article 2
of the International Covenant on Civil and Political Rights
Vol. 9, No. 1 March 2010 ISSN 1811 7023

a consultation on

corruption & counter-corruption across Asia

Bangladesh · Cambodia · Indonesia
India · Pakistan · Sri Lanka · Thailand

article 2 of the International Covenant on Civil & Political Rights:

"3. **Each State Party to the present Covenant undertakes:**

(a) To ensure that **any person whose rights or freedoms as herein recognized are violated shall have an effective remedy**, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by **competent judicial, administrative or legislative authorities**, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities **shall enforce** such remedies when granted"

Contents

A CONSULTATION ON CORRUPTION AND COUNTER-CORRUPTION ACROSS ASIA

Introduction: Corruption and counter-corruption across Asia 2
Editorial board, article 2

Elimination of corruption and the creating of conditions for transparency, integrity and accountability 6
Statement of participants at the Regional Consultation on Anti-Corruption Mechanisms in Asia, 11-15 January 2010, Hong Kong

Bribery and corruption control in Sri Lanka 13
Kishali Pinto-Jayawardena, Attorney-at-Law & Sunday Times *Columnist, and Jayantha de Almeida Guneratne, President's Counsel, Visiting Lecturer, Faculty of Law, University of Colombo, Sri Lanka*

The Indonesian Corruption Eradication Commission 18
Mochammad Jasin, Commissioner, Corruption Eradication Commission, Indonesia

Challenges in combating corruption: Lessons from Indonesia 28
Adnan Topan Husodo, Deputy Coordinator, Indonesia Corruption Watch

The nature of corruption and anti-corruption strategies in Pakistan 33
Asad Sayeed, Director, Collective for Social Science Research, Karachi

Fighting corruption from the bottom: The case of Thailand 41
Charas Suwanmala, Professor & Dean, Faculty of Political Science, Chulalongkorn University, Bangkok

Anti-corruption mechanisms in Bangladesh 48
M. Shamsul Haque, Advocate, Supreme Court of Bangladesh

Mechanisms to address corruption in Cambodia 53
Sek Barisoth, Director of Media Program, Pact Cambodia

State-patronized corruption and poverty in Madhya Pradesh 62
Rolly Shivhare & Sachin Kumar Jain, Vikas Samvad Advocacy Resource Organisation, Bhopal, India

Some closing thoughts about corruption across Asia 79
Basil Fernando, Director, Asian Human Rights Commission & Asian Legal Resource Centre, Hong Kong

Introduction: Corruption and counter-corruption across Asia

Editorial board, *article 2*

The problem of corruption is rampant in many Asian countries. It seriously affects all aspects of people's lives, as almost nothing can be done without giving bribes. If you want to make a complaint to the police or any authorities, you have to give bribes. If you want to get a driving licence or open a shop, you have to give bribes. If you want to receive a public service, such as education and healthcare, you have to give bribes. If you want to be properly treated in police custody, you have to give bribes. Even if you want to make a petition to court concerning all these problems, you have to give bribes. All the public institutions, which are supposed to provide services and protection to safeguard the human rights of people, have become dysfunctional because of corruption. In this sense, corruption is a main obstacle for the protection and promotion of human rights, as it destroys the proper functioning of the public institutions.

Corruption is the enemy of the rule of law. Under corruption, there is no respect for laws, because laws cannot be enforced or they are enforced arbitrarily in favour of people who have power or can afford to pay bribes. The key institutions for the rule of law—the police, the prosecution and the judiciary—become dysfunctional. As a result, people have no means to make complaints or seek remedies. It is a total denial of justice.

To tackle the problem of corruption, the Asian Legal Resource Centre held a Regional Consultation on Anti-Corruption Mechanisms in Asia, in Hong Kong on 11-15 January 2010. The aims of the consultation were to develop knowledge and critique existing mechanisms for the elimination of corruption in Asia and to introduce the participants to the Independent Commission Against Corruption (ICAC) in Hong Kong, so as to provide opportunities for comparative studies on corruption control. Fifteen participants from nine countries (Bangladesh, Cambodia, India, Indonesia, Nepal, Pakistan, South Korea, Sri Lanka and Thailand) took part the consultation. The participants included the commissioners of anti-corruption commissions, activists of anti-corruption NGOs, human rights lawyers and scholars.

During the consultation, participants presented the situation of corruption and the functioning of anti-corruption mechanisms in their countries, exchanging experience and ideas on how to enhance the development of effective anti-corruption mechanisms. The participants also spent a day to visit the ICAC to learn about its successful experience in fighting corruption.

"Corruption is rampant in many Asian countries"

The papers of participants for the consultation constitute this issue of *article 2* (vol. 9, no. 1, March 2010). They provide an in-depth picture and wide range of experience in fighting corruption in these Asian countries. The common concerns and principles in tackling the problem of corruption raised by the participants are contained in the statement of the consultation, which opens the issue.

The edition follows with a paper on Sri Lanka that focuses on the problems with the appointment, mandates and powers of the Bribery and Corruption Commission in the political context of the non-functioning of the Constitutional Council. For some years, the president has appointed the commissioners without checks and balances. Other attendant problems are the extreme politicisation of the commission and its activities, the disallowance of the commission to investigate complaints on its own initiative and the lack of an independent investigative force as possessed by the anti-corruption body in Hong Kong.

The experience in Indonesia provides a very valuable lesson for other Asian countries on how to develop effective anti-corruption mechanisms with the support of the public. The two papers on Indonesia, one by an anti-corruption commissioner and another by an anti-corruption activist, together give a comprehensive picture of the development of the Corruption Eradication Commission (KPK), the selection process of its commissioners, its powers and functions, what has been achieved and the present challenges. In his paper, KPK Commissioner Mochammad Jasin emphasizes that the KPK has accompanied law-enforcement efforts with prevention, supervision and coordination of all law enforcement institutions involved in processing corruption cases, and has at all points sought the participation of the public. The KPK is an independent body with a wide range of powers in investigation. The second paper discusses the advantage of the KPK of its support from civil society, the media and the public. However, it underscores that the political environment is still difficult, with the police fighting back and lack of support from political elites. The KPK also needs to develop its own investigative force instead of depending on the police to conduct investigations.

The paper on Pakistan highlights the key areas of corruption and problems of anti-corruption arrangements there, tracing corruption in land grabbing and allocation of state resources that have been institutionalised to provide benefits to the powerful sectors in which military personnel are dominant. The most important implication of this institutionalized corruption is that powerful actors—whether they are state or non-state—cannot be

brought under the anti-corruption laws extant in Pakistan. The military, judiciary and lately the Islamic clergy are all by law outside the authority of anti-corruption mechanisms. The paper suggests the creation of a constitutional body to oversee all aspects of corruption and to include all groups, the strengthening of capacity and functions of the auditor's office, and bureaucratic reform as some possible solutions.

The paper on Thailand discusses the role of civic organizations in fighting corruption through education, monitoring and watchdog functions. It illustrates four successful cases to show how civic organizations fight corruption. As corruption is still prevalent, Thailand needs to strengthen both state institutions in charge of fighting corruption from the top, as well as to multiply and strengthen civic corruption watchdogs that can chase and catch corruption at the bottom.

As described in the next paper, corruption in Bangladesh is so deeply rooted and institutionalised that it has become the way of life. The paper concentrates on the problems of corruption in the judiciary, describing the methods associated with corruption, from jumping the queue of cases to be heard on a given day to getting a copy of the judgment. The paper emphasizes that people should be willing to eliminate corruption and suggests some steps towards this end.

Corruption in Cambodia is still rampant. The paper on this country gives an overview of the existing laws and legal mechanisms for counter-corruption activities and assesses the prospects for development of anti-corruption mechanisms. The government has approved a draft anti-corruption law, but its contents have not been disclosed and the law is now waiting to be passed through the National Assembly. The lack of seriousness and political will to fight corruption is the key problem. The paper suggests several ways in which assistance could be given to promote anti-corruption work in Cambodia.

Instead of describing practices of corruption directly, the paper on India describes how people have been deprived of their livelihood through programmes for access to food and work due to the corruption patronized by the state. The state adopts growth-based development policies and squeezes public resources to provide benefits to the private and corporate sectors, whereas the poor and the marginalized are denied basic rights. Unaccountability has been fostered in a manner to further enhance corruption. Protections enshrined in the constitution and laws are not respected and ensured for people in need, as most public resources are sacrificed to corruption.

All in all, the edition paints a bleak picture of the situation in most parts of Asia, but also gives some cause for hope that more and more people are determined to effect some kind of lasting change to the cultures of corruption that have eaten into countries across the region for so long. Although there are no short-term or easy solutions, the fact that people like those who

assembled in Hong Kong for this consultation are thinking seriously through their problems, articulating them and looking for ways ahead in itself raises the possibility of a future for the region that will be markedly different from its past.

INTERNATIONAL HUMAN RIGHTS DAY 2009

Crisis in Human Rights Protection in Asia

Bad Policing Systems as a Major Threat to Human Rights

"On the 10th of December Human Rights Day is celebrated the world over. It reminds us of the adoption of the Universal Declaration of Human Rights in 1948, which symbolized the start of an era based on a respect for human dignity and on the obligations of states to protect human rights. But what kind of reminder is this day for people living in the Asian region? How many of them have seen improvements that would allow them to participate in such a celebration joyfully?

"For the majority of people in Asia human rights remain a promise and a dream; they are not protected to the extent that they are thought worth celebrating. Instead on this day, once again, people will air their grievances louder; they will remember the many who have unnecessarily died because of violence, or because of neglect on the part of their government to provide them with economic, social and cultural development necessary to sustain them..."

Read the statement of the Asian Human Rights Commission on International Human Rights Day 2009 and annual reports on human rights for 2009 in:

Bangladesh	**Burma**
India	**Indonesia**
Nepal	**Pakistan**
Philippines	**South Korea**
Sri Lanka	**Thailand**

Go to: http://material.ahrchk.net/hrreport/2009/

Elimination of corruption and the creating of conditions for transparency, integrity and accountability

Statement of participants at the Regional Consultation on Anti-Corruption Mechanisms in Asia, 11-15 January 2010, Hong Kong

We the participants of the Regional Consultation on Anti-Corruption Mechanisms in Asia held at the Asian Legal Resource Centre in Hong Kong from 11 to 15 January 2010 express our deep concern about the acute problems that people of our countries face, particularly for the large majority of people who still live in relatively poor conditions, which affect economic, social and cultural rights as well as civil and political rights.

In areas of food and water, education and health, employment and so forth people across Asia face extremely serious problems of corruption. When attempting to gain the basic services to which they are entitled as members of society, corruption remains a serious obstacle.

While budgetary allocations are inadequate to meet legitimate public expectations, state authorities misuse the allocations themselves. Apart from this, foreign aid for socio-economic development projects often ends up in the hands or pockets of corrupt politicians and those in authority, defying all attempts at accountability.

Corruption is also playing a role in stimulating violence and internal insecurity, as it shrivels the prospect of government supplying people with basic services, opportunities, rights and entitlements. As a result, people choose to remain silent on internal conflict and do not support the state in handling crises. Further, people also opt not to participate in governance. In this sense corruption weakens people's democracy and creates space for authoritarian rule.

There are also problems associated with the planning and allocation of resources that are conditioned by the institutional gaps and defects associated with systems of power in society. In the development of policies and their implementation, serious inequalities in the distribution of basic resources often affect the structural issues that engender conditions enabling corruption. On the other hand, in the struggle for the eradication of corruption, obstacles arise due to political and social factors that are associated with inequalities imbedded in society. Therefore, realisation of the basic human rights of persons, promotion of the rule of law and achievement of democratic rights in countries of the region are all very much linked to the problems of eradication of corruption.

"The treating of eradication of corruption as a human rights issue speaks to the fundamental indivisibility of socio-economic rights and civil and political rights"

Eradication of corruption as a human rights issue

The treating of eradication of corruption as a human rights issue speaks to the fundamental indivisibility of socio-economic rights and civil and political rights. In all problems associated with corruption, whether in the form of land grabbing, corrupt development projects, deaths caused by corrupt practices in health institutions or otherwise, our countries lack good policing, independent investigative agencies and well-functioning justice institutions that can meet the needs and expectations of people.

Questions of illegal arrest and detention, denial of access to justice and denial of fair trial are often associated with the unaffordability of justice, which is also associated with problems of corruption that beset institutions for the administration of justice, particularly the police, prosecution services and judiciary. The right to life is deeply affected by problems created through institutional malpractices that are the result of deeply corrupt practices within society. Among the people who face these problems in the most acute way are more vulnerable groups such as women and children, and minorities.

Historical and contemporary causes of corruption

The root causes of corruption are the histories of our society's feudal social structures as well as the problems created during long periods of colonial rule. The development of a basic institutional framework for our societies has been affected by these historical problems and in many of our countries these problems need to be resolved in an attempt to deal with the demands of the times and in order for the societies to develop with a framework of rule of law and democracy. The realisation of people's aims in modern circumstances requires attempts to understand these historical problems and find strategies to deal with them by developing institutions that are relevant to the conditions of our societies in order to ensure equality among all sections of the population and stability through the practice of democratic norms and standards.

"Feudal traditions are continued through patronage politics, which are a feature of many countries in the region"

Feudal traditions are continued through patronage politics, which are a feature of many countries in the region. Party political systems are often organised on the basis of patronage of one or a few powerful persons. The party systems are often controlled without any kind of observance of democratic norms relating to the relationship between party members and the development of party leaderships. Often there is an inherent system of corruption within the party structure itself. Within the party often there is no transparency in relation to funds and power relationships. Top party leaders are not accountable to their party members and to the inner structure of the party. The inner structure of the party is often developed in a manner to eliminate fair competition. The leadership of some is protected for a lifetime, and family members or very close associates whom the leaders nominate often become their successors.

The absence of democracy within the political party system affects the political system as a whole. The lack of healthy development of leadership within political parties also denies fair competitive practices between parties. The denial of fair competition between political parties is often the source of violence in the political life of a country. This violence also leads to the cooption of the law-enforcement agencies in favour of ruling regimes. Discrimination against those who keep out of party political loyalties develops and often penetrates into the total system of the public service. Thus, the absence of internal democracy within political parties ultimately develops into violence between political parties and corruption within the public service itself.

The absence of democracy within political parties is often the basis upon which authoritarian forms of rule develop. Such authoritarianism in turn destroys whatever freedom may have existed within a political party. Naturally authoritarian rule destroys the capacity for the emergence of other political parties. The internal violence inherent in authoritarian rule develops into societal violence, which suppresses all freedoms. The absence of freedom makes corruption easier. Critics of corruption fail to find supporters within political parties. Thus, the development of organsised resistance to corruption through party-based democratic mechanisms becomes difficult and sometimes even impossible.

In recent history, neo-liberal policies have also been considered a source of corruption in state and social services. Increasing privatization is reducing the role of states in governance and provision of services and is functioning to favour profit-based functions and systems, reducing the space for public entitlements. State functions, policies and policy formation processes are under the control of capital and market forces, which decide how to distribute revenue for specific sections of society, not for the protection of the economic, social and political rights of the people. In a sense states are subsidizing private profits through use of constitutional powers and public resources.

Public institutions and prevention of corruption

One of the major institutional aspects that must be understood and dealt with in the process of achieving equality among all sections of society is policing. Policing systems developed in the past reflect the social contradictions of those times and also the inequalities inbuilt into earlier societies. In most societies policing systems have been used for the suppression of the poorer sections of society as well as other sections that consist of vulnerable groups. Careful studies into the nature of policing in contemporary societies and the development of new strategies to develop policing systems in keeping with democratic norms and standards to safeguard the dignity of all persons are vital for the eradication of corruption.

"Studies into the nature of policing are vital for the eradication of corruption"

People are obliged to interact with the police in dealing with their problems and therefore dealing with this institution in terms of the goals of modern democratic societies is a precondition to dealing with most problems in our societies. The capacity of a population to make complaints against authorities without fear is conditioned by the nature of policing. Therefore in creating effective mechanisms for complaint-making into all aspects of the lives of citizens it is essential to ensure that the policing system acts to assist in complaint-making, to prevent it from becoming an intimidating factor within society.

In the development of complaint mechanisms to prevent intimidation there is a need for a law to protect witnesses and complainants. In most countries of the region laws relating to witness and complainant protection do not exist. The same forces trying to maintain corruption are preventing the development of such laws. Those who are fighting against corruption need to make strenuous efforts to build social consensus to ensure the development of law in this direction. The payment of adequate salaries for law-enforcement officers is also a necessary component in developing proper protection for witnesses and complainants.

Democratisation within any society requires that citizens have the capacity to make their voices heard on all occasions without fear and in a spirit of freedom. Therefore freedom of expression and publication are essential in providing for participation in a democracy. Unfortunately, in many countries legislative processes lack transparency. People's participation and accountability are defeated by corrupted party politics. The lack of access to information also adversely affects the capacity of people to participate in the legislative process.

People's participation requires not only participation by way of representatives but also direct participation, with the capacity to make grievances heard on all occasions. Therefore a climate needs to be fostered where all citizens irrespective of their social positions feel confident that they are able to express their grievances freely. Confidence-building is a necessary pre-condition for the developing of such a climate, through well-resourced organizations, which must take initiatives to instill

confidence by involving isolated voices and making them into a community of strengthened voices so that elected representatives have to take serious note.

> "Institutions devoted to the elimination of corruption are found in most countries of the region but have not been designed to achieve their purported ends"

The development of machinery for the administration of justice in a manner that legal remedies are made available to people is also an essential component of a strategy against corruption. Where there are inordinate delays relating to the administration of justice these are exploited by corrupt elements. Corruption often feeds on inefficient systems for the administration of justice. Therefore the elimination of inefficiencies and incompetence in the administration of justice at all levels is essential in dealing with corruption.

Often impediments in justice are caused by the insufficient allocation of funds. Due to insufficient allocations sometimes the salaries of officers involved in the administration of justice are affected. This creates an excuse for corruption among these officers. Therefore, providing sufficient funding for the proper administration of justice is a further precondition to deal with corruption. The salaries of officers should be adequate based on the job analysis and related to the work performance. Towards this end, not only the salaries for the higher judiciary but also the salaries of lower judges must be protected constitutionally and paid out of a consolidated fund.

Specific institutions to eliminate corruption

The development of institutions specifically devoted to the elimination of corruption is a necessity for the maintenance of the rule of law as well as democratic institutions within the countries of Asia. Institutions that are specifically devoted to the elimination of corruption are found in most countries of the region but they have not been designed to achieve their purported ends. Most agencies have very limited powers and work on small budgetary allocations. These agencies often create the impression of the existence of initiatives for the elimination of corruption but in fact these are only cosmetic. This is due to the absence of political will to create effective institutions to eliminate corruption. In the absence of political will, purely rhetorical statements are made about the elimination of corruption while ruling regimes in fact want to continue with the corrupt practices inherent within the system. The will to change among people who are the victims of corrupt practices is strong, but unless people who have the will to change express their will in a forceful manner and replace political leaderships which want to continue with corrupt practices, change for the better will not take place.

Institutions specifically designed for the elimination of corruption should have the following characteristics:

a. Independence in mandate, powers and appointments—not only for those who are in charge but also for all other employees. Personnel must be provided with security of tenure—if their independence in executing statutory functions is to be a reality—

by making provisions in relevant legislation that they are not liable to be removed from office other than for misconduct or bad behaviour. Constitutional safeguards are needed to ensure the integrity of persons appointed to hold public positions in these institutions.

"The ICAC has powers to investigate all citizens, including judicial officers"

b. Adequate budgetary allocations to carry out investigation, prosecution, prevention, education and all other associated functions required for effectiveness. An effective law-enforcement component to combat corruption must include an investigation wing with sufficient training and resources. In Indonesia, a special court was set up to adjudicate corruption cases.

c. Accessibility for people to make complaints through various means, including through branches around the country.

d. Answerability to parliament and accountability through proper procedures that have been designed to prevent interference by the executive or any other branch of government.

e. Design within the framework of the rule of law and the UN Convention against Corruption.

Learning from successful ventures for elimination of corruption: Hong Kong ICAC

There are successful attempts at the elimination of corruption that need to be studied and replicated with suitable adjustments. The example of the Independent Commission Against Corruption (ICAC) in Hong Kong is one of the more successful in Asia. This legal initiative has transformed Hong Kong, where there was rampant corruption prior to the introduction of the law establishing the ICAC in 1974, into one of the societies where there has been considerable success in the elimination of corruption. The ICAC is fully independent and protected by effective measures to prevent executive interference, or that of any other authorities, in the implementation of its objectives.

The ICAC has played a role in improving the discipline of the public services as well as the private sector in Hong Kong. In the public sector it has been able to improve discipline within the police. This has been achieved by the complete independence of the ICAC from the policing system, with powers to control investigations into corruption of police as well as any other public service. The ICAC also has powers to investigate all citizens, including judicial officers. No one has been excluded from the jurisdiction of the ICAC. The ICAC concentrates on education as an important component in the elimination of corruption and much of its resources are devoted to this purpose. The internal checks and balances within the ICAC have measures against the possible abuse of powers within the institution. Therefore this model for the elimination of corruption needs to be studied comprehensively and introduced into other countries with suitable adaptations

People's movements for elimination of corruption

> "Movements for elimination of corruption should constantly articulate the problems of those who do not belong to the privileged sections of society"

The creation of effective anti-corruption agencies as well as the maintenance of these agencies depends on the extent of public involvement and interest in the elimination of corruption. Public movements are essential for the emergence and success of these institutions. Therefore all civil society organisations should carefully examine their strategies for involvement in the creation and maintenance of institutions for the elimination of corruption within our societies.

Public movements for the elimination of corruption should constantly articulate the problems of corruption for people, particularly those who do not belong to the privileged sections of society, and more specifically for the poorer sections of society. Constant articulation of these problems can create the necessary ethos as well as popular support for the creation of agencies to eliminate corruption, and their sustenance. In this respect, the media has a huge role in highlighting issues and increasing public awareness. Utilizing the Internet too we can disseminate a huge amount of information that can reach a large audience.

Some NGOs need to be developed to serve as corruption watchdogs, to get people to complain when they experience or see corruption, to investigate and take cases to the public, and to anti-corruption institutions. These NGOs have to maintain high accountability and credibility to build public trust.

The role of the legal community in the elimination of corruption needs to be emphasised. The legal community can play an enormous role in educating a population on legal safeguards against corruption and also in providing the necessary services to victims, as well as to movements fighting against corruption, so that their interventions can be enhanced with a proper understanding of the law. Labour unions and professionals such as doctors can play positive roles in fighting corruption in business and the public sector, such as in the public health sector.

In recent times there have been positive developments in the civil society organisations of some countries that have contributed to the possibility of more effective intervention for the creation and sustenance of attempts to eliminate corruption, and these movements need to be closely studied and replicated. Among these are groups that have worked for the right to information. Comprehensive laws on the right to information can provide citizens with the powers necessary to obtain information with which to deal with their problems and those relating to their communities. The poorer sections of society in particular have to depend on public services, and the right to information given to a citizen can reveal details of the entitlements that they have under law and the means by which to obtain them. Thus initiatives to demand such laws could be an effective means of developing strategies to deal with the elimination of corruption. Where such laws already exist, citizens' movements can assist in their implementation, so that people are enabled to fight against corruption through all means available.

Bribery and corruption control in Sri Lanka

Kishali Pinto-Jayawardena, Attorney-at-Law and *Sunday Times* Columnist, and Jayantha de Almeida Guneratne, President's Counsel, Visiting Lecturer, Faculty of Law, University of Colombo, Sri Lanka

A recent news story in the Sri Lankan newspapers was to the effect that the Bribery and Corruption Commission had been successful in its prosecution of a police sergeant who had solicited and accepted a bribe of 6000 rupees (approximately USD 55) from a bootlegger in exchange for promising not to haul him up before the law.

This is a familiar and typical example of a sprat being caught by the commission while the actual crooks escape unscathed. The Colombo High Court reportedly sentenced the police sergeant to four years' rigorous imprisonment.

The ambit of the bribery law

From its inception, the Sri Lankan commission has manifested a most singular dysfunction between the grandiloquent objectives with which it was established and its actual practical achievements. The parliament voted unanimously to pass Act No. 19 of 1994, which established it. The act contemplates a commission of three members, two of whom must be retired judges of the Supreme Court and Court of Appeal while the other has to be an individual with wide experience relating to the investigation of crime, and in law enforcement. Their appointment was to be by the non-partisan Constitutional Council; however, since the council was not operative at the time that the first appointments were made—or indeed for seven years thereafter—appointments during this period were made by the president. Subsequent to 2001 and the passing of the 17th Amendment to the Constitution, members of the Bribery and Corruption Commission were nominated by the Constitutional Council and appointed by the president. However with the 17th Amendment being rendered non-functional from 2005, the president will now once again exercise an unfettered power of appointment.

> "The record of the Bribery and Corruption Commission has not been impressive"

The commissioners are given security of tenure, their removal being akin to the removal of judges of the higher judiciary. The commission is given the primary power to investigate allegations of offences committed under the Bribery Act or the Declaration of Assets and Liabilities Law, No. 1 of 1975 and to direct the institution of proceedings against such person for such offence in the appropriate court.

The authority of the commission may be invoked by any individual writing to the commission as set out in section 4 of the act. Section 5 stipulates the considerable powers bequeathed to the commission upon the conducting of an investigation as mandated by the act. Where an offence is disclosed, the commission (as per section 11) shall direct its director general to institute criminal proceedings against such person in the appropriate court. Indictment under the hand of the director general is receivable in the High Court.

A peculiar feature of the Bribery and Corruption Commission Act is the duty to maintain secrecy imposed upon the members, director general and every officer or servant of the commission (section 17). Every person subject to the secrecy clause must sign a declaration that he or she will not disclose any information received by him or her, or coming to his or her knowledge in the exercise and discharge of his or her powers and functions under the act, except for the purpose of giving effect to its provisions. Any individual who violates the secrecy clause is liable under section 22, on conviction after summary trial, to imprisonment for a term not exceeding five years and/or to a fine not exceeding a hundred thousand rupees.

Actual performance of the commission

The record of the Bribery and Corruption Commission has not been impressive. In recent years, we have seen the extreme politicisation of the commission and its activities, where its public impact is limited to politicians rushing to it to highlight allegations against opposing party rankers.

Inquiries held by the commission into activities of several front rankers of the previous government during the early years of its functioning, including of a former United National Party (UNP) minister, were conducted in a manner that appeared to be perfectly acceptable to the ruling People's Alliance. It was only some three years later, when personal differences of opinion erupted between the commissioners and its then-director general that the then-government opted to alienate itself from the commissioners. This saw an about turn in political alignments with the UNP opposition taking on the role of defender of the commissioners amidst a furious public exchange of correspondence between the leader of the opposition and President Chandrika Kumaratunge.

The tarnishing of the commission's image continued, culminating in a resolution being brought against its key officers, its director general being moved out to the justice ministry, and

the functioning of the commission itself being suspended for well over a year. While public confidence in the commission hit zero level, Parliamentary Select Committee inquiries into allegations of "misconduct and/or incapacity" of the chairman and another commissioner dragged on painfully, with the commissioners' term of office expiring during this time.

Since then, the commission has not fared better. A continuing tussle over the removal of one (part time) director general and the appointment of another to the Permanent Commission to Investigate Allegations of Bribery and Corruption again brought into public focus fundamental defects in the law under which the country's premier graft-fighting body functions. After 2003, the failure to fill a vacancy caused by the death of a sitting commissioner meant that the commission was virtually inoperative. Its success in curbing graft in the Sri Lanka has since been negligible, and the success rate of the commission in prosecutions for bribery and corruption in the magistrate's courts has been zero.

"Repeated media exposes of massive corruption scandals go disregarded by the commission on the basis that it is not able to investigate a complaint on its own initiative"

Investigative and legal deficiencies

The Sri Lankan commission lacks an independent policing arm, unlike counterparts in Singapore and Hong Kong. Instead it is able only to draw on serving police officers for its investigations. They are under the Inspector General of Police and are liable to transfer or disciplinary action at any time. This reflects badly on the capacity of the commission to govern its own investigations, as was apparent in 1997, when a substantial number of investigation officers were transferred out, crippling the commission's functions. There is also a strong nexus between organised corruption and members of the police force. And there is the commission's lack of financial independence, as it is dependent upon the treasury, resulting in indirect control of the commission by the executive.

The body complains that under section 4 of the act it cannot investigate on its own initiative. Because of this it has disallowed itself a proactive role in the investigation of corruption and bribery. Repeated media exposes of massive corruption scandals go disregarded by the commission on the basis that it is not able to investigate a complaint on its own initiative. It has also lacked the initiative to push for an amendment to the act that would bestow explicit powers to engage in investigations proactively.

Activists have recommended this and a number of other changes to the law so that the decision-making processes of the commission are transparent, to ensure that if any complainant requests the reasons for a decision, it can and must be given. The commission should also be empowered to exercise its powers in respect of election-related corruption, matters arising out of audits, cabinet decisions, public appointments and corruption in judicial administration. Other recommendations relate to the opening up of the process for appointments to the commission,

(without emphasis being necessarily on retired judges), the authorising of an independent investigation unit to the body, and the ensuring of some degree of financial independence.

"The commission should be overseen by an independent body in a manner similar to the ICAC in Hong Kong"

There is a further issue that concerns clarification of the role of the commission's director general. The 1994 Act provides in section 16 for a director general to "assist the Commission in the discharge of the functions assigned to the Commission". The director general is appointed by the president, without any minimum criteria for appointment save only that it should be done in consultation with the members of the commission. Though a laborious procedure is prescribed for removal of the commissioners (akin to the procedure for removal of judges of the superior courts), provisions governing the removal of the director general lack very basic safeguards. The framers of the law probably reasoned at that time that the director general's security of tenure need not be guaranteed to the same extent as the commissioners. However, this has been proved to be a grave defect in the law, as we have seen in disputes between the commissioners and the director general in the past. Amendment of section 16 could bring about a more rational balance between the commission and the office of its director general by providing that the appointment of the latter should be on defined criteria and removal should be subject to statutory safeguards.

It is pertinent to examine whether the 1994 Act situates the director general in a position inferior to the former bribery commissioner under the old Bribery Act, reducing the post to nothing more than that of an investigating officer. It is the commission itself that is empowered to enter into investigations and the commission could, in fact, direct any officer other than the director general to look into a particular case. The director general institutes criminal proceedings against individuals, but only upon direction of the commission. The director general therefore has very limited capacity for independent action. In fact, the final draft of the law that came as a bill before parliament referred to the post as merely director. The more grandiloquent phrasing in the act obviously emerged through the parliamentary debates and amendment process.

The commission should be overseen by an independent body in a manner similar to the Independent Commission Against Corruption (ICAC) in Hong Kong. These ICAC advisory committees which are formed of citizens and professionals include a general committee which oversees the overall direction of the ICAC and advises on policy matters, an operations review committee that examines the investigative work of the ICAC, a corruption prevention advisory committee that looks at corruption prevention studies and a citizens' advisory committee that educates the public and enlists their support. An internal investigation and monitoring group handles all complaints against ICAC staff, which are then reported to the operations review committee. Further buttressing the internal integrity of

the ICAC, an independent Complaints Committee chaired by an executive council member monitors and reviews all complaints against the ICAC.

The Sri Lankan act should be overhauled to provide for a measure of independent supervision, given severe internal controversies that were evidenced during the tenure of previous commissioners, including an instance in 2002 where a private plaint was filed against one of the commissioners for disclosing to the then-president information on pending investigations regarding a dissident politician, in violation of the secrecy oath.

Under article 2 of the International Covenant on Civil and Political Rights, states parties are under an obligation to put into effect legislative, judicial and administrative measures that ensure the covenant's implementation. This obligation is of a practical nature. It means that institutions are created and provided with resources for the implementation of the rights as enshrined in the covenant. Sri Lanka is a signatory to the covenant, but implementation as per article 2 is seriously hampered by the institutional defects of the Bribery and Corruption Commission. While this has not resulted in a direct violation of Sri Lanka's constitution (except the general rule of non arbitrariness that is infringed by some of the defects stated above), it is persuasively evident that the non-effectiveness of Act No. 19, 1994 means that international obligations under the covenant are being continuously violated.

"Sri Lanka is a signatory to the ICCPR, but implementation as per article 2 is seriously hampered by the institutional defects of the Bribery and Corruption Commission"

The Indonesian Corruption Eradication Commission

Mochammad Jasin, Commissioner,
Corruption Eradication Commission, Indonesia

The Indonesian Corruption Eradication Commission, better known as the KPK (Komisi Pemberantasan Korupsi), is an extraordinary government law-enforcement body set up at the end of 2003 to fight extraordinary corruption that had become systemic and well entrenched in Indonesian life, affecting the lives and decision-making processes of practically everyone in the country, from the highest executive official to the lowest traffic police officer.

Before the KPK, six institutions dating back to the 1950s had been formed to combat corruption. The successes of these previous institutions were very short-lived, mainly because they only focused on law enforcement. In the era before 1966, there was the anti-corruption agency "Paran" (State Aparatur Reformation Committee), which obligated all state officers to submit wealth reports. This committee failed because of the resistance from state officers to submit the wealth reports. After Paran was dismissed, Presidential Decree No. 275/1963 established Operasi Budhi. This attempt was also a failure because bureaucrats and state officers close to the president opposed it. Those officers involved in corrupt acts succeeded in persuading the president to stop it, the reason used being that this operation could disturb the prestige of the president.

In the New Order of President Soeharto, efforts to eradicate corruption were reduced by bad government. On one hand, many slogans and anti-corruption agencies were developed, but on the other the government "legalised" corrupt acts in laws and public policy. In the beginning of this era, a new anti-corruption agency called the TPK (Tim Pemberantasan Korupsi) was established. This agency was barren. Next, as a response to students' protests, in 1970 the Komite Empat (Committee Four) was formed. This agency was nothing more than the product of political rhetoric. The one and only success, if we may say so, in eradicating corruption under the New Order regime was Opstib (Clean Operation). However, this operation only dealt with petty corruption on the streets. Lastly, in the era of President

Abdurrahman Wahid, the so-called Tim Gabungan Pemberantasan Tindak Pidana Korupsi-TGPTPK (Anti-Corruption Joint Team) was established. According to the Supreme Court (by means of judicial review), the existence and structure of the agency was irregular, and it was dismissed.

Compared to these earlier operations, the KPK's much more solid track record owes much to its comprehensive contemplation of how systemic corruption had become at the time that it took office. Law enforcement alone would never have sufficed; it had to be accompanied by prevention efforts, supervision and coordination of all law-enforcement institutions involved in processing corruption cases, and the participation of the public. All these concerns were provided for in Law No. 30 of 2002 on the Corruption Eradication Commission, which sets out the KPK's authority, powers and duties of law enforcement in aforementioned comprehensive manner, as well as the KPK's main internal rules, including the duties and tasks of each deputy and directorate of the KPK, as well as the prerequisites for the appointment of its commissioners.

In conducting law-enforcement operations, the KPK follows the main Indonesian anti-corruption laws, namely Law No. 31 of 1999, *juncto* Law No. 20 of 2001 on the Eradication of Corruption, and Law No. 28 of 1999 on Corruption-Free State Governance; and even non-corruption specific acts such as Law No. 25 of 2003 on Money Laundering. In regulating the KPK's day-to-day activities, Law No. 30 of 2002 was later accompanied by supporting internal KPK regulations, including Commissioners' Ruling No. PER-08/01/XII/2008 on the Organization and Management of the KPK, which refines the duties and tasks of each deputy and directorate according to the KPK's organizational needs of the time; and Commissioners' Ruling No. KEP-06/P.KPK/02/2004 on the Code of Ethics of the Commissioners of the KPK, which sets out the behavioural standards that must be adhered to by the KPK commissioners in order both to ensure gold-standard conduct from the commissioners as well as to set an important example for KPK employees, as well as the employees of other government institutions in a country where such examples have been for the most part lacking over at least three decades.

The KPK has some unique features compared to other law-enforcement agencies. Five commissioners and two advisors (although it is supposed to be four) lead the commission's 639 staff. The KPK is independent from the executive, legislature and judiciary, and any other powers. Financially, the KPK is audited by the Indonesian Supreme Audit Board and should be responsible to the public. In doing its tasks, the KPK has the authority to supervise and coordinate the Attorney General's Office as well as the National Police in handling corruption cases.

According to the article 6 of Law No. 30, 2002, the KPK has five categories of duties, authorities and obligations, as follows:

1. To coordinate with institutions authorized to combat acts of corruption;

> "In recent years, the corrupt have fought back in different ways"

2. To supervise institutions authorized to combat acts of corruption;

3. To conduct preliminary investigations, investigations and prosecutions of acts of corruption;

4. To conduct corruption-prevention activities; and,

5. To conduct monitoring of state governance.

The KPK is authorized to conduct pre-investigations, investigations, and prosecutions of corruption cases that:

1. Involve law enforcers, state officials, and other individuals connected to corrupt acts perpetrated by law enforcers or state officials;

2. Have generated significant public concern; and/or

3. Have lost the state at least a billion Indonesian rupiah (USD 100,000)

Challenges ahead

In recent years, the corrupt have fought back in different ways, through various methods and channels. For example, the ordinary courts have not been giving much support as many of the corrupt have been freed by their verdicts.

Some aspects of corruption have not yet been criminalized, for example, wholly private sector corruption. The amended draft Law of Criminal Procedure has also not yet been passed. This law is important for the reason that at the moment the KPK cannot have its own investigators and prosecutors. Its investigators must come from the police and prosecutors from the Attorney General's Office. Besides that, matters concerning witness protection, lawful interception of communications, and wealth reports have not been settled.

The newly-passed law of the Anti-Corruption Court also poses new challenges to the KPK. The law requires that in some regions Anti-Corruption Courts should be established. Presently there is only one Anti-Corruption Court, in Jakarta. Considering that the KPK does not have branch offices, having regional courts would pose some technical coordination problems during trial.

In 2009, the KPK had to face a very heavy test. The chairman was removed from his position because of allegations of involvement in a serious case. This was followed by dirty fabricated cases aimed at two commissioners. The removal of these commissioners would have crippled the KPK's operational capabilities, as under the law on the KPK, once a commissioner is declared a suspect in a criminal investigation, he or she will be temporarily suspended. Once prosecuted, he or she will be terminated permanently from the position. Under the existing rules on decision-making of the KPK commissioners as mandated

by law, one more suspended commissioner would mean that the KPK would lose its ability to take action. Fortunately, in the latter cases the truth was finally revealed.

> **"Learning from the failure of previous anti-corruption agencies in Indonesia, the KPK has taken some measures to avoid the same mistakes"**

Other than challenges from external factors as illustrated above, some challenges are internal. Firstly, the human resources of the KPK are small when compared to the 220 millions and vast geography of Indonesia. Secondly, the current KPK building is not really providing enough proper rooms for all personnel. The proposed budget for a new building has not been approved yet by the parliament. Thirdly, the KPK is not authorized to appoint investigators and prosecutors into office. Fourthly, the KPK currently still has to borrow detention facilities from the police.

Learning from the failure of previous anti-corruption agencies in Indonesia, the KPK has taken some measures to avoid the same mistakes. Firstly and very importantly, the main philosophy chosen by the commissioners at present is the integration of preventive and repressive priorities through enhanced communication between the KPK's main activities. Proactive manifestations of this philosophy take form in repressive law-enforcement activities that are initiated when institutions are deemed to delay a proper response in addressing preventive recommendations. Institutions which have received anti-corruption recommendations and which have failed to implement change and initiate bureaucratic reforms are now at risk of being targeted for repressive law-enforcement action. Synergistically, institutions that are being processed according to law following repressive law enforcement by the KPK are also given support from the KPK in the area of corruption prevention. In certain circumstances, the KPK will conduct analysis of an institution's internal rules and regulations and discuss the results with the institution, to ascertain whether such internal rules create potential for abuse of authority, conflicts of interest, or are prone to corruption. Discussions are geared to the improvement of those internal rules.

This current philosophy of consolidating repressive law-enforcement measures with preventive measures is being adopted through the KPK's significant involvement in a national effort to clean up two priority institutions in Indonesia in respect of corruption eradication: the bureaucracy and the judiciary. All the stakeholders understand that any significant advancement in uprooting Indonesia's systemic corruption depends on the success of bureaucratic and judicial reform. Because these institutions are vital parts of the corruption ecosystem, changing them into clean instruments for combating corruption will destroy the old system, providing a basis for further, better and faster national reforms. This is why the KPK is actively involved in national bureaucratic reform.

The KPK is also rallying public support by raising awareness. This is done through educating the public about the danger and impact of corruption, ways to avoid being involved in corruption,

and other motivations to stop corruption in Indonesia. The activities showed some positive results when the fabricated cases against the two commissioners aroused a show of great public support for the KPK, because of its good performance and the integrity of its personnel.

Progress in repressive law enforcement

The KPK's caseload in law enforcement activities as of 15 December 2009 is as follows:

Year	Pre-investigation	Investigation	Prosecution	Execution
2004	23	2	2	0
2005	29	19	17	4
2006	36	27	23	14
2007	70	24	19	23
2008	70	47	35	25
2009	67	49	61	39
Total	**295**	**168**	**157**	**105**

KPK cases that have reached a final decision as of 15 December 2009 are as follows:

Year	District Court	High Court	Supreme Court	Total
2004	0	0	0	0
2005	3	0	2	5
2006	5	4	8	17
2007	9	0	14	23
2008	9	0	14	23
2009	18	2	14	34
Total	**44**	**6**	**52**	**102**

Among the corruption cases handled by the KPK from 2004 to 2009 were a variety against high-ranking officials, as follows:

- 17 members of parliament
- Five ministers or heads at ministerial level
- Five provincial governors
- One governor of the central bank and four deputy governors
- 18 mayors and heads of regents or districts
- Six commissioners of general elections; judicial figures; anti-monopoly commissioners

- Three ambassadors and four consul-generals, including a former chief of the National Police
- Senior prosecutors, the KPK's own investigators, many high-ranking government officials at echelon I & II (director general, secretary general, deputy, director, etc.)
- High-ranked private sector executives involved in corruption in the public sector

The KPK has a 100 per cent conviction rate in all cases that it has processed that have reached the courts.

> "One of the best indicators of the KPK's success is in the return of stolen state assets"

Recovering stolen assets

One of the best indicators of the KPK's success in performing its repressive law-enforcement activities is in the return of stolen state assets. During its early days, the KPK was criticized for not being able to recover assets exceeding the cost of running the KPK. Recently, this situation has changed dramatically. Whereas in 2005 it returned just under seven billion rupiah to the treasury, and in 2006 just under 13 billion, in 2007 the figure was over 48 billion, and in 2008 and 2009 more than 411 billion and 142 billion respectively.

The KPK's success in recovering assets was supported by some internal factors, which include:

1. The independence of the KPK;

2. Complete law-enforcement authority (pre-investigation, investigation, prosecution) of criminal acts of corruption;

3. Authority to supervise and coordinate the handling of corruption cases by all other law-enforcement agencies;

4. Authority to tap and record conversations;

5. No need for clearance from any authority before initiating a case against a high-profile public official;

6. Authority to request data on the wealth, tax details and financial affairs of suspects from banks or other financial institutions;

7. Authority to order relevant institutions to block the accounts of a suspect, defendant, or connected party;

8. Authority to temporarily halt financial transactions, trade transactions, and other forms of contracts, or to temporarily annul permits, licenses and concessions if there is an indication of corruption;

9. Authority to order relevant institutions to ban individuals from travelling abroad;

10. Capacity to request assistance from Interpol Indonesia or Law Enforcement Agencies of other nations; and,

11. Comprehensive information technology support.

Under certain circumstances the KPK can take over an indictment or a prosecution, for example, if a report about an act of corruption has been ignored, if the processing of a case goes on for too long without a valid reason, if the handling process is itself mired by corrupt acts, or if the case has been hampered by executive, legislative, or judicial interference.

"The KPK continues to improve the transparency of how public officials conduct their affairs by increasing the compliance with Wealth Reporting"

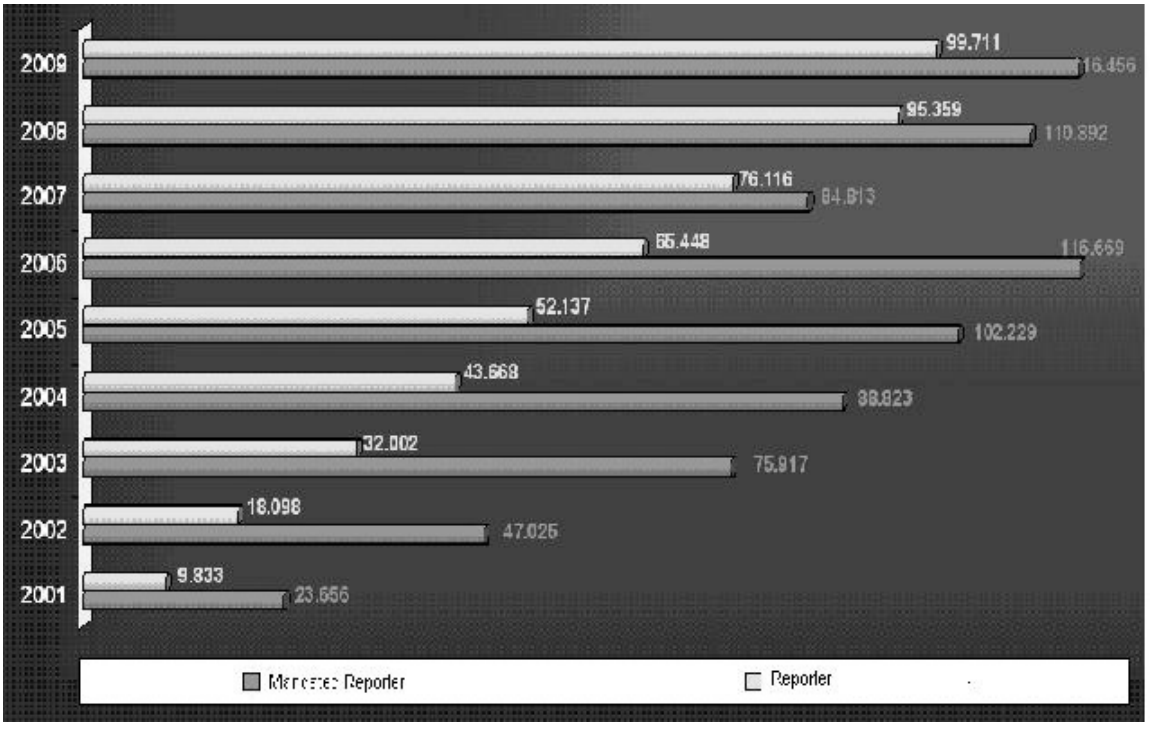
Aside from performing direct repressive law enforcement by processing cases for the Anti-Corruption Court, the KPK also coordinates and supervises law enforcement officers from the police and the Attorney General's Office. Coordination of law-enforcement efforts is conducted by way of meetings. The results of such coordinating meetings include: (i) establishing a pattern for coordination and supervision in investigation and prosecution of corruption cases, (ii) establishing mechanisms for the taking over of corruption cases by involved institutions, (iii) establishing of coordination and supervision material, including the synchronisation of corruption case data that had been reported or transferred to the KPK, as well as establishing criteria for certain corruption cases that need to be supervised.

Progress on prevention

The Deputy for Prevention also conducts coordination, including: (i) coordinating with the Minister of Home Affairs to push for the realization of the National Single Identification Number program, (ii) coordinating with the internal monitoring units of all government institutions, (iii) coordinating with government institutions and State Owned Enterprises in making inventories of all state assets under the unauthorized control of officials and former officials, resulting in several officials having returned assets voluntarily, (iv) coordinating with the State Ministry of State Owned Enterprises to obtain information on public officials who also act as Commissaries at State Owned Enterprises (with all the conflicts of interest that entail in that sort of arrangement), and, (v) coordinating with the State Ministry of Administrative Reform (KemPan) to trigger national bureaucratic reform. Developing transparency with regards to public officials by abolishing multiple commissions/duties is deemed by the KPK to be a real effort in avoiding conflicts of interest, and is one way of implementing articles 7 and 8 of the United Nations Convention Against Corruption, which Indonesia ratified and adopted through the promulgation of Law No. 7 of 2006.

The KPK also continues to improve the transparency of how public officials conduct their affairs by increasing the compliance with Wealth Reporting, as well as the effectiveness with which such reports are examined and confirmed. Other than this, the KPK's continued monitoring of gratification (the giving of gifts to public officials which sets a precedent for corrupting behaviour down the road, or given in the interest of maintaining corrupting relations) further supports its push for transparency as a means of prevention. In 2005 the number of gratification reports was

50; in 2006, 326; in 2007, 249; in 2008, 224; and up to 15 December in 2009, 287. The rate of Wealth Reporting compliance from 2004 to August 2009 is shown in the following graph:



The KPK realizes that corruption sometimes is triggered by a bad system, so it also uses its monitoring authority to evaluate the administrative management systems of state and public institutions to provide recommendations to these institutions and to monitor the implementation of the recommendations. The KPK has reviewed some systems and institutions, for example: the land agency, import administration system, state budgeting, taxation, state treasury, and management of migrant labor. The choice of which administration system should be reviewed is based on the size of the budget under the system, the numbers prone to corruption due to systemic weaknesses, and its impact on the national economy and public service. Working closely with the relevant institutions, the KPK is now monitoring the implementation of these institutions' action plan.

Some studies and surveys have been done to make the efforts to eradicate corruption more effective and efficient. Surveys on public perceptions towards the KPK, an integrity survey to assess the level of public services in some institutions, an anti-corruption initiatives assessment survey, a study on good governance in regions and the disseminating of the implementation of its principles to other regions, a study on electronic public procurement, and a study on good corporate

governance in some state-owned enterprises and private companies that are listed on the stock exchange are some examples.

"The other internal key success factor is the KPK's whistle-blowing system"

In the longer term, for the creation of a new generation that rejects corruption the KPK has anti-corruption education programs. These include various campaigns, the development of anti-corruption modules for school, anti-corruption education programs, disseminating the "Honesty Shop" concept (pay for what you take by putting the money in a box, not giving it to a cashier), recruitment of anti-corruption cadres, and seminars.

International cooperation

The aforementioned Integrity Survey was conducted after comprehensive cooperation and capacity building of the KPK's knowledge management on integrity with South Korean agencies, namely the Korea International Cooperation Agency and the Korean Anti-Corruption and Civil Rights Commission (ACRC). By using concepts of measuring and improving integrity from the South Koreans, the KPK has initiated intense dialogue in improving the integrity scores of the lowest-scoring public institutions. Some other tools learned from the ACRC include anti-corruption initiatives assessment and corruption impact assessment.

The KPK has also learned much from its cooperation and correspondence with many fellow anti-corruption agencies in South East Asia, East Asia and the South Pacific, such as the Malaysian Badan Pencegah Rasuah; the Brunei Biro Mencegah Rasuah; the Thai National Counter Corruption Commission; the Philippine Ombudsman; the Hong Kong Independent Commission Against Corruption; the New South Wales Independent Commission Against Corruption; and the Singapore Corrupt Pratices Investigation Bureau. Cooperation ranges across law enforcement activities, training, and dialogue on corruption prevention.

The other internal key success factor of the KPK is its human resource management, internal whistle-blowing system, and compliance to its code of conduct. The human resource management system includes independent and open recruitment, performance measurement and evaluation, career paths, better remuneration compared to other government agencies, and allowances based on performance

Synergy between repression and prevention

As mentioned above, the current commissioners are keen on developing a more synergistic relationship between preventive and repressive law enforcement activities. Examples of this include the conducting of raids on bribery at the Customs and Excise premises in May 2008, as well as analysis of internal rules at Bank Indonesia.

As an independent agency that is fully responsible for corruption prevention efforts, the KPK is actively involved in planning and implementing bureaucratic reform at various pilot institutions in Indonesia. The Ministry of Finance is one institution that has implemented bureaucratic reform efforts. For certain service units under the Ministry of Finance, such as the Tanjung Priok Customs General Services Office, salary improvements were substantial. Unfortunately, those salary improvements did not improve the performance or integrity of the personnel. Bribery was a common transgression, even as reform efforts were being conducted. The KPK, in cooperation with the Customs and Excise Office's Internal Compliance Division, performed raids at the Green Line (processing of documents from credible companies) and the Red Line (processing documents for dangerous goods) at the office, as well as on the vehicles used by officers working there. The raid involved around 60 KPK personnel, and they discovered evidence of bribery amounting to USD 50,000 in several hours of operations. From the raids, several officials at the Customs and Excise Office may be processed further by the legal system. It is hoped that the raids will provide shock therapy for institutions that have not heeded recommendations, encourage them to improve themselves and encourage users of public services to stop offering bribes.

"The KPK is actively involved in planning and implementing bureaucratic reform at various pilot institutions in Indonesia"

The KPK has processed a case involving an official from Bank Indonesia. It also assisted the bank by intensifying preventive efforts, analysing Bank Indonesia internal rules that created potential conflicts of interest, including those regarding legal protection for personnel and regarding work-related travel.

The future

The KPK is determined that to eradicate corruption requires not only shock therapy by repressive actions, but also many prevention efforts. The KPK has been learning from counterparts in other nations, especially from Hong Kong, that any serious anti-corruption program will need a minimum of two decades to produce real results. The KPK is dedicated to uprooting corruption in the long term, and indeed its strategies as stated above are long-term approaches. The KPK recognizes also that corruption is becoming more and more globalized, and that international cooperation is vital to counter the complicated and sophisticated machinations of criminals, as well as participation and support from the public. We are confident that the future will bring more fruitful cooperation in anti-corruption efforts within this region and beyond.

Challenges in combating corruption: Lessons from Indonesia

Adnan Topan Husodo, Deputy Coordinator,
Indonesia Corruption Watch

The Corruption Eradication Commission (KPK) was formed on the argument that corruption in Indonesia had become extraordinary crime. Therefore, Indonesia needed to establish a new law-enforcement agency that was also extraordinary, because conventional law enforcement officers—police and public attorneys—were not combating corruption. In fact, Indonesia's condition has not changed much. A 2009 report of Indonesia Corruption Watch (ICW) found that there were 40 cases of corruption involving big fish that remained unresolved and which tended to be suspended. The judicial mafia has gripped law enforcement, while on the other hand Indonesia has continued to be categorized as among the most corrupt countries in Asia and in the world.

A recent case that has given evidence to us that the conspiracy between law-enforcement officers and corruptors is still preserved was the criminal case opened against two members of the KPK, Bibit Samad Riyanto and Chandra M. Hamzah. Police headquarters named both Bibit and Chandra as suspects in criminal acts. Recorded conversations between the brother of a businessman under investigation over a procurement project involving the Department of Forestry and staff of the Attorney General together with the police officer who opened the case in the Constitutional Court revealed that they had together manufactured the case against Bibit and Chandra.

The commission came into existence through Law No. 30 of 2002, which gives it some privileges as an independent institution. The five KPK commissioners are chosen through an open selection process, involving broad public participation and more accountability. There are two stages in the election of candidates. The selection phase involves a selection committee. The next stage is for the candidates' names to go to parliament. The selection committee, established by the president, should include representatives of academics, community leaders, religious leaders, NGOs, and the government. Once elected, the

commissioners are not under the control of the president, parliament or other institutions, but still are accountable under article 19 of the law through the delivery of their work report to the president and parliament, the financial audit by the State Audit Agency, as well as annual performance reporting to the public.

> **"The role of the commission is increasingly significant, and has affected the global perception of Indonesia"**

Under article 6 of Law No. 30, 2002 the commission has greater powers than other law-enforcement agencies to coordinate anti-corruption efforts with other officers, supervise activities to eradicate corruption, conduct investigations, indict and prosecute corruption cases, prevent corruption, and monitor the governing of the state. Under article 8 the commission has special authority to conduct wiretapping, order travel bans of suspects, request information related to banking transactions of suspects, order banks and relevant institutions to block accounts, request wealth and tax data, order supervisors to suspend suspects from service, suspend transaction activities, and to seek assistance from Interpol Indonesia or law-enforcement agencies of other countries to conduct arrests, raids, detentions and confiscations in corruption cases under investigation.

Performance of the KPK

After almost five years of its agenda to eradicate corruption in Indonesia, the commission has found a place in the hearts of the Indonesian people. The KPK's performance in handling corruption cases has been deemed successful enough to answer the public thirst for justice.

Public officials who had legal immunity before the existence of the KPK can be processed under the law for complicity in corruption. Some members of parliament, in-laws (*besan*) of the president, law-enforcement officers, an ex-minister, a director of the Central Bank, regional heads, businessman and brokers have been put in jail because of corruption (see table overleaf).

Similarly, the corruption assets returned to the state account are relatively large compared with the state budget allocation used to finance the commission's operations. According to a KPK press release, in 2009 it even saved potential losses to the state from the extractive sector worth more than four trillion rupiah.

The role of the commission is increasingly significant in the agenda to eradicate corruption in Indonesia, and has affected the global perception of Indonesia. In the Corruption Perception Index (CPI) survey of Transparency International, Indonesia's position globally has improved. The CPI of Indonesia in 2007 was only 2.3; in 2008 it rose to 2.6, and in 2009 it again increased, to 2.8. However, Indonesia cannot be categorized as good in combating corruption, since on the CPI scale Indonesia is still in the category of the perceived corruption-prone countries. This is clear if we compare the CPI of Indonesia with other countries in Southeast Asia. In 2009, Indonesia was still behind Thailand (3.3), Malaysia (4.5), and Singapore and Brunei Darussalam (5.5).

Corruption cases handled against officials by the KPK

Positions	Years		
	2007	2008	2009
Parliamentarians (national and local)	0	8	8
Members of the State Commission & officials of the Secretary General	12	2	0
Officials of the Central Bank	0	7	0
Regional heads (governor, mayor, regent)	5	13	6
Ambassadors, consular and immigration officials	0	15	0
Echelon officials and project leaders	21	22	7
Officials of state-owned enterprises	0	2	4
Law-enforcement officials	2	1	0
Businessmen	10	16	3
Ministerial officials	2	0	1
Members of the State Audit Agency	0	0	1
Lawyers	2	0	0
Officials of the Supreme Court	5	0	0

(Source: ICW Performance Evaluation Reports on KPK, 2007–09)

The problems of the KPK

Despite the success of the commission in boosting public confidence about the eradication of widespread corruption in Indonesia and the global community's appraisal of the good progress in fighting corruption, the KPK still faces problems that cannot be taken lightly. These fall into two categories. The first is the commission's internal problems, and the second is the political environment (external problems).

The main internal problem for the KPK that hinders its work to eradicate corruption is the composition of the commission's investigators, who are from other law-enforcement agencies (police and prosecutors). Looking at allegedly corrupt actors whose cases the commission handled in 2007, 2008 and 2009, there were only three law-enforcement officers. In 2009, the commission did not successfully process any law-enforcement officers. This internal problem is hampering the free movement of the commission because commission investigators from the police and prosecution still have direct superiors in the police and prosecution. So it is impossible for these investigators to examine their bosses in the police and Attorney General's office, even though under article 11 of Law No. 30, 2002 the commission's mandate covers law-enforcement officers. This is best illustrated in the Bank of Century scandal, which involves former National Police Chief Susno Duadji. Up to now the KPK appears unable to address the case quickly.

Externally, one thing blocking the commission's efforts to eradicate corruption is weakening support from some quarters, especially from the political elite. Politically, the eradication of corruption has not received much support. So far only civil society groups and the mass media have seriously promoted the eradication of corruption. The reason is that the commission's agenda has become a serious threat to corrupt public officials and corrupt political party elites. Parliament is no longer immune from the legal process for the corruption that began and flourished there.

"The important factor why the commission has succeeded in uncovering cases of corruption is its special authority, including wiretap authority"

Threatened political figures and their allies have used or have contemplated using the following methods to try and weaken the commission:

1. Disarming the commission's law-enforcement authority

The important factor why the commission has succeeded in uncovering cases of corruption is its special authority, including wiretap authority. Many House members were arrested after the commission had power to intercept telephone calls. So it is not surprising that members of the House have tried to cut the authority of the commission to conduct wiretaps. Fortunately, efforts of members to revoke the wiretapping authority have so far failed due to the strong reaction from civil society groups and journalists. However, the government has secretly arranged the Draft Government Regulation (RPP) on surveillance as a means to undermine the commission. If the RPP is approved, the commission will have to report all wiretapping plans to the executive. Until now, the ICW is advocating that the government cancel the RPP.

2. Criminal case against commissioners

As mentioned above, in 2009 one attempt to weaken the commission was by constructing a scenario and engineering legal proceedings against two commissioners of the KPK.

A movement against the criminal case started from a statement of former National Police Chief Susno Duadji, who said that the KPK is a lizard (*cicak*) and the police are a crocodile (*buaya*). This metaphor led to Cicak Versus Buaya as a symbol of resistance against the criminalization of the commission by Police Headquarters. Cicak was then interpreted as "Cinta Indonesia Cinta KPK" (Love Indonesia Love KPK).

The CICAK movement began on 12 July 2009, with the ICW as one of the initiators. After the declaration, this movement emerged in various regions. CICAK protests have invited responses from the president, who stepped in and formed Team 8 to evaluate the legal process against the two commissioners. Ultimately, the team recommended that the case be stopped. The Attorney General then issued a decision to terminate prosecution.

3. Political hostages in the recruitment of candidates for commissioner

"Significant support for the commission's mission has emerged only from civil society and the mass media"

Although the recruitment mechanism of candidates for commissioner is quite accountable and transparent, political groups still have a big opportunity to control the KPK because the final decision on those elected is in parliament's hands. Parliament as the most corrupt institution has an interest in selecting candidates that will not undermine its interests.

Lessons from the fit and proper test mechanism of parliament in 2007 indicated that the priorities of parliament are mostly contradictory to public priorities. According to the Coalition of Judicial Monitoring, several candidates who in the public assessment were suitable to be commissioners were not elected by parliament, while a controversial figure was made KPK chairman. As a result, some cases involving big fish have not been processed due to debts of gratitude or political deals.

Conclusion

Because the issue of corruption in Indonesia is more fertile and sustained due to the corrupt relationships between politicians, businessmen and law-enforcement agencies, the independent anti-corruption agency needs to have large authority. However, corruption is increasingly sophisticated and hard to fight with the usual strategies. Anti-corruption institutions should be fully independent, free from any influence of power. Therefore, the KPK needs to recruit staff investigators directly, not take them from the police and prosecution.

In fact, significant support for the commission's mission has emerged only from civil society and the mass media. So it is very important for the commission to develop a strategy on how to build support and mobilization of public influence to strengthen its position vis-a-vis corrupt state institutions. One strategy to maintain that support is to give more serious attention to standstill corruption cases in regions. With the intervention of the commission, those cases can be resolved. I believe that this strategy would increase public support for the KPK.

One important reason that eradication of corruption is very slow is that there is no synergy with other law-enforcement agencies. The Attorney General's office and the police are institutions that are still perceived to be corrupt, making it difficult or impossible to believe that prosecutors and police have strong will to eradicate corruption. Therefore, the commission must clear up these two institutions through the disclosure of corruption cases involving law-enforcement officers.

Eradication of corruption is a transnational issue and therefore international instruments can be used to make anti-corruption institutions much stronger. In the case of Indonesia, civil society groups submitted a report on the systematic weakening of the commission to a conference of the United Nations Commission Against Corruption. International pressure can help protect the existence of an independent anti-corruption agency.

The nature of corruption and anti-corruption strategies in Pakistan

Asad Sayeed, Director,
Collective for Social Science Research, Karachi

Pakistan may not be making headlines in the world on corruption these days but contemporary discourse within the country has been focused on the issue in the recent past. In fact there is a discernible pattern over the years where concerns about corruption dominate discourse for some time and then seamlessly other issues take over public imagination. Meanwhile corrupt practices continue in one form or the other, only to raise their head again.

It is useful to note that corruption was mentioned as one of the ailments afflicting territories constituting Pakistan by the founder of the country, Mohammad Ali Jinnah, in his first address to the Constituent Assembly on 11 August 1947. He said:

> One of the biggest curses from which India is suffering—I do not say that other countries are free from it, but, I think our condition is much worse—is bribery and corruption. That really is a poison. We must put that down with an iron hand and I hope that you will take adequate measures as soon as it is possible for this Assembly to do so.

That is exactly what the Constituent Assembly did: an anti-corruption law was one of the first items of legislation enacted by the assembly soon after independence, only to be followed by a myriad of laws. However, the perception of Pakistan as a highly corrupt polity and society persists amongst Pakistanis as well as outsiders even after 62 years of the country's existence.

The obvious question to ask is that in spite of so much concern for so long, why has Pakistan failed to effectively reduce corruption? Is it because of a lack of effective anti-corruption strategies? If that is so, then why can international or regional best practice not be adopted? After all, in some areas—most notably in technologies and strategies related to weaponization and warfare—

The author is grateful to Moaiz Siddiqui for his diligent research assistance.

international best practice has been adopted. Or is corruption not the cause but the symptom of socio-political imbalances—such as the enduring civil-military divide as well as regional-ethnic imbalances—that Pakistan as a nation-state has been unable to resolve over the years?

"The practice of land grabbing—both urban and rural—has continued in different ways over the years"

One can only attempt to answer the above questions once we discern the nature of corruption prevalent in Pakistan as well as the form and substance of anti-corruption strategies adopted to combat the problem. Section 1 of this article lays out the broad contours of corruption in Pakistan through three different analytical vantage points. Section 2 provides a critical assessment for the success and failures of anti-corruption laws and strategies in the country. Section 3 then provides a tentative way forward for more effective and sustainable anti-corruption policy in Pakistan.

Contours of corruption in Pakistan

Corrupt practices and their impact on citizens' welfare can be categorized in numerous ways across time and across countries. For the purposes of this paper, it is important to focus on a succinct definition of corruption. Numerous unethical and illegal practices are termed as corrupt in common parlance. However, there is no perfect overlap between legality and ethics or vice versa. For these very reasons, the UN Convention Against Corruption itself does not provide a succinct definition of the phenomenon.

There are three board analytical areas where the prevalence of corruption needs to be understood in Pakistan. This particular categorization will also help us in assessing the effectiveness or otherwise of anti-corruption mechanisms adopted in the country.

1. Private sector-state collusion

Commonly referred as 'rent-seeking' in economic literature, through a variety of mechanisms, individuals and groups from the private sector interface with the state to transfer public resources to themselves. The most salient of this form of corruption in Pakistan has been allocation of state land to private interests, as well as land transactions.

The practice started immediately after partition, when millions of refugees came to Pakistani territory from post-partition India. The state adopted a policy of granting land and housing left behind by Hindus who migrated to India to refugees based on claims of property they left behind in India. There is some documentation on the use of influence and money in granting such claims, as well as some politicians using land as a form of patronage to create constituencies by deliberately driving out those Hindus who had otherwise wished to stay in Pakistan. This particular policy resulted in a class of propertied migrants to the exclusion of others.

The practice of land grabbing—both urban and rural—has continued in different ways over the years. Its modern manifestation is in different arms of the state using the Acquisition of Land Act in ways it was not intended so as to sell acquired land cheaply to mafia-like groups of land developers and builders, who subsequently sell it at a premium to prospective home dwellers or for commercial purposes.

"The central protagonists in state-led corruption are the military and politicians"

Moreover land transactions are a typical way of whitening black money acquired through corruption and criminal activities. Due to taxation loopholes, more than two-thirds of the money paid in land or property taxation is unrecorded. Thus, even if an honest property seller is to claim the market value of her property, she will be handed a large chunk of the money, which is not declared. This particular practice, which is pervasive, results in large amounts of black money circulating and a variety of ingenious methods being adopted to launder that money.

Other forms of private sector-state interface that breed corruption have occurred due to state control over allocation of resources. In the pre-liberalization period, bribery in acquiring industrial and commercial licenses and later in willfully defaulting on loans acquired from state-owned banks and financial institutions frequently hit the headlines in Pakistan. The cost of this type of corruption has been borne by the consumer, in high prices paid for goods and services as a result of inefficiency and monopoly pricing. In the post-liberalization period, a lack of regulation on cartels—particularly in banking services, and the automobile, cement, fertilizer and sugar sectors—has also hit consumers hard.

2. Corruption and extortion by state actors

State personnel across different institutions of the state engage in various forms of corrupt practices. These range from straightforward bribery and extortion of individuals and businesses to various forms of domestic and international kickbacks on procurement of materials and services. For the sake of clarity we will distinguish state-led corruption by civil bureaucrats, the armed forces and politicians.

Much of the bribery and extortion carried out by the state is executed through the civil bureaucracy. Ranging from petty bribes to the policeman or building authority clerk to major kickbacks on procurement, civil bureaucrats are the 'deal executors'. They are in the loop for the simple reason that they carry out the documentation and are most familiar with rules and regulations, as well as the loopholes and lacunae that exist. However, apart from the petty bribes and extortion, for the most part the civil bureaucrat is not the sole claimant of big-ticket corruption. Over the years, the civil bureaucracy in Pakistan has lost its clout and political power to the executive and legislature, whether military or civilian.

> Serving military personnel have been exempted from investigation by civilian anti-corruption watchdogs

The central protagonists in state-led corruption are the military and politicians. Arguably, civilian politicians are more accountable than the military for three reasons. First, the logic of electoral democracy itself holds politicians accountable for their misdeeds and lack of delivery to the electorate. Although this proposition may be contested in the case of Pakistan, where politicians with tainted reputations are re-elected time and again, the fact that electoral democracy has not had a fair run—in the sense that an incumbent government has not yet gone back to the electorate after completion of its term and been subjected to a largely fair election process—means that this contention has not been put to a robust test. Second, audit and accountability laws apply to politicians, which makes them relatively more susceptible to legal provisions than their uniformed counterparts. Third, their conduct is more in the public eye because of their greater interface with the public as well as the media.

The military, on the other hand, is powerful enough to evade public accountability. The military's budget in Pakistan is neither presented in detail to parliament nor have public representatives so far been able to debate it. Moreover, civilian audit authorities do not audit the military budget, and to top it all, serving military personnel have been exempted from investigation by civilian anti-corruption watchdogs by law. Also, because of the very nature of the civilian-military imbalance in Pakistan, demanding accountability in military scandals is a much more hazardous proposition for an otherwise free media than it is from civilian politicians.

3. Institutionalized corruption

There are a number of areas in Pakistan where corruption is institutionalized. As mentioned earlier, enough tax and legal lacunae exist through which black money can be laundered. The most salient in this regard is the 'no questions asked' private remittance in foreign exchange. According to law, an individual can get as much foreign exchange into the country tax-free as they wish without being questioned over the source of funds. This is the most-used conduit for laundering money obtained through land transactions, tax evasion, and criminal activity. In addition, the state periodically provides a window through which to 'whiten' black money at a nominal rate of taxation by announcing a 'whitener' scheme where black money can be declared at a minimal rate of taxation that is lower than for those who earn legitimate taxable income (last time, December 2008, the rate was two per cent). That the state provides this facility every few years creates an incentive to accumulate black money rather than pose any threat of penalization.

The other form of institutionalized corruption is land grants given to military personnel. Officers of the armed forces are entitled to residential, commercial and agricultural land at highly subsidized prices. In the case of residential land, numerous societies developed by the armed forces dot Pakistan's urban

landscape where infrastructure is developed (largely at state expense) and land is allotted to military personnel at subsidized rates, who in turn can sell it at the market rate and extract a hefty premium. Similarly, developed agricultural land is provided at subsidized rates and in some cases army personnel are deputed to tend the land at state expense. (See *Military Inc: Inside Pakistan's Military Economy* by Ayesha Siddiqua, Oxford University Press, 2007, for details on land allotment to military personnel as well as the process through which it takes place.)

"Five pieces of anti-corruption legislation have been enacted to date"

Another feature of institutionalized corruption in Pakistan is located in the country's security and foreign policy. For the last three decades, the Pakistani state has been involved in a number of major covert operations as part of its foreign and security policy. Perhaps the most elaborate has been the country's nuclear program. The confession of Dr. A.Q. Khan—one of the main protagonists in Pakistan's nuclear program—in 2004 that he supplied contraband material to other countries in return for cash may be the tip of the iceberg so far as money laundering and clandestine activity for this purpose is concerned. In the formative phase of the program, material and equipment were purchased illegally from the international market. This process would have involved a large number of state and non-state actors laundering state money.

The other major element has been covert warfare conducted in Afghanistan and Kashmir. A large chunk of state resources was diverted to conduct the entire war effort through non-state actors (including training, provision of arms and ammunition as well as logistic support). Much of this money would have made its way back to Pakistan through re-laundering and into land, real estate and other 'legal' activities as well as criminal ones.

The most important implication of institutionalized corruption is that powerful actors—whether state or non-state—cannot be investigated and prosecuted under anti-corruption laws if the entrepreneurial class (in the case of big business) and state personnel (in the case of covert policy operations) have the imperative to protect important state and economic interests against these laws.

Anti-corruption mechanisms and laws in Pakistan

Apart from regular laws against crime and fraud enshrined in the Criminal Procedure Code (CrPC), as mentioned in the introduction specific anti-corruption laws in Pakistan date back to the country's inception. Five pieces of anti-corruption legislation have been enacted to date. Another piece is on the anvil and is expected to replace the extant National Accountability Bureau (NAB) legislation. Much of the legislation, as seen from the titles of laws, has concentrated on elected representatives and politicians, although the 1947 Act and NAB law both have big business in their ambit also (see table overleaf).

Anti-corruption legislation in Pakistan

Year enacted	Title	Present status
1947	Prevention of Corruption Act	In force
1949	Public Representatives Disqualification Act	Repealed
1958	Elected Bodies Disqualification Ordinance	Repealed
1997	Ehtesaab Act	Repealed
2000	National Accountability Bureau Ordinance	In Force

Anti-corruption agencies in Pakistan

Name	Year established	Jurisdiction	Functions
Anti-Corruption Bureaus	1970	Provincial	Check on corruption in provincial government
Federal Investigation Agency (FIA)	1975	Federal	Immigration, financial & cyber-crime; anti-terrorism
National Accountability Bureau (NAB)	2000	Federal	Public and private sector; white-collar crime

In addition, there are a number of specialist agencies and bureaus that are dedicated specifically to investigate white-collar crime. In addition to routine investigation carried out by the police and other civil and military intelligence agencies. Presently there are three specialized anti-corruption agencies, as shown overleaf.

The general perception in Pakistan is that in spite of the myriad laws and agencies investigating corruption, white-collar crime has increased rather than decreased. Moreover, serious analysts also do not consider anti-corruption mechanisms in Pakistan to have been successful. The most common lament is that the above-cited laws and agencies are discriminatory and particularly that they are focused on politicians in the main and civil bureaucrats on the periphery. As such, politicians have often questioned the legitimacy of anti-corruption mechanisms as a form of victimization in a country where the civil-military tensions have dominated politics. Their recriminations gain credence from the fact that these laws consistently exclude the military, the judiciary and lately, the Islamic clergy from their ambit. While big business has been intermittently targeted, it too has by and large escaped the net for the simple fact that if captains of industry and commerce are hounded by the state then private sector investment will suffer.

Other complaints have centred on capacity and intent issues: lack of adequate training, duplication of effort across bureaus, lack of audit controls, interference from the executive, etc. As such the National Anti-Corruption Strategy that was unveiled in 2002 has remained ineffective.

"Corruption is inextricably linked to socio-political imbalances in Pakistan"

While interference from the executive is a political issue, there is no reason for the lack of capacity to prevail over a long period of time when ostensibly there is so much focus on corruption (as reflected by the number of laws and agencies).

Economic liberalization as part of anti-corruption strategies

Another anti-corruption mechanism that was popular in the recent past was to reduce the role of the state in resource allocation, as it was deemed to create rents and lead to corrupt practices.

Pakistan has vigorously pursued privatization and deregulation of the economy. This has at best produced mixed results. Some of the sectors privatized have indeed become more efficient and benefited from being out of direct government control, while others—particularly public monopolies—have only turned into private monopolies with no benefits to the consumer. Moreover, the process of privatization itself has been called into question as being less than transparent, and collusive.

Deregulation of the economy has in many cases gone to the other extreme, where regulation that protects public interest has also been dismantled, with results including cartels and market manipulation.

The way forward

That corruption in Pakistan is pervasive and endemic is without doubt. We have attempted to show in section 1 that it is also multi-faceted in character. In section 2, we have seen that in spite of the number of laws enacted and bureaus created to check corruption, they are not perceived as effective and are not broad-based.

While there are issues remaining for the improving of capacity and for better strategizing on anti-corruption mechanisms, corruption is inextricably linked to socio-political imbalances in Pakistan. If the country is to embark on an effective and sustainable anti-corruption drive, some level of agreement among different power wielders is necessary to ensure that accountability will be across the board. Only then will there be broader societal legitimacy for anti-corruption practices. Once such an agreement is reached, a future anti-corruption program requires us to:

1. Bury the past and start anew. Bringing up corruption cases from the past will open a Pandora's box, from which demands for accountability of all manner of powerful sections of the elite will emerge. Not only will this be divisive but it will

also consume valuable time. Moreover, those in powerful positions (including formulators of the state's security policy) will resist such a move. If catharsis is needed, then a process of truth and reconciliation, like that in South Africa, should be initiated.

2. Create a constitutional body to oversee all aspects of corruption, with no group or entity outside its ambit. The creation of such an entity would also mean that the duplication in mandates of several agencies could be rationalized.

3. Enhance the capacity and oversight functions of the auditor's office to ensure that corruption in service delivery—which is the most important for the citizen—is minimized.

4. Carry out civil bureaucratic reform to strike a balance between security of tenure and credible penalization for wrongdoing.

In this process it is very important to keep in mind that excessive moralizing on corruption does not generate substantive dividends. As with much else, it is advisable to create institutions that will over time reduce the incidence of corruption in society.

Fighting corruption from the bottom: The case of Thailand

Charas Suwanmala, Professor & Dean, Faculty of Political Science, Chulalongkorn University, Bangkok

The intention of this paper is to make some observations on civic movements in Thailand that are combating corruption. These include organizations in the mass media; social, religious and community organizations; labour unions; occupational solidarity groups; community organizations, and networks of international organizations. Most have multi-purpose missions, and anti-corruption is one goal among others.

Where corruption takes place

Corruption is a common phenomenon in Thai society. It can be wherever state-related transactions take place. The following are typical areas of corruption in Thailand:

1. Public policy process: so-called "policy corruption" and "political rent-seeking".

2. Revenue administration: including corruption in taxation, fines, fees and charges, public loans, financing investment projects, asset management, etc.

3. Expenditure administration: ranging from budget planning and allocation, procurement, concession, market intervention, disbursements, to public-private partnership management.

4. Personnel management: the notion of "position buying", ranging from recruitment and promotion, to transfer and rotation.

5. Political transactions: including asset declaration, election vote buying, parliamentary vote buying, party buying, and buying of members of parliament.

6. The justice process: from corruption among police in law enforcement and judicial corruption, to bribery in jails.

7. Public service delivery: including healthcare, education, land registration, natural resource management, pollution control, energy management, food and drug safety, environmental protection, and consumer protection, among others. Different types of corruption can be found in these areas, such as corruption in giving certifications, licenses, and permits; corruption in natural resource concessions and privatization; corruption in pricing and regulating public utilities, energy, etc.

2005 survey on businessmen's perceptions of corruption during the past five years

Corruption types	**Increasing**	**No change**	**Decreasing**
Initiation of projects for personal benefit	19.3	19.3	17.5
Collusive bidding	8.8	15.8	24.6
Arrangement of contracts with loopholes or with wide discretion	7.0	31.6	17.5
Bias or locked specifications	12.3	28.1	15.8
Locating of public infrastructure to maximize personal benefit	1.8	22.8	24.6
Use of inside information for land speculation	14.0	12.3	22.8
Extraordinarily high standard prices	7.0	21.1	35.1
Nontransparent bidding processes	3.5	35.1	26.3
Changing of construction details to help vendors get away with tax evasion	7.0	28.1	24.6
Extortion in certification of materials, goods and services	8.8	28.1	33.3
Selective certification of materials, goods, and services to benefit vendors	0.0	26.8	25.0

(Adapted from Sauwanee Thairungroj, "Corruption Situation in Thailand", a paper for the conference on evidence-based anti-corruption policy, organized by Thailand's National Counter Corruption Commission in collaboration with the World Bank, 5-6 June 2009, table 15, pages 32-33; in Thai)

Fighting corruption from the bottom

The majority of civic organizations choose a proactive approach in fighting the corruption, such as through civic education, monitoring, and information dissemination. Only some of them take aggressive roles as corruption watchdogs, revealing incidents, and pushing state institutions to take action against corruption.

Corruption watchdog organizations in Thailand have different settings. Labour unions in state enterprises, medical doctors' solidarity in the Ministry of Public Health, and organizations

representing teachers and lecturers in public schools, colleges and universities are examples of corruption watchdogs in public organizations. Likewise, community organizations, religious groups, local radio stations and newspapers are active watchdogs against corruption in their communities. At the national level, there are the press, television, foundations, and some not-for-profit institutions.

As a watchdog, a civic organization can do a good job when corruption is visible, as it can bark loud enough that someone in charge can hear and take action in response. But in many cases civic organizations have to overcome a number of barriers to get close to incidents of corruption. They might have difficulty to find media personnel willing to publicize the case. And even if they can find good media people to help make the scandal known to the public, there is little chance that state institutions will investigate.

"Civic organizations in Thailand are often seen as anti-state: they must take extraordinary efforts to fight corruption; at the same time both state agents and criminals threaten them"

Civic organizations in Thailand are often seen as anti-state or anti-organization power players. They must take extraordinary efforts to fight corruption. At the same time both state agents and criminals threaten them. Nevertheless, there are some partly successful cases, including the four illustrated below.

1. Mosquito eradication chemical project

The corruption took place during the legislative budget appropriation in 1992. Some parliamentarians were bribed by a chemical company to put a pet project, on a mosquito eradication chemical, into the 1993 annual budget appropriation. The budget amount of 143,133,800 baht was allocated but was intentionally misplaced under the Department of Community Development, Ministry of Interior, rather than the Ministry of Public Health.

The press uncovered the unusual budget allocation, as well as the bribery. The budget execution was later disrupted and investigated by an order of Prime Minister Chuan Leekpai, who came into power after the incident had occurred.

The director of the Department of Community Development contended that his department did not initiate the budget proposal for mosquito eradication, as it was not the department's mission. Nevertheless, he did not reject the budget allocation for mosquito eradication because he didn't want to meddle with political demands.

Having learned that the budget had been misplaced for political reasons, the director and officials of the Bureau of Budget neither interfered nor revoked the budget allocation while they were in charge of correcting budget allocations among departments and ministries.

Members of parliament leaked the scandal to the press, which brought it to public attention. The reporter who uncovered the case was afterward awarded best news reporter of the year 1997.

No politicians or public officials were found guilty or punished as a result of an administrative investigation. Similar corrupt dealings in legislative budget appropriation have accelerated up until now and have likely become common practice.

> "Corrupt dealings in legislative budget appropriation have accelerated up until now and have likely become common practice"

2. Klong Daan sewage treament

The Klong Daan sewage treatment case incorporates a number of corrupt practices, including illegal land registrations, illegal bidding and construction of a waste treatment factory, and non-performing officials.

The Klong Daan sewage treatment project was adopted in 1995, under Prime Minister Chatchai Chunawan's government. It was expected to be the largest sewage treatment utility in Southeast Asia, with a total budget of 23,700 million baht. The project was located in Klong Daan Sub-district, Samudprakarn Province.

Corruption took place even before the project started up. Wattana Assawahaem, the most influential politician in Samudprakan and deputy interior minister at the time, used inside information to buy 17 parcels of land, totaling 1900 *rai* (760 acres), from local people in areas where the project would be located. He paid 563 million baht for the land and sold it to the project owner, the Department of Pollution Control, for 1900 million baht.

Klong Daan people, led by two community leaders, Chalao Timtong and Dawan Chantornhassadee, organized and moved against the project as it could have severe impacts on community life, as well in protest at the non-transparent method of land acquisition. The community leaders did an in-depth study of the land registration and acquisition process, which revealed that a number of plots of public land were illegally registered as private property and subsequently sold for the project. They presented the case to the National Counter Corruption Commission, where a formal investigation started and was passed to the attorney general in 2007, sixteen years after the case's inception.

The media came in as a partner of the community organizations. Jermsak Pintong, a TV producer and director, helped organize a forum for Klong Daan local people and revealed the case through his television series. The case was brought to the Senate through community leaders and a group of senators, including Jermsak, who had subsequently been elected to a seat. The Senate also proposed that the NCCC act on the case.

In 2009 the Supreme Court sentenced Wattana to ten years' imprisonment, but he escaped to a neighbouring country prior to the date of the sentence. Other aspects of the case are still in the investigation process. Yingphan Manasikarn, science and technology minister, and his deputy Suwat Linpataphanlob, were also accused of being involved in this incident.

Government officials in the Department of Pollution Control throughout took a passive role in fighting the corruption in this case, yielding to demands of politicians. Only once the NCCC investigation had progressed and significant incidents had been uncovered did the responsible officials decide to assume active roles.

"The Ministry of Public Health encountered two major corruption scandals during the past twelve years"

3. Medicine and medical equipment purchasing

The Ministry of Public Health encountered two major corruption scandals during the past twelve years. The first one, known as the medicine and medical supply corruption case, emerged in 1998. Rural Doctor Solidarity, a watchdog group of doctors who work in remote rural hospitals, first exposed the scam. They alleged that the purchasing prices of medicines and medical supplies in 34 provinces were so unusually high that there must be some corruption in the purchasing process. Rakkiat Suksthana, the public health deputy minister at the time, was suspected of involvement. The media and press brought the scandal to public attention in a short time. The parliament, police, and then the NCCC investigated.

The police alleged that Rakkiat had ordered or induced his subordinates to purchase medicines and medical supplies from two colluding firms with a corrupt intention. A sum of 33,400,000 baht appeared in the bank accounts of his wife. In August 1998, just before leaving the post, Rakkiat obtained a cashier's cheque for five million baht from the managing director of a colluding firm. Chirayu Charatsathien, his secretary—who was also convicted and imprisoned—testified that the cheque was payment for the minister's lifting of the ceiling price and purchasing from the colluding firms.

On 24 October 2002, the NCCC ruled that Rakkiat was "unusually wealthy" and the attorney general petitioned to seize his property, including 233 million baht in bank deposits.

The second scandal over the acquisition of medical equipment and capital is known as the corruption in the Thailand Strengthening Plan scam. It began in 2009 during the economic crisis and is still unfolding. The cabinet, led by Prime Minister Abhisit Vejjajiva, introduced the Thailand Strengthening Plan for macro-economic stimulation. The plan was implemented with limited preparation, as an out-of-budget scheme. The Ministry of Public Health obtained 86,684.61 million baht, or about six per cent of the total Thailand Strengthening Plan funds. Part was dedicated for medical equipment and capital acquisitions for public hospitals in remote areas.

Rural Doctor Solidarity again uncovered the corruption. Leaders of the group indicated that the fund allocation and procurement process was unusual and nontransparent. In addition, specifications of medical equipment as well as their marked prices were excessively high and did not correspond with the demands of many hospitals, which indicated corruption. The media then came in and publicized the scandal.

> "Corruption scandals under the Thailand Strengthening Plan were reportedly pervasive in other ministries too, but none were formally investigated"

In response, the cabinet established an independent investigation taskforce to uncover the incident. In late December 2009, the taskforce reported to cabinet, confirming that the marked prices of medical equipment and capital items were unusually high. In addition, there were concentrations of fund allocations in some provinces and hospitals, especially in large hospitals in cities, rather than small rural hospitals, which did not correspond with the stated policy. The taskforce noted that government officials in general were neither attentive nor proactive in addressing the corruption, perceiving it to be a common phenomenon.

In response to the scandal the public health minister, Withaya Kaoparadai, resigned in late December 2009.

Corruption scandals under the Thailand Strengthening Plan were reportedly pervasive in other ministries too, including in the Ministry of Transportation, Ministry of Agriculture and Co-operatives, Ministry of Education, and Ministry of Interior, but none of them were formally investigated, as no watchdogs stirred up these cases. It is possible that the legislature will bring up these cases for investigation.

4. Highway bribery

Highway bribery has long been a common type of street-level corruption across Thailand. Trucks, taxis and other local public transportation vehicles often pay bribes to police in exchange for getting away with illegal practices such as speeding, overloading, drink driving, and driving without a licence. Highway and traffic police distribute the money among their companions and pass them on to their supervisors. In return, they are protected and promoted.

In 2003 the iTV television channel made highway bribery visible to the public for the first time by broadcasting a series on it. In response, the Royal Thai Police adopted an investigation taskforce into the reported cases. Only a few street-level officials were reported as having been involved. Following iTV, many other cases of highway bribery have been shown on television, broadcast on community radio, and told among local truck and transportation associations.

Unfortunately, a street-level policeman named Chit Tongchit, a lieutenant in Petchaburi Province who had dedicated more than a decade of his life to fighting highway corruption and other illegalities, was assassinated by a group of fellow police on 15 January 2009. Apart from Chit, a number of counter-corruption civic movement leaders in Thailand have been assassinated in recent years, including Churin Rajapol, Narin Podang, Pitak Tonawood, Suwat Wongpyasatit, Chaweewan Puksoongnern, and Charoern Wataksorn. State power had been involved in all of these killings.

Strengthening evidence-based watchdogs

As corruption is so prevalent, Thailand needs to strengthen both state institutions in charge of crushing corruption from the top as well as to multiply and strengthen civic corruption watchdogs that can chase and catch corruption from the bottom. It is necessary that the NCCC, parliament and civic organization watchdogs develop collective networking organizations in which all parties can multiply their capabilities in data collection, information exchange and case analysis, plotting, and mapping. The network should extend to the media, community radio, TV channels, the press, as well as labour unions, occupational associations or solidarity groups in public and private organizations, and university and college students. Thailand should aim at having enough civic corruption watchdogs that can effectively monitor corruption based on empirical evidence and nonpartisan methods in the near future.

"As corruption is so prevalent, Thailand needs to strengthen both state institutions in charge of crushing corruption as well as to multiply and strengthen civic watchdogs"

Thai-language references

Constitutional Court. 30 May 2007, decision p. 2 3-5/2550.

Nualnoi Treerat, *et al.* 2003. *Civic participation in monitoring Tambon Administrative Organizations*, Faculty of Economics, Chulalongkorn University, Bangkok.

Pasuk Pongpaichit, *et al.* 1998. *Corruption in Thai bureaucracy*. National Counter Corruption Commission, Bangkok.

Pasuk Pongpaichit, *et al.* 2003. *Business, state, and corruption*. National Counter Corruption Commission, Bangkok.

Rosana Tositrakul, *et al.* 2005. *The brave men against corruption: Five case studies; a study on impacts and violence against civic monitoring of corruption*, Papyrus Publication, Bangkok.

Supachai Yawaprapas, *et al.* 2001. *Bureaucrats' perspectives on corruption and position buying*. Office of the Civil Service Commission, Bangkok.

Anti-corruption mechanisms in Bangladesh

M. Shamsul Haque, Advocate, Supreme Court, Bangladesh

Corruption is found in almost all countries of the world, but developed countries are less corrupt than the developing world. Corruption in Asia is alarming, not least of all in Bangladesh. The people of Bangladesh nowadays tolerate corruption. They are reluctant to believe that they will ever see a change. On 28 December 2009 the speaker of parliament claimed before the media that "from purchasing pencils to telephone calls" all corruption he found in parliament has been curbed; but he said it is not possible to eliminate corruption in full. In fact, corruption in Bangladesh is considered a way of life that cannot be avoided or eradicated. It has been institutionalized. In every private or public institution corruption is practiced shamelessly. This is why in Transparency International's rankings Bangladesh has come in with the highest global corruption on several occasions.

How is corruption manifest in Bangladesh?

Corruption is not explicitly definable. It is an illegal act to achieve wrongful gain. According to one author, it is the destruction of integrity in the discharge of public duties. It has also been defined as misuse of public power for private profit. Undue privilege, nepotism and favoritism are all types of corruption.

Lack of accountability makes corruption easily and frequently exercised in Bangladesh. Greed, self interest, the wish to be rich without doing anything, the high ambition of less-qualified persons, and avarice are the main causes. Persons in power who are responsible for good governance and keeping the organs of state and the society free from corruption are themselves mostly greedy, selfish, corrupt and incompetent. This is why it is really difficult to combat or eliminate corruption. If a police officer, public servant or judicial officer is recruited through payment of money or other illegal gratification, how can that officer or employee be expected to render honest service to the nation?

There are certain government establishments where the simple transfer of an employee from one place to another reportedly needs large sums of money to be given to a higher authority. It is also known that every subordinate officer gives a fixed amount to his higher authority as a share of bribery, especially in the police department. So, honest officers cannot maintain their honesty.

Nepotism and favouritism are also common. In almost every institution the nearest relatives of party men or people from the party's area are being employed or given benefits, regardless of competency or rules and procedure; even the appointment of High Court judges sometimes proceeds in a similar way.

A recent survey carried out by the Bangladesh Unnayan Parishad found that the police were the most corrupt department in the land, followed very closely by customs, the department of excise and taxation, the bureaucracy and the judiciary. This survey shows that the primary responsibility for corruption in Bangladesh lay in the hands of government officials. The survey broadly corresponds with the findings of Transparency International, in which the police and then judiciary have been found to be the most corrupt.

A look at the judiciary

Some bench officers of the High Court Division take bribes from 500 to 15,000 taka just to push cases up the queue on the daily cause lists. Everybody working in the courts knows it but no one resists it. After cases are posted in the daily cause list of the High Court Division normally a case will not be produced before a judge if 200-300 taka are not given to the custodian of the files. Some High Court judges are accused of being selective in the lawyers to whose clients they grant relief; some lawyers take contingent fees, giving surety or assurance for enlargement of bail, and a good number have pet brokers who collect cases and take portions of the lawyer's fees.

After filing for a writ or criminal motion a lawyer must wait sometimes for three, seven or 15 days to get the matters heard, but if the lawyer gives some bribe to the bench officer it can be heard on the same day, and if the amount is a bit high then it may be heard then and there. (Of course there are certain benches where no such business is found, and matters are heard according to their serial numbers.) Similarly, another difficulty is to procure the certified copy of a judgment or order. After a judge signs a verdict or order it will take couple of months to reach the file in the copying department, but one can hurry it by giving bribes to the concerned tables.

The reconstitution of High Court benches causes a lot of suffering for litigants. There are no specific rules or procedures, so far as I know, to reconstitute benches, and it is the sole and absolute power of the chief justice. Before changing or reconstituting benches no prior notice is given,

as a result of which suffering is caused to litigants. Those matters that are posted at the bottom of the daily cause list cannot be heard because before reaching the matters for hearing the court is dismantled, and these matters must be re-fixed for hearing. Dishonest bench officers get opportunities to earn money on the plea to keep a matter at the top of the list to prevent it being pushed back to a latter date. In the early days the benches were reconstituted once or twice in a year. The frequent changes in courts allow personnel to indulge in corruption and also serve dark political interests. There should be a committee and rules framed in this regard.

"From the magistracy to additional district and sessions judge level, most judicial officers are reported to have taken bribes"

The lower judiciary of Bangladesh has earned a very bad name and lost the confidence of litigants. From the magistracy to additional district and sessions judge level, most judicial officers are reported to have taken bribes (no doubt there are a few honest judges) and this corruption should be stopped immediately. If necessary, the High Court may frame rules and appoint vigilant teams in every district to monitor judicial officers. The elected members of Bar Associations who are meant to see and address the impediments and problems facing the smooth administration of justice daily are obviously busy doing things for their own benefit, and most of them have entered into a competition to see how they can be nearer to the chief of the ruling political party or the chief of the opposition party.

Prosecutions are also run in a highly politicized and corrupt manner. Under section 494 of the Code of Criminal Procedure, the Ministry of Home may withdraw any criminal case from prosecution with the permission of the court, either in part or as a whole. What is the result in the present day? The party in power sometimes withdraws gruesome murder cases because the accused person belongs to the ruling party. The party in opposition shouts that the cases pending against the ruling party are being withdrawn but not those cases filed against their own party men. Sometimes cases are withdrawn for payment of cash.

People's hard earned money lavishly used

Bangladesh is a poor country but from looking at the facilities awarded to parliamentarians, high officials and senior government officers nobody would think so. Tax-free prestigious cars, allocations of land in the capital city, concession air tickets and other benefits are among a few of the things given to those persons on the pretext that they are the people's representatives or public servants. This so-called lawful corruption can only be curbed if the good conscience of the beneficiaries is knocked.

Eminent lawyers, journalists, important businesspersons and elected office bearers of the Bar Association, Chamber of Commerce and other non-governmental organizations engage in another type of corrupt practice. They use their high profiles and social positions to take benefits from their respective

professional fields, even if not through open bribery. Sadly there are no avenues through which to raise objections against these misdeeds.

> "Surprisingly enough there are several laws still in force in Bangladesh to prevent corruption"

The elimination of corruption

Surprisingly enough there are several laws still in force in Bangladesh to prevent corruption, such as the Anti-Corruption Commission Act, 2004; Money Laundering Act, 2002; Bangladesh Government Servants (Conduct) Rules, 1979; Criminal Law Amendment Act, 1958; Prevention of Corruption Act, 1947; some sections of the Income Tax Ordinance, 1984 and some sections of the Penal Code. Not only are these laws in force but also there are some special courts and tribunals to try corruption cases. So why have these been ineffective and what can be done about it?

No doubt, it is difficult to eliminate corruption completely from Bangladesh; but the first and most important thing is that people shall have the willingness, intention and zeal to eliminate it, and to take pragmatic steps, such as the following.

Make a corruption-free family

Build a family that does not believe in corruption. The earning members of a family especially should have honesty and transparency in respect of their lawful incomes. The family head should take responsibility to ensure that none of his or her family members earn more than deserved according to qualification and post.

Honest politicians

Corruption can never be eliminated until people holding state power want to deal with it. We know that state power is exercised and regulated by politicians. The degeneration of politics breeds dishonest politicians. So to eliminate corruption, greedy and dishonest politicians must be eliminated. Honesty, integrity, dedication, nobility and patriotism must be the qualifications of political leaders. A political leader must have determination to do something for the betterment of the citizenry. Dishonest and corrupt leaders should always be avoided, deprecated and boycotted. But the fact remains that the political process, system and environment in Bangladesh is not friendly towards honest practices.

Religious values and prescriptions should be honestly exercised and regarded

Eighty-seven per cent of Bangladesh belongs to the Muslim community. Islam does not permit corruption and dishonesty. Most people of Bangladesh seem to be pious; they say their prayers five times a day. Islam emphases 'Halal Ruzi', that is, honest livelihood, so corruption is not befitting to persons who want to comply with their religious beliefs.

Lack of proper implementation of laws and non-accountability of public servants

"The children of government officers whose official incomes are modest are getting higher education abroad: where does this money come from? This question is never put to them"

Public servants in Bangladesh are not accountable and as such, corrupt officials remain untouched after accumulating huge amounts of money. Every government servant is expected to submit an annual return of his or her assets to the government in December, but evidence of this practice is hard to find. Rather, the evidence is of corrupt practices, such as the building of houses in Dhaka City by government officers and employees whose official incomes are modest. Their children are getting higher education abroad. Where does this money come from? This question is never put to them. I firmly believe that if only the Government Servant (Conduct) Rules, 1979 was followed strictly then approximately 75 per cent of government employees' corruption could be eliminated.

In short, to eliminate corruption a system must be developed which will not be friendly to corruption. Absolute power and a lack of accountability make plenty of scope for corruption. To address it, whoever's assets and wealth have been acquired by way of corruption or misappropriation should be confiscated by the state. Furthermore, incompetent and corrupt officials must be removed from key posts, to create an atmosphere in which it might be possible to rehabilitate honest and competent persons to run the polity with a view to ensure democracy and the rule of law.

The people of Bangladesh want to give up their pessimistic ideas and views, and they are eager to see the introduction of new measures to eliminate corruption. Prime Minister Sheikh Hasina has emphasised her determination to eliminate corruption from Bangladesh. We do hope that in the near future we will see this objective realised.

Mechanisms to address corruption in Cambodia

Sek Barisoth, Director of Media Program,
Pact Cambodia

Corruption continues to rage and negatively impact all sectors in Cambodia. The cycle of the powerful exploiting the weak, stealing state resources for the benefit of a few, resulting in officially-budgeted amounts not reaching intended beneficiaries and informal fees being expected for practically any government service, is the norm rather than the exception.

In 2004, the government adopted the "Rectangular Strategy for Growth, Employment, Equity and Efficiency". The Rectangular Strategy was intended to guide the policies of the government of Cambodia between 2004 and 2008 and it has now been extended to the second phase. At the core of the Rectangular Strategy is "good governance", which is to be achieved by reform in four key areas, including anti-corruption. By adopting the Rectangular Strategy, the government has put anti-corruption measures at the heart of its plan to foster sustainable growth in Cambodia.

The centerpiece of the government's anti-corruption reforms is supposed to be passage of the Anti-Corruption Law. However, the Anti-Corruption Law has existed in draft form for more than 15 years, and although the government has recently approved the draft, nobody knows when it will go through the National Assembly. Its passage was listed as a key benchmark of progress in the Joint Monitoring Indicators of the Consultative Group's 2004 Meeting (the annual government-donor meeting when donors decide how much aid they will pledge to Cambodia). Regrettably, the current draft approved by the government is somehow in obscurity, since nobody has had access to it or knows is contents.

On Transparency International's annual Corruption Perceptions for 2008 Cambodia ranks 166 out of 180 countries. Among the countries in the region of Asia-Pacific, the country ranks 30 out of 32. Only Afghanistan and Myanmar rank lower. In 2007 Cambodia ranked 162 out of 180 and in 2006, 151 out of 160 countries.

Encouragingly perhaps, the 2009 Index places Cambodia a bit higher, at 158 out of 180 countries. However, it is still among those near the bottom of the list.

"Corruption in Cambodia is not just about corrupt politicians and high-ranking officials; bribes have become practically obligatory for any service delivered, including education and healthcare"

A corruption barometer survey by Transparency International in February 2008 revealed that 72 per cent of Cambodians reported paying a bribe to receive a public service in the last year; 61 per cent did not expect corruption to decrease in the next three years, and 42 per cent expected it to rise.

However, corruption in Cambodia is not just about corrupt politicians and high-ranking officials. "An analysis of everyday forms of corrupt practices in Cambodia" by the Phnom Penh-based Center for Social Development showed in 2005 that the corruption virus has infected almost the entire population, and it is still the case as of today. Bribes have become practically obligatory for any service delivered, including education and healthcare.

USAID-funded research in 2004 disclosed that Cambodia lost USD 300–500 million a year to corruption—about half the national budget. Another study conducted and released in 2006 by an independent research organization, the Economic Institute of Cambodia, commissioned by Pact, revealed that Cambodia lost around USD 330 million in 2005 just to unofficial fees in the private sector. Though there has been no update figure available since then and Cambodia's ranking on Transparency International's CPI for 2009 suggests a relative improvement, the Cambodian public still sees corruption as one of the most serious concerns.

Overview of existing anti-corruption mechanisms

Everybody acknowledges that Cambodia has a significant corruption problem. The government recognizes the problem and has made combating corruption a key part of its plan for sustainable growth in Cambodia. Both the donor community and the government have focused on passage of the Anti-Corruption Law as the centerpiece of this effort. However, there are a number of mechanisms that already exist and could be used to fight corruption. In 2005, Pact commissioned a study of the existing anti-corruption mechanisms ("Existing mechanisms for addressing corruption", by legal consultant Stuart Ford, 2006, available online at www.pactcambodia.org). Though the study was 4-5 years ago, the data are largely still valid, since generally there has been almost no change or no progress at all in the government's anti-corruption reforms, as in the case of the delay from year to year of the passage of the long-awaited Anti-Corruption Law. The following are just parts of the findings from that study which related to legal mechanisms, with a little update information that I would like to share with you.

Even without the Anti-Corruption Law, corruption is already illegal in Cambodia. This is primarily the result of the UNTAC Law. The UNTAC Law criminalizes embezzlement by public officials, corruption, forgery of public documents and bribery. The law forms the basis for most substantive criminal law in Cambodia.

It lays out the elements of the crimes and their punishments. It contains four articles that prohibit various aspects of corruption. There is also a special provision within the Law on Taxation that criminalizes corruption by tax officials. There are no special procedures for corruption investigations or trials in the Cambodian courts, and criminal corruption cases are treated like all other criminal cases under the Law on Criminal Procedure.

"There are no special procedures for corruption investigations or trials in the Cambodian courts, and criminal corruption cases are treated like all other criminal cases"

The four central corruption-related provisions of the UNTAC Law are as follows:

Corruption (article 38)

Like any crime, the crime of corruption is composed of individual elements. Each of these elements is derived from the language of article 38. The elements of corruption are that:

1. A government official;
2. Acting in the course of his or her duties;
3. Solicits, attempts to solicit, receives or attempts to receive;
4. Any benefit;
5. In exchange for any other benefit.

The key to the crime of corruption is that a government official is receiving or requesting something (which could include money, property, services, favours, or anything that has value or confers a benefit) in return for using his or her official position to confer a benefit on the person giving the benefit. In order for an individual to be convicted of corruption, each of the elements listed above must be present. If an individual is found guilty of corruption, they can receive a prison sentence of between three and seven years. It is also worth noting that the existence of a criminal charge arising out of an act of corruption does not preclude a parallel administrative proceeding arising out of the same act.

Bribery (article 58)

Article 58 of the UNTAC Law states that any person who corrupts or attempts to corrupt any elected official, civil servant, military personnel, or official agent of any of the four Cambodian parties to the Paris Agreement or of any registered political party who, while performing official duties or tasks related to such duties, by promising property, services, money, staff, professional position, documents, authorization or any benefit whatsoever in exchange for one of these same benefits is guilty of bribery and shall be liable to punishment of one to three years in prison. Based on this, bribery has occurred when:

1. Any person;
2. Corrupts or attempts to corrupt any government official;
3. While that government official is acting in the course of his or her duties;

4. By promising some benefit;

5. In return for receiving a benefit.

"The UNTAC Law also makes embezzlement by public officials a crime"

Embezzlement by public officials (article 37)

The UNTAC Law also makes embezzlement by public officials a crime. Any elected official, civil servant, military personnel or official agent of any of the four Cambodian parties to the Paris Agreement or any political official who, while performing official duties or tasks related to such duties, with a view to owning or using, misappropriates, sells, rents, embezzles for personal profit, or for that of a third party, property, services, money, personnel, any advantage, document, authorization, or any function belonging to any public authority, is guilty of the crime of embezzlement of public property and shall be liable to imprisonment for a term of three to ten years. Embezzlement by a public official occurs when:

1. A government official;

2. Acting in the course of his or her duties;

3. Misappropriates, sells, rents or uses;

4. Any public function;

5. Either for personal profit or to profit a third party.

Forgery of public documents (article 49)

Article 49 of the UNTAC Law states that any elected official, civil servant, military personnel, or official agent of any of the four Cambodian parties to the Paris Agreement of or any registered political party who, while performing official duties or tasks related to such duties, commits a forgery, either by false signature, or by alteration of a deed, writing or signature, or by impersonation, or by false entry into a registry or other public deed after its execution or closing, and any person knowingly makes use of the same, is guilty of forgery of a public document and shall be liable to a term of imprisonment of five to fifteen years. Forgery of public documents occurs when:

1. A government official;

2. Performing official duties;

3. Commits forgery by:

a. Falsely signing a document;

b. Altering a deed, writing or signature; or

c. Falsely entering something into a public registry or public deed after its closing or execution;

4. And any person knowingly makes use of that forgery.

Criminal corruption trials in practice

Unfortunately, even though the UNTAC Law criminalizes corruption, bribery and embezzlement by public officials, in the past there have been relatively few prosecutions for these crimes. Between 1992 (when the UNTAC Law was adopted) and 1999 there was not a single prosecution for corruption-related offences, despite widespread acknowledgement that corruption was rampant within the government.

"Between 1992 and 1999 there was not a single prosecution for corruption-related offenses"

It is often difficult to find reliable information on cases in the Cambodian courts, but the situation appears to have improved in recent years. Today, court cases against lower-ranking provincial officials are moderately common. In some cases, higher-ranking officials (like provincial governors and deputy-governors) appear to be able to use their political connections to protect themselves, but there have been cases against provincial governors. In general, the system seems to be much more responsive to charges of corruption against lower-ranking officials than it was six or seven years ago. However, publicly discussing the involvement of senior central government officials in corruption is still very risky. Allegations of corruption against senior central government officials have tended to result in defamation or disinformation charges against those making the allegations. Defamation was a criminal charge, and then was changed to a civil charge; however, it has been restored as a criminal charge under the new Penal Code, which will soon come into effect. Disinformation is a criminal charge.

In 2006, there have been quite a few corruption trials against provincial officials, often arising out of allegations of participation in illegal logging or land-grabbing. In one illustrative case, 14 officials from Ratanakiri province were charged with involvement in a multi-million dollar logging operation that took place in Virachey National Park. Initially, the case stalled because local court officials were unwilling or unable to investigate the allegations. However, the investigation resumed after it was transferred to Phnom Penh Municipal Court. Ultimately, 11 low-ranking officials, including park rangers and border police, were tried for accepting bribes to allow trucks containing illegally logged wood to leave the national park. However, the trials of the three highest-ranking officials—a former provincial governor, the former provincial police chief, and the local military commander—were postponed for some time because of alleged problems with the witnesses and evidence. The trial was then resumed, although the former governor is still at large. The outcome of this case, at least so far, suggests corruption trials against low-ranking officials are becoming more common but that higher-ranking officials may in some cases have the political connections to avoid (or flee from) corruption charges.

In another illustrative case, the World Bank froze funding on several projects in May 2006 after an internal investigation concluded that there was evidence of corruption by government officials. The government initially responded with skepticism and several senior government officials, including Prime Minister

Hun Sen, questioned the bank's findings. However, in July 2006, the former director of one of the suspended projects was arrested and charged with embezzlement under article 37 of the UNTAC Law. He was accused of embezzling more than USD 800,000 from four road-building contracts and was immediately placed in pre-trial detention. However, months later, he was reportedly freed on bail pending further investigation. But there has not been any further action reported on the case since then.

"There appears to be no publicly available information on how many disciplinary procedures are carried out under the Law on Civil Servants"

There is considerable corruption in the process of collecting taxes. According to a study by the Economic Institute of Cambodia, the government only collects about 25 per cent of the potential tax revenue, largely because of "unofficial payments being made to government officials in order to avoid paying taxes". Nevertheless, a search of public documents and newspaper reports does not reveal any prosecutions of tax officials for corruption under the UNTAC Laws or under the specific provision in the Law on Taxation. Although the head of a taxation department was publicly named in a speech by the prime minister for involvement in cheating on imported battery taxation, he was merely transferred to another post.

Administrative proceedings

In addition to formal criminal proceedings for corruption, which can lead to imprisonment and the possibility of parallel civil claims for payment of damages, various Cambodian laws also create administrative proceedings to address corruption. These administrative proceedings, which are generally conducted within a ministry or government department, may result in employees being reprimanded, demoted, losing benefits, or being terminated. There is no barrier to a government employee being charged with a corruption-related crime, being sued in a parallel civil action, and also being charged under one of the following administrative proceedings. Different classes of government employees are subject to different administrative proceedings. For example, judges are subject to one procedure, while civil servants are subject to a different one.

The Law on the Common Statute of Civil Servants regulates the work of Cambodian civil servants, excluding judges and civil servants in the legislative branch of government. In the course of their work, they are required to respect the law and are forbidden to "use the prerogatives and authority of their position for personal profits or to threaten or violate the rights of citizens".

Nevertheless, there appears to be no publicly available information on how many disciplinary procedures are carried out under the Law on Civil Servants. In fact, numerous people who work with the government, including a number of Khmer lawyers, when asked were not aware of the civil service disciplinary procedures. This suggests that either the proceedings are accompanied with an unusual level of secrecy, or that they do not occur very often.

Informal mechanisms

While there are numerous legal mechanisms for addressing corruption, many of which have been discussed above, studies on the impact of corruption consistently show that the rural poor (who comprise the majority of all Cambodians) do not use these formal dispute resolution mechanisms. Indeed, most corruption is not reported or addressed in any way. Opposition to corrupt or illegal acts seems to occur most often when the acts affect a large number of people at the same time, and there is the possibility of collective action to address it. However, even when collective action is taken, it does not seem to follow the formal rules for reporting or addressing corruption. When corruption is aimed at individuals or single families, most Cambodians seek to cope with it rather than report it.

> **"Most Cambodians dislike corruption but they feel powerless to do anything about it"**

Most Cambodians dislike corruption and recognize that it is negatively affecting their standard of living and access to services, but they feel powerless to do anything about it. Instead of trying to address corruption, most people simply cope with it. Coping mechanisms are varied. Some people simply avoid the public sector entirely, foregoing many of the services that the government should be providing because they cannot afford the payments that would be required. For example, people might not have birth certificates for their children and might not be registered with the local authorities. They might barter their foodstuffs with neighbors rather than going to the market and being forced to pay bribes along the way. If they can afford it, people might send their children to private schools and visit private health care clinics rather than government facilities.

Another coping mechanism is to try and create personal networks that can cushion the impact of corruption. Studies show that individuals who have a personal or familial relationship with an official at the service provider can avoid or minimize the corruption payment. In addition, someone who has a high-ranking patron can often avoid making payments because the official who might otherwise expect a payment is afraid of antagonizing the patron. Social networks are very important for minimizing the impact of corruption at the village and commune level. Unfortunately, the poor tend to have the smallest social networks and are thus most susceptible to corruption. People may also negotiate over the amount of the payment. This is often combined with lying about how much money the family has. In many cases, however, it seems that the payment amount for certain services is established by custom and there is little room for negotiation.

Even civil servants have reported being unable to complain about corruption, despite theoretically being better placed to do so. Civil servants tend to have a better understanding of the government's structure and rules, and better social networks, yet it is precisely these social networks that prevent them from complaining. Civil servants depend on patronage relationships with their superiors for job security, promotions, and access to

jobs that allow for collection of unofficial payments to supplement their income. They report being afraid to complain about corruption to superiors because it would destroy the patronage relationships on which they and their families rely.

> "It becomes almost a norm that the head of an agency not only employs his or her family members or relatives but also appoints them to the positions of finance director, chief of cabinet, etc."

Conflict of interest is either ignored or overlooked when it is seen as playing a substantial part in corrupt practices. It becomes almost a norm that the head of an agency not only employs his or her family members or relatives in the same institution but also appoints them to the positions of finance director, chief of cabinet, etc., and there are many cases when a bidder that won a contact, say a construction contract, was a relative of the head of the procurement committee.

Conclusions

The most obvious conclusion is that there is a great deal of corruption in Cambodia and that most of it is not reported, investigated or punished. There are numerous reasons for this. Many Cambodians do not report corruption because they do not believe the government will do anything about it and because they are afraid that they will be retaliated against for reporting it. In addition, the patronage system within the civil service makes it very difficult for government officials to report corruption without risking their careers. In fact, many civil servants' salaries are still too low to support a family, which results in a system where many government employees supplement their income through low-level corruption. Another problem is that the government's position appears to be rhetorical rather than realistic. Corruption may be investigated if it is brought to the attention of the government and if the government sees it is attached to a political gain. Finally, perhaps the biggest problem is that too many people profit from corruption and too few are punished—the ratio of risk to reward is weighted too heavily in favour of the people who profit from corruption.

While a study of anti-corruption mechanisms should look into aspects such as the institutional mechanisms, a rough overview of the legal mechanisms and real actions taken, as above, may be enough to suggest that the problem is more one of a lack of seriousness and real political will rather than the mechanisms themselves.

Even without the Anti-Corruption Law, the existing legislation plus other sector-based legislation such as the Tax Law, Land Law, Education Law, Forestry Law, Fishery Law, and Labour Law, all of which criminalize acts of corruption, can be used to address corruption at least to some extent. But the absence of real prosecution and punishment amid rampant corruption in the country makes the government's political will highly questionable and hence it will never go further without being pressured by serious and sustained demand.

Out of this conclusion Pact has been working hard over the years with its local partners on public awareness-raising on the costs of corruption and their impact on people's daily lives, generating more and more public demand for the passage of the long-awaited Anti-Corruption Law, as in the case of the so-called Million Signature Campaign in 2008, just before the general election taking place. The draft Anti-Corruption Law is likely to be passed by the National Assembly by the end of the first half of this year. However, as nobody has had access to the draft so far, nobody knows what the law will be. Anyway, having the law enacted will at least strengthen the message that corruption must be addressed and it should not be tolerated anymore. It is likely that the legislation may be used at the beginning to catch just small fish. But the scope of its enforcement could be expanded over time, since fighting corruption is definitely a long-term endeavour. In the meantime, for the law to be considerably useful, the issue of conflict of interest must also be seriously and widely addressed.

"The draft Anti-Corruption Law is likely to be passed by the end of the first half of this year; however, as nobody has had access to the draft so far, nobody knows what the law will be"

Civil society, political parties, the private sector and donors could help with long-term campaigning. The government's current reactive approach to corruption appears to be driven by several factors, including: 1) lack of proven political will but strong political rhetoric; 2) lack of staff; 3) lack of training; and, 4) lack of funding. While the donor and civil society community probably cannot help with the lack of political will, it could help alleviate the other limiting factors. Assistance might include: 1) training to prosecutors and investigating judges on the prosecution of existing corruption-related crimes; 2) training to police on investigating corruption-related crimes; 3) financial support for corruption investigations, like paying for transportation expenses, office equipment, etc.; 4) providing sub-grants and technical assistance to local organizations that work on corruption at the national and local levels; 5) establishing a coalition that has a strong voice to demand more action be taken by government to address corruption; 6) supporting political parties to make anti-corruption a major political issue; 7) providing education with the private sector on corporate social responsibility; 8) demanding further progress on administrative reform; and last but not least, 9) establishing a freedom of information law. Of course, to be successful, support will have to be accompanied by evidence of commitment to address corruption.

State-patronized corruption and poverty in Madhya Pradesh

Rolly Shivhare & Sachin Kumar Jain, Vikas Samvad Advocacy Resource Organisation, Bhopal, India

India is now known as one of the fastest growing economies in the world, but in Madhya Pradesh, one of its biggest states, the number of malnourished children has gone up from 53.55 to 60 per cent, while the number of anemic women has gone up from 47 to 57 per cent. The state also has one of the highest infant mortality rates in the world. Furthermore, definitions and calculations of poverty are fabricated and are not designed honestly to provide protection to the most marginalized, but are used to cut down the state's responsibilities towards deprived sections, and use state resources more and more for the benefit of the corporate sector and capitalist political ideologies.

In warfare, one section of the army tries to de-link the food supply to its enemy, believing that due to non-availability of food soldiers will not be able to fight and will lose the battle. At present people in Madhya Pradesh are kept hungry so that they are not in a position to fight for their socio-economic and political rights. In such a situation, struggle groups divert their actions from larger issues to small ones, like the public distribution system, old-age pension, or small scheme-based benefits.

Combating malnutrition in Madhya Pradesh: A policy illusion

We have been raising the issues of malnutrition and related deaths in Rewa district of Madhya Pradesh. This district is located in the Baghelkhand socio-cultural region of Madhya Pradesh, where feudalism is an integral part of the social structure. When the issue of child malnutrition was raised through human development and human rights networks (Right to Food Campaign, Madhya Pradesh Lok Sangarsh Saajha Manch), mainstream media and the Asian Human Right Commission's (AHRC) Hunger Alert programme, local authorities and state and central governments were asked to look into the matter urgently.

The higher authorities did not bother to check the critical situation themselves and left it to the local system (which was already brushing it under the carpet with fake data). In such a

situation grassroots organizations (like Adiwasi Adhikaar Manch, Samaj Chetna Adhikar Manch) went into an intensive data-collection process. It has been very difficult to establish the fact that certain deaths are caused by malnutrition, so civil society has followed a strategy of establishing malnutrition deaths by using circumstantial evidence—shrinking livelihood opportunities, denial of access to natural resources without alternative arrangements, social exclusion, failure of state welfare or food programs, and evidence of rampant corruption.

Later a team of government officials visited only the villages as reported in the print media. They did not even make efforts to see the condition of the surrounding villages. What they did in the villages that they visited was to reweigh the children (to re-identify the grades and levels of malnutrition). The state machinery put the small kids on the corner of the Salter scale plate to show higher weights. Once their upper side weight got registered, they were pushed out of the list of Severe Acute Malnutrition and nothing was done to fix the conditions. Their only purpose was to undermine the reports of critical malnutrition and related deaths, mostly among tribal people and dalits.

The incident is not secluded. It is often repeated to play down the problem of severe acute malnutrition in Madhya Pradesh. The state government says that 39,000 children have been identified as severely malnourished, but on the other hand the National Family Health Survey (NFHS-III) has come out with a conclusion that around 1.3 million children under the age of six are severely malnourished. This difference is due to the callous attitude of state functionaries. A complaint regarding the official figure was lodged at all levels of the state system with evidence from various studies undertaken by civil society organizations, but there was no action or reaction from state institutions. They acted only in a denial mode, which is a very common and planned strategy. State institutions willfully abjure their accountability and fail to tackle the situation.

Recently the Right to Food Campaign-Madhya Pradesh Support Group undertook field surveys on food rights and found that children are getting supplementary nutrition under the Integrated Child Development Scheme (ICDS) only for a period of 75 to 100 days, against their entitlement of 300 days in a year. Since Anganwadi workers are working at the village level to execute the ICDS programme, the general perception of common people is that these workers are siphoning off ICDS food. Thousands of Anganwadi workers are viewed as corrupt, but people have failed to analyze the problem. When we made a detailed study of the provision we found that out of 13 billion rupees allocated every year to provide supplementary nutrition to all defined beneficiaries (children under the age of 6 years, pregnant and lactating women, and adolescent girls), only two to three billion rupees on average had been disbursed by state and central governments to cover all beneficiaries. Thus, there

is deliberate denial of the food rights of children and women. Such policies have an adverse impact on the overall performance of the programme and on the frontline workers, the Anganwadi workers who are also victims of the irresponsive and callous state machinery.

"For the last nine years the Supreme Court and civil society have been trying to ensure that central and state governments in India perform their constitutional roles to deal with hunger and famine"

From loopholes to black holes in the grain basket

For the last nine years the Supreme Court and civil society have been trying to ensure that central and state governments in India perform their constitutional roles to deal with hunger and famine. The Public Distribution System (PDS) is a key programme to provide subsidized rations to poor and vulnerable people. However, the government at both levels has failed to provide basic entitlements to people under the PDS.

In the past two-and-a-half years the rations available through the PDS have assumed great significance for the 65 per cent (6.7 million identified by the state government) families living below the poverty line due to insecurity of livelihood, various deprivations and skyrocketing prices of basic items. But in this crucial period the state government, under pressure from free market fundamentalists, has not only reduced the quantity of grain available under the PDS but has also failed to take any solid steps to improve the system and to ensure that the exact quantities of rations reach the right people.

A ration-card holder, Rajjibai Ahirwar of Bagmau Panchayat in Chhatarpur district, contends that *roti* made out of red flour from red wheat becomes rock hard on getting cold and tastes like fodder. The quality of wheat has degraded to such an extent that even animals refuse to eat it. But poor families are forced to eat it under abject poverty and food insecurity. This is because in ration shops of Madhya Pradesh extremely poor quality wheat, which is harmful to health and has been imported from Australia and other countries, is being distributed to families living below poverty level.

In the absence of an adequate support system, people are forced to buy poor quality rations that have adverse heath impacts. Health complications, including stomachaches and stomach upsets, have been reported regularly by beneficiaries. Many of them have used this wheat as seed in their agricultural fields and the local variety of wheat seed is gradually vanishing. People who have used such imported wheat as seed have failed even to get back their investment. Yet when 300 tribal people of the tribal-dominated Kesla block in Hoshangabad district went to meet the state chief minister to ventilate their grievances with wheat samples, they were arrested. And this was on a day when the chief minister was inaugurating a special plan at Kesla to eradicate malnutrition.

A survey of the present situation in Madhya Pradesh showed that the state government should distribute 35 kilos of rations per family to 5.1 million families. Thus the state should provide

2,142,000 metric tonnes of grain under the PDS. But the central government has estimated that there are only 2,487,000 families in the state below the poverty line. As per this estimate the food ministry of the government of India is providing only 1,068,216 metric tonnes of grain. This means that 2,613,000 families in the state are either being totally deprived of the benefit of the scheme or the rations meant for about 2.5 million families are being stretched and distributed to 5.1 million. After corruption, only about 450,000 metric tonnes of grain are reaching the beneficiaries.

"The large-scale corruption in the Public Distribution System is clearly a violation of human rights"

The Planning Commission of India in its report on the performance of the PDS system clearly stated that Madhya Pradesh is amongst those states where 50 to 75 per cent of grain is being sacrificed at the altar of corruption, i.e. each of the 5.1 million beneficiaries is getting on average just 15-25 kilos of rations, with great difficulty. Similar to the Anganwadi workers, the PDS dealers—who through cooperative societies implement the PDS system—are again considered to be the main culprits, but actually they are not. It is true that they are an important part in the corruption chain, but they are certainly not the central component.

Apart from the PDS dealers, the Department of Food and Civil Supplies and the state government are supposed to ensure the quality of wheat under the PDS and also monitor its effective implementation. But for more than a year-and-a-half the rations provided have never been checked for quality. When the Maharashtra Government got 265 samples of these grains checked at the Konkan Bhavan Public Health Laboratory (Navi Mumbai), they found that 229 samples were unfit for human consumption!

The large-scale corruption in the PDS is clearly a violation of human rights. On World Food Day 2009, the National Human Rights Commission took the initiative to address the issue and advocated for active vigilance committees to fight against hunger and famine. This kind of proactive step is required to ensure effective implementation of the programme and also to improve the system.

The extent of malnutrition, hunger and starvation in Madhya Pradesh speaks volumes to the ineffectiveness and inefficiency of state delivery mechanisms on food rights. People do not die overnight due to starvation or hunger but they do over time due to deprivation and food insecurity. The government finds it easy to escape from its responsibility and accountability. The situation of food insecurity is extremely grim and is directly responsible for the riots at ration shops of West Bengal, and the Sindhi and Shivpuri districts of Madhya Pradesh. The state and central governments should act, if not on moral grounds, at least on political grounds, as food rights may well be the next electoral issue.

Guarantee of employment but not of wages

"The state government of Madhya Pradesh has constantly ignored constitutional and legal provisions as well as directions of the Supreme Court in fixing minimum wages"

In Madhya Pradesh, the number of marginal workers is 6.6 million and that of small farmers is 3.7 million. Thus 10 million families are basically dependent on labouring work for their incomes. At present, about 94 per cent of workers are earning their livelihoods in the unorganized sector, where they are subjected to widespread exploitation. However, implementation of the National Rural Employment Guarantee Scheme (NREGS), which ensures 100-days employment per year, raised the hopes of working people to meet their basic needs by earning minimum wages. In the state, rates of minimum wages for agricultural workers are fixed as per the Consumer Price Index and accordingly the present minimum basic wages are fixed at 91 rupees per day/person. Is this amount sufficient to meet bare amenities, especially in the context of the present price index? Wages have been increased by three per cent every year, while the inflation rate in India has been registered at more than six percent in the last two years.

The Minimum Wages Act, 1948 is based on article 43 of the Constitution of India, which provides for the fixing of minimum wages for workers that are sufficient for them to lead a respectable social life. In reality, the act in no manner acts to fix minimum wages that are sufficient to meet the food requirements of a worker and family members. It merely favours minimum wages that meet the needs of 2700 calories of food per person, 72 yards of cloth for the family, and shelter needs. In addition, for home lighting and cooking fuel an amount equivalent to 20 per cent of minimum wages is also fixed as part of wages. The Supreme Court of India, in one of its historical judgments in 1991, also directed that for meeting the educational needs of children, health facilities and other social requirements, an amount equivalent to 25 per cent of minimum wages had to be added.

However, the state government of Madhya Pradesh has constantly ignored these constitutional and legal provisions as well as directions of the Supreme Court in fixing minimum wages at 91 rupees per day. Thus, in a family of five members the share of each comes to 18.05 rupees per day, i.e. nine rupees per meal. On the other hand, to meet the requirement even of the Minimum Wages Act for 2700 calories of food per person now requires an expenditure of 31 rupees per day per person, and for meeting the clothing, education and health needs, an additional 19 rupees per day per person. As against the required minimum wages of 250 rupees per day for a family of five (31 + 19 = 50 x 5) the government is paying only 91 rupees.

In Majhera village of Shivpuri district of Madhya Pradesh the stone mines were closed down on account of heavy losses due to illegal mining, and there are no effective alternatives to employment here. Now with the implementation of the NREGS, scope for alternative employment has been created. People demanded 25 days of work and got it. But they stopped working

under NREGS just after two days because the amount of minimum wages as compared to the extremely taxing physical work was not sufficient. It was also too meager to feed their families and meet other basic needs like health, education, clothing, etc. This is not only the case of Majhera village but also of scores of others where people are attempting to meet their basic needs by working for minimum wages. The rate of minimum wages fixed in Madhya Pradesh is not adequate for two square meals a day, let alone the needs of health, education and shelter.

"The need is not only to increase the basic rates of minimum wages, but also to change the basic approach towards the whole issue"

The need of the hour is not only to increase the basic rates of minimum wages, but also to change the basic approach towards the whole issue. The rates of wages are fixed as per the Schedule of Rates (SoR) for respective works. In Madhya Pradesh, digging of 100 cubic feet on leveled surface is the minimum target, while on hard surface or *murrum*, it is 64 cubic feet, and minimum wages are to be paid only upon completing this targeted measurement (task basis). However, while linking SoR with minimum wages, it has been overlooked that SoRs are applied where the construction work, under various government schemes, is executed through contractors, where the prime objective is only to get the work completed, not to ensure employment or to provide relief against poverty to the workers.

While fixing the SoR, the government has completely overlooked varying geographical and regional conditions. For example, digging soft soil in Hoshangabad district and hard and semi-hard surfaces in Badwani districts are two different tasks. The government has fixed similar labour standards in both the places, irrespective of their geographical conditions.

A task rate study (known as a time and motion study) is essential to decide minimum wages in India. The government of Madhya Pradesh has not carried out an authorized study on task rates that will actually decide the amount of work that can be done by a nutritionally secure or insecure person in different conditions and circumstances. But armchair technocrats keep on deciding the tasks for poor laborers every six months, based on their own assumptions. The poor have to pay a heavy price because they have to complete tasks that are not at all realistic for them.

The Sahariya community, a tribal group, is one of the poorest and most nutritionally insecure communities in the world, but if they want to come out of chronic hunger through the National Rural Employment Guarantee Act (NREGA), 2005 they have to comply with the standards set down by the state. The majority of the community is weak and undernourished but they are asked to work 100 cubic feet for the minimum wages paid. The work is measured on the assigned task work. There are several instances where people have got just 20-30 rupees per day under this task-based work.

"The government is perpetuating malnutrition and hunger by depriving people of minimum wages"

The NREGA was enacted to provide employment to needy people and create rural livelihood assets to improve the situation of poverty and unemployment, track distress migration, etc. Government officials in their attempts to show targeted progress of the work apply fixed standards with absolute strictness and resultantly workers are deprived of their full day's wages. Consequently, their malnutrition, hunger and poverty remain unchanged. In other words, the government is not only aggravating the situation but also perpetuating malnutrition and hunger by depriving people of these minimum wages.

In Dindori, a tribal dominated district of the state, the chief executive officer and sub-engineer (who is responsible for the valuation of work done under the act, after which payments to the laborers are made) in coordination with the Sarpanch (head of Panchayat) and Panchayat (village tract) Secretaries of 10 village Panchayats of Karanjiya block siphoned off funds worth 80 million rupees within three years. It means tribal villagers either did not get their legal entitlement of employment or they were not paid their wages for their hard work. This public fund was allocated for ensuring the proper implementation of the NREGA, so that families could be protected from hunger and starvation. The present picture of the villagers is that they have worked for half a million person days but are still living with hunger and waiting for their rightfully-earned wages.

It is clearly evident from this case that:

1. The district and state administrations are aware about the ill happenings in the villages and block under the NREGA.

2. The NREGS has an advanced system of data collection from village to central government level, where all information is put in the public domain and analyzed by experts on a regular basis. It also has a provision for a regular social audit at the village and Panchayat level every six months, where both physical and financial matters are reviewed in the presence of the community. But in Karanjiya block, the bureaucracy and technocracy did not give any space for this system to work at all.

3. On the basis of such irregularities, a First Information Report was after six months filed with the police against the chief executive officer, sub-engineer, Sarpanch and secretaries. But even if an investigation is initiated, it will take years to come out with its findings, and there is no guarantee that the responsible persons will be punished. Meanwhile, for the workers, six months to three years have passed since the date that they laboured, but they are yet to get their wages!

The NREGS and caste struggle

Hardua Gram Panchayat comes under the Rewa district of Madhya Pradesh. It is part of the Baghelkhand region, which is recognized not only for deep-rooted poverty but also for feudalism and caste-based discrimination. Charmakar and Kola are the dalit and tribal communities residing in Hardua Panchayat, along with Patels, Kurmi and Brahmin who are from the upper castes. Almost all the dalit and adivasi communities residing in the area are landless, and earn their livelihoods either from their caste-specific work or from daily wages. They usually work in the fields of Patels and Kurmis and are paid wages of 20 rupees per day on average.

> **"The NREGA created a ray of hope for people wishing to free themselves from dependency on work upon private land for meager wages; but it was not fulfilled"**

The NREGA, which was brought into effect on 2 February 2006, created a ray of hope for people wishing to free themselves from their dependency on work upon private land for meager wages. But their wish was not fulfilled, as they were not provided with any work under the NREGS for a long time. Then on 15 September 2007, 341 dalit and tribal workers gathered at the Panchayat office and applied for work, but were not accepted by the upper-caste Sarpanch, Harihar Singh Patel, on some pretext or the other. The truth was that making work available to people under the NREGS would have been self-defeating for the upper castes, which own most of the private cultivatable land, as during the harvest season there would have been a scarcity of labour and people would have also demanded higher wages, at par with the NREGS rates.

However, the educated youth of the villages read posters and pamphlets on the NREGS and started informing workers about the opportunities and provisions of the act. Vikas Samvad, a local NGO, played a key role in spreading awareness and extending support to people in their struggle. The workers again applied for work to the Chief Executive Officer (Block Development Officer) at the Janpad (block level). Following this, the Chief Development Officer ordered the Sarpanch to start the NREGS work at the Panchayat level. With this order renovation work of Shiv Talab (pond) was started.

After working for seven days no wages were paid. Workers made a demand for timely wage payment as per the act. The Sarpanch tried to suppress the demand by verbally declaring that the work had been stopped, but there was no official order pertaining to it. The people, however, were aware that the work would at least be carried out for 14 days at a stretch, as per the law, and could not be stopped mid way. So they continued to work. The struggle for payment of wages continued along with the work. All the workers realized that it would be difficult to fight against the Sarpanch, as to do so is tantamount to challenging the age-old feudal culture. They therefore started discussions and organized meetings at different dalit and tribal villages of Hardua Panchayat to mobilize people.

"Non-payment of workers for thirty to forty days of NREGS work forced people to starvation"

Seeing the increasing strength of the dalit and tribal communities, the Sarpanch played the trick of divide and rule. He tried to motivate some workers in his favour and asked them to do roadwork in the centre of the Panchayat. The unity of the workers could not be broken and they decided to stick together. They also demanded the recommencement of the Shiv Talab work, as it was the main source for water for all of them.

Meanwhile the workers placed their demand for work and pending wages before the NREGS implementing officers at the Janpad and district levels. No heed was paid to their submissions. The workers of Haradua resorted to a hunger strike at the Simiria Tehsil Office from 28 September 2007. No NGOs or political parties were allowed to play any role in this struggle of dalits and tribal people. It was purely a people's struggle. The struggling workers formed their own organization, called Hardua Sangharsh Morcha, to fight collectively against the exploitative system. The Right to Food Campaign of Madhya Pradesh also joined its hand with the workers in their cause.

During this struggle, the district administration came up with a new excuse that the Shiv Talab work had been stopped because out of its 6.5-acre area, three acres belonged to a private party and came under another Gram Panchayat. In response to the new revelation, the representatives of the Right to Food Campaign of Madhya Pradesh met the District Collector, D.P. Ahuja, who further complicated the whole matter by saying that a portion of the Shiv Talab belonged to a local advocate, Rajkumar Pandey, therefore the administration could not go ahead with the work. The government documents collected by the volunteers of the right to food campaign, however, suggested that Shiv Talab is a 300-year-old pond and has always been used for public purpose. Although some part of the pond belonged to a private party that party had never made any claims for it.

The workers kept their struggle alive in a completely non-violent and democratic manner by continuing the work in the pond without payment for 60 long days. The determination of the workers saw them through this struggle. Two workers, Sukhwanti and Shivmangal Saket, lost their lives to the cruel hands of death while several families went to bed on empty stomachs on subsequent nights. But the struggle continued. Sachin Jain, a leader of the right to food campaign in the state, said that,

> The deaths of Sukhwanti and Shivmangal Saket were clear cases of starvation deaths. The people here are daily wage earners. Non-payment of workers for thirty to forty days of NREGS work forced the people to starvation. In case of private works they would get low payment but would at least get the payment to meet their day-to-day needs. We have submitted memorandums of these starvation death cases to the Chief Minister's Office, Advisor to the Supreme Court's Commission on Right to Food and other authorities.

As part of their strategy to mobilize the villagers, the members of the Hardua Sangharsh Morcha formed small groups and visited nearby villages to orient others on the issues of the NREGS. More and more workers identified themselves with the Hardua Sangharsh Morcha. People even observed the festival of light, Diwali, as the dark Diwali as a mark of protest against injustice. During the struggle, a public meeting was held in Hardua where more than 1500 people from 25 nearby villages participated. It was decided to gather at the Simiria Tehsil office on 19 November 2007. In the week beforehand, 14 regional and national people's organizations joined hands with the workers of Hardua. On the 19th, the Tehsil office was *gheraoed* and the Tehsildar (sub-judicial magistrate) was offered roses by the workers as part of their *Gandhigiri* to register their demands. After this the administration buckled under peaceful protests and pressure and started addressing the demands of the workers one by one.

"Even though many political parties showed interest to back the struggle, people unanimously denied them, as they perceived all parties as opportunists"

After 60 days of the Hardua Sangharsh Morcha's struggle the administration started listening to the demands made by the workers. During the struggle the pressure from the media and other quarters also worked. The state advisor to the commissioners of the Supreme Court on right to food also intervened in the issue and asked the district administration to pay the wages to the workers by 30 November 2007. District Collector D.P. Ahuja visited Shiv Talab and came to know that it is a community property and the information given by the Panchayat members was misleading. He therefore ordered the payment of pending wages.

The workers celebrated the first victory of their struggle for their rights on the grant of wages of 10,000 person-days of work by the administration and the release of a sum of 750,000 rupees, although the amount paid to the people per day was less than the minimum wages. As a follow up to the struggle, a number of roads, ponds, etc., were sanctioned to the Panchayat. The people of Hardua won the battle but the war continues.

The struggle is important for five reasons. First, as noted above it is purely a struggle by the people without any involvement or support of NGOs or political parties. Even though many political parties showed interest to back the struggle, people unanimously denied them, as they perceived all parties as opportunists. Secondly, it was done purely in Gandhian style, such as offering flowers to the Tehsildar. The boycott of work despite having no food in home is reminiscent of the Ahmedabad mills strike in 1918, where workers boycotted work in demand for an increase of wages. Third, it set an example for others to follow. Fourth and most importantly, it took the shape of a struggle that challenged the existing exploitative system, with its feudal characteristics. Last but not the least, women played a major role in the formation and functioning of the Hardua Sangharsh Morcha.

> **"The state does not intervene to solve social conflict in India; it actually divides social groups and lets them fight against each other"**

Rambharan Saket, one of the leaders of the struggle, had to pay high a price for raising a voice against injustice and exploitation. His daughter had a mild mental abnormality. One day she did not return home from work. After waiting for some time, when the people of his community (Charmakar, leather workers) went to the nearest Simiria Tehsil police station to file a report, the police attempted to malign her integrity by saying, "Your daughter is not an angel, she may have eloped with some boy." The girl's dead body was found about six kilometers from the village, after some days. The police did not even register a case, let alone launch any inquiry. It is suspected that the girl is a victim of feudal backlash.

Similarly, Ramavatar, a cobbler by profession, was also fighting for his right to equality and employment along with the villagers. Once one of his pigs accidentally entered the field of an upper caste person (a Patel) in the village. The Patels then severely beat Ramavatar.

The Hardua struggle proves that the state does not intervene to solve social conflict in India. It actually divides social groups and lets them fight against each other. The administration (local to state) made all efforts in this case to suppress the demands and struggle of these labourers. When it could not establish that they were wrong on facts, it manipulated the valuation process. And at last the administration announced the payment of wages that came to 12 rupees a day, after valuation of work. Imagine, each person was paid 240 to 720 rupees for their six to 20 days of hard work, and they sacrificed two lives for this meager amount. The Sarpanch who committed gross violations of human rights and breached the NREGA was not charge-sheeted and was freed after a formal enquiry, as he belongs to the ruling class in the system now.

Outside the judicial system

The citizens of Zharer village in Sheopur district, Madhya Pradesh, do not want to visit any government offices any more, not because they do not have anything to demand, but because they have lost all faith in the system. They are Sahariyas, one of the most deprived sections of our so-called developed society. In a span of one month in September 2008, 18 of their children died of preventable causes. The deaths happened more than eight years after the apex court defined welfare as a part of fundamental rights. In reality, for Zharer people social justice means lodging complaints repeatedly without any acknowledgement or redress.

On 23 July 2001, the Supreme Court emphasized that,

> In our opinion, what is of utmost importance is to see that food is provided to the aged, infirm, disabled, destitute women, destitute men who are in danger of starvation, pregnant and lactating women and destitute children, especially in cases where they or members of their family do not have sufficient funds to provide food for them. In case of famine, there may be shortage of food, but here the situation is that amongst plenty there is

scarcity. Plenty of food is available, but distribution of the same amongst the very poor and the destitute is scarce and non-existent leading to malnourishment, starvation and other related problems.

Almost the same situation is prevailing today but even after nearly nine years of Public Interest Litigation (PIL), these entitlements could not be covered under the social justice system, because we do not have such a system. Meanwhile, cases of alleged corruption in government welfare schemes are investigated through the same bureaucratic institutions—like collectors, sub-divisional magistrates or Tehsildars—who often have a dubious role in these schemes.

While the debate on poverty and starvation rages, we should understand that there is need to decentralize our social justice system for protection of fundamental rights. Presently, citizens who seek systemic change on people's issues or protection of their rights can file PIL only in high courts or the Supreme Court, which are inaccessible to poor people most of the time. The local courts are not empowered to look into matters of starvation, hunger, malnutrition, or exclusion from welfare services.

"Presently, citizens who seek protection of their rights can file Public Interest Litigation only in high courts or the Supreme Court, which are inaccessible to poor people most of the time"

It seems that district courts should be made more powerful so that they can look into cases and give proper directives to the government, particularly the executive. Under the Civil Procedure Code, the district courts cannot interfere in these matters, but the Supreme Court has come out with several interim orders on food security, the right to nutrition, freedom from starvation and social security that are equivalent to reference laws. Thus district courts could take responsibility to ensure their implementation. This should be done without any delay. The district courts are now full of cases of bounced cheques or non-payment of bank installments in loan schemes. Are these the most important legal matters?

We have to view rights violations in the present system at four different but interconnected levels. At the first level is the community, which needs protection from the state, and for which food, employment and social security are lifelines, but in which—owing to discrimination, deprivation and corruption—confidence of the state is in decline. The second is the administrative level, which is responsible to provide those protections enshrined in the constitution, but is not doing so due to corruption and accountability. The third level is law and policy-makers, consisting of the structures and people that formulate rules and regulations, which have moved away from society over the years, so that laws and policies now seem to oppose the basic rights of people. At the fourth level is the judicial system, which is approached when people become disappointed with various other levels of functionaries, but which if too far away from the concerns and rights of the people allows the bureaucracy to get out of hand, as has happened in our system.

Distress migration: No issue

"One district of Bundelkhand alone has seen over 150,000 farmers migrate in a single month"

Dharampura village of Shivpuri district in Madhya Pradesh has three Sahranas (small pieces of land at the outskirts of villages where Sahariyas live). The Sahariyas of Dharampura are landless, and all of them work as labourers. For 6-8 months of a year they are migrating, working in nearby towns like Dabra, Datia and Sheopur.

These people are extremely poor. Most of them are left with no money and no food when they return from migration. Indebtedness is common among them. During the migration period most of them do stonecutting work in mines. Some of them also do agricultural work on daily wages. They earn 40 rupees per day, which is much lower than the minimum daily wage ensured by the law. Getting adequate food remains a distant dream for almost all of these people throughout life. Malnourishment and poor nutrition is the destiny of every Sahariya child in this village.

Upper caste and dominant people of the village exploit these people and treat them in an inhuman manner. The conditions of female widowers and elderly people are unimaginable. As they are unable to work, they are totally dependent on the charity of other people who themselves are not in a position to provide food or shelter to even their children.

Such stories are increasingly common in Madhya Pradesh. People have been moving from rural to urban areas too. Migrants are engaged in different types of work in rural and urban areas. In rural areas, migrant workers generally engage in agriculture and allied activities, followed by casual work. Migrants in urban areas are engaged in construction work. As per the 2001 census, out of 60.3 million people in Madhya Pradesh, 18.2 million were reported as migrants by place of last residence.

In recent years, a very high rate of distress migration has been witnessed in various parts of the state, as due to unfavourable conditions, manmade disasters and natural calamities like drought, millions of people are forced to leave their places of birth and residence.

According to estimates from one district of Bundelkhand, Chattarpur alone has seen over 150,000 farmers migrate in a single month. In villages, rows of houses lie locked, the occupants having migrated. The few houses that are still occupied have only children and old men and women, as they cannot work. However, almost no methodical data have been collected on the prevalence of this temporary migration, about the conditions under which people migrate, the costs and risks of migration, or the impact of remittances on the household and village economy.

There are no proper records and data on displacement in Madhya Pradesh. Departmental officers claim that it is not their responsibility to keep information regarding displaced persons. The policy of rehabilitation has been notified in the state gazetteer of the state government, and that is all.

In the absence of factual information, it is very difficult for policymakers to know the causes and level of migration, and is difficult to protect the rights of the migrants. The present development policies are the key source of distress migration in India, but there is no system to track this rapidly emerging issue. Since there are no data available, the state does not need to take any action, as there is no consolidated picture available for any one.

"The most disheartening factor is now that the state stands with corporate interests and pushes villagers out from their land"

Displacement-induced development

Madhya Pradesh has been one of the laboratories of development projects in India. During the last three decades people have been displaced from their homesteads and lands in the name of development projects, including dams, national parks, sanctuaries, mines, industries, infrastructure projects, and beautification of cities, and this activity is continuing even now.

In Singrauli district recently the government acquired land for the Essar Group to establish a Super Thermal Power Project. Farmers are campaigning against the company and demanding only land for their land. The Essar Group required 1250 acres of land to set up the power project and there is talk of providing compensation. But it is clear that proper rehabilitation is not being done in Singrauli.

The most disheartening factor is now that the state stands with corporate interests and pushes villagers and farmers out from their land or resources. Now policies are framed in such a manner that communities are legally bound to leave their land in most cases. The new Land Acquisition Act and R & R Bill have been the topic of much controversy and debate, both within political circles and among civil society organizations involved with people's struggles and movements all over India. At the root of the debate lie questions related to the definition of 'public purpose' and 'infrastructure' and the need for and extent of involuntary displacement that is caused by the former.

The incongruities in the two bills are disconcerting, as they do not attempt to redress the question of involuntary displacement and work on the 'Better off Principle' for the dispossessed. Even more threatening is that the new bill writes 'private corporate interest' into 'public interest' to facilitate and justify the acquisition of huge chunks of agricultural land.

The Mamata Banerjee-led Trinamool Congress in West Bengal has raised objections on the provisions that allows for private investors acquiring up to 70 per cent of land from farmers and landowners, while the remaining 30 per cent can be acquired by the government. She has voiced her opinions in several interviews and even in the Union Cabinet meeting to discuss the proposed bills. Some reports also take into account the changed definition of an "infrastructure project", which has been widened to include a vast swathe of industrial activities—from

water supply and irrigation projects to mining, power generation, transmission and supply of electricity; construction of roads, highways, airports, etc.

"Hundreds of thousands are displaced due to projects like road construction, urban development and establishment of industries"

The R&R Bill is on the other hand not based on the 'Better Off Principle' or 'Land-for-Land' entitlement, which is most crucial, as also recognized by the Supreme Court in the Narmada cases. Even provisions for conducting a Social Impact Assessment or an Environmental Impact Assessment are half-hearted measures that do not attempt to study the real effects of the project on people post-displacement, nor are those to be the criteria for decision on the project itself.

The Central and State Governments have evicted tens of millions of people—especially tribals and forest dwellers—from their habitats and having deprived them of their livelihoods and natural resources have also practically finished their cultural identities under the guise of development.

The government presented rosy dreams of health, employment and education through various projects for the displaced, and claimed that only through these would their standard of living improve. But unfortunately they have remained distant dreams, never converted into reality. Projects came up in these many years but all that the people had accumulated was snatched from them.

If we pay attention to just those figures of people who have been displaced by dam construction we can see that in the whole country the figures reach to almost 40 million families. The World Bank has reached a conclusion after study of 11 dams that 2.5 persons are displaced per hectare, whereas according to the Central Water Commission the figure of persons displaced per hectare is 1.1. Every dam project is created and approved at the highest level of government and at the cost of displacement and further loss. The figures of displaced people continue to rise along with their problems.

The struggle going on for the last two and half decades against the dams on the river Narmada is one example. The poor tribal people are being defrauded in the name of development, whether at Sardar Sarover, or at Maheshwar or at Omkareshwer. No solution has been found till today for those who were displaced from the Bargi Dam area, built in 1984. The government has not given information regarding the people displaced by the Tawa Dam built in the 1970s and those displaced by the Banganga Dam built in the 1980s.

In addition to these displaced persons, hundreds of thousands of others are getting displaced due to many other projects like road construction, urban development and establishment of industries. In the name of development, large projects are regularly being finalized which will lead to displacement of a huge number of people. But the government has no clue or information

about these displacements. The question here is that if the government has no clue about these people then how is it going to rehabilitate them?

The saddest part of the story is that people once displaced keep getting uprooted repeatedly. They are often displaced in the name of irrigation projects, electricity projects, national parks, wildlife sanctuaries—and the list continues. Once uprooted from their culture and roots they find no permanent place to settle down and have to adjust in inhuman conditions in resettlement shelter homes or other areas where there is no electricity, no school, no primary health centre, and no Anganwadi centre for children. But life continues. It is an awkward situation for both landowners and landless families. Those who have cultivable lands do not receive appropriate and adequate compensation, and are forced to survive on what little they can get in 'compensation packages'. The landless labourers have to commute to nearby areas to work for daily wages, as there might not be enough cultivable land where they are relocated. Male members commute to nearby areas for work while leaving family members behind.

"In 2002 the MP government prepared an Ideal Rehabilitation Policy under which the rehabilitation department has responsibility, but the department is warding off its responsibility, saying that it is only responsible for the rehabilitation of refugees to Bangladesh and Pakistan"

There are no official statistics on the numbers of people displaced by large projects since independence. Also, no department is clearly responsible or accountable for these displaced people. In 2002 the Madhya Pradesh government prepared an Ideal Rehabilitation Policy under which the rehabilitation department of the state has been declared as a nodal department and it has responsibility to coordinate with the department through which displacement is taking place. But the department is warding off its responsibility, saying that it is only responsible for the rehabilitation of refugees to Bangladesh and Pakistan.

The question arises: who is responsible for the tears and pain of millions of displaced people who have sacrificed their lives and livelihoods for so-called national development? What is national development if it is not people's development?

Who pays the price for corruption?

Who pays the price of corruption in governance? There may be no answer to this question, as it involves the politics of accountability and self-realization. But when we look at the grassroot realities of systemic corruption and unaccountability, it comes out very clearly that the most marginalized pay the price of corruption. This makes them more vulnerable and poor.

The government system at all the levels in India does not take responsibility for its officials. The money that villagers are owed they do not receive. Poor workers are suffering and will continue to suffer for crimes they have not committed. Administrators are not concerned about people's entitlements; provisions under statuary audit are the prime concern for them.

Instead of statutory audits, what we need is a social audit system to assess different aspects of work and also encourage community monitoring through active participation. The time has come to find mechanisms for policy audits whereby all gains and losses are evaluated on the basis of what is enumerated in the policy framework.

This paper has sought to highlight that monetary gains are not the sole means of corruption and that various practices can be devised and developed to exploit the loopholes in the government system, which churns out schemes and projects aimed at political gains. While a small section of the population in Madhya Pradesh continues to bask in the glory of development, the majority is still struggling for the bare necessities, thanks to the corruption that has seeped into the system, affecting one and all.

Some closing thoughts about corruption in Asia

Basil Fernando, Director,
Asian Human Rights Commission &
Asian Legal Resource Centre, Hong Kong

The regional consultation on the elimination of corruption and the creating of conditions for transparency, integrity and accountability held in Hong Kong from 11 to 15 January 2010 was an occasion for a number of persons who have been very much concerned with corruption in our region to freely discuss about the situation in their societies. As is usual in a meeting of this sort organised by the Asian Human Rights Commission, it was held with complete openness for participants to share their experiences and points of view sincerely.

Bluffed

The overall impression that emerged throughout the meeting was of a group of Asians who feel that they have been bluffed by their political and legal systems: that the absence of concern about preventing corruption is itself the problem. The theme of the discussion was the prevention of corruption; however, the overarching theme was that the political and legal systems operating in their countries are developed in a manner so as to frustrate any serious attempts to address this problem.

The participants were commonly concerned that the citizens in their countries feel that the prevention of corruption is not at all a concern of their systems and that, in fact, these systems aim to protect the holders of power and influence, and ensure continued possibilities for corruption. Concern for the prevention of corruption seems to be extraneous to these systems.

While they felt strongly about the need to eliminate corruption, they felt that they were in extremely powerless positions because the general policy within the political and legal systems of Asia allows for very great corruption.

Popular consensus

"There seems to be no consensus on how to go forward"

The participants also felt that they represented the feelings of significant sections of their societies in their opposition to corruption. People of Asia are in general opposed to corruption. In fact, the observations at the meeting clearly indicated that there is very strong public opposition.

This conflict between the desire of people to have significant changes to eliminate corruption, and the opposition of the system to any kind of reform that might restrict or limit corruption was one of the predominant problems that emerged through the observations of the participants.

Anger and powerlessness

Popular will is against corruption. On the other hand there is a strong sense of frustration and anger at public incapacity to change political systems and even more so, legal systems, in order to achieve their expectations. The feeling that citizens are powerless against their political systems was perhaps the deepest underlying theme at this gathering.

Most participants seemed to be very concerned about this sense of powerlessness. They were not submissive or were willing to accept this situation of powerlessness; however, at the same time there was a deep underlying confusion as to how to deal with this situation. Some kind of desperate search for alternatives to deal with the political and legal systems of their societies was reflected in the discussion. No clear ideas or beliefs about the prospects for any immediate possibility of a particular strategy emerged. But at the same time there was a strong preoccupation with finding some way through this problem.

Unresolved

The underlying dynamic of the meeting was a belief that change is seriously needed, that society must get rid of corruption, and that the political system has to develop in such a way so as to eliminate it. This was the issue on which there was clear agreement. It was also agreed that legal systems in Asia are backward and that they do not serve the interests of the people at large in dealing with corruption.

The meeting came out with many strong and valid assertions and ideas of how to proceed. At the same time it also left problematic areas where in the societies from which the participants came there seems to be no consensus on how to go forward. There were affirmations based on general agreements for various reforms; however, despite agreeing on these principles the ways in which to bring these principles to reality remain unresolved.

STOP DISAPPEARANCES IN PAKISTAN: AHRC ONLINE PETITION

The facts:

♦ Pakistan has among the highest number of enforced disappearances in Asia. Thousands of persons have been disappeared, mostly from Balochistan and also from the North Western Frontier Province, Sindh and Punjab.

♦ Intelligence agencies are reportedly responsible for the arrest and disappearance of more than 4,000 persons since the start of the 'war on terror'; 1600 persons are reportedly still missing from Balochistan.

♦ Among the disappeared persons from Balochistan are 168 children and 148 women. Many of these women have been allegedly tortured and used as sex slaves by military and intelligence officers.

♦ The military is believed to be running at least 52 torture and detention centres throughout the country.

The demands:

♦ Release all disappeared persons.

♦ Allow access to all places of detention.

♦ Close all torture centres.

♦ Establish a strong, independent and accountable body to investigate the disappearances.

♦ Prosecute those found responsible and provide the victims and their families with satisfactory reparations.

♦ Form a war crimes tribunal to investigate the disappearances of the children of Balochistan.

♦ Ratify and implement the ICCPR and the International Convention for the Protection of All Persons from Enforced Disappearance.

♦ Issue standing invitations to all UN special procedures and invite the Special Rapporteur on Torture and the Working Group on Enforced or Involuntary Disappearances.

Read the petition in full and sign online at:
http://campaigns.ahrchk.net/pakdisappearance/

In this issue of *article 2*

a consultation on
Corruption & counter-corruption across Asia

Editorial board, article 2
- Corruption and counter-corruption across Asia

Kishali Pinto-Jayawardena, Attorney-at-Law &
Sunday Times *Columnist, &*
Jayantha de Almeida Guneratne, President's Counsel, Visiting Lecturer, Faculty of Law, University of Colombo, Sri Lanka
- Bribery and corruption control in Sri Lanka

Mochammad Jasin, Commissioner,
Corruption Eradication Commission, Indonesia
- The Indonesian Corruption Eradication Commission

Adnan Topan Husodo, Deputy Coordinator,
Indonesia Corruption Watch
- Challenges in combating corruption: Lessons from Indonesia

Charas Suwanmala, Professor & Dean,
Faculty of Political Science, Chulalongkorn University, Bangkok
- Fighting corruption from the bottom: The case of Thailand

M. Shamsul Haque, Advocate, Supreme Court of Bangladesh
- Anti-corruption mechanisms in Bangladesh

Sek Barisoth, Director of Media Program, Pact Cambodia
- Mechanisms to address corruption in Cambodia

Rolly Shivhare & Sachin Kumar Jain,
Vikas Samvad Advocacy Resource Organisation, Bhopal, India
- State-patronized corruption and poverty in Madhya Pradesh

Basil Fernando, Director, Asian Human Rights Commission &
Asian Legal Resource Centre, Hong Kong
- Some closing thoughts about corruption across Asia

And
- Statement of participants at Regional Consultation on Anti-Corruption Mechanisms in Asia

ISSN 1811702-3

Printed on recycled paper

article 2 is published by the Asian Legal Resource Centre (ALRC) in conjuction with *Human Rights SOLIDARITY*, published by the Asian Human Rights Commission (AHRC).

ALRC is an independent regional non-governmental organisation holding general consultative status with the Economic and Social Council of the United Nations. ALRC seeks to strengthen and encourage positive action on legal and human rights issues at local and national levels throughout Asia.

ALRC invites submissions to ***article 2*** by interested persons and organisations concerned with implementation of human rights standards in the region.

For further details, email the editor: editor@article2.org

Back issues of *article 2* available online:

www.article2.org

Annual Subscription Fee (4 issues)

Hong Kong HK$250
Asian Countries US$35
Outside Asia US$50

Asian Legal Resource Centre
Floor 19 , Go-Up Commercial Building
998 Canton Road, Mongkok, Kowloon
Hong Kong SAR, China
Tel: +(852) 2698-6339
Fax: +(852) 2698-6367
E-mail: editor@article2.org
Website: www.article2.org