ethics;
- Strengthen the institution of the family; and
- Improve the quality of life and people's well-being.

Establishment of the Integrity Institute of Malaysia (IIM)

The study team that formulated the NIP was also entrusted with the task of preparing the blueprint for the establishment of the Integrity Institute of Malaysia (IIM). IIM was launched at the same time as the NIP, in April 2004. IIM is an independent institution whose function is to monitor and coordinate the implementation of the NIP, devise appropriate indices to measure performance in achieving the NIP's targets, prepare annual reports on the Malaysian integrity system, hold National Integrity Day, and organize conventions of stakeholders to debate integrity issues and to seek views about how to move forward.

Led and managed by professionals, the IIM is housed in an appropriate building in Kuala Lumpur, called Menara Integriti (Integrity Tower).

Full support for the ACA to take action against the corrupt

As pointed out in the NIP, efforts to enhance integrity and eradicate corruption cannot achieve the desired results without strong political will, manifested in the willingness to act without fear or favour including against those in leadership positions in government. The Prime Minister has shown that he has such will and the courage of his convictions.

The ACA has been given a free hand to initiate investigations and recommend the prosecution of any person involved in corruption, irrespective of his or her rank. With strong support from various quarters, the ACA has been able to act more aggressively. The two high-profile arrests made late last year of a cabinet minister and a powerful former managing director of the state steel corporation, Perwaja, on charges of corruption were seen as the beginning of a sustained campaign to combat corruption at the highest levels. Other ranking politicians and state leaders have also been charged for corruption recently.

Establishment of the Anti-Corruption Academy

As part of the move to enhance the capability and capacity of the ACA, the Government has announced the formation of the Anti-Corruption Academy. Located near the IIM, the Academy is placed under the training division of the ACA, and is expected to be functional by end of 2005. As a reflection of the Government's commitment to the anti-corruption reform agenda, the Public Services Department has approved 116 posts (officers and staff) for the Academy. The Academy, which is planned as a regional training centre for Asia-Pacific, will train officers from the ACA and their counterparts from neighboring countries in various sophisticated techniques and skills such as forensic engineering, investigations of money laundering and computer fraud, and audit trails. ACA's close proximity to the IIM will facilitate cooperation between the two institutions and the sharing of resources as a regional centre in their common endeavor to enhance integrity and stamp out corruption.

Witness protection program

The study "Public Perception of Corruption in Malaysia" concluded that Malaysians would be willing to cooperate in various efforts in the war against corruption if there were incentives for whistle-blowing and a witness protection program were instituted. To this end, the Government is working on a draft bill on witness protection to be tabled in Parliament soon.

Intensified fight against political corruption in the ruling party

Money politics or political corruption has been endemic in UMNO, Malaysia's ruling party. To combat this scourge, the Prime Minister, who is also UMNO President, has ordered tough action against political corruption within the ranks of his own party. Whilst earlier actions against the lower party ranks were seen as only acting against "the small fry", the six-year suspension from the party imposed on UMNO Vice-President Mohd. Isa Abdul Samad—a cabinet minister and the third-most-senior party leader—for breaching party discipline by indulging in vote buying in the September 2004 party elections indicates that Abdullah is keeping to his promise to root out corruption not only in the government but also in his party, and to act against "the big fish".

The impact of the action was best summed up by a front-page editorial in the UMNO-aligned mainstream daily, *Utusan Malaysia*, on 27 June 2005,

which stated that the action against Mohd. Isa showed "political courage" on the part of Abdullah, and gave new hope to efforts to root out political corruption within the ruling UMNO. It argued further that, "after action has been taken against Mohd. Isa, there is no stopping to effect further actions. This cleansing act cannot stop as long as the situation [in UMNO] is not fully clean…. The fight [against corruption] has to be waged to the finish".

At the same time, the Prime Minister has also introduced the Key Performance Index (KPI), which is an instrument to measure the effectiveness of Members of Parliament from the ruling party in delivering the public goods.

Reform of the police force

The study "Public Perception of Corruption in Malaysia" also proposed that the Government enhance the integrity of front-line agencies and strengthen their capability and capacity. In this regard, to improve and strengthen the Malaysian police force—the foremost law enforcement agency that has been criticized for abuses of power, violations of human rights, and corruption—Prime Minister Abdullah Badawi, who is also Minister for Internal Security, proposed the setting up of the Royal Commission to Enhance the Operation and Management of the Royal Malaysia Police. The proposals of the perception study were a catalyst. The Royal Commission, which came into effect on 4 February 2004, is headed by the former Chief Judge, Tun Mohammed Dzaiddin Haji Abdullah. In its tour of duty, it traveled the length and breadth of the country to hold public hearings where the people could air their views on the police, and submitted its report to the Government in early 2005.

The report takes note of the changes in the political and social environment governing policing, namely, "the rapid development and empowerment of civil society", "greater consciousness regarding issues affecting human rights", as well as rights of women and children; "expectations of better service from public agencies including the police"; "demands for greater transparency and accountability from government"; as well as "the trend towards engaging civil society and the private sector in policy making and governance".[6]

The Commission hopes that the recommendations in the report will achieve the strategic objective of transforming "the Royal Malaysia Police into a world class, twenty-first century organization that is efficient, clean and trustworthy, dedicated to serving the people and the nation with integrity and respect for human rights" (p. 8). A number of the

Commission's recommendations are now being implemented by the Government.

Integrity in national planning

In line with the objectives of the NIP to strengthen the foundation of the society and nation, integrity must become a culture and be embedded in the activities and programs of the Government and also of various sectors of society. It is therefore historic that for the first time in Malaysian history, a chapter titled "Good Governance for Development" is being included in the Ninth Malaysia Plan (2006–2010), which is in the final drafting stage. This proposal by the IIM to include such a chapter in the Plan will ensure that development planning takes good governance into account.

Conclusion

All the above measures, namely, the launching of the NIP and the IIM, as well as the Royal Commission's report on reforming the police force, have been received with great enthusiasm by various quarters, have captured the imagination of the people, and have affected public policy. The accolade given by the president of the Malaysian Institute of Business Ethics to the NIP, calling it "the best document to have emerged since Malaysia's independence", may sound a bit exaggerated. However, it does reflect the "feel good" mood and the high expectations the people place on the NIP and various other reforms the Government is undertaking.

The various reform measures undertaken by Malaysia have also attracted positive responses from international agencies including Transparency International. As TI Asia and Pacific director Peter Rooke said in an interview with the *New Straits Times* (23 August 2005, p. 2), the country has made much positive progress lately. "We always stress that leadership is essential in fighting corruption, so we are delighted that Abdullah has made curbing corruption a priority issue for his administration." He also welcomed the establishment of the Integrity Institute of Malaysia and the Anti-Corruption Academy as positive developments.

Bearing all the above in mind, we can say with certainty that the public opinion survey on corruption in Malaysia and its recommendations have fulfilled its objective of generating commitment to set in motion a train of interrelated reform measures that will have far-reaching consequences

for the country's progress. We are confident that all these measures will contribute positively towards combating corruption and enhancing integrity in Malaysia, and towards improving its global competitiveness.

Notes:

The author served as adviser on the team that did research on public perceptions of corruption in Malaysia, in 2001/2002. He also headed the team that formulated the National Integrity Plan and the blueprint for the setting up of the Integrity Institute of Malaysia referred to in this paper.

1 Eighth Malaysia Plan, 2001–2005. Kuala Lumpur: Government Printers. Page 35.
2 Public Perception of Corruption in Malaysia. 2003. Final report in three volumes submitted to the Special Cabinet Committee on Government Management Integrity.
3 The team consisted of Professor Rahimah Aziz (development sociologist/team leader), Professor Abdul Rahman Embong (development sociologist/adviser), Associate Professor Rokiah Ismail (criminologist), Associate Professor Iran Herman (psychologist), and Mohamad Zaki Ibrahim (criminologist). All are from Universiti Kebangsaan Malaysia, except for Iran Herman, who is from Universiti Utara Malaysia.
4 The team consisted of Professor Abdul Rahman Embong (leader), Professor Rahimah Aziz (deputy leader), Associate Professor Rashila Ramli, and Mohamad Zaki Ibrahim. Associate Professor Rokiah Ismail from the earlier team participated in the beginning stages but then withdrew from the team for health reasons.
5 National Integrity Plan. 2004. Kuala Lumpur: Institut Integriti Malaysia. Pages vii, 18.
6 Report of the Royal Commission to Enhance the Operation and Management of the Royal Malaysia Police. 2005. Submitted to the Government of Malaysia.

The Minxin website: Connecting government and the citizens in the People's Republic of China

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The Minxin website (literal meaning: a website that reflects people's aspirations) is a website platform on the internet set up by the Liaoning provincial government to release the results of the settlement of cases reported by the people, to answer the people's inquiries, to correct wrongdoings that impair people's benefits, to make government affairs public, and to create a good environment for economic development. Since the Minxin website was officially opened to the public on 21 May 2004, more than 500,000 people have visited it, more than 32,000 items of information have been issued on the site, and 8,767 reports and appeals have been accepted through the site. It has proved to be a strong information link between the government and the public.

Characteristics of the Minxin Website

The website combines supervision by special supervision agencies with public supervision. It provides the public with a convenient, fast, and efficient way of supervision. By filling appeals and sending in email and comments through the "Appeal Window and Comments" box, citizens can raise their problems at the "Minxin Forum". Under each item of information, there is an "I Want to Appeal" button, enabling people to send in reports and appeals easily. They can also click on the "Contact Us" button for the address and contact details of the relevant governmental agencies. "Open Government Affairs" lists the responsibilities, mission, and contact details of all provincial agencies. All the submitted reports and appeals are entered into the working programs of the supervision agencies, which, in turn, give feedback on the Minxin website as to how the reports and appeals have been handled.

The website aims to solve problems, and has helped to set up a coordination mechanism between government agencies. An appeal submitted through the Minxin website is handled in five ways: (1) direct handling or referral – the government discipline office investigates and

handles serious complaints, passes other complaints to the relevant departments, and sets deadlines for settlement; (2) concentrated handling – the departments that handle the various complaints hold coordination meetings; (3) oversight of the case – the government discipline office directly supervises the handling of specific problems; (4) direct referral – for some problems, the government discipline office gives direct instructions to the relevant departments and supervises their progress; and (5) follow-up supervision – for cases that were not satisfactorily handled, the relevant departments are asked to re-examine them until they are satisfactorily dealt with. Once every season, the Minxin website holds a herald meeting of all relevant departments to exchange information, discuss problems, and find solutions. The website has now established a system of acceptance, referral, rectification, feedback, solicitation, and follow-up supervision.

The assisting mechanism was set up to improve the performance and decision making of the Government with the support of a software analysis system. By developing and employing the "Minxin Web", we collected and analyzed various messages, and put forward methods and suggestions for improvement to the Government and relevant authorities to solve the problems. The analysis of those messages provided a relatively objective basis for general decision making and detailed administration. For example, from a comprehensive analysis of appeals and other messages sent in during the second quarter of 2005, we found that property management problems accounted for most problems in the construction industry. The 70 property management cases brought to our attention through the website represented 19.4% of all complaints related to the construction industry. Twenty-four cases were about unreasonable charges in higher education; these made up 16.9% of all cases concerning unreasonable educational charges. Illegal medicare advertisements were the most serious problem mentioned in complaints about the medicare system. On the basis of these findings, the provincial government decided to focus on the improvement of the three areas in the second half of 2005.

To involve the public, we collected evaluations of government and relevant authorities from people from all walks of life through "Minxin Web", and obtained quite meaningful results. Direct feedback from the public, through open evaluation, helped us to understand people's aspirations in a timely manner. We could also sense their satisfaction or dissatisfaction with the performance of government, and pass on our findings to the relevant authorities. So far in 2005, we have collected more than 1,200 evaluation messages on various issues, including about 400

expressing satisfaction with the work of government, more than 200 suggesting improvements, and more than 600 complaining about certain problems. These messages were of great help in standardizing the activities of government and improving its work style.

This mechanism of communication between government and the public was established with the goal of forming a more harmonious society. The Internet boasts the advantages of wide coverage, strong interactivity, and long life of messages. "Minxin Web" is therefore a good platform for government to communicate and interact with the public. It provides opportunities for the public to express their opinions and thus ensures their right to participate, give suggestions, and make choices. The relevant authorities, after some investigation, reply directly to the complainant if he or she can be reached, and the results are publicized on the Web so the public can evaluate them and make comments. If the results are not satisfactory to the complainant and the general public, the authorities go over the issue another time. This kind of interaction is based on equality between the government and the citizens, and they share all the information available. It especially reflects the mission of the government, that is, to govern for the people. "Minxin Web" has changed the concept of supervision from a one-way process to consensus building and cooperation in solving problems.

Effect of the Minxin Website

Under direct public scrutiny, problems detrimental both to the interests of the citizens and economic development have been rectified effectively and on time. In one case, the Department of Communication in a certain county was accused of abusing its contractual and temporary workers. The provincial government immediately sent staff to investigate, and imposed disciplinary punishment on five people who were held accountable. In another case, someone complained about the unreasonable fees charged at one middle school. The complaint was verified through inspection. The staff responsible for overcharging was removed from office. In still another case, some people reported that civil servants had embezzled the money collected from the sale of "World Expo" postcards. After the charges were substantiated, the civil servants who were found guilty were removed from their positions, and were required to give back the money they had stolen. "Minxin Web" has so far received 5,095 complaints on infringement of people's interests, 1,135 of which have been solved. Eighty-five percent of the people declared themselves satisfied with the handling of these complaints. We have sent

621 feedback messages through the feedback column on the website, and have replied directly to the complainants in 85 cases. We reported the results of 329 cases to the provincial government and relevant authorities as requested, gave feedback on the rectification of 651 complaints, imposed punishment on 42 civil servants for violating the discipline of the Party. We punished 61 people for violating political discipline, removed two of them from their function and fired four others. The illicit money confiscated reached RMB 964.000, while CYN 6174.000 in unreasonable charges was returned.

More prominent problems were resolved through the regular analysis of complaints. After the opening of "Minxin Web", complaints pertained mainly to the following: poor services from administrative departments (762 cases, or 37.13% of the total), abuse of power in law enforcement departments (531 cases, 25.87%), unreasonable charges in education (396 cases, 19.30%), poor services in service departments (101 cases, 4.92%), and corruption in medicine procurement and medicare (86 cases, 1.70%). We also adjusted our emphasis from time to time. From March to April 2005, many citizens complained that commercial and industrial departments charged membership fees from private enterprises. We received 58 complaints of this kind. The Rectifying Office of the provincial government suggested rectifying this problem immediately after careful analysis. The Industrial and Commercial Bureau of Zhejiang Province held several meetings to solve the problem, and decided to let businessmen join the association on a voluntary basis. Authorities should not force individuals to join the association or require them to pay membership fees. In the first quarter of 2005, we focused on the rectification of the following four problems: private companies being forced to pay membership fees in industry associations, overcharging for the processing of ID cards, unreasonable charging by Public Security authorities, and unreasonable charging for tutoring by teachers. All these problems have been basically solved.

The Minxin website has fully played its role of educating, guiding, and setting an example. The Department of Construction is a model entity for handling complaints. The head of the department personally took charge of rebuilding the department's work style by discussing a suggested solution with supervisors and formulating a system for the quick, high-quality, and satisfactory handling of complaints. The Rectifying Group was led by the director of the Public Security Department and leaders of other departments, whose serious attitude and honest working style set a good example for other departments and industries. At present, the rectifying network and administrative revamping at the provincial,

city, and county levels, under the leadership of the provincial government, have been established in construction, environmental protection, and public security systems.

The connection between the government and the citizens has been strengthened by the well-run channel for complaints. One citizen in Jinzhou sent a letter of thanks to the Rectifying Committee of the province. He wrote: "I complained about a hospital in Jinzhou on the web in July, and the hospital and Sanitary Bureau of our city called me two days ago. They promised to inspect the issue carefully. I had never been expecting any reply simply by complaining on the Net before that, and they did report my complaints to relevant authorities. I want to say 'Thank You!' to 'Minxin Web'. That hospital called me today, and told me the inspection result solemnly, and they even asked to apologize to me in person. From this experience, I know this web is not established in name only. It is established to serve the people."

A company in another place also sent an appreciation letter, which read: "The anti-corruption activities of the provincial Rectifying Committee, and the Technology Supervisory Bureau of Liaoning protected the legal rights of businessmen from elsewhere. We are very confident in continuing our business here."

The letters of thanks and the warm remarks clearly reflect people's belief in the government and the close relations between them.

Chapter 5
Preventing corruption in disaster relief operations

Emergency disaster relief efforts and the ensuing rebuilding operations, by their very nature, are especially exposed to corruption. Substantial aid flows—money, goods, and services—the vital need to act quickly, and the major infrastructure projects that are often part of the rebuilding phase after a disaster exacerbate the risk of corruption. In many cases the structures in place to oversee such projects are themselves disabled after major disasters. Many of the lessons learned in preventing corruption in humanitarian relief efforts in the Asia-Pacific region draw on the experience of two major disasters that have recently struck the region—the devastating January 2001 earthquake in the Kutch region of the state of Gujarat in India and the Indian Ocean tsunami of December 2004. This chapter reviews these and some cases, and explores the lessons that were learned and continue to be learned in the rebuilding process.

The massive destruction caused by the Indian Ocean tsunami at the end of 2004 sparked an unprecedented outpouring of international attention and humanitarian aid. In response to concerns about the management of this aid and the high risk of corruption and misuse of these funds, the ADB/OECD Anti Corruption Initiative for Asia and the Pacific and Transparency International convened an expert meeting, hosted by the Government of Indonesia, to bring together government and civil society representatives from India, Indonesia, Malaysia, Maldives, Sri Lanka, and Thailand, as well as donors and international governmental and non-governmental organizations, in April 2005.

This Expert Meeting on Corruption Prevention in Tsunami Relief identified six essential elements to curb corruption and to reduce waste

and mismanagement in the delivery of humanitarian relief and reconstruction, namely: country ownership; community-driven and participatory processes; transparency of aid flows; financial safeguards and administrative capacity; oversight, monitoring, and evaluation; and effective anti-corruption enforcement and complaint handling. Helen Sutch of the World Bank and J.C. Weliamuna of Transparency International Sri Lanka elaborate on these elements and delve into some of the complexities that have been encountered in areas affected by the tsunami.

Circumstances that result in humanitarian agencies' reluctance or refusal to admit or address corruption and fraud in humanitarian aid delivery must be overcome. There may be a perception, for example, that acknowledging corruption could undermine confidence in the agencies and deter donors. This phenomenon may be attributable to the assumption that any public acknowledgement of the existence of financial mismanagement would lead to a loss of donors', taxpayers', and politicians' confidence in the aid system, and thus threaten future projects. Responses to these challenges, forwarded by Nicholas Stockton of the Humanitarian Accountability Partnership International, include addressing the systems and organizational vulnerabilities, as well as the contextual factors that compose the complex backdrop of humanitarian aid operations.

In order to advance knowledge on how to prevent corruption in humanitarian aid operations, it is essential to engage with key aid agencies, governments, and populations who have lived through disasters and who have experienced rebuilding operations first-hand to draw on practical experience and lessons learned in the Asia-Pacific region and other parts of the world. While much good practice exists in transparency in community involvement and in coordination, the practical application still often falls short of what is needed, and further work is called for to satisfy both integrity and speedy, efficient delivery criteria, particularly in relation to financial management, administrative procedures, and anti-corruption safeguards. A window of opportunity exists to further operationalize and improve on past practices, given the media attention focused on these issues and the political commitment to address these that has emerged in many quarters.

After the massive earthquake in Kutch, the government of Guajarat designed and implemented a monumental reconstruction and rehabilitation project that encompassed housing, urban and physical infrastructure reconstruction, education, health care, livelihood rehabilitation, and social and economic rehabilitation. Pramod Kumar Mishra of India's Ministry of Urban Development explains that the key

lesson in this process was the utmost importance of the involvement of the people affected by the disaster in the rebuilding efforts. Policies and projects had to be as transparent and as accessible to the population as possible in order to create awareness and to achieve acceptance and cooperation. Public involvement and consultation throughout all phases of rebuilding—policy formulation, damage assessment, project implementation, monitoring, and redress of grievances—were crucial to the success of the community and of those involved in the exceptional rebuilding accomplishments in Kutch.

Trade-offs and sequencing: Fighting corruption in disaster relief and reconstruction

Helen Sutch
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From Principles to Guidelines: The Jakarta Framework

International experts at the Jakarta meeting on Curbing Corruption in Tsunami Relief Operations[1] agreed on a framework of action to ensure the appropriate management of the huge outpouring of aid and pledges of support in the wake of the Indian Ocean tsunami. This framework embraces key measures and approaches for use by policymakers, civil society, and donor and international institutions to deliver assistance to affected communities and to counter corruption in humanitarian relief and reconstruction efforts.

Country ownership

Affected countries should exercise effective leadership over their humanitarian relief and reconstruction, and should be enabled to do so. To this end, governments of affected countries, in dialogue with local communities, civil society, donors, and the private sector, should commit themselves to translating their national reconstruction strategies into prioritized, results-oriented operational programs and take the lead in coordinating the aid they receive in conjunction with other ongoing development programs. Donors should commit themselves to respecting the affected countries' leadership in relief and reconstruction efforts and help strengthen their capacity to exercise it; they should further align with affected countries' strategies and base their overall support on these countries' national reconstruction efforts.

Participatory, community-driven processes

The active participation of affected communities in relief and reconstruction decisions can minimize the risk of corruption in the delivery of aid. From the earliest stages of relief, through to the design, implementation, and evaluation of long-term projects, communities should be enabled to articulate their needs and assist in devising

reconstruction plans, as well as evaluate end results. The economic capacity and expertise of affected communities should be utilized wherever possible in delivering relief and reconstruction to reduce cost, ensure appropriate solutions, and assist with economic recovery.

Transparency

Affected communities need accessible and understandable information about relief and reconstruction efforts, as well as about the relief and compensation benefits to which they are entitled, to ensure their participation in these efforts and relevant decision-making processes. Governments, public and private donors, international organizations, and local civil society organizations should implement comprehensive and harmonized information strategies that uphold internationally recognized access to information standards. Such strategies should make use of appropriate formats and local languages to ensure ease of access by local communities. Additionally, all stakeholders should seek to support the role of the media in ensuring transparency in relief and reconstruction efforts.

Financial safeguards and administrative capacity

The transparency and traceability of aid flows is a major concern for all stakeholders. Disaster responses require the rapid flow of funds, which results in an increased risk of corruption. The establishment of appropriate mechanisms to track aid flows from source to end-user and to publish this information is crucial.

Tracking systems designed to respond to emergencies and manage and channel information to and from all stakeholders can contribute to coordinating, monitoring, and managing the overall rebuilding effort in a given country. Such systems not only trace needs and commitments, but also help meet legitimate expectations for transparency, accountability, and sound governance. It is important that these tools be developed, owned, and maintained by affected governments and communities, and used to coordinate the support of all providers of relief and reconstruction, including donors, as well as local and international non-governmental organizations.

National tracking systems need to show the funding mechanism, preferably on budget, and the contribution of multi-donor funds set up to respond to catastrophes. These systems should contain information comprehensive enough to respond to government and donor exigencies,

yet simple enough to be accessible by affected communities. International organizations and donors should support the development and maintenance of such national tracking systems; collate national information for cross-country comparison; and implement compatible international tracking systems.

Oversight, monitoring, and evaluation

Effective, independent monitoring and evaluation are key to ensuring the transparent implementation of relief and reconstruction programs. The development and application of mechanisms to facilitate such monitoring are of great importance. Effective internal control and external auditing should be complemented by community-led approaches, such as people's audits, that reinforce accountability towards affected populations. Such approaches should be promoted by governments and by donors, and all stakeholders should implement the necessary action to rectify problems identified. All stakeholders should commit themselves to maintaining adequate accounts and providing timely, transparent, comprehensive, and accessible information on programming, aid flows, and expenditure.

Effective mechanisms for enforcement and the handling of complaints

Affected countries should provide accessible grievance procedures, including corruption reporting channels and protection for whistle-blowers in the context of humanitarian relief and reconstruction efforts, for private and public sector employees, the media, and the general public.

Preventing Corruption in Humanitarian Relief Operations: The Experience of Indonesia in Post-Tsunami Reconstruction

Situation in Indonesia

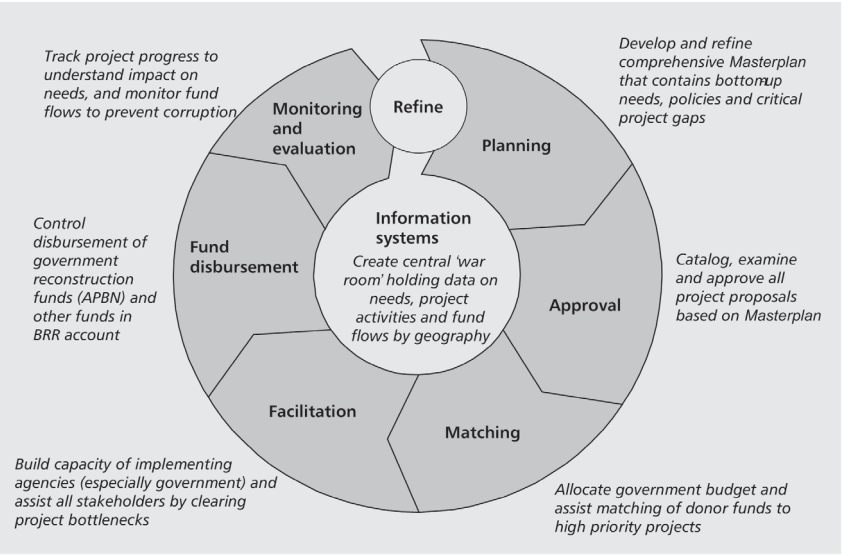
The first phase of emergency relief in Indonesia in the wake of the December 2004 tsunami has borne impressive results: community involvement has been high and the response to the tsunami was speedy. While emergency relief continues, the second phase—reconstruction—has begun. The emergence of a plethora of agencies and a wide range of assistance necessitated a governance and coordination framework. The government established the Rehabilitation and Reconstruction

Agency (Badan Rehabilitasi dan Rekonstruksi, BRR) for Aceh and Nias, and its Supervisory Board and Executing Agency (BAPEL) in April 2005. The mission of BRR is to restore livelihoods and strengthen communities in Aceh and Nias by designing and implementing a coordinated, community-driven reconstruction and development program with the highest professional standards. BRR matches resources to priority needs and helps ensure integrity in the use of the billions of dollars coming from Indonesia and around the world.

Among BAPEL's goals is to build local and national capacity to ensure long-term good governance and to prevent and punish corruption in reconstruction projects. The agency has a zero-tolerance policy towards corruption. Its anti-corruption strategy includes guidelines, codes of ethics, and anti-corruption declarations, especially in the areas of procurement, partnership, and capacity building in implementing agencies, including the central Government. These measures aim to prevent, detect, and investigate corruption—as do the system for placing and processing complaints, spot checks executed by investigation teams, and measures to enhance transparency (including the use of information technology). Additional safeguards where money comes through government systems, as well as external audits, have been put in place.

Seven main activities have been assigned to BRR (see Figure 5.1). In its first 45 days of operation, BRR has met with a number of successes. It successfully reviewed existing projects, valued at USD 1.2 billion, and approved a further 182 NGO and donor projects at USD 586 million. The agency led the revision of the 2005 budget to secure approval of grants, loans, and debt relief amounting to USD 863 million, and cleared administrative obstacles for NGOs and other agencies so that project work could continue. BRR also set up a one-stop shop for visas and obtained clearances for 1,300 containers held up at port, further facilitating reconstruction work.

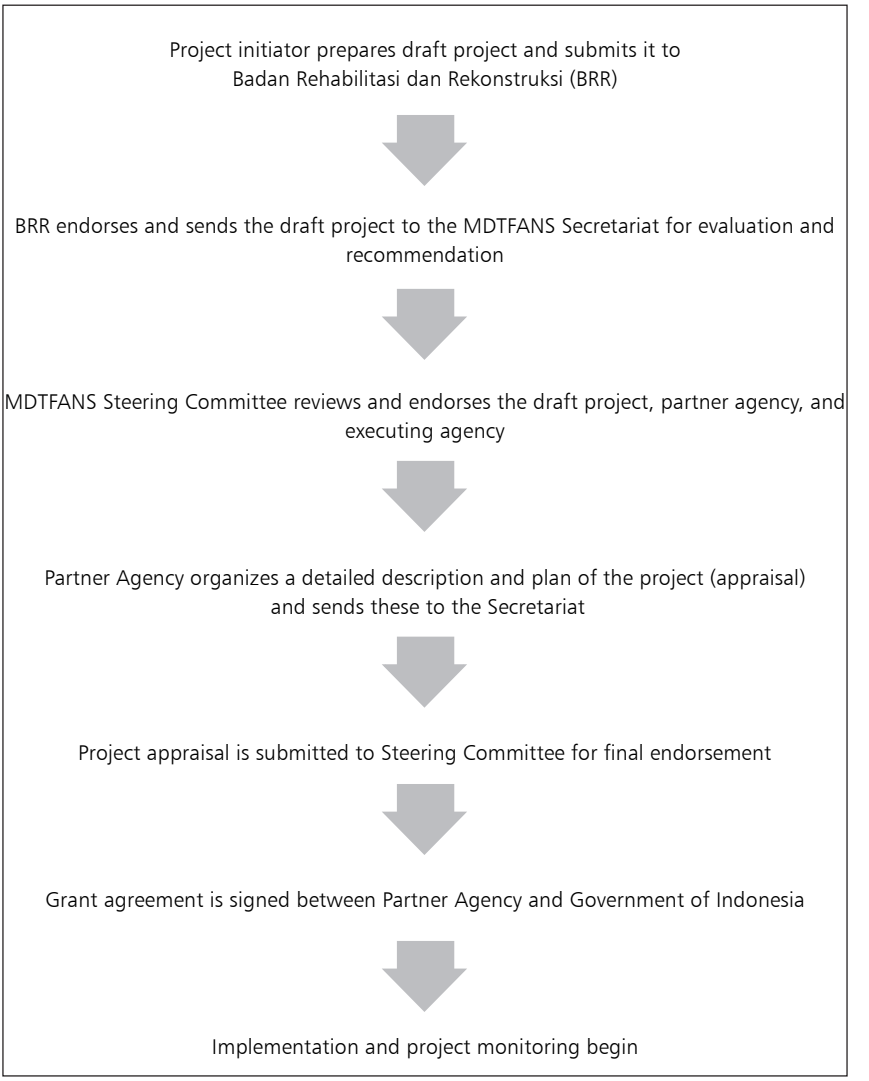
Figure 5.1: Main Activities of BRR



Multi-Donor Trust Fund for Aceh and North Sumatra

The Multi-Donor Trust Fund for Aceh and North Sumatra (MDTFANS) is a partnership of the international community, the Indonesian Government, and civil society to support the recovery following the earthquakes and the tsunami. It contributes to the recovery process by providing grants for quality investments that are based on good practice, stakeholder participation, and coordination with others. In doing so, the MDTFANS seeks to reduce poverty, (re)build capacity, support good governance, and enhance sustainable development. There is a seven-step approval process for MDRFANS project funding, illustrated in Figure 5.2. Each project is required to have an anti-corruption plan based on disclosure, civil society oversight, complaints handling, collusion mitigation policies, mitigation of forgery and fraud, and sanctions and remedies.

Figure 5.2: MDTFANS Project Approval Process



Oversight and transparency

Many measures for close oversight and improved transparency have been initiated. Monitoring will be carried out by Indonesian anti-corruption NGOs. The Corruption Eradication Commission (Komisi Pemberantasan Korupsi, KPK) will establish an office in Banda Aceh. Several communications tools have been created to ensure wide

dissemination and accessibility of information. The Unitary Website for Aceh, Nias Island, and North Sumatra Reconstruction Information Sharing, at www.e-aceh-nias.org, has centralized several information sources from the Government of Indonesia and the donor community related to post-tsunami reconstruction efforts. The MDTFANS newsflash, available at www.mdtfans.org, provides a regular, concise overview of the status of MDTFANS concepts and projects. It covers the activities of the Secretariat and outlines upcoming events and documents. *Ceureumen* is a twice-monthly supplement of Aceh's main local daily newspaper, *Serambi*. *Ceureumen*, "mirror" in the Acehnese language, is designed to reflect the needs of tsunami survivors and help them keep in touch with the process and progress of reconstruction. Acehnese journalists, working together with Internews, an international non-governmental organization specializing in humanitarian media coverage, produce a regular two-hour radio program on Aceh reconstruction, *Peunegah Aceh*, which is broadcast throughout Aceh. Once every two weeks, the *Ceureumen* team does a 20-minute radio talk show during the *Peunegah Aceh* program, with invited guests and other journalists, based on the cover story of the latest issue. Aceh universities are planning to create a Centre for Rehabilitation and Reconstruction Information (PIRR) to provide oversight to reconstruction efforts.

Persistent challenges

Whereas such communications innovations constitute important progress, reconstruction requires functional institutions as well. Aid delivery continues to be hampered: government money is often delayed for months and donor pledges are slow to materialize; local government suffers from absenteeism and from "shadow projects"; central and local government agents demand brokerage fees in return for relief. In some cases, development budgets are actually cut to meet reconstruction needs.

The biggest challenge is combining aid delivery with reform. BAPEL's planned anti-corruption framework is replete with checks and controls, which can slow reconstruction. While facilitating reconstruction, BAPEL also seeks to reform systems by strengthening local governments, promoting effective relations between central agencies and local level actors, and enhancing accountability regimes at all levels of government.

Tensions and trade-offs between anti-corruption work and delivery of humanitarian aid are inevitable. Some of these tensions may stem from the high salary supplements for government officials who implement

reconstruction projects or from the creation of district-level project management/enforcement units in major towns and cities. Another difficulty arises from the fact that during the time required to build complex anti-corruption systems, suspect projects and activities are launched. Finally, there are potential difficulties inherent to the relationship between those who deliver aid or guidance and those who receive it. Those who are advised and assisted in reconstruction may become frustrated: "If you know better than we do…why don't you do it all?" Stakeholders are working to find solutions for both effective delivery humanitarian aid and anti-corruption work that respond to the needs of all involved.

Conclusion

There are several strong points to be highlighted in the efforts to fight corruption in the delivery of post-tsunami humanitarian aid and reconstruction work in Indonesia. A single governance and coordinating agency with authority and integrity has been established. There are high levels of community involvement in small-scale activities. Clear anti-corruption standards and strategies for projects have been put in place, as have effective measures for transparency, access to information, complaints management, oversight, and monitoring.

Important questions remain, however, on how best to manage trade-offs or compromises between swift delivery of humanitarian aid and efforts to prevent, detect, and punish corruption. In the context of post-tsunami Indonesia, lives are at stake.

- Can immediate actions be taken to secure greater integrity and efficiency, while working towards a more complete strategy, *without* slowing delivery?
- Are there more streamlined, swifter ways to increase integrity and efficiency until better, more comprehensive systems are built?
- Can early successes towards fast, corruption-free delivery of aid spark a demonstration effect, providing an impetus for high standards and best practices in future projects?
- Could a single procurement agent be envisaged?
- Can tracking and monitoring for each project be simplified?

Note:

[1] Expert Meeting on Corruption Prevention in Tsunami Relief, 7–8 April 2005, Jakarta, Indonesia; jointly organized by ADB, OECD, and Transparency International, and hosted by the Government of Indonesia.

Corruption in disaster relief operations: Risks and pitfalls

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On a recent visit to Aceh, it was explained to me that there is a clear moral distinction between theft and fraud—or "trickery" as it more accurately translates into English—the latter being much less reprehensible and in particularly audacious cases perpetrated against less sympathetic targets, even considered to be rather admirable. Yet in spite of the tsunami relief operation channeling unprecedented amounts of cash into what Transparency International's CPI index rates as the eighth-most-corrupt political economy on earth, after six months none of the relief agencies that I visited was able (or willing?) to admit to having themselves experienced a single case of fraud, although, somewhat curiously, all believed that other agencies had encountered such problems. Similarly, in 2003 while evaluating a major donor's USD 220 million Kosovo relief operation, I was told by its foreign ministry's audit department that not one case of financial misappropriation had occurred in any of the 217 completed contracts managed by 44 different implementing partners—a remarkable record of perfect implementation in a territory widely thought to contain one of the most criminalized economies in existence. If you took such aid donors and implementing agencies reports at face value, you would be bound to conclude that the management of humanitarian resources is nigh on perfect and that this conference might be well advised to turn its attention to other sectors.

However, on challenging the plausibility of this official record of perfect performance in Kosovo, I was told by the field coordinator in charge that he had been made aware of at least one allegation of serious fraud, but had not followed this up because "this was not in my job description". I also learned that the Ministry's audit process is routinely conducted in the headquarters of the implementing agencies, and that no visits are made to the field. Thus, the absence of reported cases of fraud is more likely an indication of chronically weak financial management and audit controls, rather than an indication of peerless management. This particular donor's practices are not, I believe, unique. For example, a new initiative led by Transparency International to engage aid agencies in seeking solutions to the problem of corruption within the humanitarian aid system seems to

have encountered widespread disinterest in the issue among operational humanitarian agencies.

All of this points to a rather disturbing problem about the phenomenon of corruption in humanitarian aid operations. The agencies themselves appear to be in a state of general denial about the scale of the problem, in large part, I suspect, because there is a widely held assumption that any public acknowledgement of the existence of financial mismanagement would lead to a loss of donors', taxpayers', and politicians' confidence in the aid system, and thus threaten their income. This simplistic and, I believe, ultimately self-defeating public relations policy promotes *systemic* underinvestment in corruption control measures, which in turn produces a *systematic* under-reporting of fraud and corruption. While preparing this talk I took a look at the annual reports of six major NGOs, not one of which reported even a single case of fraud or offered any general estimate of "shrinkage". In my view, without the scale of the problem being measured and acknowledged, it is highly improbable that financial malfeasance is being adequately controlled by humanitarian agencies. Thus, the first hurdle in addressing the challenge of corruption is to persuade the donors and relief agencies that this is a "mission-critical issue". But how can we calibrate the scale of the problem when the aid system is in a state of collective denial that there is a problem in the first place? Indeed, perhaps they are right?

From almost 30 years of involvement in the aid system, over half of which I have spent "in the field", I am quite convinced that there is a veritable iceberg of corruption, with the great majority of it remaining undetected and unreported. Why do I think it is so ubiquitous a problem? There are a range of organizational, system, and contextual risk factors at play here.

Organizational Issues

- Most humanitarian assistance projects are chronically *under-managed* in the field, mainly because of pressure from donors to meet unrealistically low "overhead" ratios. As a consequence, the typical relief project manager works 80 hours per week. It is all too easy to exploit the benefits to the system of such apparently heroic devotion to the mission, while ignoring the inevitable costs of this form of organizational irresponsibility that is incurred by field staff and ultimately also by intended beneficiaries.
- Largely because of this management overstretch, *due diligence* in human resource and financial management is rarely fulfilled. Staff

(local and international) is often recruited without proper checks, job descriptions are usually inadequate, unrealistic, or non-existent, performance management is usually absent or ad hoc. Because of shortsighted and dysfunctional human resource management practices, most relief aid is administered in the field by staff on very short-term contracts that seem almost purposely designed to encourage organizational disloyalty and all its attendant ills. The average first-phase deployment of senior emergency operations managers in response to the tsunami was probably about three weeks.

- The "*culture of urgency*" that characterizes humanitarian field operations is antipathetic to the nurturing of a "culture of accountability". An almost theatrical obsession with speed means that managerial oversight is de-prioritized, and this in turn increases opportunities for corruption. Relief aid managers are subject to a perverse incentive to ignore cases of fraud because of a combination of the time-consuming consequences of fraud investigations, on the one hand, and a desire to not be tainted by the discovery of corruption, on the other.
- The habitual dependence of most major relief agencies on *expatriate managers* (more often than not, male) means that the humanitarian system's key managerial cadre are too often devoid of local language skills and adequate cultural knowledge. Corruption is frequently perpetrated through bent procurement practices, and many expatriate managers have insufficient knowledge of local markets to be able to "sniff a rat" and initiate investigative proceedings. How many national staff appointed by expatriates are locally renowned as persistent crooks?
- The remoteness from headquarters of most humanitarian work provides by default unusual degrees of managerial autonomy in the field, allowing individualistic, arbitrary, and *authoritarian management styles* to thrive. When combined with a managerial culture that condones that oft-heard claim that "I am too busy saving lives", good practices of consultation, participation, complaints handling, and redress mechanisms attract only meager management support. The absence of transparency, coupled with the top-down and supply-sided characteristics of the relief industry, militates against "community policing" and whistle-blowing behaviors that are essential for identifying and preventing corruption.
- Although there are a few NGOs capable of mounting sizeable relief operations, a combination of donor preference and NGO

competition tends towards *relief operations being highly fragmented*, with the individual agencies then unable to enjoy the economies of scale that would allow them to employ, for example, the procurement and internal audit specialists needed to establish a far more robust control environment in the field. Small is not always beautiful. In the international relief business, it may be something of a curse.

System Factors

- The standard practice of aid coordination typically encourages and then sanctifies the creation of mini aid agency "*bush governorates*", often reflected in the popular labeling of particular villages, provinces, or refugee camps. The CARE camp, the World Vision village, and the Oxfam region all reflect a standard system of humanitarian coordination that seems to respect the principle of political patronage more than performance and quality management. This further exaggerates already grossly asymmetrical power relations between aid provider and beneficiary and would automatically lead any principal-agent theorist to predict with great confidence a high incidence of cases of *inappropriate choice* (e.g., agencies being contracted to do tasks for which they are not competent) and *moral hazard* (e.g., the failure to secure the informed consent of beneficiaries to specific interventions that might be harmful to their interests). Indeed, humanitarian aid beneficiaries are typically denied any choice in the selection of the aid provider by humanitarian coordination mechanisms, and legitimate complaints are all too often dismissed as the work of political troublemakers or rent-seeking freeloaders. Agencies are normally loath to criticize each other and in most cases there are no systems for the safe handling of complaints. The costs of corruption and fraud are, of course, ultimately borne by the legitimate intended beneficiaries of relief work, and while they remain profoundly disempowered, they, who have most to gain from anti-corruption measures, are invariably excluded from participating in its identification and prevention.
- While aid coordination practices tend to reinforce contract- rather than market-based behavior, this *oligopolistic* tendency is further reinforced by the nature of the donor system that allocates resources first on the basis of national affinity, with results-based performance appraisal being of secondary concern at best, if indeed it figures at all. This takes me back to my Kosovo study, and the fact that all emergency aid contracts were awarded to organizations from the

donor country, none of which had been subjected to a system of pre-contract appraisal or any meaningful post-contract quality assurance. Similarly, when researching the practice of "strategic coordination" in Afghanistan in 2002, I came across one donor that had imposed one of its officials on the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) to ensure that the NGOs from the donor country received "their fair share" of the avowedly "unrestricted" contributions made by that donor to the UN's emergency trust fund.

Contextual Factors

- *T*he great majority of relief operations are conducted in weak, fragmented, contested, or failing states, usually with *corrupted police and judicial systems*. Furthermore, agencies can rarely depend on the forces of "law and order" to comply with basic standards of due process. On various occasions in Sudan and Uganda I have found myself pleading, sometimes in vain, with enthusiastically brutal policemen not to torture potential witnesses, to refrain from the practice of subcontracting witch doctors for crime detection through divination, and not to abandon suspects to summary mob justice. Initiating a criminal investigation can often have quite horrendous consequences, and many relief workers have witnessed suspects being lynched for petty or even non-existent offences. In some contexts, the pursuit of accountability can be counterproductive in humanitarian terms.
- Another confounding factor for transparency and accountability is the *weakness of civil society* in most humanitarian theatres. Local NGOs—or their staff—are invariably contracted into the international aid system through the popular practice of "partnerships for capacity building", and with this goes their independence. Local news media are invariably under-resourced and (a fatal flaw) are produced in local languages that have next to no penetration into the international aid milieu. It seems that humanitarian aid corruption stories have no leverage value until they hit CNN. In fact, allegations of aid agency corruption are frequently made in local newspapers, but these are rarely exported to the northern news media. A recent article by Michael Wrong of the UK *Financial Times* points out that foreign correspondents such as herself are now so dependent on the aid system to get out to remote field sites that they are reluctant to file stories that might be seen as "biting the hand that feeds them".

These external hazards, combined with the systems and organizational vulnerabilities described above, must generate a significant degree of "shrinkage" in donated resources, yet this remains unacknowledged and thus largely uncontrolled. When confronted with an oligopoly in denial, it is all too tempting to turn towards challenges that offer more obviously achievable solutions. This is perfectly rational, and is indeed the reason why so many good people in the aid business appear to be behaving like ostriches. However, I still think that we can do better than this.

First, international relief aid is founded on a moral rather than a commercial calculus, and the "bottom line" is about basic life, health, and dignity. The opportunity costs of corruption and fraud within the humanitarian system can thus be calculated in terms of lives lost, morbidity not averted, and dignity denied. Surely, you might think, this is self-evident? Unfortunately, it is not, and I suspect this is not unconnected to the abnormally low levels of numeracy among aid agency managers. Well-planned research that measures the scale and the opportunity costs of corruption and fraud within the aid system would, I believe, have the same galvanizing effect on the humanitarian aid system as the punch delivered by the Save the Children UK/UNHCR report on sexual exploitation by aid workers in West Africa in 2003. A determined effort to stamp this out followed, and while I am sure that this scourge has not been eradicated, it most certainly has been checked, after years of system-wide denial that it was even an issue. Once the scale and consequences of the wider dimensions of corruption have been enumerated and explained, I believe action will follow.

Second, there are a number of initiatives under way to improve humanitarian emergency management practices. For example, the French inter-agency forum Coordination-Sud is promoting a quality management system specifically adapted for humanitarian emergency projects. Humanitarian Accountability Partnership-International (HAP-International) has initiated an Accountability and Quality Management Standards Development Project, with a view to establishing an accreditation and certification scheme in the latter part of 2006. At the national level, we know of several other initiatives for developing stronger mechanisms for self-regulation, most of which cite enhanced transparency and accountability as both an aim and an output. To complement these, I believe that an international humanitarian managers association needs to be formed to create a stronger motor for the promotion of more coherent quality management processes within the aid system, and in particular to challenge the ludicrous and perverse donor policies that treat management as an undesirable cost, and coordination as a free good.

Third, and in my view perhaps most critically, there is a trend towards strengthening accountability to the intended beneficiaries of humanitarian action, both at the level of agency leadership and in the field. The inaugural speech of the new High Commissioner for Refugees, Antonio Guterres, and a recent paper published by the UN Relief Coordinator Jan Egeland might both have been scripted by HAP-International. Having publicly stated the fundamental importance of transparency and accountability to the subjects of humanitarian action, both agencies must surely now take practical action to follow these commitments through. At the other end of the system, we in HAP-International see small, but in their own way quite dramatic, changes in accountability field practices. Oxfam's public notice boards and complaints boxes in Aceh are just one of many signs that reform is under way where it probably counts most. There is much still to do, but if the asymmetrical power relations between aid agencies and beneficiary populations can be addressed through the provision of accessible and safe complaints-handling mechanisms, those with the most to gain from preventing corruption will at last be in a position to play their rightful and crucial part.

To finish, my first experience of community-managed relief aid distribution convinced me over 20 years ago that real participation is the most potent tool to control fraud and corruption in the relief system. Nothing I have seen since persuades me to revise that opinion. However, to make this happen more systematically we must first identify, and persuade donors of the case to fund, an optimal management quotient for humanitarian emergency operations; we must replace the hard incentives for denying the existence of corruption and mismanagement with a system of resource allocation that rewards the application of good-quality management, transparency, and accountability principles; and finally, we need an independent mechanism for verifying agency compliance with these.

Preventing corruption in reconstruction operations after the Kutch earthquake

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26 January 2001: A Terrible Human Tragedy

The date 26 January 2001 was marked by one of the most destructive earthquakes ever recorded on Indian soil. The natural catastrophe, hitting the country already in the wake of two consecutive years of drought, inflicted enormous damage to life and property in Kutch (Kachchh) and some other districts of Gujarat State, leaving the entire nation in a state of shock and gloom.

The massive earthquake—one of the worst in the last 180 years—measured 6.9 on the Richter scale (7.7 on the Mw scale) and was felt across most of India and Pakistan. The seismic activity's epicenter was Kutch, where the old towns of Bhuj and Bachau were flattened and severe damage was inflicted on the towns of Anjar and Rapar. Overall, 7,900 villages were affected and more than 400 villages were completely destroyed.

The earthquake, and a large number of aftershocks, affected more than 10 million people. The number of lives lost is 13,805; 167,000 people were injured and over 1 million homes were destroyed.

The United Nations Children's Fund has estimated that as many as 5 million children were directly affected through the loss of family, home, or school. Authorities have estimated that 15,000 schools were damaged or destroyed, along with more than 300 hospitals. Massive damage was also inflicted on water and sanitation systems.

More than 20,000 cattle were killed. More than 10,000 small and medium-sized industrial units went out of production, and 50,000 artisans lost their livelihoods.

In financial terms, the estimated direct loss adds up to USD 3.3 billion (for private property, livestock and other animals, municipal infrastructure, power and telecommunications infrastructure, health care and education assets), USD 635 million for indirect losses (exports and imports; agricultural, industry, and services output; remittance income; lost earning potential due to disability, trauma, etc.; unemployment, health hazards), and USD 2.1 billion for tertiary losses (long-term development, overall

investment climate, funds reallocation, community migration and relocation).

For residents of the area, the devastation was immediate and seemingly unending. The collapsed infrastructure and the loss of life undermined determination and optimism, even in a part of the world that is familiar with struggle.

Short- and Medium-Term Reconstruction and Rehabilitation

In the aftermath of the earthquake, both state and society had to gear themselves for the long-haul task of reconstruction and rehabilitation. The government of Gujarat undertook a wide-ranging reconstruction and rehabilitation project. It was specially designed to address the needs of beneficiaries comprehensively and was composed of capacity building, housing, urban reconstruction, education and health care, livelihood rehabilitation, social and economic rehabilitation, and physical infrastructure reconstruction. The cost of the program was estimated at USD1.5–2.0 billion, with housing, education, and water supply constituting its largest components.

The concerted efforts of non-governmental organizations (NGOs) from across the country and the globe ensured that immediate relief was provided to the villagers, in the form of temporary housing, medical supplies, food, and clothing. The main concern was the repair and reconstruction of the villages to enable villagers to return to normal lives as soon as possible. The government also appealed to NGOs and private organizations for assistance in rebuilding shattered villages where the structural damage sustained exceeded 70%. If the involved NGOs or private organizations agreed to follow prescribed government guidelines for building, the government would often agree to bear 50% of the capital costs.

The short- and medium-term rehabilitation policy was targeted to offer immediate, effective, and transparent relief. The program comprised 28 reconstruction and rehabilitation packages, providing for 1.2 million beneficiaries and covering the rehabilitation of orphans and women, rural and handicraft artisans, housing, capacity building, industry, trade, services, agriculture, and tourism. These rehabilitation projects envisaged the revival of livelihood and economy, the resurgence of trade and enterprise, and the renewal of social capital, as well as the reinforcement of critical infrastructure.

During the first four years, an extraordinary number of tasks were accomplished. About 95% (898,816) of the affected private houses, 75%

of all 12,896 affected public buildings, and all 44,215 affected schoolrooms were repaired. One-third of 9,019 kilometers (km) of broken-down transmission and distribution lines and 75% of destroyed roads were restored, and about 80% of 2,700 km of needed water supply and sewage pipelines were laid. Furthermore, the livelihoods of 200,000 families were restored, to name just a few accomplishments.

Ensuring People's Participation and Transparency

A key lesson learned following the Kutch earthquake was that people had to be involved in the reconstruction and rehabilitation process. The entire process had to be people-centered and participatory. To create awareness of the forthcoming process and to obtain acceptance and cooperation, policies and actions had to be as comprehensible and transparent as possible. In addition, an extensive system of internal and external audits allowed for reviewing and, where necessary, revising procedures or decisions taken.

Formulating policies

A state-level advisory committee comprising representatives of the government, academic or management institutions, NGOs, and industries was formed to assist and advise in policy formulation. An operations manual for project implementation was prepared in consultation with funding agencies, clearly spelling out powers and responsibilities. The housing reconstruction program was designed in an owner-driven way to ensure homeowners' participation. Finally, a program of public-private partnership was set up to secure public participation by further involving concerned NGOs, and to enhance transparency.

Creating awareness of policies

To create awareness not only of the project as a whole but also of ongoing processes and applicable procedures, the state government issued advertisements in the relevant newspapers at regular intervals on the individual rehabilitation packages. Government resolutions were translated into the Gujarati language and made available to the public and to NGOs. They were also published on the website of the Gujarat State Disaster Management Authority (GSDMA), www.gsdma.org, which is still used and updated regularly. Furthermore, a booklet containing a list of frequently asked questions and corresponding answers about the

available assistance and the disbursement procedure was prepared and distributed to the public and NGOs. Finally, video shows were held in two phases in affected villages to inform people about the assistance packages and to educate them about earthquake-resistant construction methods.

The Gujarat State Legal Aid Services conducted legal literacy camps in 1,800 villages to educate people about their eligibility for assistance, legal rights, and mechanisms for redress of grievances. Information kiosks were also installed in various places to provide information about assistance schemes and beneficiaries, as well as about financial resources available and disbursed.

NGOs also contributed to the public awareness and education campaign, for instance through a network of public information offices named "SETU" providing guidance on policies and acting as an interface between the affected people and the administration.

Assessing damage

Damage assessment was another area in which public participation was crucial in providing equal treatment to the affected population and ensuring that aid was disbursed in a fair, effective, and appropriate manner. Each damage assessment team consisted of an engineer, a revenue department official, and a local schoolteacher or member of a local NGO. Each evaluation was subject to objective criteria and followed clear and predefined guidelines for damage assessment. To avoid inconsistency, damaged houses were assessed and photographed and this information was archived. A system for reviewing decisions on rebuilding damaged structures was put in place; despite the above-mentioned precautions, such measures became necessary in quite a few cases in which a lack of uniformity in damage assessments was detected.

Implementing the project

In addition to public participation in damage assessment and awareness raising about the rights of affected people, the government of Gujarat further sought to integrate local people into a number of other crucial areas of concern. Decisions on relocation, for instance, if applicable, were taken by local self-government institutions at village level. Debris removal was conducted by a village-level committee, though problems arose in a few cases. Village civil works committees accomplished the repair of classrooms. Furthermore, town planning schemes were prepared

in consultation with the affected people; development plans, especially for the four worst-affected towns, were prepared in consultation with all stakeholders.

Moreover, housing assistance was linked to physical progress in reconstruction and was offered and released in installments. Those installments were released only upon the issuing of a quality certification by government engineers and were carried out by direct payment—in most cases through bank accounts—to the homeowners. At the same time, third-party quality audits of all the houses being reconstructed were conducted by independent agencies not involved in the rehabilitation and reconstruction program.

Monitoring

The implementation of the program was monitored by a state-level advisory committee consisting of eminent public persons, NGO representatives, and other experts. In addition, a central implementation review group assessed and monitored implementation. Further periodic review was conducted by institutions like the Asian Development Bank (ADB) and the World Bank, as well as state-level review groups. GSDMA submitted monthly, quarterly, and annual reports to all concerned.

National commissions for minorities, socially weaker groups of society, and women were also involved in the implementation review. Social impact assessment studies were conducted to provide for real-time feedback by the affected people. Benefit monitoring and evaluation was put in place to ascertain the delivery of benefits, especially to the socially and economically weaker groups of society, women, and other vulnerable groups.

Obtaining redress of grievances

As for redress of grievances, the reconstruction and rehabilitation program foresaw two types of committees, one at village and the other at district level. The village-level committee included a member each from the socially weaker groups of society, women's organizations, and the minority community. The district-level committee comprised five NGO representatives, a social welfare officer, the president of the local self-government, and all elected members of the legislative assembly and parliament. The district judge acted as ombudsman to inquire into any complaint and direct the district administration to follow up if needed.

Avoiding Corruption in Humanitarian Relief and Reconstruction

Full transparency of the entire process is crucial to ensure the project's effective operation and people's participation. It is also a fundamental precondition for meeting another principal objective of the reconstruction system, namely, to minimize corruption and damage deriving from it.

In this context, the reconstruction and rehabilitation project paid special attention to the procurement of goods and services, which is highly vulnerable to corruption, even under normal circumstances. Other decisive factors to bridle corruption were the maintenance of financial discipline and the implementation of distinct disciplinary proceedings and anti-corruption measures.

Public procurement

The procurement system provided for proper delegation of powers. Procurement approval was located at different levels, as follows:

Rs10 million:	Secretary of the Department
Rs20 million:	Secretary of the Department and Chief Executive Officer, GSDMA
Rs20–50 million:	3-Member Committee composed of the Secretary of the Department; the Chief Executive Officer, GSDMA; and the Secretary of the Finance Department
Over Rs50 million:	Governing Body

The standard procurement procedures of ADB and the World Bank were applied to all procurement related to the Kutch earthquake reconstruction. To gain broad awareness and attention to open tenders and the tendering process, notices for pending procurement of goods and services were advertised on the GSDMA website and in leading newspapers in regional and national languages. To prevent corruption in public procurement, the concerned authorities attempted, where feasible, to initiate a system of e-tendering. Expert committees were specifically established to conduct technical evaluations of received tenders, and before projects could be implemented, administrative approval had to be sought from the GSDMA.

Financial discipline

To oversee financial discipline during the reconstruction, an independent professional accounting system was set up. It consisted of day-to-day internal as well as statutory and Comptroller and Auditor General of India audit. Annual financial statements were subject to statutory audit certificates provided twice a year or yearly.

Disciplinary proceedings and anti-corruption measures

Various steps were taken to ensure disciplinary proceedings and provide for appropriate anti-corruption measures. A special system was established for reporting suspicions of corruption. Verification and departmental proceedings were set up. On the law enforcement side, a number of arrests and legal prosecutions were initiated in some cases.

Summary

Following a massive earthquake causing widespread damage and destruction, the government of Gujarat State succeeded in installing a comprehensive reconstruction and rehabilitation program involving NGOs, industries, and other institutions. The program consisted of various features such as an owner-driven approach to housing reconstruction; participatory decision making at various levels; the involvement of affected people, people's elected representatives, and civil society; and the decentralization of decision making. Autonomy and delegation of powers, independent audit and review systems, social impact assessment, and benefit monitoring studies played a decisive role as well.

The government of Gujarat specially designed the project, taking into account the importance of the transparency of policies, proceedings, and actions, and of people's participation and integration, to ensure widespread and multi-stakeholder cooperation in avoiding corruption.

Note:

This contribution is a slightly modified version of a paper published in *Curbing Corruption in Tsunami Relief Operations*. Proceedings of the Jakarta Expert Meeting organized by the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific and Transparency International (Jakarta, Indonesia, 7–8 April 2005), Manila, Philippines: ADB, OECD, TI. 2005.

Sri Lanka's experience in preventing corruption in disaster relief operations

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There are a number of overall concerns related to humanitarian relief operations that arise after a major disaster. Saving lives and the race against time become the overriding priorities, whereas developing and following a systematic approach become a secondary priority. There may be a sudden inflow of substantial amounts of aid; however, the lack of a coordinated approach to manage this aid becomes problematic. In the wake of a major catastrophe, transparency and accountability are often seen to be both less important and more difficult to achieve. There is a heightened need for flexibility in the rules that govern aid delivery in order to provide effective and quick relief. Finally, unexpected reconstruction often creates substantial economic opportunities.

Risks and Considerations in the Delivery of Relief Aid and Reconstruction

In the period immediately following an emergency, there are certain risks for corruption during the phase of providing relief aid. The procurement of goods and services for relief operations is performed through emergency contracting processes that accelerate contracting mechanisms (direct contracting). There is often no record keeping of these contracts that allows for ex-post transparency, accountability, or monitoring. The distribution of goods and services is prone to fall prey to corruption networks and bureaucratic obstacles that impede access to those in need, limit the volume of goods that are actually distributed, and lower the quality of the delivered goods. It is difficult to track the inflow of funds and therefore difficult to assess whether they reach their intended destination. Moreover, private funds are less easily identified and tracked than public and international funds; hence, expenditures and disbursements are even more difficult to monitor. However, the overriding need to save lives makes the timeliness and efficacy of the relief response a priority. Measures that introduce onerous bureaucratic requirements and unnecessary delays should be avoided. Corruption prevention efforts should be focused on the subsequent reconstruction stage.

Reconstruction efforts are often concentrated on rebuilding (or building) housing facilities and infrastructure and entail many contracting processes. Obscure and closed contracting processes create waste, adversely affect quality, and create an unfair distribution of wealth among those individuals and companies that profit from the disaster. Perversely, inappropriate contracting processes can also perpetuate these problems in the long term. Damage and needs assessments must be conducted carefully, with the participation of stakeholders, in particular those affected by the catastrophe. Otherwise, waste and extravagance are unavoidable. Waste is even more prevalent when programs are not country-driven. Unplanned development projects and "expensive expatriates" recruited for simple projects add to the burden of a country. This commonly occurs when donors impose unfair conditions without identifying country specifics.

Overview of the Sri Lankan Post-Tsunami Scenario

As in other affected countries, the tsunami was an entirely unforeseen catastrophe requiring the immediate attention of a large number of international and local actors with no precedent to fall back on for guidance. The Government was slow to respond at first, but ultimately managed to secure international support. The people themselves, civil society and religious groups, led the initial phases of relief, without allowing further death or disaster, such as disease outbreaks or other public health catastrophes.

On 17 January 2005, a Task Force for Rebuilding the Nation (TAFREN) was entrusted with ensuring the transparent and efficient use of resources for tsunami relief, recovery, and reconstruction. Because it comprised renowned business leaders who did not, however, have expert knowledge of disaster relief operations, there were allegations that they had been selected primarily on the basis of political connections and that some willing experts had been refused access to the "the nation-building process". TAFREN has been entrusted to coordinate with and assist government agencies and institutions in their efforts at reconstruction and rehabilitation in the tsunami-affected areas.

At the beginning of the process, all decisions and implementation plans were carried out at central government level. Local authorities and other peripheral institutions, governmental and non-governmental, were involved only to a limited extent, resulting in minimal participation from the different layers of the governance structure and the public themselves. It took some time for the public authorities to recognize the civil society as a partner in the post-tsunami rebuilding process.

Donor aid overwhelmed the country's financial and institutional structures, leading to major questions in the minds of the public. A key concern was whether the accountability framework was strong enough to ensure corruption-free use of aid. The need for intensive public participation and debate to ensure transparency in the use of post-tsunami reconstruction funds came to the forefront of the public debate, mainly because of the exclusion of the affected people at all levels of the post-tsunami recovery process. The absence of a freedom-of-information law, weak parliamentary oversight, and an attenuated anti-corruption body left Sri Lanka in particularly poor shape to monitor the funds correctly and contributed to serious questions about the capacity of the country to handle the aid.

The informal economies (i.e., the fishing community and informal communities), which did not have records of wealth or income, were among the most affected by the disaster. The risk of grossly inaccurate damage and needs assessments could not be ruled out. In this context, a multitude of allegations concerning unethical behavior or misappropriation of relief funds emerged. Rules prohibiting the construction of houses within a buffer zone (100 meters west and south and 200 meters north and east of the affected areas) were introduced, rendering landless the people in these areas whose houses were affected. It was felt that the views of the affected people and other stakeholders had not been properly sought in formulating or introducing these rules and, therefore, that such rules had been decided on arbitrarily, rather than on the basis of a careful assessment of the situation.

The North and East conflict made the situation worse. The Liberation Tigers of Tamil Eelam (LTTE) and the Government took a long time to agree on a way to ensure relief and reconstruction aid to the affected people in LTTE-controlled areas. Mishandling of the negotiations led to further conflict and political turmoil. There is a common view that neither the Government nor the LTTE should be permitted to waste or misappropriate foreign aid, whether in Government-controlled or LTTE-controlled areas.

In a welcome move, the Tsunami (Special Provisions) Act, No. 16 of 2005, came into operation on 13 June 2005, facilitating the handling of legal issues such as issuance of birth certificates, protection of children, and protection of ownership of property affected by the tsunami. Parliament also introduced Sri Lanka Disaster Management Act, No. 13 of 2005, which, among others, established the National Council for Disaster Management to introduce a national policy and program on disaster management and to monitor its implementation in future disasters.

Way Forward

Ensure country ownership and public participation

Sri Lanka no doubt has shown its desire to maintain country ownership in designing and implementing the projects that the country has identified on its own. The principle of public participation is relatively new to Sri Lanka, and needs to be introduced and developed from its very foundations. This will require leaving behind the traditional political belief that, between elections, the public has no role to play in policy decisions. In relation to public institutions, local authorities should immediately be included in the reconstruction process. As concerns other entities, the affected people themselves, as well as civil society organizations, need to be consulted at every stage of reconstruction. Months after the disaster, there has been definite progress in recognizing civil society participation in relief and reconstruction operations, and several local and international NGOs are working closely with many public institutions. However policymakers' attitude regarding the role of the civil society still needs to change, especially in the present environment, where some politicians reject NGOs for short-term political gain.

Strengthen the accountability structure, especially the anti-corruption mechanism

The accountability structure in Sri Lanka mainly involves three institutions:

- The anti-corruption institution (CIABOC),
- The Auditor General's Department, and
- Parliamentary supervision.

The commissioners of CIABOC and the Auditor General (the two organizations on which international support has been focused), in spite of their inherent institutional deficiencies, have shown their commitment to addressing post-tsunami corruption issues specifically. For example, the Auditor General has established a special unit on post-tsunami reconstruction issues. A special Parliamentary Select Committee for Natural Disasters was also formed, although its mandate is restricted to investigating the island's lack of preparedness and recommending steps to minimize damage in the event of a recurrence. Unfortunately, the two financial committees, the Committee on Public Enterprises (COPE) and

the Committee on Public Accounts (COPA), continue to work behind closed doors, devoid of public support and participation. To strengthen the accountability structure further, it is also necessary for the Parliament or its committees, such as the COPE or the COPA, to authorize the Auditor General to conduct value-for-money audits.

Ensure free flow of information

A draft Freedom of Information Law has existed for the last two years but has yet to be passed. But despite the lack of such a law, an administrative practice could be developed by public institutions to release critical data to the public (e.g., financial information, project expenditures, implementation plans, project proposals, details on relief packages together with criteria of distribution, administrative rules governing relief operations and land acquisition). A system where information flows to the public quickly must be developed.

Cultivate strong political will

The fight against corruption in post-tsunami reconstruction cannot be won without determined political will. Strong and committed leadership is needed to bolster and unite the efforts of Sri Lanka's civil society and its government to rebuild and at the same time strengthen mechanisms to enhance transparency and fight corruption, throughout the recovery period and beyond.

Annex: A Briefing Note from Transparency International Sri Lanka

Preventing Corruption in Post-Tsunami Relief and Reconstruction Operations: Lessons and Implications for Sri Lanka

Sri Lanka is still reeling from the trail of devastation unleashed by the tsunami of 26 December 2004. The damage caused is of unprecedented scale and magnitude: large numbers of people have been killed, those managing to survive are displaced and severely traumatized; livelihoods are wrecked beyond recognition; social networks have been dismantled and economic infrastructure has been crippled. Thanks to spontaneous and generous support and solidarity expressed by the global community, normalcy is slowly returning to the ravaged social and economic landscapes. But as we gear up for the painful but necessary step of reconstruction and rebuilding, the spectre of corruption has started to

loom large and ominous on the horizon. Not that this apparition has gone unnoticed. International aid agencies, private donors, and civil society organizations have begun to alert governments on the need to strengthen anti-corruption mechanisms and approaches.

It was against this backdrop that an expert meeting on Corruption Prevention in Tsunami Relief was held during April 7–8, in Jakarta, Indonesia. The meeting, organized jointly by the Asian Development Bank, Organization for Economic Co-operation and Development Anti-Corruption Initiative for Asia-Pacific, and Transparency International, was hosted by the Government of Indonesia. Representatives of the Government of Sri Lanka, several Sri Lankan civil society organizations, and members of Transparency International Sri Lanka participated at this meeting. The meeting concluded with participants recommending a set of principles to prevent corruption in delivering relief and reconstruction assistance to tsunami-afflicted areas.

Key recommendations identified include:

- *All stakeholders* involved in the tsunami assistance must ensure transparency and accountability in their operations, in particular in the management of the financial flows. For this, up-to-date information must be actively made available to any interested party. Further, they should coordinate their respective operations and provide for independent oversight of project implementation.
- As the *affected people's* ownership of the relief and reconstruction process is essential, operations should build on their leadership, participation, and commitment to ensuring the best use of assistance. Relief operations must therefore contribute to the strengthening of local institutions, transfer of technical skills, and should promote policies aimed at preventing corruption.
- *Donors* should coordinate with governments and among themselves to avoid duplication of assistance schemes. They should also establish uniform procurement rules, maintain and publish clear books and records, and provide assurance of full internal and external controls. They must further make a careful assessment of the local conditions so that allocated resources match needs.
- *Governments* must involve affected people and civil society in decision making, ensure information dissemination, and provide easily accessible corruption reporting channels combined with effective mechanisms to encourage and protect whistle-blowers.

- *Non-governmental organizations* play an important role in monitoring the relief and reconstruction process and in reporting any suspicion of corruption to authorities. They need to closely coordinate their activities with governments, donors and among themselves, while ensuring the maximum involvement of all groups of affected people in priority setting and decision making.

Conclusion

How do these ideas resonate and apply in the Sri Lankan context? TISL strongly believes that certain enabling factors need to be promoted to make sustained impact on the ground.

- If there is one shining example of a positive beacon in the cross-cutting experiences of effective aid relief from different parts of the world, it is "political will". Clear, committed, and cohesive policy statements and operational directions from the highest levels of the polity send a powerful message of uncompromising political commitment to walk the talk. TISL strongly feels that a visible political will to fight corruption in post-tsunami reconstruction is conspicuous by its absence in Sri Lanka. The need of the hour is a strong and committed leadership to address the phenomenon of corruption that lurks ominously in the shadow of the various aid pledges that have been made in the wake of the tsunami disaster. A good contrast is Indonesia, where the entire polity, cutting across all sectarian divides, has come out in one strong voice to address the emergent concerns.
- Strengthening of local institutions and networks is a must to ensure community ownership and participation in the relief and reconstruction activities. A point to emphasize is the need to identify and promote local expertise; there is a clear danger of applying universal templates to culture-specific contexts and creating solutions that are impractical and, worse, exaggerate existing problems.
- Empowering citizens and affected communities by enacting new legal measures like right-to-information, disclosure laws, and whistle-blower protection acts will go a long way in ensuring effective public participation and collaboration in rolling back corrupt practices. TISL strongly calls for the urgent enactment of disclosure norms for all relief and reconstruction activities.
- There is a growing danger that all capacity-building measures related to accountability and transparency will be limited to the relief and reconstruction projects (mostly because of donor compulsions) and

will leave the larger domain of public institutions untouched. There is a strong need to strengthen critical institutions like the office of the Auditor General, independent commissions like CIABOC (Sri Lanka's Commission to Investigate Allegations of Bribery or Corruption) and parliamentary oversight committees. If these wider measures are not taken, there is a strong chance that particular projects will exist as "islands of integrity" in "oceans of corruption".

- The undercurrents of conflict embedded into the social and political fabrics need to be kept in perspective while designing participatory structures for the implementation and monitoring of relief and reconstruction works. The idea of broad-based consortiums should be promoted to make public participation more inclusive and representative.

Transparency International Sri Lanka strongly believes that these ideas, concerns, and suggestions should reverberate within all institutional spaces in the governance arena. The need of the hour is for a constructive inclusive debate and a proactive posture to reflect and review current practices and policies. TISL calls on all members of Sri Lankan society to come together in this process of renovating the governance architecture and collectively and collaboratively work to make Sri Lanka an island of integrity in the true sense.

Chapter 6
Conflict of interest in the public sector

Rapid changes in the public sector environment of Asian and Pacific countries, such as the emergence of new models of cooperation with the business sector, public-private partnerships, and increased mobility of personnel between the two sectors, have multiplied grey zones where public officials' private interests can unduly influence the way they carry out their official duties. If not adequately identified and managed, conflict-of-interest situations can lead to corruption. A growing number of countries have come to recognize the need to develop or substantially modernize their regulations, institutions, and practices, particularly in areas that present specific risks for corruption. Appropriate policies regulating conflict-of-interest situations arising in post–public employment situations are attracting growing attention in some of the Initiative's member countries.

In response to these concerns about conflict-of-interest situations and the resulting risk of corruption, the OECD has developed the OECD Guidelines for Managing Conflict of Interest in the Public Service. These Guidelines constitute a set of core principles, policy frameworks, institutional strategies, and practical tools from which countries may benefit when establishing, amending, or reviewing their conflict-of -interest policies. As this chapter shows, some Asian and Pacific countries have also begun work to develop frameworks for identifying and managing conflict-of-interest situations.

Pairote Pathranarakul of the National Institute of Development Administration of Thailand shares his country's experience with conflict-of-interest situations at both operational and political levels. He reports, many conflict-of-interest situations arise from informal relationships, notably involving relationships between officials' relatives or between

patron-clients. Thailand has made various efforts to build constitutional and legal checks against the incidence of conflict of interest. Thailand's new constitution contains specific provisions on conflict of interest for government officials and parliamentarians. Public sector reform, anti-corruption measures, and initiatives of civil society organizations have helped build awareness and have stimulated capacity building and reform. However, these efforts take place in a particularly challenging environment. Public awareness of conflict of interest is considerably low; corruption and rent seeking by public officials even appear to be socially acceptable to some; and mechanisms designed to prevent such conflicts are undermined by the domination of high-ranking officials or politicians.

Today, preventing and managing conflict of interest have become important tasks in anti-corruption in the People's Republic of China, as reported by Cheng Wenhao from the anti-corruption and governance research center of Quinghua University. These tasks have been undertaken in an ever-changing environment in the 20 years since China opened up to the outside world. Public officials running businesses to supplement their revenue constitute a good example of an emerging phenomenon with important potential conflicts of interest. This trend triggered an initial separation of government functions and business in the mid-'80s that has steadily evolved over the last 20 years, becoming more specific and covering a wider scope. Later regulations extended these restrictions to relatives and close friends of public servants, and a series of regulations intensified the control of enterprises and businesses. Today, the People's Republic of China's conflict-of-interest policies address simultaneously public agencies, public servants, and their relatives and close friends. To keep up with changes at the national and international levels, the People's Republic of China will continue to develop its framework for managing conflict of interest, building on foreign countries' experience and assistance.

Hong Kong, China has developed a host of mechanisms to manage conflict-of-interest situations in the public sector. Thomas Chan, from Hong Kong, China's Independent Commission against Corruption (ICAC), describes a robust system whereby public officials complete declarations of interest, notably financial interests, to ensure openness and accountability. Public access to these declarations, a code of conduct setting out ethical practices and expectations, guidelines and training, and disciplinary and criminal sanctions for non-compliance are also among the measures taken to address conflict of interest. As in other countries, these instruments are constantly challenged by the steady evolution of the environment in which public officials operate and the public's expectations about ethical behavior. Employment in the private sector

that follows an assignment in the public service is a prominent example of a challenging emerging issue, and Hong Kong, China, is one of the first to address it by requiring prior approval or, for senior officials, minimum "sanitization" periods. ICAC plays a prominent role in the enforcement of ethical conduct, in awareness raising, and in the development of transparent procedures that prevent opportunities for corruption.

Conflict of interest: An ethical issue in public and private management

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Introduction

Conflict of interest is a complex issue that reflects the structural problems of any civilized society. It relates to several facets including the socio-cultural, political, and administrative. If government officials lack the ethical foundation to protect values and cultural systems, then they lack the consciousness to protect the public interest. Abuse of power by interfering in development policies, projects, and economic activities is common. The abuse of political and administrative power for self-interest, whether by an individual, group, or party, has damaged public and private sector organizations, the general public, and society as a whole. It also destroys future opportunities for sustaining long-term socio-economic development.

Thus, it is high time to raise public awareness among the agencies concerned, both local and international, and to seek joint efforts to prevent and protect against the negative effects arising from conflict of interest. It is indeed an urgent task of policymakers, government leaders, advocates, and all partners to rethink and renew our consciousness with new values and a new cultural framework. Enhancing the governance system of political and administrative organizations and promoting ethical standards among key actors to ensure transparency and accountability for the sake of public interest are top priorities. Public forums with this agenda, at the national, regional, and global level, are necessary for a better understanding of conflict of interest. Policy measures on values and cultural reform, and specific laws, should be seriously addressed through close collaboration among the public, private, and civil society sectors.

"Conflict of Interest" Defined

Michael McDonald defines the term "conflict of interest" as "a situation in which a person, such as a public official, an employee, or a

professional, has a private or personal interest sufficient to appear to influence the objective exercise of his or her official duties."[1]

According to McDonald, conflict of interest has three key elements: (1) a private or personal interest, often a financial interest; (2) official duty, or the duty one has because of one's office or official capacity; and (3) interference with objective professional judgment. McDonald emphasizes that conflict of interest is an ethical issue. Whenever the official lacks ethical standards there is potential risk of conflict of interest.

Conflict-of-interest typologies are the work of Canadian political scientists Ken Kernaghan and John Langford. In their book *The Responsible Public Servant* they list seven categories:

- **Self-dealing.** One instance is using an official position to secure a contract for one's own consulting company. Another is using a government position to get a summer job for one's daughter.
- **Accepting benefits.** Bribery is one example; substantial (non-token) gifts are another, as in the case of a purchasing agent for a department accepting a case of liquor from a major supplier.
- **Influence peddling.** The professional solicits benefits in exchange for using his or her influence to unfairly advance the interest of a particular party.
- **Using the employer's property for private advantage.** This could be as blatant as stealing office supplies for home use. Or it might be as a bit more subtle, say, using software licensed to the employer for one's private work.
- **Using confidential information.** Learning, through work for a private client, that the latter is planning to buy land in one's region, one quickly buys land in the region, perhaps in the name of one's spouse.
- **Outside employment or moonlighting.** An example would be setting up a business on the side that is in direct competition with one's employer. Another case would be taking on so many outside clients that one doesn't have the time or energy to devote to one's regular employer. Or, in combination with influence peddling, a professional employed in the public service might sell private consulting services to an individual, assuring the latter of benefits from government: "If you use my company, you will surely pass the environmental review."
- **Post-employment.** A person resigns from public or private employment and goes into business in the same field. For example,

a former public servant sets up a practice lobbying the department in which he was employed.

Five main factors can be considered as contributing to conflict of interest: the individual factor, which comprises personal values, beliefs, attitudes, and behavior; the economic factor, which involves the official's income and indebtedness; the social factor, such as societal values, moral and ethical framework, position in society, patronage system and nepotism, and role models among top leaders and supervisors; the legal factor, comprising rules and procedures (opportunities to take advantage of conflicts of interest would flourish in an environment with outdated laws with legal loopholes or the absence of the rule of law and an auditing system); and the environmental factor, which includes the organizational culture, and expectations and traditional practices among government officials.

Ethics, Morality, and Conflict of Interest

Bandfield, in *The Moral Basis of a Backward Society,*[2] after studying cultural conditions and moral standards, concluded that an individual may not necessarily succumb to temptation if the household or institution to which he or she belongs upholds the values of public-spiritedness or enlightened self-interest. Bandfield also pointed out that amoral society members tend to neglect public interest and are always driven by self-interest.

In *Moral Hazards of an Executive*,[3] Norris addresses the ethics and morality of executives, emphasizing that integrity and loyalty are prerequisites for organizational achievement. A key issue is whether the executive decides for the sake of the general public or of the inner group. The principles of moral democracy dictate that executives must uphold public values in their decisions and actions. In practice, however, the principle of "the greatest good for the greatest number" does not always work to the satisfaction of everyone or even the majority. Executives are, moreover, often faced with ethical issues and conflicting circumstances. But they must at least be aware of their responsibility to acts for the common good.

Conflict of interest is one type of corruption. Defined as the abuse of public office for private gain, corruption generates problems of social equity.[4]

Following Heidenheimer (1978), Thai political scientist Somporn Saengchai[5] classified corruption into three main types:

- **White corruption.** The general public sees this type of corruption as common and allows it to happen because it has no serious effect on society.
- **Grey corruption.** The general public is still unclear about the process and impact of this type of corruption. Academics think it is a serious issue but the general public seems to be reluctant to think so.
- **Black corruption.** Society deems this to be grave misconduct that must be punished according to the law.

Conflict of interest lies in the grey area of corruption.[6] It relates to ethical standards and social values. Each society judges human actions with different value systems. Some people may not perceive conflict of interest as misconduct, but civilized society cannot bear violations of moral and ethical behavior.

Conflict of Interest: Thailand's Experience

Understanding conflict of interest

Academics and experts perceive conflict of interest as a conflict between private and public interest. It is equivalent to policy corruption or overlap between private and public benefits. It is serious if it destroys the people's welfare and national benefits. Some view conflict of interest as a Western value; however, they accept it as a standard practice among international communities.

Conflict of interest can be considered in the narrow or the broad sense. Taken in the narrow sense, the problem is seen to be susceptible to mitigation through new, stricter laws or new institutions to monitor and deal with it. In a broader sense, conflict of interest is seen as policy corruption where decision making, particularly by industry or business entities, always involves conflict between personal and group interests. The policy corruption often surfaces in development programs and projects, especially procurement in megaprojects.

It is agreed that conflict of interest leads to corruption, and that the greater the interference from the interest group, the more severe the case is. Most cases are directly or indirectly linked with political power, both formal and informal. In Thai society, the abuse of power is connected

with legal procedures and informal relationships. Conflict of interest thus involves kinships.

Academics and other experts view conflict of interest at two levels: the policy level, involving the state power of policymakers; and the operational level, where government officials seek private benefits from official duties. Conflict of interest depends on the degree of political development and political accountability. Thai politics is not progressive enough to address the public interest in the true sense. Some agencies may use power not for the sake of the people but to expand and protect their own interests. Some politicians buy votes to gain powerful positions and use those positions to advance their interests.

Conflict of interest at the operational level depends on opportunity and position, and opportunities are rife in procurement, where, despite advances in systems, interest-seeking behavior often prevails. The conflict arises when the various roles adopted by the same person are thinly separated and official duties are affected. For instance, a highway construction regulator might work after hours as a consultant to one of the construction companies supervised.

In summary, conflict of interest arises because of various factors:

- Centralized state power and money politics, leading to actions to maintain the status quo;
- Rules and regulations inadequate for coping with conflicts of interest;
- Not enough policy measures to protect the public interest—hence, the potential for human rights violations;
- Political intervention in policy formulation and implementation; and
- Weak ethical standards of society.

Thai society does not fully pay attention to the problem. The general public perceives conflict of interest as not much related to their national values. Some people think it is common for government officials to cheat without any social blame attached. That is why conflict of interest persists. It is unfortunate that those involved in misconduct related to conflict of interest deny any wrongdoing. Instead, they say that it is the duty of the public to prove abuse of power. This is because, under Thai social norms, people generally pay attention to formal laws, not to conflict-of-interest principles and ethical standards.

Public awareness of conflict of interest is quite low since the cultural and values systems are not strong. The commitment of policymakers and

government officials to the public interest, which should be a matter of social awareness and core belief, is illusory. Conflict of interest is one of the most complex issues in society, and there is no easy access to information on conflict-of-interest cases. Studies are relatively rare. Most of the available data come from mass media. The general public has no clear understanding of the pattern and forms of conflict of interest. People do not clearly perceive such cases as corruption, or else they think of conflict-of-interest violations as legalized corruption.

It is agreed that conflict of interest is a critical problem in Thai society. It arises when there are close ties with state power. Through patronage, an association with power through informal relationships can protect patron-client relationships and shared benefits among cronies, cliques, groups, and parties. The point is the fuzzy line between public and private interest. Thus, under the patronage system, some politicians and government officials misuse their official powers to seek private benefits from society.

Government officials among whom there are potential risks of conflict of interest can be categorized into these five occupational groups:

- Officials of provincial, municipal, or district administration;
- Officials who rely on discretion in auditing (like accountants) and tax collection (such as revenue, customs, and excise tax officers);
- Independent professionals such as physicians, pharmacists, engineers, and architects;
- Academics and professionals such as teachers, instructors, researchers, analysts, and consultants; and
- Officials who work in justice affairs, including the police, correction officers, attorneys, and judges.

Common types of conflict of interest among government officials are:

- Self-dealing;
- Acceptance of benefits such as substantial gifts or valuable assets in exchange for advancement in official posts and, conversely, use of money or valuable gifts to buy a higher position or promotion;
- Influence peddling;
- Use of public property such as a public car for private business;
- Use of confidential information about development policies and projects to advance private interests; and

- Post-retirement employment of high-ranking officials; and
- Abuse of power in favour of relatives and clients in bidding contracts in government agencies.

Current Efforts to Manage Conflict of Interest in Thai Society

Various efforts are being made in Thailand to deal with corruption and conflict of interest.

First, Thailand's new constitution[7] clearly prohibits conflict-of-interest violations. Specific provisions require government officials to be politically impartial (Section 70, Chapter IV) and prohibit members of the House of Representatives from placing themselves in situations where conflicts of interest could arise.

Section 110 (Chapter VI) clearly states that a member of the House of Representatives shall not:

- Hold any position or have any duty in any state agency or state enterprise, or hold the position of member of a local assembly, local administrator, or local government official or other political official other than minister;
- Receive any concession from the State, a state agency, or state enterprise, or become a party to a contract of the nature of an economic monopoly with the State, a state agency, or state enterprise, or become a partner or shareholder in a partnership or company receiving such concession, or become a party to a contract of that nature; or
- Receive any special money or benefit from any state agency or state enterprise apart from that given by a state agency or state enterprise to other persons in the ordinary course of business.

Section 111 states: "A member of the House of Representatives shall not, through the status or position of member of the House of Representatives, interfere or intervene in the recruitment, appointment, reshuffle, transfer, promotion and not being a political official, an official or employee of a State agency, State enterprise or local government organization, or cause such persons to be removed from office." By virtue of section 128, this provision also applies to senators.

Second, public sector reform has pushed public agencies to act as catalysts for change through capacity building with strategies for structural, legal, and values and cultural reform, among others.

Third, anti-corruption measures have been promoted through workshops and seminars, both at the national and organizational level, to improve understanding of corruption problems among stakeholders.

Fourth, civic groups in partnership with voluntary associations, non-governmental organizations (NGOs), and civil society organizations (CSOs), are educating the general public and taking the lead in improving governance, both political and administrative. In addition, independent public organizations and mass media groups actively monitor the transparency and accountability of policymakers and government officials.

Fifth, at the initiative of the Foundation of a Clean and Transparent Thailand (FaCT), an awareness-raising program of good governance has been launched. The program is aimed at raising consciousness of accountability and conflict of interest among Thai people from all walks of life, including politicians, government officials, businessmen, and the public at large. To achieve this, program leaders are making efforts to raise ethical and moral standards, and campaigning for public participation in protecting the public interest and refraining from corruption of all types. The program is expected to inspire cooperation among anti-corruption movements in Thai society.

Conclusion and Recommendations

In conclusion, conflict of interest is a form of corruption since it is the use of official authority for personal gain. Conflict of interest violates the country's laws and code of public ethical conduct. Where personal advantage is involved, conflict of interest leads to manipulation of authority to influence decisions for private interest. This unethical practice has negative effects on public services since it compromises independent decision making, neutrality, and moral standards. It hurts the interests of the agency, the organization, the institute, and society. The loss may be in the form of financial assets, quality of services, and future opportunities. Conflict of interest also destroys equity and other values and norms of a given society.

Conflict of interest is a key ethical issue in public and private management and has significant association with corruption. It relates to conflicts between authorities, roles, and values in decision making. Conflict of interest can occur at two levels: policy and operational. At the policy level, policymakers intervene in decisions for their own benefit, direct or indirect. At the operational level, officials use official capacities to advance their personal interests.

Several factors determine opportunities for conflict of interest, including, among others, private interest, weak ethical standards, discretion in the use of power, and the lack of clear guidelines for official practices. Inefficient law enforcement and the lack of effective measures to protect the common benefits of the society are also crucial factors. Besides, conflict of interest is correlated with the Thai political structure, where the patronage system allows businessmen to be involved in politics and to siphon benefits from society.

Measures to improve the situation include strengthening ethical standards of behavior among government officials at the policy and operational level. Raising public awareness through socialization among new officials in both public and private organization is vital. The international community must make joint efforts to raise professional and ethical standard among policymakers and officials.

The following specific measures are proposed: encouraging organizational leaders of all types to act as catalysts for change or change leaders in enhancing professional ethics and integrity in public and private organizations; putting the conflict-of-interest issue on the national agenda and earnestly pushing implementation efforts together with people's organizations; and developing guidelines for managing conflict of interest in the public service, in both political and governmental organizations.

Notes:

This paper is based on the author's research paper Conflicts of Interest: Study on Public Sector Professional Groups (2004), a research project supported by the Ethics Promotion Center, Civil Service Commission of Thailand.

1 www.ethics.ubc.ca/people/mcdonald/conflict.htm

2 Bandfield, Edward C. 1967. *The Moral Basis of a Backward Society.* New York: the Free Press.

3 Norris, Louis William. 1989. Moral Hazards of an Executive. In *Ethics in Practice: Managing the Moral Corporation*. Edited by Kenneth R. Andrews. Boston, Massachusetts: Harvard Business School Press.

4 White, Thomas I. 1993. *Business Ethics: A Philosophical Reader.* New York: MacMillan Publishing Company.

5 Somporn Saengchai. 1985. Corruption: Theory and Reality. *Thai Political Science Journal* 11 (June–December).

6 Anechioco, Frank, and James B. Jacobs. 1996. *The Pursuit of Absolute Integrity.* Chicago: University of Chicago. Pages 45–62.

7 1997 Constitution of the Kingdom of Thailand.

Managing conflict of interest in the public sector: The approach of Hong Kong, China

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Introduction

We all manage conflict of interest in our routine daily life, e.g., we enjoy eating but want to remain slim. Usually we are able to manage our personal interest on our own, and people don't care how we do it.

It is, however, a completely different matter when it comes to our public life. People expect and demand that public officials manage their interests and discharge their duty in an open and impartial manner. They expect the official's private interest not to compromise the way he discharges his public duty. In other words, the public interest comes first. In fact, there are increasing public expectations that governments should ensure that public officials do not allow their private interests and affiliations to compromise official decision making.

It is therefore important, from government's point of view, and indeed from everyone's point of view, that conflict of interest should be managed properly. We have seen so many cases where conflict-of-interest scandals undermined the credibility of individuals, institutions, and governments. So many promising public service careers were destroyed because the conflict was overlooked, sometimes out of sheer ignorance or stupidity.

The Public Sector

In Hong Kong the public sector comprises the civil service and other principal officials appointed under the Basic Law. There are also the Legislative Council (which is the law-making body), and the District Councils (which represent the local communities). In addition, we have a string of advisory boards and committees that advise the Government in many areas of public administration.

Other public bodies in Hong Kong include statutory regulatory bodies (e.g., the Securities and Futures Commission) and other public-funded institutions (e.g., the universities).

Together I refer to them as the public sector in Hong Kong. I believe many countries have similar public sector institutions.

Managing Conflict of Interest

So, how do we deal with this important, topical, controversial, and sometimes difficult issue?

It is important that we define what constitutes conflict of interest. In Hong Kong, we have a simple definition. As spelt out in civil service regulations, conflict of interest arises "when the private interests of a public official compete or conflict with the interests of the government or the official's public duties". But what exactly constitutes "conflict" can sometimes be a matter of contention.

From the outset, we should recognize that conflict of interest is largely a "perception" issue. That is, it is not a matter of whether you think you have done the right thing. What matters is whether the public thinks you have done the right thing. When determining whether a conflict of interest has arisen, one test we can practically apply is whether you are prepared to discuss the situation openly—the so-called "sunshine test". In the last analysis, the onus is on you to prove that you have acted properly.

And perception is a living issue. That is, public perceptions change over time. A certain act that was acceptable 10 years ago may no longer be acceptable now. It therefore follows that the public official must always stay vigilant about current public perception and expectations, and appropriately adjust his or her way of dealing with possible conflict between public and private life.

Conflict of interest being a perception problem, openness and accountability is the obvious answer. A robust system of declaration of interest by public officials is the key to assuring the public that they have acted impartially and in the public interest. Such declarations should be documented and should cover:

- Declaration of financial interests. This should include investments in land and property, and shareholdings and directorships in companies. This is particularly important with public officers who have access to market-sensitive information, e.g., those who make fiscal policies and decisions, or are involved in the regulation of the financial markets.
- Declaration of conflict of interest as and when it arises, e.g., when an officer involved in the award of a contract finds a brother is one of the tenderers, or when a land lease is being granted to a social club of which the approving officer is a member.

We also need a system to appropriately handle the declarations:

- We should consider whether the public should have access to the declarations. Obviously one consideration would be how influential the public official is and how important is the public duty being performed. For senior civil servants, elected officials, and politicians, the public generally expects their financial interests to be made transparent.
- Managers and supervisors should carefully vet the declarations and take appropriate management actions. Where necessary, the public officer should be given appropriate advice, including instructions to divest interest or remove himself or herself from the decision-making process.

Within the civil service, the following "tools" are useful in managing conflict of interest:

- A code of conduct setting out government's commitment to ethical practices and the management's expectations of ethical behavior of its staff.
- Clear guidelines with examples of what constitute conflict of interest, and the procedures governing the declarations.
- Training and education to ensure the officers understand the issues and follow the procedures.
- The designation of an ethics or compliance officer to ensure that staff follow the rules, and also to discuss grey areas and dilemma situations with staff.
- Effective disciplinary/criminal sanctions for non-compliance.

Public interest versus privacy: The proportionality test

Some may argue, with some justification, that the requirement to declare one's personal interests is inconsistent with human rights, i.e., the right to privacy. However, such a right has to be balanced against the public's right to know, since public duty is involved. Lawyers have advised us that such requirements are consistent with the Bill of Rights, provided that the extent of the declaration is commensurate with the need, and that it serves a legitimate purpose. This is commonly known as the "proportionality test".

Post-service employment

So far, we have examined how we can manage conflict of interest while in public office. But it should not stop there. If a public official, upon retiring from office, immediately takes up an appointment in private business, the public is likely to perceive a potential conflict of interest. In Hong Kong, a retired civil servant who intends to take up any employment or engage in any business activity within two years of retirement is required to obtain prior approval for doing so and the Government will assess, with the advice of an independent committee, whether the proposed employment or business activity will cause a conflict of interest. In the case of senior officers, as a matter of principle, there is a minimum "sanitization" period of six months during which approval for post-retirement employment will not be given.

Role of Hong Kong ICAC

Criminal sanctions

In Hong Kong, any public official who accepts an advantage, which can be in the form of money, gifts, or favors, in connection with his public duty is guilty of corruption under the Prevention of Bribery Ordinance. Even if it cannot be proved that a bribe has been accepted, misconduct in public office (known as malfeasance) is a common-law offence. Conflict of interest in its blatant form constitutes misconduct in public office. An important part of ICAC's job is to investigate, through its Operations Department, all corruption allegations and, if the Department of Justice determines that prosecution is warranted, assist in the prosecution.

Ethical awareness

We also have a Community Relations Department, which, apart from educating the public about the evils of corruption, actively assists the Government in raising ethical awareness in the civil service.

Transparent and accountable procedures

Another department of the ICAC, the Corruption Prevention Department, systematically reviews the practices and procedures of government departments to minimize the opportunities for corruption. An important strategy in the corruption prevention program is to promote

transparent and accountable practices, and to build in safeguards to minimize the possibility that the decision-making process will be compromised by self-interest.

Through all these efforts, the ICAC has launched a three-pronged attack on corruption. We have been fairly successful in containing corruption in Hong Kong. In the last Transparency International Corruption Perception Index, Hong Kong was ranked the 16th-least-corrupt place among the 146 regions surveyed.

Misconduct in Public Office

As stated above, conflict of interest in its blatant form constitutes "misconduct in public office", which is a criminal offence under the common law. This common-law offence, which has its origin in the 18th century, had been rare in Hong Kong until recent years. In a recent court case, the Court of Final Appeal of Hong Kong elaborated on the elements of the offence. According to the judgment, misconduct in public office arises when a public official, in the course of or in relation to his or her public office, willfully misconducts himself and the misconduct is serious. The misconduct can be an act or omission, for example, willful neglect or failure to perform one's duty without reasonable excuse or justification. The seriousness of the misconduct has reference to the responsibilities of the office and the officeholder, the importance of the service, and the nature and extent of departure from those responsibilities.

So far we have prosecuted 19 cases of misconduct in public office: 7 acquitted, 11 convicted, and 1 ongoing. The following are a few recent cases in Hong Kong that illustrate how we dealt with this kind of wrongdoing.

Case 1

A directorate officer responsible for managing government buildings–

- awarded government contracts amounting to USD 20 million to a property management company owned by the brothers of his sister-in-law;
- knew that the company did not fully meet the tender requirements; and
- failed to declare the relationship.

The officer was convicted and sentenced to 30-month imprisonment.

Case 2

A senior officer responsible for television and entertainment licensing

- awarded printing and production contracts amounting to USD 30,000 to his wife's company; and
- failed to declare the relationship and forged some quotations to favor his wife.

The officer was convicted and sentenced to one-year imprisonment.

Case 3

The chairman of a licensing board

- persuaded license applicants to hire a close personal friend as their representing lawyer; and
- failed to declare his relationship with the lawyer and improperly provided confidential documents to her.

The chairman of the licensing board was convicted and sentenced to one-year imprisonment.

Case 4

A senior police officer who accepted free sexual services from prostitutes and vice operators was convicted and sentence to two-year imprisonment.

Although the police officer at the time of the alleged offence was off-duty and was not directly involved in anti-prostitution duties, he was still convicted, as he was a senior police officer with overall responsibility for enforcing the law and fighting crime. In other words, had he not been the senior police officer that he was, he would not have been offered such free services.

Disciplinary Cases

There have also been other conflict-of-interest scandals that did not result in prosecutions. A case involved a senior tax official who failed to declare a conflict of interest when he personally dealt with tax cases handled by his wife's tax consultancy firm. Although subsequent audit revealed that there was no evidence to suggest that he had favored his

wife's firm, the public perceived that there was a clear conflict of interest and protested. The Hong Kong Government subsequently terminated his employment contract.

Conclusion

In conclusion, I would like to reiterate the importance for public officials to handle conflicts of interest properly and carefully. Public office is public trust. Public expectations are rising, and public officials are increasingly being called to account for their decisions. The public needs to be reassured that the decisions are made impartially without self-interest.

Some recent world developments have made this need for caution more apparent. We now see more and more successful private sector businessmen or executives becoming senior government officials and vice versa. Business models have changed: the public-private partnership approach is now commonly used in implementing public projects. The public sector and private sector are now much more interactive, and this makes it all the more important that public policies and decisions are made impartially and in the public interest, and perceived to be so.

Monitoring and preventing conflict of interest among public servants in the People's Republic of China

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Conflict of inte rest in this paper refers to the clash between the public interest, represented by public servants, and their personal interests. Public servants in China hold public power and resources and should use these to serve the public interest. However, as individuals, they do have some personal interests. If the public servants were to mingle their personal interests with the public interest in performing their public duties, the public interest and resources they hold will inevitably deviate from the public objective and degenerate into a tool for their personal interests. Therefore, conflict of interest is a form of dissimilation of power.

Conflict of interest is also a source of corruption. The broadest definition of corruption in public service refers to the practice of public servants of taking advantage of public power for personal gain. Conflict of interest falls under this category. Many instances of conflict of interest do not necessarily come from conflict between public and private interests but from the fact that some public servants allow their personal interests to extend into the public sphere and make use of public authority to seek illicit gains for themselves. In this case, conflict of interest leads to corruption.

In the more than 20 years that China has carried out reform and opened up to the outside world, conflicts between public servants' personal interests and the public interest have increased and have taken many forms. More and more, the conflicts are concealed. Under such circumstances, governing and preventing conflict of interest has become an important task in the anti-corruption campaign and in the promotion of clean and honest government in China.

China's efforts to prevent conflict-of-interest violations have been carried out on three levels: at the level of the public entities, the public servants, and their relatives and close friends. Both the Communist Party and the Government hold public authority. Once this authority is abused for profit, whether the profit goes to a public organization or an individual, there is obviously a conflict-of-interest violation. In many cases, particularly

in recent years, relatives and close friends also gain from the power of public servants by being appointed to certain positions to protect the illicit profits from power. Therefore, it is absolutely necessary to extend the measures for the prevention of conflict of interest to the public servants' relatives and close friends.

In or around 1984, with the push toward a market economy, some government officials, including leading officials of certain counties and municipalities, started setting up and running enterprises with urban residents, rural peasants, or job-hunting youths, and used the profits to fatten their own salaries. To cope with this, the General Office of the State Council issued a Notice on 17 July 1984 to the effect that, in the reform of the economic system, there must be separation between government and enterprises, and public servants must be separated from businessmen and from industry. Allowing public servants to run the enterprises could weaken government economic leadership and lead to people scrambling for their own interests. It could result in the establishment of monopolies backed by the public power, and this would not be conducive to reviving the economy.

The Notice said that such practices would no longer be tolerated. For the enterprises that had already been set up, public servants should take proper steps to gradually withdraw from those enterprises or, if not, to resign from government. Meanwhile, so as not to cause misunderstanding, the Notice expressly prohibited the use of the following slogan: "Let government public servants also become rich as soon as possible!"

The issuance of the Notice had some positive results. But its implementation was far from thorough. In some places, the practices persisted. The Central Committee of the Communist Party and the State Council therefore jointly issued on 3 December 1984 the Decision on Strictly Forbidding the Party and the Government Organs and their Officials from Engaging in Trade and Business.

The Decision pointed out that the Party and government organs at all levels, and the economic departments and their leading officials in particular, should more correctly lead and organize for economic reform, stick to the principle of separation of government from private enterprise and separation of public servants from businessmen, and be clean and honest, and fair and decent. They should faithfully serve economic development, national prosperity, and the wealth and happiness of the people. They were strictly forbidden from abusing their power to run enterprises and businesses in violation of the Party's and the Government's Decision, to seek illicit profits for themselves at the expense of the ordinary people's interests.

To realize the above-mentioned requirement, the Decision stipulated that the Party and government bodies could not use public funds, loans, or their own funds to set up and run enterprises by themselves or with private citizens, or receive dividends from stock shares; nor could they join private enterprises. They were also prohibited from using their power to seek profit for the enterprises of their relatives and close friends.

The Decision explicitly stipulated that officials of the Party and the Government could be allowed to run enterprises and businesses if they applied for it, but they could not keep their government position or their salary and welfare benefits as public officials.

Clearly then, as early as 1984, when the economic reform had just been launched in the urban areas of China, the central Government already had a deep knowledge of the ill effects of public entities and public servants running enterprises and businesses, and had systematically figured out ways to cope with the practice.

To further solve the problem of government involvement in business, the State Council issued on 20 August 1985 the Notice on Further Clearing Off and Reorganizing Companies, which clearly emphasized the separation between the Government and public servants, on the one hand, and those running the enterprises, on the other, as well as between those running an enterprise and its finances. The Notice, once again, reminded government officials who were running enterprises to leave the enterprises or resign from public office.

Most of the enterprises run by the Party and government organs have either stopped operation or separated themselves from the public organs, and most of the public officials working in enterprises have either returned to government or quit public office. However, this unhealthy tendency has not completely stopped. Some officials of the Party and government entities still found ways to continue running enterprises or to take concurrent positions in the enterprises. Some dependents of public servants took advantage of their relationship and the influence of the officials to run enterprises. Seeking illicit gains and gaining personal profits at the expense of the public interest in this way is exceedingly harmful.

To stop this unhealthy tendency once and for all, the General Office of the Central Committee of the Communist Party and the General Office of the State Council jointly issued on 4 February 1986 the Regulations on Further Stopping the Party and the Government Organs' Running of Enterprises and Businesses. The Regulations once again prohibited Party and government organs—including the various agencies of the Party Committee and the State, public administration, justice, and the procurator at all levels and their subordinate institutions—from running enterprises.

Enterprises still operating in violation of the Regulations had to stop operating or had to be separated from the public organs, irrespective of the authority that had approved their operation.

The Regulations also prohibited relatives and close friends of public servants from running enterprises and from using the influence of the public officials to seek illicit profits from such enterprises. Those found to have violated the Regulations would be punished and their illicit gains would be confiscated.

The Central Committee of the Communist Party and the State Council jointly published on 3 October 1988 the Decision on Clearing Off and Reorganizing Companies. It forbids the use of public administrative fees, institution fees, exclusively allocated funds, extra-budgetary funds, and bank loans by public organs to run companies. The companies already being run in this way must be separated from the public organs within a prescribed period, with respect to the companies' finances as well as their goods and materials. The capital invested in them by the public organs must be managed as state assets by the financial departments at the corresponding level. No public organs shall seek capital or contributions in kind from the companies for any purpose.

Since then the Party and the Government have published other decisions and regulations intensifying the control of the enterprises and businesses run by the Party and the government organs. The most significant measure taken in this respect had to do with the running of enterprises and businesses by the armed forces, the armed police, and judicial organs—a practice that is liable to corruption and destructive to the socialist economic order. The Central Committee of the Communist Party decided in July 1998 that the armed forces, the armed police, and the judicial organs could no longer run enterprises and businesses. By the end of that year, all such organs had separated themselves from the enterprises they had been running.

On 27 March 1997, the Central Committee of the Communist Party published Several Rules Concerning the Leading Officials of CPC on Clean and Honest Government (Trial). The Rules stipulate that leading officials of the Party should strictly prevent the commodity exchange principle from encroaching on the political life of the Party and the political activities of state organs. Public officials may not engage in profit-gaining activities. The following activities are not permitted to them: personal commercial trade, enterprise management, concurrent appointment as part-time employees in economic entities, agency activities with pay, buying and selling of shares, and registration of a company abroad or investment in the company as stockholders.

The Rules also require Party officials to be law-abiding in matters involving their relatives and close friends. They are forbidden to take advantage of their power and influence to seek profit for their relatives, close friends, and subordinates. They are not permitted to provide convenience and favorable conditions for their relatives and close friends to run enterprises and businesses.

To further solve the problem of conflict of interest among relatives and close friends of leading officials, the Rules also expressly prohibit these from running enterprises or taking positions in wholly foreign-owned enterprises within the jurisdiction of the officials.

To emphasize the authority of the Rules, their implementation has been made an important criterion for the assessment of leading officials and their prospects for reward and advancement. Party officials who violate the Rules must accept criticism, re-education, and organizational or disciplinary punishment according to the relevant regulations. The Rules also apply to Party officials working in the organs of the Party, the People's Congress, administration, political consultation, justice organs, and the procurator's office at county (division) level and above; in people's organizations and institutions at county (division) level and above; at the upper-middle level of large and extremely large state-owned enterprises, and medium-sized state-owned enterprises, as representatives of the State or appointed by company investors, and elected and approved by competent authority; or in the Communist Party Committee of Enterprises.

The Fourth Plenary Session of the Commission for Discipline Inspection of the Central Committee of the Communist Party, held in 2000, put forward the requirement that the immediate family of leading officials at the provincial (ministerial) or prefecture (bureau) level may not run enterprises within the officials' administrative jurisdiction that clash with the public interest. To put this requirement into practice, the Commission for Discipline Inspection of the Central Committee of the Communist Party published and distributed on 8 February 2001 the Five Rules on the Running of Enterprises and Businesses by the Spouses, Sons and Daughters of the Chief Leading Officials of the Party Committee and the Government at Provisional and Prefecture Level (Trial). These Rules stipulate the following: the immediate family of chief leading officials of the Party and the Government at provincial (ministerial) and prefecture (bureau) levels working in the area under the administrative jurisdiction of the officials are not permitted to engage in housing estate development or real estate agency, evaluation and consulting activities, advertising agency, or publishing; to set up law firms or be appointed as attorneys or as litigation agents within the area under the administrative jurisdiction of the officials; to operate for

profit such entertainment businesses as singing halls, dance halls, and nightclubs, bath and massage businesses, and any other business activities that may clash with the public interest. If they are already engaged in any of the above-mentioned activities, they should stop those activities or the official should resign from government or accept organizational treatment.

It can be seen from the above account that China's decisions, rules, and regulations intended to govern and prevent conflict of interest have become more and more specific, and their scope has widened to cover not only public organs and public servants but also relatives and close friends.

What is worth noting is that the Communist Party and the central Government, in accordance with the changed situation of the country and the spirit of pragmatism, have made timely amendments and adjustments in the relevant decisions and rules to adapt them to the requirements of social development. The decision on the buying and selling of stock shares by officials is a typical example. In October 1993, the Central Committee of the Communist Party and the State Council jointly made a decision prohibiting leading officials of the Party and the Government at county (division) level and above from buying and selling stock shares. Local authorities and departments in turn forbade their staff from buying and selling shares. In cases when state supervision of the securities market was not adequate, these decisions and rules played an important role in helping the leading officials of the Party and the Government to be clean and honest and self-disciplined, preventing corruption, and ensuring the sound development of the market.

However, with the gradual improvement of the securities market in China, and the promulgation and implementation of the Securities Law in particular, the securities market has been legalized. Investments that staff of the Party and the Government make in the securities market with their own legally earned money are in support of nation building. Therefore, the Central Committee of the Communist Party and the State Council have lifted to some extent the restrictions on the buying and selling of stock shares by Party and government staff. The General Office of the Central Committee of the Communist Party and the General Office of the State Council jointly issued on 3 April 2001 Several Rules on the Practice of the Working Staff of the Party and the Government to Buy and Sell Stock Shares, expressly allowing the practice.

Although the policy has become more lenient, there are still many restrictions to prevent conflict of interest. The Rules point out that the staff of the Party and the Government should follow the relevant laws and regulations in buying and selling stock shares and making security

investments. Among other things, they are strictly forbidden to take advantage of their power and influence (including access to inside information) or take improper means to demand or force the buying and selling of shares of stock.

In line with other rules and regulations on conflict of interest, the Rules prohibit competent authorities in charge of listed companies and other people with inside information on the companies, including their immediate families, from buying or selling the shares of stock of the companies.

As these examples show, China can amend its policies on conflict of interest to suit the country's level of development. With the proper combination of leniency and restriction, pressure can be put on conflicts of interest while avoiding restrictions for their own sake, thus enabling the building of clean and honest government, along with economic and social development.

China has made achievements and acquired experience in governing and preventing conflicts of interest. However, the concept of conflict of interest is fairly new in China, and research on the relevant theory lags far behind. In addition, globalization is gradually intensifying, causing conflicts of interest to extend internationally. Under such circumstances, China will, on the one hand, continue to curb conflicts of interest according to the situation in China and, on the other hand, use foreign experience and the support and assistance of the international community. It is absolutely necessary to strengthen communication and exchange of information with regard to this issue. At the same time, China's success in governing and preventing conflicts of interest is its contribution to international efforts to build clean and honest government.

Chapter 7
International legal assistance in the prosecution of corruption

Globalization has brought countries closer, strengthened economic relations across borders, and rendered cross-border travel easier. Offenders have profited from this ease and it is no longer uncommon for corrupt individuals to hide or launder bribes and embezzled funds in foreign jurisdictions. Bribers may keep secret slush funds in bank accounts abroad, or they may launder the proceeds of their crimes internationally. Governments are increasingly faced with the need to gather evidence abroad in corruption investigations through international legal assistance. As those who engage in corruption may also seek safe haven in a foreign country, extradition might be necessary to ensure effective prosecution of crimes. Yet, benefits of globalization in the form of closer relations in criminal justice and law enforcement are yet to be seen on a large scale, and criminals continue to exploit weaknesses in mutual legal assistance to disguise corrupt funds abroad and escape prosecution. Many practitioners decry the fact that international cooperation is sometimes not possible because of legal obstacles, such as the absence of legal bases for cooperation, strict interpretation of legal principles, or differences in legal systems. Other cases suffer from inordinate delay, inadequate legislation, or insufficient institutional support. Despite these difficulties, experience shows that mutual legal assistance procedures ultimately produce results—provided that the agencies involved adopt a holistic

approach. To identify recurrent problems and weaknesses and ways to overcome them, this chapter assembles countries' experience in requesting and granting mutual legal assistance in corruption cases.

Australia attaches high priority to prosecuting transnational corruption, as Ian McCartney of the Australian Federal Police (AFP), Australia's international law enforcement and policing representative, explains. Australia has put in place a comprehensive legal framework and has furthermore established particular institutional measures to render their enforcement more effective. Relevant legislation covers corruption by Commonwealth officials and the bribery of foreign public officials by Australian citizens or companies, as required under the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention). The AFP has categorized the offence of foreign bribery as an essential priority. To render law enforcement in this and other areas effective, the AFP has established a vast international network that extends to 25 countries. It is used in the investigation of a range of crimes that fall within the jurisdiction of the AFP, including corruption offences. It is also used in the recovery of proceeds of crime and serves for networking, investigation, collection of criminal evidence, and capacity building. Supporting legislation on mutual legal assistance in criminal matters and on the recovery of proceeds of crime complements Australia's legal and institutional framework to fight and sanction transnational corruption.

Switzerland has had ample experience with mutual legal assistance and transnational corruption. Being one of the major financial centers through which the booty of grand corruption is funnelled, it is requested to grant assistance regarding information on funds deposited or passed through the country's banks. Jean Bernard Schmid, investigating magistrate in the financial section in one of the country's banking centers, Geneva, shares Switzerland's experience in the matter. He has observed significant changes in attitude towards transnational crime and international cooperation over the past decades. Until the late '80s, countries were concerned solely with crime within their own territory. Since then, growing ethical costs and risks to reputation have made countries and companies more aware of crimes committed abroad. Harboring embezzled assets has become costly. These trends have brought about the OECD Anti-Bribery Convention, as well as the creation and extension of jurisdiction over corruption cases. Switzerland has also made important achievements in improving mutual legal assistance procedures. Requests for assistance from foreign jurisdictions are nowadays handled routinely—

despite the remaining particularities and challenges inherent in mutual legal assistance procedures.

The Philippines has also had a good share of experience in transnational legal cooperation—not the least of this in cooperation with Swiss authorities. The country faces the particular challenge of recovering assets worth millions of dollars, embezzled as bribes, kickbacks, and "facilitation fees" and stashed in foreign jurisdictions like the United States or Switzerland by some of the country's highest-ranking individuals. As asset recovery has in the past been achieved mainly through bilateral treaties, the Philippines has been actively seeking partnerships with other countries to prevent corrupt individuals from using these countries as financial havens. The recently signed ASEAN Treaty on Mutual Legal Assistance in Criminal Matters is expected to boost these efforts in the near future. The Philippines has also had a fairly positive experience with international cooperation in recovering assets without bilateral or multilateral agreements: the country successfully recovered ill-gotten assets worth hundreds of millions of dollars deposited in Switzerland—but only after 17 years.

Australia's approach to prosecuting transnational corruption

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Introduction: The role of the Australian Federal Police

The Australian Federal Police (AFP) enforces Commonwealth criminal law and protects the national and Commonwealth interests from crime in Australia and overseas. The AFP is Australia's international law enforcement and policing representative, and the chief source of advice to the Australian Government on policing issues.

The investigation of corruption in certain circumstances (not State/Territory-level corruption allegations) is the responsibility of the AFP. Commonwealth legislation exists for the investigation by Commonwealth officials of corruption including bribery, perjury, and unauthorized disclosure of information. However, there is also legislation that deals with the bribery of foreign officials by Australian citizens or companies, which carries a maximum penalty of imprisonment of 10 years.

Combating Bribery of Foreign Public Officials

This legislation is found under Division 70 of the Criminal Code Act 1995 and is as follows:

70.2 Bribing a foreign public official

(1) A person is guilty of an offence if:

(a) the person:
  (i) provides a benefit to another person; or
  (ii) causes a benefit to be provided to another person; or
  (iii) offers to provide, or promises to provide, a benefit to another person; or
  (iv) causes an offer of the provision of a benefit, or a promise of the provision of a benefit, to be made to another person; and

(b) the benefit is not legitimately due to the other person; and
(c) the first-mentioned person does so with the intention of influencing a foreign public official (who may be the other person) in the exercise of the official's duties as a foreign public official in order to:
    (i) obtain or retain business; or
    (ii) obtain or retain a business advantage that is not legitimately due to the recipient, or intended recipient, of the business advantage (who may be the first-mentioned person).

The AFP is investigating allegations of bribery of foreign officials. There are defences in relation to this offence in the legislation. Some examples of these defences relate to culture and documentation of details of the incident.

Australian authorities participate in the Organisation for Economic Co-operation and Development (OECD) Working Group in International Business Transactions on Bribery of Foreign Public Officials. The AFP works closely with other Australian and international law enforcement bodies to enhance safety and security in Australia and to provide a secure regional and global environment.

The offence of foreign bribery falls within the category of corruption within the AFP Case Categorisation and Prioritisation Model (CCPM) and is rated as having high impact and high importance to the AFP. Further, it is categorized as an essential priority, which means that if there is sufficient information to support the suspicion that an offence of this nature has occurred, the AFP will investigate the allegations.

The AFP's International Network

The International Network of the AFP is used in investigating a range of crimes that fall within the jurisdiction of the AFP, including corruption offences and recovery of the proceeds of crime. The AFP's International Network has gradually expanded in response to the growth in transnational crime. AFP posts are currently found in 30 cities in 25 countries and are staffed by 63 officers (including seven advisers). The International Network is integral to the AFP's operations and functions. Further, it provides a platform for promoting the whole-of-government approach, i.e., Commonwealth agencies working together to combat crime.

The functions of the International Network include:

- **Networking.** Establishing relationships of confidence with international law enforcement and other agencies.
- **Investigations.** Brokering collaboration with international law enforcement agencies for multi-agency investigations.
- **Criminal intelligence collection.** Gathering and sharing intelligence on criminal activities and groups in support of international law enforcement efforts.
- **Capacity building.** Providing advice and coordination, where appropriate, on training and technical measures for international law enforcement to combat transnational crime.

Interpol operates on behalf of all Australian law enforcement agencies in coordinating international inquiries through the Interpol network and also acts as the central relay point for all Asian and South Pacific countries.

The AFP International Network and Interpol provide a similar function in relation to the flow of information across agencies; however, the AFP International Network provides another avenue for the dissemination of information to other law enforcement agencies. The International Network does not have an investigative function—it is a facilitator of information, forwarding inquiries and receiving information on behalf of other agencies.

Supporting Legislation

The Mutual Assistance in Criminal Matters Act 1987 facilitates international cooperation between law enforcement agencies. It provides legislative underpinning for obtaining evidence for prosecutions in Australia in an admissible format from other countries. Multilateral and bilateral treaties exist with Argentina; Austria; Canada; Finland; France; Greece; Hong Kong, China; Hungary; Indonesia; Israel; Italy; Luxembourg; Mexico; Monaco; Netherlands; Portugal; Philippines; Spain; Sweden; Switzerland; United Kingdom, and United States of America. The law also enables the proceeds of crime orders relating to restraint, forfeiture, and repatriation of illegally obtain funds to be registered in countries with similar legislation. The aim is to pursue the financial benefit obtained by criminal activity without being constrained by geographical boundaries. This legislation also provides for extradition applications and processes.

The Proceeds of Crime Act 2002 applies to certain offences committed outside Australia's jurisdiction and includes provisions to recover proceeds of crime from foreign indictable offences. A foreign indictable offence is

an offence against a law of a foreign country that, had it occurred in Australia, would have constituted an offence against Australian law punishable by at least 12 months' imprisonment. For example, if monies are the proceeds of a corruption offence committed in another country and the same crime would have been a serious offence in Australia, the Australian Government can move to restrain and seize the funds or assets derived from those monies. The Criminal Code Act 1995 has been amended to include new money laundering legislation with penalties of up to 25 years' imprisonment. Proceeds of crime action can also be taken against the monies laundered as those funds are an instrument of the money laundering offence.

Conclusion

In summary, organized crime will not decline in the Asia-Pacific region. It is therefore incumbent on governments and law enforcement agencies in this region to work together to combat criminal offences such as corruption and the laundering of the proceeds of crime. Corruption offences are effectively an enabling offence insofar as this illegal activity may be the means of facilitating another type of offence. For example, bribery may be necessary to commit a major fraud. The increased prevalence of legislation with extraterritorial application is an indication of countries working together to combat transnational crime like corruption and proceeds of crime.

A view of the future is the move *from cooperation to collaboration* by international law enforcement: multinational task forces operating in a global environment with a clear focus and mandate to disrupt and dismantle transnational organized crime syndicates

Switzerland's experience with transnational judicial cooperation

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Modern Switzerland has not been faced with serious problems of corruption among its own public servants. Corruption does exist, but is certainly not widespread and definitely not socially nor culturally accepted.

If the rationale for prosecuting bribery of national public officials has, consequently, always seemed obvious, such has not been the case for bribery related to foreign public officials. Commercial considerations have led to not worrying much about the integrity of other countries' public sector, and practical necessities have not been conducive to interfering with their problems, structures, or internal organization. This perception is gradually changing as the consequences of corruption, on today's global market, are becoming clearer in economic, political, and even moral terms. The Swiss legal framework has evolved accordingly.

In 2000, Switzerland ratified the OECD Convention on Combating Bribery of Foreign Public Officials in International Business. Various consequences derived thereof, directly or indirectly.

- To incorporate the provisions of the Convention into internal legislation, the Swiss Penal Code (Code pénal [CP]) had previously been updated on bribery.
  A new section of the Penal Code (Title 17 "Bribery" – art. 322ter to 322^{octies} CP) came into force in May 2000. Active and passive bribery of public officials has been upgraded to a criminal offence. A special provision (art. 322^{octies} CP – active bribery of a public official) made it punishable to bribe a person acting on behalf of a foreign state or an international organization. There is practically no more difference, on active bribery, between Swiss and foreign public officials.
  The offence of bribery is defined along the lines of the OECD Convention. It covers intentionally offering, promising, or giving, spontaneously or on request, any undue advantage, material or immaterial, to a public official, understood as any person carrying out a public function in a state body or enterprise, or in an international organization, to obtain from that person the commission or omission of an act in relation to his official functions that is contrary

to his duties or that depends on the exercise of his discretionary powers.

An exception is made for advantages authorized by internal regulations and so-called "facilitation payments" of minor value.

The exception made for advantages "in conformity with socially accepted practices". In Switzerland there is practically no accepted practice to make a gift of any value to a public person. Paying for a round of coffee or beer is about as much as would be considered socially acceptable. Inviting one's tax controller to even a simple meal would most definitely not be accepted at all.

This raises the question of how to interpret other countries' "socially accepted practices". The point could be made that bribery, even if practiced by and large, is not recognized as correct behavior by most citizens of any country.

- The penalties incurred for bribery, of national or foreign officials alike, are imprisonment for up to five years in ordinary cases, to seven-and-a-half years in the case of a plurality of offences (art. 68 C), and theoretically to 20 years in case of special recidivism (art. 67 CP). An unlimited fine can be inflicted if the offender has acted "out of greed" (art. 48 and 50 CP), which is presumably usually the case.

  The proceeds of the offence are confiscated, even if no one is condemned or even identified as corruptor (art. 58–59 CP).

  A range of ancillary sanctions can be inflicted, such as disqualification from holding a public office (art. 51) or from exercising a business subject to official authorization (art. 54); expulsion from the country for foreigners (art. 55 CP).
- Defining bribery as a criminal offence allows notably, under Swiss law's provisions of money laundering (art. 305bis CP), the prosecution of the laundering of its proceeds.
- Swiss jurisdiction is given, as a rule, for offences committed in Switzerland, or in a foreign country by or against a Swiss national (territorial jurisdiction: art. 3 CP; nationality jurisdiction: art. 5 and 6 CP).

  When Switzerland is bound by an international treaty (like the OECD Convention), jurisdiction is usually given for offences committed in a foreign country by non-national perpetrators who find themselves in Switzerland and are not extradited (Extraterritorial juridiction: art. 6bis CP).
- Immunity of political heads of state has, in recent times, tended to be denied for "private activities" such as hiding the proceeds of corruption in the Swiss accounts of offshore companies.

- Provisions on the liability of legal persons have been introduced in the Swiss Penal Code in October 2003 (Art. 100^{quater} et 100^{quinquies} CP). A company can, as such, be held accountable for criminal behavior linked to the conduct of its business, insofar as the perpetrator cannot be identified because of organizational flaws (subsidiary liability); for certain offences, including bribery of public officials, both the company and the actual perpetrator can be held responsible (dual or primary liability) (art. 100^{quater} al. 2 CP).
  The sanctions are essentially pecuniary. The company can be sentenced to a fine of up to CHF 5 million (about USD 4.2 million).
- "Private corruption" is not as such considered an offence under Swiss law. It can be indirectly incriminated under various provisions (art. 158 CP: Disloyal management; art. 168 CP: Subornation; art. 273 CP: Economic intelligence; LCD: Disloyal competition).
  A 1999 Convention of the Council of Europe addresses the matter. Its implementation is being discussed by the federal legislature.

Mutual Legal Assistance (MLA)

International cooperation is key to combating international corruption. It has been getting more efficient in recent years, but serious difficulties remain.

Switzerland has signed a number of treaties with individual countries to regulate MLA procedures. It is bound to its European partners by the European Convention on Mutual Assistance in Criminal Matters[1] and the so-called Convention 141.[2] The matters not addressed by these acts are regulated by internal legislation, essentially the Federal Law on Mutual Legal Assistance in Criminal Matters (Loi fédérale sur l'Entraide Internationale en Matière Pénale [EIMP] (RS 351.1)).

The legal framework tends to get quite dense. It is far from being perfect, but even farther from being the sole culprit for many shortcomings.

MLA remains characterized by national conceit and international suspicion. Politicians and judges do remain uneasy with the concept that a foreign country's authorities are to be trusted when they ask for cooperation in investigating a criminal matter.

Certain abuses have done little to help promote an open approach to international cooperation. But it would be fair to admit that economical and political reasons, rather than worries about "fair justice", still play an all-but-negligible role in cooling enthusiasm for cooperation-friendly law-making and practices.

Swiss legislation on international cooperation has, in its own right, put up a set of hurdles aimed at guaranteeing that we do not cooperate too blindly with anybody. This fine reasoning leads to benchmark foreign legal systems to the standards of our own. And, quite logically, to grant the persons implied a right to challenge, in Swiss courts, the legality of the criminal proceedings directed against them abroad.

The unavoidable consequences of this are the time-consuming procedures that slow down the execution of too many MLA requests.

The Swiss legal authorities can act very quickly on a foreign request. A bank account can be frozen within hours, and detailed information about the account can be obtained from the bank within days. But then the holder of the account can oppose the transmission of such information to the foreign judge who needs it for his enquiry.

Overriding such opposition can take up to a good year, simply counting the time needed to go through two court procedures to invalidate the opposition, first on the cantonal and then on the federal level.

"Fair trial"

Another serious hindrance derives from the fact that MLA implies the coordination of two legal systems that might be of a very different nature.

Concepts, laws, and practices can vary significantly in, among others, police action, the rights granted to an accused person, and the independence of courts.

Universal standards in that field have not grown much beyond declarations of good intentions.

The United Nations Universal Declaration of Human Rights, adopted in December 1948, devotes a fourth of its provisions (art. 5 to 11) to the rule of law and basic legal rights, still a long way from being universally implemented.

The Universal Declaration has been codified into two Covenants, adopted by the General Assembly on 16 December 1966, notably the International Covenant on Civil and Political Rights II, art. 14 of which details essential procedural rights for the accused (like the right to be notified the charges held against him, to refuse to speak, to be assisted by a lawyer, to challenge in court an arrest order, to be granted legal aid if needy, to be tried without undue delay)—see the UN Pact II; in force in Switzerland since September 1992.

The European Council's Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) of 1950, which explicitly refers to the Universal Declaration, guarantees a similar range of procedural rights to any accused person (art. 5 and 6). Not respecting these guarantees can lead to invalidating a whole criminal procedure. The ECHR was signed in Rome, 14 November 1950; it entered into force in Switzerland in 1974.

As a general rule, Switzerland denies international cooperation to countries that do not guarantee these minimal rights to the accused and, consequently, do not respect the basic requirements of a "fair trial" as defined in the corresponding international legal instruments (see art. 2 EIMP).

Other material conditions

Legal assistance must not jeopardize the "essential interests" of Switzerland. It is denied if the request is based on motives linked to race, religion, nationality, or political opinions. The political exception does not cover cases involving acts of genocide or terrorism or violations of the Geneva Conventions on humanitarian law.

The "specialty" or "double criminality" condition requires that the facts on which an MLA request is based are defined as an offence in both the Swiss and the requesting country's legislation. This condition is fulfilled in our internal law since the ratification of the OECD Convention and the coming into force of the new legislation on bribery of public foreign officials. MLA can thus be granted more easily in international bribery cases.

If the offence is of a fiscal nature, Swiss lawmakers become quite sensitive; MLA is granted for fiscal fraud but not for "simple" evasion; the difference is not obvious to everybody, and may be used as a cover for laundering proceeds of corruption.

Ordinary cooperation

It includes exchanging information, seizing documents, freezing assets, conducting searches, and hearing witnesses. Swiss authorities act according to their own procedural rules.

Extradition

Extradition is the most drastic form of international cooperation. It is regulated by the same body of laws and treaties, and the same basic principles than regular MLA (art. 32–62 EIMP; Council of Europe's Convention on Extradition.)

The offence must be punishable in Switzerland and in the requesting state by a penalty of at least one year of imprisonment. It can be granted for bribery of national or foreign public officials.

It is denied if based on a sanction inflicted on a defaulting defendant whose minimal procedural rights have not been respected ("Fair trial": ECHR art. 6.) It is further denied if the requesting state does not guarantee that the death penalty will not be inflicted, or at least carried out. Also, as a rule, it is denied if Switzerland itself has jurisdiction over the person for the offences considered. Subsidiary clauses permit the granting or denial of extradition in "special circumstances" like the "social rehabilitation" of the person.

Swiss nationals are not extradited; they are prosecuted in Switzerland if jurisdiction is given over them for the offences they might have committed abroad.

A recent extradition case towards Chinese Taipei might interest this Conference. It illustrates many of the above points. The decision, rendered by the Swiss Tribunal Federal in May 2004, is published in French (ATF 130 II 217; www.admin.ch). The Tribunal Federal has notably remarked that judging another country's judicial system implies a "value judgment" about its internal affairs, its political regime, its institutions, its concept of and respect for fundamental rights, and the independence and impartiality of its judiciary, all of which require "particular caution".

Caution is fine. A strong argument can nevertheless be made that respecting the basic rights imposed by the international legal framework in criminal procedures helps legitimatize the state's repressive action, and does not seriously handicap police and judicial action.

Corruption, of all offences, will not be curbed through judicial practices contrary to international rules.

Open and "fair trial" procedures will prove as essential to international cooperation as open and fair markets to global business. Today's legal environment needs as much a "level playing field" as global business does—that is, if we want to rest assured that international cooperation, essential to the fight against corruption, does work effectively.

Annex: Relevant legislation

United Nations: The Universal Declaration of Human Rights (10 December 1948)

Article 5 - No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6 - Everyone has the right to recognition everywhere as a person before the law.

Article 7 - All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8 - Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9 - No one shall be subjected to arbitrary arrest, detention or exile.

Article 10 - Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

International Covenant on Civil and Political Rights (16 December 1966)

Article 14 - General comment on its implementation

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial

tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
   a. To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
   b. To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing;
   c. To be tried without undue delay;
   d. To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
   e. To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
   f. To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
   g. Not to be compelled to testify against himself or to confess guilt.
4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.
5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.
6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction

shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Council of Europe: Convention for the Protection of Human Rights and Fundamental Freedoms (Rome: November 4, 1950) also called Convention on Human Rights

Article 5 - Right to liberty and security

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
   a. the lawful detention of a person after conviction by a competent court;
   b. the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfillment of any obligation prescribed by law;
   c. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
   d. the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
   e. the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
   f. the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
3. Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge

or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.

Article 6 - Right to a fair trial

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
    a. to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
    b. to have adequate time and facilities for the preparation of his defense;
    c. to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
    d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
    e. to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Switzerland: Federal Law on International Cooperation in Criminal Matters (EIMP/351.1)

Article 1a - Cooperation limits

The present law must be applied taking into consideration the sovereignty, security, public order or other essential interests of Switzerland.

Article 2 - Foreign Proceeding

A request for cooperation in criminal matters will be dismissed if their are grounds to admit that the foreign proceeding

a. does not meet the procedural requirements of the European Convention of Human Rights and Fundamental Freedoms of November 4, 1950, or the International Covenant on Civil and Political Rights of December 16, 1966;
b. tends to prosecute or punish a person on account of his political opinions, his belonging to a specific social group, his race, his religion or his nationality;
c. could aggravate the situation of the person prosecuted for any of the reasons mentioned under letter b, or
d. is seriously flawed in any other way.

Penal Code (CP / 311.0)

Corruption

Corruption of Swiss Public Officials

Article 322ter- Active Corruption

Any person who offers, promises or gives any undue advantage to a member of a judicial or other authority, a state employee, an expert, translator or interpreter employed by any authority, an arbitrator or a member of the armed forces, for the benefit of such person or any third party, for the commission or omission of an act in relation to his official functions that is contrary to his duties or depends on the exercise of his discretionary powers, shall be liable to reclusion for a maximum term of five years' or imprisonment.

Article 322^{quate}- Passive Corruption

Any person who, as a member of a judicial or other authority, a state employee, an expert, translator or interpreter employed by any authority or an arbitrator solicits, elicits a promise of or accepts an undue advantage, for his benefit or that of any third party, for the commission or omission of

an act in relation to his official function that is contrary to his duties or depends on the exercise of his discretionary powers, shall be liable to a maximum term of five years' imprisonment.

Article 322quinquies- Giving of an Advantage

Any person who offers, promises or gives any undue advantage to a member of a judicial or other authority, a state employee, an expert, translator or interpreter employed by any authority, an arbitrator or a member of the armed forces so that he accomplishes the duties of his position shall be liable to imprisonment or a fine.

Article 322sexies- Acceptance of an Advantage

Any person who, as a member of a judicial or other authority, a state employee, an expert, translator or interpreter employed by any authority, or an arbitrator solicits, elicits a promise of or accepts an undue advantage so that he accomplishes the duties of his position shall be liable to imprisonment or a fine.

Art. 322septies- Active Corruption of Foreign Public Officials

Any person who offers, promises or gives an undue advantage to any person acting for a foreign State or an international organization either as a member of a judicial or other authority, a state employee, an expert, translator or interpreter employed by any authority, an arbitrator or a member of the armed forces, for the benefit of such person or any third party, for the commission or omission of an act in relation to his official functions that is contrary to his duties or depends on the exercise of his discretionary powers, shall be liable to reclusion for a maximum term of five years' or imprisonment.

General disposition

Article 322octies

1. If the offender's guilt and the consequences of his act are so insignificant that a penalty would be inappropriate, the competent authority shall waive prosecution, judicial proceedings or the imposition of a penalty.
2. Advantages authorized by department regulations and advantages of minor value in conformity with socially accepted practices shall not be considered undue advantages.
3. Individuals who carry out public functions are deemed to be public officials.

Money laundering

Article 305bis

1. Any person who commits an act such as to impede identification of the origin or the discovery or confiscation of assets which he knew or must have presumed to have originated in a criminal offence shall be liable to imprisonment or a fine.
2. In serious cases, the penalty shall be reclusion for a maximum term of five years or imprisonment. The custodial sentence shall be consecutive with a maximum fine of one million francs. A case is serious when the offender:
   a) acts as a member of criminal organization;
   b) acts as a member of a gang formed to systematically launder money;
   c) generates substantial revenues or profit from money laundering.
3. Offenders are also liable when the principal offence has been committed in another country and is punishable in the State where it was committed.

Notes:

1 Council of Europe, Strasbourg, April 20, 1959 (http://conventions.coe.int).

2 Council of Europe, Strasbourg, November 8, 1990 : Convention no. 141 on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, Chapter III art. 7–12.

Denying safe havens through judicial cooperation: The experience of the Philippines

Simeon Marcelo
Ombudsman of the Republic of the Philippines

Introduction

The first quarter of 2003 saw the institutionalization of a new thrust in the Office of the Ombudsman: the conduct of lifestyle checks on suspected corrupt public officials aimed at uncovering and recovering their illicit assets. In this lifestyle check, the private sector—private citizens, church and community-based non-governmental organizations (NGOs), and people's organizations—has been tapped to assist the Office in gathering data and information. Indeed, citizen empowerment can effectively assist in the accurate identification of suspected corrupt public officials and their ill-gotten assets.

In the implementation of the lifestyle check, the Office, because of its limited resources, has decided to engage in strategic agency targeting. The Office has focused on the three agencies consistently perceived by the public as the most corrupt, namely: the Bureau of Internal Revenue (BIR); the Bureau of Customs (BoC); and, the Department of Public Works and Highways (DPWH). A year later, the Office also investigated officers of the military who were suspected of accumulating ill-gotten wealth.

Corruption may be possibly transformed into a transnational crime, considering that unlawfully obtained assets can be stashed in foreign jurisdictions. When this happens, the recovery of such ill-gotten monies and properties becomes a game of hide-and-seek. Only in rare instances do corrupt public officials slip. In one particular instance, a two-star general of the Armed Forces of the Philippines (AFP) was discovered to have amassed ill-gotten wealth in the amount of at least USD 5.5 million, a substantial portion of which has been dollars transported into the United States or remitted through its banking system, as well as a condominium unit at Trump Park, New York, worth USD 765,000.

The investigation was prompted by the discovery by US Immigration and Customs Enforcement (ICE) agents of undeclared dollars brought into the US by the general's son from the Philippines. The admissions by the general's wife of receipt of bribes, kickbacks, and facilitation fees, among others, were brought last year to the attention of the Office of the Ombudsman, which then investigated the same. This was complemented

by the parallel money-laundering investigation conducted by the Anti-Money Laundering Council (AMLC), at the request of the Office of the Ombudsman. Pending the collation of all data on the properties and monies traceable to the general, the AMLC, through the Office of the Solicitor General (OSG), secured a temporary freeze order from the Court of Appeals. Meanwhile, in a separate move, the Office of the Ombudsman filed a forfeiture proceeding with the Sandiganbayan, the Philippines' anti-graft court, which thereafter issued a writ of preliminary attachment on the properties and monies of said general and his family. This served as legal basis for continuing the seizure and freezing of the properties and monies of the general. Considering that some of the assets were located in the US, the Mutual Legal Assistance Treaty (MLAT) between the Philippines and the US was availed of, ensuring an effective coordination between Philippine and US officials.

Defining the Philippine Challenge: Asset Recovery of Ill-Gotten Wealth Through International Cooperation

Historically, the most effective legal approach for the recovery of illicit wealth concealed in foreign jurisdictions is through the execution of bilateral treaties with countries in which the ill-gotten assets or the offenders are probably found. Thus, the Philippines has been actively seeking partnerships with other countries for the main purpose of preventing corrupt Philippine public officials from using these countries as their own financial havens.

The present Philippine legal configuration offers a glimmer of hope in addressing the problem of recovery of ill-gotten assets, including the arrest of the perpetrators. The countries with which the Philippines entered MLATs are Australia; P.R. China; Hong Kong, China; Republic of Korea, Switzerland; and United States of America. (The MLATs with P.R. China, the Republic of Korea, and Switzerland are still awaiting ratification.) The main objective of these MLATs is to improve the cooperative efforts of the Philippines and the other states to effectively prevent, investigate, and prosecute crimes, including those relating to corruption in the public sector.

Bilateral treaties

The MLATs entered into by the Philippines contain many common provisions, among them are:

- gathering evidence, records, or documents;
- taking the testimonies or statements of persons;
- executing requests for searches and seizures;
- facilitating the personal appearance of witnesses;
- transferring persons in custody for testimony or other purposes;
- obtaining and producing judicial or official records;
- tracing, restraining, forfeiting, and confiscating the proceeds and instrumentalities of criminal activities, including assisting in proceedings related to forfeiture of assets, restitution, and collection of fines; and
- providing and exchanging information on law, documents, and records.

To stress, a common provision of the various MLATs is the obligation of the requested state to take measures in tracing, freezing, seizing, and forfeiting the proceeds of any criminal activity, including corruption, that may be found in that state. In the case of our MLAT with the US, Article 16 provides that "[t]he Party that has custody over proceeds or instrumentalities of offenses shall dispose of them in accordance with its laws. Either Party may transfer all or part of such assets, or the proceeds of their sale, to the other Party, to the extent not prohibited by the transferring Party's laws and upon such terms as it deems appropriate".

On the one hand, complementing these MLATs are bilateral arrangements for the extradition of the corrupt public officials who have become fugitives from justice. The countries with which the Philippines has entered into extradition treaties are Australia; Canada; Hong Kong, China; Indonesia; Republic of Korea; Switzerland; Thailand; and United States of America.

Regional treaty

Lately, the Association of Southeast Asian Nations (ASEAN), composed of Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Philippines, Singapore, and Vietnam, signed the Treaty on Mutual Legal Assistance in Criminal Matters. The treaty still has to be ratified by the respective states. Article 1 specifies that mutual assistance may include:

- taking evidence or obtaining voluntary statements from persons;
- making arrangements for persons to give evidence or to assist in criminal matters;

- serving judicial documents;
- executing searches and seizures;
- examining objects and sites;
- providing original or certified copies of relevant documents, records, and items of evidence;
- identifying or tracing property derived from the commission of an offence and instrumentalities of crime;
- restraining dealings in, or freezing of property, derived from the commission of an offence that may be recovered, forfeited, or confiscated;
- recovering, forfeiting, or confiscating property derived from the commission of an offence;
- locating and identifying witnesses and suspects; and
- other assistance as may be agreed upon consistent with the treaty and the laws of the requested state.

The proposed ASEAN Treaty provides that accrual of forfeited or confiscated property to the requesting party is subject to the domestic laws of the requested state, unless otherwise agreed by the proper authorities on a case-to-case basis. Further, it stipulates that the transfer of the recovered property is subject to the costs and expenses incurred by the requested state in enforcing the forfeiture order.

IMAC

The Philippines was able to recover millions of dollars in ill-gotten wealth from Switzerland despite the absence of a mutual legal assistance treaty. This was made possible through Switzerland's International Mutual Assistance in Criminal Matters (IMAC).

Anti-Money Laundering Law

Recent laws have allowed Philippine anti-corruption investigators to actively use anti–money laundering investigations to initiate the recovery process. The anti–money laundering law of the Philippines, Republic Act (R.A.) No. 9160, was signed into law on 29 September 2001 and took effect on 17 October 2001. It was amended by RA 9194 on 7 March 2003. Apart from criminalizing money-laundering activities, the said law requires financial institutions to report covered and suspicious transactions and to cooperate with the Government in the prosecution of the offenders. The threshold amount for covered transactions is PHP 500,000 (around

USD 9,090). The anti–money laundering law requires banks and other financial institutions to know their own customers; prohibits the opening of anonymous, fictitious, and numbered checking accounts; requires said banks and other financial institutions to keep records; and obligates them to report suspicious activities. The banks and other financial institutions are those regulated by the Bangko Sentral ng Pilipinas (BSP, the central bank of the Philippines), the Securities and Exchange Commission (SEC), and the Insurance Commission.

The Philippines has its own central financial intelligence unit, the Anti–Money Laundering Council (AMLC), which actively cooperates with the Office of the Ombudsman in anti-corruption investigations. It has entered into a Memorandum of Agreement (MOA) with the Office of the Ombudsman guaranteeing information sharing and close coordination between these agencies. Parallel money-laundering investigations strongly complement anti-corruption probes. Thus, the MOA was but a natural consequence of the symbiotic working relationship between the AMLC and the Office of the Ombudsman.

Under the anti–money laundering law of the Philippines, the AMLC is authorized to issue orders to determine the true identity of the owner of any monetary instrument or property that is the subject of a covered or suspicious transaction report, and if necessary to request the assistance of a foreign country. Concomitantly, it is likewise mandated to receive and take action on any request from foreign countries for assistance in their own anti–money laundering operations.

Application of Legal Concepts

For public corruption cases, especially in the ongoing lifestyle probes, the Philippines extensively utilizes the presumption under its Forfeiture Law (Republic Act No. 1379) that amounts or properties manifestly out of proportion to the public official's lawful income (i.e., salaries, legitimate income, and legitimately acquired properties) are prima facie unlawfully acquired. The natural consequence of such investigations is the initiation of forfeiture proceedings over the corrupt official's ill-gotten wealth. Of course, this is separate and distinct from the criminal actions that may be filed under the Revised Penal Code (the general penal law of the Philippines) or other special statutes like the Anti-Graft and Corrupt Practices Act. Under Philippine laws, forfeiture is deemed quasi-criminal and operates *in rem*. Assets of corrupt government officials that are stashed abroad may thus be declared unlawful and forfeited in favor of the State. The *in rem* concept was applied by the Philippine Supreme

Court in the recovery of the ill-gotten wealth of the late Philippine dictator Ferdinand E. Marcos.

The Marcos Wealth: A Case Study

In 1972, then President Ferdinand E. Marcos placed the entire Philippines under military rule. From then until February 1986, he, his family, and his cronies systematically looted the public wealth of the Philippines. It may thus be relevant to present a concise case study on the recovery of a substantial portion of that wealth.

The following is a short chronology of significant events in the seizure and transfer of a sizeable amount of the Marcos wealth:

- 28 February 1986 – The Presidential Commission on Good Government (PCGG), the lead agency of the Philippines tasked to recover the Marcos wealth, was created. The Philippine Government made informal representations to the US and Swiss courts to freeze Marcos assets abroad.
- 25 March 1986 – Swiss authorities imposed a unilateral freeze on Marcos assets in Switzerland.
- April 1986 – PCGG filed a request for mutual assistance with the Swiss Federal Police Department, under the procedures of the International Mutual Assistance in Criminal Proceedings (IMAC).
- 21 December 1990 – The Swiss Federal Supreme Court authorized the transfer of Swiss bank documents to the Philippine Government. It required the Government to file in the Philippines all criminal cases and forfeiture petition within a period of one year.
- 10 August 1995 – The Philippine Government filed with the District Attorney in Zurich a Petition for Additional Request for Mutual Assistance, dated 7 August 1995. The petition was essentially a request for the immediate transfer of the Swiss foundations' deposits to an escrow account.
- 21 August 1995 – Examining Magistrate Peter Cosandey granted the request and ordered the banks to liquidate all Marcos-related securities and accounts and to transfer them to an escrow account with the Philippine National Bank (PNB). However, the Zurich Superior Court of Appeals quashed the order.
- 10 December 1997 – The Swiss Federal Supreme Court upheld Cosandey's order.

- 15 July 2003 – The Philippine Supreme Court declared the forfeiture of the Swiss deposits in escrow at the PNB in the estimated aggregate amount of USD 658 million in favor of the Republic of the Philippines.

In the foregoing events, some significant observations on the processes and inter-governmental cooperation involved for the recovery of the above-mentioned USD 658 million may be noted, to wit:

- Switzerland voluntarily froze the Marcos Swiss deposits, later on invoking the IMAC, as availed of by the Philippine Government, as legal basis for such action.
- The Swiss appellate procedures were extensively used by the Marcoses to delay the transfer of the ill-gotten wealth from Switzerland to the Philippines. When the Marcoses' appeal was denied by the Swiss Federal Supreme Court, the monies were allowed to be transferred and deposited in escrow with the PNB.
- The Swiss Federal Supreme Court required the Philippine Government to institute criminal and forfeiture proceedings with the Philippine courts before the seized Marcos monies were transferred to Philippine jurisdiction.
- It took 17 years for the USD 658 million Marcos wealth to be seized in Switzerland and finally awarded in favor of the Republic of the Philippines. In this instance, the highest courts of both Switzerland (Swiss Federal Supreme Court) and the Philippines (Philippine Supreme Court) were involved in the seizure, confiscation, transfer, and final award of the wealth.
- Many agencies were involved in the seizure of the ill-gotten wealth. For the Philippines, the key players were the PCGG, the Office of the Solicitor General, the Sandiganbayan, and the Supreme Court. For Switzerland, the involved agencies were the Swiss Federal Police, the Zurich District Attorney, the Examining Magistrate, the Zurich Superior Court of Appeals, and the Swiss Federal Supreme Court.

Conclusion

The Philippines has statutes ensuring the stability of its financial system, including the secrecy of bank deposits. Foreign countries have similar statutes for that purpose. Corrupt Philippine officials have taken advantage of these domestic and foreign laws to conceal, protect, and spirit away their ill-gotten wealth, and later launder the proceeds through

seemingly legitimate investments. The identification, seizure and confiscation, transfer, and disposition of the ill-gotten wealth in favor of the Philippine Government demand international cooperation, especially from the competent law enforcement and judicial authorities where these ill-gotten wealth are located. Bilateral treaties provide an effective legal framework as to the mechanics for this cooperation.

The passage of an anti–money laundering law by the Philippines has boosted the anti-corruption initiatives of the Office of the Ombudsman in its domestic investigations and prosecution. Further, the ratification and implementation of bilateral and regional MLATs would ensure the placement of mechanisms to detect, trace, seize, confiscate, transfer, forfeit, and dispose, in favor of the Philippine Government, wealth unlawfully accumulated by its corrupt officials. Finally, to ensure a successful and sustained anti-corruption campaign that would cut through international borders, the competencies of Philippine anti-corruption investigators and lawyers must be upgraded to equip them with the knowledge and legal skills to use the various MLATs and other treaties vis-à-vis the anti-corruption and anti–money laundering laws of other states.

Appendices

Conference Agenda

Tuesday, 27 September 2005

16.00 – 18.15 Registration of conference participants

17.00 – 18.00 Preparatory meeting for chairs, speakers and panellists

Wednesday, 28 September 2005

08.00 – 09.00 Registration of conference participants

09.00 – 09.45 **Plenary 1 – Opening**

Chair:
LI Zhilun, Minister of Supervision, P.R. China

Welcoming remarks:
HUA Jianmin, State Councillor and Secretary General of the State Council, P.R. China

Opening remarks:
Geert van der LINDEN, Vice President, ADB

Opening remarks:
Richard HECKLINGER, Deputy Secretary-General, OECD

10.30 – 12.30 **Plenary 2 – Recent policy developments in Asia and the Pacific**

Co-chair:
Jak JABES, Director, Capacity Development and Governance Division, ADB

Carolyn ERVIN, Deputy Director, Directorate for Financial and Enterprise Affairs, OECD

Speakers:
Gretta FENNER, ADB/OECD Anti-Corruption Initiative Secretariat

HUANG Shuxian, Vice Minister, Ministry of Supervision, P.R. China

Janet Grace MAKI, Solicitor General, Cook Islands

TRAN Quoc Truong, First Vice Minister, Deputy Inspector General, Government Inspectorate of Vietnam

Patrick KEULEERS, Policy Advisor, Public Administration Reform and Anti-Corruption, UNDP Regional Center Bangkok

14.00 – 17.00 **Capacity building workshops I – Setting the scene for effective anti-corruption reform**

Workshop A: How can public opinion surveys assist in preparing anti-corruption reform?

Chair:
Jak JABES, Director, Capacity Development and Governance Division, ADB

Speakers:
David ZUSSMAN, Stephen Jarislowsky Chair of Public Management; Commissioner, Public Service Commission, Canada

Cobus de SWARDT, Global Programs Director, Transparency International

Abdul Rahman EMBONG, Principal Fellow, Institute of Malaysian and International Studies (IKMAS), Malaysia

Workshop B: Effective donor support for anti-corruption reform in developing countries

Chair:
Staffan SYNNERSTROM, Governance Advisor, ADB Indonesia Resident Mission

Speakers:
Fiona LAPPIN, Team Leader, Financial Accountability and Anti-Corruption, UK Department for International Development

Amien SUNARYADI, Vice-Chairman, Corruption Eradication Commission, Indonesia

XIAOHUI Wu, Programme Manager, UNDP Beijing

Thursday, 29 September 2005

09.00 – 12.00 **Capacity building workshops II – Developing targeted tools to address corruption risk zones**

Workshop C: Preventing corruption in humanitarian relief operations

Co-Chair:
Peter ROOKE, Director Asia-Pacific, Transparency International and
Bart EDES, Head, NGO Center, Asian Development Bank

Speakers:
Helen SUTCH, Regional Governance Adviser, East Asia and Pacific Region, World Bank

Nicholas STOCKTON, Director, Humanitarian Accountability Partnership International

Pramod Kumar MISHRA, Member Secretary, National Capital Region Planning Board, Ministry of Urban Development, India

Jayasuriya Chrishantha WELIAMUNA, Executive Director, TI Sri Lanka

Workshop D: Identifying typologies for conflicts of interest

Chair:
Janos BERTOK, Principal Administrator, Innovation and Integrity Division, OECD

Speaker:
Thomas Chi-sun CHAN, Director of Corruption Prevention, Independent Commission against Corruption, Hong Kong, China

Pou DARANY, Under Secretary of State, Ministry of Relation with the National Assembly, the Senate and Inspection, Cambodia

Pairote PATHRANARAKUL, Associate Dean, School of Public Administration, National Institute of Development Administration, Thailand

14.00 – 17.00 **Capacity-building workshops III – Working together for change**

Workshop E: Creating a supportive environment for business integrity

Chair:
Frédéric WEHRLÉ, Anti-Corruption Division, OECD

Speakers:
Henry PARHAM, Coordinator, Publish What You Pay
Vanessa HERRINGSHAW, Head of Economic Policy, Save the Children UK

Lester ROSS, Chief Representative, Wilmer Cutler Pickering Hale and Dorr LLP

So-yeong YOON, Deputy Director, Policy Coordination Division, Korea Independent Commission against Corruption (KICAC)

Workshop F: Denying safe havens through regional and worldwide judicial cooperation

Chair:
HUANG Shuxian, Vice Minister, Ministry of Supervision, P.R. China

Charles CARUSO, Regional Anti-Corruption Advisor, American Bar Association/Asia Law Initiative

Speakers:
Ian MCCARTNEY, Senior Liaison Officer Beijing, Superintendent, Australian Federal Police

Ador PAULINO, Director, Office of the Ombudsman, Philippines

Jean-Bernard SCHMID, Investigating Magistrate, Switzerland

CAI Yilian, Deputy Director General, The People's Bank of China

17.00 – 18.00 Drafting of meeting conclusions (for workshop chairs only)

Friday, 30 September 2005

09.00 – 10.30 **Plenary 3 – Defining the avenues for future anti-corruption reforms in the Asia-Pacific region**

Co-Chairs:
Jak JABES, Director, Capacity Development and Governance Division, ADB

Carolyn ERVIN, Director, Department for Financial and Enterprise Affairs, OECD

Speakers:
Chairs from capacity-building workshops A-F

10.30 – 11.00 Chinese leaders receive heads of delegations and other distinguished foreign guests

11.15 – 12.15 **Plenary 4 – Presentation of draft conference recommendations and conclusions**

Draft recommendations:
Jak JABES, Director, Capacity Development and Governance Division, ADB

Carolyn ERVIN, Director, Directorate for Financial and Enterprise Affairs, OECD

Closing remarks:
HUANG Shuxian, Vice Minister of Ministry of Supervision of P.R. China

12.15–12.40 Joint press conference by the ADB/OECD Initiative and the Ministry of Supervision of the People's Republic of China

List of Participants

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