



ADB/OECD Anti-Corruption Initiative for Asia and the Pacific

# **Building Multidisciplinary Frameworks**

## **to Combat Corruption**

**Proceedings of the 7th Regional Anti-Corruption Conference**

**Held in New Delhi, India, 28-29 September 2011, and hosted by  
the Government of India**





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Asian Development Bank

Organisation for Economic Co-operation and Development

## Publications of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific

- Building Multidisciplinary Frameworks to Combat Corruption: Proceedings of the 7th Regional Anti-Corruption Conference. Paris: ADB/OECD, 2011.
- The Criminalisation of Bribery in Asia and the Pacific: Frameworks and Practices in 28 Jurisdictions. Paris: ADB/OECD, 2010.
- Criminalisation of Bribery: Proceedings of the 10th Regional Seminar for Asia and the Pacific. Paris: ADB/OECD, 2010.
- Strategies for Business, Government and Civil Society to Fight Corruption in Asia and the Pacific. Paris: ADB/OECD, 2009.
- Supporting the Fight against Corruption in Asia and the Pacific: ADB/OECD Anti-Corruption Initiative Annual Report 2007. Paris: ADB/OECD, 2008.
- Fighting Bribery in Public Procurement in Asia and the Pacific. Proceedings of the 7th Regional Technical Seminar. Paris: ADB/OECD, 2008.
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- Curbing Corruption in Public Procurement in Asia and the Pacific: Progress and Challenges in 25 Countries, Manila: ADB/OECD, 2006.
- Denying Safe Haven to the Corrupt and the Proceeds of Corruption: Enhancing Asia-Pacific Co-operation on Mutual Legal Assistance, Extradition, and Return of the Proceeds of Corruption. Proceedings of the 4th Master Training Seminar. Manila: ADB/OECD, 2006.
- Knowledge-Commitment-Action against Corruption in Asia and the Pacific: Proceedings of the 5th Regional Anti-Corruption Conference. Manila: ADB/OECD, 2006.
- Anti-Corruption Policies in Asia and the Pacific: Progress in Legal and Institutional Reform in 25 Countries. Manila: ADB/OECD, 2006.
- Anti-Corruption Action Plan for Asia and the Pacific with country endorsing statements. Manila: ADB/OECD (2002; reprinted 2005).
- Curbing Corruption in Tsunami Relief Operations. Manila: ADB/OECD/TI, 2005 (available in English, Bahasa, Sinhala, and Tamil languages).
- Controlling Corruption in Asia and the Pacific: Proceedings of the 4th Regional Anti-Corruption Conference. Manila: ADB/OECD, 2005.
- Anti-Corruption Policies in Asia and the Pacific: The Legal and Institutional Frameworks. Manila: ADB/OECD, 2004.
- Effective Prosecution of Corruption. Proceedings of the 1st Regional Training Seminar. Manila: ADB/OECD, 2003.
- Taking Action against Corruption in Asia and the Pacific: Proceedings of the 3rd Regional Anti-Corruption Conference. Manila: ADB/OECD, 2002.
- Progress in the Fight against Corruption in Asia and the Pacific: Proceedings of the 2nd Regional Anti-Corruption Conference. Manila: ADB/OECD, 2001.
- Combating Corruption in Asia and the Pacific: Proceedings of the Manila workshop held in 1999. Manila: ADB/OECD, 2000.

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# Foreword

Created in 1999, the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific supports its members in strengthening their policies, legislation, institutions and practices to fight corruption. The Initiative offers experts in Asia and the Pacific opportunities to work with colleagues from around the globe to address emerging challenges in the fight against corruption, and to seek solutions.

Corruption is a multifaceted problem that requires a multidisciplinary solution. The need for multidisciplinary frameworks for combating corruption is also reflected in prevailing international standards, such as the United Nations Convention against Corruption (UNCAC), and the OECD Anti-Bribery Convention and other OECD instruments. The ADB/OECD Anti-Corruption Initiative thus dedicated its 7th Regional Anti-Corruption Conference to the theme: *Building Multidisciplinary Frameworks to Combat Corruption*.

The Conference, generously co-organised by the Government of India, provided participants with an understanding of the key issues holistic solutions to corruption in Asia-Pacific. Discussions covered four main areas: 1) international co-operation in multijurisdictional corruption investigations; 2) measures to prevent and detect corruption in public procurement; 3) corporate compliance, internal controls and ethics measures to fight corruption; and 4) strong citizen contributions to these frameworks. Experts from the Initiative's member countries and economies and leading global experts, including from other regions and OECD member countries, shared their experiences.

# Main Abbreviations and Acronyms

ADB	Asian Development Bank
APEC	Asia-Pacific Economic Cooperation
CBI	Central Bureau of Investigation (India)
EU	European Union
EUR	Euro
ICAC	Independent Commission against Corruption (Hong Kong, China)
KPK	Komisi Pemberantasan Korupsi—Corruption Eradication Commission (Indonesia)
MACC	Malaysian Anti-Corruption Commission
MLA	mutual legal assistance
MOU	memorandum of understanding
NGO	non-governmental organization
OECD	Organisation for Economic Cooperation and Development
TI	Transparency International
UK	United Kingdom
UN	United Nations
UNCAC	United Nations Convention against Corruption
UNDP	United Nations Development Programme
UNODC	United Nations Office on Drugs and Crime
US	United States



# Introduction

Corruption is a multifaceted problem that requires a multidisciplinary solution. The need for multidisciplinary frameworks for combating corruption is also reflected in prevailing international standards, such as the United Nations Convention against Corruption (UNCAC), and the OECD Anti-Bribery Convention and other OECD instruments. These instruments address the problem from every angle – prevention in the public and private sectors, detection and law enforcement.

To help governments, businesses and citizens in Asia-Pacific find holistic approaches to the corruption problem, the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific held its 7<sup>th</sup> Regional Anti-Corruption Conference on 28-29 September 2011. The conference was graciously hosted and co-organised by the Government of India. The conference provided a forum to exchange views on some of the main features of an effective multidisciplinary anti-corruption framework: 1) international co-operation in multijurisdictional corruption investigations; 2) measures to prevent and detect corruption in public procurement; 3) corporate compliance, internal controls and ethics measures to fight corruption; and 4) strong citizen contributions to these frameworks. Additional smaller breakout sessions delved further into more specialised areas of interest, such as effective international information-sharing in investigations; public procurement in high risk sectors; features of an effective corporate compliance programme; and strengthening citizens' participation to increase integrity and transparency in government.

This conference was designed for policy makers, legislators, compliance practitioners, and civil society and private sector representatives seeking holistic solutions to corruption in Asia-Pacific. It gathered experts from the 28 member countries and economies of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific. In addition, leading global experts, including from other regions and OECD member countries, shared their experiences. Experts came from all the relevant disciplines – representing international organizations, leading enterprises and businesses associations, civil society, and multilateral and donor organizations. Many presentations are reproduced in this publication, in hopes that the ideas and knowledge contained therein would be disseminated to a wider audience.



# Acknowledgments and Editorial Remarks

The ADB/OECD Anti-Corruption Initiative for Asia and the Pacific sincerely thanks the Government of India, host of the 7th Regional Anti-Corruption Conference, for its gracious hospitality and excellent preparation. Special thanks also go to the conference participants, particularly the expert speakers whose insights and experiences enriched the meeting discussions and informed its outcomes.

The conference was co-organised by the Ministry of Personnel, Public Grievances and Pensions and the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific Secretariat. Secretary Alka Sirohi and Additional Secretary Dr. S.K. Sarkar oversaw the organization of the event on behalf of the Government of India. Staff of the ADB/OECD Initiative Secretariat who participated in the conference's organization include Sandra Nicoll, Director, concurrently Practice Leader (Public Management, Governance), Public Management, Governance and Participation Division, ADB; Surya Shrestha, Senior Public Management Specialist, Public Management, Governance and Participation Division, ADB; Marilyn Pizarro, Consultant, Public Management, Governance and Participation Division, ADB; William Loo, Senior Legal Analyst, OECD Anti-Corruption Division; Christine Uriarte, Counsellor, OECD Anti-Corruption Division, and; Melissa Khemani, Anti-Corruption Analyst/Legal Expert, OECD Anti-Corruption Division.

The Initiative is also grateful to its partners for their financial and intellectual support: the German Federal Ministry for Economic Cooperation and Development, German Agency for International Cooperation (GIZ), Swedish International Development Cooperation Agency (SIDA), Asia-Pacific Group on Money Laundering, the American Bar Association/Rule of Law Initiative, Transparency International, United Nations Development Programme, United Nations Office on Drugs and Crime, World Bank, and the US Department of State.

The Initiative would also like to thank the Swedish International Development Cooperation Agency for its generous financial support, without which this conference would not have been possible.

The term "country" in this publication also refers to territories or areas; the designations employed and the presentation of the material do not imply the

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# Opening Ceremony

- Inaugural Address by H.E. Smt. Pratibha Devisingh Patil, Honourable President of India
- Opening Remarks by V. Narayanasamy, Honourable Minister of State, Government of India
- Welcome Address by Alka Sirohi, Secretary, Department of Personnel and Training, Ministry of Personnel, Government of India
- Opening Remarks by Xiaoyu Zhao, Vice President, ADB
- Opening Remarks by Richard A. Boucher, Deputy Secretary-General, OECD
- Vote of Thanks by S.K. Sarkar, Additional Secretary (Services & Vigilance), Department of Personnel and Training, Ministry of Personnel, Government of India





## Inaugural Address

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H.E. Smt. Pratibha Devisingh Patil  
Her Excellency the President of India

It is a great pleasure for me to inaugurate the Seventh Regional Conference of the ADB/OECD Anti-Corruption Initiative being hosted by India. I convey my warmest greetings to experts and policy makers from various countries that have come together for these deliberations. I understand that the request of the Government of 'Timor Leste' to join the Initiative has been considered and recommended for acceptance by the Steering Committee as the 29th Member.

The ADB/OECD Anti-Corruption Initiative for Asia and the Pacific, which now has more than a decade of experience, is committed to move forward purposefully, in the fight against corruption. The Action Plan, together with its Implementation Plan developed by the Initiative, consist of steps relating to the public sector, the private sector and civil society, and also contain a number of principles and standards on policy reform, which Governments of the region implement on a voluntary basis. The initiative, indeed, seeks to implement the entire gamut of obligations contained in the legally binding United Nations Convention Against Corruption, extending from the preventive aspects of corruption, to the requirements to ensure effective international co-operation for combating it.

To begin with, I take this opportunity to speak of India's economic growth as well as its governance structure. India has made great economic strides since 1991 when the process of economic reforms was ushered in. This has enabled the country's GDP to grow, reaching a level of 9.6 percent in the year prior to the global economic crisis of 2008. The Indian economy faced this global financial meltdown with alacrity and persisted with a high growth trajectory. India's weight in the global economic landscape increased considerably. Once again the global economic environment is raising concerns. However, I am confident that with its strong fundamentals and resilience, the Indian economy will grow, and we will continue to pursue an inclusive growth strategy, that includes an ambitious programme for the expansion of our social and infrastructure sectors. We recognize that corruption is a hurdle towards these endeavors and that it must be removed.

India has a Constitution whose principles and institutions have served the nation well. We are a secular democratic country with separation of powers of the Legislature, the Executive and the Judiciary. Equally important are the fourth and fifth pillars, which have been playing their role of instruments of course correction. Equality of opportunity is contained in the Fundamental Rights and Directive Principles of the Indian Constitution and, we have a long history of responsible affirmative action to meet peoples' needs within a democratic framework. In India, the roots of democracy are deep and abiding. We are not only the largest functional democracy in the world but have an unwavering faith in it. We have held 15 nationwide general elections since our independence. Following the verdict of the people, each time there has been a peaceful transition of government. The 73rd and 74th Constitutional Amendments have strengthened the Panchayati Raj System in villages and municipal bodies in towns and cities, as the third tier of the democratic system. This has resulted in a deepening of democracy and further empowered citizens at the grassroots level by decentralizing decision making in many areas. We are committed to greater transparency and accountability in governance, as also to a policy of "zero tolerance" towards corruption.

India has an elaborate legal and institutional framework for prevention and combating corruption in public services. We have a well structured system of recruitment, clear and transparent policies of promotion, and elaborate conduct rules for public officials for ensuring the maintenance of integrity. Rules of conduct for public officials provide for submission of reports regarding investments, assets and properties and gifts received. There are also provisions for prevention of conflict of interest through restrictions on private employment of public officials after retirement. Violation of conduct rules attracts disciplinary action against officials. The Central Vigilance Commission, the Central Bureau of Investigation, State anti corruption agencies, the Directorate of Enforcement, and the Lokayuktas, tackle preventive and punitive aspects of corruption. Laws like the Prevention of Corruption Act 1988, the Prevention of Money Laundering Act 2002, the Indian Penal Code and the Criminal Procedure Code, are in force and form the core of the legal provisions to tackle corruption. The judicial process through the structure of civil courts, the High Courts and the apex level Supreme Court, provide an alternate channel of redress for matters related to corruption. The issue for framing an Ombudsman Law is presently being considered by Parliament, as also the Judicial Standards and Accountability Bill, 2010.

The Extradition Act and bilateral arrangements for mutual legal assistance are the tools on which we seek to build international co-operation.

India has ratified the United Nations Convention Against Corruption in May 2011. It has been a significant step and would facilitate the furtherance of efforts to secure effective international co-operation in tackling trans-border corruption. Domestic laws are substantially compliant with the mandatory provisions of the UN Convention, excepting a couple of Articles. For this, the necessary Legislative Bill has been introduced in Parliament, which relates to the prevention of bribery of foreign public officials and officials of public international organizations. A process to consider changes in the Indian penal laws has also been set in motion for criminalizing private sector bribery.

Any approach to combating corruption would need to be multifaceted, as the problem itself has a number of dimensions. Governments would have to constantly look at and review existing laws, systems and procedures for ensuring their effectiveness. It would require strengthening institutions, removing loopholes, stringently implementing laws and making every institution more transparent in its functioning. All the stakeholders have to work together in all these initiatives to eradicate the cancer of corruption.

I believe that any fight against corruption also requires the need to look at individual behaviour as well as societal norms. Legislation alone would not be enough. It requires education, creation of awareness and moral regeneration to fight corruption. Gandhiji once said that the right national life has to begin with the individual. Corruption basically arises out of greed and a desire for quick enrichment without efforts. It can be described as a moral failure. There are some who speak of how the temptation of consumerism has caused a drift away from a principled life. Therefore, it is very important for society to look at inculcating values that respect and give a premium to honesty and integrity. India has always been a land where through the ages, there has been an emphasis on human values and ethics. This spirit remains an integral part of the Indian ethos. At testing times, we need to remember this.

I believe the regional conference will prove to be a useful platform to share views and experiences, and learn from one another in addressing the specific themes which are on the agenda of this Conference.

I again congratulate you all, for having come together on a common platform against corruption, which is of a global concern. To address this effectively, it requires the nations to debate and deliberate on improving the effectiveness of international co-operation. I am sure this Conference will provide the right forum to address this.

Thank you.



## Opening Remarks

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Shri V. Narayanasamy  
Honourable Minister of State (Prime Minister's Office and Personnel,  
Public Grievances and Pensions), Government of India

Your Excellency, The President, Mrs. Alka Sirohi, Secretary, DoPT, Mr. Xiaoyu Zhao, Vice President, ADB, Mr. Richard A Boucher, Dy Secy General, OECD, Shri Pradeep Kumar, CVC, Chairman, UPSC, Shri A P Singh, Director, CBI, Mr. Sarkar, Addl Secretary, DoPT, Distinguished guests, Eminent personalities, My colleagues from the Government of India, Delegates, Ladies and Gentlemen:

I am grateful to the Honourable President of India for the kind inaugural address in the 7th Regional Conference of ADB/OECD today. I wish to convey my sincere thanks and gratitude to all the members of the delegation and participants who have assembled here today from different parts of the world.

I extend a very warm welcome to each one of you on behalf of the Government of India and congratulate the ADB/OECD Initiative and its team for having chosen India and making this seventh regional conference possible here in Delhi.

The United Nations Convention Against Corruption is a legally binding universal international Instrument to deal with corruption. The preamble of the Convention, while describing the circumstances which resulted in the birth of the universal instrument, highlighted the pernicious effects of corruption. The Convention's recognizes that:

- "Corruption is a serious problem and threatens the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law.
- There are close links between corruption and other forms of crime, in particular organized crime and economic crime, including money laundering.
- Corruption is no longer a local issue but a transnational phenomenon, making international cooperation and a comprehensive and multidisciplinary approach.

- Illicit acquisition of personal wealth can be particularly damaging to democratic institutions, national economies and the rule of law”.

The international ramifications of the evils of corruption cannot be denied. It is this global dimension of the problem that brings all of us again and again to deliberate various aspects in international co-operation. Such conferences strongly undermine the realisation amongst us that we all need to collaborate and co-operate more effectively with the common objective of weeding out the evil called corruption in various fields.

One of the important elements, in any anti corruption framework, involving multiple jurisdictions is the effectiveness of co-operation amongst the agencies involved in pursuing the common goal of punishing the guilty and recovery of proceeds of crime or the assets created out of the proceeds thereof. There are issues of detail which at the ground level create serious difficulties in ensuring effective co-operation between jurisdictions. The difficulties for jurisdictions to act in a concerted and co-ordinated manner may be many. There is thus a need to look at the existing mechanisms of institutions and instrumentalities of international co-operation in cross border investigations and the necessity to evolve mechanisms for addressing the flaws. 9

I am happy that the Conference would be discussing all these issues including the importance of information exchange in one of the Plenary and Break Out Sessions on ‘Strengthening frameworks in Multijurisdictional Corruption Investigation Cases’ and on the ‘Strengthening of the Exchange of Information’. I am sure that the experts who have gathered here will come out with ideas and suggestions which can be built upon to address the irritants in building an appropriate anticorruption framework to ensure more effective international co-operation in cross border investigations and issues in cases involving multijurisdictional investigations.

We have recognised that Public Procurement is a fertile area for corruption to breed. Measures aimed at bringing total transparency in the procurement process and ensuring promotion of integrity of individuals are two big areas which will go a long way to address the preventive angle in public procurement.

The General Financial Rules, manual on Policies and Procedures for Purchase of Goods, instructions on the subject issued from time to time by the Central Vigilance Commission help to achieve the objective of making the process of public procurement very transparent and fair. The promotion of the

concept of 'Integrity Pacts' and use of e-governance mechanisms in public procurements are some of the significant initiatives.

In order to bring out procurement under a legal framework, we have decided to bring in a comprehensive legislation on Public Procurement. I am happy that the conference will also deliberate on this subject.

There are two important areas, namely, involvement of Private Sector and role of citizens in combating and strengthening the framework of corruption. I will now deal with them.

The United Nations Convention Against Corruption requires State parties to put in place measures within its means and in accordance with fundamental 13 principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness. The Convention envisages measures for enhancing transparency and promoting contribution by the public in the decision making process, ensuring effective transparency, involvement and creating awareness. The Right to Information Act 2005, a landmark legislation passed by the Parliament under the able guidance of the Honourable Chairperson, United Progressive Alliance Government Smt. Sonia Gandhi and Honourable Prime Minister Dr. Manmohan Singh which will ensure compliance with the requirements of the Convention.

The role of Private Sector has increasingly come into focus as one of the key players in the Anti corruption framework. The United Nations Convention Against Corruption requires State Parties to provide for measures to ensure transparency, accountability and ethics in corporate governance. It also encourages the State Parties to criminalise private sector bribery. India's domestic laws governing the functioning of corporate bodies is robust and it has substantive provisions to ensure transparency, accountability and audit as the basic elements of corporate governance. Steps have also been initiated to cover private sector bribery within a legislative framework.

Combating corruption is a continuous process. A multi dimensional approach is required to tackle the menace of corruption. India is fully committed towards its policy of 'zero tolerance to corruption'. We will continue to work to fulfil these objectives in association with various stakeholders and countries.

I hope that the deliberations in the conference will help the policy makers and practitioners to tone up their knowledge and skills benefitting the Governments across the region.



Thank you.

## Welcome Address

---

Alka Sirohi

Secretary, Department of Personnel and Training, Ministry of Personnel  
Government of India

Her Excellency, The President of India, Smt. Pratibha Devisinhji Patil, Honourable Shri V. Narayanasamy, Minister of State for Personnel, Public Grievances, Pensions, & the Prime Minister's Office, Mr. Xiaoyu Zhao, Vice President, ADB, Mr. Richard A. Boucher, Deputy Secretary General, OECD, Mr. Pradeep Kumar, Central Vigilance Commissioner, distinguished participants in the Conference from around the world, ladies and gentlemen,

It is my proud privilege to welcome Her Excellency to the 7th Regional Anti Corruption Conference supported by the ADB & OECD Initiative and being hosted by India. Madam President, this is a time in history when people and nations are increasingly introspecting and reassessing the political and economic order, and debating on better paths for governance, a time when the issue of effectively combating corruption acquires fresh immediacy and urgency. I am sure, Madam, that your vision expressed at this Inaugural session will set the tone for the policymakers and thinkers in their deliberations in the days ahead.

I also welcome our Minister of State who has been the inspiration behind the Conference and under whose guidance several anti corruption measures have been initiated.

I extend a warm welcome to Mr. Xiaoyu Zhao, Vice President, ADB, and Mr. Richard A. Boucher, Deputy Secretary General, OECD, and thank the ADB/OECD Initiative for giving us the opportunity to host this Conference here in New Delhi and for recognizing India as a worthy torch bearer in the global march against corruption. The efforts put in by the ADB/OECD team in making this event possible are admirable.

On behalf of the Government of India, I warmly welcome all the distinguished delegates and guests, friends and colleagues who have gathered here. Your presence adds immense value to the process of shared learning which can be accelerated through deliberations.

This is one of the many endeavours to build bridges between countries, to create a community of effort on a matter which is of vital concern for all of us, as governments, as public servants and as individuals. Corruption, unethical conduct, conflict of interest between the private and the public good, lack of accountability, decline in integrity and rectitude are issues which are taking a toll not only on our developmental process and progress but on our day to day lives as well.

Corruption is a malaise in the governance of nations — a malaise that demands an urgent and immediate response, a malaise that needs to be eradicated as it often threatens to overtake and overshadow all the public good that may have been done. Corruption is contrary to the principle of rule of law that is the foundational principle for democracy. It fosters inequity and injustice, contributing to a disenchanting citizenry. The problem of embedded corruption is also inter-twined closely with developing an accountability framework that applies to all within the hierarchy of Government. This framework should recognize the causes for corruption; evolve principles, institutions, structures and laws to deliver greater accountability in functioning without compromising democratic principles or the fabric of the State. The clamour from citizens for better governance can be heard across the world — in developed and developing nations alike. It is for us to hear the voice and respond appropriately. India has been steadfast in her commitment to democracy and democratic values and the theme of the Conference carries deep resonance and salience at this particular moment of our political evolution. We have taken some very meaningful steps to demonstrate our commitment to fight corruption both at the national and international levels. This includes strengthening of our legislative framework, institutions, administrative practices and procedures, and recent ratification of the United Nations Convention Against Corruption.

Yesterday, the Steering Group met and deliberated purposefully on the Initiative's, work programs and activities for the next 3 years along with country specific anti corruption issues and strategies. In this 2-day Conference, through its plenary and breakout sessions, experts from 28 countries, from the Asia and the Pacific Region, along with an advisory group of related international organizations & other experts, will debate and deliberate on establishing and implementing an effective, multidisciplinary anti-corruption framework in the Asia-Pacific and cover aspects related to:

- strengthening international cooperation in multi- jurisdictional corruption investigations;

- putting in place measures to prevent and detect corruption in public procurement;
- building effective corporate compliance, internal controls and ethics; and
- focusing on the role of the private sector in prevention of corruption and underscoring the importance of citizen's role in strengthening anti-corruption strategies.

It has been aptly said and I quote “The accomplice to the crime of corruption is frequently our own indifference”. I hope the outcomes that emerge from the deliberations at this Conference would be a milestone in evolving durable strategies and framework for affirmative action to combat corruption in our respective countries.

On behalf of the Department of Personnel & Training, Government of India, I once again extend a warm welcome to her Excellency, the President, and to all our distinguished guests.

To those who have taken the trouble of traveling to our country, from other shores, I extend a hope that you will get some time to enjoy the magnificent city of Delhi and its rich culture and heritage. There are three world heritage sights in the city - the Red Fort, Humayun's tomb and the Jama Masjid, which are a treat in history and architectural splendour. At this time of the year the city is at its greenest best and the weather gods are kind. I wish you a pleasant stay with us.

Thank you.



# Opening Remarks

---

Xiaoyu Zhao  
Vice President  
Asian Development Bank

## I. Introduction

Your Excellency Madam President; Honorable Shri Narayanasamy; Mr. Boucher; Madam Sirohi; distinguished guests; ladies and gentlemen:

I am honored to be here this morning.

I would like to take this opportunity to thank the Government of India and particularly our host, the Ministry of Personnel, Public Grievances and Pensions, for hosting this regional conference on Building Multidisciplinary Frameworks to Combat Corruption. This is an important forum for us to discuss a range of pressing issues.

India has been actively participating in the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific since its launch in 2001.

Our ongoing portfolio with the Government of India includes 67 sovereign loans amounting to USD 10.2 billion. ADB has been supporting the Government's efforts to facilitate inclusive growth as emphasized in the 11th Five-Year Plan. Our partnership has focused on four areas: (i) inclusive and environmentally sustainable growth; (ii) catalyzing investment through the use of innovative business and financing solutions; (iii) strengthening results orientation and knowledge solutions; and (iv) regional cooperation. India's economic growth in the past decade has been phenomenal. We would like to see India's robust growth continuing in future with more people sharing the opportunities that growth and development provides.

## II. Challenges of Weak Governance and Corruption

Corruption remains a major global challenge. It devastates societies, harms economies, undermines the rule of law, distorts competition and weakens public trust.

Transparency International's Corruption Perception Index, a survey which annually ranks countries by their perceived levels of corruption as determined

by expert assessments and opinion surveys, revealed in 2010 that corruption remains a serious problem in nearly three quarters of the 178 countries it reviewed. Unfortunately, many members of the ADB/OECD Initiative ranked poorly on the index, with many suffering from high levels of corruption.

A separate survey by Transparency International – the 2010 Global Corruption Barometer – interviewed over 91,000 people in 86 countries about their perceptions of bribery in their own countries. It found that people in almost all Asian countries, regardless of income level, felt that corruption had worsened over the last three years. It has also been widely reported that corruption threatens the global community's ability to achieve the Millennium Development Goals by 2015.

Although the Asia and Pacific region has had tremendous success in reducing poverty through several decades of strong economic growth, there are increasing income and non-income disparities among and within countries in the region. Asia is home to more than hundreds of millions people who struggle to exist on \$1.25 a day or less. And we know that weak governance and corruption hits the poor the hardest. Corruption is a serious brake on the development process now, and into the future.

Asia's development over the past four decades has been remarkable and many people are now talking about the Asian Century, with the economic center of gravity shifting to the region.

A recent ADB study called "Asia 2050: Realizing the Asian Century" articulates what the Asia and Pacific region might look like in the future. The study found that if current trends prevail, Asia could make up half of the world's economic output by 2050 and another 3 billion people would have joined the ranks of the affluent, their income matching those of Europe today.

The study also states that while the Asian Century is certainly plausible, it is not preordained. There are several serious challenges to achieving this collective aspiration but one overarching challenge that is relevant to us here today is improving governance and fighting corruption. Asia has generally lagged behind the rest of the world when it comes to effective governance practices and effective institutions. If the region is to move forward and this is to become the "Asian century", eradicating corruption will be crucial for growth, as well as to maintain social and political stability.

Asian countries must transform their institutions with an emphasis on transparency, accountability and enforceability. In this context, this conference's

focus on strengthening diverse institutional frameworks to combat corruption is very relevant and timely.

### III. ADB: Development and Good Governance

The persistence of poverty in the Asia and Pacific region is a major challenge for the region. We at ADB believe the way to reduce poverty and make development more effective is by addressing corruption and governance problems. Corruption sabotages policies and programs that aim to help the poor and move a society forward economically and socially.

As the region's development partner, ADB works closely with our developing member countries to address their governance challenges. Our engagement in the ADB/OECD Initiative is an integral part of our overall program on good governance and public sector management.

We were the first multilateral development bank to adopt a Governance Policy in 1995, and three years later in 1998, we approved a comprehensive Anticorruption Policy. Strategy 2020, our long-term strategic framework, reframes good governance – transparent, accountable and participatory – as a driver of change in the Asia and Pacific region. Our anti-corruption efforts are a crucial part of our broader governance agenda, which seeks to improve the quality of the public sector.

We also focus on initiatives and systems in our member countries that emphasize corruption prevention and utilize the international framework embodied in the United Nations Convention against Corruption. We are pleased to note that the majority of members of the ADB/OECD Initiative have ratified this Convention.

### IV. Regional Conference: Strengthening Multidisciplinary Frameworks

ADB warmly welcomes the theme of this year's conference which emphasizes a multidisciplinary framework for fighting corruption. Governments, private sector, citizens, and civil society must work together towards a transparent and accountable governance and anti-corruption agenda. Equally important are the partnerships among diverse groups of institutions at national, regional and global levels.

Today, business leaders from the private sector are becoming more aware of the legal problems and risks to their reputation associated with



corruption. Many private companies have promoted corporate responsibility and accountability internally through codes of conduct, transparent company accounts, and integrity in operations. ADB is committed to expanding our work with the private sector to generate economic growth in the Asia and Pacific region by strongly promoting and encouraging public-private partnership in our core operational areas. The private sector has been, and will remain, the engine of growth in the region. We therefore strongly support improvements and reforms in corporate governance.

As we provide billions of dollars to member countries for development, strengthening public procurement is a key concern for us. The vast amounts of money flowing from government budgets for procurement can create opportunities for corruption. We are very concerned about ensuring effective use of our financial resources. Complex procedures, broad discretion, weak oversight, and limited implementation capacity are among the main challenges to making sure resources are used properly.

ADB has supported several approaches to counter corruption risks inherent to public procurement, as well as bolstering country systems. For example, we have strengthened the capacity of central procurement oversight authorities, promoted e-procurement, and engaged civil society and private companies in emboldening transparency and integrity in procurement.

ADB recognizes the need for and advantages of international cooperation in the fight against corruption, including in the area of investigation. In 2010, ADB joined the African Development Bank Group, the European Bank for Reconstruction and Development, the Inter-American Development Bank Group, and the World Bank Group in an agreement to cross debar firms and individuals found to have engaged in wrongdoing in our development projects. ADB believes that collective efforts of multilateral development banks in combating corruption globally will make development more effective and bring about sustainable economic growth in the long run.

## V. Conclusion

Let me conclude by thanking all the members of the Initiative and other conference participants for your unrelenting commitment to fighting corruption in your respective countries. Corruption causes profound harm to a society and hampers the development process. It must be beaten if we are to achieve inclusive development and reduce poverty in the Asia-Pacific region

I wish you a very stimulating and fruitful discussion over the next two days.

Thank you.



## Opening Remarks

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Richard A. Boucher  
Deputy Secretary-General  
OECD

Madam President, Ministers, Excellences, distinguished ladies and gentlemen, I am honored to be here today with you to open this extraordinary gathering devoted to stopping corruption.

I am particularly honored to share this platform with Her Excellence Srimati Pratibha Devisingh Patil, President of India. Your presence is testimony to the commitment at the highest levels to explore new and better ways to fight corruption. We thank you and the Government of India for hosting us and for organizing this conference.

You have assembled an impressive group of high-ranking representatives for our discussions. Special thanks go to the colleagues sharing this podium this morning: Minister Narayanasamy, Secretary Sirohi, and Additional Secretary Sarkar.

I would also like to acknowledge our partner, the Asian Development Bank, and thank Mr. Zhao for his remarks.

This is the seventh Conference we have held in the past twelve years with the Asian Development Bank to strengthen the legal and institutional frameworks against corruption in this region.

Today we have 28 members. We welcome each and every one of you.

India plays an important role in this effort, as one of Asia's and the world's largest economies, with impressive growth and yet many challenges.

The movement sweeping India and indeed sweeping the world to expose and punish corruption offers hope. We're here to identify what we can do to satisfy the demands of our citizens for fairness, efficiency, and equality in government and business.

For bribery and corruption are steal from them. They steal especially from the poorest, those who can't pay or can't protest. The corrupt steal hospitals from sick children, roads and water from poor farmers, education from young students hungry to learn.

With determination we can change the culture of tolerance. No more should anyone ask for a bribe, nor should anyone have to pay.

At the OECD, we are bringing together the whole tool kit of steps governments and business can deploy. We call this initiative CleanGovBiz, and it is based on existing tools, tools to improve government systems and corporate practices, the open up transparency, and help implement the UN Convention Against Corruption and the OECD Anti-Bribery convention.

Let me cite some examples:

- By simplifying regulations, governments can eliminate the unnecessary steps, forms and procedures that become the excuse for bribes.
- By improving transparency in public procurement – which is often more than 15% of the national income – we can make sure citizens get value for their tax money. Especially important are tools to fight bid rigging and encourage whistleblowing.
- The integrity of public officials can be safeguarded through disclosures and merit based systems of performance.
- Clarity in taxes and budgets shows citizens know what's happening to their money, and what is their due in terms of government services.
- Good corporate practices can ensure that there are no givers of bribes as well as no takers, and reduce the corporate exposure that comes from sloppy or bad practices.
- Empowered prosecutors can go after those responsible, no matter what their position or affiliation.
- Good laws against foreign bribery are essential. Bribery is not acceptable –not here, not anywhere. Under the OECD convention, interlocking laws help clean up international business and ensure that lawbreakers can't hide in the cracks between borders. We look forward to passage of the law against foreign bribery now pending in the Indian parliament.
- In all these aspects, citizen involvement – through the media, civil society groups and through the ballot box – is absolutely

essential. Transparency works when people are paying attention.

All these tools can contribute to stopping bribery. We'll discuss many of them in more detail over the next day or so.

Underlying the effort, has to be the determination shown by passing the laws, finding the flaws and taking action to hold leaders accountable and to expose corruption.

We admire the Indian citizens and others, in government, in business and in the streets, who are taking up this challenge.

All of us are gathered here as partners. All of us can contribute.

In the end, the goal is to make sure our economic progress benefits all in our societies, to ensure that prosperity spreads and all citizens benefit.

The OECD works with India on inclusive growth. Fighting corruption is a key aspect for all of us, and a constant struggle for all of us.

At the OECD, we call it "better policies for better lives."

So for all of you who have brought your determination and your expertise to this Conference, I welcome you and thank you for your contribution to this effort.



## Vote of Thanks

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Additional Secretary Dr. S.K. Sarkar  
Department of Personnel & Training, Ministry of Personnel, Public  
Grievances & Pensions, Government of India

It is my privilege to propose the Vote of Thanks for the 7th Regional Anti-Corruption Conference of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific commencing today.

At the outset, I would like to express my profound gratitude to Her Excellency, the President of India for sparing her valuable time to address the gathering, and for highlighting the issues that we need to deliberate on during the Conference. It is an indication of the importance India attaches to the subject of corruption. Her Excellency has highlighted the need for adopting a multi disciplinary approach to deal with corruption, emphasized the need for systemic reforms, and impressed on the need for improving governance. These will also form the basis of deliberations during the two day conference.

I would like to express our sense of obligations to the Honourable Minister of State for Personnel, Public Grievances and Pensions for his kind guidance for this event, and also in helping us in strengthening various mechanisms of anti corruption framework with the aim to implement the Government's policy towards 'zero tolerance against corruption'. We are also extremely grateful to Secretary, Personnel for her constant and meticulous guidance, and in making this conference happen in India, and also in inspiring us to host it successfully.

We convey our sincere thanks to the Chairman, Union Public Service Commission, and Central Vigilance Commissioner for their gracious presence today. I thank all the senior functionaries of the Governments for their kind presence today.

On behalf of Government of India, we would like to place on record the excellent contributions made by the OECD led by its Deputy Secretary General, and the ADB led by its Vice President by sharing their thoughts on the subject. Our special thanks go to the ADB/OECD Anti Corruption Initiative Secretariat for helping us organize the 7th Regional Conference and 16th Steering Group meeting in India.



These events would not have been possible without its constant guidance and help.

We also thank the representatives of the Member Countries of the Initiative, representatives of the Observer countries/organizations, members of the Advisory Group and International Organisation for their presence today, and we will be immensely benefited by their input during the conference.

I take this opportunity to extend our gratitude to the distinguished panel of speakers, delegates, from India as well as overseas, distinguished participants, and learned guests for participating at the event.

I would be failing in my duty if I do not convey my thanks to the print and electronic media for the efforts they are taking for coverage of the event, and for highlighting various anti corruption issues at different fora.

Lastly, I thank all the members of the organizing Committee, and all my colleagues who have been involved in this particular exercise for last several months. Without their cooperation and full support, this conference would not have been possible.

Thank you all once again, and we look forward to an extremely productive two day discussion

# Conference Conclusions

Corruption is a multifaceted problem that requires a multidisciplinary solution. This Conference has shown how more than ever governments, the private sector and civil society, need to work together to address corruption in Asia-Pacific in a holistic and inclusive fashion. This Conference has also shown how opportunities for collective anti-corruption efforts in the Region are increasing, with recognition that corruption harms everyone in society, and everyone has a role to play to tackle it effectively. The following conclusions from the Conference represent the collective commitment of the 28 governments and economies in the ADB/OECD Anti-Corruption for Asia and Pacific (Initiative) to achieve its goals in this direction.

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1. Since corruption does not stop at countries' borders, the Initiative is encouraging new and effective ways to conduct multi-jurisdictional corruption investigations and prosecutions. Informal channels, such as police-to-police contacts, and foreign liaison offices are used increasingly, where possible to start investigations. Joint investigations by all the jurisdictions involved in cross-border cases help bring the full extent of corrupt schemes to light and their perpetrators to justice. Where formal channels to obtain legal assistance are necessary, they must not be subject to undue delays. The Initiative could be an avenue for providing further technical assistance to members that are trying to enhance their formal MLA capacities in multi-jurisdictional investigations. The Initiative could also encourage international and regional police agencies to focus more on helping members share information in multi-jurisdictional corruption cases.

2. Non-criminal law enforcement agencies, such as tax agencies, could also help provide leads in corruption cases. In addition, through new provisions in model tax codes, such as the OECD Model Tax Convention, Initiative members could enable tax agencies to share information about corruption received from foreign tax authorities with their law enforcement authorities. Members could also enter Memorandums of Understanding for the exchange of information in corruption investigations between their law enforcement authorities and the World Bank and other multi-lateral banks that have adopted this measure. The Initiative's members recognise that grass-roots civil society

watchdog organisations can often be a source of investigative leads in cross-border corruption cases, particularly in the field of natural resource exploitation.

3. Public Procurement in the Asia Pacific is prone to corruption. New technologies, such as e-procurement could simplify procurement procedures, and ensure the highest level of transparency, without compromising the fairness of the bidding process. Anti-corruption and fair competition agencies should work together closely to address the links between corruption and bid-rigging. Comprehensive procurement laws that recognize the role of citizen participation in the whole procurement process would be an important step to increase transparency and accountability in procurement processes. The adoption of integrity pacts contribute to enhancing transparency and accountability in public procurement. The capacity of procurement institutions needs to be strengthened, as well as co-operation and collaboration with international agencies.

4. The private sector in Asia Pacific has to share more responsibility for tackling corruption in business transactions through the adoption and implementation of appropriate corporate compliance frameworks. International standards on establishing such frameworks issued by, for instance, the OECD, in the form of its Good Practice Guidance, can serve as a model in this respect and can be adopted by companies of all sizes, including SMEs. A channel for blowing the whistle is an important part of such a framework. Governments and business associations have an important role to play in encouraging the adoption of corporate compliance measures, particularly amongst SMEs, which often face significant challenges dealing with bribe solicitations and affording preventive measures.

5. Efforts by civil society including vigilant media often lead to important anti-corruption reforms in Asia-Pacific, including improved access to information, and legislation to prevent conflicts of interest in the public sector. To support these efforts, there is a need to ensure an environment in which civil society organisations can thrive, including effective access to information laws, safe and reliable channels to report allegations of corruption to the law enforcement authorities, such as an independent ombudsman.

## Theme 1

# Strengthening Frameworks for International Co-operation in Multi-jurisdictional Corruption Investigations

A key aspect of an effective anti-corruption framework is criminal enforcement of laws so that wrongdoers are punished. In the age of globalisation, enforcement efforts increasingly go beyond one country's borders since more and more corruption cases are international in nature. The briber, the corrupt official, their ill-gotten gains, and additional evidence of the crime may all be in different countries. Bribery may be committed by multinational companies that operate simultaneously in several countries. All of these factors could give rise to investigations into the same case in more than one jurisdiction. Multijurisdictional investigations and prosecutions of this nature give rise to many unique issues, such as coordination, joint investigative teams, sharing of evidence, double jeopardy, fine and asset sharing, global settlements etc. This part of the conference looked at some of these challenges that have arisen in actual cases.

A vital ingredient to a successful international corruption investigation is effective information-sharing. The difficulty in sharing information can vary, depending on the nature of the evidence, and rules in various jurisdictions. The conference thus also dealt with some international frameworks for sharing information, as well as the challenges and solutions for sharing information in specific contexts. Reference was also made to the role of civil society as a source for information sharing.



# Thailand's Approach in Strengthening International Cooperation in Multi-jurisdictional Corruption Investigations

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Professor Pakdee Pothisiri  
Commissioner, National Anti-Corruption Commission of Thailand

As international trade and investment expands against the backdrop of increased globalization, so too have the opportunities for businesses to operate abroad and to bribe public officials in a foreign country. The changing structure of trade, finance and communications has generated an environment in which corrupt practices and their adverse effects are no longer confined within national borders. The briber, the corrupt official, their ill-gotten gains, and evidence of the crime may all be in different countries. This means that investigation of corruption today needs to take a coordinated multi-jurisdiction approach. The need for effective international cooperation in anti-corruption law enforcement is greater than ever.

Traditionally, there are four channels through which jurisdictions seek international cooperation in anti-corruption or other criminal matters:

- (1) Multilateral conventions, treaties, or agreements including the UN Convention against Corruption, the OCED Anti-bribery Convention and the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters. The transnational nature of corruption as a phenomenon is explicitly recognized in Chapter 4 of the UNCAC, which lays down the framework for international cooperation on anti-corruption.
- (2) Bilateral Mutual Legal Assistance Treaties or 'MLATs'. Bilateral agreements give countries greater flexibility over the preferred scope and degree of cooperation compared to multilateral conventions.
- (3) Moving to non-treaty based cooperation, another means through which a jurisdiction can seek assistance from a foreign jurisdiction is through provisions in the requested jurisdiction's relevant domestic legislation on mutual legal assistance. For example, according to Thailand's Act on Mutual Assistance in Criminal

Matters, Thailand may grant assistance to a foreign jurisdiction even when no treaties exist between Thailand and the requesting jurisdiction, provided that the latter commits to reciprocate assistance to Thailand in a similar manner in the future.

- (4) And lastly, letters rogatory is one of the oldest means of seeking formal international assistance in criminal matters. In its most traditional form, a letter rogatory is a request for assistance issued by a judge in the requesting jurisdiction to a judge in the requested jurisdiction through diplomatic channels.

However, the formal MLA channels I have just described are not without limitations. For instance, negotiating a multilateral convention is often a complicated and time-consuming task because it usually involves multiple stakeholders with multiple interests. Moreover, States Parties to international conventions such as the UNCAC have different levels of readiness in implementing obligations of the convention due to inadequate domestic legal framework or the lack of the necessary enforcement capabilities.

Similarly, while making a request through a bilateral MLAT, a slight deviation from the strict requirements of the stipulated framework may render the request invalid. Moreover, the lengthy procedures involved in executing a formal MLA request can make the process ineffective in urgent cases.

Letters rogatory, on the other hand, involve several agencies in both the requesting and requested countries. On average, letters rogatory take six months to one year or more to execute and have a very restricted scope of assistance. Aside from being regarded as a time and resource consuming process, the confidentiality of sensitive information may also be compromised given the large number of actors involved.

So the question is: As corruption grows to become an increasing complex and transnational phenomenon, what can the global anti-corruption community do to strengthen international cooperation to enable it to reach its desired level of effectiveness?

First and foremost, countries whose domestic legal frameworks are still inadequate in providing effective and efficient international cooperation should make amending their relevant domestic legislation a top priority. These countries should strive to strengthen their domestic legal framework by ensuring that they are in line with international standards and best practices, such as those espoused in the OECD Anti-Bribery Convention and the UN Convention against Corruption (UNCAC).

However, we all know that amending domestic anti-corruption legal frameworks is often easier said than done. The process usually takes huge political will and considerable time. And these factors are playing to the advantage of the corrupt.

Fortunately, in recent years the global anti-corruption community is increasingly recognizing the importance and benefits of the informal channels of assistance. Jurisdictions which are in the process of amending their domestic legal framework should take advantage of informal channels of assistance. Likewise, jurisdictions that already have an adequate legal framework in place can also benefit from the effective use of informal channels of assistance, which should be regarded as a practical means to not only supplement, but also to synergize with the formal channels of assistance.

Broadly speaking, the difference between formal and informal assistance principally centers on the speed with which cooperation may be provided and the purpose for which what is obtained is to be used. Because informal assistance often involves direct agency-to-agency communication, legal formalities and procedures can be greatly reduced so long as the execution of such requests does not contravene the national law of the requested jurisdiction. Now, this allows requests of assistance to be executed in an expeditious manner.

However, it should be noted that information obtained through the informal channel can, in most instances, only be used as operational intelligence. So logically speaking, informal assistance should be sought at the initial stages of investigation when the primary goal is to obtain intelligence and information, after which the requesting agency can decide whether to proceed with formal assistance. Informal assistance should, at a minimum, include non-coercive investigatory measures.

In the case of the NACC, it is part of our modus operandi to first explore and exhaust informal channels of assistance before resorting to formal MLA. And while doing so, we usually consider four key questions, in the order as listed on this slide, to discern when to seek formal or informal assistance:

First: Are we currently conducting a preliminary fact-finding mission or a formal inquiry? If we are at the stage of conducting preliminary fact-finding, we would prefer going first for informal assistance to obtain the necessary intelligence.

Second: How urgent is the matter at hand? For example, if the assistance sought is related to a temporary freezing of illegal proceeds to prevent it from being wired out of the requested jurisdiction, then speed is of the essence.



Traditional channels of assistance like MLA request or letters rogatory are not meant to operate on a real-time basis.

Third: Is our overseas counterpart agency open to informal assistance? It would be much easier for a request of informal assistance to be entertained when the requesting agency already has a strong relationship with the requested agency. The principle of reciprocity can be put to good use here.

Fourth: Is the assistance sought coercive or non-coercive in nature? Typically, the requested agency is more willing to accede to an informal request that involves non-coercive measures.

All in all, the NACC always takes the effort to consult with our overseas counterparts on the best strategies that would enable our requests to be carried out with least resistance and with maximum effectiveness.

Allow me to quickly illustrate, through four summarized NACC cases, the effectiveness of informal assistance in international cooperation on anti-corruption:

- I would like to begin with the Greens case. This case involved a Hollywood couple bribing a Thai senior tourism official to unfairly obtain concession rights to organize an international film festival in Bangkok. Through the information provided to the NACC by the US Federal Bureau of Investigation and Department of Justice, we were able to initiate our own formal inquiry of the Thai public official. In our subsequent MLA request to the US Department of Justice, the constant communication we had maintained with our counterpart before, during and after the submission our MLA request, helped expedite its execution.
- In the second case, the NACC assisted the Independent Commission Against Corruption (ICAC) of Hong Kong, China by conducting surveillance and checking land registry records to verify the actual existence and ownership of a real estate property in Phuket believed to have been bought using corrupt proceeds from Hong Kong, China.
- In a more recent case, the NACC sought the assistance of South Korean prosecutors in locating the whereabouts of a wanted Thai suspect believed to have escaped to South Korea. Our strategy was to first file for an informal request to confirm that the suspect was still in South Korea instead of immediately going for a formal

extradition request. Because it was a request for informal assistance, our counterpart was able to execute our request promptly with minimum legal formalities.

- Similarly in the final case, the NACC facilitated the informal request of a Slovenian-Finnish joint investigation team looking into a major weapons bribery case by coordinating various domestic and foreign agencies to enable the taking of a witness statement by a voluntary witness in Thailand.

A comparison of the purpose, types of assistance, contact process, advantages and limitations between the use informal assistance and Mutual Legal Assistance requests is summarized in this table below.

<b>Factors</b>	<b>Informal assistance</b>	<b>Formal MLA</b>
Purpose	Obtain <u>intelligence and information</u> to assist investigation	Obtain <u>evidence</u> admissible to the court
Types of assistance	Non-coercive measures (e.g. obtain public information, conduct surveillance, cooperative witnesses)	Both non-coercive and coercive measures (e.g. search and seizure orders, obtain non-public info, custody)
Contact process	Direct: agency-to-agency	Generally not direct: Have to pass through central authorities of requesting and requested jurisdictions
Advantages	<ul style="list-style-type: none"> <li>• Speed in execution of request due to minimum legal formalities</li> <li>• Useful for verifying facts and obtaining background information to improve MLA request</li> </ul>	Evidence is admissible in court
Limitations	<ul style="list-style-type: none"> <li>• Information obtained at this stage cannot always be used as evidence</li> <li>• Difficult to determine contacts</li> </ul>	<ul style="list-style-type: none"> <li>• Time-consuming</li> <li>• Resource intensive</li> <li>• Potential leaks</li> </ul>

Again I would like to stress that informal assistance and formal assistance are not mutually exclusive or alternative to each other. The purpose of the comparison is to show that the informal assistance channel can not only supplement the formal assistance channel but also be used together to create

greater synergy to enable more effective international cooperation on anti-corruption law enforcement.

As you can see from this table, the purpose of MLA is mainly to obtain evidence admissible to the court while the purpose of the informal assistance is generally to gather intelligence and information for investigative purposes. And because informal assistance is usually non-coercive in nature, the legal formalities and requirements involved are greatly reduced. Furthermore, by leveraging on direct agency-to-agency contact, requests can be executed in a more timely manner and with less potential leaks of confidential information.

In recent years, the international anti-corruption community has established various mechanisms in the form of practitioner's networks in recognition of the increasing importance of informal assistance cooperation. Examples of some of these networks include:

- StAR/Interpol Asset Recovery Focal Points Platform
- Egmont Group
- International Corruption Hunters' Alliance (World Bank)
- Eurojust & European Judicial Network
- Organization of American States Network
- South East Asia Parties Against Corruption (SEA-PAC)

Aside from providing a platform for the sharing of practical experiences and best practices, these networks play an important role in helping members build familiarity and trust among each other. Face-to-face contact and sharing of experience can go a long way in establishing the strong groundwork essential for effective ongoing and future cooperation, whether formal or informal.

Moreover, law enforcement agencies should start establishing partnerships with foreign counterparts even before the actual occurrence of any cases of mutual interest. In other words, law enforcement agencies should take a proactive stance by establishing agreements in the forms of MOUs or agreements with foreign counterparts in anticipation of greater need for bi-lateral law enforcement cooperation in the near future. Such agency-to-agency arrangement is strongly encouraged in [Article 48](#) of the UNCAC.

At the same we must not forget that corruption is a multifaceted problem that requires the concerted and coordinated effort from various stakeholders in the domestic arena. Although it is not uncommon for a single country to have

more than one agency involved in anti-corruption, it is essential that unity be present among these agencies that work towards the same cause. Countries should strive to develop a domestic inter-agency mechanism that would enable better coordination, minimize duplication of efforts, and above all create an environment of mutual trust among domestic stakeholders.

In Thailand, the NACC is designated by law to function as the national focal authority in coordinating all international anti-corruption matters. In this regard, the NACC has set up the Thailand Anti-Corruption Agreements Coordination Center or “TACC” to function as an inter-agency mechanism to strengthen coordination among domestic and overseas agencies regarding all anti-corruption matters. One clear advantage of having this center is that the TACC will serve as the focal unit through which international requests for assistance on corruption matters can be submitted, executed or passed on to relevant domestic authorities. This means that foreign jurisdiction no longer need to contact multiple domestic agencies in Thailand when seeking assistance on anti-corruption cases.

To conclude, there are three key messages:

First, countries whose legal frameworks are inadequate in providing international cooperation in anti-corruption should make the amendment of their legal framework a top priority.

Second, in practice, it is imperative that practitioners explore and exhaust informal channels of assistance before resorting to formal MLA. Nonetheless, we have to keep in mind that formal and informal channels of assistance are not mutually exclusive. They can be used to support each other and to create synergy to enable more effective and efficient international cooperation in anti-corruption.

And lastly, countries should strive to develop cooperation mechanisms that would help build and strengthen trust among international and domestic anti-corruption stakeholders. Because above all, trust is the most important factor in successful international cooperation on anti-corruption.



# OECD Work to Counteract Bribery: The Tax Dimension

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Heather Hemphill and Martine Milliet-Einbinder  
International Co-operation and Tax Administration Division, Centre for Tax Policy and Administration, OECD

## Introduction

Tax policy is often used to encourage or discourage certain behaviour and countering corruption is no exception. Similarly, tax administrations are increasingly involved not only in enforcing tax measures but also in the detection of possible crimes, particularly financial crimes. Tax examiners are ideally placed to detect and report suspicions of criminal activity such as payments of bribes to the appropriate authorities. Countries have taken a range of tax related measures to strengthen both the legal framework and the practical administrative efforts to counter corruption.

The OECD has worked on 4 fronts to further efforts to counter bribery: 1) eliminating incentives to bribe foreign officials by encouraging countries to prohibit tax deductions for such payments; 2) encouraging countries to make changes to tax secrecy provisions to enable tax authorities to report to other law enforcement authorities suspicious payments that appear to be bribes; 3) encouraging revisions of tax treaties so that information received from another country for tax purposes may also be used to counter serious crimes such as bribery; and 4) educating tax examiners on how to detect bribery payments. The objective has been to promote both policy changes and practical implementation of those policies.

## 1. Eliminating incentives to bribe foreign officials by encouraging countries to prohibit tax deductions for such payments

On 25 May 2009, the OECD adopted the Recommendation of the Council on Tax Measures for further Combating Bribery of Foreign Public Officials in International Business Transactions (see Annex). The Recommendation builds on and strengthens the 1996 Recommendation of the Council on the Tax Deductibility of Bribes to Foreign Public Officials, which encouraged the non deductibility of bribes to foreign officials. It also invites countries not yet Parties

to the OECD Anti-Bribery Convention to implement the new Recommendation to the fullest extent possible.

The 2009 OECD Recommendation requires countries to adopt explicit legislation to prohibit the tax deductibility of bribes to foreign public officials.<sup>1</sup> Today no OECD country allows the tax deductibility of bribes to foreign public officials but having explicit legislation to prohibit such deductibility increases the overall awareness within the business community of the illegality of bribing public officials. Explicit legislation also increases the overall awareness of the tax administration and in particular tax examiners during tax audits of the need to detect and disallow deductions for payments of bribes and to report suspicious payments to the appropriate domestic law enforcement authorities in order to prosecute bribery.

## **2. Encouraging countries to make changes to tax secrecy provisions to enable tax authorities to report to other law enforcement authority's suspicious payments that appear to be bribes**

Historically, information obtained by tax authorities could only be used for tax administration purposes. Domestic law generally prevents a tax administration from disclosing taxpayer-specific information to any person not directly involved in the administration of that taxpayer's tax affairs. The rationale for this policy was that it would encourage voluntary compliance with the tax laws.

More recently, with the challenges posed by the globalization of the economy and the increasing sophistication of financial crimes, policymakers have recognized that sharing of certain tax information with law enforcement authorities can improve the detection and sanctioning of serious crimes like corruption. Countries therefore need to establish an appropriate and effective legal and administrative framework that facilitates the reporting by tax authorities of suspicions of corruption arising out of the performance of their duties to the appropriate domestic law enforcement authority. For instance in Germany, the Income tax Act provides expressly that the tax authorities are obligated to provide information regarding suspected bribery payments to the public prosecution office or competent administrative office.

The 2009 OECD Recommendation therefore promotes measures to facilitate cooperation between tax and other law enforcement authorities to counter corruption. It recommends that Parties to the OECD Anti-Bribery

Convention, in accordance with their legal systems, should establish an effective legal and administrative framework and provide guidance to facilitate reporting by tax authorities of suspicions of foreign bribery arising out of the performance of their duties, to the appropriate domestic law enforcement authorities.

### 3. Encouraging revisions of tax treaties so that information received from another country for tax purposes may also be used to counter serious crimes such as bribery or corruption

To enhance cooperation between tax and other law enforcement authorities, the 2009 OECD Recommendation encourages the inclusion in bilateral tax treaties of provisions allowing the sharing of tax information received from foreign tax authorities with other national law enforcement authorities to combat certain high priority matters, such as corruption, subject to certain conditions.

Nearly 30 tax treaties now contain such provisions, including those between Austria and Mexico, Bulgaria and Germany, Mexico and Switzerland, and Norway and Slovenia.

A Multilateral instrument: the Convention on Mutual Administrative Assistance in Tax Matters which is now open to all countries also makes possible the sharing of information received under the Convention with other law enforcement on high priority matters (e.g. to combat money laundering, corruption and terrorism financing). At the moment, there are 24 signatories to the Convention and more countries are expected to follow shortly.

### 4. Educating Tax Examiners to Detect Bribes

Legislation prohibiting the tax deductibility of bribes acts as a strong deterrent to bribery. The deterrent effect of such legislation is greatly enhanced when businesses see that tax examiners are applying the law in practice. The OECD has therefore developed the Bribery Awareness Handbook for Tax Examiners to provide practical guidance to help tax inspectors and investigators identify suspicious payments likely to be bribes so that the denial of deductibility can be enforced, and bribe payments detected and reported to the appropriate domestic law enforcement authorities.

Tax authorities can use the handbook for training and also as a basis for the design of domestic handbooks. The Handbook provides useful legal



background information as well as practical tips: indicators of bribery, interviewing techniques and examples of bribes identified in tax audits.

In December 2009, to mark the 10th anniversary of the entry into force of the OECD Anti-Bribery Convention, the Handbook was updated to include the new Recommendation. That Handbook has been translated into 17 languages and is now being used as the basis for training of tax officials. [www.oecd.org/ctp/nobribes](http://www.oecd.org/ctp/nobribes). For instance the Korean National Tax Service has provided tax examiners with the OECD Bribery Awareness Handbook and has used the Handbook in training courses.

The OECD has developed a “train the trainers” programme based on the Bribery Awareness Handbook for Tax Examiners and the Money Laundering Awareness Handbook. The first such event was held in Washington DC, jointly hosted by the US Internal Revenue Service and the OECD, on 8-9 June 2010. Regional events over the next year will be held in Botswana, Korea, Mexico and Turkey.

### **Annex: Recommendation of the Council on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions**

THE COUNCIL,

HAVING REGARD to Article 5, b) of the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960;

HAVING REGARD to the Recommendation of the Council on the Tax Deductibility of Bribes to Foreign Public Officials [C(96)27/FINAL] (hereafter the “1996 Recommendation”), to which the present Recommendation succeeds;

HAVING REGARD to the Revised Recommendation of the Council on Bribery in International Business Transactions [C(97)123/FINAL];

HAVING REGARD to the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions to which all OECD Members and eight non-members are Parties, as at the time of the adoption of this Recommendation (hereafter the “OECD Anti-Bribery Convention”);

HAVING REGARD to the Commentaries on the OECD Anti-Bribery Convention;

HAVING REGARD to the Recommendation of the Council concerning the Model Tax Convention on Income and on Capital (hereafter the “OECD Model Tax Convention”) [C(97)195/FINAL];

WELCOMING the United Nations Convention Against Corruption to which most parties to the OECD Anti-Bribery Convention are State parties, and in particular Article 12.4, which provides that “Each State Party shall disallow the tax deductibility of expenses that constitute bribes”;

CONSIDERING that the 1996 Recommendation has had an important impact both within and outside the OECD, and that significant steps have already been taken by governments, the private sector and non-governmental agencies to combat the bribery of foreign public officials, but that the problem still continues to be widespread and necessitates strengthened measures;

CONSIDERING that explicit legislation disallowing the deductibility of bribes increases the overall awareness within the business community of the illegality of bribery of foreign public officials and within the tax administration of the need to detect and disallow deductions for payments of bribes to foreign public officials; and

CONSIDERING that sharing information by tax authorities with other law enforcement authorities can be an important tool for the detection and investigation of transnational bribery offences;

On the proposal of the Committee on Fiscal Affairs and the Investment Committee;

I. RECOMMENDS that:

(i) Member countries and other Parties to the OECD Anti-Bribery Convention explicitly disallow the tax deductibility of bribes to foreign public officials, for all tax purposes in an effective manner. Such disallowance should be established by law or by any other binding means which carry the same effect, such as:

- Prohibiting tax deductibility of bribes to foreign public officials;
- Prohibiting tax deductibility of all bribes or expenditures incurred in furtherance of corrupt conduct in contravention of the criminal law or any other laws of the Party to the Anti-Bribery Convention.

Denial of tax deductibility is not contingent on the opening of an investigation by the law enforcement authorities or of court proceedings.

(ii) Each Member country and other Party to the OECD Anti-Bribery Convention review, on an ongoing basis, the effectiveness of its legal, administrative and policy frameworks as well as practices for disallowing tax deductibility of bribes to foreign public officials. These reviews should assess whether adequate guidance is provided to taxpayers and tax authorities as to the types of expenses that are deemed to constitute bribes to foreign public officials, and whether such bribes are effectively detected by tax authorities.

(iii) Member countries and other Parties to the OECD Anti-Bribery Convention consider to include in their bilateral tax treaties, the optional language of paragraph 12.3 of the Commentary to Article 26 of the OECD Model Tax Convention, which allows “the sharing of tax information by tax authorities with other law enforcement agencies and judicial authorities on certain high priority matters (e.g. to combat money laundering, corruption, terrorism financing)” and reads as follows:

“Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.”

II. Further RECOMMENDS Member countries and other Parties to the OECD Anti-Bribery Convention, in accordance with their legal systems, to establish an effective legal and administrative framework and provide guidance to facilitate reporting by tax authorities of suspicions of foreign bribery arising out of the performance of their duties, to the appropriate domestic law enforcement authorities.

III. INVITES non-members that are not yet Parties to the OECD Anti-Bribery Convention to apply this Recommendation to the fullest extent possible.

IV. INSTRUCTS the Committee on Fiscal Affairs together with the Investment Committee to monitor the implementation of the Recommendation and to promote it in the context of contacts with non-members and to report to Council as appropriate.

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NOTES

- <sup>1</sup> The UNCAC also calls for the denial of expenses that constitute bribes. Its Article 12.4 provides that: "Each State Party shall disallow the tax deductibility of expenses that constitute bribes, the latter being one of the constituent elements of the offences established in accordance with articles 15 and 16 [1] of this Convention and, where appropriate, other expenses incurred in furtherance of corrupt conduct."

[1] Article 15 concerns national public officials and Article 16 foreign public officials and officials of international organizations.



## Getting Anti-Corruption Bite from a Watchdog's Bark: The Value to Corruption Enforcers in Feeding and Sheltering CSOs

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By virtue of their nature (or perhaps the nature of their virtue), civil society organizations (CSOs) play a key role in establishing an environment hostile to corruption; groups of citizens, organized not for profit but in support of specialized social interests, may demand transparency and create accountability in a manner that other institutions would shy away from. In April 2010, Dr. Ramos-Horta, the President of Timor-Leste, described Non-Governmental Organizations (NGOs) as, second only to an active and independent parliament, the most important element in creating transparency in extractive industry revenue.<sup>1</sup> His remark suggests that, in environments such as Cambodia where the parliament may be less assertive,<sup>2</sup> NGOs may be the primary component in maintaining the transparency of that revenue and, more generally, in creating accountability for the government's use of resources.

This paper addresses the possible role of CSOs in Cambodia (and by extension, in similar countries), not only in deterring corruption, but in providing information that could be used, perhaps even by enforcement agencies in other countries, to support the investigation and prosecution of foreign bribery. It goes on to suggest three mechanisms that might reinforce this capacity: 1) creating information platforms that aggregate, add context and facilitate access to the information CSOs gather; 2) prioritizing support to CSOs, in UNCAC implementation programs, under Art. 13; and 3) adopting a risk management approach to the investigation and enforcement of foreign bribery that identifies as a risk factor the extent to which, in a particular state/economy, civil society is permitted to hold government accountable.

Cambodia is an appropriate case study for examining the role of CSOs as corruption watchdogs: there is a substantial corruption problem,<sup>3</sup> other institutional checks on corruption are sufficiently challenged that a substantial role may remain to be filled<sup>4</sup> and CSOs themselves face additional governmental control that may reduce their role as watchdogs, which may

provide additional insight into the challenges CSOs face as watchdogs.<sup>5</sup> Moreover, I work in Cambodia on a USAID-funded project that supports human rights NGOs and civil society development, so I have had an opportunity to make some observations supporting this analysis.<sup>6</sup>

I note, by illustrative example below, how Cambodian NGOs are gathering information that has use to corruption enforcement, and some of the obstacles that they are encountering along the way. But as I go through these examples I would stress that this is not just about Cambodia; these events reflect how civil society organizations in similar circumstances contribute to anti-corruption efforts, as well as the difficulties that would be faced elsewhere. The broader issues are: what is their value, what challenges do they face and what can be done to support them in confronting these?<sup>7</sup>

Illegal logging is a curse common to much of the Asia-Pacific, and one often associated with official corruption, either in permitting the logging to occur, allowing the movement of illegally cut timber or both. In Cambodia, some community organizations have established patrols to protect the forests that they rely on for their livelihoods. In doing so, they sometimes encounter both evidence of illegal logging and threats against them, sometimes from officials, aimed at silencing them. In a newspaper account published in August of this year<sup>8</sup> Cambodia's Natural Resource Protection Group (NRPG), suggests that "activists monitoring the forest for illegal logging activity have often been intimidated and threatened" by armed soldiers of the Royal Cambodian Armed Forces. The specific incident reported in that article was one occurring on 5 August, when they claimed that they caught a Royal Cambodian Armed Forces soldier with 10 cubic meters of wood while on routine patrol in Kompong Damrei Province. The activists on patrol reportedly photographed the soldier with the cut timber, and subsequently secured the wood, which they turned over to local authorities.

Soon after this, the home of one of the forest activists involved, a Mr. Ten Ran, was reportedly burned to the ground. Mr. Ran later told the Cambodia Daily, "*Villagers are scared to patrol because we believe it's an intimidation message to stop us opposing forest crimes,*" adding that police had found no suspects involved with the torching of his property.

In another case, also occurring in August of this year, the NPRG reported a situation where two community members, along with NPRG Director, Mr. Chut Wutty, were taken into custody for their efforts to investigate illegal logging. The group stopped a series of illegal logging trucks coming from Prey Lang and asked the drivers who they worked for and who owned the trucks, as well as

where the trucks were headed. Eventually a group of soldiers appeared, brandishing AK-47s. Chut Wutty and the two others were then delivered to the Sandan district police office, where they were detained for questioning before being released without charge.<sup>9</sup>

Yet another incident in August of this year involved a further display of military assault rifles, when a workshop on community forest protection was abruptly stopped by local authorities, assisted by soldiers carrying AK-47s. This was a two-day event that authorities challenged on the first day, but allowed to proceed provisionally under their supervision. The following morning, the event was halted, with the display of guns and a threat that villagers would be fined for participating. It was apparently ended by the District Governor when he learned that the organizers, NPRG and the Cambodian Center for Human Rights (CCHR), had failed to get “permission” from his office for the event.<sup>10</sup>

According to the published report, the workshop was aimed at teaching villagers the law applicable to logging and other forest issues, and to impart skills that would allow villagers to identify and block illegal logging. NPRG’s Director Chut Wutty, who was involved in managing this event, suggested that local authorities did not want the villagers to learn this information because they were involved in logging themselves.

The recent examples above focus on logging. Other instances where village communities have been involved in identifying questionable natural resource exploitation include sand dredging and mining activities. Villagers, as well as an ecotourism operator directly affected by river dredging (which has been officially restricted inside Cambodia) have played a crucial part in bringing incidents of this nature to the attention of the Cambodian Government and the international press, including the identification of the parties involved in the dredging.<sup>11</sup> And Global Witness has also played a role in ensuring that these developments were placed in a broader context.<sup>12</sup>

Cambodian NGOs have also been involved in identifying questionable conduct associated with the mining sector. Cambodia’s Extractive Industry Social Environmental Impact (EISEI) group has identified the fact that, although few companies have been authorized to begin mining, those operating in the country are apparently allowed exploration licenses for excessive periods, suggesting that “they are doing more than exploration.”<sup>13</sup>

One example noted in the report involved a company that had been undertaking a “five-year feasibility study” of exploratory digging. It is not clear whether EISEI’s observation of prolonged exploration would indicate the companies may be avoiding regulatory controls on actual mining operations,



avoiding disclosure of the value of mined ore or something else. Much is unclear; EISEI has identified obtaining information from the government and mining companies as a primary difficulty, and one exacerbated by the fact that provincial governments generally do not have any control or oversight of mining operations. (But as noted below, EISEI may be reluctant to theorize, even with supporting facts.)

Global Witness, noted above in association with other resource extraction corruption issues, has also been actively engaged in ensuring that regulatory weakness that might facilitate corruption in extractive industries, in Cambodia and elsewhere, continues to be highlighted. Reports of corrupt conduct in the mining sector occasionally surface in Cambodia, such as that in late May 2011 suggesting that the relatives of Cambodian officials received hundreds of thousands of dollars in payments from Oz Minerals.<sup>14</sup> While it is not clear what role CSOs may be playing in bringing these specific reports to light, the monitoring done by groups such as EISEI is essential to identifying questionable practices and assisting enforcement bodies (domestic and foreign) in identifying issues that should be investigated.

In looking at the examples above, it might appear that NPRG and others opposing illegal logging are facing the most direct and dire consequences for their activism, which may also reflect that theirs is the most aggressive activity described here (placing them at “loggerheads” with companies and local authorities). But it should be born in mind that there is some pressure on NGOs not to openly report acts they observe or conclusions they reach, and that legal process may be used as a means to silence those who would expose negative information. This may be inferred from NPRG’s detention following their interviewing drivers of logging trucks, and the villagers who were threatened with “fines” for attending a workshop on forest protection.

It could also be reflected in EISEI’s reluctance to clearly state the practical significance of excessively long permits for mining exploration. As the UN Special Rapporteur on the situation of human rights in Cambodia Surya Subedi recently stated in his 2 August 2011 report to the General Assembly:

The state of the right of free expression and opinion in Cambodia remains a matter of concern. There has been a disproportionate use of defamation and disinformation provisions in the law by the Government against journalists, human rights defenders and political leaders, who seem to be resorting to self-censorship because of the fear of such possible charges against them.<sup>15</sup>

It should be clear at this point that CSOs in Cambodia generate information that could be of value to enforcers, elsewhere, of foreign bribery laws. Information that NPRG was seeking from the drivers of trucks carrying illicit timber, and details that were developed in association with reports on sand dredging, stand out as particularly good examples.

And though my description of these incidents has not emphasized this aspect, these activities appear to involve foreign companies. The reference I site in discussing CSO scrutiny of mining operations focuses on a Chinese company's gold mine (see footnote 14); there are two articles relied on in my brief coverage of sand dredging and these together (see footnotes 12 and 13) suggest the possible involvement of companies based in Malaysia, Vietnam, China and Singapore. The two reports suggesting illegal logging do not have foreign companies associated with them, per se. However, Chut Wutty, the Director of the NPRG who was involved in both those accounts, has separately indicated that timber illegally logged in these situations is crossing the border into Vietnam at the Doung checkpoint in Kampong Cham Province ("up to 12 trucks a day") and that it is shipped to China from Koh Kong and Preah Sihanouk provinces.<sup>16</sup> This suggests that companies from the destination countries may be involved in illicit activities in Cambodia supporting the movement of the cut wood, as well as similar conduct by Cambodian enterprises facilitating the import of the illicit product into those countries.

Again, the point here is not to suggest that the conduct being reported in these instances establishes acts of corruption; there is insufficient evidence presented to reach this (so no aspersions are being cast upon the character of businesses from the countries noted above). Rather, the purpose here is to show that CSOs are capable of generating investigative leads that should receive serious attention from enforcement agencies, including bodies in other countries that enforce foreign bribery provisions.

It is also clear that domestic CSOs and villagers involved in these activities face significant difficulties and are at substantial risk. What can be done to support them? Beyond the obvious method of providing funding to organizations that are directly engaged in these activities, this paper suggests three mechanisms: 1) creating platforms that provide context, access and thereby greater value to the information they gather; 2) promoting the protection of civil society's "accountability role" as a first priority in implementing the UNCAC (accomplished by focusing first on UNCAC Art. 13); and 3) promoting a risk management approach to foreign bribery enforcement that focuses investigative resources on countries that are known to suppress civil society's

reporting of corruption in extractive industries, along with other factors that support treatment as high risk.

**1. Generate platforms that allow the information these organizations collect to be aggregated, and given context and attention.**

The information collected, for example, on the ownership and destination of trucks carrying illicit timber, has limited value unless it becomes known to regulatory or criminal enforcement officers and can be connected to other information. Increasing its value is an important way of supporting the organization. Why conduct forest patrols if it does no good?

In today's environment, the most efficient way to organize information and make it public is to place it on a website that hosts related information.

There are currently no websites that I am aware of that collect ground level reports of possible corruption-associated incidents in the developing world and post them in a manner that allows law enforcement agencies to identify, or follow up on, investigative leads. There are 4 websites that I would point to (several specific to Cambodia) as possible examples of pieces that might contribute to a model, or which might otherwise provide a starting point.

The Business Corruption Portal:<sup>17</sup> The Business Corruption Portal is a website of global scope that brings together information, organized by country, that business persons might use to assess and reduce business risk in particular economies, sometimes with risks noted as to particular activities. The information provided there could also assist foreign-bribery enforcement personnel in identifying high-risk sectors in a particular country. The site includes references to reports prepared by CSOs providing insight into corruption-related risk. For example, the Cambodia section,<sup>18</sup> in describing Land Administration identifies, among other resources, a 2009 report by LICADHO on the extent of land-grabbing and its impact on the population, and in discussing "Environment, Natural Resources and Extractive Industries" cites several reports prepared by Global Witness.<sup>19</sup>

BRIBELine – To quote the site:<sup>20</sup> *Launched in mid-2007, BRIBELine is a secure, multi-lingual website through which companies and individuals can anonymously report the bribe demands they receive. Making a report is quick and easy, and the online survey is currently available in 21 languages. No names are requested or collected, and reports made to BRIBELine are not used*

*for investigations or prosecutions.* BribeLine aggregates reports of bribes solicited (primarily) from business persons, by type of official, sector and location so that, while it does not aim to support prosecution of individuals, the scope of a corruption problem can be proven and systemic correction sought. It does produce information that identifies risk associated with sectors.

Open Development Cambodia<sup>21</sup> is a site, still in its “soft-launch” phase, which was spun up with USAID seed money. Like the Business Corruption Portal above, it seeks to bring together information that helps prospective investors gauge risk, and make informed decisions about the best sectors for investment. While it does not address corruption, it lays out in as much detail as possible what development activities are occurring at ground level (including agriculture, mines, dams, etc.) so that issues associated with land and water use, and impact on communities, may be clearly identified to support informed planning. While it makes no effort to report acts of corruption, it does endeavor to map all officially recorded economic land concessions and other government-approved development projects, so – once the site’s maps are fully populated (this will follow the hard launch) – projects that are on the ground, but not reflected on the maps, may have questions associated with their official documentation.

Sithi.org<sup>22</sup> is a website that has its address as its name; “sithi” is Khmer for “rights.” Unlike the sites listed above, this one has nothing to do with business per se, only issues related to human rights. Sithi.org collects and maps information about human rights violations, associating information on the map with textual information documenting the event or providing context. It has layers that include types of violations, including one recently added that identifies rape and violence against women. Sithi.org does not currently collect information on government corruption, but has indicated plans (in a conversation with the author) to add a layer documenting official acts reflecting “impunity” that will embrace corrupt behavior as part of that class. Sithi.org was recently announced (in August 2011) as the winner of an Information Society Innovation Fund (ISIF) award, for the Asia-Pacific region, in the category of “Rights and Freedom.”

All of these platforms have elements that could be appropriately included in a hybrid site documenting local acts associated with possible corruption and linking them to a broader context: BRIBELINE’s effort to capture individual acts of bribe solicitation globally, Business Corruption Portal’s focus on business risk, and Open Development Cambodia’s aim to create a rich and detailed description of the development context that acts of corruption may occur within.

However, only Sithi.org appears to be a platform that could appropriately add this type of coverage without compromising or distorting the site's purpose.

2. The international community, and particularly organizations that have a mandate to support UNCAC implementation, should promote the development of policies and practices that support the role of civil society in creating government accountability through efforts focused on UNCAC Art. 13.

This is a rather obvious point, so it will be brief. States-parties to the UNCAC have an obligation to implement Art. 13, addressing the role of society in preventing corruption. There are now 154 parties to the Convention.<sup>23</sup> There is a continuing obligation by all to implement/comply with the requirements of the Convention, and developing countries need substantial assistance adopting policies and procedures expressing its provisions.

Art. 13 requires that parties affirmatively act to promote the role of civil society in fighting corruption.<sup>24</sup> Art. 13 (b) calls for, among other things, ensuring that the public has access to information, which would help organizations like EISEI identify which mining operations were in fact licensed to explore or extract, and under what circumstances. The core aspect of the article, as well as increased transparency and an opportunity to participate in government decision (13(a)), and rights under 13(d), which would permit reasonable expressive conduct related to corruption and government accountability, would all apply to the benefit of the organizations described above – and permit them to ask questions about trucks carrying illicit timber, meet to discuss forest protection plans and to express their observations about mining companies that may be evading regulatory controls.

Currently, a number of countries are in the process of completing or preparing for their UNCAC review process, so there are opportunities to offer assistance. Cambodia's is scheduled for 2012. And there are other reasons to believe that Cambodia (and similarly situated countries) would be receptive. Cambodia's Prime Minister, Hun Sen, has repeatedly spoken out against illegal logging and river dredging, and he reportedly intervened in stopping the sand dredging that was reported above. Significantly, in case of the 5 August 2011 logging patrol, local authorities assisted in processing the stolen lumber. At all levels there appears to be some desire to reduce both corruption and the environmental degradation that is associated with it.

Supporting the implementation of Art. 13 should be the first step in implementation assistance. Increasing and clarifying the role of civil society liberates agents of reform who then become “force multipliers” for the whole of the implementation process, helping to generate additional political will in support of a robust effort. Transparency and accountability are fundamental to creating motivation for government integrity – civil society is fundamental to transparency and accountability.

**3. Finally, offices addressing foreign bribery enforcement should consider adopting a workplan or investigation protocol based on risk management that includes as a risk factor civil society’s permitted role in holding government accountable for corrupt acts.**

As noted above, Art. 13 of the UNCAC stands for the proposition that civil society is a necessary component of corruption prevention, and as I note here, a valuable ally in enforcement. Where civil society is prevented from observing and reporting on their government’s allocation of timber or extractive resources – whether it is with the wave of an AK-47 or the threat of criminal prosecution for defamation or disinformation – it means the risk of corruption is higher.

Applying a risk-based enforcement strategy has the benefit of creating incentives for stakeholders to take their own steps to reduce risks.<sup>25</sup> If the extent to which civil society is permitted to hold government accountable is included as a factor (and this may not be so hard to gauge, as it may be indirectly reflected in various bench-markings of free speech rights),<sup>26</sup> it creates an incentive for governments to support the implementation of UNCAC Art. 13’s principles, whether they are a party to the Convention or not. And, further, it creates an incentive for the international business community present in an economy (or the portion subject to risk-managed foreign bribery enforcement) to lobby that government for better application of Art. 13’s principles.

As mentioned previously, one value in supporting Art. 13 as a primary step in UNCAC implementation is that it is a cornerstone; it provides, in the form of civil society partners who can leverage resources, support for the process. Creating a risk management approach to foreign bribery enforcement gives governments and the business communities a reason to promote Art. 13’s principles, and leverages this further.

In conclusion, CSO watchdogs can bite as well as bark, but only if unleashed.

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**NOTES**

- <sup>1</sup> Roundtable discussion on “Transforming Natural Resource Wealth into a Source for Sustainable Growth and Democratic Development”, Phnom Penh, 23 April 2010, attended and observed by author.
- <sup>2</sup> UN Special Rapporteur on the situation of human rights in Cambodia, Report of 2 August 2011, to the General Assembly, noting in par. 49, that for reasons outlined in pars. 42-49 (generally describing restrictions on the engagement of opposition or minority members in the National Assembly), “the role of Parliament has been limited in overseeing the work of the executive.” (hereinafter, “Subedi Report”)
- <sup>3</sup> In 2010, Cambodia was ranked globally in Transparency International’s Corruption Perception Index as 154th out of 178 countries, where higher numbers reflecting greater perceived corruption (putting Cambodia in the worst 15% of corrupt states). Regionally, Cambodia ranked 30th out of 33 in the Asia-Pacific, tied with Laos and PNG, and trailed only by Afghanistan and Burma. On a scale of 0 to 10, where a higher score reflects less perceived corruption and a score of 10 indicates a corruption-free environment, Cambodia received a raw score of 2.1.
- <sup>4</sup> Regarding the role of the Cambodian Parliament as a “watchdog,” please see text in footnote 3. Regarding the role of the justice institutions in acting as a check on government corruption, see Transparency International’s Global Corruption Barometer Report for 2010, which as to Cambodia, indicates that the Judiciary is rated as the most corrupt sector of society, with a rating of 4.0 out of 5.0, where a higher score indicates greater corruption. This paper does not address the activities of the Cambodian Anti-Corruption Unit established in 2010. A relatively young organization, it has investigated and referred for prosecution several substantial cases. However, it is unclear at this time what resources and role it will find for itself in policing corruption associated with illegal logging, extractive industries and development. See *Transparency Highlighted*, Phnom Penh Post, 3 June 2011, p. 7.
- <sup>5</sup> At the time of this writing, Cambodia’s draft Law on Associations and NGOs (LANGO) is currently being revised by the Ministry of Interior. The International Center for Not-for-Profit Law (ICNL) characterized the most recently published (3<sup>rd</sup>) draft of the LANGO, in an August 1, 2010 Summary Analysis as failing “to ensure that denial of registration is consistent with international law standards” and that it “seems to provide inadequate standards to guide the government’s determination of suspension or termination of an association or NGO.” Early in the law’s development, the Speaker of the National Assembly explained its purpose as follows: “Today, so many NGOs are speaking too freely and do things without a framework. When we have a law, we will direct them.” National Assembly President Heng Samrin, Kay Kimsong, *Some NGOs See Gov’t Control in Proposed Law*, The Cambodia Daily, June 16, 2006.
- <sup>6</sup> USAID/Cambodia’s *Program on Rights and Justice*, implemented by the East-West Management Institute. See [www.ewmi-praj.org](http://www.ewmi-praj.org).
- <sup>7</sup> Note that although the examples I provide below are informed by my personal experiences with PRAJ, the references are based on the published reports that I cite.

Except with regard to the material in footnote 2 (Dr. Ramos-Horta's comment), this paper does not recount my observations (or those of my staff) as evidence in support of the analysis presented.

- <sup>8</sup> Forestry Activists Claim to Have Received Threats From Soldiers, Cambodia Daily, Aug. 23, 2011, pg. 30.
- <sup>9</sup> [www.rfa.org/khmer/indepth/preylang-08212011062422.html](http://www.rfa.org/khmer/indepth/preylang-08212011062422.html)
- <sup>10</sup> Authorities Break-Up Forest Protection Workshop, Cambodia Daily, Aug 11, 2011, p. 25.
- <sup>11</sup> *Creating space in Singapore is helping destroy Cambodia*, The Scotsman, 23 August 2011 at [thescotsman.scotsman.com/news/Creating-space-in-Singapore-is.6823387.jp](http://thescotsman.scotsman.com/news/Creating-space-in-Singapore-is.6823387.jp)
- <sup>12</sup> See *Cambodia: Sand for sale; environment ravaged*, AP News, 22 August 2011 at [asiancorrespondent.com/63080/sand-for-sale-environment-ravaged/](http://asiancorrespondent.com/63080/sand-for-sale-environment-ravaged/)
- <sup>13</sup> *Digging Deep Outside the Law*, Phnom Penh Post, 2 September 2010, p. 8, (quoting EISEI's Mam Sambath)
- <sup>14</sup> "In buying out its partner in a Mondolkiri province gold mine in 2009, the Australian company OZ Minerals paid hundreds of thousands of dollars to people who are reportedly the family members of government officials, according to a company memorandum." *OZ Minerals Deal a Windfall for Officials' Kin*, Cambodia Daily, May 31, 2011. p. 1.
- <sup>15</sup> Subedi Report, at par. 18. There is greater detail in par. 26: In the past two years, human rights groups and other NGOs working to promote and protect the land and housing rights of the poorest, sustainable development, or the constitutional rights to freedom of expression, assembly and the press have been increasingly subjected to various forms of harassment and intimidation, including restrictions on movement and freedom of assembly, verbal threats, threats of legal action and, in some cases, criminal proceedings.
- <sup>16</sup> *Despite Some Efforts, Forests Continue To Dwindle*; Voice of America | Khmer, 11 July 2011 at [www.voanews.com/khmer-english/news/environment/Despite-Some-Efforts-Forests-Continue-To-Dwindle-125373233.html](http://www.voanews.com/khmer-english/news/environment/Despite-Some-Efforts-Forests-Continue-To-Dwindle-125373233.html)
- <sup>17</sup> [www.business-anti-corruption.com](http://www.business-anti-corruption.com)
- <sup>18</sup> [www.business-anti-corruption.com/country-profiles/east-asia-the-pacific/cambodia/?pageid=282](http://www.business-anti-corruption.com/country-profiles/east-asia-the-pacific/cambodia/?pageid=282)
- <sup>19</sup> Because of its role in compiling information generated, at least in part, from the reports CSOs and grassroots community activities, Global Witness should be recognized as a platform that supports the relay of their data. Of course, Global Witness should also be recognized as a watchdog with a pretty good set of its own teeth. It has compiled several "biting" reports on corruption in Cambodia, including "Country for Sale." [www.globalwitness.org/library/country-sale](http://www.globalwitness.org/library/country-sale)
- <sup>20</sup> [www.traceinternational.org/news/BRIBELineData.asp](http://www.traceinternational.org/news/BRIBELineData.asp)
- <sup>21</sup> [www.opendevdevelopmentcambodia.net/](http://www.opendevdevelopmentcambodia.net/)
- <sup>22</sup> Sithi.org is a project managed by CCHR, the human rights organization that saw the training workshop it organized with NPRG stopped on the second day, with AK-47s. The Sithi.org project is supported through EWMI-PRAJ by USAID.



<sup>23</sup> [www.unodc.org/unodc/en/treaties/CAC/signatories.html](http://www.unodc.org/unodc/en/treaties/CAC/signatories.html)

<sup>24</sup> “Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption [...]” [www.unodc.org/pdf/crime/convention\\_corruption/signing/Convention-e.pdf](http://www.unodc.org/pdf/crime/convention_corruption/signing/Convention-e.pdf), Art. 13.

<sup>25</sup> The adoption of voluntary compliance programs by companies subject to the U.S. Foreign Corrupt Practices Act of 1977 (15 U.S.C. §§ 78dd-1, et seq.) is a classic example of how a risk-management approach to enforcement (here, expressed in sentencing guidelines) can increase the resources applied to policy enforcement.

<sup>26</sup> One example is Freedom House’s *Freedom in the World* reports. See [www.freedomhouse.org](http://www.freedomhouse.org).

## Information Sharing with the World Bank

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Robert Delonis  
Litigation Specialist  
World Bank Integrity Vice Presidency (INT)

My presentation will focus on the reasons to share information with INT, the mechanics of such information sharing, and the limitations that exist regarding it. My aim is to provide information in a brief, practical manner that hopefully will spark a good conversation among meeting participants.

**Why share information?** Different investigative bodies have different strengths and limitations. Working together enables us to pair our strengths for greater results. INT's main advantage is ease of action: Although we do not have coercive investigative powers, we can conduct transnational investigations—get on a plane to collect documents and talk to people—with minimal bureaucratic hurdles. As a result, we may have an easier time obtaining information from other jurisdictions than a national authority.

**What are the mechanics of sharing information with INT?** Depending upon the needs of a case, INT can share information throughout an investigation, from the initial complaint to our ultimate findings. The mechanics vary depending upon when the information is shared.

To share information during an investigation, INT usually enters into a Memorandum of Understanding (MoU) with the counterpart national authority. The MoU provides a legal basis for exchanging the information, and it details mechanics such as contact points and confidentiality requirements. The World Bank needs to protect its privileges and immunities, and to ensure that its information is not the sole basis for national law enforcement action. A MoU helps achieve these needs.

At the end of an investigation, INT shares its ultimate findings with national authorities through a referral report. These reports are always provided to the Ministry of Finance (or equivalent authority) as the World Bank's official counterpart in the country. Whenever possible, we also provide the reports directly to relevant enforcement authorities. Additional, detailed information can be provided upon national authority request.

INT has experience conducting investigations in parallel with national law enforcement authorities, exchanging information as both sides progress in their investigative activities. We do not, however, conduct joint investigations with national authorities due to the legal complications that can arise. INT's only joint investigations are done with our sister offices in other International Financial Institutions.

**What are the limitations on this information sharing?** INT's jurisdiction is restricted to World Bank-financed projects, and our investigative powers are limited to contractual inspection and audit rights, witnesses' willingness to speak to us, and our ability to grant confidentiality. There is, therefore, a practical limit on the type of information that we usually can obtain.

Once we obtain information, however, there are only a few limitations on our ability to share it. If we receive information on a confidential basis, we honor that confidentiality unless the information provider waives it. Similarly, if we receive information with restrictions attached, then we have to honor those restrictions unless they are waived by the information provider. And if we receive information from witnesses, we cannot share it in deep detail—for example, by sharing a copy of an interview transcript—without the witness's permission.

Aside from those limitations, we are happy to share whatever we can to assist national authorities in their fraud and corruption investigations. In practice, this usually is a substantial amount of information. We usually find that our national counterparts are more limited in what they can share than we are.

# Obtaining and Sharing Information in Multi-Jurisdictional Investigations

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The global context of the fight against corruption is evolving. Transnational trade and investment have multiplied in the past years. This has significantly increased the likelihood of transnational crimes and corruption to occur. In addition, financial transactions across borders are done with greater ease. Even with domestic corruption, the bribe or proceeds of the corrupt transaction obtained could easily be transferred to another foreign jurisdiction. These developments create new opportunities for transnational corruption and concealment of proceeds. As such, it requires international co-operation to address this phenomenon, disgorge illegally obtained criminal proceeds and bring the offenders to justice.

In recent times, we have seen a marked increase in instances of multi-jurisdictional investigations in corruption cases. Multi-jurisdictional investigations can occur under the following circumstances (not exhaustive):

- a. Givers and receivers of bribes are based in different jurisdictions;
- b. Corrupt proceeds are laundered in jurisdictions other than where the predicate offences took place.

## Aspects of International Co-operation

Before we zoom into obtaining and sharing information in multi-jurisdictional investigations, which is essentially a subset of international co-operation in investigation, let us first look at the fundamentals of international co-operation in investigation. International co-operation relates to the following 3 different aspects, namely:

- a. apprehending the offender who fled the country after committing crimes/corruption offence – this is usually done through the extradition process;

- b. gathering of evidence across national boundaries to link the offender to the crime/corruption via formal means, i.e. through Mutual Legal Assistance and informal means as part of agency-to-agency collaboration; and
- c. recovering of crime/corrupt proceeds through confiscation and forfeiture orders.

The framework and practices we adopt in relation to international co-operation are similar to many countries. Domestically, all our law enforcement agencies adopt the same co-operation measures and practices, be it related to corruption or other serious crimes. This same-approach is good, or otherwise it will be confusing for our enforcement agencies to have to adopt different methods for different crimes.

### Types of Co-operation

International co-operation in criminal matters such as gathering of evidence and recovering of corrupt proceeds may be divided into two types: formal and informal. The difference between the two lies mainly on the speed with which co-operation may be provided and the purpose for which what is obtained is to be used.

#### a. *Informal co-operation*

Generally, it refers to co-operation between law enforcement authorities between countries, such as police to police, anti-corruption agency to anti-corruption agency, FIU (Financial Intelligence Unit) to FIU for financial information. This approach is simple and straight-forward and it yields quick response as it does not need to go through a formal process. For instance, the anti-corruption agency in one country can simply phone or send a letter detailing a case to its foreign counterpart, with the assistance needed, and then simply wait for a response. However, it is important to state from the onset that the results obtained may only be used for purpose of investigation and intelligence gathering. In recent years, we have received numerous requests of this form from our foreign counterparts and likewise, we have made such requests to them as well. The response received had been used as a lead for further investigation and it has also helped the anti-corruption agency to decide whether formal co-operation should be sought. Hence its usefulness as a start point is immense. It also help bridge any obstacles and difficulties that may

arise when the more formal mutual legal assistance route is used in the ensuing follow-up.

*b. Formal co-operation*

Another form of co-operation is often known as mutual legal assistance (MLA) in criminal matters. In today's context, many States have set up a central authority to deal with requests for assistance from other countries. A State, which needs to obtain information relating to a case it is investigating from a foreign jurisdiction, can make use of this form of co-operation to write directly to the central authority of the said foreign country to seek assistance such as gathering evidence to prove and substantiate the charge against the offender or recovering of proceeds obtained by the offender through corrupt or fraudulent means. An advantage of this form of co-operation is evidence obtained is admissible in a court in the requesting State. We had on several occasions provided such assistance to our foreign counterparts and had also enlisted assistance from them via this mean.

### Legislation on Mutual Legal Assistance

In Singapore, there are two main laws governing mutual legal assistance and recovery of corrupt proceeds, namely:

- a. Mutual Assistance in Criminal Matters Act (MACMA); and
- b. Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (CDSA).

#### *Mutual Assistance in Criminal Matters Act (MACMA)*

MACMA came into effect on 1 Apr 2000. Its objective is to facilitate and regulate the provision and obtaining of assistance in criminal matters. It also laid down the following types of assistance to be rendered to our foreign counterparts, upon their request, in relation to an investigation or criminal proceedings.

- a. Taking of oral evidence from witnesses before a Magistrate;
- b. Obtaining of materials from financial institutions through production orders;
- c. Request for the attendance of a person;

- d. Enforcement of a foreign confiscation order and restraining in property dealing which may be subject to foreign confiscation order;
- e. Search of persons/premises/land and seizure of things under search warrant;
- f. Identifying or locating persons; and
- g. Service of documents.

The assistance rendered would help the requesting State to gather evidence to prove a corruption charge against the offender.

*Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (CDSA)*

The enactment of the CDSA is to criminalize the laundering of benefits derived from corruption and other serious crimes, as well as to allow for the investigation and confiscation of such benefits. The underlying principle of the CDSA is to extract the profit from the crime by denying the criminal his ill-gotten gains. This can be done by way of a confiscation order against the offender in respect of the benefits derived by him from the criminal conduct.

### Central Authority

In Singapore, the Attorney-General's Chambers is the Central Authority for Mutual Legal Assistance in Criminal Matters. The Criminal Justice Division of the Attorney-General's Chambers handles and processes all formal requests for assistance in accordance with the provisions of the MACMA and any applicable Mutual Legal Assistance Treaty. Upon receiving the requests, the Attorney-General's Chambers will assess the case details before forwarding it to the relevant law enforcement agency, such as Police, CPIB etc, to take follow up action.

For countries with which Singapore has an existing Mutual Legal Assistance Treaty with, assistance involving coercive measures such as taking of oral evidence before a Magistrate, search and seizure of materials etc may be rendered in accordance with the terms of the relevant Treaty. Examples include – our MLAT with Hong Kong and India, MLAT among likeminded ASEAN countries etc. For others, such assistance may also be rendered even in the absence of a bi-lateral treaty if the requesting State provides an appropriate undertaking of reciprocity in accordance with Section 16(2) of the

MACMA stating that that country will comply with a future request by Singapore to that country for similar assistance in a criminal matter involving a corresponding offence.

### Grounds for Refusal to Request for Assistance

In addition to the principle of reciprocity, the MACMA provides the following grounds on which requests for assistance will be refused:

- a. failure to comply with the terms of any treaty, MOU or other agreement between Singapore and the requesting country;
- b. the request relates to the prosecution or punishment of a person for a foreign offence that is an offence of a political character;
- c. the request relates to the prosecution of a person for a foreign offence in respect of conduct pursuant to which the person has been convicted, acquitted, pardoned, or punished (i.e. double jeopardy);
- d. the request relates to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Singapore, would not have constituted a Singapore offence (i.e. dual criminality); and
- e. acceding to the request would seriously impair the essential interests of Singapore.

### Co-existence of Legislation and Informal Assistance

The Mutual Assistance in Criminal Matters Act provides a purpose-built framework to provide mutual legal assistance, including asset recovery. It co-exists with the provision of informal assistance such as facilitating the interview of witnesses and obtaining documents or exhibits on voluntary basis. The legal framework is also reinforced by the presence of the Attorney-General's Chambers, which acts as the Central Authority in Singapore to receive and process all legal requests for assistance from abroad. The Central Authority of any foreign country can send the requests to the Criminal Justice Division of the Attorney-General's Chambers. Like many other countries, the Attorney-General's Chambers has posted the details of the mutual legal assistance arrangements in the following internet website [www.agc.gov.sg/criminal/mutual\\_legal\\_asst.htm](http://www.agc.gov.sg/criminal/mutual_legal_asst.htm) so it is easy for you to look at and determine the requirements.



## Approaching Information Sharing in Multi-Jurisdictional Investigations

With the above fundamentals in mind, the following approaches can be considered when looking at obtaining or sharing information in multi-jurisdictional investigations:

- a. Make the informal contacts with counterparts as quickly as possible, especially the parties handling the actual investigation;
- b. Have quick initial discussions on way forward, details of information required, at what stage, for what purposes etc
- c. Some information can be obtained at the initial stage through informal channels for investigation purposes and the information can be obtained through MLA at a later stage for it to be used during trial stage.
- d. Have regular discussions with counterparts and internal stakeholders i.e. investigators, prosecutors to understand and appreciate the types of information that can be shared, ways of sharing such information and the evidential requirements of the respective jurisdiction. Some information can be obtained from open source and some information can be shared readily as such information may be in the public domain.
- e. Build rapport and trust. Observe 3rd party rule when obtaining and sharing intelligence.
- f. When in doubt, always ask.

## Case Studies on Obtaining & Sharing Information in Multi-Jurisdictional Investigations

Before I end my presentation, I like to share on some cases to illustrate the positive outcome derived from collaborating with our foreign counterparts in multi-jurisdictional investigations and the importance of working together in our fight against corruption.

### *Case 1*

In 2010, CPIB investigated a case involving Directors of 3 different companies paying bribes to a Global Supply Manager of Apple Inc based in USA in return for pricing information and business from Apple Inc. At that time,

FBI had already initiated investigation against the Global Supply Manager in USA. We made contact with the FBI investigators through the FBI attaché in Singapore and obtained valuable information about the corrupt transactions amongst the parties that aided our initial investigation. We had many discussions with the US authorities on the sharing of information and the evidential requirements of the information that we obtained. With the assistance of FBI, our investigators also flew to the USA to interview the receiver and other witnesses and obtained their undertaking to testify in the Singapore courts against the Singapore givers. Eventually, most of the evidences were obtained simply through agency to agency request.

### Case 2

Another case, Macao's Commission Against Corruption (CCAC) investigated a senior public official working in the Transport and Public Works for corruption offences. CCAC had sent a MLA request to CPIB through our Central Authority (AGC) seeking for assistance to retrieve remittance records on bank accounts belonging to few companies which have been used by the said senior public official to receive bribes. Upon CCAC's request, CPIB obtained a production order from the High Court and retrieved the relevant information from the Bank concerned. The information was passed on to CCAC to assist in their investigation. The senior public official was subsequently prosecuted in Court and he was convicted of corruption charges and sentenced to jail imprisonment.

### Case 3

The last case which I like to share involved a joint operation by the Singapore CPIB and the Malaysian Anti-Corruption Commission. The MACC had informed CPIB that a senior officer in the Royal Malaysian Police was found to be in possession of few million Malaysian Ringgits, which he claimed to be commissions received from a Singapore businessman for recommending business opportunities to him. Pursuant to the information received, CPIB mounted an operation and commenced investigation which revealed the Singapore businessman had assisted the senior officer by making a false statutory declaration that he had given him commissions, to help account for the unexplained wealth. In return for his assistance, the Singapore businessman was promised a bribe amount of few hundred thousand Malaysian Ringgits. Upon conclusion of the investigation, the Singapore businessman was prosecuted in Singapore Court for a corruption offence and he was convicted and fined \$30,000/-. He is currently assisting the MACC in the case against the senior officer.

## Conclusion

To conclude, while it is easier for corrupt offenders to move, and to move the corrupt and criminal proceeds across borders, law enforcement agencies across the globe have to continue to work together, either through informal means at the agency-to-agency level or utilizing the established legal framework to recover crime proceeds and bring these crooks to justice. This way, we can increase the chances of success in fighting corruption and make the world a better place to live in.

## Theme 2

# Enhancing Frameworks for Public Procurement

Preventing and detecting corruption before it occurs is as important as pursuing wrongdoers after the crime has been committed. Frameworks to prevent and detect corruption are especially important in public procurement, which has long been a hotbed of corruption. Procurement systems based on transparency, competition, and objective criteria are critical in preventing corruption, as reflected in the UN Convention against Corruption. A holistic approach covering the entire procurement cycle from needs assessment to contract management is necessary, as noted in the 2008 OECD Recommendation on Enhancing Integrity in Public Procurement, and the OECD Competition Committee's Guidelines on Fighting Bid Rigging in Public Procurement. A holistic strategy for improving integrity in public procurement should include an increased government focus on fighting collusion in the procurement process. Different jurisdictions in Asia-Pacific are at different stages of reforming their anti-corruption measures in public procurement. Measures such as integrity pacts were introduced in several countries some time ago but have been implemented only recently in countries such as India. The private sector and civil society also have important roles in enhancing transparency in public procurement. This part of the conference thus considered the latest developments and lessons learned in these areas, with a particular focus on the practical experiences in Asia-Pacific countries.

A multifaceted approach to fighting corruption needs to recognise that corruption in different situations and sectors may call for different measures. All governments have rules on public procurement. But procurement in specific high-risk sectors may require special measures and frameworks. The conference therefore also looked at procurement measures designed for some corruption-prone sectors and situations.



# Electronic Government Procurement in Bangladesh

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## The Problem

Corruption limits the engagement of citizens in their societies. Where citizens discount the value of their voice, political power can be bought and corruption thrives. Larger public interests fall victim to narrow private gains creating unequal opportunities and limiting societal development.

Efforts of committed political leadership, administrations, business and civil society have remained isolated, fragmented and in many cases transient. Caught in a powerful web of corruption, paths to integrity seem challenging even for committed leaders. Rebuilding public trust in political leadership and institutions requires a collective and concerted effort. Only then can encouraging examples of integrity emerge, sustain and grow.

## The Pact: A Way Forward

TI's Development Pacts bring together political commitment, administrative champions and concerned citizens around a public agreement to prevent corruption. The Pacts start with a dialogue on challenges and arrive at solutions for integrity. They convert commitments and promises into a plan of action and tangible gains. In the public limelight they create a way for political leaders, public officials and institutions to rebuild their credibility and reputation.

The Pacts are based on 5 basic principles:

1. That integrity brings greater gains to a larger number than corruption
2. That political will for change must be sustained by public constituencies
3. That the public will reward responsive leadership
4. That the time is right for setting higher benchmarks for integrity and performance

5. That meeting these benchmarks will count in the competition for public office

At the minimum a Pact must:

- Establish a constructive dialogue between citizens and public office holders and institutions
- Provide people informed choices on the integrity and commitment of political candidates
- Create spaces for informed, inclusive and institutionalized oversight and participation at prioritized stages of public decision-making
- Identify and prioritize public engagement to address corruption in the setting of political agendas, policies and budgets to the execution of promises at local level
- Specify roles, responsibilities and contributions of all relevant stakeholders to achieve time-bound and specific milestones on agreed road-map of change
- Achieve increased benefits from public resources to an increased number of citizens
- Achieve tangible benefits for population groups disadvantaged and excluded by corruption
- Create conditions for replication through broad-based media and public scrutiny, links to political and administrative reforms, partner CSOs etc.

### How Can It Work? TI's Role

TI National Chapters are facilitators of a process that seeks to strengthen political commitments to fight corruption. And bring larger public constituencies into a focused effort.

Chapters are at forefront of the initial phase:

- Identifying key stakeholders: concerned citizens and civil society, administrations, political candidates and elected representatives keen to find solutions for endemic corruption.

- Facilitating a dialogue that matches expectations, commitments and resources.
- Agreeing on time-bound deliverables for improving integrity and performance.
- Spelling out specific steps to enable citizen oversight and participation in public decisions.
- And involving media and local civil society.

TI's own neutral position and credibility along with media recognition provide a strong incentive for performance. They promote the replication of pacts as tools in the hands of public institutions to regain public trust. And they empower people elsewhere in their dialogue with political candidates, public officials, local governments and sector administrations.

## A Win-Win Situation

### Community members

- are heard and responded to by public officials and institutions
- receive better services
- contribute to public efforts relevant to their own lives

### Public officials

- are supported in resisting corruption
- can build credible reputation based on integrity and performance
- achieve career gains or re-election

### Broad society

- energizes civic engagement
- strengthens democratic processes
- demonstrate the tangible gains of integrity
- creates leadership role models
- creates a 'race to the top' with public officials competing on credibility and performance



## Pacts in action

Transparency International India has continued its work on pacts with political representatives at the lowest level of government in Chhattisgarh and in the state level elections in Bihar. India's pacts cover a range of sectors and investment areas. These were ranked after the election, in partnership with the district administration, moving towards a more formal baseline and delivery framework. Political and administrative representatives of Rajnagar district are not only ensuring the delivery of their current pact, but recommending it for use at local government level.

In Chattisgarh, seven pacts have been signed at the Panchayat level (local government level), 14 in Bihar at the Panchayat level as well at the State Assembly level and one in Rajasthan at the Panchayat level. Sectors such as infrastructure, health, safe drinking water, education and health have been covered under the Pacts. A review committee comprising members from other political parties and members of the community to monitor the Pacts, have been put in place.

# A Survey of International Best Practices for Fostering Integrity in Public Procurement

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An anti-corruption approach is certainly one of the most effective and favoured approaches for enhancing integrity in public procurement in jurisdictions across the world. It provides strong deterrents for non-compliant procuring officers and contractors with severe criminal penalties. However, it remains a high-cost, high-risk approach to resolving integrity problems, for this necessarily requires establishment of mistakes in the procurement process, coupled with identification and proof beyond reasonable doubt in courts of money trails or other forms of *quid pro quo*. This approach also, by default, results in a situation where simple mistakes in the procurement process get automatically equated with possible corruption, and thus has the result of significantly demotivating procuring officers and contracting parties from reporting honest mistakes. It also generally leads to significant delays in course-correction, affecting efficiency of procurement decisions.

As a result, Governments world-wide are increasingly adopting a rich bouquet of other alternative, low-cost, more effective approaches to enhancing integrity issues in public procurement. One such tool is the setting up of real-time, reliable and timely bid-protest systems for resolution of complaints from dissatisfied bidders, and immediate course-corrections by contracting entities. Bid protest systems have in fact been the favoured norm in the United States and in many developed countries; and legal advocates in the UK and in many European jurisdictions now favour strengthening bid-protest mechanisms in their country procurement systems. The 2011 UNICTRAL Model Law on procurement of goods, works and services also advances the importance of such systems for fostering integrity, compliance and competition in the public procurement process.

Another emerging approach internationally is greater reliance on uniformity in the use of legal language and promotion of standard contractual provisions in the drafting of government contracts and agreements, resulting in greater understanding and uniformity in interpretation across various stakeholders such as procuring entities, contractors and oversight bodies. This

has the rather advantageous added effect of fostering integrity through reduced scope for multiple interpretations by various agencies involved in the contracting process, and it also fosters simultaneous development of strong common law findings on meaning and consequences of violation of contractual provisions.

Most governments now recognise not only the importance of enhancing competition in the award of contracts, but also the importance of improved post-award contract management. Better administration of contracts necessarily results in inspiring greater confidence amongst existing and potential contractors, and invigorates new entrants into the public procurement marketplace, thus resulting in dual benefits of greater competition because of lower perceived barriers to entry; and reduced problems with integrity arising out of greater uniformity in post-contract administration.

Better market research is also an increasingly favoured approach in many national jurisdictions, oriented directly towards identifying commercial goods and services for government procurement and geared for facilitating MSMEs and new entrants. As an indirect effect, such market research helps in establishing better price and cost data and realistic identification of existing commercial practices, including commercial contractual provisions relevant to the procurement decisions, thus enhancing efficiency and integrity of the procurement processes.

Conflict-of-Interest has been universally identified as an important factor affecting integrity in public procurement, and most countries now attempt better disclosure and sharper mitigation of *organisational* as well as *personal* conflicts-of-interest. Many such jurisdictions allow for close monitoring by Ethics Officers, who are available for real-time assistance to procuring officers for better identification and correction of such conflicts. Closer integration of audit bodies and incorporation of contractor compliance programmes with public procurement processes are some of the other approaches being increasingly adopted for resolving integrity problems in public procurement.

Overall, as compared to pure anti-corruption solutions, the adoption of multi-pronged approaches that inspire greater confidence amongst both contracting officers and contractors appears to a better, lower-cost and more effective strategy for addressing integrity problems in public procurement.

# Bid-rigging and Corruption in Public Procurement

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Collusion and corruption both subvert the competitive procurement process and they often occur in tandem. However, tensions can exist between the mechanisms to protect the integrity of the public procurement process and those to promote competition. This paper highlights the importance of balancing competition and anti-corruption concerns in well-designed procurement systems in order to minimise trade-offs between the two policies. With such balancing, measures that are aimed at preventing corruption and promoting competition are likely to be mutually re-enforcing.

## 1. Collusion and corruption: concomitant threats to public procurement

Collusion and corruption are distinct problems within public procurement, yet they may frequently occur in tandem, and have mutually reinforcing effect. They are best viewed, therefore, as concomitant threats to the integrity of public procurement.

*Public procurement* comprises government purchasing of goods and services required for State activities, the basic purpose of which is to secure best value for public money. In both developed and developing economies, however, the efficient functioning of public procurement may be distorted by the problems of collusion or corruption or both.

*Collusion* involves a horizontal relationship between bidders in a public procurement, who conspire to remove the element of competition from the process. Bid rigging is the typical mechanism of collusion in public contracts: the bidders determine between themselves who should “win” the tender, and then arrange their bids – for example, by bid rotation, complementary bidding or cover pricing – in such a way as to ensure that the designated bidder is selected by the purportedly competitive process. In most legal systems, bid rigging is a hard core cartel offence, and is accordingly prohibited by the competition law. In many countries bid rigging is also a criminal offence.

Corruption occurs where public officials use public powers for personal gain, for example, by accepting a bribe in exchange for granting a tender. While

usually occurring during the procurement process, instances of post-award corruption also arise. Corruption constitutes a vertical relationship between the public official concerned, acting as buyer in the transaction, and one or more bidders, acting as sellers in this instance. Corruption is generally prohibited by the national criminal justice rules, legislation on ethics in public office or by the specific public procurement regulations.

Ultimately, however, these discrete offences have the same effect: a public contract is awarded on a basis other than fair competition and the merit of the successful contractor, so that maximum value for public money is not achieved. Corruption and collusion can occur in tandem and they have a mutually reinforcing effect. Where corruption occurs in a public contract, collusion between bidders – for example, in the form of compensatory payments or the granting of subcontracts – may be necessary to ensure that losing bidders do not expose the illegal conduct to the public authorities. Equally, economic rents derived from collusion may foster corruption, while collusion is also facilitated by having an insider in the public agency that provides the bidders with information necessary to rig bids in a plausible manner and may even operate as a cartel enforcement mechanism.

### **Examples of Cases Involving Collusion and Corruption**

Hungary – In recent years, the Hungarian road construction market has witnessed a series of bid rigging cases. So far, the biggest antitrust fine (approximately EUR 27.7 million) was imposed in a bid rigging case involving highway construction. The contract was valued at EUR 630 million. The Hungarian competition authority found that the bidders had previously agreed among them on who was going to win the tender and also on the competing bidder to which the general contractor would offer a subcontract in the construction works. The press has repeatedly reported that road construction projects may have provided an ideal environment for corruption, and suspected that the illegal gains from bid rigging were a major source for financing political campaigns.

Japan – In 2005, the Japanese Fair Trade Commission (JFTC) ordered 45 Japanese steel bridge builders to stop rigging bids for government contracts. More than 70% of the steel projects for steel bridges given out between 1999 and 2004 by the Japan Highway Public Corporation were won by 47 companies which belonged to two bid-rigging associations. Their bids were almost exactly the same as the public corporation estimates. In one of the largest bid rigging

cases in Japanese history, the JFTC also ordered the Japan Highway Public Corporation to improve its bridge contract procurement practices, alleging that some 20 former public officials had been involved in bid-rigging practices to secure future jobs with the 45 companies. According to one tally nearly 60% of former bureaucrats involved in road work got jobs after they retired with one of the top 10 corporate bodies that do road work.

France – Another example is the case of three major French construction companies, Bouygues, Suez-Lyonnaise and Vivendi which were the subject of a major investigation for a scandal which was described as “an agreed system for misappropriation of public funds” (*Le Monde*, 10 Dec 1998). The three companies participated in a corrupt cartel over building work for schools in the Ile-de-France (the region around Paris) between 1989 and 1996. Contracts worth over four billion Euros were shared out by the three major French building companies. The system also involved political corruption: a levy of 2% on all contracts was paid to finance the major political parties in the region.

## 2. The detrimental effect of distorting public procurement

The distinctiveness of public procurement and its context makes the process particularly vulnerable to collusion and corruption, while also increasing the magnitude of harm that these offences cause.

Collusion and corruption can arise in any procurement procedure, whether occurring in the public or private sectors. Yet, the distinctiveness of public procurement renders it particularly vulnerable to anticompetitive and corrupt practices, and magnifies the resultant harm. It is for this reason that the problems of collusion and corruption within the field of public procurement specifically merit individual attention.

Public procurement is vitally important to the economic system of a State: the country contributions indicated that it typically accounts for between 15-20% of Gross Domestic Product in OECD countries. The share of GDP is even higher in non-OECD countries.<sup>1</sup> Effective public procurement determines the quality of public infrastructure and services and it impacts on the range and depth of infrastructure and services that a State can provide to its citizens, as money wasted because of collusion and/or corruption ultimately results in fewer public funds. In this way, public procurement is an issue of key importance for a State's economic development.

Aspects of the public procurement process nevertheless render it particularly vulnerable to anticompetitive and corrupt practices. Public

procurement frequently involves large, high value projects, which present attractive opportunities for collusion and corruption. Regulatory requirements dictating particular procurement procedures can render the process excessively predictable, creating opportunity for collusion. Certain sectors frequently subject to public procurement, including construction and medical goods and services, may be particularly prone to anticompetitive or corrupt practices. Finally, the sheer quantity of goods and services that are contracted by the State creates monitoring difficulties and increases the likelihood that the public procurement process may fall prey to collusion or corruption.

The effects of collusion and corruption in public procurement are arguably more problematic than in private procurement. Moneys lost because of subversion of the public procurement process represent wastage of public funds. The resulting loss to public infrastructure and services, whether in quality or range, typically has the heaviest detrimental impact on the most disadvantaged in society, who rely on public provision to the greatest extent. Distortion of the public procurement process is detrimental for democracy and for sound public governance, and it inhibits investment and economic development. Thus, deficiencies in public procurement impact on the wider economy in a way that does not occur with private procurement.

### 3. The relationship between collusion and corruption in the procurement process – and the tension over transparency

Tackling collusion and corruption are not mutually exclusive goals, so there is a need to accommodate both in order to better protect the public procurement process. Tensions between the sometimes competing approaches to the prevention of collusion and corruption within public procurement may necessitate trade-offs to achieve both effectively. For example, while transparency is indispensable for corruption prevention, excessive or unnecessary transparency should be avoided.

Both collusion and corruption prevention are necessary aspects of any overall strategy aimed at protecting the integrity of the public procurement process: that is, ensuring that no party to a public procurement transaction acts in a manner contrary to the objective of securing best value for public money. Collusion and corruption are typically pursued under separate but largely compatible legal frameworks. Moreover, as these problems are mutually reinforcing, reducing the likelihood of one offence will also decrease the risk of the other.

At an operational level, however, best practice approaches to avoidance of collusion and corruption can differ. In terms of designing the procurement process, for example, while a pattern of regular small tenders is seen to facilitate collusion, large lumpy tenders can foster corruption. A significant difference is the role and importance of transparency in the procurement process. The principle of transparency – which relates to the availability of information on contract opportunities, the rules of the process, decision-making and verification and enforcement – is of critical importance in preventing corruption. In certain instances, however, transparency is inconsistent with the need to ensure maximum competition within the procurement process. Transparency requirements can result in unnecessary dissemination of commercially sensitive information, allowing firms to align their bidding strategies and thereby facilitating the formation and monitoring of bid rigging cartels. Transparency may also make a procurement procedure predictable, which can further assist collusion.

This may lead to tensions between the sometimes competing approaches to prevention of collusion and corruption within public procurement and require trade-offs in terms of how to achieve these objectives. While transparency of the process is indispensable to limit corruption, excessive or unnecessary transparency should be avoided in order not to foster collusion. There is some uncertainty, however, as to what information can facilitate collusion. Nevertheless, sound procedural design can go a long way towards achieving effective procurement and mitigating this trade-off. For example, procurement rules might require only information on winning bids to be released and not require bidder identities to be disclosed. Bidding procedures should not provide participants with sensitive information regarding the actions of others tenders, but, conversely, should allow for review of decisions of public officials by independent public agencies.

#### 4. The importance of co-operation between the various enforcement agencies

Co-operation between the various national enforcement agencies with jurisdiction over collusion and corruption in public procurement is paramount, in order to achieve a coherent overall strategy and ensure its full implementation, and additionally, to facilitate efficient prosecution of these offences.

Incidents of collusion and corruption are typically investigated and sanctioned by separate national agencies: collusion generally comes within the remit of the competition authority, whereas corruption is pursued by public



prosecutors or specialised anti-corruption agencies. However, due to the mutually reinforcing nature of collusion and corruption plus the likelihood that such offences occur in tandem, the most effective approach to protecting the integrity of the public procurement process requires co-operation between the various enforcement agencies, whether by means of a formal memorandum of understanding, notification requirements or other mechanisms.

The benefits to a co-ordinated approach are considerable. Evidence of collusion may come to light during a corruption investigation, and vice versa; having in place a knowledge-sharing policy ensures that this information is brought to the attention of the appropriate enforcement body. Evidence-sharing, where compatible with national evidentiary rules, also assists those enforcement agencies (typically, competition authorities) that have more limited evidence-gathering powers than the public prosecutor or other criminal justice agencies. The introduction of a formal co-operation policy can improve knowledge of misconduct in public procurement amongst enforcement agencies more generally. Co-operation between enforcers can therefore go some way towards addressing the deleterious effects of cumulative attacks on public procurement through collusion and corruption. In certain jurisdictions, a single agency may have both a collusion and corruption remit, thus internalising this co-operation. While a combined approach is not a necessary requirement of an effective strategy for the protection of public procurement, whatever the structure of the co-operation mechanism utilised, it should, as basic principle, ensure: (i) comprehensive coverage of all forms of malfeasance in public procurement; and (ii) efficient prosecution of any such offences that arise in practice.

Enforcement agencies should also seek to establish a collaborative relationship with front line public procurement officials. The purpose of such co-operation is two-fold. There is an educative effect, alerting officials to the possibility and warning signs of collusion, as well as warning of the consequences for officials who themselves engage in corrupt practices. Additionally, co-operation establishes channels of communication between procurement officials and enforcers, thus further facilitating efficient prosecution of suspected instances of collusion and/or corruption.

## 5. Mechanisms to protect and improve the public procurement process

In addition to enforcement of the general competition law, criminal justice provisions and any public procurement rules, there exist a variety of methods by which integrity of the public procurement process, specifically, might be protected or improved. Nevertheless, such techniques must balance the sometimes competing requirements of collusion and corruption prevention, and the need to achieve a mutual accommodation of these objectives.

Such mechanisms include:

- Opening national markets to international competition, thus increasing the number of bidders in any tendering process.
- Redesign of the procurement process, maximising transparency without allowing sharing of commercially-sensitive information. Generally, sealed bid tenders are less prone to collusion than dynamic or open tender mechanisms; whereas individual negotiation has greater potential for corruption or favouritism than competitive bidding, although in certain circumstances it may be the most efficient procurement tool.
- E-procurement, that is, the organisation of tenders by electronic means via an internet portal. Care must be taken to ensure that the e-procurement procedure itself does not facilitate collusion, especially as this method eliminates the paper trail that might otherwise have provided evidence of bid rigging in the process.
- Certificates of Independent Bid Determination (CIBD), which require bidders to certify that they have arrived at their tender price absolutely independent of other bidders. CIBDs operate as both a reminder of the relevant legislation and as a commitment by the bidder that these rules have been complied with, and are of particular value in situations where tender participants may be less aware of national legislation prohibiting corruption and collusion. Prosecution of CIBD violations can also be a possibility where absence of proof of an agreement makes it impossible to charge an antitrust violation.
- Education of public officials, business and civil society. This is perceived to be especially relevant in economies where rules against collusion and/or corruption in public tendering are relatively new or under-enforced.

- Data analysis tools, such as comparison of public databases to identify indicators of anti-competitive or corrupt activity.
- Specialised review mechanisms for public contract awards, whereby unsuccessful bidders who suspect flaws in the procurement procedure can challenge the award before a specialised tribunal. While such procedures can identify individual instances of corruption or collusion, they are generally unsuitable for detecting patterns of corruption and/or collusion across a number of contracts.
- Auditing of public procurement procedures, whether conducted internally by a separate wing of the relevant public agency, or externally by an independent State body with specific powers of audit.

Public administrators and procurement officials should be trained to apply adequate rules and control mechanisms to prevent and detect malfeasance. The use of guidelines and best practices can be particularly useful in this area where a multi-disciplinary approach can secure important results. Training should be aimed at improving understanding among officials of the costs that such practices have on public resources and on the benefits of ethics for the contracting authority and its officials. Training should focus on detecting signs of collusion or corruption and should also encourage officials to come forward and report instances of corruption or collusion.

### **OECD Tools**

#### *Guidelines for Fighting Bid Rigging in Public Procurement:*

The OECD has long recognised the vital roles that competition and procurement agencies play in fighting hard core cartels in public procurement. In 2009, the Competition Committee developed a specific methodology to help governments improve public procurement by fighting bid rigging. The OECD's Competition Committee Guidelines for Fighting Bid Rigging in Public Procurement assist procurement officials to reduce the risks of bid rigging through careful design of the procurement process and to detect bid rigging conspiracies during the procurement process. The purpose of the Guidelines is to help procurement officials to identify:

- Markets in which bid rigging is more likely to occur so that special

precautions can be taken;

- Methods that maximise the number of bids;
- Best practices for tender specifications, requirements and award criteria;
- Procedures that inhibit communication among bidders;
- Suspicious pricing patterns, statements, documents and behaviour by firms, that procurement agents can use to detect bid rigging.

More information on the OECD Bid Rigging Guidelines can be found at: [www.oecd.org/competition/bidrigging](http://www.oecd.org/competition/bidrigging).

*Principles for Enhancing Integrity in Public Procurement:*

The OECD has developed a set of Principles for Enhancing Integrity in Public Procurement. The Principles were approved as a Recommendation by the OECD Council in October 2008. This instrument provides guidance to policy makers on how to enhance integrity in public procurement. The Principles are anchored around 4 pillars: (i) Transparency; (ii) Good management; (iii) Prevention of misconduct, compliance and monitoring; and (iv) Accountability and control. The Principles support the implementation of international legal instruments developed within the framework of the OECD, as well as other organisations such as the United Nations, the World Trade Organisation and the European Union.

To help countries implement the Principles for Integrity in Public Procurement, the OECD has developed a compilation of existing tools used in member and non-member countries (the “Toolbox”). The aim of the Toolbox is to support public officials in designing and developing guidance and procedures at various points in the procurement cycle. The Toolbox is currently undergoing a consultation process with a broad group of key stakeholders from both OECD member and non-member countries. They include the national and sub-national governments, the business community, trade unions and civil society organisations.

More information on the OECD Principles for Enhancing Integrity in Public Procurement can be found at: [www.oecd.org/gov/ethics/procurement](http://www.oecd.org/gov/ethics/procurement).

## 6. Sanctions, deterrence and compliance

Sanctions for collusion and/or corruption in public procurement range from fines and imprisonment to more specialised penalties like debarment from participation in future public procurement procedures. A key factor to achieving deterrence is to ensure a credible prospect of detection and prosecution, coupled with a sufficiently severe penalty. However, generating a “culture of compliance” should be a key objective for enforcement agencies.

In fighting collusion and corruption in public procurement, there must be a credible threat of discovery and prosecution, coupled with strong sanctions upon conviction. The typical penalties imposed for corruption in the contributing country submissions are fines and imprisonment, and dismissal within the employment context. Bid rigging is generally subject to the same penalties as other hard core cartels, meaning fines and, depending on the jurisdiction, imprisonment. Many countries have competition leniency programmes in place which grant immunity or reduced fines to firms that reveal the existence of cartels and participate in their subsequent investigation.

A number of sanctions, specific to the public procurement context, can be identified. In many jurisdictions, a conviction for participation in collusion and/or corruption in public procurement leads to debarment from future procurement procedures for a certain period of time. Particularly in smaller economies, however, this penalty may have the paradoxical effect of reducing the number of qualified bidders to an uncompetitive level. In those jurisdictions that utilise Certificates of Independent Bid Determination (CIBD) in public procurement, prosecution for false statements in certification can provide a straightforward means of penalising collusion in tendering. While the possibility of civil suits against corrupt officials and/or firms that participated in collusion was mentioned in the contributions, quasi private action of this nature is utilised to a lesser extent in the public context.

For some businesses, fines imposed for anticompetitive or corrupt behaviour are considered simply a cost of doing business. In certain situations, the adverse publicity and the possibility of disqualification from holding certain company offices may represent a greater harm and therefore function as a greater deterrent for firms. More generally, while eliminating collusion and corruption entirely is a very challenging goal for any legal system, the development of a “culture of compliance” is an important step towards reducing such behaviours. As competing firms are often best placed to identify irregularities in public procurement, getting business on board in the fight

against collusion and corruption can reap benefits in terms of both deterrence and detection.

## 7. A strategy to protect the integrity of public procurement

The optimal strategy to tackle both collusion and corruption in public procurement appears to require a three-pronged approach: (i) development of best practice rules for public procurement; (ii) extensive advocacy efforts; and (iii) vigorous enforcement action taken against any instances of corruption and/or collusion that are uncovered.

Co-ordinated efforts to develop best practices rules for public procurement can utilise the benefits of hands-on experience to shape balanced and effective regulations for this complex area. Knowledge sharing can occur on at least three levels: as part of a co-operation strategy between enforcement agencies at the national level; through transnational networks of national enforcement agencies; and through the work of international organisations, including the OECD.

With regard to advocacy efforts, a broad range of useful target areas can be identified: education of public officials; of business; of the media; and of the wider community. Effective advocacy can promote a change of culture in State practices and generate public support for enforcement efforts. More generally, enforcement agencies should identify and advocate for the removal of any public procurement rules or procedures that facilitate or foster collusion or corruption. Business also has a role in this process, in terms of the education of its personnel and the development of internal compliance mechanisms.

As regards enforcement, the principles already outlined – including credible likelihood of discovery and prosecution, strong sanctions, use of specialised detection mechanisms and inter-agency co-operation – should govern such procedures. Moreover, enforcement should extend to the frontline of public procurement – namely, procurement officials themselves – so as to develop a synergy between all State agencies charged with the protection of the public procurement process.

## 8. Concluding observations

Given the significance of public procurement for national economies, it is important for governments to address the difficult issues arising from the interface between policies aiming at eliminating collusion and corruption in public tenders. Both practices generate significant damages for taxpayers and

should be addressed in a co-ordinated fashion to maximise the deterrent effect of both anti-competition and anti-corruption laws. There may be difficult trade-offs between the two policies. The desired degree of transparency of the procurement process is one of example of these difficult policy choices. Should governments opt for a maximum level of transparency to reduce the risks of corruption and keep public officials accountable? Or should they opt for a minimum level of transparency to limit the opportunities for bidders to engage in collusive practices? Should open and transparent procedures be favoured in every case over direct negotiations? These questions cannot be answered in the abstract and procurement officials should tailor their choices to the specifics of each tender.

Competition and anti-corruption authorities can be of great support in helping procurement officials finding the most appropriate balance. Improved national and international co-operation between the three sets of officials is therefore key to tackling collusion and corruption in public procurement. The use of guidelines and best practices, possibly reflecting experiences at an international level, alongside concerted information sharing information between the public officials involved, can result in more efficient procurement. This in turn will deliver cost savings to governments and taxpayers, which can benefit economic development and growth in developed and developing economies alike.

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#### NOTES

- <sup>1</sup> OECD (2005), *Public Procurement in OECD, Fighting Corruption and Promoting Integrity in Public Procurement*, Paris.

## Steps and Progress in Public Procurement and Relevant Supervision in P.R. China

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Government procurement is an important part of public finance and meanwhile a significant means for preventing and combating corruption. It has been 13 years in 1998 since the Chinese government began to carry out reform in the practice of government procurement. In June 2010, the National People's Congress passed the Government Procurement Law of the People's Republic of China. Local governments and government departments successively formulated relevant implementation regulations according to the law. A legal framework for government procurement was thus basically formed.

After efforts of a number of years, outstanding progress and achievements have been scored in government procurement in China, such as a rapid increase in the scale of government procurement, broadening of the scope of government procurement, a full display of the function of policies toward government procurement, and gradual improvement of the supervision and management of government procurement.

In recent years, the Ministry of Supervision has incorporated government procurement into the task of punishment and prevention of corruption, and has carried out a series of special campaigns jointly with relevant departments. Since 2006, together with the Ministry of Finance, it has launched a nationwide campaign against commercial bribery in government procurement; in 2008, together with the Ministry of Finance and the National Audit Office, it conducted an inspection of the enforcement of government procurement and scored positive progress in standardizing operations of government procurement. After Sichuan Wenchuan and Qinghai Yushu were hit by grave earthquakes successively in 2008 and 2010, the supervisory departments of various levels urged relevant departments to set up fast-speed contingency meeting mechanisms for government procurement to ensure that the need of disaster-struck areas could be met, and came up with in-time disciplinary regulations for government procurement, strengthened supervision and inspection, investigated and dealt with conducts that violate disciplines and regulations,



thus guaranteeing highly-efficient and “honest and clean” disaster relief and maintaining government’s credibility.

## Indonesia's Experiences: Handling Corruption in the Forestry Sector

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Commissioner  
Corruption Eradication Commission of the Republic of Indonesia (KPK)

Indonesia is one of a largest country in the world with a population of more than 240 million. It has thousands islands, and hundreds ethnics and local languages. With GDP per capita of around USD 3 000 in 2010, Indonesia is also a G20 member country. Along with France, Indonesia co-chaired the G-20 Anti Corruption Working Group in 2010-2011.

Indonesia has millions of square kilometres of territory, of which 37% is land area and 67% percent is covered with water. Around 69% is covered by forest. Indonesia is rich with thousands species of plants, including medicinal plants and thousands types of wood. Indonesia is also a paradise for millions of species of rare plants and animals.

But wrongdoers are destroying this rainforest paradise for their greed and short term gain. Deforestation has taken place at a rapid pace from 2000 to 2006. In 2000, the forest in Sumatera, Kalimantan, Sulawesi, and Papua had not seen too much exploitation. By 2003 and 2006, the greenery of Sumatera, Kalimantan, Sulawesi and Papua had disappeared slowly. We worry that one day it will completely disappear. The direct impact would be climate change and more natural disasters in the future. The Corruption Eradication Commission (KPK) has the responsibility of preventing these negative impacts by eradicating the forestry crime through anti-corruption efforts, as mandated by law.

The legal approach in order to handle forestry crime is to use Indonesian Law Number 41 of 1999 on Forestry. Under the law, private sector actors (including corporation or individuals) who engage in illegal deforestation or forestry crimes will be charged with criminal offences. A second law is the Law on Corruption Eradication, that gives mandate for the KPK to handle corruption related forestry crimes and also handling forestry crimes which create state loss. The anti-corruption law also gives a mandate to the commission to supervise and coordinate other law enforcement agencies in handling corruption cases related to forestry crime. In practice, the crimes usually happen when private sectors and public sector conspire together.

I personally had experience in handling illegal logging when I was the Regional Police Commander in the Province of East Kalimantan. During that time, I handled 234 cases of illegal logging.

Deforestation in Indonesia typically involves the following actors. The first category includes the perpetrators of illegal logging without license. These individuals are those who live near the forest and are sponsored by illegal businessmen who are interested in getting illegal logs. The second group are individuals with legal licenses, but who log outside the permitted location. The last group are individuals with legal licenses obtained illegally through corruption and conspiracies with public officials. Based on statistics, the last group is largest of the three.

The log tracking system with barcode was introduced in Indonesia in 1999. To promote this system, the Ministry of Forestry works together with the Tropical Forest Trust. Another problem in forestry came when the licensing process considered the forest as a mining area or industrial cultivation forest. The process began involving other ministries and local government. In practice, the coordination factor, including conspiracies, influences the result of the licensing process.

The KPK is handling a large number of forestry-related cases at the moment. However, due to confidentiality we would only present two major cases that have been decided by the courts. In the Kalimantan and Sumatera Cases, the former East Kalimantan Governor and the Pelalawan Head of Regent have been convicted respectively.

More specifically, in the Kalimantan Case, the government developed a forestry policy. Private companies and government officials then conspired to issue unlawful recommendations and approvals, perhaps involving bribery and corruption. In particular, the government issued an unlawful recommendation to the private company Surya Dumai Group (SDG) for a palm oil plantation of 1 million hectares in a forested area. The Governor of East Kalimantan then issued a temporary permit to release the forest area without the permission of the Minister of Forestry. A third conspiracy resulted in the company obtaining bank guarantees to conduct the logging. In the end, SDG did not start a palm oil plantation. Instead, it logged the forest and sold the timber on the market. In short, SDG benefitted from the logging. As a result, the governor, head of regional forestry office, CEO of SDG were convicted of the offences. A total of over USD 40 million in assets was recovered.

Turning to the Sumatera case, the private sector used eight intermediary companies to obtain licences from the government. The licenses were issued in contravention of Technical Rules in Decree of Ministry of Forestry No. 10.1/Kpts-II/2000, 6 November 2000 on Guidance of IUPHHKHT Issue and Decree of Ministry of Forestry No. 21/Kpts-II/2001, 31 January 2001 on Criteria and Standard for Production Forest. One of the companies then took over the other seven companies in order to get the logs. Total state loss was almost IDR 1.3 trillion (USD 131 million). After the KPK investigated and prosecuted this case, all of defendants were convicted and ordered to compensate the government. The KPK is still struggling to recover more assets in the case. One challenge is to convince courts to recognise the “social cost” and “potential lost”. There is a discourse among judges, prosecutors and investigators to define state loss.

There are two more cases in the pipeline. One involves the Head of The Regional Office of Riau's Ministry of Forestry Case, whose sentence of 5 years' imprisonment is under appeal. The Siak Head of Regent, Head of the Regional Office of Riau's Ministry of Forestry is under prosecution.

Overall, the KPK has successfully recovered hundreds of millions of dollars in assets from corruptors. In 2008, the KPK successfully recovered more than 85% of assets in the forestry sector. The success is the consequence of the KPK's strong and prudent investigations and prosecutions. The KPK has maintained its 100% conviction rate since 2004. High ranking officials have not avoided enforcement. This figure shows that no one is above the law.

Nevertheless, there is room for improvement:

- The Ministry of Forestry should prepare an action plan based on recent KPK's Administrative Assessment on prone corruption areas; They should implement sustainable forest management in 35-year cycles, from cultivating to cutting the log. They should integrate the work of international NGOs such as the Natural Conservancy by using the Tropical Forest Trust logging trading system.
- Harmonization of SOP of granting forest utilization License and Regulation and Law on Forestry.
- Strong supervision of the Ministry of Forestry government apparatus by internal supervision bodies.
- Price adjustment in accordance of international standards on the provision of forest resources.

- Heavier focus on asset recovery to provide deterrence
- Co-operation beyond the border and implementation of affirmative action.
- Exchange information on blacklisted and non-eco-friendly products and companies in the international community.
- Follow international environmental commitments.

## Procurement Reforms in Infrastructure

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Public procurement is particularly exposed to corruption risks, given the high value and number of contracts and the broad discretion that is inherent to assessment of needs and priorities, and the quality of products and services. Public procurement is one of the priorities under the Malaysia government transformation programme. Despite many initiatives of anti-corruption reform, corruption and bribery remain widespread in practice, indicating that further reform of procurement policies is needed.

International instruments such as the UN Convention against Corruption (UNCAC) and the OECD Anti-Bribery Instruments have set standards and policies. Many member countries have adopted the standards and ratified these instruments, which are widely considered good practice beyond their direct reach. The Anti-Corruption Action Plan for Asia-Pacific, which supports the principles of both the OECD anti-bribery instruments and the UNCAC, stressed the needs for mechanisms to prevent, detect and sanction bribery in public procurement.

Many countries have learnt that protecting procurement against bribery risks is a particularly difficult exercise. Identification of risk areas and priorities for further reform helps as a basis for the development of appropriate anti-bribery mechanisms in procurement. Typology exercise is a good example of efforts taken by OECD, whereby the exercise on bribery in public procurement highlights corruption risks at each stage of the procurement process: from needs assessment, project specification, bidding and contract award to contract management and execution. The typology also provides ways to prevent, detect, and sanction bribery in public procurement, which include formulation and implementation of clear rules and regulations and preventive measures.

Checklist for Enhancing Integrity has also become a must; the checklist has made it possible to reform public procurement systems to prevent corruption, from needs assessment to contract management and payment. The system must have transparency, good management, prevention of misconduct as well as accountability and control in public procurement. Mechanisms to

prevent corruption within organizations include frameworks and organizational resources or protecting officials from undue influence, identify projects that are potentially vulnerable to corruption, separation of duties, asset declarations, as well as integrity training.

Malaysia, under the new Prime Minister, has started a new administrative reform that is called Government Transformation Programme (GTP). The success of GTP is measurable through the Key Performance Indicator (KPI) and Key Result Area (KRA). Each Ministry and department has its own KPI and KRA, and the head or chief of the organisation is responsible to ensure their success. The simple explanation of its implementation is; firstly, the government set the KPI at the national level, then each ministry and departments (based on respective portfolio and function) plan and formulate the operational initiatives of the KPI to achieve the national KRA. To oversee the success of GTP, the government of Malaysia had formed a unit under the Prime Minister Department, the Performance Management Delivery Unit (PEMANDU).

Malaysian Anti-Corruption Commission (MACC) is responsible for and accountable on issues related to corruption, be it punitive or preventive in nature. To do so MACC has organised a workshop to identify the scope and prioritise issues of corruption to be addressed. The workshop has come out with three main focus area of priority, that is: Grand Corruption, Public Procurement, and Regulatory; set as national KRA for MACC. The annexes to this paper give an overview of MACC's approach of anti-corruption in the new GTP. It started by identifying the issues, causes, measures taken, and finally the achievement of the new administrative approach (Malaysia KPI and KRA) of Government Procurement (Annex 1). A general overview of the procurement process (Annex 2) is an example of how anti-corruption measures had been instituted to the process.

"You Can Make A Difference, Fight Corruption" the current slogan of MACC, appeal and continuous effort to eradicate corruption.

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## Annex I – Initiatives & Outcomes

### *Governance and Processes*

1. Directive from Prime Minister not to issue support letter and from Ministry of Finance to reject the practice of accepting support letter for procurement especially for direct negotiation
2. Tighten price negotiation process and enforcement for direct negotiation
  - Mandatory negotiation on unit price
  - Establish scope before negotiation process in vendor driven procurement
  - Use independent expertise for complex procurement
  - Member for tender board should be competent and well versed with current rules and regulations
  - Standard price database for supply and services
  - Demarcation between Procurement and Privatisation / Public Private Partnership Definition of procurement, privatisation and PPP
  - Review, improve and make transparent Standard Operating Procedures and guidelines for privatisation/PPP
3. Procurement Act\*

### *Capability and Compliance*

4. Enhance technical capability at every Ministry
  - Establish “standard and Cost Committee” at every ministry for work, supply and services procurement below certain threshold value
  - Enhance procurement manpower at every ministry



5. Certification and mandatory training, (systematic and continuous) and the formation of National Procurement Institute
  - Expose high level decision makers and those involved in investigating government procurement (e.g. Audit, MACC) for procurement training
  - Expose and participate in local and international conference
6. Review and tighten on SO Facilities\*

*Disclosure*

7. Disclosure of planned and awarded via Virtual Procurement One Stop Centre
  - Disclose annual planned projects upon budget approval
  - Disclose awarded projects after tender board approval
  - Disclose justification of direct negotiation award
  - Disclose justification of privatisation projects
  - Disclose procurement process
8. Integrity Pact between Government and Vendors / Suppliers
  - Code of ethics of suppliers and vendors
  - Pilot project to show case to the public

Annex II – Project Procurement Process: Malaysia’s Experience

<b>(1) Filter proposal</b>	
<b>Gate 1: Proposal filtered</b> Proposal meets filter criteria and proceeds to evaluation phase	
<b>(2) Evaluate</b>	
<b>Gate 1: Approve PPP term sheet</b> PPP Committee to approve preliminary terms	
<b>Gate 2: Select approach</b> Cabinet approval if direct negotiation approach selected	
<b>Approval in principle</b>	
<b>(6) Direct negotiation</b>  <b>Gate 1:</b> <u>Agree on scope</u> Confirm negotiation levers, targets and objectives  <b>Gate 2:</b> <u>Agree on execution plan</u> Confirm	<b>(3) Prepare RFP</b>
	<b>Gate 1: Tender process</b> Confirm open or closed tender (and number of stages)  <b>Gate 2: Prequalified bidder list</b> Finalise list of bidders to engage in tender stage  <b>Gate 3: Finalize RFP</b> Finalise and launch RFP, include evaluation criteria, process, bidders
	<b>(4) Call tender</b>
	<b>Gate 1: Agree bidder engagement plan</b> Investment officer confirms and announces frequency, format and timeline of bidder engagement

<p>approach, team roles and process</p> <p><b>Gate 3:</b>  <u>Select approach</u>          Approve final / intermediate outcomes on term sheet</p>	<p><b>(5) Evaluate bid and negotiate</b></p> <p><b>Gate 1:</b> <u>Check for completion</u>          Investment officer ensures completeness of bid submission</p> <p><b>Gate 2:</b> <u>Technical spec pass/fail</u>          Investment officer checks for technical compliance (if required)</p> <p><b>Gate 3:</b> <u>Select winning bid</u>          Evaluation committee selects winning bidder</p> <p><b>Gate 4:</b> <u>Endorse winning bid</u>          PPP Committee endorses bidder selection by evaluation committee</p> <p><b>Gate 5:</b> <u>Approve winning bid</u>          Cabinet approves PPP Committee recommendation</p> <p><b>Gate 6:</b> <u>Agree terms for finalisation</u>          PPP Committee to agree final term sheet for finalisation</p>
<p><b>Cabinet's approval on agreement / salient terms</b></p>	
<p><b>(7) Finalise</b></p> <p><b>Gate 1:</b> <u>Approve final concession agreement</u>  <i>PPP Committee, Attorney General Chambers, relevant agencies and cabinet approve the final concession agreement</i></p>	
<p><b>CONCESSION AGREEMENT FOR SIGN-OFF</b></p>	

## Theme 3

# What Can the Private Sector Do to Prevent Corruption?

Since bribery involves a giver and a taker, a multidisciplinary approach to the crime must also address the supplier of the bribe. In recent years, there has been a growing recognition that businesses need to take on some responsibility to prevent corruption by strengthening the integrity of their own institutional frameworks. The G20 Leaders have called for a strengthened partnership between the public and the private sector for jointly developing and implementing initiatives to fight corruption. This public-private partnership is also reflected in international instruments, such as Article 12 of the UNCAC and the OECD Good Practice Guidance on Internal Controls, Ethics and Compliance. More and more companies around the world are therefore implementing corporate compliance, internal controls and ethical measures to prevent and detect bribery and corruption. This part of the conference therefore considered various aspects of an effective corporate programme to deal with corruption, including how guidance in international instruments helps put these in place. The Conference also took a more in-depth look at some aspects of corporate compliance, internal controls and ethics. It also considered the impact of the G20 Anti-Corruption Action Plan, and its mandate for closer engagement between business and government for developing and implementing anti-corruption initiatives involving the private sector.



# Fighting the Menace: Advocating Clean Business Practices

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Rohit Mahajan  
Executive Director and Co-Head of Forensics Practice  
KPMG India

**Scenario at present:** In today's competitive and global business environment, the modern and liberalized India has emerged as a hotspot for Foreign Direct Investment (FDI). The country's economy is soaring towards a 9% Gross Domestic Product (GDP) and the workforce here is the biggest impetus that any nation would desire to make its mark on the global economic platform. While we are able to achieve high growth rates and a positive international sentiment, the Indian corporate sector is still facing some significant challenges; the rise in the level of bribery and corruption cases have cast a dark cloud over the hard earned success achieved by the country over the last two decades.

**Facing the reality of the situation:** Corruption is a complex social, political and economic phenomenon that affects both public and private sectors of all countries. At present, while we have regulations in place that demand transparency from the public sector, there are no laws that state the same from the private. In fact, public officials and private company representatives tend to blame one another for soliciting or offering bribes. In order to develop a common global language against corruption, one needs to set universal standards that can be used by both sectors to increase integrity. The participation of the private sector in the fight against corruption is a key component to success.

**Aim of my presentation:** While bribery and corruption exists in all parts of the world in varying degrees, managing the risk of bribery and corruption needs to take center stage in corporate boardrooms. Today, it is of paramount importance that business processes follow a more transparent route of functioning. My presentation seeks to address the preventive mechanisms that can be adopted by organizations to curb corruption. This could include various facets such as adopting a comprehensive code of conduct and ensuring a zero tolerance policy; adequate training for employees; a structured whistle blowing mechanism to report potential bribery/corruption issues; comprehensive and

periodic risk assessment mechanism, including third party audits; and a regular monitoring mechanism to address issues arising out of bribery/corruption.

# Preventing and Detecting Corruption through Whistleblower Protection Mechanisms

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Melissa Khemani  
Anti-Corruption Analyst  
Anti-Corruption Division, OECD

## 1. What is Whistleblower Protection?

There is no universal definition for whistleblower protection; a number of definitions are provided under the various international law and anti-corruption instruments, including the UNCAC and the OECD Anti-Bribery Convention and its related instruments. The definition set out below extracts the common elements found in a number of these instruments to frame a definition in the context of corruption.

**Protection from discriminatory or disciplinary action public and private sector employees who report in good faith and on reasonable grounds suspicions of corruption to competent authorities**

Whistleblower protection is a relatively new and fast developing area of law. As a result there are some common misunderstandings as to what it encompasses. For example, whistleblower protection is often confused with witness protection. There are similarities between the two – mainly to keep the identity of the individual confidential – but they are fundamentally very different legal concepts. Witness protection is mainly about the physical protection of a person who will testify in a criminal case. In whistleblowing, the focus is on the information disclosed and protecting the person who discloses such information from mainly workplace retaliation. A whistleblower may become a witness and perhaps under some circumstances later afforded witness protection, but they are two very different concepts.



## 2. Benefits of Whistleblowing to Combating Corruption

The provision of effective whistleblower protection is integral to efforts to combat corruption, promote public sector integrity and accountability, and support a clean business environment. It encourages the reporting of misconduct, fraud and corruption, and the risk of corruption is significantly heightened in environments where the reporting of wrongdoing is not supported or protected. This applies to both public and private sector environments, especially in cases of bribery: Protecting public sector whistleblowers facilitates the reporting of passive bribery, as well as the misuse of public funds, waste, fraud and other forms of corruption. Protecting private sector whistleblowers facilitates the reporting of active bribery and other corrupt acts committed by companies. Encouraging and facilitating whistleblowing can also help authorities monitor compliance and detect violations of anti-corruption laws.

## 3. Legal Sources

Whistleblower protection laws can be found in various legal sources. A number of sectoral laws make provision for such protections, such as labour and employment laws, as well as anti-corruption laws. For example, Korea's ACRC Act provides whistleblower protection to anyone who reports an act of corruption to the Commission. Whistleblower protection can also be provided under dedicated, comprehensive whistleblower protection acts, such as Japan's Whistleblower Protection Act. Korea has also recently enacted a dedicated Public Interest Whistleblower Protection Act. Criminal Codes, and laws regulating public servants are also common sources for such provisions.

The importance of whistleblower protection to combating corruption has also been recognized by international anti-corruption instruments, including the UNCAC (Article 33), the OECD Anti-Bribery Convention, and more recently by the G20 Anti-Corruption Action Plan. Action Point 7 of the G20 Anti-Corruption Action Plan states that:

To protect whistleblowers, who report in good faith suspected acts of corruption, from discriminatory and retaliatory actions, G20 countries will enact and implement whistleblower protection rules by the end of 2012. To that end, building upon the existing work of organizations such as the OECD and the World Bank, G20 experts will study and summarize existing whistleblower

protection legislation and enforcement mechanisms, and propose best practices on whistleblower protection legislation.

#### 4. Mechanisms for Protection

Whistleblower protection laws will include mechanisms to protect individuals who blow the whistle. Depending on how comprehensive a law is, this may include protection against workplace reprisals which may not be limited to dismissal, but also demotions, transfers, refusals of promotion, decrease in security clearance, and other more subtle forms of workplace retaliation. Protection can also be provided by ensuring that whistleblowers do not face civil or criminal liability for disclosing information, including defamation or libel suits. Protection can also be provided in the form of allowing anonymous reporting, as well as reversing the burden of proof such that the onus is on the employer to show that the action taken against a whistleblower would have taken place even if the whistleblower did not make the report.

Whistleblower protection mechanisms would also include reporting procedures; these can vary from prescribed channels through which the disclosure must be made in order to be afforded protection. For whistleblowing in certain sectors, this may involve reporting internally first, before going external outside the organisation.

A number of organisations and companies have also implemented whistleblower reporting telephone hotlines or e-mail addresses which have proved to be an efficient and effective way of handling reports and also allowing for anonymity and/or confidentiality.

Lastly, some countries have introduced financial incentives to encourage whistleblowing. The United States' recently enacted Dodd Frank Wall Street Reform Act allows whistleblowers under certain circumstances to obtain a share of the funds that are recovered as a result of their whistleblowing. Korea's whistleblower provisions under the ACRC Act also allow for a reward and financial incentives system. Some view such incentives as controversial, but other countries are considering adopting similar provisions to encourage the reporting of unlawful conduct.

Whistleblower Protection laws should also provide for strong enforcement mechanisms, whereby a whistleblower who has faced retaliation can have his case heard by an independent or external body. Comprehensive enforcement mechanisms should also ensure that whistleblowers who have faced retaliation are adequately compensated. This may include not only for lost salary but also

compensatory damages for suffering. Some countries also sanction employers who retaliate against whistleblowers by fines or imprisonment; the US Sarbanes Oxley Act for example, can impose a criminal penalty of up to ten years imprisonment on an employer who retaliates against a whistleblower who reveals a violation of any criminal act to law enforcement authorities.

Whistleblower protection laws should also be supported by effective awareness-raising, communication, training and evaluation efforts. Indonesia's KPK, for example, has been actively promoting whistleblowing programmes within government agencies and state-owned enterprises. Systematically collecting data and information on the number of cases and reports is one way of evaluating the effectiveness of a whistleblowing system. Such efforts play a key role in assessing the progress – or lack thereof - in implementing whistleblower protection laws.

## 5. Private Sector Protection Mechanisms

Domestic legal provisions expressly devoted to the protection of whistleblowers in the private sector are less common than for the public sector. Japan, Korea, the UK are some examples of countries which have laws that cover both the public and private sectors, but most countries' with whistleblower protection laws still limit protection to public sector employees.

However, as the acts of companies increasingly have an impact on the public, and many in fact may perform a public function, there has been an increased call for whistleblower protection laws to be extended to the private sector.

At the same time, the private sector is increasingly taking voluntary measures to self-regulate, and create internal channels for safely and confidentially reporting misconduct. These are for a number of reasons:

- Reporting of misconduct without fear of retaliation helps identify misconduct early on and prevent escalation to potentially grave disasters;
- Reduces the risk of potentially damaging external reports, including to regulators or the media;
- Whistleblower protection is also an important element of an internal controls, ethics and compliance programme, which—taken in the programme's entirety—could demonstrate to

shareholders and law enforcement that a company has made efforts to prevent, detect and address corrupt behaviour.

- This could be especially relevant to companies subject to the jurisdiction of anti-bribery and anti-corruption laws that include a defence against liability for certain offences by having “adequate procedures” in place to prevent bribery, or where sentencing guidelines provide more lenient sentences on companies with such programmes in place.<sup>1</sup>

## 6. Challenges to Whistleblowing

There are a number of challenges that remain to the promotion and facilitation of whistleblowing. These include the following:

- People are unaware of the law and whether it may cover them and their reports;
- Lack of confidence in the law; even with whistleblower laws in place, many still fear workplace reprisals if they blow the whistle or that nothing will be done about their report;
- Poorly implemented laws and mechanisms, which do not afford genuine protection;
- Conflicting laws can also be a barrier to whistleblowing; confidentiality, secrecy laws or duties of loyalty can conflict with whistleblowing laws and prevent disclosures from being made;
- Cultural perceptions of whistleblowers may also constitute a significant barrier. In some countries, there may be engrained cultural attitudes which date back to social and political circumstances such as dictatorship and/or foreign domination under which there is distrust towards “informers”.
- There is also often a social stigma that is attached to whistleblowers as “tattle tales”, or irritating “busy bodies”.

## 7. Overcoming Challenges

There are ways to help overcome these challenges. These include:

- Education: instilling from early years the benefits of speaking up when you see something wrong, and that it is acceptable and encouraged;
- Awareness-raising of rules and procedures, including through staff training and guidance;
- Ensuring effective protection is provided; as with many anti-corruption laws, it is important that whistleblower protection laws do not just remain on paper. Whistleblower protection mechanisms require a significant amount of institutional support to be carried out effectively;
- Creating an organisational culture of transparency which supports whistleblowing. This can be set by the tone from the top within an organisation - that whistleblowing is encouraged and that it should be seen as an act of loyalty to a company or institution rather than disloyalty.

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#### NOTES

- <sup>1</sup> Section 7 of the UK Bribery Act (2010) establishes the offence of “Failure of Commercial Organisations to Prevent Bribery” where strict liability is imposed for active bribery. The only defence is that a company had in place “adequate procedures” designed to prevent persons associated with the company from engaging in bribery.

## Theme 4

# Citizens' Role in Strengthening Governmental Anti-Corruption Frameworks

An effective multidisciplinary anti-corruption strategy must promote the active participation of individuals and groups outside the public sector, such as civil society, NGOs, and community-based organizations. The importance of such a strategy is fully reflected in the UN Convention against Corruption. NGOs and private individuals can act as government watchdogs, demand accountability, and assess the effectiveness of other components of an anti-corruption strategy. Direct citizen action also often has significant and unexpected impact on efforts to improve the integrity of public institutions. In several Asian and Pacific countries, citizens have recently come up with some innovative and imaginative ideas to fight corruption, sometimes with the help of technology. The conference considered some of these initiatives and examined the secrets behind their success.

In addition, direct citizen action must often be fostered and promoted before it materialises. In this respect, anticorruption commissions, NGOs and the media, as well as mechanisms to protect citizens who report corruption, can make an impact. The conference therefore also touched upon the role of these measures, as well as the impact of Article 13 of UNCAC in establishing a framework for these initiatives.



## Strengthening Partnerships between Anti-Corruption Commissions, Citizens and NGOs

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Michael Burley  
Chief Investigator, Independent Commission against Corruption  
Hong Kong, China

Since its inception in 1974 the ICAC realised that strong anti-corruption legislation coupled with the need to develop skilled and dedicated corruption investigators was essential in its fight against corruption. Equally it recognised that in order to effectively combat corruption it had to win the hearts and minds of the ordinary citizens of Hong Kong who were sceptical about the government's true resolve to combat and eradicate the entrenched and syndicated corruption that existed at that time. Consequently when it was established the ICAC, in parallel to its law enforcement functions, simultaneously developed corruption prevention and education programmes designed to elicit the participation of the public and foster its support. In his presentation Mr. Michael Burley will give an overview of how this three pronged attack ethos was developed. He will discuss the multi faceted approach that the ICAC adopts towards the continuing challenge of keeping anti-corruption education as part of the Hong Kong culture through the use of personal and group liaisons, and the mass media. He will explain how the ICAC adopts a two way approach to education where the need to listen and learn from the citizens of Hong Kong of their concerns about corruption is as important as the programmes that are created to continually educate the community away from the evils of corruption.





# Citizens' Engagement to Increase Integrity and Transparency in Government

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Paramjit Singh Bawa  
Chairman, Transparency International India

The civil society, as it exists now, is a modern phenomenon. It is engaged in secular agendas of human rights, preservation of the environment, and transparency in contrast to the earlier times when its interest was confined to charitable activities or support of religious institutions.

The latest flavor of activity is on issues of integrity, openness, honesty, accountability, and responsibility. This is clear from the vibrant and assertive stance of people who feel restless at the apathy of government that could not legislate on the ombudsman for forty years, and undertake other doable measures.

The fast by Mr. Anna Hazare that elicited public support in the form of a catharsis conveyed the impatience of society to seek legal reforms, unmindful of the contents of such drafts. It demonstrated a resolve of society that change had to visit India and nothing short of legislative framework shall satisfy its aspirations and longings. It is for the first time that, at a national level, the civil society has been given credence and response to its noises, protests, and non-violent aggression expressed in large congregations.

The civil society recently had responded in roundtable conferences to seek consensus on the Lokpal Bill, summit on 'Freedom from Corruption', a seminar on 'Black Money', talks on corruption-free governance, etc., all in quick succession. These initiatives have further generated people's anguish and concern.

The civil society had sought important legislation in Right to Information Act after a concerted effort. It has succeeded in seeking National Rural Employment Guarantee Act, and the Right to Education Act. It is now engaged in seeking more legislation on:

- Judicial Standards and Accountability Bill
- Public Procurement Bill
- Whistleblowers Protection Bill

- Foreign Companies Prevention of Bribery Bill
- Amendment to Money Laundering Act
- Electoral Reforms Amendment Bill, etc.

The civil society has been pressurizing the establishment to formulate citizens' charters. Since the departments had not been serious, the Public Service Delivery and Public Grievances Redress Bill and prototypes thereof have been enacted by ten states in the country. Pressure is being put on other states to do frame such legislation.

Under constant pursuit by civil society, two states have legislated with regard to freezing of property of public servants whose conduct is under investigation in corruption cases so that they cannot alienate it during the process.

Similarly, the civil society is seeking probe into the declared assets of legislators where there is a substantial addition within a span of five years. It voices dissatisfaction at the opacity of political party funds.

There is pressure upon the government to launch measures for retrieval of black money stashed in foreign havens. Baba Ramdev, a yoga guru, had initiated this movement.

It was again pressure from civil society that made government to ratify the United Nations Convention against Corruption.

There is now a protest by civil society against the proposal of the government to provide amnesty to business houses and individuals who had evaded taxes and locked their money in foreign banks by not only concealing the source of their earnings but also evading taxes.

The civil society is serious, conscientious, and pursues its agendas with tenacity and determination. No government would be able to ignore its legitimate demands. It has to be consulted, heard, given a platform to express its views, and given its due.

# Closing Ceremony

- Valedictory Address by Shri Pranab Mukherjee, Honourable Finance Minister, Government of India
- Closing Remarks by V. Narayanasamy, Honourable Minister of State, Government of India
- Closing Remarks by Alka Sirohi, Secretary, Ministry of Personnel, Public Grievances and Pensions, Government of India

## Valedictory Address

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Shri Pranab Mukherjee  
Honourable Finance Minister, Government of India

Distinguished Participants, Ladies and Gentlemen,

It is my pleasure to be here at the concluding day of the 7th Regional Conference on the theme “Building Multidisciplinary Frameworks to Combat Corruption.” I understand that this conference has brought together policy makers, experts, legal specialists and practitioners from the public sector, the private sector and the Civil Society from several countries and that you have had fruitful deliberations.

Let me start by congratulating all delegates and experts for their contributions to this conference. I would also like to commend the Department of Personnel & Training Government of India, the ADB and OECD for the efforts put into organizing this event. I appreciate the relentless and persistent efforts of this ADB/OECD initiative in joining the global fight against Corruption and their goal to address all aspects of the universal convention of United Nations Convention Against Corruption (UNCAC).

I am happy to learn that this conference has helped focus on issues such as framework for multi-jurisdictional investigations, Public Procurement and the role of private sector and citizens in combating corruption. I have been told that the conference has discussed the challenges that countries face in securing effective mutual legal assistance to address trans-border corruption in the Asia Pacific context. I have also been told that the Steering Committee had considered and recommended acceptance of the request of the Government of Timor-Leste to join the initiative thus paving the way for its formal admission as the 29th member.

Corruption is a multifaceted problem. It has diverse manifestations, from petty bribery in the delivery of public service to major scandals involving large organizations and even nations. It requires a multifaceted approach to address it. There has to be a framework for prevention of corruption in the public and the private domain. There has to be a legal framework recognizing the act of

corruption as a crime, supported by an effective enforcement machinery. There is also an awareness aspect on the issue, which has to be addressed by empowering individuals who are the ultimate victim of corruption, directly or indirectly.

In today's globalised context of our economies, effective international co-operation has become a sine qua non of any framework against corruption. We need to engage with each other at different levels to effectively block all physical escape routes for those blatantly propagating corrupt practices. Moreover, given the pervasiveness of this phenomenon, it is a war that has to be fought on all fronts and in a concerted and coordinated manner by all stakeholders. Symptomatic solutions to the problem only present temporary results. To be effective, any framework against corruption has to be comprehensive.

Our efforts to tackle this menace have been unceasing and we are committed to the goal of achieving 'Zero Tolerance' against corruption. India has a sound legal framework to address corruption. It includes the Prevention of Corruption Act 1988, Money Laundering Act 2002, the Companies Act; and the Criminal laws of IPC and Cr. PC, which provide, in adequate measure, the tools to enforce the law against the guilty. The Anti-Corruption institutional infrastructure consists of the Central Bureau of Investigation, Central Vigilance Commission, Directorate of Enforcement, Serious Frauds Office; police machinery at the State level; and, the elaborate vigilance administration mechanism setup both at the centre and state levels, which forms the framework to handle corruption, at the domestic and trans-border levels. There are well established institutional mechanisms for transparent and fair selection of public servants, implementation of code of conduct and Disciplinary Rules, Constitutional bodies and mechanism of oversight. Our country is also privileged to have an independent and vibrant judiciary as an able watchdog, means of legal redress and a guardian of justice.

This does not mean that we are free of corruption. Indeed, corruption is widespread and deep rooted in our society. There are issues of slackness in implementation of existing laws, ineffectiveness of some laws, lack of coordination between different agencies that have overlapping mandates, policy gaps such as in the area of election funding and governance failure in several areas of public services delivery, that have contributed to the pervasiveness of this phenomenon.

On the positive side, we are a free society with rich democratic traditions where the freedom of expression is highly valued. If citizens are able to make

their voice heard and the media is able to project the will and wish of the people, a vibrant judiciary working for the cause of justice is invariably able to deliver justice.

The Government of India has taken an all-encompassing initiative with a Group of Senior Ministers being entrusted with the task of formulating and putting in place a roadmap for strategizing and spelling out measures to tackle corruption in public life. The Group was constituted in early January this year and has already submitted its first report. The specific areas which the committee has been looking into are state funding of elections; fast tracking of all cases against public servants accused of corruption; ensuring full transparency in public procurement and contracts, including enunciation of public procurement standards and a public procurement policy; taking away the discretionary powers enjoyed by Ministers at the Centre; introduction of an open and competitive system of exploiting natural resources and other administrative issues. The first Report spelling out various recommendations regarding administrative and disciplinary measures has already been accepted.

We have recently ratified the United Nations Convention Against Corruption (UNCAC) in May 2011. We are required, as a part of our obligations emanating from the Convention, to undertake an assessment of the state of domestic laws. Our domestic laws are substantially compliant with the mandatory requirements of the Convention. With the ratification of the UNCAC, we hope to secure effective international co-operation in addressing trans-border corruption.

A bill titled 'The Prevention of Bribery of foreign Public Officials and Officials of Public International Organizations Bill 2011' was introduced in March 2011 in the Indian Parliament. This would cover the requirement of criminalization of bribery of foreign public officials as mandated under the United Nations Convention Against Corruption. A process has also been set in motion to consider criminalizing bribery in private sector through an amendment in the Indian Penal Code.

The Government has also taken a number of significant legislative initiatives, in parallel to the exercise of ratification of the convention, which include the introduction of the Public Interest Disclosure and Protection to Persons making the Disclosures Bill, 2010; Lokpal Bill, 2011; and the Judicial Standards and Accountability Bill, 2010.

As a measure to tighten the control over black money, the Government has made significant progress in the recent year. There have been 16 new Tax

Information Exchange Agreements (TIEAs) with focus countries like Bahamas, Bermuda, British Virgin Islands, Cayman Islands, Isle of Man, Jersey, Gibraltar, Monaco, etc. have been concluded. A process of re-negotiation of Double Taxation Avoidance Agreements (DTAA) with 75 countries to broaden the scope of the Article concerning Exchange of Information to specifically allow for exchange of banking information has been taken up. Negotiation has since been completed with 22 countries. In addition, 18 new DTAA negotiations have been completed which provide for effective exchange of information. Government has signed amendment to tax treaty with Switzerland and the Swiss Parliament has accorded its approval to the treaty recently. As soon as Switzerland completes its internal process, the treaty shall come into force and will allow India to obtain banking information from Switzerland in specific cases for the period starting from 1st April, 2011.

We are committed to making progress in our fight against corruption. It is also important that other stakeholders, including the private actors and the civil society come forward in shouldering some responsibilities and contribute to the efforts of public agencies in this endeavour. At the same time we are one with the global community in sharing the responsibilities in our collective efforts to address this issue in its international dimension.

Let me conclude by thanking you all for your valuable contributions towards making life of each global citizen corruption free. I hope all the delegates will be carrying with them a resolve to further the efforts of this Initiative in tackling corruption. I hope you have enjoyed your stay in India and carry back fond memories from here. Have a safe journey as you return to your countries.

Thank you





## Closing Remarks

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V. Narayanasamy  
Honourable Minister of State, Government of India

Honourable Finance Minister, Shri Pranab Mukherjee, Secretary (Personnel) Smt Alka Sirohi, distinguished guests and delegates.

It is my privilege to be present at the conference again today. I would like to thank the delegates for having given their precious time and efforts in making this conference a great success. I specially thank all those members and staff from the ADB/OECD and Government of India who worked relentlessly in the smooth process of this conference. I am very impressed by the fact that delegates from 28 member countries spread across the Asia Pacific Regions, the experts, policy makers and practitioners from across the globe have put in their thoughts and views during the last two days.

I hope that the conference provided a very useful platform for the delegate countries to share their best practices, problems and difficulties with the other members of the Initiative. I am sure that the participation has been enriching and rewarding. I am certain that the member countries would pick up threads from the learning here and test them in real time situations in their respective countries.

I find that there were four areas within the main theme of Building Multidisciplinary Framework for combating corruption, which this conference provided a platform to deliberate. The first one relates to strengthening the frameworks for international co-operation in multijurisdictional Corruption Investigation. I am sure that the conference deliberated on a number of aspects and particularly focused on issues of detail at the ground level which are the biggest hindrances in ensuring co-ordination between investigating agencies across jurisdictions. I am sure that the informal interchange of information between the investigating agencies will be a big step to build the level confidence and trust before initiating the formal process of sharing of evidence. As most of the jurisdictions in the region are parties to UNCAC, I feel that the dissimilarities in the extradition laws and the system of mutual legal assistance or interpretations do not pose that serious problem as it was a few years back. The problems in translation of huge volumes of documents are significant, and I

am sure that the conference also deliberated on sharing of evidence, issues relating to double jeopardy and global settlement.

The second area, I find the conference had discussed, was on 'Public Procurement Issues'. There are implementation problems of the laws and rules in existence. Whether a legislation would serve the purpose or not, is an area which may require a detailed look. The potential risk of a statutory backing to address the problems in handling 'public procurement' leading to rigidity and tendency to decision making could be a factor weighing against a legislation. Therefore, any public procurement law should provide for necessary flexibility to address the needs of different sectors and types of projects. There is a need to also strengthen the existing systems of procedures and administrative measures to ensure effective and purposeful implementation of public procurement in the immediate future. Certain specific problems and the possible special measures should be considered in respect of corruption in 'high risk areas'. In India Government has decided to enact a Public Procurement Act soon.

The presence of private sector and the civil society in the conference has been very encouraging. The civil society's concern that there is a need to involve them in policy decisions and in many jurisdictions needs to be addressed. The Private Sector has an effective role to play in their own competitive interests in the business. There is a need to take concerted and coordinated steps to criminalize private sector bribery as private to private bribery can be a very serious factor in undermining fair and reasonable competition, and may result in pricing which may become unaffordable.

India, as one of the member countries to the Initiative, is committed to continue its relentless fight against global corruption and ensure their best in furthering the international co-operation. I hope that the members would agree that such commitment is essential in fighting corruption at all levels.

I conclude by thanking every one of the delegates and experts for their useful contribution. I am sure you had a wonderful time during your stay in India.

Thank you.

## Closing Address

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Alka Sirohi  
Secretary, Ministry of Personnel, Public Grievances and Pensions  
Government of India

Honourable Finance Minister, Honourable Minister of State for Personnel, Public Grievances, Pensions, & the Prime Minister's Office, Mr. Richard A. Boucher, my colleague, Dr S.K.Sarkar, distinguished participants in the Conference from around the world, ladies and gentlemen,

We are indeed fortunate to have with us today Mr Pranab Mukherjee, whose leadership in the Ministry of Finance and other economic Ministries has been well acclaimed nationally and internationally. He has been a key figure in formulating the economic policies of the nation.

It is also befitting that he should preside over this last session of our conference on Building Multi Disciplinary Frameworks to Combat Corruption, as he also chairs the Group of Ministers, set up by the Government earlier in the year to suggest measures both legislative and administrative for curbing corruption.

We have watched him tirelessly working on the Lokpal Bill where we had series of discussions with various stakeholders and ultimately we came up with a draft bill, within a record time. It was presented in the Parliament in August this year.

The 7th Regional conference had participants from 28 member countries plus representatives from advisory groups and other stakeholders. It had in all 175 delegates both from the public and the private sector. We had very intensive and extensive deliberations in the course of our discussions. The 2 conclusions have already been briefly outlined by Mr. Richard Boucher.

This is a time in history, as I said yesterday, when people and nations are increasingly introspecting and reassessing the political and economic order, and debating on better path for governance, a time when the issue of effectively combating corruption acquires fresh immediacy and urgency.

It is in this background that the conference has been organized. The tone for the conference was set by the Honourable President. In her speech, Her Excellency, the President of India and I quote "Any approach to combating

corruption would need to be multifaceted as the problem itself has a number of dimensions. Governments would have to constantly look at and review the existing laws, systems and procedures for ensuring their effectiveness. It would require strengthening of institutions, removing loopholes, stringently implementing laws and making every institution more transparent in its functioning. All the stakeholders have to work together in all these initiatives". The President had also said I believe that any fight against corruption also needs to look at individual behavior as well as societal norms.

This Conference has shown how more than ever Government, Private Sector and the civil society need to work together to address corruption in Asia Pacific Region in a holistic and inclusive fashion. This conference has also shown how opportunities for collective anti-corruption efforts in the region are increasing with recognition that corruption harms everybody in society and everyone has a role to play to tackle it effectively.

Thank you

## Annexes

Conference Programme,  
Biographies, and  
List of Participants



## Conference Programme

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Wednesday 28 September 2011

9:00 – 10:00 *Registration of participants*

10:00 – 10:15 *Participants and invited guests are requested to take their seats*

<b>10:30– 11:25</b>	<b><u>Opening Ceremony</u></b> 10:30-10:35 Arrival of Chief Guest and Lighting of traditional lamp 10:35-10:43 Welcome Address by Alka Sirohi, Secretary, Department of Personnel and Training, Ministry of Personnel, Government of India 10:43-10:51 Address by Xiaoyu Zhao, Vice President, ADB 10:51-10:59 Address by Richard A. Boucher, Deputy Secretary-General, OECD 10:59-11:07 Address by V. Narayanasamy, Honourable Minister of State 11:07-11:22 Inaugural Address by H.E. Smt. Pratibha Devisingh Patil, Honourable President of India 11:22-11:25 Vote of Thanks by S.K. Sarkar, Additional Secretary (Services & Vigilance), Department of Personnel and Training, Ministry of Personnel, Government of India
11:25- 12:00	<i>High Tea (Break)</i>



12:00– 1:30	<p><b><u>Plenary Session 1: Strengthening Frameworks for International Co-operation in Multijurisdictional Corruption Investigations</u></b></p> <p><b><u>Chair:</u></b> Pradeep Kumar, Central Vigilance Commissioner, India Daniel Clegg, Special Agent, Federal Bureau of Investigation, United States Challenges in multijurisdictional investigations and prosecutions</p> <p><b><u>Pakdee Pothisiri, Commissioner, National Anti-Corruption Commission, Thailand</u></b> Multijurisdictional investigations and prosecutions from an Asia-Pacific perspective</p> <p><b><u>Balwinder Singh, Special Director, Central Bureau of Investigation, India</u></b> India’s experience in multijurisdictional corruption investigations</p> <p><b><u>Muhammad Salim Sundar bin Abdullah, Senior Assistant Commissioner, Malaysian Anti-Corruption Commission</u></b> The use of joint investigation teams in corruption investigations</p>
1:30-2:30	Lunch
2:30–4:00	<p><b><u>Plenary Session 2: Enhancing Frameworks for Public Procurement</u></b></p> <p><b><u>Chair:</u></b> Neten Zangmo, Chairperson, Anti-Corruption Commission of Bhutan</p> <p><b><u>Speakers</u></b></p> <p><b><u>Paul Pastrano Gangoso, Project Development Specialist, Affiliated Network for Social Accountability in East Asia and the Pacific</u></b> Public-private partnership in public procurement</p> <p><b><u>Amulya Kumar Debnath, Director General, Central Procurement Technical Unit, Bangladesh</u></b> Electronic Government Procurement of Bangladesh</p> <p><b><u>Sandeep Verma, Director (Planning and Coordination), Ministry of Defence, Government of India</u></b> A Survey of International Best Practices for Fostering Integrity in Public Procurement</p> <p><b><u>Hilary Jennings, Head of Outreach, Competition Division, OECD</u></b> Bid-rigging and corruption in public procurement</p>

4:00-4:15	<i>Break</i>	
4:15-5:45	<b><u>Breakout Session 1</u></b>	
	<b><i>1a. How Can Information Be Shared in Multijurisdictional Investigations?</i></b>	<b><i>1b. How Can Corruption Be Prevented when Awarding Public Procurement Contracts and Concessions in High Risk Sectors?</i></b>
	<p><b>Chair:</b> A.P. Singh, Director, Central Bureau of Investigation, India</p> <p><b><u>Speakers</u></b>  <b>Heather Hemphill, Advisor, Centre for Tax Policy and Administration, OECD</b>  Sharing information among tax authorities  <b>Andrew Boname, Chief of Party, East-West Management Institute Program on Rights and Justice (PRAJ)</b>  Grass roots civil society organisations as a source of information on corruption cases.  <b>Robert Delonis, Litigation Specialist, World Bank</b>  Sharing information by multilateral development banks  <b>Ang Seow Lian, Corrupt Practices Investigation Bureau, Singapore</b>  Obtaining and sharing information in multi-jurisdictional investigations</p>	<p><b>Chair:</b> K.D. Tripathi, Secretary, Central Vigilance Commission, India</p> <p><b><u>Speakers</u></b>  <b>Jian Wei, Director General of the Fifth Supervisory Department, Ministry of Supervision, P.R. China</b>  Steps and progress in public procurement and relevant supervision in P.R. China  <b>Sharvada Nand Sharma, Deputy Solicitor General, Office of the Attorney-General, Fiji Islands</b>  Recent procurement reforms in Fiji Islands  <b>Bibit Rianto Samad, Commissioner, Corruption Eradication Commission (KPK), Indonesia</b>  Procurement in forestry  <b>Assistant Commissioner Mohammed Hassan Ismail, Director, Integrity Session of Public Private Partnership Unit, Prime Minister Department, Malaysia</b>  Procurement reforms in infrastructure</p>

5:45	<i>End of Day 1</i>
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Thursday, 29 September 2011

9:30– 11:00	<p><b><u>Plenary Session 3: What Can the Private Sector Do to Prevent Corruption?</u></b></p> <p><b><u>Chair:</u></b> Jagvinder Brar, Integrity Vice Presidency, World Bank</p> <p><b><u>Speakers</u></b></p> <p><b>Rohit Mahajan, Executive Director and Co-Head of Forensics Practice, KPMG India</b> Preventive mechanisms that can be adopted by organisations to curb corruption</p> <p><b>Neville Gandhi, Regional Compliance Officer Siemens India, Siemens Corporation</b> Policies on corporate hospitality, travel, gifts and facilitation payments</p> <p><b>Carolyn Ervin, Director, OECD Directorate for Financial and Enterprise Affairs</b> OECD Good Practice Guidance on Internal Controls, Ethics, and Compliance</p> <p><b>Paresh Tewary, Director, Aditya Birla CSR Centre for Excellence, Federation of Indian Chambers of Commerce and Industry</b> Development and evolution of CSR policies and practices in India, and how the prevention of bribery and corruption have come to form an integral part therein.</p>
11:00 11:15	<i>Break</i>

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<b>11:15– 12:45</b>	<b><u>Plenary Session 4: Citizens’ Role in Strengthening Governmental Anti-Corruption Frameworks</u></b> <b><u>Chair:</u></b> Alka Sirohi, Secretary, Ministry of Personnel, Public Grievances and Pensions, Government of India  <b><u>Speakers</u></b> <b>Nayak, Coordinator of Commonwealth Human Rights Initiative (CHRI), India Office</b> Citizens’ role in strengthening anti-corruption frameworks <b>Raghunandan Thoniparambil, Programme Coordinator/Spokesperson, ipaidabribe.com, Janaagraha Centre for Citizenship and Democracy</b> Public denunciation of corruption
<b>12:45– 1:45</b>	<i>Lunch</i>

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1:45–3:00	<b><u>Breakout Session 2</u></b>	
	<b><i>2a. What Makes a Corporate Compliance Framework Effective?</i></b>	<b><i>2b. Strengthening and supporting citizen engagement to increase integrity and transparency in government</i></b>
	<p><b><u>Chair:</u> Yoshitaka Tsunoda, Deputy Director, International Economy Division, Economic Affairs Bureau, Ministry of Foreign Affairs, Japan</b></p> <p><b><u>Speakers</u></b>  <b>Bharat Wakhlu, Resident Director, Tata Group</b>  Special corporate compliance measures in high risk sectors  <b>Melissa Khemani, Anti-Corruption Analyst, OECD</b>  Whistleblower reporting and protection mechanisms, including G20 initiatives  <b>Peter Rooke, Senior Advisor, Transparency International</b>  Self-reporting of wrongdoing</p>	<p><b><u>Chair:</u> Jane Ley, Deputy Director, U.S. Office of Government Ethics</b></p> <p><b><u>Speakers</u></b>  <b>Michael Burley, Chief Investigator, Independent Commission against Corruption of Hong Kong, China</b>  Strengthening partnerships between anti-corruption commissions, citizens and NGOs  <b>Anjali Bhardawaj, Director, National Campaign for People’s Right to Information (NCPRI), India</b>  Civil society in protecting victims of corruption  <b>Paramjit Singh Bawa, Chairman, Transparency International, India</b>  Citizens' participation for legislation for governance reforms</p>
3:00-3:15	<i>Break</i>	
3:15-3:30	<p><b><u>Conclusions</u></b>  <b>S K Sarkar, Additional Secretary (Services &amp; Vigilance), Department of Personnel and Training, Government of India</b>  <b>Sandra Nicoll, Director, Public Management, Governance &amp; Participation Division, concurrently Practice Leader on Public Management &amp; Governance, Asian Development Bank</b></p>	

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<b>3:30-4:20</b>	<b><u>Closing Ceremony</u></b> 3:30-3:40 Address by Richard A. Boucher, Deputy Secretary-General, OECD, on behalf of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific 3:40-3:50 Address by Alka Sirohi, Secretary, Department of Personnel & Training, Government of India 3:50-4:00 Address by V. Narayansamy, Honourable Minister of State for Personnel, Public Grievances and Pensions and Prime Minister's Office 4:00-4:15 Valedictory Address by Shri Pranab Mukherjee, Honourable Finance Minister, India 4:15-4:20 Vote of Thanks by Alok Kumar, Joint Secretary (Vigilance), Department of Personnel and Training, Government of India
4:20	<i>End of Conference</i>

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## Biographies of Speakers and Chairs

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**Ang Seow Lian** is an Assistant Director of the Corrupt Practices Investigation Bureau (CPIB), Singapore. He currently oversees one of the investigation units within CPIB. Mr. Ang joined CPIB as an Investigator in 1994 upon graduating with a Bachelor of Science Degree majoring in Economics. Over the years, he has been involved in the following areas of work in CPIB: investigation; investigating both public and private sector corruption cases; prevention and education; reviewing corruption prone government processes, educating civil servants and the public on the evils of corruption; training; planning and policy; intelligence; international affairs, inclusive of international liaison and mutual legal assistance matters; proceeds of crime investigation and confiscation. Mr. Ang is also a certified Polygraph Examiner and is concurrently the Head of the Polygraph Unit in CPIB.

**Paramjit Singh Bawa** is the Chairman of Transparency International India. He holds an M.A. (Economics) degree from Punjab University. In 1961-64, he was part of the Rajasthan Administrative Service, working as Magistrate Class I at Alwar. He joined the Indian Police Service (1964-Union Territories) and served in Delhi, Arunachal Pradesh, Tripura, Goa, Daman & Diu, in various capacities, and organized police arrangements for the Asian Games, and CHOGM. He also served as Inspector General of Police in Goa, Daman, & Diu; IGP, Arunachal Pradesh; and Joint Commissioner of Police, Delhi. His last posting was as Director General of Police, Sikkim in 1997. Since retirement, he has been a member of the Prison Reform Committee of the Government of Delhi, and a consultant to the Lieutenant Governor of Delhi. He has authored books on police, traffic, managing mobility, human rights, crime prevention, police investigation, etc. He also contributed to professional journals on rights, ethics, transparency, corruption, police management, role of semiotics in public order, etc., in addition to writing three novels. He has been awarded the Indian Police Medal for Meritorious Service; President's Police Medal for Distinguished Service; and Asiad Jyoti Medal for coordinating police arrangements for the Asian Games.

**Andrew Boname** is the In-Country Director for the Program on Rights and Justice at the East-West Management Institute, a U.S.AID-funded, Cambodian-based project that supports human rights, the rule of law and anti-corruption efforts. Andy obtained his law degree at the New York University School of Law in 1983 before serving as a prosecuting attorney and Staff Judge Advocate in the U.S. Navy. In 1987, he became a prosecutor in the Guam Attorney General's Office, establishing and heading an anti-corruption unit and a specialized appeals unit. He also acted as Guam's Chief Prosecutor and a Special Assistant U.S. Attorney to assist in corruption prosecutions. He became



the Staff Attorney when the Guam Supreme Court was founded in 1996. This was followed by a brief assignment as an investigating officer for the National Guard Bureau in Arlington, Virginia. In March 2000, Andy became a Criminal Law Liaison for the ABA/CEELI Office in Sarajevo (and participated in the creation of Bosnia's Transparency International Chapter). Later he was appointed a Regional Coordinator for the Criminal Justice Advisory Unit attached to the UN Mission in Bosnia. After the UN Mission closed in late 2002, Andy stayed to lead two projects to reform administrative law and streamline regulatory controls on business. After leaving Bosnia, Andy served as the Bangkok-based Regional Anti-Corruption Advisor for the American Bar Association's Rule of Law Initiative for nearly three years, during which he was a member of the Advisory Group of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific.

**Ambassador Richard A. Boucher** took up his duties as Deputy Secretary-General of the OECD on 5 November 2009. Among his responsibilities, he spearheads the Organisation's enhanced engagement and accession processes. Ambassador Boucher, a U.S. national, is a senior foreign policy executive who has managed worldwide teams, programs and strategies and brings extensive experience in emerging economies. Over his thirty-year career in foreign policy, he has consistently had challenging assignments and achieved the highest rank in the United States Foreign Service. From 2006 to 2009, as Assistant Secretary of State for South and Central Asia, Ambassador Boucher was involved in high-level negotiations throughout the region, from Kazakhstan to India. Prior to this, he was Spokesman and Assistant Secretary for Public Affairs for five years, crafting the U.S. public approach on critical world issues for three Secretaries of State. In 1999, he served as the U.S. Senior Official for Asia-Pacific Economic Co-operation promoting more open trade and an improved investment climate. From 1993 to 1999, he served consecutive terms as the U.S. Ambassador to Cyprus and Consul General in Hong Kong, China. Ambassador Boucher is fluent in French and Mandarin Chinese. He holds a BA in French and English Literature from Tufts University and undertook further studies in International Economics at George Washington University.

**Jagvinder S. Brar** is a senior forensic accountant in the Integrity Vice Presidency at the World Bank Group. He specializes in conducting inspections and forensic reviews on private businesses and project implementing units in Australia, Europe, South Asia, East Asia and Africa regions. He is a chartered accountant in India and Canada, specialist in investigative and forensic accounting in Canada and project management professional by the Project Management Institute. Previously, Mr. Brar worked in the private sector in India and North America.

**Michael Burley IMS** is acting in the rank of Principal Investigator with the Independent Commission Against Corruption Hong Kong, China. He started his

law enforcement career in 1977 on joining the Hampshire Police in the United Kingdom. After three years he became a detective and in 1983 was promoted to Detective Sergeant. He specialised in commercial fraud and in 1988 as a Detective Inspector took control of Hampshire's Northern Fraud Squad. In 1990 he came to Hong Kong, China on secondment to the Independent Commission Against Corruption at the rank of Senior Investigator. He decided to pursue the remainder of his law enforcement career with the ICAC after reunification of Hong Kong with China. He was promoted to Chief Investigator in 2006 and commanded a section within ICAC's policy and legal research group which he now heads. Michael Burley has a Diploma in Criminal Justice and Public Order from the University of Hong Kong. He was awarded the Hong Kong ICAC's Medal for Meritorious Service in 2010.

**Daniel Clegg** has been a Special Agent with the Federal Bureau of Investigation for 21 years. He is currently the FBI's Attaché, or head-of-agency, at the U.S. Embassy in India. He oversees all FBI programs in the region—India, Bangladesh, Bhutan, Maldives, Nepal, and Sri Lanka—from international terrorism to cyber crime. His focus in the region is to protect U.S. citizens and interests by building relationships with law enforcement and intelligence services to ensure quick and continuous exchange of information. Mr. Clegg was appointed as a Special Agent in 1990 and served 13 years in domestic assignments in Oregon, Puerto Rico, and Nebraska. He has also served as an Assistant Attaché in Mexico for four years and as the principal Attaché in Brazil for three years, co-ordinating investigations under all major FBI programs. Mr. Clegg has a BA from Brigham Young University and is fluent in Spanish and Portuguese. He is a certified police instructor and has taught interview and interrogation techniques to police officers in the U.S. and around the world. In 2008 he collaborated with the University of Nebraska Medical Center on a curriculum to help medical students develop better diagnostic interviewing and observation skills by incorporating the FBI's active listening and cognitive interview techniques.

**Amulya Kumar Debnath** is the Director General of Central Procurement Technical Unit (CPTU) of the Implementation Monitoring and Evaluation Division (IMED) in the Ministry of Planning, Government of the People's Republic of Bangladesh and Project Director, Public Procurement Reform Project assisted by the World Bank. Mr. Debnath has been a member of the Bangladesh Civil Service (Economic) for 29 years, with experience in development planning, project and procurement management, procurement reform including Bangladesh's electronic government procurement (e-GP) reform and implementation. He served on the Bangladesh Planning Commission, Pay Commission and central monitoring organization. He has a master's degree in science and a post-graduate degree and diploma in development economics, population, and development and procurement

management. Mr. Debnath is certified national trainer on procurement and development planning. His current responsibilities include implementation of country's procurement law (PPA 2006), Rules (PPR 2008), increase of procurement and management capacity, introduction and implementation of national e-GP, digitalization of compliance procurement monitoring, implementation of country's communication, and awareness raising strategy on public procurement.

**Robert Delonis** is a litigation specialist in the World Bank Integrity Vice Presidency (INT), focusing on the Bank's South Asia region. He partners closely with INT investigators on their inquiries and prepares and argues the World Bank sanctions cases that result from those investigations. Mr. Delonis also helped launch and, for a one-year period, ran INT's Voluntary Disclosure Program, and he was a core team member on INT's Detailed Implementation Review of the India Health Sector, the largest forensic review ever conducted by INT. Before joining the World Bank, Mr. Delonis worked as a lawyer in private practice at a Washington, DC-based multinational law firm.

**Carolyn Ervin** is Director of the OECD's Directorate for Financial and Enterprise Affairs (DAF). Her Directorate helps governments to improve the domestic and global policies that affect business and markets. It works in the fields of anti corruption, corporate governance, competition law and policy, investment, financial markets, insurance, private pensions and private sector development. During over twenty years at the OECD, Carolyn Ervin has held posts in several areas. She was director of the secretary-general's office from 2000 to 2005. As counselor in DAF in the 1990s she led the project to negotiate the OECD Anti-Bribery Convention and was a main drafter of the OECD Jobs Study. During the 1980s and 1990s she handled programme and budget issues in the secretary-general's office, and helped to set up the Centre for Co-operation with the Economies in Transition. Prior to joining the OECD Carolyn Ervin spent six years in the United States diplomatic service. Carolyn Ervin is a U.S. citizen. She has a B.A. and an M.A. in Economics from Stanford University. She is married and has one daughter.

**Neville Gandhi** is a B.Com, C.A, ACFE. He has been the Regional Compliance Officer of Siemens India since June 2010 and has handled Internal Audit for the past 11 years. Mr. Gandhi is a CA by profession; a career Auditor and also possesses a CFE qualification. He has completed 15 years in Siemens and in this tenure he has taken up positions in Audit, as Head of Accounts Receivables.

**Heather Hemphill** is currently an Advisor with the International Co-operation and Tax Administration Division at the OECD's Centre for Tax Policy and Administration. Heather's work at the OECD involves exchange of information and mutual assistance in tax matters. This includes exchange of information

under tax treaties, multilateral agreements and tax information exchange agreements. Heather is on loan from the Canadian Department of Justice where she is a Senior Counsel at the Legal Services office of the Canadian Revenue Agency (CRA). Heather has been with the Canadian Department of Justice since 1991 and has provided advice and support to the Canadian Revenue Agency with respect to international taxation issues including tax treaties and exchange of information. She was National Coordinator for International Taxation Litigation and was recently responsible for the national coordination of legal advice being provided to the International and Large Business Directorate of CRA.

**Hilary Jennings** joined the OECD in October 2008 as Head of the Global Relations programme within the Competition Division. She leads the team responsible for designing, implementing and managing the OECD's capacity building activities in the area of competition law and policy. Prior to joining the OECD, Hilary worked as EU/International Government Relations Manager at HSBC and for five years was Head of International at the United Kingdom's Office of Fair Trading. She also held posts as: European policy adviser to the EEF, the UK-based manufacturers' organisation; Research Fellow at the British Institute of International and Comparative Law; and Head of Research for a public affairs agency in London. Hilary holds an LL.M in International Business Law from King's College London and has studied at the Institut d'Etudes Européennes at the Université Libre de Bruxelles as part of her LL.B (Hons.) with French from the University of Sussex.

**Melissa Khemani** is an Anti-Corruption Analyst/Legal Expert with the OECD's Anti-Corruption Division, Directorate for Financial and Enterprise Affairs. Her responsibilities include supporting the work of the OECD Working Group on Bribery in International Business Transactions, including monitoring the implementation of the OECD Anti-Bribery Convention and related OECD instruments. Ms. Khemani also works on the Anti-Corruption Division's bilateral outreach with India, and the OECD's regional anti-corruption initiatives jointly held with the Asian Development Bank, and with the African Development Bank. Prior to joining the OECD, Ms. Khemani was with the Criminal Law Section of the Commonwealth Secretariat, London, where she supported the Section's work providing capacity-building and technical assistance on transnational criminal law issues, including domestic implementation of the UNCAC, within Commonwealth member countries. Ms. Khemani is a Canadian national. She holds Law degrees from Georgetown University, Washington DC, and the University of London (King's College), UK, and a Bachelor of Arts in Political Science and Economics from McGill University, Montreal, Canada.

**Pradeep Kumar** was appointed the Central Vigilance Commissioner of India in July 2011 after a distinguished and varied career as a Civil Servant spanning about four decades. He is a graduate in Electrical Engineering from Indian

Institute of Technology, Delhi and Masters in Economics and Social Studies from the University of Wales, UK. He joined the Indian Administrative Service in 1972 and served at various execution and policy making levels in the State Government of Haryana and Government of India. He has had notable achievements as the head of three important departments in the Government of India as Secretary, Disinvestment; Secretary, Defence Production; and Defence Secretary. As the Chairman of the National Highways Authority of India, he was instrumental in implementing important Highway projects. He has a rich experience of heading some of the important sectors as Principal Secretary of Power, Irrigation, Science and Technology, Town and Country Planning and Urban Development Departments in the Government of Haryana. He has also worked as Joint Secretary in the Department of Heavy Industry and as Additional Secretary in the Ministry of Coal in the Government of India. He has served on the Boards of several leading companies like Bharat Heavy Electricals Ltd., Maruti Udyog Ltd., Andrew Yule Ltd., Hindustan Paper Corporation Ltd., Coal India Ltd., and Neyveli Lignite Corporation Ltd.

**Jane S. Ley** is a Deputy Director of the United States Office of Government Ethics (OGE) where she has primary responsibility for the Office of International Assistance and Governance Initiatives. In carrying out the international assistance programs, she has travelled widely making presentations to international organizations and working with countries which are developing or enhancing their ethics and anti-corruption programs. She is also a U.S. representative and expert in the Council of Europe's Group of States against Corruption (GRECO) follow-up mechanism; Inter American Convention Against Corruption (MESICIC) follow-up mechanism; OECD public governance programs; UN Convention Against Corruption Implementation Review Group, Prevention Working Group and COSP; the APEC Anti-Corruption and Transparency Task Force. Ms. Ley joined OGE upon its creation in 1979, serving progressively as a staff attorney, the Deputy General Counsel, and the Deputy Director responsible for Government Relations and Special Projects. In those roles she was significantly involved in the development of the U.S. Federal public financial disclosure system, the executive branch standards of ethical conduct, amendments to the criminal conflict of interest laws and the OGE legislative program, working closely with the White House, the U.S. Department of Justice, and Congress. She also acted as OGE's liaison with the Criminal Division of the U.S. Department of Justice. Prior to joining OGE, Ms. Ley served as the Associate Director of the Hawaii State Ethics Commission, during which she participated in the Council on Governmental Ethics Laws. Ms. Ley has a law degree from George Washington University (1975) and an undergraduate degree from Kansas State University (1972). She is licensed to practice law in the states of Kansas and Hawaii although currently on inactive status.

**Rohit Mahajan** is an Executive Director of KPMG in India. He co-heads KPMG India's Forensic practice, besides leading the investigations and Anti-Bribery and Corruption service line within the practice. He is a Chartered Accountant with over 15 years of experience in handling projects in the areas of Fraud Investigations, Anti-Bribery and Corruption diligence and compliance reviews, Financial Due Diligence and Valuation, Business Fraud Risk Review and Business Process Risk Consulting. His exposure spans all major industries with specific focus on Infrastructure, Pharmaceuticals, IT/ITeS and Consumer Markets. Mr. Mahajan led a team to develop a compliance framework with UK Bribery Act requirements and providing guidance on 'adequate procedures'. He has led several investigations involving financial improprieties, bribery, corruption, FCPA non-compliance, employee fraud and non-compliance including being part of the team investigating the Satyam case. Another investigation involved suspicions of an Indian subsidiary of a leading UPS manufacturer paying commissions to a Government agency to win a bid. Certain employees were also suspected of receiving kickbacks. Other investigations included a leading NBFC that suspected malpractice in its credit approval process and about 140 loans approved based on fake / forged documents; misappropriation of assets in a PE funded logistics firm; and data theft and intellectual property fraud in a pharmaceuticals firm, where certain employees were suspected of divulging sensitive information to outsiders. Mr. Mahajan has also involved in global investigations in several sectors such as Telecom and IT/ITeS and is adept at understanding regional and global legislations pertaining to a case. He successfully mentored the preparation and launch of publications like the India Fraud Survey 2010 and Survey on Bribery and Corruption 2011; including recent point of view documents on the impending Lokpal Bill.

**Sandra Nicoll** is Director, concurrently Practice Leader (Public Management and Governance) of the Public Management, Governance and Participation Division of ADB's Regional and Sustainable Development Department. As Director, Ms. Nicoll heads a team that supports ADB's sector and thematic operations in areas of governance (especially public financial management and anticorruption), public management, e-governance, disaster risk management, and civil society engagement. This involves support to operations in implementation of ADB's Second Governance and Anticorruption Action Plan, Capacity Development Action Plan, and Disaster and Emergency Assistance Action Plan. She also chairs the Governance & Public Management Community of Practice and oversees ADB's support for the ADB/OECD Anticorruption Initiative for Asia and the Pacific. Ms. Nicoll began her career in ADB in 2002 and has since worked in various capacities in the former Mekong Regional Department, NGO and Civil Society Center, and the Pakistan Resident Mission. Prior to her ADB career, Ms. Nicoll served as Governance Adviser for the Department for International Development (DFID) in Bangladesh; Project

Director for the Vietnam-Canada Financial Management Project (Price Waterhouse Coopers) in Vietnam; Financial and Training Manager for the Sulawesi Regional Development Project in Indonesia; and Manager, Capacity Development Programs for the Aga Khan Foundation Canada.

**Professor Pakdee Pothisiri** is a Commissioner of the National Anti-Corruption Commission (NACC) of Thailand, and concurrently serves as Chairman of its International Affairs Sub-Commission. Prof. Pothisiri had previously served in various capacities in the Ministry of Public Health. Some of his previous positions include Secretary-General of Thai Food and Drug Administration (2004-2006 and 1995-1997), Deputy Permanent Secretary of the Ministry of Public Health (2002-2004 and 1997-1999), Director-General of the Department of Health (2001-2002), Director-General of the Department of Medical Sciences (1999-2001), and Inspector-General of the Ministry (1991-1995). Prof. Pothisiri was an active member of a number of international and national organizations. He was a Commissioner of the WHO-Commission on Intellectual Property Rights, Innovation and Health (2004-2006), and Chair (1995-1999) and Vice-Chairman (1991-1995) of FAO/WHO Codex Alimentarius Commission. Between 1974 and 1990, Prof. Pothisiri served as the Chairman of the Jurisprudence Division of the Federation of the Asian Pharmaceutical Association. He was also President of the Pharmacy Council of Thailand, Chairman of the Board of Director of Government Pharmaceutical Organization. Prof. Pothisiri received his B.Sc (Honors) in Pharmaceutical Sciences from Chulalongkorn University, Thailand, and a Ph.D. in Physical Chemistry from the University of Wisconsin, United States. He also holds a B.A. in Law and a D.PH in Public Health Administration. He has been a special lecturer at many universities and was Royally appointed an Adjunct Professor of Chulalongkorn University in 1990. Prof. Pothisiri is the author and co-author of more than 50 scientific papers and several textbooks. In 1996, Prof. Pothisiri was awarded "Men of Achievements" from the Association of Thai Society. He was also a recipient of the prestigious "Ebert Prize" for best scientific report published in the Journal of Pharmaceutical Sciences in 1975 from the National Academy of Sciences of the U.S..

**Bibit Rianto Samad** is the Vice Chairman of the Corruption Eradication Commission (KPK) Republic of Indonesia. Born in Kediri (East Java) in 1945, Bibit graduated from the Police Academy in 1970 and then served in the force for around 30 years. Bibit held the final rank of Inspector General before his retirement in July 2000. In recognition of his service and dedication to the country, he received a variety of awards, among them the Badge of Loyalty, Dwidya Sista Award and Bhayangkara Pratama Nararya Star. After retiring from the Police service, Bibit returned to university and completed a Doctor of Philosophy degree in 2002. Before his appointment as the Commissioner of the KPK in 2007, he lectured in the Magister Management program at the University of Surapati and Dean of Bhayangkara Jaya University in 2005. As a

KPK Commissioner, he is actively involved as the head of delegation, speaker, and as a member of delegation in numerous prominent international forums such as: United Nations Convention Against Corruption (UNCAC) Conference of States Parties, APEC Anti Corruption Task Force (ACT) and the Senior Official's Meeting (SOM), Workshop of the Institute for Peace and Democracy, Meeting of the Corruption Hunter Network and the Asia Anti-Corruption Conference. Bibit has published research and books such as: "Towards a Professional Indonesia National Police", "Illegal Logging in Indonesia", "Empowering the Community to Guard against Crime", and "Corruptor, Go to Hell".

**Peter Rooke** is currently a Senior Adviser at Transparency International (TI) and a member of TI's Membership Accreditation Committee. He has practised as a lawyer in Europe, Africa and the Middle East. For more than 20 years he was a partner in international law firm Clifford Chance where he advised multinational corporations and governments on transnational commercial transactions in the oil and gas and other sectors. Since he retired from legal practice in 1993, Mr Rooke has worked as a volunteer for Transparency International where he has been a Board member and Asia-Pacific Regional Director. In particular he supported the development of TI's presence in the Asia-Pacific region. He represented TI on the ADB-OECD Anti-Corruption Initiative for Asia and the Pacific, the APEC ACT and other fora. He also represented TI at the negotiation of UNCAC and in various activities relating to transnational corruption and economic crime.

**Muhammad Salim Sundar bin Abdullah** is a Senior Assistant Commissioner of the Malaysian Anti-Corruption Commission (MACC). He is currently the Deputy Director of Policy, Research and Planning Division and Head of the Corporate Communication Branch of MACC. He started his career in MACC in 1978. During his 33 years of service in the MACC, he has served in Investigation, Intelligence, Community Education in Headquarters and also in MACC State offices. Prior to heading Corporate Communication, he was the Deputy Director of the Intelligence Division. He was the liaison officer for Operation/Intelligence Cooperation between MACC and anti-corruption agencies in other jurisdictions. He is a member of the Working Secretariat of the Multilateral Cooperation between Indonesia, Brunei Darussalam, Singapore and Malaysia. He is highly involved in coordinating project based investigations and joint investigations with other anti-corruption agencies. He is also involved in developing MACC's strategic plan on combating and preventing corruption. His other experiences including serving as a member of the Panel on the Establishment of Certified Integrity Officers; Head of the Segamat and Teluk Intan MACC Branch; Chairperson of the Tender Board Sub-Committee on Pricing; and Member of the MACC Tender/Quotation Board. He is also a



lecturer and has expertise in criminalization and law enforcement, and asset recovery.

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**K. D. Tripathi** is a Secretary in the Central Vigilance Commission, India's premier integrity institution. He joined the Commission in May 2011. Mr. Tripathi is 53 years' old. He joined the Indian Administrative Service (IAS) in 1980. He completed his Post Graduate degree in Physics at the University of Allahabad in 1978, and a Masters of Business Administration degree in 1994 with the In Service Foreign Training Programme at the University of Ljubljana, Slovenia. He has over 30 years of experience in IAS, serving in the North Eastern State of Assam in the Departments of Agriculture, Industries, Rural Development, Secretarial Administration, Personnel & PG, General Administration, and Fisheries. He has also served in the Government of India in New Delhi in the Ministries of Rural Development, Steel & Mines, Tourism, Chemicals, and Public Enterprises.

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Tsunoda is in charge of the OECD Anti-Bribery Convention for the Ministry of Foreign Affairs, and regularly represents his government at meetings of the OECD Working Group on Bribery. He is leading Japan's contribution to the Working Group's ongoing review of Japan's implementation of the OECD Anti-Bribery Convention. Mr. Tsunoda is the Ministry of Foreign Affairs' Germany specialist, and in previous positions with the Ministry he was in charge of Japan's bilateral relationships with the EU, Germany, Austria and Switzerland. He has also worked in Japan's embassy and consulates in Germany.

**Sandeep Verma** is a senior member of the Indian Administrative Service, and holds a Master of Laws with highest honors, having specialised in Government Procurement Law from The George Washington University Law School, Washington DC. He is currently working as Director (Planning & Coordination) in the Department of Defence Production, Ministry of Defence, in the Government of India. He has extensive hands-on experience in the design and implementation of government contracts. His areas of academic interest are law enforcement, government contracts and agreements, and property laws. He has authored a number of research papers on various aspects of international and national public procurement laws, regulations and practices.

**Jian Wei** is the Director-General of the Fifth Supervisory Department of the Ministry of Supervision (MOS) of the People's Republic of China. Mr. Wei holds a Doctor of Laws degree and graduated from the Law School of the China University of Political Science and Law in 1984. From 1984 to 2005, he worked within the judicial system, and served successively as Chief Justice of the Second Criminal Court, Judicial Committee member and Vice President of the High People's Court of Hebei Province. From 2005 to 2007, he was the Deputy Director-General of the Case Review Department of MOS. Since 2007, he served successively as the Deputy Director-General and the Director-General of the Fifth Supervisory Department of MOS. During his judicial career, he chaired a number of important trials, including the trial against Cong Fukui, former vice governor of Hebei Province, and Li Zhen, former Director-General of Tax Authority of Hebei Province. In recent years, he organized and conducted investigation to several major corruption cases, by which several ministerial-level officials such as Huang Yao in Guizhou, Li Tangtang in Shaanxi were punished according to law. Mr. Wei is also devoted to academic research, and has published more than ten academic papers in the area of criminal proceedings.

**Dasho Neten Zangmo** is the Chairperson of the Anti-Corruption Commission (ACC) of Bhutan. She leads the building of an anti-corruption cadre in the ACC unified by the vision of building an incorruptible society; the establishment of an Anti-Corruption Commission that is incorruptible, credible, impartial, fearless, effective and a professional institution that will enjoy the confidence and trust of the people; and the building of social, economical and political synergies to curb

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# BACKCOVER BLURB

## **Building Multidisciplinary Frameworks to Combat Corruption**

Corruption is a multifaceted problem that requires a multidisciplinary solution. The need for multidisciplinary frameworks for combating corruption is also reflected in prevailing international standards, such as the United Nations Convention against Corruption (UNCAC), and the OECD Anti-Bribery Convention and other OECD instruments. These instruments address the problem from every angle – prevention in the public and private sectors, detection and law enforcement.

With this in mind, the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific, and the Government of India, co-organized the 7th Regional Anti-Corruption Conference on 28-29 September 2011. Entitled *Building Multidisciplinary Frameworks to Combat Corruption*, the conference aimed to help governments, businesses and citizens in Asia-Pacific find holistic approaches to the corruption problem. It provided a forum to exchange views on some of the main features of an effective multidisciplinary anti-corruption framework: 1) international co-operation in multijurisdictional corruption investigations; 2) measures to prevent and detect corruption in public procurement; 3) corporate compliance, internal controls and ethics measures to fight corruption; and 4) strong citizen contributions to these frameworks.

The Asian Development Bank (ADB)/Organisation for Economic Co-operation and Development (OECD) Anti-Corruption Initiative for Asia and the Pacific supports its 28 member countries and jurisdictions in their efforts to establish sustainable safeguards against corruption as set out in the Anti-Corruption Action Plan for Asia and the Pacific. For more information, please visit [www.oecd.org/corruption/asiapacific](http://www.oecd.org/corruption/asiapacific).