GOPAC PHILIPPINES, INC.

GLOBAL ORGANIZATION OF PARLIAMENTARIANS AGAINST CORRUPTION
ORGANISATION MONDIALE DES PARLEMENTAIRES CONTRE LA CORRUPTION
ORGANIZACION MUNDIAL DE PARLAMENTARIOS CONTRA LA CORRUPCION

PROCEEDINGS of the CONFERENCE OF SOUTH EAST ASIA PARLIAMENTARIANS AGAINST CORRUPTION

SEAPAC 2005

Philippine International Convention Center (PICC)
Manila, Philippines
March 31 – April 1, 2005

Sponsored by:

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PROCEEDINGS
OF THE

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Friedrich Ebert Stiftung,
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and all the noble souls who put their hard work
into the organization of the founding conference
of the South East Asia Parliamentarians Against Corruption.

Their support will go a long way in helping cure our nations
of the perilous ills of corruption.

For the Organizing Committee,

DEMAREE J.B. RAVAL

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FOREWORD

Our experience with corruption has been one continuing hard lesson. Corruption is not only a shameful feature of our system but, more importantly, a threat to our democratic way of life.

Its harmful effects on economic development, political stability, and social welfare are more tangible now than ever. It impoverishes us, destroys our people's trust in their leaders as well as their faith in the political process, and frustrates our efforts at instituting strategic reforms.

What we have lost to corruption we could have rightfully used to pay our burgeoning external debt or to improve public services, buy textbooks for our country's children, provide for immunization and better maternal and child health care, put in place a network of post-harvest facilities across the country, or build roads that provide both access and opportunity.

We must seize the growing global momentum to address corruption and turn our goals into a solid platform of action.

One such step has been taken, particularly in intensifying international cooperation. It is my utmost pride that the Philippines has hosted the founding conference of the South East Asia Parliamentarians Against Corruption (SEAPAC).

This compendium is a testimony of our efforts to combat corruption, beginning with each of our countries and, ultimately, our region. It is a fusion of our experiences, our vision and, most importantly, our pledge to take on this arduous task.

EDGARDO J. ANGARA
Senator of the Republic of the Philippines
Charter President - SEAPAC

HIGHLIGHTS OF THE CONFERENCE OF SOUTHEAST ASIA PARLIAMENTARIANS AGAINST CORRUPTION

Philippine International Convention Center

MARCH 31, 2005

OPENING CEREMONIES

WELCOME ADDRESS

Philippine Senator Edgardo J. Angara, Asian representative in the executive board of the Global Organization of Parliamentarians Against Corruption (GOPAC), which is based in Ottawa, Canada, stated that he was delighted in taking the lead to organize GOPAC's Southeast Asia chapter, the first in Asia as he cited the other GOPAC chapters: Canada, Latin America, North Africa and Middle East.

He stressed the need for the parliamentarians of Southeast Asia to address the issue of corruption and seek ways to eliminate it. "It is necessary for us as policy makers, for us legislators to join hands because corruption robs our people of limited resources, drives away domestic and foreign investors, and scares away our friends from visiting our respective countries," he said.

He expressed the hope that from this meeting and subsequent conferences in each of the capitals of the Asean, the parliamentarians would learn from each other's experiences, adopt the best practices on how to combat corruption and synchronize their efforts in addressing corruption.

KEYNOTE ADDRESS

Philippine Senate President Franklin M. Drilon expressed his appreciation to Senator Angara for the privilege of addressing the parliamentarians on a vital issue plaguing the region: corruption. He noted that holding the organizing conference of the regional chapter of GOPAC in Manila comes at a propitious time for Asean parliamentarians to band together and work for the development of the region.

According to the head of the Philippine Senate, one of the valuable lessons

learned from the 1997 Asian financial crisis was the need for transparency and accountability in government and private business transactions. He lamented the fact that most Asean countries are in the bottom half of the Transparency International's 2004 Corruption Perceptions Index (CPI).

Corruption exists, he said, not because of the absence of a legal framework but because of the lack of political will to address it; and that corruption is not just an economic and political issue but a moral issue because its cost to humanity is beyond calculation. Rampant corruption, he noted, results in bad infrastructure, low literacy rates, backward economy, a poorly equipped and trained military, damaged environment, and inadequate public services.

More importantly, he said, corruption stands in the way of achieving the UN Millennium Development Goal of reducing by 50 percent in ten years the number of people living in extreme poverty. "Public funds needed for education, health care and infrastructure are salted away in foreign banks," he remarked.

He urged the parliamentarians to find a lasting solution to corruption by assiduously working for the ratification of the UN Convention Against Corruption (UNCAC), which, he said, could very well be the first worldwide anti-corruption treaty that could pave the way for poor countries to recover billions of unlawfully taken public funds now stashed in banks. Citing the World Bank figure of US$1 trillion as being paid annually in bribes worldwide, he said that mechanisms must be in place to track down the flow of ill-gotten wealth.

He reiterated that the ongoing conference is an opportune time for parliamentarians of Southeast Asia to adopt a Regional Action Plan Against Corruption.

ORGANIZATIONAL MEETING

PRESENTATION OF THE PROPOSED CONSTITUTION AND BY-LAWS

In presenting for discussion the proposed SEAPAC constitution, lawyer Demaree J.B. Raval of the Office of Senator Angara pointed out the following:

- The proposed constitution was patterned after the GOPAC charter adopted in Ottawa, Canada, and was similar to the constitutions of other regional chapters of GOPAC.

- The preamble is a restatement of the first portion of the GOPAC constitution which emphasizes the need for parliamentarians to unite and adopt a common front against corruption endemic in many parts of the world.
- The SEAPAC is a nonprofit international organization whose members are the parliamentarians of Southeast Asia, and whose founding members are parliamentarians present in the conference.
- The entire membership—founding members, full members, honorary members and observers—would constitute the General Assembly which would meet every two years.
- The SEAPAC office would be located in the country where the elected president resides.
- The Executive Committee would be composed of four elected officers of the SEAPAC—president, vice president, secretary, and treasurer—with each member country represented by one member in the committee.
- The Executive Committee would do the work of the SEAPAC in the interim while the General Assembly is not in session.
- An effective Secretariat which would monitor and supervise the work of SEAPAC for the next two years is an important requirement of the GOPAC.
- Chapter IV, on financial provision, of the proposed constitution provides for the management of the funds of SEAPAC which would be sourced out from various donors and funding agencies supportive of the anti-corruption campaign;
- A bank account for the SEAPAC would be maintained and supervised by the Treasurer. Funds would be used by the Secretariat to conduct reform dialogues and conferences throughout Southeast Asia, with the participation of GOPAC and other international agencies involved in anti-corruption;
- A Code of Conduct for members are provided in Article III of the proposed constitution.

ADOPTION OF THE PROPOSED SEAPAC CONSTITUTION

Upon motion of Rep. Oscar Gozos of the Philippines, seconded by MP Dockthaisong of Thailand, with no objection from the assembled body, the proposed constitution was unanimously adopted.

ELECTION OF SEAPAC OFFICERS

The result of the election for the Executive Committee was as follows:

Sen. Edgardo J. Angara (Philippines)	President
MP Charoen Kanthawong (Thailand)	Vice-President
Rep. Joel Villanueva (Philippines)	Secretary
Rep. Oscar Gozos (Philippines)	Treasurer
MP Imam Anshori Saleh (Indonesia)	Member
Sen. Aquilino Pimentel Jr. (Philippines)	Member
MP Wang Kai Yuen (Singapore)	Member
MP Boonton Dockthaisong (Thailand)	Member
MP Nhem Thavy (Cambodia)	Member

The elected SEAPAC officers shall have a term of two years.

Other delegations expressed their desire to choose and submit the names of their representatives at a later date.

REMARKS OF MR. ULRICH

Mr. Martin Ulrich, executive director of GOPAC, congratulated the parliamentarians for formally organizing the SEAPAC and electing its set of officers. He said he was delighted that Senator Angara was elected to chair the regional chapter, pointing out that the Philippine solon has been active in GOPAC affairs for the last three years.

ADJOURNMENT

Senator Angara declared the morning session adjourned at 10:50 a.m.

AFTERNOON SESSION

PRESENTATION OF DR. MAHAR MANGAHAS:
Citizens' and Managers' Views of Corruption in the Philippines

Dr. Mahar Mangahas, president of Social Weather Stations (SWS), a prominent statistical polling organization in the Philippines, explained that part of the mission of SWS is to bring to public attention its advocacy and fight against corruption.

The highlights of his talk were:

- SWS conducts three types of surveys on corruption:
  a) Quarterly national survey of citizens' satisfaction with governance, including the national administration's performance on fighting corruption (SWS-initiated and noncommissioned)
  b) Annual surveys of Filipino managers of large, medium and small enterprises in Metro Manila and key cities on corruption in the public and private sectors
  c) Annual national surveys of citizens' views on sincerity of institutions in fighting corruption
- Citizens give government performance mixed ratings—positive on some matters, negative on others
- Corruption is government's second worst subject
- Ratings for the national administration and for Congress are volatile; at present, ratings are tepid

According to Dr. Mangahas, issues tackled in conducting surveys on the overall performance rating of the national administration and other government institutions include fighting inflation, helping the poor, collection of taxes, fighting crimes and terrorism, national security, and relations with the United States, among others.

Among the general findings on the series of surveys of Filipino managers about corruption are:

- most government agencies got worse grades
- one of every two managers personally encountered a case of public sector corruption
- many business enterprises donated to the election campaign and usually to more than one candidate vying for the same elective position

- majority of managers say that bribery to get a government contract is pervasive in their own sector, and that private contracts involve bribery too
- the business sector is willing to do its share in order to fight corruption through a private anti-corruption fund, with some businesses willing to share 3 percent of their net income; 2.5 percent for those in metropolitan area; 5 percent for those in Cebu; and 4 percent for businesses in Davao
- Two out of three managers said they are willing to join the program fund

He enumerated the following conclusions based on the statistical surveys conducted by the SWS:

- Statistical surveys of public opinion are a scientific means, especially fitting in a democracy, of monitoring the corruption problem
- The public in general and business managers in particular see corruption as a very serious problem which they expect all government institutions to try to solve
- Managers tend to be more severe as critics than ordinary citizens
- Even though some agencies are singled out as centers of corruption, the Philippine Congress—both the Senate and the House of Representatives—rate poorly compared to the executive and judicial branches in terms of corruption.

OPEN FORUM

Asked by Mr. Eduardo Vetere of the United Nations office in Geneva how big was the survey sample used by SWS, Dr. Mangahas explained that the national statistical sample is 1,200 while the business trend surveys had been growing in size—from an original 500 to a more recent 700 sample. The samples were drawn at random but the base has been expanding, i.e. Metro Manila in the first three years, then moving on to Cebu, Davao, even Cagayan de Oro.

MP Boonton of Thailand remarked that SWS is one of the best examples of an organization that is involved in the study of corruption. He asked, however, how long does it take to conduct research on these matters, where could they obtain a copy of these surveys, and how would SWS implement its findings, recommendations or conclusions.

In reply, Dr. Mangahas pointed out the following:

- One of the greatest assets of the Philippines is the political freedom exercised by its people; meaning, the freedom to conduct research on issues, and the

freedom of respondents of surveys to speak up

- Each round of surveys takes up about three months. The governance surveys, for instance, are reported quarterly while the annual surveys of enterprises need a six-month turnaround time from start up to the results
- The SWS has an archive for public use and research. There are library fees and purchase fees if one needs to obtain a copy.
- Implementing their survey findings or recommendations is a separate matter. The SWS actually uses the capacity of statistics to motivate concerned people or agencies to do something about corruption. Thus, SWS simply advocates.

Senator Angara pointed out that implementing the survey findings is really the task of agencies concerned. But the results of surveys are really powerful tools to motivate a particular sector to act, he added.

Asked by MP Yuen of Singapore if they have conducted a detailed analysis on why, for instance, people lacked confidence in the Presidential Anti-Graft Commission (PAGC), Dr. Mangahas said that SWS does not have enough stock resources to be able to examine in detail such results and neither have they conducted studies on these matters, he added.

On the query of MP Kathawongs if the SWS has received positive or negative feedbacks from national institutions that have been the subject of their surveys, the SWS chief said that based on personal experience, some major agencies have not taken offense on even negative results involving them. Some agency heads have even expressed their frustration for failing to act quickly to change the public's negative perception to positive, he said.

On whether there is a sign of decreasing corruption as a result of their surveys, Dr. Mangahas replied that there is no sign yet of corruption abating. "I don't know how long it will take, but at least we're doing our part to address the issue," he remarked.

On the poor rating that the Philippine Congress got in terms of fighting corruption, Dr. Mangahas clarified that the survey conclusion does not point out that the Congress itself is corrupt. The precise question, he explained, is how sincere Congress is in fighting corruption. The rating, therefore, is the result of the public perception on the sincerity of Congress to address the corruption problem.

Dr. Mangahas stated that the Philippine Congress has definitely a corruption-fighting function in Philippine society, especially with lots of exposÈ on corrupt

agencies and personnel emanating from the halls of the Legislature. It is disappointing, he remarked, that the whole institution comes out as insincere in its fight against corruption.

On the observation that corruption also exists during elections and in election protests filed by members of the Legislature and why this was not addressed in the surveys, the SWS chief said that his organization did indeed omitted the Commission on Elections as one of the subject agencies—an omission they would correct in future surveys.

Senator Angara agreed that the way the elections are conducted and how they are supervised have much to do with the quality of elected public officials; thus, there are pending measures in Congress that seek to address this. He cited the Political Party Development Act that aims to eliminate the practice of vote-buying, overspending and buying of certificates of votes from corrupt election officials.

PRESENTATION OF MR. VETERE:
The UN Convention on Anti-Corruption

Director Eduardo Vetere, representative from the United Nations, stated that parliamentarians worldwide have a very crucial function in the fight against corruption. For instance, he mentioned their important role in the immediate ratification of the United Nations Convention on Anti-Corruption (UNCAC). He urged the conference participants to begin the process of ratification in their respective countries.

Highlights of his discussion on the Convention:

- The UNCAC has 71 articles in addition to a Preamble that outlines the major goals of the treaty—to prevent and combat corruption more efficiently and effectively; promote and improve international cooperation and technical assistance, including asset recovery; and promote integrity, accountability and proper management of public affairs and property.
- The chapter on preventive measures stresses not only the importance of the legislature as an organ that oversees the activities of the executive but also the importance of an independent prosecution service and judiciary that could act without being intimidated.
- Articles 5 and 6 call for the need to implement effective and coordinated anti-corruption policies, such as enhancing the standards for accounting and auditing to make the principle of no-tax deductibility of expenses as

constituting bribe.

- On the issue of criminalization and law enforcement, a chapter lists mandatory offenses. It is a requirement for ratification and countries, therefore, should legislate laws that cover these offenses such as passive bribery of public officials, trading influence, abuse of functions, illicit enrichment, among others.
- The Convention provides for measures related to the crime of obstruction of justice similar to a provision contained in the Convention Against Transnational Organized Crimes.
- An innovative aspect of the UNCAC is the chapter on Asset Recovery. The fact that money should be returned to the country of origin is formally recognized as a fundamental principle of the Convention, with measures addressing the question of detection, transfer of proceeds, recovery of property, return and disposal of assets, and recovery of property through international cooperation and confiscation.
- The provisions on Technical Assistance and Information Exchange are integral parts of the UNCAC, which would have to be reviewed by the conference of state-parties as part of the implementation machinery.
- The last chapter is related to the mechanism of implementation. A conference of state-parties would be established within one (1) year after the entry into force of the Convention. All countries that have ratified the Convention, therefore, plus others that have signed as observers could attend the conference to: a) promote, facilitate and review implementation; and b) make recommendations for technical assistance needs and how to facilitate information exchange.
- Technical assistance and exchange of information deals with the training of criminal justice officials, studies, research and evaluation of criminal justice for institution building.

REACTION FROM COMMISSIONER CONTI

Commissioner Nicasio Conti of the Presidential Anti-Graft Commission of the Philippines noted that by and large, the Philippine government's existing policies in fighting corruption fit well with many provisions of the UN Convention.

Among these policies enunciated through laws are: the Anti-Graft and Corrupt

Practices Act; Presidential Decree No. 749, Granting Immunity to Bribe Givers; Presidential Decree No. 46, Prohibiting Gift-Giving to Public Officials; Republic Act 6713, the Code of Conduct and Ethical Standards of Public Officials and Employees; Republic Act 6770, the Ombudsman Act; The Anti-Plunder Law; Republic Act 9184, the Government Procurement Reform Act; and The Anti-Money Laundering Act

Commissioner Conti also pointed out the following:

- The UNCAC provides new insights and perspectives that would enable state-parties to broaden their reach and effectiveness against corruption
- It mentions a code of conduct that would prevent conflicts of interest, set internal auditing controls and promotes transparency among private entities and proper commercial practices
- Article XIII of the Convention encourages the participation of society—civil society organizations, community-based groups—in the fight against corruption
- Article XVI on the Criminalization of Bribery of foreign Public Officials of Public International Organizations needs a local legislation in the Philippines, but the rest of mandatory offenses are already addressed by existing Philippine laws
- The far-reaching implication of the UNCAC is the comprehensive road map it provides in the journey towards a global society, premised on integrity and transparency in the conduct of the affairs of the government.

OPEN FORUM

Moderator: Dr. Emmanuel Buendia, UNDP-Philippines

Issues raised:

- The UNCAC chapter on Asset Recovery requires developed countries to either review existing legislation or enact a new law in connection with the return of assets to the country of origin
- The signature of a state-party to the UN Convention is not the ratification itself. It is merely the first process but is important because it is the first step in recognizing the political importance of the instrument. The signature is a commitment of future ratification and implementation

On the observation that the United Nations itself is a corrupt organization,

Mr. Vetere clarified that the UNCAC addresses the corruption of public officials. He admitted though that the UN secretariat should be guided by a more strict behavior, bearing in mind that it is an intergovernmental organization. The manner in which the Convention was negotiated demonstrates the democratic spirit in which everything was done. Most provisions were based on proposals received from more than 25 countries in the beginning. More proposals from other countries such as China, Indonesia, Thailand and the Philippines were received during the negotiation.

On whether or not the UNCAC is a good instrument that would guarantee the process of asset recovery apart from the actions taken by the International Criminal Court, Mr. Vetere opined that the ratification of the Convention by state-parties would represent a tremendous progress that would facilitate international cooperation in the matter of asset recovery. It would be a question of goodwill and commitment on the part of all member-states, he said. He noted that cases lodged in the ICC also take so long to adjudicate.

At 4:43 p.m., the meeting was suspended and resumed at 5:22 p.m.

BRIEFING ON GOPAC BY EXECUTIVE DIRECTOR MARTIN ULRICH

Director Ulrich explained that the Ottawa-based Global Organization of Parliaments Against Corruption (GOPAC) was formed when some members of parliament concerned about the issue on corruption saw the need to form a group that would plan, monitor and report the progress of anti-corruption initiatives and activities worldwide. The group, in coordination with the UN, would also provide the political leadership, he said.

The three central parts of GOPAC's mission are: provide peer support to its members; provide the needed education of parliamentarians; and work hand-in-hand with other organizations to help provide the political clout to ensure results.

PRESENTATION OF COUNTRY REPORTS

MP WANG KAI YUEN — Singapore

MP Wang said that Singapore has an easier task of fighting corruption because his country, compared with other countries, is smaller in terms of geography and population. He recalled that in the early 1950s, corruption was rampant in Singapore but that they were fortunate to have elected first generation leaders in 1959 that exemplify absolute integrity and honesty.

To address the problem of a system-wide corruption, he narrated that then Prime Minister Lee Kwan Yew undertook the following initiatives:

- increased the pay of civil servants to a level adequate enough to support their family and a lifestyle comparable to their status in life; and
- enforced an efficient tax collection system with minimum leakage so that the Treasury have the funds to pay civil servants.

A thorough review of existing legislation was also instituted to render prosecution of corrupt officials easier and more effective, he added.

He explained that Singapore's anti-corruption measures today are based on three pillars: meritocracy; a market-based pay for public servants; and deterrence through stringent legislations and enforcement.

MP Wang reiterated the requisites in order for corruption, no matter how rampant, could be eradicated. Based on their experience, these are:

- political leaders must be fully committed in their fight against corruption;
- anti-corruption laws musty be adequate and should provide sufficient punishment to deter acts of corruption; and
- the organization charged with investigation must be independent enough to have a free hand to act against corrupt persons regardless of their social status and political affiliation.

MR. LEE CHONG SAN — Malaysia

According to Mr. Lee of the Transparency International-Malaysia, when his country's new Prime Minister Badawi took office, he introduced a National Integrity Plan that gave birth to the Malaysian Institute of Integrity to effectively address corruption. The Plan concentrated on organizational development, resource mobilization, membership development and regional networking.

Programmatic activities include policy advocacy, strengthening institutional pillars of the national integrity system, public awareness, education and training,

the conduct of public surveys to assess corruption in local municipalities, and placing emphasis on the independent media and their ability to access information.

Mr. Lee said that Transparency International-Malaysia would organize a campaign to promote investigative journalism and to amend restrictive laws such as the Official Secrets Act. Part of their advocacy, he explained, is to lobby the Malaysian government to ratify the UNCAC.

He urged the Malaysian parliament to promote the passage of freedom of information legislation that would allow the disclosure of government information needed by parliamentary investigation of cases of corruption.

REP. OSCAR GOZOS — Philippines

Representative Gozos outlined the various remedial measures that the Philippine government have already put in place to break the system of corruption in his country. Among them are:

- Legislative: the Anti-Money laundering Act; the Government Procurement Reform Act; Republic Act 9227, the law granting special and additional allowances for justices and judges; and the Customs Brokers Act
- Executive: Administrative Order No. 70, directing all government offices, agencies and financial institutions, including local government units, to organize an internal audit system; Executive Order No. 12, establishing the Presidential Anti-Graft Commission and authorizing it to investigate, conduct hearings of administrative cases and complaints against presidential appointees in the executive department; and a simplified processing system for frontline services to address the problem of red tape in government transactions

MP CHEA CHETH — Cambodia

Senator Cheth, president of the delegation of the Kingdom of Cambodia and chairman of the Commission on Anti-Corruption, explained that corruption in his country takes a variety of forms: bribery, nepotism, patronage, theft of state assets, evasion of taxes, diversion of revenue and electoral fraud. Generally, he noted, corruption flourishes when institutions of government are weak, government's policies and regulatory regime provide opportunities for the commission thereof, oversight institutions (parliament, judiciary, civil society)

are marginalized or are themselves corrupted.

He then proceeded to cite the various factors that contribute to the commission of corruption:

- *Political:* Corruption levels are linked to the strength of the civil society, freedom and independence of the press.
- *Legal and ethical:* A major factor linked to corruption is the quality of the country's legal system, existence of effective anti-corruption laws and the capacity to enforce laws. Corruption also takes place when ethical values are neglected by the people.
- *Bureaucratic:* Greater regulatory and bureaucratic interventions in the economy tend to increase the incidence of corruption. As discretion increases and accountability declines, the potential for corruption grows.
- *Salary:* Where the wages of public servants are low or there exists a large disparity between public and private sector wages, public servants are more tempted to engage in corrupt practices.
- *Economic:* Corruption is more likely to proliferate is government creates a monopolistic economic environment.

Senator Cheth emphasized that uncontrolled corruption undermines the credibility of democratic institutions and works against good government. Its most visible consequences, he pointed out, are poor public services, increased social polarization, disinvestments and exclusion.

He said that in combating corruption in his country, Cambodian Prime Minister Hun Sen issued warnings to public servants, particularly those in Customs, that they risk losing their jobs if they are caught cheating the country; he streamlined the import-export documentation process. The Prime Minister also took direct control over the nation's military and police forces to curb smuggling.

Complimentary to the efforts of the Prime Minister in fighting corruption, Senator Cheth stated that the Cambodian Parliament adopted a law establishing the Ministry of Relations with the National Assembly, the Senate and the Inspection which was given control over contentious acts which are irregularly committed by public servants. He also announced that the Kingdom of Cambodia will ratify the UNCAC to reinforce the national law on anti-corruption.

The Senator also mentioned the other plans of his government in its effort to combat corruption, to wit:

a) establishment of an independent national supreme council on anti-corruption
b) establishment of an independent public entity, the National Auditing Authority
c) establishment of "priority mission groups" which will receive technical assistance from the ADB.
d) acceleration of legal and judiciary reforms
e) completion of the Governance Action Plan

ADJOURNMENT OF MEETING

At 6:37 p.m., the first session of the conference was adjourned.

APRIL 1, 2005

MORNING SESSION

PRESENTATION OF SECRETARY GUTIERREZ

Secretary Merceditas N. Gutierrez, chief presidential legal counsel, presented a brief background on why corruption is endemic in the Philippines. She then outlined the following consequences of rampant corruption:

- corruption lessens the quality of public service
- it results in substandard infrastructure facilities that are dangerous to use, are expensive, inefficient and prone to failure
- it causes local and foreign businessmen to suspend and even avoid investing for fear that the costs far outweighs the expected profits, resulting in loss of potential jobs and income
- corruption alienates the citizenry from their government.

She enumerated the following initiatives undertaken by the Executive department to address the issue of corruption:

- lifestyle checks on government officials;
- the signing of the UN Convention Against Corruption (UNCAC) for Senate concurrence;
- the implementation of the Philippine Medium-Term Development Plan that incorporates measures on good governance and anti-corruption;
- appointment of an anti-corruption czar to coordinate efforts in the executive

branch; and

- setting up of partnership arrangements among major government agencies and select civil society groups to serve as watchdogs against corruption in government transactions.

Although there are now existing legislations that seek to curb corruption, she said new laws may be needed that would provide legal protection for witnesses or "whistle blowers" in corruption cases; and mandate all government departments to submit to the Executive, the Congress and the Chief Justice a once-every-three-year report on the status of corruption in their areas of responsibilities.

Secretary Gutierrez pointed out that changing the mindset of the people toward corruption is very important. Thus, there is a primordial need to teach moral values early on to the children. The teaching of right values and basic concepts like the common good is critical, she stressed, because most often than not, the ills of government do not come from incompetence of public servants but from competence that is used for individualistic ends.

Another way to fight corruption, according to her, is to train government employees, no matter how high or low their positions, how to love their work and see their importance in the overall scheme of government that truly promotes national interest.

PRESENTATION OF MR. JABES

Mr. Jak Jabes, director of the Asian Development Bank's governance and cooperation division, discussed the ADB-OECD Anti-Corruption Action Plan which, he said, had been endorsed by 24 countries through various conferences. The Action Plan's salient features are:

- The Anti-Corruption Action Plan is based on three (3) pillars: public service, effective and transparent system; strengthening anti-bribery actions and promoting integrity in business operations; and active public involvement in the fight against corruption;
- It is basically based on good practice from various countries;
- Five mechanisms used in the initiative include strategy documents; regional cooperation through subregional round table discussions or conferences; country ownership of the plan/initiative; participation of civil society and

international donors; and enlarge regional participation to ensure that other countries also participate.

Mr. Jabes enumerated some initiatives or projects undertaken by select countries:

- Malaysia has undertaken a survey on the public's perception towards corruption in the country
- Indonesia set up a partnership for governance reforms with key sector, including media, to make the public aware of the seriousness of the problem of corruption
- Cambodia is putting in place some procedures to improve the hiring and managing of public servants
- Vietnam, which endorsed the Action Plan last year, is coming out with an anti-money laundering legislation and putting in place penalties for laundering proceeds of crime and corruption.

He stated that the international community is prepared to help more than at anytime in history in the global fight against corruption.

OPEN FORUM

Issues and concerns raised were the following:

- The teaching of values and morality as pointed out by Secretary Gutierrez should indeed begin at home and at the schools if corruption is to be stamped out nationwide
- There is a need to go to the UN to define what "corruption" really is in real terms or in political terms since most powerful countries abet corruption in weak or poor countries where they avail of resources and technologies to further their interests
- Poverty is not the source of corruption. Corruption actually causes poverty based on the Singaporean experience.
- The "shame campaign" which has successfully lessened the incident of corruption in Hong Kong could probably be applied in the Philippines only after conviction of a corruptor, according to Secretary Gutierrez
- A congressional oversight committee to monitor the implementation of a law is indeed a potent weapon to monitor and abate corruption

- The difficulty of pinning down a high official for corruption stems from the fact that low ranking civil servants have no protection when they expose a case of corruption
- Political will plays an important role in rooting out corruption
- There is a need to draft a national action plan by each countries that would dovetail with SEAPAC's regional action plan

On why the ADB-OECD Anti-Corruption Action Plan seems to be more effective in initiating countries to take action, Mr. Jabes pointed out that the plan endorsed by many countries is a non-legally binding document, which means that countries do take action because they want to and not because they are legally obliged to do so

On why Singapore would need more time before ratifying the UNCAC, MP Yuen explained that they have to study all the implications of the binding agreements contained in the Convention to their domestic laws. They would also like to see how the more developed countries like Europe and the U.S. would respond to some of the provisions of the UNCAC, he said.

PRESENTATION OF COUNTRY REPORTS

MP IMAM ANSHORI SALEH —Indonesia

MP Saleh stated that corruption in their country is addressed by Article I (3), (4) and (5) of Act No. 28 dated 1999, which defines the parameters of the crime of corruption, collusion and nepotism (KKN). The Indonesian Parliament, he said, considers corruption as an extraordinary crime today and has endeavored to provide a legal framework for interdicting and handling cases of corruption. Their Act No. 30 paved the way for the creation of a Commission to Combat Corruption, or KPTPK, on December 27, 2002, which was charged to build a strong network to combat corruption and to monitor the government's performance in addressing the problem. The government has also entered into extradition treaties with neighboring countries to arrest suspected corruptors, he added. They have also been aware of the need to increase the public's critical attitude against corruption and the importance of drawing their active participation, he said.

MP CHAROEN KANTHAWONGS — Thailand

MP Charoen pointed out the following initiatives that his government had undertaken to root out corruption in Thailand: The Thai Constitution has empowered the Thai Parliament to establish independent organizations or agencies that would fight corruption. These include the Election Commission; Anti-Corruption Commission; the Constitutional Court; Administrative Court, a special branch of the Supreme Court task to oversee corrupt politicians; the Ombudsman; and the National Auditing Commission.

He said the government is aware of the need for a strong political will to battle corruption. The use of the mass media as one of the mechanisms to help fight corruption is also their concern. The Thai Parliament is therefore bound to protect the freedom of the press, he said. He emphasized that regional organizations such as the SEAPAC would play a vital role in Thailand's effort to lessen corruption through useful exchange of information and knowledge.

MP NOD ANH DZUNG — Vietnam

MP Dzung recommended the following actions to address the issue of corruption:

- Each country should develop strategies to enforce laws against corruption at a time when globalization is taking hold fast;
- Raise public awareness against corruption;
- Accelerate administrative reforms in state institutions and in the civil service;
- Build a complete legal apparatus against corruption to be strictly enforced against corrupt public officials;
- Examine the UNCAC and its implication to domestic laws of each country;
- Offer incentives and protection to whistle blowers;
- Mobilize public opinion against corruption;
- Complete the mechanism of democracy; and
- Promote international cooperation, particularly in exchanging experiences in the fight against corruption.

ADJOURNMENT OF MEETING

At 12:32 noon, the morning session of the conference was adjourned.

RESUMPTION OF MEETING

At 2:17 p.m., the conference was resumed.

PRESENTATION OF ATTY. SIMEON V. MARCELO

According to Ombudsman Marcelo of the Philippines, these are some of the consequences of rampant corruption in the Philippines:

- According to the World Bank Report 2005, corruption is the top investment constraint in the Philippines and that the Wallace Business Forum reported that corruption is the most serious disadvantage to investment in the country; and
- UNDP's Common Country Assessment of 2004 states that 13 percent of the country's P781-billion budget, or around P100 billion, was at risk of being lost to corruption, with the greatest loss in revenue coming from the Bureau of Internal Revenue and Bureau of Customs—two important revenue-generating agencies of the Philippine government.

He identified some of the initiatives he undertook when he assumed office as Ombudsman in October 2002 as follows:

- Augmented the number of personnel—field investigators and prosecutors—and other resources;
- Crafted and institutionalized training programs for prosecutors, field investigators and other employees with the help of local and foreign experts; set up administrative disciplinary powers enabling the administrative decisions of the Ombudsman to be immediately executed even pending appeal;
- Established an "integrity development review" in the Office of the Ombudsman

He enumerated the following reforms instituted by other government institutions:

- The passage of Republic Act 9184, the government Procurement Reform Act;
- The adoption of the National government Accounting System developed by the Commission on Audit as part of the financial management reforms policy of the government
- The revision of the Performance management System by the Civil Service

Commission and stricter enforcement of the Code of Conduct and Ethical Standards for Public Officials and Employees

- The passage of the national budget that approved a substantial increase in the budget of the Office of the Ombudsman that would enable the office to hire additional personnel;
- A pending legislation in Congress increasing the number of Justices in the Sandiganbayan, the anti-graft court in the Philippines
- Another pending legislation in congress allowing the appearance of private lawyers to assist the Office of the Ombudsman in prosecuting corruption cases; and
- The partnership of the Office of the Ombudsman with certain civil society organizations in a collaborative effort to fight corruption.

Ombudsman Marcelo pointed out two primary things that should be done to stop corruption in the Philippines: 1) government must invest massive resources in anti-corruption initiatives, especially funding support; and 2) government and the private sector must earnestly help each other in the fight against corruption.

ROUND TABLE DISCUSSION

The issues and concerns raised were the following:

- The devolution of power, the sharing of power among the people, would probably hasten the fight against corruption than centralizing all the efforts in Manila where the Office of the Ombudsman is located.
- Increasing the compensation of public servants would contribute to the decrease in corruption.
- On the "public assistance" role that the Ombudsman was originally conceived, where it is supposed to have a preventive role rather than a prosecution role, there are public assistance centers in three pilot regions to be set up.
- On what security precautions the Ombudsman and his personnel have arranged considering the dangers and hazards of their job, Mr. Marcelo said that the Special Action Force of the Philippine National Police was tapped for security purposes.

ADOPTION OF SEAPAC'S REGIONAL ACTION PLAN

After deliberating on certain proposals and amendments, especially on the four main components—institutionalization; capacity and knowledge building; reform dialogues; and the ratification of UNCAC—the Body unanimously adopted the SEAPAC's Regional Action Plan.

APPROVAL OF THE MANILA DECLARATION

Similarly, the Body, after clarifying some amendments, unanimously approved the Manila Declaration, a document that commit the SEAPAC to collectively and individually pursue five programs of action against corruption.

Thailand as Venue of Next SEAPAC Conference

In behalf of the delegation from Thailand, MP Kanthawongs proposed that his country host the next SEAPAC Conference, a proposal unanimously accepted by the Body.

ADJOURNMENT OF SEAPAC MANILA CONFERENCE

At 5:10 p.m., the Chairman declared the conference adjourned.

A DAUNTING TASK

by Hon. Edgardo J. Angara (Philippines)

I have long been looking forward to this conference. I am truly honored for having had the opportunity to gather our Southeast Asian parliamentarians, and make a covenant to fight corruption in each of our own governments and societies. I thank the delegates for coming to Manila, as well as our guests for making time to be here, to show their commitment to this challenging but deeply rewarding endeavor.

This is also a joyous chance to renew old ties and forge new ones. I extend a hearty welcome to the participants who were present at the founding of the Global Organization of Parliamentarians Against Corruption (GOPAC) in Ottawa, Canada, in October 2002. Indeed, it has been a long way from Ottawa to Manila.

As the Asian representative in GOPAC's Executive Board, I am delighted to have taken the lead in organizing our South East Asian Chapter, the first in Asia. We will take our place among GOPAC's other chapters, namely, the Canadian Chapter, Latin American Chapter, North Africa Chapter and Middle East Chapter.

I express my heartfelt gratitude to Senate President Franklin M. Drilon for keynoting this historic conference.

I cannot adequately stress the need for us to address the issue of corruption and seek ways to eliminate it from our midst. It is profoundly necessary for us legislators to join hands against corruption, for it robs our people of limited resources, drives away local and foreign investors, and scares away friends who want to visit our countries.

As parliamentarians, we can become exemplars and thus have the moral standing to hold our governments accountable, open, and transparent.

At the time I sponsored the Government Procurement Reform Act in the Philippine Senate, I had to face tremendous pressure from government contractors who have links with incumbent members of bids and awards committees. But today the Procurement Reform Law, which overhauls the public bidding system, stands as the country's biggest anti-corruption measure.

The Ombudsman Law, which I also sponsored in the Senate, similarly seeks to cleanse our bureaucracy and set our politicians straight. The pending Political Party Development Act, by transforming political parties into public institutions, seeks to create a breed of politicians rooted in ideology, instead of enchained in the interests of their financiers.

Needless to say, combating corruption is a daunting task. But our goals are not beyond reach. Just as corruption transcends borders, so too must we fight it on a transnational level.

Let us learn from each other and synchronize our efforts. Let us exert political will and confront this most pressing need of our day. Let us make the fight against corruption our most immediate undertaking.

Thank you and good morning.

MAKE A DIFFERENCE

by Senate President Franklin M. Drilon (Philippines)

I deeply appreciate this privilege and honor of addressing you today. On behalf of the Philippine Senate, I would like to welcome delegates and guests to this Conference. To our foreign delegates, I hope the Filipinos' innate hospitality will make your stay in our beloved country memorable.

Holding the organizing conference of the regional chapter of the Global Organization of Parliamentarians Against Corruption (GOPAC) in Manila now could not have come at a more auspicious time. The Philippine Senate is hosting the 112th Assembly of the Inter-Parliamentary Union next week. I am certain that I am going to see most, if not all, of you in the IPU conference.

It is a privilege indeed to meet and exchange ideas with the best minds from the parliaments of the ASEAN. This is a propitious time for us to band together and work for the attainment of development in the region.

Years after the financial crisis that dealt a big blow to the region's economies, things have become brighter and upbeat. Most of the regional economies are picking up. We are strengthening our trade relationship not only with the U.S. and EU but also with China, the emerging giant economy in Asia.

However, we must not forget one of the valuable lessons we learned from the 1997 financial crisis. And that is, transparency and accountability in government and business transactions.

Corruption impedes development.

It is lamentable that most countries in the ASEAN region are in the bottom half of Transparency International's 2004 Corruption Perceptions Index. Critics and concerned governments alike are quick to attribute this to the absence of a legal framework, shortage of expert personnel, and financial resources.

I believe that the biggest underlying reason is the lack of political will. Corruption is not just a concept some self-righteous groups love to debate on. It is not merely a neat academic exercise to which some individuals love to use their intellects on in numerous international conferences. Corruption is not just an economic and political issue. Corruption is a moral issue as well. It is a moral issue because the cost to humanity is incalculable. Rampant corruption

results in bad infrastructure, low literacy rate, a backward economy, a poorly trained and equipped military, badly damaged environment, and inadequate public services.

Who will suffer most from the grave social consequences of corruption? The poor and marginalized sectors, because it is they who rely heavily on public services.

That corruption does a lot of harm to our society is an understatement. It robs our children and the generations yet unborn of a bright future. It deprives people of choices. It results in the loss not only of opportunities but also of lives. Low-quality infrastructures due to corruption endanger the lives of people.

Corruption stands in the way of achieving the Millennium Development Goal of reducing by 50 percent in ten years the number of people living in extreme poverty. Public funds needed for education, health care, and infrastructure are salted away in foreign banks. Moreover, there is the confluence of corruption, money laundering, and terrorism that we all must be vigilant about, in light of the despicable acts of terrorism in the region.

As legislators, we have to take concrete actions. We must not accept corruption as an inevitable outcome and issue in government operations and in our society. We must do our share in finding a long and lasting solution to this universal malady. We must assiduously work for the ratification of the UN Convention Against Corruption. This is the first worldwide anti-corruption treaty that may pave the way for poor countries to recover billons of unlawfully taken public funds now stashed in banks.

Rich and poor nations are on equal footing when it comes to tracing and returning scandal-tainted money that often ends up in the world's banking capitals. In a highly globalized world, international cooperation is crucial in the fight against this scourge. The UN Convention Against Corruption binds countries to provide specific forms of mutual legal assistance.

However, the Convention has its weaknesses which we can address at our level as legislators. We can start by enhancing transparency in the procurement process. Mechanisms must be in place to track down the flow of ill-gotten wealth. According to the World Bank Institute, more than US $1trillion dollars are being paid annually in bribes worldwide.

I submit that the fight against corruption can only be effective in a democracy. Why? Because it is only in a democracy where accountability is required of

public officials and institutions. It is only in a democracy where we can have a strong and independent judiciary and a resolute and vigilant media. When democratic institutions are weak, corruption flourishes.

Governments stand to lose the faith of their people if offenders go unpunished. People will tire of public calls for reform if we all end up in empty rhetoric.

Getting rid of corruption is a formidable challenge. Here in our country the government has taken on the challenge by undertaking significant reforms, including the creation of the Presidential Committee on Effective Governance. We are undertaking reforms in the areas of procurement, corporate governance, and the judiciary. We are getting help from the private sector and the NGOs. But I am the first one to admit that much needs to be done.

Fighting corruption requires passion, unwavering commitment, and financial resources from all who will take the cause.

This conference is an opportune time for us to adopt a Regional Action Plan Against Corruption. We must explore all avenues so as to have a sustainable campaign against corruption in the region.

Ladies and Gentlemen, we do not have the luxury of time. Let us deal with an iron hand and firm resolve this global scourge which has corrosive effects on our society. We must act now so corruption will not impede our development. So we can all move forward, toward our goals.

This is a journey that we all must embark together so as to ensure a bright future for our children and to the generations yet unborn.

Thank you very much. *Mabuhay!*

PHILIPPINE ACHIEVEMENTS IN FIGHTING CORRUPTION

by Speaker Jose De Venecia, Jr. (Philippines)

Corruption is the most common degenerative disease of governments. And it is endemic, not just among the new countries but all over the world. Even in the rich countries corruption is perennially a potent election issue. But in the Third World, corruption has caused authority to disintegrate and states to collapse. In this country over these last 20 years corruption has set off two peaceful revolutions. Thus this effort to adopt a regional action plan against corruption—led by our distinguished Senator Edgardo J. Angara—is a political and civic effort with which we in the Philippine House of Representatives are pleased to associate ourselves.

One reason corruption is so hard to check is that it arises from too many causes. Often enough, the problem is simply that of badly underpaid officials possessing wide discretionary powers, not only over business but also over too many aspects of people's everyday lives. In most poor countries corruption has become so commonplace that businesspeople regard bribes as a kind of transaction cost.

Then, also, the transition from authoritarianism to representative systems has by itself spread corruption more widely. ("Formal" democracies increased from 30 in 1974 to 120 in 1999.) In transitional democracies like our own, "money politics" has become the name of the game.

Even efforts to modernize public administration may increase corruption—at least in the short term. Take decentralization as an example. As the World Bank warns, "devolution of large amounts of state resources to a level of government that has had little past experience risks the money being abused." By now most of us realize how corruption saps the resources available for development, distorts access to social services, and undermines people's confidence in government.

How is corruption to be checked? One obvious way is to limit state interventionism, deregulate the economy, spur competition, and generally allow the market more elbow room.

In the Philippines, we are dismantling the cartels, monopolies, and other

forms of crony capitalism left over from the period of protectionism and import-substitution. And we have brought down tariff walls, which had made smuggling so lucrative. We have also overhauled a tax system which had at one time allowed high-income taxpayers to deduct as much as 92 percent of their gross incomes! In a word, we're trying to make it possible for every businessman to run his enterprise—while also staying on the right side of the law.

Early on, we also realized that in a weak state the bigger the public sector, the greater the scope for corruption. So, one after the other, we privatized the great public corporations, beginning with the flag-carrier, the state petroleum company, and even Metropolitan Manila's water system.

The thrust of reform has been to get Government off the backs of businesspeople, and to focus it on the basic things it should be doing: to provide the political stability, the level playing field, the infrastructure, and the rule of law that people need to get on with their lives.

Thoughtful Filipinos are also beginning to realize our need to reform political-campaign financing and to simplify the multiple party system. Most everywhere in the democratic world, we need to encourage the evolution of less fragmented party systems and to limit the influence of big money on national politics. Hence, Senator Angara and I have filed separate bills that authorize public subsidies for our major political parties in the context of a thoroughgoing reform of our present-day party system.

Over the longer term, the constitutional shift to a unicameral parliamentary system that we are considering should put an end to our ridiculously expensive presidential and senatorial elections.

In the transitional democracies, the central task in the fight against corruption must be to build state capacity—because successful development needs an efficient state—transparent government, honest bureaucrats, stable policies, and an effective legal order. In most of the transitional democracies, building the capacity to govern means a virtual renovation of the State.

The discretionary power of the administrative bureaucracy must be reduced by greater openness, by greater transparency in policy making, by greater accountability, and by institutionalized control through the participation of people's representatives. Necessarily, this building of political institutions will take time. It will require intelligent direction, money, and—above all—patience, on the part of both political leaders and their constituencies.

Let me outline for you the administrative and legislative measures we in the Philippines are taking to enhance transparency and accountability in the public sector. In recent years, Congress has raised sharply the legal sanctions against corrupt behavior by enacting a law against plunder. The law defines plunder as the stealing of public funds worth a minimum P50 million, which is equivalent to U.S. $1 million. Plunder is non-bailable; it is also punishable by death through lethal injection. Plunder is the offense of which deposed President Joseph Estrada and—in a separate case—a two-star general who was comptroller of the Armed Forces, are now accused.

We're also beefing up the powers of our Ombudsman and of our special anti-corruption courts. Congress is deliberating the adoption of Hong Kong's model of an Independent Commission Against Corruption. Meanwhile, Government is pushing for ratification of the UN Convention Against Corruption, which criminalizes bribery and increases civil society's participation in the anti-corruption campaign.

Everywhere in the world, government procurements are a prime target of corrupt practices. We have just made our procurement system more open and more competitive. I was chief author of Republic Act 9184 of the Government Procurement Reform Act of 2003, which set up an electronic system as the primary source of information on all government purchases. This Act is being mobilized to root out the causes of corruption—which are the lack of transparency, excessive discretion, wide opportunities for collusion, and unnecessary delays. These are loopholes in the procurement system that this major reform Act has now started to plug.

Not only did we provide a centralized electronic portal for information on all government procurement to enhance accountability, equity, efficiency, and economy; we raised as well the standard for transparency to a different level. Representatives from a recognized and relevant private-sector association, organization or chamber—and even from the religious sector—are now allowed to participate as observers in all the stages of the procurement process. This Act has dramatically reduced procurement-processing time. It has also included, for the first time, a warranty provision to ensure only quality products and services.

Already, the Asian Development Bank has observed that this Act is a major anti-corruption law. This new system has enhanced competition among suppliers and lowered the prices of government purchases by an average of 30 percent.

Right now I'm studying the concept of a Freedom of Information Act that would increase public oversight of government by expanding the information made available to ordinary people about its activities.

Among the administrative measures we have taken in recent years, the most noteworthy are the lifestyle checks of career officials in sensitive Cabinet departments. Since these lifestyle checks began—in March 2003—they have resulted in several prosecutions of high-level officials found to be living beyond their means. The whole of government has also switched to a simplified accounting system that conforms to international standards; generates periodic financial statements; and allows government to benchmark its costs against those of the private sector.

Having noted all these positives, I must also note that we're still making only slow progress in our efforts at anti-corruption.

Under the spur of an activist Ombudsman, the conviction rate in corruption cases has recently doubled. But it is still only 14 percent of all the cases brought to trial. We need to strengthen our judicial system as a whole, so that it can more effectively protect property rights and oversee the credible enforcement of contracts.

For the moment, this is how things stand in our struggle against corruption. Filipinos, as a whole, seem to have a high tolerance for corruption—probably because of its historical "usefulness" as a way of greasing the wheels of the bureaucracy.

We need to raise people's awareness of corruption's larger, corrosive effects on the mechanisms of the state and to engage civil society in the effort to eradicate it. I recall the American historian, Barbara Tuchman, observing that humankind makes a poorer performance of government than of almost any other human activity.

The fight against political corruption is bound to be an endless, twilight struggle, not only in the new nations but everywhere in the world. Obviously there are no easy solutions to the problems of corruption—except for us to promote the civic culture that encourages ordinary people to take up their share of the civic burden.

And this we can do only if we, as the elected representatives of our people, conduct ourselves as exemplary officials for whom citizenship is not a part-time job—and not a hobby—but an everyday obligation.

Proceedings from the March 31, 2005, Organizational Meeting of SEAPAC

ADOPTION OF THE SEAPAC CONSTITUTION

MR. ANGARA: Good morning again. Let me formally call this organizational meeting to order. We have for our agenda the adoption of the proposed constitution and bylaws of the South East Asia Parliamentarians Against Corruption Chapter. Your kit contains the draft constitution. We will elect our first set of officers for the two-year period. The intention is to have a biennial meeting; therefore, the set of officers that we will elect today will serve for two years.

Before I propose the business to you, let me acknowledge the presence of our justice secretary, Justice Secretary Raul Gonzales. (*Applause*) And to my right is Martin Ulrich, the executive director of GOPAC in Ottawa. (*Applause*)

I now turn over the microphone now to Atty. Demaree Raval to present the proposed constitution to the body.

MR. RAVAL: Thank you, sir. Good morning, ladies and gentlemen. I was discussing with Ms. Penny Low of Singapore this constitution earlier, and she gave me some pointers on how this should be discussed in this conference. Copies of this proposed constitution have been enclosed in your kits, together with the constitution of the GOPAC.

This proposed constitution of the SEAPAC is patterned after the GOPAC constitution which was adopted in Ottawa. And, similarly, this has been the pattern for the other regional chapters of GOPAC—in Latin America, in Africa, in Eastern Europe, and the rest of the membership of the GOPAC. So let me just walk you through the provisions of the proposed constitution.

The Preamble is a restatement of the first portion of the GOPAC constitution, basically emphasizing the need for parliamentarians to unite and adopt a common front against corruption, which is endemic in many parts of the world.

The organization has as its members the parliaments in the Southeast Asia region. Originally, we were thinking only of the ASEAN—Association of Southeast Asian Nations—but we are hoping that since SEAPAC will be continuing its recruitment of members, we might as well just give it the regional appellation of

South East Asia because there are still countries in Southeast Asia which are not members of the ASEAN, and they might become members of SEAPAC earlier than being members of ASEAN. We are looking at Papua New Guinea, East Timor, and many more countries.

SEAPAC is a nonprofit international organization, which is going to be the regional chapter of GOPAC in Southeast Asia. Its membership is composed of the founding members. The founding members are the members who are present here in Manila today and tomorrow. So you are privileged to be the founding members of this prestigious organization in the region.

We are also going to increase the membership of the SEAPAC by invitation and by election. There will be members of the other parliaments in the region who are not represented here today but who will be accepted as full members of the SEAPAC by the approval of the Executive Committee, which I will discuss with you later. Former parliamentarians, as well as members of the legislative staff who are active in the work against corruption, will also be admitted as honorary members in the SEAPAC by a similar action of the Executive Committee.

Now, the work of the SEAPAC is supported by many international agencies and many individuals who are active in the anti-corruption campaign. We are hoping that these funding agencies—the USAID, the Asia Foundation, the FES, which are supporting us now—we would like to take them in as honorary members or observers of the SEAPAC.

So these are the members: the founding members, the full members, the honorary members and the observers. And this entire membership will constitute our General Assembly, which will meet every two years. After Manila, we expect the body to deliberate at the end of the conference the next venue of the conference two years from now.

The office of the organization is situated in the country where the elected president of the SEAPAC resides. That is similar to the provision of the African Constitution, where the country of origin of the elected president is the *situs* of the secretary and the secretariat, and the office of the SEAPAC or the regional committee.

We will have a president, a vice-president, a secretary, and a treasurer. Necessarily, the president, the secretary, and the treasurer will come from the same country, since the Secretariat will be based in the country of residence of the elected president.

There is also an Executive Committee which does the work of the SEAPAC in the interim while the General Assembly is not in session. Because the General Assembly will be in session only every two years, we will have an Executive Committee that can meet as often as the president may decide. The Executive Committee will be composed of the four elected officers of the SEAPAC, and each member-country is represented by one member in the Executive Committee. We will expect the delegations to choose from among themselves the member of the Executive Committee for the next two years, representing, say, Singapore, Thailand, and the rest of the membership of the SEAPAC. Right now, we have seven members represented in this conference, so we will have after today an Executive Committee of eleven members—the four officers and the seven members elected by the different member-countries of the SEAPAC.

One requirement of the GOPAC is an effective Secretariat that is going to monitor and supervise the work of the SEAPAC for the next two years. Among the contents of your kits is a draft regional action plan—it entails a lot of work which involves many countries across the region. We will have to, for example, conduct a research on the extent of corruption in all the countries in the region. We will have to have a survey—an inventory of all the legislations in these countries—which are designed to fight corruption. And then, of course, we will have to look for ways and means to fight corruption in relation to the global problem which is presented in each and every conference. The Secretariat will compile all this information through a website that it will maintain at its country of residence and give information to the members of the SEAPAC regularly.

If you take a look at the provisions on financial provisions, in Chapter IV—the GOPAC constitution has also its provision on financial provisions in Chapter IV—this has to do with the management of the funds of the SEAPAC. You will note that this conference is modest by many standards, aside of course from giving you the free tickets and the accommodations in Manila. We could not have done this without the support of many funding agencies and donors who are active in the anti-corruption campaign. But necessarily, since this involves many funds from different sources, we have to institute controls in the management of these funds. So we have a treasurer—directly accountable to the president, but also accountable to the Executive Committee in the General Assembly—who will be making reports to the General Assembly and the Executive

Committee regularly. And the reports of the treasurer can be accessed in our website. That much is what is expected of us, as organizers, by the funding agencies, so that for the next two years we have to make an accounting of every cent that is spent for this conference and for all the activities that will be undertaken by the SEAPAC for the next two years.

Incidentally, one of the objectives of the SEAPAC is to organize reform dialogues across the region. While the Secretariat is based in Manila for the next two years, we will be going around Southeast Asia to conduct similar conferences or assemblies in your respective countries. These are reform dialogues which will involve the participation of GOPAC, SEAPAC and many international agencies involved in anti-corruption. We have to maintain a bank account for the SEAPAC under the supervision of the treasurer.

And finally, let me go back to Article III—Code of Conduct of Members—because it is possible, as you well know, that some members of parliament might probably be involved in some problems in the future. There's a provision here on divestment of membership through the Executive Committee.

Mr. President, that's all for now. If there are questions, we'd like to be able to answer them.

MR. ANGARA: We will now open a discussion of this proposed Constitution. Is there any question you want to put?

MR. FLAVIER: Small question.

MR. ANGARA: Senator Flavier.

MR. FLAVIER: Just a small question. Can you just amplify a little bit more on the concept of divestment?

MR. RAVAL: As a member of the SEAPAC, one is supposed to observe a certain code of ethics. First and foremost, one should not be involved in any corruption charge or whatever. And then, of course, one should avoid any conflict-of-interest situation that may arise in the future. There is also a requirement for each member to drum up membership in the SEAPAC, and hopefully, we'd like them to make this a big organization in the future, not only from seven countries and about eleven parliaments but more.

MR. ANGARA: Many of those provisions are already within our parliamentary rules. When you mention *divestment*, it rings a different bell. When you say *divestment*, that means you get rid of your shares of stock or your property. So that's not what you mean.

MR. RAVAL: No.

MR. ANGARA: So maybe we should look for an appropriate term.

MR. RAVAL: Perhaps *losing one's membership* ?

MR. ANGARA: Yes, it's really about avoiding conflict of interest. As members of parliament, we are always subject to those conflict-of-interest rules. Dr. Wang?

MR. WANG: Mr. Chairman, my colleague Penny Low and I are happy to be here at this conference. We thought this was a loose association. Little did we know that we are given the privilege of being founding members of a new association. Of course, the Singapore parliament's position has always been to look at whether the objective of a new association could be achieved under the existing framework of an association of parliamentarians already within the region.

I noticed that the key objective of this chapter, which is an association of parliamentarians against corruption, is a very meaningful one, and it's being supported by all parliamentarians. And as such, I can say that even though we have not been given the mandate from our association back in Singapore—the Singapore Parliament Society—my colleague and I are exercising the discretion to support the establishment of this chapter, the SEAPAC. Also, we are happy to be considered as founding members. Thank you very much.

MR. ANGARA: Thank you, Dr. Wang. We are indeed grateful to you and to Penny Low for coming over to Manila to attend this meeting, and we are grateful for your expression of support.

MR. THAVY: Mr. Chairman, in March 2003 Cambodia became the nineteenth country to join the anti-corruption initiative organized jointly by Asian Development Bank and the Organization of Economic Cooperation and Development. It is an honor to be a founding member of this organization. We have discussed among ourselves and we are in full support of the proposed constitution. Thank you, sir.

MR. ANGARA: Thank you, Mr. Thavy of Cambodia. Yes, Professor Boonton?

MR. BOONTON. Mr. Chairman, in the name of the Thai Senate, we have a champion of fighting corruption in Thailand who came with us. Chief of Police General Pratin is here. He is the one who sees the problem in the whole country in terms of anti-corruption measures. And in the same token, we have Chairman Charoen who is also well known in parliament for so many years.

We are honored to be considered a good member of this organization. And

we support the proposed constitution because we know well that corruption has become a cancer worldwide. We can see that our country is in the middle of trouble because of corruption. It's driving away the resources from the people. Therefore, this first organization of SEAPAC, second to Ottawa, can be one of the good things that could happen to the region. Thank you very much.

MR. ANGARA: Thank you, Professor Boonton. Thank you, Thailand. Any other comment? Yes, Mr. Dzung of Vietnam.

MR. DZUNG: Mr. Chairman, we appreciate the initiative put forth by Senator Angara. The issue of anti-corruption is very important to every nation now, and we are among the nations fighting corruption. This is notwithstanding the invitation we received from Senator Angara, for which we thank him.

As far as the constitution is concerned—because we received this just now in our kit and we have not enough time to study it, and I don't have any mandate from my national parliament—the purpose of organizing such statutes is very important.

I hope we invite in the future more members to come, not only the members of the ASEAN countries, but also other countries like Japan and Korea. China, for example, can be a member within the framework of the Asia-Europe parliamentary partnership meetings. They can bring more issues for us, more funds for us. The issue is that we hope that SEAPAC will be a mechanism, an open forum for all parliamentarians in the South East Asian Region.

Second, in the constitution, I think we should have more clarification. The issue on how to make decisions as an organization is not clear. What is the principle? Is it through majority consensus? This is not clear. And the membership—here I see that the parliamentarians can join in their own personal capacities, but at the same time they can also represent their own national parliament.

On the financial provision, what about the membership fee? It does not say in the charter that there must be a membership fee, but in the financial provision, you mention about membership fee. It is a kind of a flexible issue—if they can or cannot. Don't mention membership fee here because it is not decided yet that the members should have a membership fee. If we mention membership fee, that means it is obligatory for the members. If not, I suggest we use funds raised and donations from different organizations and institutions.

Finally, we appreciate this draft, it has very good content and it responds to

our request. Anyway, if we have more time to consider thoroughly, then we can approve it. Thank you very much.

MR. ANGARA: Thank you, Mr. Dzung. Let me reply to some of the points that you raised. First, the point that we should get other dialogue partners to be part of the organization. The conception of the organization of GOPAC is according to regional basis; that's why there is a GOPAC chapter of North America, of North Africa, of Latin America, of the Middle East, of East Asia and North Asia. What we are organizing is a South East Asia chapter, because that's the regional bloc to which we belong

That doesn't mean that although we organized regional, we cannot enter into dialogue with the other chapters. In fact, under the GOPAC Ottawa Constitution, there should be a biennial global conference—that's the occasion for us to get together with other chapters. Now, for us in Asia we can also sponsor a regional meeting with North East Asia as well as South Asia. We are not going to duplicate the International Parliamentary Union. We will be a little bit more autonomously organized.

The second point I want to comment on is about the contributions and fees. The reason the contributions and fees were not fixed, were not computed in the bylaws, is that we leave this matter to each national chapter. We don't want our regional constitution to stipulate the fee. So we leave that entirely to you.

And lastly, we appreciate your support for the constitution. I think it is necessary that we, first of all, have a legal framework by which we will operate. Any change that you think necessary in the future, I think we can leave it to the executive board and we can effect those changes later on. As you very well know, no document at first hand is perfect. There will always be necessary changes but we will handle that because there is a mechanism for amendment in this constitution. Thank you.

MR DZUNG: Sorry, Mr Chairman but another point.

MR. ANGARA: Yes?

MR. DZUNG: How will we make decisions, by consensus or majority? That's first. And second, the quorum for the conferences—I think half is too small. Maybe simple majority. It is my personal opinion. Thank you.

MR. ANGARA: Very important points. How do we arrive at a decision? Is it by consensus, meaning, no one disagrees, or is it by majority vote? Well, if we

follow the ASEAN way, then we do it by consensus—when no one objects, then that's the agreement. There are pros and cons to the ASEAN way of decision-making. Some say it a very slow, plodding way, and we don't get things done as quickly as the times demand. But there is also the advantage in having a consensus because the decision is firmer. But we leave that to the body because we can decide that here and now, whether we make a decision by majority, simple majority vote, or by consensus

The second important point is about quorum. Is it 50 percent plus one of the total membership or what?

MR. DZUNG: Sorry, Mr. Chairman, may I have some comment on this? If we apply the simple majority, because the quorum is only half, it is impossible to make a majority adoption. In consensus—I think we have a good tradition within the ASEAN Parliament—we have a good spirit of cooperation. One could not be alone if we apply consensus. We should mention here—at least, perhaps by following the tradition of the ASEAN practice—something like this, then we go further. Thank you.

MR. ANGARA: Professor Boonton.

MR. BOONTON: Mr. Chairman, concerning my friend from Vietnam's reference to consensus, according to this constitution, decision must be taken by a majority of votes. This is a good thing, because we can use the principle of democracy. Sometimes it is very difficult to make a decision in case of a tie, therefore the simple word to be used is *majority*. That is the good thing. I read the constitution last night and it is so well defined and it is nice to hear from a friend that he needs a consensus. But for me, if one man says no, we cannot do anything. Therefore if we use *majority*, one above the number, yes, the activity can go on. Thank you.

MR. ANGARA: Thank you, Professor Boonton. Is there any other opinion from the rest of the table?

MR. GOZOS: Mr. Chairman, Mr. Convenor.

MR. ANGARA: Yes?

MR. GOZOS: Mr. Convenor, if there are no more questions . . .

MR. ANGARA: Before that, let me first tackle the question of quorum because our friend from Vietnam is also raising the issue. The quorum—half of all members—might be too high. Are you objecting that it's too high?

MR. DZUNG: Sorry, Mr. Chairman. The senator from Thailand mentioned

that *majority*—

MR. ANGARA: Yes, that's the decision.

MR. DZUNG: Then if we keep *quorum*, you can never get majority.

VOICE: Of those present.

MR. ANGARA: Of those present, yes. We will follow the usual parliamentary procedure in that case. As long as there is a quorum, we can transact business and majority of that quorum is enough to make a decision. But let me go back to your question of how you arrive at a quorum. Under the proposal, the quorum will be half of all the members. Is that satisfactory or are you also proposing a change?

MR. DZUNG: Yes. If the quorum will be more than a quarter of the membership, then this is difficult for others to apply.

MR. ANGARA: Anyway, I think we have heard your reason. I think they are valid points. But the draft proposal just follows the usual parliamentary procedure. I will now recognize Mr. Gozos.

MR. GOZOS: If there are no more questions or suggestions or any amendments, then we can move on because I think we need the constitution so that we can move on to the next agenda, which is the election.

I move that we approve and adopt, either by consensus or majority vote, the constitution, as presented by Atty. Raval.

MR. BOONTON: I second.

MR. ANGARA: Moved and seconded that the proposed Constitution of SEAPAC be adopted. Is there any objection? (*Silence*) There being none, the Constitution is hereby adopted. We should now congratulate ourselves.

CONSTITUTION

OF THE

SOUTH EAST ASIA PARLIAMENTARIANS AGAINST CORRUPTION

PREAMBLE

WE, the members of the South East Asia Parliamentarians Against Corruption, representing our respective parliaments, assembled in Manila, Philippines on the 31st day of March, 2005

Affirming that the commitment and capacity of parliamentarians in South East Asia to fight corruption must be strengthened.

Aware that corruption poses a grave danger to the well-being of the peoples of South East Asia and to the development of their countries.

Alarmed that corruption diverts scarce resources from human basic needs and destroy confidence in the integrity of our institutions.

Concerned that it is essential that we develop healthy, balanced relations between the State, civil society and the marketplace, andthat parliaments be strengthened as effective institutions of accountability in overseeing the policies and actions of governments.

Acknowledging that corruption can best be controlled by strengthening systems of accountability, transparency and public participation in the governance processes of our countries.

Realizing the great value of parliamentarians coming together to share information, experience and lessons in strengthening parliaments in the fight against corruption.

Reiterating our commitment to strengthen the capacity of parliamentarians to fight corruption by:

a. Encouraging the commitment and building the capacity of parliaments to exercise accountability with particular relation to financial matters

b. Sharing information lessons learned and best practices

c. Undertaking projects to control corruption

d. Cooperating with organizations in civil society with shared objectives

DO HEREBY RESOLVE, AS WE HEREBY RESOLVE, to organize the South East Asia Parliamentarians Against Corruption effective as of the date of the adoption of this Constitution.

CHAPTER ONE

Article 1: Name of the Organization

The name of the network of parliamentarians under this Constitution shall be South East Asia Parliamentarians Against Corruption, or SEAPAC for short.

Article 2: Nature of the Organization

SEAPAC is a non-profit international organization whose main purpose is to bring together parliamentarians, both in representation of their respective parliaments and individually, and former parliamentarians and international organizations and individuals in South East Asia for the purpose of combating corruption and promoting transparency and accountability, to ensure observance of high standards of integrity in public management and governance.

SEAPAC shall exist and operate as the regional chapter in South East Asia of the Global Organization of Parliamentarians Against Corruption (GOPAC) based in Ottawa, Canada.

Article 3: Offices of the Organization

The first office of SEAPAC shall be situated in Manila, Philippines. The location of subsequent offices shall correspond to the country of residence of the elected President of SEAPAC.

Article 4: Objectives

The objectives for which SEAPAC is established are:

a. To strengthen the capacity of parliaments and parliamentarians in South East Asia to supervise the activities of their governments and other State institutions.

b. To work with the national chapters of the SEAPAC in South East Asia in the establishment of standards of conduct that will promote transparency, accountability and good governance.

c. To promote the Rule of Law and the accountability of State institutions.

d. To promote and facilitate exchange of information, knowledge and expertise among its members.

e. To undertake research and share information on lessons learned and best practices in combating corruption.

f. To encourage parliaments and parliamentarians to enact laws that promote good governance, transparency and accountability.

g. To raise general awareness about the problem of corruption in all spheres of society.

h. To support and cooperate with parliamentarians and policy makers in their efforts at devising new ways of combating corruption.

i. To advocate the inclusion of measures to combat corruption in all government programs, and work to boost the capacity of national and regional institutions to tackle corruption effectively.

j. To institute contacts and cooperative work with national, regional and international organizations, parliamentary institutions, civil society and other organizations, and individuals in all areas intended to improve governance, transparency and accountability, and mobilize resources for programs to combat corruption effectively.

k. To do all such other things as are incidental or conducive to the attainment of these objectives.

CHAPTER TWO

Article 1: Membership

The following shall comprise the membership of SEAPAC:

a. *Founding members:* These are parliamentarians from South East Asia in attendance at the SEAPAC Conference held in Manila, Philippines on March 31-April 1, 2005.

b. *Full Members:* These include all parliamentarians in South East Asia who are committed to the objectives of SEAPAC, and who shall apply for membership in the form and manner prescribed by the Executive Committee.

c. *Honorary Members:* These include experts in anti-corruption work, former parliamentarians, and members of legislative staffs who have a vested interest in the objectives of SEAPAC, upon invitation by the Executive Committee.

If a member of SEAPAC is not reelected to the parliament of his/her country, he/she may retain honorary membership status in SEAPAC, upon invitation by the Executive Committee.

d. *Observer Status Members:* These will include international organizations and individuals funding and/or supporting the operations and projects of SEAPAC, nominated by any Full Member and subject to approval by the Executive Committee.

Article 2: Code of Conduct of Members

Each member shall strive to behave in a manner which upholds the integrity of SEAPAC, thus:

a. Each member shall strive to strengthen the commitment and capacity of parliamentarians in South East Asia in their fight against corruption.

b. Members shall actively recruit new membership so as to create and strengthen SEAPAC national chapters in their countries.

c. Members are required to avoid real, potential or perceived conflicts of interest.

d. Members shall inform the organization of any real, potential or perceived conflict of interest as soon as they become aware of any circumstance that could lead to such conflict.

The Executive Committee will be responsible for examining violations of the values of the organization, and has full authority to decide on the appropriate penalty in any given case.

Article 3: Cessation of Membership

A member shall cease to be as such upon any of the following grounds:

a. On account of death, removal or voluntary withdrawal from the organization.

b. If he/she fails to fulfill his/her obligations to SEAPAC, or commits any act which amounts to a breach of the objectives of SEAPAC, upon a determination by the Executive Committee.

c. If he/she is convicted of a criminal offense by a competent court.

CHAPTER THREE

Article 1: Organs and Offices

The administrative organs of the organization are the General Assembly and the Executive Committee, and such other sub-committees as the Executive Committee may create.

Article 2: General Assembly

The General Assembly shall be composed of up to three representatives of every national parliament represented, who shall serve for a term of two years, and may be re-elected. The President shall preside at the conference of the General Assembly.

The General Assembly shall decide on any matter of importance for the organization, and guide the implementation of its decisions, on the basis of the goals and objectives of the organization.

The quorum for conferences of the General Assembly will be half of its all its members.

Article 3: Bi-Annual Conference

The General Assembly will convene in a conference once every two years. It shall coordinate with the GOPAC and its other regional chapters in organizing the conference to which all the members will be invited.

The General Assembly will debate any topic that falls within the objectives of the organization or any other related business matter, and shall decide at its bi-annual conference the following:

a. Consider the reports of the Executive Committee, and decide whether to confer formal approval on its actions;

b. Establish rules for contributions, donations and gifts to the organization;

c. Approve the accounts for the previous year, the annual budget and any complementary items;

d. Consider proposals to amend the Constitution.

Decisions will be taken by a majority of votes. Each member of the General Assembly will have one vote, and the President will cast the deciding vote in case of a tie.

Article 4: Executive Committee

The members of the General Assembly shall elect an Executive Committee composed of a president, vice-president, a secretary, a treasurer and one member each from the countries represented in the SEAPAC.

The first election will take place on the occasion of the first conference of the General Assembly in Manila, Philippines, and every two years thereafter during the bi-annual conference of the General Assembly.

Article 5: Functions

The Executive Committee shall have the following functions:

a. Attend to all matters related to the organization, in between the conferences of the General Assembly, except in cases where a responsibility or task has been expressly assigned to another body by the General Assembly.

b. Approve applications for membership and take decisions regarding the suspension and removal of members.

c. Adopt the organization's annual program of work and budget.

d. Organize a schedule of activities in conjunction with the Global Organization of Parliaments Against Corruption (GOPAC) and its regional chapters.

e. Report to the General Assembly about the activities of SEAPAC, through a report prepared by the President.

f. Facilitate and promote communications among the members.

g. Apply for loans, collect, receive and spend funds in pursuit of the objectives of the organization; provided, that the Executive Committee's authority to apply for loans may not be exercised unless the loan is guaranteed with funds or assets belonging to the organization.

h. To expand the funds of SEAPAC in such a manner as they shall consider most beneficial for the purposes of SEAPAC.

i. To make, and from time to time review, revise or repeal regulations as to the management of SEAPAC and the affairs thereof; as to the duties of any officer or employee of SEAPAC; as to the conduct of business by the Executive Committee or any of its sub-committees; and, as to any matter or business within the powers or under the control of the Executive Committee; provided, that the same shall not be inconsistent with this Constitution.

j. To delegate any of their powers to any sub-committee or national chapter.

k. To discipline all officers and employees of SEAPAC.

l. Generally to do all things necessary or expedient for the due conduct of the affairs of SEAPAC not herein otherwise provided for.

The quorum of the Executive Committee will be seven of its members.

Meetings of the Executive Committee may be held through video-conferencing or some other suitable mode. The modes and dates of meetings will be decided by the President.

Article 6: The President

The President will be the legal representative and chief executive officer of the SEAPAC, and shall hold that position for not than more than one term of two years. At the end of his mandate, the President will be succeeded by a person from a different country.

The President shall supervise and administer the Secretariat. In particular, he shall ensure that the decisions adopted by the Executive Committee or the General Assembly are executed, and enter into contracts on behalf of the organization;

Article 7: The Vice-President

The Vice-President shall perform the duties of the President during the absence or inability of the latter to act, and such other duties as may be assigned to him by the President and the Executive Committee.

Article 8: The Secretariat

There shall be a Secretariat headed by a Secretary elected by the General Assembly upon nomination by the President. The Secretariat shall assist the President in the day-to-day running of the organization.

The Secretary or, in his absence, a person designated by the President, will keep the minutes of the meetings and sign the minutes and any decisions of the General Assembly, the Executive Committee or by any of its sub-committees.

The Secretariat will be located at the organization's headquarters in the country where the President resides.

The Secretariat will have the following functions:

a. To man the headquarters of the organization, and act as the organization's official channel of communication;

b. To keep the list of members, including the national chapters, and encourage new members and affiliates to join;

c. To coordinate and facilitate the activities of the organization's different bodies and, in particular, to provide support for the Executive Committee and the General Assembly;

d. To compile and disseminate information on the organization and its members and on any of the national chapters through the website of SEAPAC;

e. To assist in establishing national chapters;

f. To ensure that the members of the organization are well informed about its programs and activities;

g. To maintain contact and coordinate activities between the organization and other groups or institutions; and

h. To coordinate the representation of the organization at international conferences.

Article 9: The Treasurer

The Treasurer shall receive, collect and safely keep, under the direction of the President and the Executive Committee, all funds of the organization; keep proper books of accounts and render reports of receipts and disbursements as may be required; and perform such other duties as may be assigned to him/her by the President.

Article 10: National Chapters

National chapters may be established in the countries in the South East Asian region by one or more parliamentarians holding membership in SEAPAC. The following shall govern the establishment and operation of national chapters:

a. Each national chapter shall have a constitution that shall not depart from the aims and objectives of, or be inconsistent with, the provisions of this Constitution.

b. National chapters shall seek funding support and undertake activities which uphold the objectives of SEAPAC in their country.

c. National chapters shall be accountable to the General Assembly and the Executive Committee.

d. Each national chapter shall identify a Chapter Head and a corresponding contact office to facilitate communication.

e. The Chapter Head shall be responsible for all communications with the General Assembly and the Executive Committee, and will be responsible for disseminating information to the members of the national chapter.

f. Where necessary, the Chapter Head shall organize and develop a support structure including a secretariat and an executive committee at the national chapter.

CHAPTER FOUR

Article 1: Financial Provisions

All monies are to be used for fulfillment of the objectives of SEAPAC. Sources of finance for SEAPAC shall include the following:

a. Fund raising from internal and external sources;

b. Donations and grants;

c. Partnerships and agreements with funding organizations;

d. Contributions, including those from governments, corporations and other businesses, international organizations, and individuals; and

e. Self-generation through membership fees to be determined by members and annual subscription by national chapters.

Article 2: Bank Account

The Executive Committee shall by general resolution keep a bank account in a financial institution of its own choice and all financial transactions shall appear in the name of SEAPAC.

All cheques of the SEAPAC shall be signed by the President and the Treasurer.

Article 3: Accounts and Audit

a. The financial year of SEAPAC shall commence form January 1 to December 31

b. The Executive Committee shall keep proper books of accounts to be audited;

c. Income and expenditure statements shall always be available for inspection and the discussion; and

d. The Secretariat shall produce an Annual Report showing amount and sources of funding received as well as monies spent in the financial year.

CHAPTER FIVE

Article 1: Amendments and Revisions

This Constitution may be amended or revised from time to time by special resolution passed by two- thirds majority votes of members present at the bi-annual conference of the General Assembly.

Any member proposing changes in the Constitution shall reduce the same into writing notifying the Secretary not less than twenty-one (21) days before

the date of the conference at which it is to be considered.

The approved changes shall be embodied in the amended constitution.

Article 2: Seal

The Secretariat shall provide for the safe custody of the seal of SEAPAC. The seal shall only be used by authority of the President. The seal shall be affixed by the Secretary on every document signed by the President and countersigned by the Secretary.

Adopted in Manila, Philippines on March 31, 2005.

CITIZENS' AND MANAGERS' VIEWS OF CORRUPTION IN THE PHILIPPINES

by Dr. Mahar Mangahas (President, Social Weather Station)

Good afternoon, distinguished parliamentarians, participants, ladies and gentlemen. I'm going to talk to you about three types of surveys.

First, quarterly national surveys of citizen's satisfaction in governance. We do this regularly and among the matters that we craft is satisfaction in fighting corruption. This we do on our own initiative. This is not a commissioned work in any way.

Secondly, two other types of survey sources: annual surveys of enterprises and an annual survey of the general public on corruption, sponsored by the Asia Foundation out of USAID funds. This annual survey of Filipino managers, involving large, medium and small enterprises was started in Metro Manila five years ago. We have conducted it in other cities gradually on the topic of corruption in both the public and the private sectors.

Thirdly, we have included in our annual survey of citizens views of the sincerity of the institutions in fighting corruption. On the a general picture of what the public thinks about governance and corruption, I would just give you three main points. The citizens give government performance mixed ratings: *positive* in some matters and *negative* on other matters. Corruption in particular is the second worst subject on which the Philippine government is graded.

We also have ratings of other institutions such as Congress, and they are volatile and currently tepid, meaning, they're just on the margin of *positive*.

Here's an example of satisfaction with the national administration on certain issues done last year December 2004. This is our 4th Quarter Report for 2004. That's actually our latest public report since our 1st Quarter 2005 Report is for subscribers in the meantime.

[*Dr. Mangahas showed a PowerPoint presentation of charts, graphs and statistics*]

Here, you would see an overall performance rating of what we call +3, which is the difference between 39 percent *satisfied* and 35 percent *dissatisfied*, properly rounded. So just by looking at the last column—the pluses and the

minuses—you will see on what issues are more people satisfied and on what issues are more people dissatisfied. Third from the bottom is ERADICATING GRAFT AND CORRUPTION, where 56 percent of the general public were dissatisfied and only 25 percent were satisfied. Pretty poor, although not as bad as FIGHTING HUNGER AND FIGHTING INFLATION.

We have done this for many years—actually SWS is 20 years old now—and this is just to give you a background of the overall performance rating of the national administration—I cannot say *government*; the exact term is the national administration—their ups and downs. Zero marks the difference between the favorable and unfavorable. In this case, + 3 is just about neutral.

In HELPING THE POOR—the blue line there, in the general chart—you can see the overall rating of the administration. It is very close. It is HELPING THE POOR and HOW DO YOU FEEL ABOUT THE GOVERNMENT? These two track very closely together.

Here's another set of governance ratings. Now the worst, historically, is FIGHTING INFLATION and that's the lowest chart down there. FIGHTING INFLATION—the poorest rating over there—COLLECTING TAXES sometimes up and sometimes down, but it's been down now for several years. Here, very specifically, a long series on what people think about the administration's effort to fight corruption.

The last point is -30, so pretty poor. Please also note that every time a new administration takes over—at least at the beginning of the Ramos administration, at the beginning of Estrada administration, and at the beginning of the Arroyo administration—you have a bounce up. You have people feeling hope that maybe with a new administration something will happen. It's a seasonal feeling but is rather short-lived within two quarters. In fact, the longest indication of hope was in the Estrada administration. It took at least one year, after which disappointment set in. It's very interesting to point out the Estrada administration because he is the one most prominent person who is actually being sanctioned for graft and corruption.

Here's another example: On FIGHTING CRIMES—that's the red line there—sometimes it is rated positively. It has ups and downs although it's been negative recently.

On the positive level, things on NATIONAL SECURITY, RELATIONS WITH THE UNITED STATES, even FIGHTING TERRORISM, RESTORING PEACE IN MINDANAO—these matters get more favorable comments from the general public.

I just put all these for you so that you could see the context of how people feel about graft and corruption, given other functions, other matters, that government has to attend aside from graft and corruption.

We also asked people what they think about institutions—incidentally, I thought I would point out what people feel about the [Philippine] Legislature, because this is a meeting of parliamentarians. We have a bicameral legislature in this country. Here, you see the net satisfaction with the Senate—that's the green—and the House of Representatives, and that's been volatile also. It's been rather low lately, about +10, or +5.

Let me talk specifically about the Erap factor, about former President Joseph Estrada. He was extremely a popular president but whose popularity plunged when he was accused of bribery in 2000, impeached by December 2000, and finally ousted in what we call People Power 2 in January 2001 . . . we're not going into that story. He has been in detention now for almost four years. Public attention on his trial for plunder continued to be strong. Of course, his popularity fell, but it has been revived and became a little positive again, I'll show you.

This tells you about people's attention to news events. In the orange line, this is people following the trial. That stage is strong. It has been overshadowed only during the time of elections, when people started thinking more about the candidates and about the cheating, and when one of the Filipino workers was kidnapped in the Middle East—it got a lot of attention—but the Erap trial was strong subject of interest to the general public.

This is to give you the specific results of the December 2004 survey. Seven big events was considered in that poll and, again, the most interesting to the public is the trial of former President Estrada. Very close was the kidnapping of the worker in the Middle East. Number 5 was court martial proceedings of allegedly corrupt military officials, with 25 percent of the public following the event.

Here is the history of the popularity of former President Estrada. The green line is what we call *net satisfaction*. Proportion satisfied with him, minus proportion dissatisfied with him, and you see that it's very, very high. In fact, it reached more than +80 or close to +80 sometimes. Net satisfaction is a number that can go anywhere from +100, if you had unanimous popularity, and -100 if you had unanimous hatred. To give you an example, somebody who is -70 or

-80 is Saddam Hussein as far as the Filipinos are concerned.

Mr. Estrada is the opposite side of the spectrum. He's a very popular person, whose popularity however suddenly collapsed; that's when that green line suddenly fell. I failed to inform you—the first panel is when Mr. Estrada was a senator. The second panel is when he was the president; it is short because his term was terminated by People Power after two year as president. Then he became a private citizen.

Now we started asking people whether they trust him as a private citizen, if they were satisfied with his performance. But whether they trust him or not, and that's the red line—the red line being the proportion of those who trust him minus the proportion those who do not trust him. I think this is because he has actually been detained and is probably one of the very, very few who was actually been arrested. There's a division of opinion as to whether he's been treated fairly: 41 percent saying *fairly*; 36 percent saying *too harshly*; and 21 percent saying *too leniently*. Still, focused on the middle but tending to say that it's getting harsh.

Recently the graft court, the Sandiganbayan, allowed him to be confined under house arrest instead of in a prison facility. I have not actually seen it, but this happens to be some kind of a rest house or villa which is close to a military facility and, of course, secured all over. That was a popular decision. In other words, after all, he is the former president, he deserves some special treatment.

Now, from there we go to what is more the meat of my topic, and this is our series of surveys of Filipino managers about corruption. Actually we have reported four rounds of this annual survey and we have just completed the field work for the fifth round. We'll report this maybe in a month or so, when we get the results computed. We called this project our annual surveys of enterprises on corruption for transparent, accountable governance. The aftermath of this series of surveys was a growing willingness of businessmen to contribute to a private-sector fund to fight corruption. Let me comment, though, that the big difference between these surveys and the Transparency International surveys is that these are reviews of Filipinos. These are not reviews of expatriate managers in the Philippines but of Filipino managers.

We're using a five-point sincerity rating scale where there is an English version and two Filipino language versions, Tagalog and Cebuano. I just want to clarify that we asked people whether they think that government is very

sincere, somewhat sincere, undecided, otherwise neutral, somewhat insincere or very insincere. The green answers are called *gross sincerity answers* and the red answers are the *gross insincerity answers* and the net is simply *sincerity* minus *insincerity.*

We have asked people separately what they think about different institutions, and these are the ratings that businessmen gave to these institutions. *Net insincerity* again is a number that ranges from +100 to -100. I am calling *very good* those who are graded with +50 or more, and these are the Security and Exchange Commission, the Supreme Court, the Department of Health. There are those I would call *good*: the *barangay,* or village government, the Department of Budget, the Department of Education. Others, I would call *moderate*: the Ombudsman, the Commission on Audit, the Sandiganbayan, or graft court, the town government, the Department of Justice, the Office of the President, the Presidential Commission on Good Government.

Now, *mediocre.* I am using this term for answers from -10 to +10; they could as well be zero, either between -10 or +10. So they're just about neutral. There are very split opinions as to whether these are sincere or insincere. *Mediocre*: the trial courts, the Presidential Anti-Graft Commission.

Now, *poor, bad* or *very bad*—double digit negatives from -11 to -30—are the Department of Interior, the Senate, the Department of Environment. I've underlined the Senate and the House of Representatives because these are our legislative bodies, and I assumed that you may be a little bit more interested in the Legislature than in the other agencies. So, as far as our managers are concerned, our two Houses are both on the negative side.

The *very bad*—the usual suspects, as they say—are the Bureau of Internal Revenue, the Department of Public Works, and the Bureau of Customs.

Since we conduct the survey annually, we are able to see what's happening over time and to track results. And we are able to identify those which have become better, and by *better*, I mean *more positive*. These agencies were already positive and they have gotten higher: the SEC, the Ombudsman, Commission on Audit, the town government, Justice, the PCGG, and the trial courts. In fact, trial courts turned negative to positive—that is nice to see.

Not as bad is the term I am using for less negative. Still negative but not as bad as before: the Department of Environment.

Not as good, less positive, but still *positive* are the Supreme Court,

Department of Health, the town government, the Department of Budget, Education, the graft court, the Office of the President. The Supreme Court was very high, so high that it would be hard for the Supreme Court to maintain that. All right, we won't be harsh on this—*not as good* because they are *positive.*

We must be harsh on those which became *more negative* because they started *negative* became even worse: the Presidential Anti-Graft Commission, which in fact turned from *positive* before to *negative*, and, in the new round, the Department of the Interior. Unfortunately, I have to report to you the Senate and the House both turned *worse* as far as managers are concerned, together with the Land Transport Office, the police, the Bureau of Internal Revenue, the Department of Public Works, and Customs. So these, you might say, are the agencies on their toes.

The general findings here:

(1) Most agencies got worse grades.

(2) One of every two managers personally encountered a case of public-sector corruption in the previous three months.

(3) So many enterprises donated to the election campaign, usually to more than one candidate for the same position. In other words, it is like an insurance.

Majority of managers say that bribery in order to get a public-sector contract is pervasive in their own sector. We are trying to ask them to be as specific as possible without incriminating themselves, because, of course, that will be useless to do that. So we're asking them what they know about their own industry, what the practice in their own industry is.

How much is being allotted for bribery? In a contract, 20 percent if it's government; 10 percent if it is private. So there is also bribery for private contracts. Then we asked them if they have ever been asked or offered, and of course, so many were. But almost everybody keeps quiet; they say it is useless. The main excuse is, it is futile to report being asked for a bribe.

We used Singapore as a model and said, "Will it be good for you if corruption could be lowered to what you know as the case in Singapore?" A great majority said, "That is going to be good for us personally, for our business." We asked them to estimate how much better, and the immediate response was: "It will probably increase our income by 20 percent."

That leads us to our next question. We asked them, 'Will you be willing, how much would you be willing to share from your net income in order to fight

corruption?" And our latest result came up with a very pleasant 3 percent of net income—the average of 2.5 percent in the Metropolitan area; 5 percent in Cebu; 4 percent in Davao—for a private anti-corruption program fund. This specifically led to the creation of the Coalition Against Corruption. Two out of three said they were willing to join the program fund.

Problem: The business sector itself has got to clean its own house. Only 35 percent issue receipts all the time; only 21 percent keep one set of books; only 15 percent pay taxes honestly. These are not our respondents—this is what they said happens in their own sector, in their own industry. In other words, without incriminating themselves personally, this is the result in their industry.

Being publicly listed or having a code of ethics doesn't in itself do any good. Statistical analysis showed no relationships to reporting for bribe. They must cleanup their ranks. They say that corruption is learned in the workplace, and half say that the private sector itself does not punish corrupt executives.

If we compare citizen's views versus manager's views, managers are more generous when praising good agencies and more outspoken when criticizing the bad ones. Managers, incidentally, perceived that both Houses of Congress were very insincere in fighting corruption.

The public is more generous to the Congress than the managers are. But citizens themselves are suspicious of whether big business is also sincere in fighting corruption. These are part of our data. So remember my conclusion: businessmen are both more generous and more critical.

The main point I would like to make is that statistical surveys of public opinion are scientific means of monitoring the corruption problem, and that they are especially fitting to a democracy because a democracy is supposed to heed the general public's point of view as well as the managers' point of view also. Corruption is definitely a very serious problem seen by everybody, and managers are more severe, with higher expectations.

Key difference from our surveys from those of international consulting firms: What you see in TI and almost everything else—all the international indices, all the competitiveness indices, all the how-easy-to-do-business in a place—are all based on data from international consulting firms and, therefore, stemmed from questionnaires which they issued to their clientele. These are, of course, expatriates; these are Westerners who happened to be based all over the world—Coca Cola, McDonald's, whatever. I suppose that if one wants a common

cultural perspective, there is a common cultural perspective in those data. But it is not global because it is very special. It happens to be the ratings of a particular sector, the multinational sector.

I must also complain that I have never obtained the original data about the ratings of the Philippines from Transparency International, although I have asked many, many times. They have never shown me the original results, not even the numbers for the Philippines from those surveys on the Philippines. I think Transparency International should be more transparent. I don't know if they can do it without somehow breaking contracts. Their claim is that they're proprietary data and proprietary data cannot be divulged. Well, I also say non-divulgeable data cannot also be believed as much as data which can be divulged.

Then finally—and only because this is for a meeting of parliamentarians—it should be pointed out that even though the Legislature is not one of the "usual suspects," it rates very poorly; it rates worse than the Executive Branch and the Judicial Branch when it comes to fighting corruption.

Thank you for the chance to point out that part of our mission in the SWS is to bring this to public attention because our work is statistics for advocacy, and fighting corruption is one of the challenges that we are happy to participate in.

Thank you very much. *Maraming salamat.*

OPEN FORUM

MS. ESPAÑOL: We will now have the open forum portion of our program. And I'd like to ask that I'd be the moderator of this open forum. Open forum starts now.

MR. VETERE: I am Eduardo Vetere from the United Nations office in Vienna. I would like to congratulate the presentor for the data which was shown us—they show a trend during time and this is not always possible to find in many countries. And for the picture that has been given, the draft presents not only opinion polls of general population but also of the private sector community and the business sectors on the perception of the phenomena. I have a very simple question: How big is the sample that you have been using, both as far

as the general population is concerned and as far as the business community?

MR. MANGAHAS: The national sample, sir, is 1,200 statistical samples—that's more or less a global standard for a national survey. The business trend surveys had been growing in size, originally 500, and more recently 700 in size. They are also drawn at random but the base has been expanding—Metro Manila in the first three years, and then we moved down south, Cebu and Davao, and now we've also moved into provinces outside Manila and Cagayan de Oro. But when examining the trends, we usually stay with the originals so that we're sure it's not a question of design. We're dealing with all of that in a proper and scientific way. Thank you for letting me state that.

MR. BOONTON: My name is Dockthaisong from Thailand. I am very happy to note that in your country it seems that you open your hearts here, you open the Philippines to let us know how people perform. I am sure that this one is one of the best examples of an organization studying about corruption. You present to the world how an open society considers its leaders, including those at the Senate, and how it has been done. I'm very interested in terms of how you implement it and let the public know about your own country. The second one: it is possible for us to get a copy? Third: how long did it take you to research all these matters? Thank you.

MR. MANGAHAS: I think you have hit the main point at the very beginning. Despite all the problems of the Philippines, I would say one of our greatest assets is freedom—you know, to be able to do such research and to be able to speak out. We have probably a greater surplus of freedom of speech and freedom to do research here than elsewhere. That makes up for some of our other deficiencies in other things.

Each one of these rounds takes about three months to do. The governance things are reported quarterly; the annual survey of enterprises takes maybe about a six-month turnaround time, from initiating to finding out what the results are. I guess not only it is the freedom for the researchers to do this; it's also the freedom for the respondents to be able to speak up. We are very grateful to them for their being able to speak up and share their points of view. Our response rates are normal, compared to the response rates of advanced countries, so we don't feel people are holding back anymore. In most places they want to protect their privacy. I would say that our problems of getting people to cooperate are no different than in other countries. It's not so easy; we

have to make some substitutions here and there, but it works; it can be done.

We also have our own archives for public use, so someone can actually come and say, "Can I have a copy?" Of course, there are library fees and there are purchase fees and stuff like that, but the archives are open for research.

We will also be very happy to cooperate. In fact, cross-country cooperation is starting, quite a lot in our area. Last month, we just signed a general agreement with King Prajadhipok Institute of Thailand because we already had three projects with them on topics other than corruption. In fact, it's very easy to get started on this sort of matter. I see that the people there also have a very nice research attitude when it comes to these things.

As far as the institutional matters are concerned, things are in hand. Of course, financial support is always needed to do this properly, but the main ingredient, which is not in our control, is the political freedom to be able to do this, to be able to speak out, which is handled by the political leadership as a whole, including the legislature, to be able to have an open-mind to do these things.

MR ANGARA: Excuse me. The other point I think that he wants to find out is, how do you implement your findings? Who implements it?

MR. MANGAHAS: You know, that's a separate matter. We are advocates, all right, but we cannot file cases in court. We don't have probative materials out of these things. We are actually exploiting the capacity of statistics to motivate people who could do something about it. That's why I cite that business itself could be motivated to do something like it. We are happy this encourages agencies like the Ombudsman to feel good about whatever they are doing right. Last year the Securities and Exchange Commission had a great celebration that they were Number 1.

MR. ANGARA: The chairperson of the commission, Ms. Barin, is here right now.

MR. MANGAHAS: [*Addressing Ms. Barin*] Your predecessor was so happy she's that she's played it up to all the employees. She said, "We must maintain our good reputation."

MR. ANGARA: If I may add, since these are really addressed to the agencies concerned, it's up to them to implement in their respective fields what the findings. But it's a very powerful motivation to do something. I think this gathering is an example of us in the Senate and Congress trying to respond in

our own way to the issue of corruption. The SWS quarterly survey is like a bible. All the agency heads read it every quarter, just to find out what position they occupy in the corruption league. So it's a motivator. It moves the agency heads and members to action.

MS. ESPAÑOL: Sorry for the interruption. But may I add also that copies of the presented document are available. Most of these have been included in the conference kits of the delegates. For the other guests, we have copies of the same outside. Thank you.

The delegate from Singapore, you have a question please?

MR. YUEN: Thank you. I would also like to ask a copy of the presentation. So let me ask you a question on statistics: In your analysis, have you done a two-dimension analysis checking the seriousness of each of the issue? For instance, Senate confidence or Congress confidence in present offices versus the gap. Today you only presented the gap, the gap between what is considered good, what's considered not so positive, the minuses. But I think what's equally important is how serious is lack of confidence in the present office or lack of confidence in the present Anti-Graft Commission. Have you done such analysis?

MR. MANGAHAS: You are referring to the detailed position in the scale?

MR. YUEN: Your options in those two agencies.

MR. MANGAHAS: We don't have only one point. Actually we have five. So one can go into more details and find out how people score on the *very corrupt* answer or question, or the *very incorrupt* answer. I must confess that we haven't had the stock resources to be able to examine that in more detail ourselves. We are occupied extremely with things like number of topics so that we can barely rest. While I apologize for our not having been able to do studies of those things, I can say that they are open, and one can purchase our single CD containing all four rounds in the enterprises survey, for example, and do statistical testing. Every survey has at least 50 variables to examine and create models from. For the statistical analyses in business administration and public administration, there's a lot of material to choose from, and then a lot of them could be examined for creating new Ph.D. theses for the future.

MR. CHAROEN: My name is Charoen Kathawong from Thailand. Since you have been doing this survey for some time now, I'd like to know the feedback of those institutions like the Senate, the Congress, the administration and the courts.

MR. MANGAHAS: We don't have face-to-face confrontations with so many of these agencies. I can just perhaps narrate to you from personal experience that, by and large, I am satisfied that some major agency heads have been able to take it without offense. That's right—we have been able to present this directly to heads of the Bureau of Internal Revenue and the Bureau of Customs without them taking offense. Some of them even tell us how frustrated they are about us not being able to produce results so quickly. We're very much encouraged by the Office of the Ombudsman—especially the new Ombudsman, with whom we have very close ties and who has given us a lot more chances to work nowadays. I think we are working hand-in-hand there very well.

MR. CHAROEN: Another question: Since you let the public learn of this survey, has there been any sign of decreasing corruption—or do you have nothing to do with it?

MR. MANGAHAS: Not yet. Is there a sign of decreasing corruption? The public's protest about corruption is so far just as high before. I've just seen our results for early March 2005, and the corruption rating is a little bit negative—not enough to say a breakthrough—than it was in December. If it continues to fall like that, that will be very nice, but I've learned they can extrapolate from just two points. You have to see if it proceeds like that for maybe two years before one can say it's really on the way down. I don't know how long it would take, and certainly I won't say that such research would mainly be responsible, but at least we're doing our part and we feel we're not in some ivory tower producing research for other researchers. But we have to do research for people who could do something real with it.

MR. ANGARA: Well, let me point this out. In the case of two agencies—the Securities and Exchange Commission and the Ombudsman—your earlier survey indicated that their ratings were already positive, and your next survey indicated that they are even rating better. That means there was an improvement. But in the case of the House and the Senate, it's the opposite.

MR. MANGAHAS: Yes. Sorry to say it so.

MR. ANGARA: We were already enjoying very poor reception with that, but even got less. So how do you explain that?

MR. MANGAHAS: Well, these are businessmen, and I guess they would be attuned also to what's going on in the business sector. We're not able to test, say, certain cases, certain scandals—we're not doing that.

MS. ESPAÑOL: Yes, Mr. Boonton?

MR BOONTON: I'll continue from the question of Senator Angara. Your fourth conclusion is very, very interesting. You said that some agencies are the centers of corruption, the Philippine legislature included. You mean to say the legislative body, the two Houses, are corrupt?

MR. MANGAHAS: To be very precise, the question is, sincerity in fighting corruption. We are not saying that they are corrupt. Sincerity—of course, you don't want to be insincere in fighting corruption.

MR. BOONTON: You mean to say they are unwilling to perform their job?

MR. MANGAHAS. Well, it's their job. For instance, the Office of the President has the rating *slightly positive*, not so very high but *slightly positive*. Supreme Court, of course, is *very good*. Even the trial courts rate as *slightly positive*. The Senate and the House are much, much lower in those things.

And then you have many agencies that are *positive*. They are the usual—revenue collection and public works agencies—but those are the well-known, notorious agencies.

Another one I could point out that was really captured by the survey is the Department of Education. They had a very bad reputation just about toward the end of the Estrada Administration, when the book purchase scandal came out. But then it recovered very well, as found out in the surveys, when new management came in and people saw that there were efforts to correct that kind of situation. So I think the perception—and maybe more so the managers'—changed because they are more attuned to what was going on than the ordinary people. Of course, they are relatively reliable in terms of guides for doing well in fighting corruption.

MR. ULRICH: You didn't say what others have done in other countries, but are there other cases with other countries that are similar to what you have done? Do you know of other cases in other countries which have done similar things, and you can do some comparison for us?

MR. MANGAHAS: I think we are quite innovative in the Philippines and if others have, we'd like to know what they are, but they are not certainly standing out. Aside from the consulting firms work which goes into the Transparency International—which one should have to subscribe to if one is a business company—I would say I know of no ordinary governmental or NGO research group that that is working on corruption like we do.

regional basis, but we don't know how much it will cost. So again, Mr. Mangahas, thank you for your presence and for your excellent presentation which brought insights to all of us. Thank you very much. [*Applause*]

MS. ESPAÑOL: Thank you very much. We now proceed to the next plenary discussion, which pertains to the United Nations Convention Against Corruption.

THE UN CONVENTION AGAINST CORRUPTION

Discussant: Mr. Eduardo Vetere
Director, UN Division of Treaty Affairs

Let me start by thanking GOPAC and all our hosts here in the Philippines for having organized this meeting. It is a great pleasure to be here with you. And the great pleasure is you, as parliamentarians, have a very crucial function in the fight against corruption. But there is an additional reason: we need all of your parliamentarians for a quick ratification process of the new United Nations Convention Against Corruption. Although the work has to be done by the executive branch, by the relevant ministries, in order to check if the legislative and other organizational structures are ready or not for the ratification process, at the end is your role in completing the process and making sure that the Convention is ratified as soon as possible. I therefore plead with all of you to make sure that once you go back to your own country, do see that the process is started and that it gives results in terms of quick approval of the ratification. In order for the Convention to enter into force, we still need quite a number of other countries. Therefore, whatever you can do in order to speed up the process is greatly appreciated.

Let me try to go through the highlights of the origin and why the United Nations and the international community decided that there is a need for a new instrument at the global level to fight against corruption.

[*Mr. Vetere utilized a PowerPoint presentation to aid his discussion*]

Basically, the phenomenon of corruption is a multidimensional challenge for all governments because it touches human rights protection, democracy, the rule of law, quality of life, open markets, human security, and sustainable development. In any country that is so much threatened by corruption, it's the entire development process that suffers at the end. This is a threat not only at the national level but also at the global level.

First of all, the cost of corruption exceeds by far the damage caused by any other type of serious crimes. This is not just UN data; this is data from World Bank. In terms of cost, it really represents a tremendous drain on the economy of many countries. I don't have to give you the numbers; they speak by themselves:

one trillion U.S. dollars paid in bribes in one year, according to the World Bank. According to the Asian Development Bank, corruption eats up 17 percent of the gross domestic product. Data from the World Bank also show the harm exceeds the proceeds of the crimes, that a $1 bribe costs us $1.7 damage.

Now, if you reflect on some of the so-called cases of grand corruption—just to make a basic distinction between so-called petty corruption or small corruption and grand corruption—any type of corruption can be extremely deleterious and tremendously damaging to not only the economy but likewise the spirit of morality and ethics in any country. To look at the cases of grand corruption, extremely important in the new Convention is the question of asset recovery. This is why I am particularly mentioning these cases. In Mobuto, Zaire: $5 billion, which corresponds to more than the foreign debt of that country; in Duvaliers, Haiti: $500 million, 87 percent of the annual budget of their government; and not to speak of Nigerian kleptocrats: up to $100 million, which is more than double the GDP and three or four times the foreign debt.

Now, let me go to the next slide, to the negotiations process of corruption and why the need for a new convention. Here, I would like to go back a little bit in this study, simply to recall that the United Nations, particularly through our congresses on crime prevention and the treatment of offenders held every five years, has been a forum in which the issues of corruption have been discussed. Before, it could not even be discussed. The issue could not even be raised at the level of the United Nations. But little by little, the matter has been discussed. Then we inquired into the number of relevant resolutions, starting from the one on the code of conduct of public officials that was adopted by the General Assembly in 1996, together with the declaration on bribery as a problem of security. Starting from there, additional discussions and specific recommendations related to measures to fight against corruption were made. Finally, the negotiations for a new instrument related to transnational organized crime: the United Nations Convention Against Transnational Organized Crimes with three protocols—on trafficking of human beings, particularly women and children; on smuggling of migrants; on trafficking of illicit drugs—was negotiated in Vienna and was approved by the General Assembly in 2000 and placed for signature.

In this Convention on Transnational Organized Crime, Article VIII obliges countries that ratify the convention to criminalize the corruption of public officials; while Article IX requests specific preventive measures that countries

should put into place. However, at the time during which this article was being agreed upon, it was also realized that the problem of corruption was much bigger, and it required much more time and discussion to come out with an article criminalizing the acts of corruption of public officials. It was for this reason that at the time in which the agreement on the Convention on Transnational Organized Crime was reached, it was also decided that an ad hoc committee be established in order to deal with the negotiation of a new instrument dealing specifically with corruption.

This is why during the General Assembly in 2000, by Resolution 55 plus 61, it was decided to establish an ad hoc committee for the negotiation of a new instrument. It was also decided that it was important to have a specific term of reference for this committee to start working on. For this reason, an intergovernmental meeting was held in Vienna in 2001 to agree on the terms of reference. The committee met, and everything was endorsed by the Commission on Crime Prevention and Criminal Justice, the policy-making body, and approved by the General Assembly.

On this basis, an informal preparatory meeting took place in Buenos Aires in December 2001 to collect proposals from all interested governments. We collected proposals from more than twenty-five governments, some of which even gave draft copies for the new instruments. We consolidated all these proposals in one document, and in a very democratic way the ad hoc committee was convened and started to work for two years. This is why between 2002 and 2003, seven sessions of the ad hoc committee were held.

The ad hoc committee is open to all member-states, following the rules of procedure of the General Assembly. All countries were represented, and there was a tremendous amount of work in order to decide on the architecture and the structure of the Convention. There were three different readings made in order to properly agree on all of its provisions. And all these culminated in the last session of the ad hoc committee itself, in which final agreement was reached on each and every provision. On the 31st of October 2003 the General Assembly in plenary approved the text. It also decided to convene a high-level political signing conference in Merida, Mexico, to collect as many signatures as possible. For this, we followed the model of the Convention Against Transnational Organized Crime, for which a very similar high-level conference was organized in Palermo in December 2000.

In Merida, the Convention was signed by ninety-eight countries. Additional countries continue to sign the convention which will remain open for signatories till December 2005, in accordance with the provision of the Convention. In Merida there was also one country that ratified this instrument forthwith: Kenya. Since then, eighteen countries have ratified.

In the next chart, you will find their composition in connection both to signatories and ratifications of the convention in the various regional groups. As you can see, among those eighteen countries which have ratified, majority are from the African continent, followed by Latin America and by the other regions. Of course, we realize that the ratification process can take quite some time, depending on the complexity of the legal system of each country. Some countries have the capability to ratify by executive or presidential decree, others by parliaments. Other countries require exactly the contrary, according to their kind of parliament. When we compare, however, the pace of ratification by countries on the two instruments—the one on transnational organized crime and the one against corruption--we can see that the Convention Against Corruption, in terms of number of ratifications being received, is going faster vis-a-vis the Convention Against Transnational Organized Crime. Hopefully, it may enter into force by the end of the year if the continuing process of ratification goes the way in which it has gone up to now.

We go to the next slide for the main point of the convention. The Convention has 71 articles, in addition to a preamble where the major goals are mentioned. Basically, the aims as mentioned in the relevant article are: to prevent and combat corruption more efficiently and effectively; to promote and improve international cooperation and technical assistance, including asset recovery; and to promote integrity, accountability and proper management of public affairs and property.

Now, the main chapters of the convention, after the beginning articles devoted to definition, are the chapters on preventive measures on criminalization, law enforcement, international cooperation, asset recovery, technical assistance, and information exchange, plus the final chapter on implementation because there are instruments that are there without this very important provision. But history tells us that unless there is a very strong implementation mechanism composed of parties that can review what is being done, this instrument will not have too much effectiveness in terms of proper implementation.

Let me go very briefly to the first chapter related to preventive measures. This is a chapter which is quite rich in terms of proposed measures, which represents the extract of the best practices that have been going on in many countries. Basically, they are there already for implementation without the instrument being ratified, because these activities are already going on in most of the countries of the United Nations.

There is a very important aspect that relates to the conduct of public officials and to the integrity of the judiciary and the prosecution service. And here I would like to stress once more the importance of not only the legislature in order to be the organ that overviews the activities of the executive, even as it carries on legislation. The importance of the prosecution service and the judiciary, the importance of their independence in order to act without any possibility of being intimidated, is also emphasized. And when I speak of the judiciary, the prosecution service in each country is also tremendously important in order to support the law enforcement authority and the public in general.

The other articles mainly concern the participation of public and private sectors, the role of civil society. We have seen the importance of survey groups in order to assess and measure what the public perceptions are. I would like also to stress the role of journalists and media in exposing aspects of this phenomenon called corruption. And in general, the role of civil society—because in the end, it's up to them really to support the activities of government.

There is also an article which relates to the prevention of money-laundering, but I would like to stress here the importance of Article 5 and Article 6 of the Convention which address, in particular, the need for the implementation of effective and coordinated anti-corruption policies, and in general, to be overseen by proper fully independent anti-corruption bodies.

Part of the measures that I have mentioned before—since we are now dealing not only with the public institutions but also of the private sectors—are particular articles in the Convention, especially those enhancing the standards for accounting and auditing, to make the principle of no-tax deductibility of expenses as constituting a bribe. Please do not laugh. In some countries, by legislation, some expenses could be deducted from the taxes paid by the various companies and enterprises.

Thus we see the importance of other preventive measures, particularly the participation of society in all these, not only in terms of their active role in

exposing acts of corruption but also in participating in anti-corruption mechanisms and modes, and the importance of money-laundering preventive measures because we are going to act again on what constitutes the profit. If we are successful in attacking the profits, no doubt we will also be successful in the overall fight, especially if the fight is comprehensive and done with the participation of different sectors of society.

The other chapter of the Convention is on criminalization and law enforcement. Of course, for some offenses there should be time bounds, but I am not ready for this. But as you can see, there are mandatory offenses. This means that it's a must, it's a requirement for the ratification, to have legislation that already covers those offenses. There are other types of offenses, including passive bribery for public officials, trading influence, abuse of function, illicit enrichment, which a country may also consider to criminalize, depending on the situation in each country.

In connection with law enforcement measures, there are particular provisions related to prosecution and adjudication. Other provisions are related to the protection of witnesses, victims and other reporting persons. You all know the importance of the full participation of the victims in the process, not only because there is a UN declaration on basic principles concerning the rights of victims of crime and abuse of power but also because without the cooperation of the victims and without witnesses to provide the right evidence, it is very difficult to be successful in the prosecution and adjudication of any serious criminal offence.

If we go to some of those particular aspects that are essentially important, it is the question of obstruction of justice. This is something which all judges and prosecutors feel very much threatened with. The Convention provides for measures related to obstruction of justice, which is also foreseen in a similar provision in the convention against international organized crime.

The next chapter which relates to international cooperation in criminal matters, and again we focus on classical mechanisms of international cooperation, particularly extradition, mutual assistance, transfer of sentenced persons, transfer of criminal proceedings, and law enforcement cooperation and joint investigations. I think that Article 46, on mutual assistance, or even Article 44, is more or less a mini-treaty within the treaty because of the richness in which the article foresees the various modalities of cooperation that both requesting

and requested parties have to observe in accordance to the provisions of the Convention.

In the next slide, we see the question of dual criminality, which is considered very much a basic principle of international cooperation. It needs to be refined and somewhat narrowed down, particularly because it now permits countries to cooperate at the level of mutual assistance even when such provisions are not so clear.

Probably the most innovative aspect of the Convention is the chapter on asset recovery. This was a major breakthrough in the negotiation, because while there were already conventions at the regional level dealing with corruption—such as the corruption convention of the Organization of American States or the Council of Europe Convention on Corruption, the OECD Convention on Bribery—these conventions basically were just treating one particular aspect, that is, bribery and corruption of public officials. But there was absolutely nothing on the question of asset recovery. I am pointing this out before I show the question of grand corruption. We have seen cases in many developing countries that when corruption occurs, the money unfortunately does not even remain within these countries to be used for some other activity. The money flies; it goes to banks abroad and is kept there.

You in the Philippines, in view of your recent history, are very familiar with the efforts that were devoted in order to trace and afterwards to get back some of the funds from the Marcos period. In many other countries, unfortunately, the money is hidden somewhere else. And for the first time now, the fact that the money should return to the country of origin is formally recognized as a fundamental principle of this new convention, with measures exactly addressing the question of detection and transfer of proceeds, recovery of property, return and disposal of assets, and measures for recovery of property through international cooperation and confiscation.

Article 57 makes the basic distinction between funds embezzled by public officials from the State and then returned to the State, and funds related to cases where victims have to be properly identified in order to be compensated.

Among the measures for prevention, for direct recovery and a comprehensive framework for international cooperation as outlined in Articles 45 and 55, the question of confiscation of proceeds is the most important element because unless those goods and monies are confiscated and are identified right away,

there is very little that can be done in order to properly recover them in connection with Articles 53 and 57.

We go now to the other chapter, and this is another extremely fundamental part which relates to technical assistance and information exchange. Why fundamental? Because it is recognized that while there are countries that have the means and the resources to take the obligation to implement the convention on their own, there are some countries which do not have these resources. They need technical assistance. They need the proper help from the solidarity of other countries in order to join the fight. This is why technical assistance is an integral part of the provisions of the Convention which will have to be reviewed by the conference of state-parties as part of the implementation machinery that I have mentioned. This technical assistance and exchange of information is addressed particularly at the training of criminal justice officials, conduct of studies, research and evaluation, criminal justice for institution building. This assistance is mainly directed to developing countries and countries in transition. In order to facilitate this process of technical assistance, there is the possibility of voluntary contributions in terms of a given percentage of the proceeds of crime, which each state-party can put at the disposal of the United Nations .

Finally, we go to the last chapter of the Convention—the mechanism of implementation. A conference of state-parties is going to be established within one year after the entry into force of the Convention. This means that all those countries which have ratified the Convention, plus others who have signed as observers, can attend the conference the main functions of which are, first, to promote, facilitate and review implementation; second, to make recommendations particularly in case of technical assistance needs and international cooperation; and third, to facilitate information exchange.

One of the tasks also given directly to the conference of state-parties by the General Assembly is to look at and address the question of criminalizing passive bribery of officials of international organizations. This point was raised and was discussed during the negotiations, but there was full agreement only on the question of active bribery, not on the passive kind. This was left for further discussion and negotiation to the conference of state-parties. As I mentioned before, within one year the first session of the conference has to be convened. It was given another year to allow additional countries to ratify, the intention

being not to limit the conference only to the first original thirty.

The other committee will then have to be reconvened in order to draft rules of procedures for the conference to adopt. Why not directly the conference of state-parties? Because the other committee is an open one where every country can participate. The conference of state-parties, on the other hand, will be mainly limited to the thirty countries that have already ratified the convention.

What do we have to do? First of all, we have to promote the ratification. This is why we have been working with interested countries in order to provide assistance in the ratification process. We have also organized a series of regional meetings in connection with the regional preparatory meeting for the 11th Congress. We also added more days to discuss the implementation and the ratification of the Convention Against Corruption.

As we did for the Convention Against Transnational Organized Crime, we are also preparing a legislative guide which will help drafters, legislators, and criminal justice officials to see what are required to ratify and thereafter implement the Convention, to give options, to give modalities of what a number of countries have been doing. We do hope that we will be able to distribute the first draft soon. We already have a committee of experts which has met three times in order to prepare it and we do hope that with the help of the legislative guide, we ensure that the Convention will enter into force before the end of this year, when we will have to convene the conference of state-parties.

The Convention Against Transnational Organized Crime now has received more than 100 ratifications. We are moving toward the full universal acceptance of this instrument and we do hope that the same thing may happen with the Convention Against Corruption.

I wish to thank you for all this. Speaking of ratification and compliance, let me underline the great importance that you have as legislators in trying to get the ratification as soon as possible. Perhaps you can attend the Conference of State-Parties as full members of the respective delegations that are overseeing the implementation.

Finally, I would like to inform you that we will soon have in Bangkok the 11th UN Congress on the Prevention of Crime and Criminal Justice. The prevention of corruption is one of its substantive items, so we do hope that further discussion of this issue can be generated and desired results obtained. The congress will also have a high-level segment during which we will have a

treaty event, according to the countries and ministers coming whereby they can deposit directly in Bangkok the instrument of ratification of either the Convention Against Transnational Organized Crime and the Protocols or the Convention Against Corruption, and even the UN Convention Against Terrorists.

Thank you for your attention, and I hope to see all of you again in Bangkok. Thank you very much.

IMPLICATIONS OF THE UNITED NATIONS CONVENTION AGAINST CORRUPTION ON ANTI-CORRUPTION PRACTICES AND INITIATIVES IN THE PHILIPPINES

by Commissioner Nicasio A. Conti
Presidential Anti-Graft Commission, Philippines

It is my singular honor and privilege to address you today on the occasion of the South East Asia Parliamentarians Against Corruption Conference, to talk about the implications of the UN Convention Against Corruption on anti-corruption practices and initiatives in the Philippines.

Corruption in public service, just like terrorism, global warming, environmental degradation, drug trafficking, and poverty, has become a shared concern of the international community. It is regarded all over the world as a social and economic evil. It has become a menace across all borders.

To some governments, to be listed at the lower end of the Corruption Perception Index (CPI) of Transparency International is a continuing source of embarrassment. However, there is more to the problem than a sense of disgrace. In developing and less-developed economies, the specter of corruption not only weakens the ability of governments to fight poverty. Worse, it erodes people's confidence in public institutions.

Given the nature and dynamics of the peril posed by corruption, no single society or country can address the problem alone. In fact, no less than the General Assembly of the United Nations stressed that international cooperation is essential to prevent and control corruption. The member-states of the United Nations, during the 51st Session of the General Assembly in 1997, expressed their collective concern at the seriousness of the problems posed by corruption "which may endanger the stability and security of societies, undermine the values of democracy and morality and jeopardize social, economic and political development."

It is, therefore, very encouraging and heartening to note that the community of legislators representing various nations in several continents deemed it wise, timely, and necessary to establish the regional chapter of the Global Organization of Parliamentarians Against Corruption. GOPAC, through its regional arm known as the South East Asian Parliamentarians Against Corruption (SEAPAC) constitutes a significant step in the worldwide fight against corruption.

A congruence of concerns ties the Philippines to the Global Organization of Parliamentarians Against Corruption. At this point in their history, the Filipino people have never been as focused and as determined in promoting a real sense of integrity in public service as they are now. A sustaining vision of the Philippine national leadership is to use its will, its facilities and resources at its command for the sustained prosecution of the war against the agents and apparatus of corruption. Civil society groups are never far behind. There is solidarity of purpose to take the challenge of corruption head on. Hence, the logic in the choice of the Philippines as the venue in this year's conference of the Global Organization of Parliamentarians Against Corruption cannot be glossed over.

In our relentless fight against the various tentacles of corruption, we certainly welcome every possible help from any institution, be it at a bilateral, regional or international level. Certainly, the United Nations Convention Against Corruption is a great moral and psychological booster. It makes global opinion and attitude hostile to the presence of corruption.

As a matter of record, there was something historically meaningful about the day when President Gloria Macapagal Arroyo signed the landmark UN document for transmittal to the Senate of the Philippines for ratification. The UN Convention Against Corruption was signed by our President on February 25, 2005, which was the 19th anniversary of the famous peaceful EDSA Revolution that brought back democracy to the Philippines. Just as the Filipino people were united in driving away a dictatorship, so also on the same day 19 years later were they in solidarity in finding common cause with the United Nations in fighting corruption.

How then do we relate our own policies and initiatives in the war against corruption to the UN Convention? Our own organizational aspirations in the pursuit of our mission are very well reflected in the substance and spirit of the preamble of the Convention. The declaration of principles, as enunciated in the preamble, underscores the need for a multi-disciplinary approach to combat corruption as well as the importance of technical assistance in the areas of capacity- and institution-building. Equally significant is the stress on prevention, criminalization, and international cooperation in asset recovery in order to deter more effectively the cross-border transfers of illegally acquired assets.

We fully subscribe to the position of the United Nations in its anti-corruption covenant that fighting this global social cancer requires the integration of the

competencies of various disciplines. Beneath the surface of investigative and detective work and the subsequent prosecution work is the broader sociocultural infrastructure of perceptions and attitudes that define the extent to which a given public act or behavior is tolerated or censured. Hence, popular conceptions and expectations must be modified in support of anti-corruption measures. This calls for an advocacy program requiring the intervention of educators, sociologists, communicators, community and institution builders, opinion leaders, and all stakeholders. In effect, fighting corruption is like building a great cathedral—every brick matters.

We are confident that as corruption appears on the radar screen and the crosshairs of all weapons at the disposal of the United Nations, we shall be given easy access to all sources of expertise spread out among the various agencies and units under the UN system, let alone the facilities of member-states with track records of success in neutralizing corruption. Indeed, it is very comforting to know that one is never alone in fighting so widespread an evil.

By and large, our existing policies and initiatives in fighting corruption fit well with many of the provisions of the UN Covenant. We have in the Philippines many anti-corruption laws whose implementation is in the hands of a number of government agencies. In addition, the Medium-Term Philippine Development Plan (MTPDP 2004-2010) provides that the enactment of the Republic Act 9184 (e-procurement law) redefined procedures in government purchasing, and has enhanced transparency, competitiveness and accountability in government procurement. The Anti-Money Laundering Act (Republic Act 9160 as amended) seeks to facilitate the detection of dirty money and prevent the Philippine banking system from being used as safe haven for the proceeds of corruption. And to strengthen public financial accountability, the New Government Accounting System (NGAS) was implemented on January 1, 2002. The NGAS aims to simplify government accounting, conform to international accounting standards, and generate periodic and relevant financial statements for better performance monitoring. The World Bank likewise cited the conduct of lifestyle or asset consistency checks on government officials and employees as an effective too geared toward forfeiture of unexplained wealth.

The UN Convention provides new insights and perspectives into the total war against corruption. Specifically, we can cite distinct articles in the Convention which will enable us to broaden our reach and improve our effectiveness. Article

12, on Private Sector, provides a new dimension to the anti-corruption efforts by including the private sector within the area of immediate concern. The Convention mentions a code of conduct for the prevention of conflicts of interest, internal auditing controls, transparency among private entities, and proper commercial practices. One cannot help being reminded of the scandals that rocked Enron in the United States.

Article 13, on Participation of Society, is a confirmation of our working philosophy that no anti-corruption campaign will ever succeed without the direct and active involvement of civil society, the NGOs and the community-based organizations, as well as all those outside the mainstream of the public sector. After all, the ill effects of dishonesty in public service jeopardize every sector of society.

To the credit of the Philippines, it has a very dynamic civil society and a most militant press. The people-led peaceful and successful revolution at that stretch of the national highway called EDSA had antedated the collapse of the Berlin Wall, the dismantling of the Soviet Union, and the removal of the Iron Curtain in Eastern Europe. The UN Convention is a reminder that we must get the private sector on board in the fight against corruption.

The provisions providing for the criminalization of bribery of foreign public officials of public international organizations, (Article 16) bribery in the private sector (Article 21), illicit enrichment per se (Article 20), and continued retention or enjoyment of the property despite knowledge that it is a fruit of corruption (Article 24) will effectively prevent, detect, and deter acquisition of illicit assets and their consequent transfers. The proposed bill on the protection of whistle blowers, pending before the Congress of the Philippines, finds support under Article 33 on protection of reporting person to the discomfort of the beneficiaries of corruption.

We look forward to deriving benefits from the provision of Article 46 on mutual legal assistance as we seek partnership with other states in identifying the proceeds of crime stashed beyond our borders, in obtaining help in conducting searches and seizures, in gathering evidence, in the service of judicial documents, and in the recovery of assets.

A corollary provision of the UN Convention is Article 52, on Prevention and Detection of the Proceeds of Crime, which strengthens our resolve to run after those who betray the public trust wherever they may go. The arm of the

law acquires a transnational reach. Equally comforting for us is Article 54 and related provisions with its mechanisms for the recovery of illegally acquired property through international cooperation in confiscation.

Where there is no safe haven anymore for anybody who steals public money by means of any scheme, and when the level of global rejection of illegally acquired wealthy is part of the day-to-day awareness of those both in circles of official power as well as those beyond, then the death knell for corruption is not too remote.

Given the vast network of the United Nations with its specialized agencies and offices located around the world plus its tremendous moral influence, to be allowed access to its training facilities and a wealth of technical expertise is very reassuring indeed for a country that leaves no stone unturned in its earnest desire to eradicate corruption.

In summary, the most far-reaching implication of the United Nations Convention Against Corruption is the comprehensive road map it provides in the long journey towards a global society premised on integrity and transparency in the conduct of the affairs of government. The new pathways revealed should make the future better for all.

Thank you and *mabuhay!*

OPEN FORUM

MRS. ESPAÑOL: Thank you very much, Commissioner Conti. Now we are going to have an open forum and the moderator is Dr. Emmanuel Buendia.

MR. BUENDIA: Thank you very much. We are opening the session for questions. We have two gentlemen experts here. One is Mr. Eduardo Vetere, the Director of the UN Division of Treaty Affairs. In fact, Mr. Eduardo Vetere was actually requested on a very short notice and he accepted our invitation. So we would like to maximize his presence. He will be leaving tomorrow. I would encourage everybody to ask their questions. We also have our commissioner from the Philippines, Atty. Conti, who would also give his insights on the country level.

MR. WANG: My question is, which group of countries do you expect to sign the UNCAC first?

MR. VETERE: In terms of signatures, I think that we have many already.

MR. BUENDIA. The lists are being distributed now.

MR. WANG: Which ones have ratified it?

MR. VETERE: If you think of ratification, there are some OECD countries which have ratified—Mexico, for example, which is now a full member of OECD. I think the others are on the way. We heard information that sometimes the process takes more time than expected, but they were much involved in the negotiating process. That is now a question of months, and we'll see many developed countries ratifying it. We know, for example, that France has almost completed the process. The same thing can be said for UK, Finland, and Norway. I say the process can be more complex in some countries, less complex in others.

There is also another point that I would have to mention. For many developed countries, the chapter related to asset recovery will require those countries to either review their legislation or to make new legislation in connection with the return of assets to the country of origin. This is an additional reason why more time may be required for developed countries rather than for developing ones.

MR. CHAROEN: I see here that Thailand has ratified, I think, on December 9, 2003. I am now aware that I have seen this one before. I have served the parliament for thirty years.

MR VETERE: I would hope that what you are saying is right even if you are not aware of that. But that is the signature, not ratification. There are two processes: the first is the signature, which is mainly the commitment. It is important because it's the first step of recognizing the political importance of the instrument, the commitment to take whatever further action may be required for the ratification. The other thing is the ratification itself. What you have seen there is mainly the signature. And we do hope that Thailand, as I have said before, as well as other countries, will follow through with the ratification as soon as possible.

MR. CHAROEN: I wonder if other countries are on the same boat. So someone signed it and then kept it somewhere and no one knows until we come to know from here. Is that the same process in other countries?

MR. VETERE: As we have seen in the Philippines, they have taken the matter very seriously. The have established this intergovernmental committee from different departments and various agencies and they have already submitted their instrument of ratification for the approval of the Senate, et cetera. So I think that in some countries quite a lot of work has already been done in order

to proceed with the ratification process. Probably, as a legislator, you can help quite a lot in demanding and in seeing that all the preparatory work is done in order to proceed with it as soon as possible. Thank you.

MR. BOONTON. Let me comment that Mr. Vetere's and Mr. Conti's papers are very interesting. But what I see is that the UN is trying to set up the preamble or the principle for the world to follow—what is to be done to counter corruption or to fight corruption. But in fact, UN itself has corruption. In the ASEAN, they respect the differences of cultural principle. The same in Africa, Asia, and Latin America. I don't know why people in a particular country are corrupted more.

And second, this preamble from UN is a good presentation of the teaching of how to do or what to do, and requests the help from other countries to join hand-in-hand to combat corruption. But for me, I'd like to think that the behavior of the individual human being, which originated from the family, from school, from the villages, is something the UN cannot teach. Any country, including Thailand, can have so many problems. We have so many acts, so many laws. We have so many doctors, good doctors of law in parliament, in our Senate, but those people cannot prevent any corruption at all, including myself. Why? The thing is that they have acted as the big boss of the country. They were elected as leaders of the country but they were already corrupt. If those people are corrupt, the followers will be corrupt. If UN is corrupt, the whole organization will be corrupt. Thank you very much.

MR. VETERE. Of course—especially if one reads today's papers, one would probably read about food scandal, et cetera, corruption in the UN. I think this is why many important the provisions of the new instrument refer to corruption of public officials. It is clear that as these things happen in the best families, in the best societies or whatever, some of those things may also happen in the United Nations.

May I say this, however: let us not forget that the United Nations, in addition to its own Secretariat structure, is an intergovernmental organization. There are several government representatives and they are mainly those who, in the end, take decisions on what to do and what not to do. So, very often we really should go a little bit more in-depth and look at why corruption there happens, where the responsibility lies, whether it is the UN Secretariat itself or in other elements in the decision-making process.

I fully agree with you on the importance of particular cultural, social and particular traditions, the important role of the family, of religion—and this is why, again, in the Convention there are quite a number of provisions, particularly those related to prevention measures, that highlight the importance of those particular sectors of society. They are brought in the fight against corruption, together with all other governmental institutions. The way in which the Convention was negotiated also demonstrated not only the democratic spirit in which everything was done but also the fact it was based on proposals received from more than twenty-five countries from the beginning, not to speak of all the other proposals made at the time of the negotiations, from China to Thailand to Indonesia to the Philippines. One of the vice chairmen of the other committee was from the Philippines. When the Columbian ambassador in Vienna died in the middle of the negotiation, the work was finished by one of the acting vice chairmen, an ambassador from Jordan, but it was Ambassador Victor Garcia from the Philippines who was in charge of negotiating the entire chapter on international cooperation. If we ever managed to get at the end a chapter on asset recovery, it was mainly because of the skills and the contribution of the Indian experts and the Indian ambassador in Vienna.

So what I want to say is that the instrument itself does not represent any imposition from any country or to any system. It really reflects whatever best practices and whatever best possibilities of legal construct one could make at the moment in which the Convention was negotiated.

Of course, there are limitations. Of course, it could have been more powerful. But as you said, my dear professor, sometimes those matters are negotiated by government representatives. As you also said, if at the top you have corruption, there are cases where to fight against corruption is more difficult than in other cases. This, however, does not imply that simply because of those conditions we say it is useless to fight. On the contrary, this should be one reason more in order to try to see what can be done together in order to try to come to terms with this corruption phenomenon that is damaging the future generations. Thank you for your attention.

MR. CONTI: Allow me to thank you for that comment and I would like to say that I can agree no less that value formation, or the upbringing of the children in the family, in the school, is very important in the fight against corruption. In our experience in the Philippines, no less than the President

created a council for values formation which she is heading, because we believe that the formation of values and love of country is very important. It has been said time and again that corruption is the antithesis of development, but the antithesis of corruption is a morally enlightened conscience or a morally enlightened consciousness. So it is at the level of the individual person. It is in the level of the person's conscience where the fate of corruption hangs, whether he will allow it to prosper or survive or allow it to die. And we are addressing that and that has been included in the medium-term development plan of the Philippines. Thank you.

MR. GOCO: Good afternoon. I have to mention my previous post because this is relevant to what I am going to talk about. As an ambassador, I was a member of the International Law Commission of the United Nations. I was also former solicitor general of the Republic of the Philippines. I would like also to introduce my wife because of what Mr. Conti had said regarding the moral issue; my wife was the head of the Moral Recovery Program of the President. She is here.

I am glad about the description of what ultimately became the Convention Against Corruption, because we had a hand in the formulation of this within the International Law Commission. I was the one specifically assigned to craft what would eventually become the Convention. But I recall we had some opposition from members of the United Nations International Law Commission. One of the basic objections is that it would have been better, or it would serve the purpose or the objective, if it were a regional convention in much the same manner by which the Organization of American States adopted the Inter-American Convention Against Corruption,.

In an instrument signed on March 29, 1996, at Caracas, Venezuela, they argued that insofar as implementation or enforcement of all related issues vis-a-vis corruption, it would be better and it would serve the instrument if it were a regional convention. We have had a Universal Declaration on Human Rights in 1948, which was then supplemented by the International Convention on Human Rights. There is the International Covenant on Social, Economic and Cultural Rights; and then of course the International Covenant on Civil and Political Rights. It necessitated the formation of a Commission on Human Rights in the United Nations in order to monitor compliance by respective parties to sign and ratify the convention. Without a monitoring agency, then it would be a

useless thing because of the scope of its concern.

Now let me tell you about my own role when I was the solicitor general—all of these statements here are all too familiar with me even without that being granted in this convention. Number 1: the International Mutual Assistance Cooperation; we call it IMAC. When I was appointed solicitor general in 1992, my office's first concern was to retrieve the assets that were stashed away in Switzerland. When we identified the money of the Marcoses and their cronies in Switzerland, we applied for the SEC registration of that money before the federal court in Switzerland. Of course, we ran into some opposition—opposition emanating from the account holders; opposition emanating from the Marcos lawyers—they said that we could not do that because we do not have a treaty on mutual assistance cooperation with Switzerland. But Switzerland granted our request and so we were able to identify the accounts and sequester them to prevent them from disappearing. Because the late president had already passed away, forthwith we tried very well to convince Mrs. Marcos to agree to the transfer of the account because according to the court that granted the sequestration, the sequestration will be in force for a period of one year only.

The provision that was specifically mentioned to us is that you must initiate a case before your local court and to try to prove before your local court that this money that you allege as having been stolen from the people was indeed stolen or ill-gotten wealth. We had one year to do that, so we filed the corresponding action before our court to justify the sequestration by the Swiss court; otherwise, without a court case here, we would have nothing to hold on. We proceeded on that and at the same time we tried to convince Mrs. Marcos to agree to the transfer of the account so that there would be no more difficulties. But of course she was advised by her lawyers not to agree.

Anyway, to cut it short, we tried our best to get that money so that the same can be placed in escrow to await the final decision. We were not convinced at that time that the final decision of our courts would be to adjudge the money as ill-gotten wealth, because our court will give full hearing to the other party to express its own justification that the money was not ill-gotten. In other words, this was the thing that we were able to impress upon the Marcoses—that they will have the full benefit of a hearing or due process.

So in the meantime while the case was on, we found out in Switzerland—I made several trips to Switzerland—that this same money that we were interested

in—at that time it was about U.S. $400 million but ballooned to almost $800 million because of the interest—was also the subject of several other claims. In other words, it was not only the Philippine government that was the sole claimant over that money. There were the human rights victims who filed a case in Hawaii, and there was a Judge Real in Hawaii who issued the decision and said that there is the worldwide injunction—first time I heard of the term "worldwide injunction"—to stop, to enjoin, that money from being moved.

And then there was a decision by a London court regarding promissory notes issued by the late President Marcos while on exile in Hawaii. That was about U.S. $600 million, the amount represented on those promissory notes. When they were presented at the time of maturity and dishonored, the notes went to the hands of a London-based company, which filed a case before the court because the Marcoses had defaulted.

In other words, the Philippine government was not the only claimant to the money. But eventually—this is the most important thing—even before the judgment of the competent court here in the Philippines was handed down, we were able to secure an authority granted by the Swiss court to transfer the money in escrow, to await whatever is the final judgment of our competent court.

The only reason I'm mentioning this is that all of these provisions now in the Convention are also familiar with the process that we had followed. The most important thing is we had that cooperation from the Swiss authorities. In other words, we had a fair hearing before the Swiss court, went up to the Supreme Court that that money should be sequestered. And eventually in 2003 our Supreme Court here decided that money was ill-gotten because the money was highly disproportionate to the legitimate income of the Marcoses. So the decision has now become final.

I mention this because many countries would like to follow the example that was shown by the Philippines. I had the presentation coming from Nigeria because they have a similar situation there—from Congo, from Haiti, from all of these countries, they would like to know how did you go about it. What I'd like to say is that the Philippine example is now the example insofar as retrieval of ill-gotten wealth is concerned.

MR. VETERE: I would like to stress in a sense the importance of what Atty. Goco just mentioned, not because it is just an episode like this, but because it

really shows the complexity and the time and the efforts that it may take. When we started negotiations, particularly on the question of asset recovery, we knew and realized that even the understanding of the problem would be completely different from one country to another. In order to start, we made a workshop based on a hypothetical case—country X and country B—and the problems involved just to have a simple discussion in order to have a basic understanding of the various passages. And in all these, we had some experts from the Philippines as one of the discussants who came to explain exactly the same thing that our dear friend the ambassador mentioned now. Thank you.

MR. BUENDIA: Thank you very much. Any more questions? Yes, Your Excellency from Vietnam.

MR. NGO: Thank you. On the issue of asset recovery and sequestration, I think how to return the asset to the original is a very important part of the combat against corruption. My question is addressed to the UN director. Do you think that it is a good instrument, that the Convention will guarantee the process of asset recovery? In case of recovery, we have to discuss—one country with the other—in order to come an agreement, but it needs time. We need a mechanism strong enough to guarantee the process to be secure. What is your opinion about that? Thank you.

MR. VETERE: I think that you have asked a very important question. You know, it's very very difficult to say or to try to read from a crystal ball what may happen. I think that, for the first time, the principle is now recognized and the aim is to facilitate international cooperation on this and be laid out in a form of obligations on the part of all those who not only sign but also ratify. I think that this represents a tremendous progress made, compared with early times in which this fight had to be done individually. So I don't have to elaborate further on the progress, both conceptually and politically, that has been made in order to arrive at this decision.

Now, whether that is a guaranty that is going to work . . . Look, even the International Criminal Court takes so much time. Who knows whether it's going to work or not at this stage? So I think that international cooperation is a question of goodwill and commitment on the part of all member-states. I think that all member-states should take very seriously not only the implementation on the national level but also the terms of monitoring government implementation. This is why the conference of states party list is

fundamental because it is through the conference that some cases or incidents could be determined whether they are not working, or are not functioning in accordance with the provisions here. Every country can raise it and every day they can discuss openly among all the other countries. I think that this is the real other tremendously important element.

As my final point, in order for the conference of state-parties to properly do its work, it is necessary that there is full attention, not only of the minister of foreign affairs or the diplomatic corps; otherwise it becomes a routine. It is tremendously important that all the bodies charged in the fight against corruption participate in the conference. It is important that a prosecutor, judge, members of the legislature, members of the public who are monitoring what they are doing, are also there because this is the only way in which the monitoring of the implementation can take place. Otherwise, the conference may become a routine, a meeting at a diplomatic level.

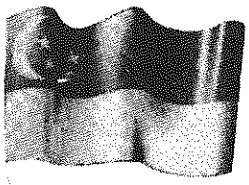
MR. BUENDIA: Thank you. In behalf of the United Nations Development Program and the UN family in the Philippines and the regional level, New York, Vienna and Switzerland, we'd like to thank the organizers led by Senator Angara and the GOPAC group for making us part of this process. And we'd like to assure you that the UNDP family, the UN family, is committed to support the anti-corruption efforts in your respective countries.

Just to inform you, in most countries in the ASEAN, the UNDP has a country office and it's a major program right now. In fact, the regional program has a major anti-corruption program that would support the review of policies and promote the UN Convention Against Corruption. So you may wish to visit the regional office or your country offices.

Thank you very much again, and good afternoon to all of us.

SINGAPORE

by Dr. Wang Kai Yuen



Within the ten years after Singapore reverted to British rule after the 1945 Japanese surrender, corruption permeated all sectors of society. Syndicated corruption was common, especially amongst law enforcement officers. In fact, public outcry against the extensive syndicated corruption in society was one of the rallying points for the independence movement in colonial Singapore.

It would be interesting to look at how Singapore managed to evolve from a colonial administration riddled with system-wide corruption to a clean government. Of course, in the fight against corruption Singapore had an easier task compared to other like-minded societies because of its small size, both in terms of geographical area as well as population.

How did we get from where we were in 1959 to where we are now? We were fortunate in that the first-generation leader of the PAP was voted to form the government in 1959, the year Singapore attained self-government. PM Lee Kuan Yew was only 36 years old, idealistic and tough-minded. He set a personal example of total and absolute integrity. He and his Cabinet created a climate of honesty and integrity, making it known to public officers in no uncertain terms that corruption in any form would not be tolerated.

Then Mr. Lee tackled the problem of corruption head-on, using a two-pronged approach. First, he made sure that the pay of the civil servants, all the way down to the traffic policemen, was adequate for them to support their families. To do so, one must have an efficient tax collection system with minimum leakage in order for the treasury to have the money to pay for the salary of the civil service.

Then, starting in 1960, the government instituted a thorough review of existing legislations to render prosecution of corrupt practices easier and more effective. Parliament amended laws to shift the balance in favor of assumptions, thus lessening the burden of proof of the prosecutor. These changes included:

a) rendering it unnecessary to prove that a person who accepted a bride was in the position to carry out the required favor,

b) requiring public officers under investigation to furnish sworn statements specifying properties belonging to them, their spouses and children,
c) empowering the public prosecutor to obtain information from the comptroller of income tax,
d) admitting wealth disproportionate to income as corroborative evidence, and,
e) removing the accomplice rule, which views evidence of accompli as unworthy of credit, unless corroborated.

Other laws were also amended in line with this shift towards assumptions. For instance, the Customs Act was amended so that any moneys found on a custom officer that could not be accounted for would be considered as corruptly obtained.

Other amendments rendered Singapore citizens liable for corrupt offenses committed outside Singapore and dealt with them as if the offences had been committed in Singapore. The Corruption (Confiscation of Benefits) Act of 1989 was replaced by the Corruption, Drug Trafficking, and Other Serious Crimes Act. This Act provides the court with power to confiscate the funds and properties which cannot satisfactory be accounted for by a person convicted of a corruption offense.

Having these laws on the books by themselves is not sufficient. Enforcement of existing laws is equally important. Hence, the investigation of corruption is entrusted to an independent unit, the Corrupt Practices Investigation Bureau (CPIB) which reports directly to the PM. If the PM, for whatever reasons, chooses not to get the CPIB to proceed with a prima facie case, there is a provision allowing the President to direct the CPIB to do so. Hence, the incorruptibility of the government is assured, as the CPIB could perform its function without fear or favor.

Though very rare, Cabinet ministers and parliamentarians had been investigated as well. In fact, a culture has evolved in Singapore that the most effective deterrent today is the shame of the accused person facing the judgment of his peers, as such incidents would be thoroughly debated in Parliament as well as inquired into by a commission of inquiry in public hearing. During my tenure in Parliament, one minister who was under investigation for corruption committed suicide rather go through the process. He paid the ultimate penalty.

Pillars of Anti-Corruption Measures. Today, the anti-corruption measures in Singapore are based on three pillars:

1] *Meritocracy in the selection and promotion of civil servants.* All civil servants are selected and promoted based on personal merits and job performance. To achieve this, we have an independent Public Service Commission with very strict rules and regulations governing the conduct of public officers. A high standard of discipline is demanded such that–

a) a public officer cannot borrow money from any person who has official dealings with him;
b) a public officer's unsecured debts and liabilities cannot at any time be more than three months of his pay;
c) a public office cannot use any official information to further his private interest;
d) a public officer is required to declare his assets at his first appointment and, subsequently, annually;
e) a public officer cannot engage in trade or business or undertake any part-time employment without approval; and
f) a public officer cannot receive entertainment or present in any form from members of the public.

2] *Market-based pay.* We have implemented a market-based compensation scheme for all civil servants–a pyramidal pay scheme with that of the PM being at the apex of the structure. The apex is pegged to the private-sector pay based on the previous income tax returns of the top three earners in six professions, excluding the bankers. The annual bonus scheme has two components: an average component based on the performance of the economy and a personal component based on merit.

3] *Deterrence through stringent legislation and enforcement.* Over the years, we have amended existing legislation and enacted new laws to make our laws on anti-corruption comprehensive and extensive. CPIB is the independent enforcement agency.

Some consequential ramifications. To remove the opportunity for corruption in government work procedures, we increased our reliance on the process and put less reliance on the judgment of the individual in the loop. As a result, we have experienced the following:

a) The system does not give initiatives to lower-ranking officers to solve problems on their own. At times, citizens' satisfaction would be affected.
b) The system learned through transgressions by officers. To prevent recurrences,

rules and regulations were added. Over time, this growth in rules and regulations led to slower government response to changes. After the severe 2001 recession, we recognized this as one of the causes, as we did not respond fast enough to new challenges thrown up by globalization. Thus the Cabinet has instituted a standing committee to review all rules and regulations, with a mandate to slash as many of them as possible.

Operational Results of CPIB in 2004. In 2004, a total 844 reports/complaints were received. The figures for 2000, 2001, 2002 and 2003 are 991, 812, 911, and 966, respectively. Of the 844 reports in 2004, 50.5 percent of the complaints were anonymous.

Of the corruption-related complaints constituting 49.1 percent, or 414 reports, 298 were registered for action by the Complaints Evaluation Committee. Of these, 138 cases (46.3 percent) were anonymous, while 160 cases (53.7 percent) were from known complainants.

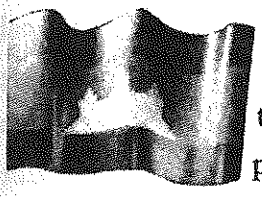
Of the 265 cases completed in 2004, 107 cases (40.4 percent) were recommended for prosecution in court, 21 (7.9 percent) were recommended for department action, and 17 (6.4 percent) were recommended for warning.

Conclusion. Based on Singapore's success, one can conclude that corruption could be expunged from a society. The three prerequisites are:

a) The political leaders must be fully committed in their fight against corruption. [Corollary: The election process itself must not render corruption unavoidable.]
b) Anti-corruption laws must be adequate and provide sufficient punishment to serve as a deterrent.
   [Corollary: The public-service sector should be slim and trim; public servants must be adequately paid.]
c) The organization charged with the investigation of corruption must be given a free hand to act against the corrupt, irrespective of their social status or political affiliation.

CAMBODIA

by Chea Cheth
Chairman on Commission of Anti-Corruption



Corruption may be defined as the abuse of public position for personal gain or for the benefit of an individual or group to whom one owes allegiance. Corruption occurs when a public official accepts, solicits, or extorts a payment, or when private agents offer a payment to circumvent the law for competitive or personal interest (CSD, 2002:72). Corruption is a two-way process, involving members of both the public and private sector, or a "giver" and a "taker" who are engaged in illegal, illegitimate and unethical action.

Forms of Corruption

Corruption takes a variety of forms: bribery, nepotism, patronage, theft of state assets, evasion of taxes, diversion of revenue, and electoral fraud. The theft of state assets by officials in charge of stewardship, and manipulation or violation of electoral laws regarding campaign finance and voting is also considered as corruption.

Distinction should be made between "greased" corruption—which is payment made to or sought by public officials for performing their legal duties, or sought for illegal action—and "grand" corruption, which is practiced by senior officials obtaining large benefits for themselves.

Corruption could be "individual" or "collective," according to the number of people involved. Further, it should be classified as "systematic" and "non-systematic," according to the degree whether the corruption was planned and purposely organized. In Cambodia, usually the promotion of someone to a high government position is connected to his/her contribution in one party's interest, so sometimes the corruption is seen to have a chain and cyclical character.

Factors Affecting Corruption

In general, it can be said that corruption flourishes where the institutions of government are weak, where a government's policy and regulatory regime

provide scope for it, where oversight institutions (parliament, judiciary, civil society) are marginalized or corrupted themselves. It must be stressed that the causes of corruption are highly contextual, rooted in a country's political development, legal development, social history, bureaucratic traditions, economic conditions and policies. Therefore, efforts needed to combat corruption tend to vary from one country to another.

Political factors. Corruption levels are linked to the strength of civil society, freedom, and independence of the press. Furthermore, in the Cambodian context, due to the fact that the government is formed and influenced by political parties, so the objectives and political strategies play a dominant role in getting and spending their resources. At some time, the corruption cycle appears from time to time and becomes systematic.

Legal and ethical factors. A major factor that is linked to corruption is the quality of the country's legal system, to the existence of effective anti-corruption laws and to the capacity to enforce laws. Corruption also takes place where ethical values are neglected by the people; for instance, people who commit corruption neglect their dignity and follow their egoism.

Bureaucratic factors. The incidence of corruption tends to be higher when higher regulatory and bureaucratic interventions in the economy are set up. Where government imposes a large number of rules and regulations, there is greater opportunity for public officials to exploit or subvert them. As discretion increases and accountability declines, the potential for corruption grows.

Salary factors. Where the wages of public servants are low or there exists a large disparity between public and private sector wages, public servants are more tempted to engage in corruption.

Economic factors. Corruption is more likely to proliferate where government creates monopolistic economic settings.

Consequences of Corruption

Endemic corruption has severe consequences on the quality of governance and efforts to attain sustainable development. Corruption is a form of public theft. Instead of acting as "grease," corruption serves as a kind of "sand" in the gears of public policy decision-making.

Political consequences. Corruption is insidious, attacking the quality of governance and national stability by undermining the legitimacy of the political process. It fosters contempt for public service and leads to cynicism about

politics. It distorts decision-making, resulting in the wrong projects, prices, and contractors, substandard delivery, and promotes further corruption at lower levels. Corruption in elections has also serious consequences. Because election campaigns are expensive, candidates and parties rely on funding from wealthy individuals or corporations.

Economic consequences. Corruption compromises the achievement of sustainable development objectives. Bribery results in additional business costs, a burden to small entrepreneurs, and the misallocation of the country's human capital and talent. The continuous attention demanded of business by corrupt officials also threatens economic productivity.

Corruption distorts the fair rules of competition. A majority of firms doing business in Cambodia identified unfair or informal competition as at least a moderate problem among a variety of practices of competitors. Some perceived that the government does not treat firms equally.

Corruption becomes focused on the highest bribe, thereby denying the public the advantage of a competitive marketplace.

The poor bear the heaviest burden in such situations, reinforcing gaps between rich and poor. Corruption results in tax evasion and significant losses of revenue for the state. It slows down direct foreign and domestic investment because it is perceived as a form of taxation. Corruption causes major misallocation of scarce resources. Instead of meeting basic needs such as food, health, and education, resources are sometimes used to finance purely prestige projects with no economic value. In short, the corruption is at root of underdevelopment and poverty.

Social consequences. The political and economic consequences have significant social impact. Corruption demoralizes the population and leads to a lack of confidence on the state Institutions. If it is allowed to expand, corruption erodes political legitimacy. Corruption also causes unequal distribution of public assets and funds to different social class. Very often the poor are the victims of corruption. Unfortunately, many Cambodians (84%) treat bribery as the normal way of life in their country (CSD, 1998:38).

In brief, uncontrolled corruption undermines the credibility of democratic institutions and works against good governance. Its most visible consequences are poor public services, increased social polarization, disinvestments and exclusion.

Corruption at its most basic level is the diversion of public finance and material resources away from the public use for which they are intended. Corruption is simply the private benefit of a few powerful officials at the expense of the people. Money that should go to the treasury in order to provide for the people goes instead into the pockets of senior officials.

In a speech at the conference on Corruption and Its Impact on National Reconstruction and Reconciliation, our Finance Minister estimated the state as losing up to U.S. $100 million a year to corruption, primarily because of illegal logging, rubber exportation, and fishing (CSD, 1995). Other sources are skeptical that the above assessment was quite low and put the cost at $300 million (CSD, 2002:58).

Corrupt practices are responsible for a catalogue of environmental disasters, in particular, the destruction of Cambodia's forests—natural resources which the country can ill afford to lose. In 1997, the International Monetary Fund canceled a $60 million loan to Cambodia because of corruption in the timber industry. Taking its lead from the IMF, The World Bank declined to renew its budgetary support. Over three years, that support had amounted to roughly $85 million (Reuters, 9/23/97).

After discovering that a large quantity of rice reportedly worth more than a million dollars was stolen, the WFP alerted the government of the scandal. Many people, including its staffs and government officials, were involved in this fraud. The WFP has halted new Food for Work activities until it could implement safeguards against corruption. Prime Minister Hun Sen agreed to reimburse the WFP for its losses (*Cambodia Daily*, 9/08/2004).

Recently, a World Bank report revealed that pervasive corruption, a suffocating bureaucracy, and weak law enforcement are crippling the growth of private business, rending them uncompetitive in the global economy. Roughly, 80 percent of 800 firms surveyed in the report acknowledged "the necessity of paying bribes," which eats up an average of 5.2 percent of total sales revenue—more than double the amount paid by their counterparts in Bangladesh, Pakistan and China. The report also mentioned: "Trade facilitation practices in Cambodia stand out in having high official and unofficial costs, delays, uncertainty and discretion—a critical problem for a country that must rely on exports for growth." In addition to corruption fees, the report found out that firms also pay in time wasted through bureaucratic delays. The complaints of businesses regarding

overlapping and time-consuming governmental procedure need to be thoroughly examined, justified, and corrected.

A Corruption Case Study

In order to start a business in Cambodia, business owners need to have licenses from different governmental organizations and local authorities. Every place where they ask for the services usually takes a long time to process the request. The total cost of this process, if carried out by an entrepreneur acting alone, is about U.S. $1,500, and the total time required is around 94 days. The cost, which include unofficial fees, is very high. Furthermore, registered firms in urban areas pay three times more informal fees than unregistered firms. Formally registered firms spend more time dealing with public officials.

Import and export processing, involving a multiplicity of steps, introduce substantial delays, uncertainty, and discretion into the process of trading goods. If firms purchase machines, tools, or raw materials from abroad, they may or may not need to pay tax, depending whether they export their products or not. To get their imported machines, raw materials from the port warehouses, business firms need to fill up and present many documents. The port authority, Customs, and Camcontrol have to check the goods imported. In each request, for these government officials to verify the bills, the transaction is formed. Garment factories, responsible for more than 90 percent of the country's exports, typically hire brokers to clear goods from Camcontrol, Trade Preference and Customs. To bring a 40-foot container from the seaport of Sihanouk Ville to Phnom Penh, a factory has to pay around U.S. $800, half of which are hidden costs; whereas in Vietnam it costs only $200; in China, $350; in Indonesia, $320; in Malaysia, $300; in Sri Lanka, $484; and in Madagascar, $380. (Materials from the 6th Private Sector Forum)

Trading firms report that members of the border police, and veterinary and phyto-sanitary office also carry out their own inspections. So each step involves delays, formal costs and informal payments. Customs clearance by itself imposes substantial delays and great variation, and hence, unpredictability. On the average, firms report that imports take 6.5 days to clear, exports take 4.5 days. However, this timing could still be variable. Clearance at the port of Sihanouk Ville involves, for customs purpose only, twelve steps which mainly consist of visiting, sometimes repeatedly, key officials. An importer, during the clearance, must present himself to (a) the customs headquarters, (b) twice to the chief of customs

at Sihanouk Ville, (c) twice to the chief of port customs, and (d) twice to the chief's deputy; two different positions are responsible for affixing stamps on the declarations. Each step may involve long waits and negotiations. Cargo that is neither sealed nor pre-inspected by SGS is submitted to a routine X-ray scan (with very limited rates of detection of irregularities), after which a decision is made whether or not to inspect the shipment. All goods taken out of the port can be re-examined at the gate. (World Bank Report, 2004:18-19)

After the production, the garment factories additionally need to have a Certificate of Origin from the trade preference department of the Ministry of Commerce, which needs to inspect goods before issuing said certificate. During the inspections, money regularly exchanges hands, usually from U.S. $150 to U.S. $170, and half of which is hidden costs. And when the container full of finished garments is transported back to the seaport, the outbound cost runs to about U.S. $880 due to additional inspections. (Materials from the 6th Government-Private Sector Forum)

Cambodian firms are subject to an unusually high number of inspections, averaging 16 per year. Officials usually do not see something wrong with their practices. "It's not bribery, it's more like sympathy—some small thing to sustain the life of the inspectors." But the cost of doing business in Cambodia is not, however, similar for all. Companies with links to "senior officials" pay less for inspections, but paying at least 5.5 percent of annual business revenues in unofficial fees could be just too high for many. (*Phnom Penh Post,* June 4-17, 2004)

Measures Taken by the Royal Government of Cambodia

- In 1996, three to customs officials were suspended for a document-forging scheme in which they undervalued imported vehicles so they pockets the difference in import duties, which amounted to hundreds of thousands of dollars. Later, Second Prime Minster Hun Sen warned 1,000 to 2,000 customs officials that they risked losing their jobs if they continued cheating the country out of badly of needed tax revenues.
- In 1999, Prime Minister Hun Sen told a forum that customs officials who demand bribes would be fired. He added, "Mr. Customs has to stop disturbing investors. Customs is the king of corruption."
- Recently, Prime Minister Hun Sen said in a strongly worded speech at CDC: "If we don't ban corruption, we will lose investments and we will die." The

premier also announced several concrete measures to streamline the import-export documentation process in an effort to reduce corruption and make the garment industry more competitive. From 1 September 2004, the Customs and Excise Department and Camcontrol will conduct joint inspections. Also, the cost of registering a business at the Commerce Ministry will drop from $615 to $177, and the time spent on paperwork will be cut from 30 days to 10 days.

- Facing the invasive corruption, the government resolved that it must do more to improve the investment climate by tackling the high cost of business, bureaucratic red tape and corruption. During pre-CG meeting, Prime Mister Hun Sen responded to the donors' concerns by declaring war on corruption, through legal, judicial, and public administration reforms. He announced that he would force his ministers to answer questions from the National Assembly once a week. He threatened to bring to court any official who does desist from corrupt activities.
- At the National Conference on Strengthening Good Governance, Poverty Alleviation and Development on 14 December 2004, the Prime Minister said that the tax revenue amounts to mere 7.5 percent of the government's budget compared to 8.6 percent in Laos. He announced that in an effort to generate greater tax revenue and impose stricter rule in the bureau he would remove the Finance Ministry's tax department director from his post. In addition, the premier offered incentives to those who apprehend smugglers.
- Addressing the National Health Congress on 03 March 2005, the Prime Minister, announcing an emergency campaign through the use of "iron fist" in judicial reform, vowed to re-arrest hundreds of armed robbers who bribed their way out of jail, and to arrest corrupt judges and prosecutors.
- The Commerce Minister Cham Prasidh, on 14 March 2005, vowed to resign at the end of the year if by that time corruption still plagued the taxation and regulation of the garment industry. He added, "In order to help the garment sector to survive, we must cut all the under-the-table costs. How can I still be a commerce minister if the garment industry dissolves?" A month before this event, Prime Minister Hun Sen had laid out a 12-step plan aimed primarily at ending corruption affecting export industries. The plan focused on simplifying customs procedures and eliminating opportunities for bribe-taking.

- In a speech at the close of the Ministry of Interior's annual conference on 17 March 2005, Prime Minster Hun Sen warned that police, military, court, and government officials will be punished if they are caught conspiring with those who run the sex trade. The *Cambodia Daily* quoted him as saying, "Regardless of the star, or even moon, ranks you are wearing, you will be removed."

In addition to the warnings, admonitions and promises made by the Prime Minister, the government has achieved many concrete measures such as:

- Establishment of the National Assembly-Senate Relations and Inspection
- Setting up the National Auditing Authority, an independent public institution reporting directly to the National Assembly, the Senate, and the Royal Government.
- Establishment of the Priority Mission Group (PMG), which is technically assisted by the ADB.
- Acceleration of the country's legal and judicial reform program.
- Completion of the Governance Action Plan (GAP) for eight priority areas: legal and judicial reform, administrative reform, decentralization and local governance, public finance reform, anti-corruption, gender equity, demobilization and reform of the armed forces, and reforms in natural resources management.

The government subsequently drafted its own legislation concerning anti-corruption, and set up regular forums between investors and government officials. It also launched what is now known as the Rectangular Strategy, which acknowledges the importance of good governance in fighting corruption.

ACTION TAKEN BY STAKEHOLDERS TO FIGHT CORRUPTION

• *National Assembly and the Senate*. The National Assembly had enacted the Law on Audit and Civil Servant Statute Law.

• *Political Parties*. In Cambodia, during the 1998 and the 2003 election campaign, anti-corruption measures were featured in every major party's political platform.

• *International Organizations and Donor Countries*. These organizations and state bodies asked the Government to submit the anti-corruption draft law to the National Assembly by June 2003, and urged the Government to endorse the Anti-corruption Action Plan for the Asia and Pacific, which had already been adopted by 17 other Asian and Pacific governments in Tokyo in 2001.

• *Civil Society.* Many nonprofit organizations play a crucial role in combating corruption. Among them is the Center for Social Development (CSD), which actively organizes conferences, seminars, publishes and distributes journals and brochures to educated people on how to deter corruption.

• *The Citizenry.* From time to time the people complain about the local authorities, police officers, and soldiers who ask for bribes when the people transport their farm products to the markets.

• *The Press.* The press from time to time publishes stories about cases of corruption.

Conditions for a Successful Anti-corruption Drive

A successful anti-corruption drive requires seven crucial factors:

1 *Will.* It must have strong a political will to deal with this problem.

2 *Law.* It must be a strict law defining clear offenses, showing the value of community, power for effective investigation, and rules of evidence for a fair prosecution of those who accused of corruption.

3 *Strategy.* To fight corruption it must have a clear, full, and consistent strategy which consists of three significant components:
   - Effective law enforcement
   - Deterring corruption by elimination of loopholes that may cause both grand and greased corruption
   - Deterring corruption by educating and encouraging the public to contribute or take part in the fight against corruption

4 *Facilitating activities.* In order to make the above components effective, it must have the facilitating activities.

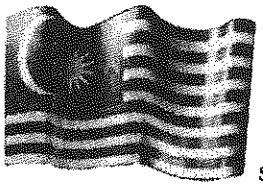
5 *Resources.* Leaders have to recognize that fighting corruption successfully depends upon both human and financial resources.

6 *Public support.* The authorities will not be able to fight corruption without the contribution of people, so all the communities should join from the start.

7 *Patience.* Everyone should be aware that success in fighting corruption takes times and may cause hurt. Furthermore, when the measures are taken, they shall be under a continuous supervision. As a result, the commitment needs a long period of time and resources for anti-corruption in which permanent expenditure of annual national budget is required.

MALAYSIA

by Mr. Lee Chong San
Deputy President, TI Malaysia



I don't really have a country report to render, but what I do have is a story about what we in Transparency International Malaysia do with regard to our anti-corruption strategies and how we work with the public and private sectors to try to push these ideas across to the target audience in order that we can move ourselves up the CPI ranking of Transparency International.

To understand and appreciate the strategies and actions that we took, I think it is important to understand a bit of the background of our political and historical situation in Malaysia. You know that Dr. Mahathir, our former prime minister, left the scene after 22 years as prime minister of the country. Mahathir was pretty well-known for speaking his mind out and being aggressive. Badawi, his successor, is more of the soft-spoken and moderate personality. Many Malaysians do not really have an idea of what the new prime minister will be doing on the issue of good governance and corruption. These issues of good governance and corruption had plagued Dr. Mahathir in the past before. And when Badawi came into the scene and tried to use that as a platform on which he would go and seek the mandate from the people to govern the country, he came back with a big mandate and actually swept the opposition apart.

Now, with that mandate, the new Prime Minister set things in motion to fight corruption. He introduced the National Integrity Plan, which gave birth to the Malaysian Institute of Integrity. The release of the political prisoner Anwar Ibrahim was also attributed to Badawi's non-interference with the judicial process. The country for a long time witnessed the high-profile arrest of a prominent businessman and a minister on corruption charges. These and several other factors were major considerations when we in Transparency International Malaysia designed our strategic plan for the next five years. The new administration provided us with a unique opportunity in order that we can carry out this plan.

The fight against corruption has got to be a long-term affair. The approach

to be systematic and within the means limitations, both in human and financial resources of our society.

[*At this juncture, Mr. Lee used an audiovisual presentation to discuss topics*]

It is therefore necessary and appropriate because, with the formation of such a plan placed under a steering committee, we could approach that issue of corruption systematically.

Everyone knows what the Corruption Perception Index is all about. I'm not here to defend the CPI, but I think it's a very good tool upon which we can use in our countries to try to upgrade our standing within the rankings of the countries that have been surveyed.

I just want to show that in 2004 Malaysia was ranked at 39, which is a drop from its 37th position in 2003. In 2002, Malaysia ranked in the 34th position. As you can imagine, the continuous backsliding cannot downplay the importance of our role in anti-corruption efforts, and I do emphasize that our role is on anti-corruption and not in any anti-governmental efforts.

This chart shows only the South Asian countries and how our CPI fares amongst us and amongst the rest of the world. I think we all know that Singapore is right up at the very top. The way I see it, if you have the political will not to be corrupt, everything else can be implemented, and I think Singapore got it very right.

This is the background, including as to where we stand in the CPI ranking and the objective of pushing Malaysia to catch up with Singapore. We emphasized that we have to have organizational work.

With that kind of background, we came up with a plan which concentrated on organizational development, programmatic activities, resource mobilization, membership development, and regional networking.

In the area of programmatic activities, activities identified include policy advocacy, strengthening institutional pillars of the national integrity system, reviewing anti-corruption policies, laws, education training, research, information and documentation, publications, and ongoing conferences. For each of these areas, there is a detailed action plan, which includes the timeline for implementation and execution, and the resources needed, both financial and human.

We have our task in the area of public awareness, education and training, as

well as building mutually beneficial networks. We're trying to create public understanding and awareness over the ills of corruption by our engagement with the media, the government and other organizations in civil society. We conduct public workshops and public surveys to assess the perception of corruption in local municipalities. We placed a huge importance on the independence of the media and their ability to assess information.

In line with this, we'll be organizing a campaign on the promotion of investigative journalism and the amendment of restrictive laws such as Official Secrets Act and the Printing and Presses Act. You know the newspapers in Malaysia have got to renew their license every year, and because of that kind of restriction, you find that they don't come up with any article that is critical of the government; the government has kind of got to the newspapers—that's the unfortunate part of it.

Then there's the Official Secrets Act. If any government official stamps a document *secret*, you cannot have access to that information. There was this person who had been making allegations of corruption; instead of investigating the allegation, the government charged him because he had access to documents which were top secret. That's the kind of oppressive laws we have right now.

In 2003, TI Malaysia commissioned a report on the national integrity system in Malaysia. These reports studied the perception of the public and international community towards the main pillars of the Malaysian society. It was extremely disheartening to know that most have perceived the three main pillars in a democratic society—legislative, judiciary, and executive—that they have nothing much to show about. In fact, you find that the Executive is so powerful that Parliament really is just a rubber stamp. As a result of our study, our strategic plan in the next five years will include a lot of work in improving these pillars.

Currently, TI Malaysia is a partner in the regional project funded by the European Union and the aim is to curb corruption in public contracting and local government. We hope that as a result of this project, we'll be in a better position to implement our strategy to introduce competitive procurement systems in Malaysia. This project would provide the entry point for a better working relationship with local governments and several key players in the procurement system in the country. Part of our strategy is also to encourage public-private partnerships. We hope to develop open committees that would include government corporate sectors and civil society to serve as watchdogs.

We work closely with the newly established Malaysian Institute of Integrity, and we are now in the midst of ironing out the details of our collaboration.

As part of our advocacy strategy, we'll be lobbying the Malaysian government to ratify the UN Anti-Corruption Convention. And hopefully, with what I've learned down here, I could go back and try to enhance that process. Another campaign that TI Malaysia feels strongly about is the independence of the Anti-Corruption Agency in Malaysia. We strongly believe that the ACA should report directly to Parliament instead of only to the Prime Minister. I think along this line, I see that the ACA of Hong Kong would be a very good model on which the Anti-Corruption Agency can be based.

As I mentioned earlier, the opportunities and challenges that we have in Malaysia are unique to the country. One of the things that we have in common, however, is lack of political will among the decision-makers to make a fully concerted effort to eradicate corruption. We acknowledge that without political will, nothing may be accomplished. So I think it is very important that the political will should surface and stop the reforms that are unnecessary to bring about a clean society.

Now, we wonder as to whether there is really any type of political will under the new administration. Another litmus test will be when the results of the study of the commission that was established to look into the activities and behavior of the police force are shown. When that was completed and how the results are implemented, will go a long way to establish whether the new administration is serious about the fight against corruption or not.

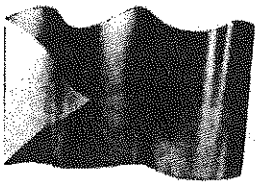
I think most parliamentarians have the power to establish the legal framework for the organization and management of the public funds and society. Malaysia would like to strongly recommend that all parliamentarians lobby their respective governments to ratify the UN Convention Against Corruption. We should also promote and introduce appropriate anti-corruption legislation to criminalize certain acts and provide appropriate punishment and other deterrent measures.

Finally, the Malaysian Parliament should promote the passage of freedom of information legislation that allows for the disclosure by the government of information necessary for the conduct of parliamentary business, especially the investigation of cases of corruption.

These, basically, are the strategies and efforts that Malaysia has put in the recent past and hopefully in the future.

PHILIPPINES

by the Honorable Leovigildo B. Banaag
Representative, First District of Agusan del Norte



While fighting corruption is synonymous to good governance, public reports about such efforts are guided by two extremes: reports about perceptions of corruption and reports about final convictions in specific legal cases on corruption.

A perception about corruption is like the smoke that implies a fire somewhere. A society that can perceive and act on corruption suggests that it is functional (as opposed to being dysfunctional)—the supposed guarantee of democratic institutions. Unfortunately, while smoke is physical and suggests physical fire (what would be fair evidence to corruption), perceptions are mental. Therefore, unless the parties charged of corruption are meted final convictions by the appropriate courts, any report is premature. In fact, any report other than final convictions becomes trial by media—which the same democratic tradition is precisely supposed to prevent.

Guided by two extremes (thus avoiding sociological perceptions about corruption, final legal convictions of specific corruption cases—and anything in between) an alternative approach could be: (a) Awareness about existing tools against corruption; and (b) Suggestions on how to take advantage of the SEAPAC framework.

Awareness about Existing Tools. Within our legal framework are laws and actions against corruption, suggestions from outside which are equally valid, and private initiatives.

A. Laws Against Corruption

I. EXISTING LAWS AGAINST CORRUPTION

1 *The 1987 Philippine Constitution*: Art. XI of the Accountability of Public Officers and the Creation of the Graft Court, Sandiganbayan.

2 *Republic Act No. 1379:* Declaring forfeiture in favor of the State any property found to have been unlawfully acquired by any public officer or employee, and providing for the procedure therefor

3 *R.A. No. 3019:* The Anti-graft and Corrupt Practices Act
4 *Presidential Decree No. 48:* Making it punishable for public officials and employees to receive, and for private persons to give, gifts on any occasion, including Christmas
5 *Presidential Decree No. 749:* Grant of immunity from prosecution to givers of bribes and other gifts and to their accomplices in bribery and other graft cases against public officers
6 *R.A. No. 6770:* Providing for the functional and structural organization of the Office of the Ombudsman
7 *R.A. No. 6713:* Code of Conduct and Ethical Standards for Public Officials and Employees
8 *R.A. No. 7080:* Defining and penalizing the crime of plunder
9 *R.A. No. 3813:* The Revised Penal Code on crimes committed by public officers
10 *R.A. No. 9160:* Anti-Money Laundering Act of 2001
11 *R.A. No. 9166:* Rental Form Act of 2002
12 *R.A. No. 9184:* Government Procurement Reform Act
13 *R.A. No. 9194:* Amending the Anti-Money Laundering Act of 2001.
14 *R.A. No. 9227:* Granting special allowances for Justices and Judges with the equivalent rank of Justices of the Court of Appeals and Judges of the Regional Trial Court
15 *R.A. No. 9263:* Bureau of Fire Protection and Bureau of Jail Management and Penology Professionalization Act
16 *R.A. No. 9279:* Granting additional compensation to the National Prosecution Service and the State Counsels
17 *R.A. No. 9280:* The Customs Brokers Act of the Philippines
18 *R.A. No. 9285:* The Alternative Dispute Act of 2004.
19 *R.A. No. 9287:* Increasing the penalties for illegal gambling.

II. ANTI-GRAFT AND CORRUPTION BILL PENDING IN THE HOUSE OF REPRESENTATIVES

1 House Bill No. 3776: Improving efficiency in the delivery of government service to the public by reducing bureaucratic red tape, preventing graft and corruption, and providing penalties thereof

III. PRESIDENTIAL ISSUANCES INTENSIFYING CAMPAIGN AGAINST GRAFT AND CORRUPTION

1 *Administrative Order No. 1 of Jan. 22, 2001,* prohibited public officers and employees from entering into certain kinds of official transactions with real, pretended or imaginary relatives of the President and the First Gentleman.
2 *Administrative Order No. 70 of April 14, 2001*, directed all government offices, agencies, and local government units to organize an Internal

Audit System in their respective offices.

3 *Executive Order No. 12, Series of 2001,* created the Presidential Anti-Graft Commission (PAGC) to investigate and conduct hearings of administrative case and complaints against all presidential appointees in the Executive Department, and assist the President in the campaign against graft and corruption. In collaboration with the Ombudsman and civil society groups, the PAGC has crafted the National Transparency and Accountability Program on Procurement Watch and Transparency Accountability Network in departments, bureaus and agencies. It has also created the Multi-sectoral Lifestyle Check Coalition.

4 *Structural and institutional reforms in the Bureau of Internal Revenue and the Bureau of Customs*, such as the Voluntary Assessment and Abatement Program, a computerized system to uncover value-added tax evasions; and the Tax Compliance Verification Drive to collect deficiency taxes from establishments violating tax laws and regulations.

5 *Simplified processing systems for frontline services* to reduce signatories and processing time in areas that include tax payments, professional ID, licensure examinations, OFW documents, civil registry documents, business documents, veteran's pensions, driver's licenses, and mining applications.

6 *Feedback mechanism through short message services (SMS)*, such as Text GMA, DETxt (complaints against the Department of Education), TxtUsok (on smoke-belching vehicles), Text CSC (on government's frontline services) GAWIN 1345 (for queries on government processes and services), and PRC Text (licensure examination and other PRC concerns).

IV. CONSTITUTIONAL BODIES, CREATED FOR ANTI-GRAFT AND CORRUPTION

1 *The Office of the Ombudsman* is charged with the investigation and prosecution of criminal and administrative offenses committed by government officials and employees.

2 *The Commission on Audit* conducts financial management and fraud audits to detect illegal acts in the disbursement of public funds.

3 *The Civil Service Commission* conducts fact-finding, adjudication, and prosecution of criminal and irregular acts based on reports and complaints against civil servants.

4 *The Department of Justice* is the prosecuting arm of the government for all types of crimes.

5 *The National Bureau of Investigation* is the primary law enforcement, investigating, and fact-finding agency of the government.

6 *The Presidential Commission Against Graft and Corruption* investigates complaints of graft against Presidential appointees in the Executive Department who cause harm to the national interest.

7 *The Inter-Agency Anti-Graft Coordinating Council* conducts operations and campaigns against graft.

8 *The Inter-Agency Consultative Committee* is an inter-agency task force which investigates collection cases related to graft and corruption.

B. Suggestion from Outside

In 1999, the Estrada administration requested the World Bank for help to fight corruption. The World Bank responded by submitting an excellent report entitled *Combating Corruption in the Philippines*. While most of the suggestions are pertinent and are already being adopted by the Arroyo administration, some ideas in it can be modified to fit the Filipino culture (which then in turn would inhibit its unique culture of corruption).

C. Private Initiatives

Citizen action is a vital part of Philippine democracy (EDSA I and II). There are excellent initiatives from the press to fight corruption, as evident in the daily energetic reports by the major television stations and the efforts of the Philippine Center for Investigative Journalism, especially its book, *Investigating Corruption: A Do-It-Yourself Guide.*

Taking Advantage of the SEAPAC Framework. Because corruption is a simple illegal act, we think laws alone can effectively deal with corruption. In some countries, especially in the West, it may be enough to point a flashlight at a thief operating in the dark. In other countries, mostly in the East, it may be necessary to announce that the flashlight is attached to a shotgun. What may be theft in the West may not be one in the East, not because the same consequence is valid or invalid (stealing the economic value from the people and giving it to government or those who work for government) but because the same is differently labeled.

For example, SEAPAC is the ideal institution where its members can standardize the detailed costs of governance. If it is determined by the members, in consultation with each other, that the percentage of all government salaries

and allowances is around one-third of overall cost, then the SEAPAC member-government with a higher percentage or salaries has a sure qualitative form of corruption (excessive hiring; ghost employees; intolerable if not criminal inefficiencies). This kind of corruption is difficult to catch unless a standard—is precisely first established by SEAPAC. Call this the qualitative reform; it requires qualitative policies.

The other kind of corruption happens inside the quantitative structure of the system. Because there are no step-by-step standard procedures of government in its agencies—that has instant feedback to those who are to check on their veracity at the time they are happening—all the quantitative form of cheating and corruption happen here.

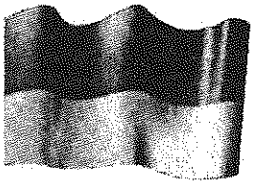
Surely, the COA (government audit) report is always after the fact—years after the crime. There was just no way to control this situation in the past but this is surely not true today because of the quantitative crunching power of the computer.

A simple customs collector at the dock or airport using the wrong from or wrong step—or willful wrong calculations—can create a physical blinking light in several on-line control points in Malacañang or at the Secretary's office at the Department of Finance—or preferably in both.

Shocking as it may be with today's technology, one serious person can control—or inhibit the corruption (the shotgun in the flashlight)—of nearly all quantitative types of government corruption. So if SEAPAC creates the standard qualitative guidelines of good governance, the same can be put in a rigorous quantitative systems and control package that can make a difference.

INDONESIA

by Hejriyanto Y. Tohari, Imam Anshori Saleh, and Eni Khairani
Members of Indonesian People's Consultative Assembly



The study on corruption, collusion, and nepotism (KKN) in Indonesia needs an explicit concept or criteria. Of course, it should be focused on the wider and more principal problems of corruption. By this approach the KKN program will be directed to create the step-by-step result until all the problems related to KKN case can be overcome.

Cooperation among the executive, legislative, and judicative branches is absolutely needed. Each of them should have the same enthusiasm and spirit, i.e. operating a clean government based on the anti-KKN concept. The government has strived to solve the problem of KKN by applying many policies. The Parliament (legislative), as a state institution, sustains such a program by producing the law which serves as the basis of government policy. The judicature, on the other hand, is the executor of the law in combatting KKN. As the top of the lance establishing the law, the judicature have to be capable of showing themselves as institution that is to be reasonably trusted.

DESCRIPTION OF COLLUSION, CORRUPTION AND NEPOTISM: AN EMPIRICAL STUDY

The definition of KKN is found in Article 1, Items 3, 4, and 5, Act No 28, year 1999. It enumerates how state operation could be clean from corruption, collusion and nepotism. Corruption is defined as follows: "Corruption is criminal as meant in the stipulation of legislation that defines corruption as a crime."

The definition of collusion is mentioned in Article 1, Item 4, Act No. 28, year 1999, as follows: "Agreement or cooperation against the law between a state executor or between an executor and another kind of institution, which is harmful to other persons, people, and or the state."

Nepotism is formulated in Article 1, Item 5, Act No. 28, year 1999, as follows: "Nepotism is an activity of a state executor against the law, benefiting

the interest of his family and/or his crony beyond the interest of society, nation, and state."

The concept of KKN may differ from one person to another, so that a discussion on this issue becomes uncertain. Perhaps the definition for each component, i.e. corruption, collusion, and nepotism, is not the same for different persons, especially when all are combined.

Corruption, collusion, and nepotism are always expressed in one term: KKN. However, the issue is whether the problem could be solved by combining the three in one concept. Combining these three kinds of crime creates more dispute and does not help solve the problem. It even blocks the effort to solve them. Oftentimes, it prescribes limitations and provides different arguments based on an individual's knowledge and experience. How to solve KKN, therefore, is not realized due to different paradigms. As a result, all become unclear and problem-solving is never reached.

As a political statement, "To fight KKN" sounds good. All agree and support it. But when the strategy for removing this problem is formulated, many obstacles hinder this program. Before planning the programs, the root of the problem should be determined first—which one is the effect, which one is the additional impact, what is size of the problem, which stipulation is broken, etc.

The case of KKN is complex. If we observe what is going now, people combine these three kinds of crimes into one term: KKN. By using one term, discussion on this problem is not focused and complicates its operation. If someone is accused of committing KKN, which charge applies—corruption? collusion? or nepotism? All or two? As a political or social accusation, it is legal and it does not matter, for all of these crimes are contemptible, and so must be removed.

Besides that, there is the problem of how to begin the process of handling. All members of society are convinced that problems related to KKN should be solved. This is good. However, society needs a clear concept on what is the approach and strategy to be used. These two should to be clear so that society would know the truth of that effort, because combatting KKN should be thorough, open, and fair. Openness is especially essential, inasmuch as the handling of KKN should based on a just prosecution and should not create new injustices.

The fight against KKN in Indonesia is, up to now, seemingly conducted on

the basis of closeness to the ruler. It does not solve the problem and, instead, creates new problems. Oftentimes violators are dragged to the Supreme Court to be investigated based on unclear reports, just to fulfill the "demands" of society, and only for social-interaction interest. This kind of action can create new injustices, such as releasing those who are guilty or arresting and punishing those who are not guilty.

CORRUPTION: THE CORE OF KKN HANDLING

If corruption is committed to the disadvantage of the state or society by a functionary and his relatives, the most important aspect of KKN is corruption. Because these three crimes can be a kind of combination, often one could cause another or worsen the other. But if the crime results in the disadvantage of the state, the center of attention should be in the action of corruption, to determine who commits the violation and what is the sanction to be given.

If corruption is separated from collusion and nepotism, maybe we can avoid the slogan KKN. The prosecution will be clearer, and the investigation of the problem will be focused, so that the government can act concretely. In Act No. 28, corruption is already described explicitly. Basically, its element is violation of the law—when one intends to be rich or to make his or her group rich, and harms the state. The crime can be construed more explicitly, and the basis is already provided.

If the focus is on combating corruption only, the problem will be clearer and its operation can be more real. Could combination with collusion and nepotism lead to further investigation? Even if corruption is committed for the sake of collusion and nepotism, then those who are involved in corruption will be involved in the network of collusion and nepotism, and the investigation can directly catch them. But the focus should be the act of corruption as violative of the law, harming the state according to the certain definition.

Our wish is to separate the collusion and nepotism from KKN to make the concept clear. In fact, it is one of the causes why corruption is hard to remove in Indonesian society. What should be done first is to arrange the stipulation and legislation to interdict corruption and nepotism.

CORRUPTION AND THE EFFORT FOR ITS REMOVAL: THE EXPERIENCE OF INDONESIAN PARLIAMENT

Corruption is acknowledged as the main cause of the crisis in Indonesia. But this is just one of the multidimensional crises that befell Indonesia since

1996. Act No. 3, dated March 29, 1971, was enacted to combat corruption, and not only to hinder it. But it failed. Corruption did not decrease or disappear, but developed further into a national scourge that could bankrupt the state. Nowadays, corruption is considered an extraordinary crime that places Indonesia always as the most corrupt country in the world. The problem is, although corruption occurs anywhere, the corruptors are difficult to pinpoint or even brought to court. Even the courts have been contaminated by corruption in various stage of investigation and prosecution. It is not surprising that most of those who are presumed to have committed corruption need not be responsible for their deeds in front of the green table. This condition indicates how law enforcement works in our country. Corruption has become an epidemic, so it needs also to be overcome by extraordinary efforts.

The Indonesian Parliament has endeavored to provide the legal framework to interdict and handle the corruption through laws. The enactment of People's Consultative Assembly's TAP No. XI/MPR/1998, on the recommendation of policy direction in the removal and prevention of KKN, is one example.

A subsequent effort is the passage of Act No. 31, year 1999, on combating corruption. This was amended by Act No. 20, year 2001; and subsequently by Act No. 30, year 2002. By virtue of Act No. 30, the Commission on Combating Corruption (KPTPK) was established on December 27, 2002, to enhance the power and result for combating the crime of corruption (Article 4). The existence of the Commission, however, is not a guarantee that corruption can be combated. Political will and political action of the government are needed to fight corruption. Thus, the method of fighting corruption should be top-down, not bottom-up (Harahap, 2004; 159).

Historically, the role of Parliament in fighting corruption in Indonesia began since 1962. It was based juridically from the Regulation of the Military Ruler of the Army and Navy of the Republic of Indonesia, number PRT/PM/06/1957, for regulating the affair of corruption in KUHAP, which was already incapable of preventing the spread of corruption. Then in 1971 the Indonesian Parliament enacted Act No. 3 on Combating of the Crime of Corruption. Further amendments were made in order to establish the law's certainty, avoid variances in the interpretation of the law, and protect the socioeconomic rights of society.

The existence of the Act was not enough. Cases of money laundering have motivated the Indonesian Parliament to enact Act No. 15, year 2002, on the

Crime of Money Laundering (this Act was amended by Act No. 25, year 2003).

Through Act No. 15, year 2002, Parliament also recommend to the government to establish KPTPK, or the Commission on Combating Corruption (Act No. 30, year 2002). The existence of KPTPK was necessary to build a strong network in order that the combating of corruption can be carried out effectively and efficiently. This commission also monitors the performance of anti-corruption activities to coordinate actions taken by investigation and prosecution agencies—the police and the judiciary.

The Indonesian Parliament is also active in criticizing the growth of corruption. Relevant to its role, Parliament has strengthened anti-corruption activities through laws. Parliament has also sought the cooperation of all state institutions (executive, legislative, and judicative) to plug loopholes in legislation.

The fight against corruption only can be carried on by a powerful and clean government having powerful political legitimacy. For that purpose, the Indonesian People's Consultative Assembly amended UUD 1945, i.e., changed the system of presidential election by direct election of a president, and strengthened the legitimacy of president. President Soesilo Bambang Yudoyono is the first who was elected directly and has powerful political legitimacy. He holds direct political mandate from the people for the purpose of combating corruption, among others.

Nowadays, the Indonesian government strives to enter into extradition agreements with neighbor states, especially Singapore, which is presumed as an oasis for corruptors. Extradition is not a sure way for safeguarding the state wealth from big-time gangsters or corruptors. However, it is an alternative way to prevent corruption.

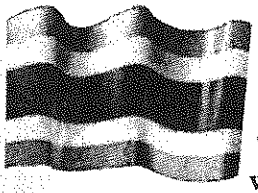
Finally, the fight against corruption needs the people's active participation. The promotion of the awareness and critical attitude of people are needed in keeping a vigilant watch over the behavior of certain state apparatus, such as the so-called "Mafia judicature," in order to uphold the law and KKN judicature in Indonesia. Social and law awareness, therefore, need to be applied to society for the sake of developing the attitude of anti-corruption in all lines and areas.

We have thus far described how serious the condition of KKN is; in this case, in corruption. Laws passed by the Indonesian Parliament, the existence of the stipulations, regulations, and Acts do not guarantee to end the corruption phenomena. However, at least all of them combined can reduce the spread of

corruption. As previously pointed out, the battle against corruption should be seriously implemented by nation's three elements, i.e., executive, legislative, and judicative, together. No less important, is the participation of all Indonesian people. Sincere intention is inevitably needed to overcome corruption.

THAILAND

by the Honorable Charoen Kanthawongs



At the onset, please allow me on behalf of the Thai delegation to first extend our sincere gratitude and appreciation to the Senate, the Congress, and the people of Philippines for the warm welcome and hospitality extended to us since our arrival in Manila. Also please allow me to congratulate you on your success in constituting our regional chapter, to be known as South East Asian Parliamentarians Against Corruption--SEAPAC. We are confident that under your leadership, SEAPAC will be able to attain the desired objectives.

Ladies and gentlemen, we could not deny that various kinds of corruption in many areas in the international arena now threaten global good governance. The Global Organization of Parliamentarians Against Corruption (GOPAC) is one of the concrete approaches to strengthen the capacity of parliamentarians to address issues of corruption and promote good governance. Also, a regional chapter of GOPAC in Southeast Asia is another approach to strengthen regional cooperation. Thus, SEAPAC has been constituted here in Manila to combat corruption in the region.

On March 9, 2005, an issue of *Asian Intelligence* published the results of a corruption survey among countries, with zero as the best grade possible, and 10 for the worst corrupt country. The best grade in the survey was 0.5, and that went to Singapore; the worst was 9.25. Thailand scaled at 7.33, like two other countries. Also, the Transparency International (TI), the leading global nongovernment organization devoted to combating corruption worldwide, marked an important issue on December 9, 2004, that in 36 out of 62 countries surveyed, political parties and politicians were rated by the general public as the institutions most affected by corruption. In other words, it implies that corruption pervades the political life more than business and private life.

In the ranking of the corruption in ASEAN nations, Thailand ranked No. 7. We, the Thai delegation, had well accepted that we are faced with the inhuman act of national corruption. We, as members of the legislative body, have joined

hand-in-hand in the fight for this national concern by all means, but that problem still remains to be solved. To deal with such a case, the present Constitution of Thailand, enacted in 1997, has given to the legislative body the power to establish independent agencies to counter corruption. Those independent agencies are the Election Commission, the Anti-Corruption Commission, the Constitutional Court, the Administrative Court, the special branch of the Supreme Court tasked with overseeing political wrongdoing, the Ombudsman, and the National Auditing Commission

Through the Senate, these agencies have the power to oversee the management of public affairs, and have the power to impeach high-ranking officers, including the Prime Minister and even the head of Supreme Court.

Since 2003, the Thai people have witnessed politicians disciplined for cases of wrongdoing and corruption. For example, the Election Commission has ousted senators from office for vote-buying. Also, the Election Commission gave them the yellow card, meaning, a new election has to be held. The Election Commission even terminated one politician by disqualifying him from running in an election for five years. One minister even had to go to jail for six years.

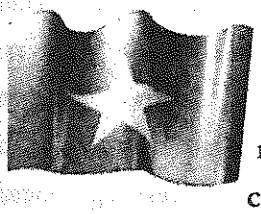
Apart from that, I think mass media is another major problem concerning corruption in the country. It should have served as one of the most powerful watchdogs against corruption. It is harmful if the government is able to control mass media because it becomes a political instrument of the government. Because of this, it becomes a hard burden for the Thai people to play a major role as a watchdog to fight corruption in every dimension.

Being members of GOPAC and SEAPAC, we have an important mission to develop our own objectives and be accountable for the results. We have to share knowledge and exchange useful information in order to address the corruption problem. More importantly, we have to find common factors that become causes of corruption in the country. It might take travelling a very long road to combat corruption in the region and world community, but I think we can learn from each other based on the experience of other countries. Therefore, I would like to call for cooperation in the region so that we can reach out for one another. Accountability, Transparency, and Integrity should be our ultimate goals in combating corruption together.

Thank you very much for your attention.

VIETNAM

by Ngo Anh Dung
Vice-Chairman of the Foreign Affairs Committee



First of all, allow me, on behalf of the Vietnamese National Assembly delegation, to send to all parliamentarians and representatives of international organizations in this anti-corruption conference of ASEAN parliaments my best wishes. We appreciate Senator Edgardo J. Angara's initiative to organize this conference. Many thanks to you and to our Philippine colleagues for your warm welcome and the thorough preparations you have made for our delegation.

Corruption has become a threat to many countries, This disease has hindered and sabotaged socioeconomic development, and legal and ethical systems in all countries, especially in developing countries where legislation is still weak and not strictly observed. In recent years, corruption has developed into a collaboration between corrupt officials and criminal gangs. Their operations are systematic and are often associated with politics and go beyond the territorial borders of a nation. In the face of the situation, the anti-corruption fight has been expanded to involve cooperation between countries and between regions in the world. The United Nations and international financial institutions such as the World Bank and the International Monetary Fund have attached great importance to the fight against corruption. Since the UN Convention Against Corruption was signed, many countries have carried out legal reforms and taken drastic measures to prevent, detect, and handle this social problem.

In recent years, despite the remarkable achievements that have been made in national reconstruction, Viet Nam has also been facing big threats and challenges, including corruption. The question of preventing and fighting corruption has been raised at various forums, from the meetings of the National Assembly and the Government to international conferences, meetings between state leaders and the business community, including foreign investors, and in the media.

Since the early 1990s, the Vietnamese National Assembly and the Government

have issued resolutions to fight corruption. Our Criminal Code also includes provisions concerning corruption. So, too, do the Ordinance Against Corruption, the Public Employee Ordinance, the Law on Supervision, the Law on Complaints and Denunciations, and other legal documents. The law makes it compulsory for candidates for elected bodies to declare their assets.

Viet Nam has uncovered and dealt with several corruption cases. However, as the number of corruption cases tends to increase, so does the degree of the offense, as demonstrated by the amount of stolen public assets. Some offenders are even high-ranking officials. Corruption has spread from the traditionally vulnerable areas such as construction investment and public finance management to education and health care. It has even infiltrated law enforcement agencies.

The Communist Party of Viet Nam and the Vietnamese Government have over the past years attached great importance to the fight against corruption by issuing resolutions, directives and legal documents concerning this matter. In 1998, the Ordinance Against Corruption (which was amended in 2000) was issued, providing a solid foundation for the prevention of and fight against corruption. Although it is incomplete and falls short of meeting all of the needs of national socioeconomic development, the Ordinance Against Corruption has in its first phase made it easier for services and authorities at all levels to detect and handle many corruption cases, and has helped retrieve a substantial amount of assets stolen from the State and the people. The ordinance has also helped encourage socio-political and mass organizations, the media, and the citizens to get involved in the fight against this social evil. All this has contributed to curbing corruption in our country.

At recent meetings of the Vietnamese National Assembly, fighting corruption was a topic that deputies discussed frankly and with a strong sense of responsibility, which the press covered extensively and promptly. Covered extensively by media, the corruption issue has been closely followed by voters nationwide in the hope that the National Assembly will work out a feasible solution to the problem.

Enforcing the National Assembly's resolution to build a legislation schedule for 2005, Prime Minister Phan Van Khai has assigned the Government Inspectorate, in collaboration with relevant agencies including the National Assembly's Law Committee, to draft a Bill Against Corruption for discussion and endorsement at the next National Assembly meeting. The bill will provide

for upgraded regulations to suit the current anti-corruption efforts in Viet Nam. In particular, anti-corruption steering committees will be set up at the central and local levels. The role of mass and social organizations, the media, and the business community in the fight against corruption will be defined more clearly.

We would like to share with you some experiences and make some recommendations for the fight against corruption, which are as follows:

1. Develop national strategies for the observance of laws and fighting corruption at a time when globalization is progressing fast. This is crucial for developing and transitional economies, as fighting corruption serves national interests and helps bolster economic development.

2. Pay due attention to raising public awareness of the need to fight corruption. Corruption must be uprooted with a strong determination.

3. Accelerate administrative reform, especially that of State institutions; tighten the management of public employees through the adoption of policies on personnel, with a view to ensuring a strong, modernized, and transparent administration and cultivating an ethical and able contingent of public employees.

4. Build a complete legal system for fighting corruption, and act strictly and promptly against corrupt officials.

5. Examine the UN Convention Against Corruption your country has signed and turn provisions that are suited to your situation into domestic laws in order to ensure compatibility between international and domestic laws. Furthermore, increase the supervision of law enforcement agencies.

6. Offer incentives and protection to those people who are against corruption, and take strict disciplinary action against those who cover up corruption or hinder anti-corruption efforts.

7. Complete the mechanism of democracy; encourage elected bodies, mass organizations, and the mass media to get involved in the supervision of State officials, employees and agencies.

8. Work harder to raise public awareness of the law against corruption. Keep every citizen informed of it. As long as there is a lack of knowledge about laws among the public, corruption still will continue to develop.

9. Promote international cooperation in preventing and fighting corruption, particularly by exchanging experiences in making laws, and organizing and running counter-corruption agencies.

Corruption is a serious problem. The fight against corruption should involve collaboration between countries and between regions in the world. Being aware of this, Viet Nam signed the UN Convention Against Corruption in 2003. We highly praise UN Secretary General Kofi Annan's call for countries to cooperate with and help developing countries pass and implement this Convention so that it can have an international effect and become an effective means of fighting corruption.

In this fight, the assistance given by international and regional organizations to developing countries is of great significance.

I think that corruption and the fight against it have become more complicated and diverse. Based on its conditions, each country has its own ways to organize, direct, and launch the fight against this problem. We would like to share our experiences with you and learn from your experiences so as to work out a reasonable approach to the situation in our country. We hope that at this forum, besides frank discussions on ways to fight corruption—an urgent problem in many countries—we will have a chance to increase our understanding and mutual trust, and thus contribute to the maintainance of peace and stability, and advance friendship and cooperation for the sustainable development and prosperity of every nation.

Finally, we wish the conference success.

Thank you for your attention

OPEN FORUM

MR. ULRICH: I do believe we have some time to get comments and observations from other participants. Please identify yourself and proceed. While you are thinking about that, perhaps I could provide a number of the comments focusing on what government should do. I think your session this afternoon will focus on what you as individuals can do, and I think that's important.

For GOPAC generally, we are anticipating the first conference in Nairobi, Kenya, in January of next year. And one of the things that we're hoping for is that all of the regional chapters will be able to articulate, in terms that are consistent with others, what the parliamentarians are doing to address corruption in the various parts of the world where corruption is a problem. I think there are lots of discussions and comments here in the last day-and-a half that have

been extremely impressive and important for that. So I would encourage you to think about not just in terms of your own countries but how you can compare with other parts of the world. That is hugely important.

In any case, that was just a little promotion. One of the things I try to do when I go to events such as this is to spend ninety-nine percent of my time listening to how people articulate and watching what they do. And one of the things that seem to work fairly well is, thinking about parliamentarians having three broad jobs. There's clearly the legislative job—this tends to dominate the discussion—and sometimes there's conversation about oversight. And yesterday's presentation on the perceptions of citizens of the Philippines regarding the various branches of the executive, as well the legislature, pointed out some very interesting things that are seen by citizens here in this country.

The other one—and these are observations in the literature—is what has been called leadership. There is a tendency, in a lot of the stuff I've seen, to call this as "public engagement." But I think public engagement and leadership come very close to the same thing, and that is clearly something that has been raised here above all the other places where I've heard it. That's something that really could be talked about in a more general form. So I think you're really looking at something in this region that could be quite exciting elsewhere.

In general, it seems to me that the interests among parliamentarians that I've heard so far tend to be on the legislative side and talking about leadership. I don't know about the *acting* on leadership. The oversight aspect doesn't seem to get as much attention.

A second way of looking at what parliamentarians do is looking at it from the perspective of public administration. This is governance—looking at what the government does, what parliamentarians do regarding social and economic policy. And one of the nice things about the ADB initiative is that it brings the economic and social policy right within the same framework of anti-corruption. A lot of places don't do that, and I think that is an interesting kind of comparison to make when you think about what are the things you can do. In any case, those are just some observations from this and other events. And it's a way of thinking about what parliamentarians can do.

MS. LOW: We've heard the deliberations and some presentations from the past two days and we've been very grateful that the efforts of the Singapore government and people have shown you some results—both, as Mr. Jak Jabes

has said, on the subjective and objective perception about the indices, and we've ranked favorably on the whole. Many of the speakers here have also alluded to the Singapore example as a possible model for anti-corruption battles. On behalf of the delegation, we'd like to thank everyone for the recognition of the effort.

At the same time, I'd like to seek clarification from our Indonesian colleagues. On page 6 of their presentation, there was a statement that says that Singapore is presumed to be a comfortable place for corruptors, and that seemed to be quite the contrary to all the evidence that have been presented in the last few days. We've make great efforts, we've ranked high on the Transparency Index, corruption index and so on and so forth. This certainly does not appear to be quite consistent with the rest of the observations. So I'd be grateful if you could clarify.

MR. SALEH: Okay. In Indonesia, we hope Singapore will sign the extradition treaty. There are many corrupt Indonesians living in Singapore who cannot go back to Indonesia. Thank you.

MR. WANG: I think what was said earlier, Singapore considers corruption as a national crusade and, in terms of principle, follows the spirit of the Convention. As such, we really do not have any objection to the confiscation of assets derived from corrupt practices, either due to commercial corruption, government corruption, even drug smuggling. In fact, we have strong laws within Singapore about this.

Now, of course, we understand that in Indonesia there's a public perception that Indonesians residing in Singapore are corruptors. But Singaporeans do not judge. It is up to Indonesians to decide whether they are indeed involved in corrupt practices in Indonesia.

As to whether an extradition treaty will solve the problems, it's up for the public to judge. Oftentimes we are always asked the question, "How come such individual managed to get a passport, managed to exit and come to Singapore?" So, somehow they were given safe passage into Singapore. Having an extradition treaty with Singapore may not solve the problem. I'd like to say, for the benefit of the parliamentarians gathered here, Singapore has already agreed in principle to complete an extradition treaty with Indonesia.

Our Minister Gho Chok Tong met with former President Megawati in November 2004, and agreed in principle that it can be done. In fact, the first

technical meeting had already been conducted in 17 January 2005. And the second meeting will be conducted on November 12 in Jakarta, so the process of signing the extradition treaty is already in place. However, as you all know, an extradition treaty not a one-way extradition treaty—it should be bilateral. Extradition treaties are actually extradition treaties for criminals of all kinds. When we had a discussion on this, we also saw that Indonesia may not want to complete a treaty as such, because this is bilateral. One example I can give is that there might be terrorist suspects that may be charged in simple court, and if they are hiding in Indonesia, we might demand the extradition these suspects from Indonesia to Singapore as well. So in certain cases, there might be some technical problems, as well as other difficulties with Indonesia.

I want to broaden this, and may have to touch upon the agenda this afternoon, which is a regional plan for action for this particular organization. Indeed there is already a regional mutual legal assistance treaty in place, and it was initiated by Malaysia in 2003. Signatories to this treaties include most countries in Southeast Asia, except Myanmar and Thailand. Singapore has ratified this regional AMLAC, and it is up for the other countries to ratify it. Under this regional AMLAC, Singapore will agree to provide technical assistance—not just extradition treaties, not just extrajudicial but also technical assistance—when we receive a request from the relevant authorities of member-countries to go through or look for or trace assets, to define whether there are corrupt activities coming. We'll provide assistance to other countries. So if Indonesia ratifies this, we will also render the necessary assistance to erase that perception in the Indonesian public that Singapore is a safe haven for corrupt persons. Thank you.

MR. BOONTON: Comment to Imam, my friend from Indonesia. We understand that the government or the legislative body has tried very much to solve the problem, in your country. And in the same token, we listened to the gentleman from Vietnam and to Edgardo Angara. We considered the common consequences together, and we may have some good examples from Singapore and from Malaysia, including Thailand, that was presented to us. We listened to the United Nation gentleman and the lady this morning, and it seems that we are now aware of the problem of corruption in the world. Particularly, we would like to help solve the problem in our region.

I am very interested in Vietnam and how it is up in terms of development. This is my question to you: Since you are a big country of 250 million population,

do you have any tangible punishment for the corruptors in your country?

For my chairman, I am happy about his presentation on Thailand. May I say that our Senate has passed 100 laws. I would like to tell you that the senator who was terminated from his position was the president of the Senate. He got the red ticket, the president. He happened to be the first white president of the Senate who was ousted from that position. He had some affair with a young lady, so the Asian people loved it. As regards what my chairman said about our Supreme Court dealing with special cases of politicians accused of wrongdoing, we elected two persons to work with the Supreme Court. When the case comes to this court, there is no appeal—the decision is final. That is why they put him to jail. That is what I would like to say in this meeting. It is one of the tangible measures of rendering punishment in our country. Thank you.

MR. ULRICH: Perhaps Vietnam would like to respond?

MR. DZUNG: Thank you for the question. I think the question is common for us because it deals with the problem of how to punish people who are guilty of graft and corruption.

The issue of punishment has been taken up during the discussions. And I think we should take these issues thoroughly. Why? High-ranking officials, if they do wrong, can cause damage to the face of the administration itself, and put the country to shame. Normal citizens are not much too concerned if the country is put to shame. For high-ranking people, however, it is different. A corrupt high-ranking official can bring shame to the entire country. One of the things we have to do is take quick measures against him, regardless of how high he is. As I have said, there is a mechanism. We have the court, the Supreme Court to interpret the punishment stipulated for cases when the people violate the law.

Second, public opinion should be mobilized on the issue, because sometimes the authorities are hesitant to act in some cases. But the public opinion will be a good basis for the authorities to take quite tough measures to decide the cases because they know that the public is behind them. Mass media also plays a very important in shaping public opinion.

Coming back to the issue of education. In my country it is very important to educate the people, to know the way how to fight against corruption, to know the instrument that we have, to know the way how we tackle the issue and how we can achieve our goals, because the people sometimes find this difficult

to understand and they just give up. They don't want to continue anymore because of some steps in Vietnam bureaucracy. You see, if you go to the court—different courts from different provinces and districts, and up to the Supreme Court—it needs time. It even needs money because you have to ask assistance from lawyers. That is why it is important to educate the public. I don't know how it is in other countries, but in our country we have problems on how to educate the people. We have adopted laws, but to introduce them into the life of the people is very difficult. We have spent sums of money within the national budget so that we can furnish every village a library with all the necessary laws so that more citizens can come and consult and be informed. We are trying now to establish in every village at least Internet centers so that they can access the flow of information from central down to the province, then district level. It is our will now, but it is not complete yet. It needs money, it needs time.

I have also other ideas that I would like share with you. We are talking about the role of oversight of the parliamentarians. We are talking about cooperation between the lawmakers of the region. But I think we need also the cooperation and assistance of each other, between the government and the parliament, because if the executive branch definitely exercises political will, then it is good for us as lawmakers to support them. If they are not very much cooperative with the legislative branch, then we face difficulties. According to the ASEAN tradition, they have quite a good plan of cooperation. But with this anti-corruption issue, I think we should push our government to cooperate within the ASEAN framework. So we let them know that we parliamentarians are fighting for that. And I suggest that somehow, once a year, if AIPO could do a report to the ASEAN, then ASEAN should also have a report on the situation of this problem to the lawmakers of the region. That will be good assistance for us. Thank you.

MR. ULRICH: Thank you very much. Mr. Saleh, would you like to respond?

MR. SALEH. Yes. I have a special answer for Mr. Boonton: it is very difficult to combat corruption in Indonesia. And then for Mr. Wang, thank you for your comment, and I hope that we, as members of SEAPAC, can share experiences with Singapore, Thailand, and other countries. Thank you.

MR. ULRICH: Thank you very much. I think we have more time, are there any other observations?

MR. BOONTON: I am very happy that my friend said that there should be

another year to cooperate with ASEAN. I have homework for my chairman, Mr. Edgardo Angara. I have a homework for you, sir. We should meet each other at least six months from now to evaluate our performance, what to do. If it's two years from now, I may be dead already by that time.

MR. ANGARA: I think that is a good suggestion. We will meet in Bangkok; immediately the executive board can meet in Thailand, and Professor Bontoon will provide us the tourist guide. I think the executive board ought to meet once every six months. So for the duration of the term, there will be at least four executive board meetings which we can rotate in each others' capitals. Thanks, I think it's a good suggestion.

MR. ULRICH. Thank you for all the country—

MR. WANG. Sorry for the interruption. Actually I was going to ask Professor Boonton about his paper, even though he did not deliver it. We read through it and it was very interesting that his key message is that fighting corruption is really based on education. Earlier, when Jak Jabes talked about corruption, I think we all agreed that we should all rear our children on integrity and honesty. The last thing I would not like for my children is for them to be corrupt. None of us can teach anything them beyond that. Religion teaches the young to be upright and honest. The first thing in the presentation that I remember is that corruption is basically learned in the workplace. So once the person leaves the school system and enters the workplace, perhaps he learns that corruption might be the easy and fast way to acquire the material needs you mentioned earlier. So maybe you could respond whether education in the schools will surely solve this problem of corruption? One more important thing: How do we prevent the idealistic young person from coming to society and becoming corrupt as a shortcut to wealth and position of power?

MR. BOONTON: Back to basics—I would like our family, our school, our church to pay attention to that. I have observed different families living a decent life, like the family of our chief of police, you know. His children follow the same principles as that of their father. You got to do that in the family. Take the concept of a good God, as taught in school. You have to practice in group. The father, mother and the church have to be the leaders of morality. That is their duty in the twenty-first century. In the Muslim faith, they train the kids to follow when they are very young, up to nine or ten years old. They believe in their religion, they never change, and truly they have full faith in Islam when

they grow up. It's just putting faith into practice. Thank you.

MR. NGO. On the issue of the obligation of the school, I think we should take it in a very thorough way because if the children get too much information about corruption, then society has nothing for them. There is no way for them to get out once they take a negative influence. It has to be balanced. I think we should ask our experts, the educated people, how much information should be furnished to these people. Influence is a consideration to be taken very attentively. Thank you.

MS. LOW: Since we are on the subject of school and education, I might as well jump in. I think children generally do not learn very much from schools in terms of behavior and all. They learn by role modeling, looking at what the adults do. Therefore, if in school we teach them good morals, but at home we tell them all the shortcuts, and we treat the results by the shortcuts, then I think it's quite telling which routes they should be adopting.

In the last deliberations, we spoke about the result of culture. The culture of corruption, by itself, is also built upon a certain paradigm. Perhaps the question then to ask is: What are the pillars of this paradigm that we have to shift so that the culture of corruption can become a culture of hard work? Some people say poverty is the cause. I think my colleague Dr. Wang has disagreed with that. And I tend to think that greed is probably the cause, is one of the causes of corruption. But greed in itself, however, may not be an evil thing. Greed could be neutral if it leads to hard work. But if greed leads to corruption, in people wanting to find the shortest way or the easiest way to achieve, or to amass gold, then obviously there is something wrong with that.

And since Prof. Boonton's paper touched upon psychology and so on, I think every individual is endowed with the ability to think for himself. That's what the other member from Thailand spoke about. It's also about us doing our own cost-benefit analysis. Obviously, in a culture where corruption is rampant, the cost of corrupting must necessarily be lower than the benefits of corruption, and perhaps the solution is in correcting this equation itself. In other words—like in the case of Singapore, where the cost is overwhelming compared to the benefits of corruption—there we can then start to put in the necessary framework to shift the paradigm.

MR. LEE: I'd like to mention some of the things that we are continuing to do in Transparency International in Malaysia. We appreciate what Singapore is

talking about with regard to people coming into the workforce and then getting contaminated by the older people. So we try to come up with a model in which we spend about a week with these guys to try to teach them, impress upon them ethical behavior as well as religion, and the role religion can play in becoming ethical and non-corruptible.

I think the other point we need to recognize is that it is not black or white corruption or ethical behavior. Sometimes there are a lot of gray areas of being non-ethical—I won't use the word "corruption"—that unless you are trained, you probably may fall into that trap. For example, I think that in a lot of Asian cultures we try to help the family to progress and to prosper. We bring them into our workplace if we are the big boss and all that. But if you are the head of a publicly listed company, for example, you shouldn't be bringing them in. Even though you may be helping a member of your family, the fact of the matter—if you are running the company for the public shareholders—is that there's a kind of conflict of interest there. Until and unless you are trained to recognize that there are gray areas, then you have to try it carefully. You wouldn't know that you are even doing the wrong thing.

These are some of the things where education becomes very important in trying to impart to us what is ethical, what is non-ethical, and how that thing can lead to corruption. Thank you.

MR. THAVY: I'd like to touch on the issue mentioned earlier by the delegate from Singapore. She said that children are not learning much about this in school. What we are trying to do in Cambodia is to use the public school system to get the corruption issue from the very beginning. I don't know how they are going to do it but we have been talking, and some paper has been drafted. Earlier this morning I asked: "How do you make the public aware of this issue?" Is it through a general campaign or by spot campaign by involving churches or temples or priests? But before making that statement, have you tried first teaching kids in school, telling them about the adverse effect of corruption? What we see here, like what Secretary Vetere earlier said, is that if you are not corrupt you'll look awful. Society is now, as a whole, corrupt, starting from church. I tend to agree that once a family is rich, the idea is instilled in the mind of the children. How do you break their mood, starting from the family or starting when they get into school? We're going to waste a lot of money because kids will not learn much about that. This is not just a

matter of education. This involves a change of morality back into the idea of society. Being good to be good and being good to be rich are two different things. Thank you.

MS. LOW: Just a quick intervention there. Indeed, what you've said is very true, and therefore what we advocate consistently is that you must come from the top, not only when the person is in school or whatsoever. All these things must happen, but at the same time people learn by role modeling—whether it is children, subordinates or whoever. They look to the top for all the signs, for what to do. Therefore, normalizing or practicing corruption is actually also normalizing it both to the child as well as to the subordinates, telling them that it is all right to corrupt.

In the case of Singapore, I think what we've done very unequivocally is the normalizing of corruption in itself, that you will not be at fault if you try corruption, rather than the other way around.

MR. WANG: May I interject a little bit more. We don't have education as experience to show that teaching in school doesn't work as far as corruption is concerned. But I think it's wise to say that you might learn a lot of education in school. You get educated in schools but you learn value systems at the knees of your grandparents. So it's in the family that our value systems are instilled in us. We know explicitly that this value system, transmitted from generation to generation, is important. In our society we must ensure that such a value system should be transmitted.

Now, in our schools, the value system of non-corruptibility is transmitted through another concept, the concept of what I mentioned earlier—meritocracy. All our children know that they can progress in education based on merit. Their parents' position in no way influence their achievement in schools. The Singapore primary schools . . . some of them are good, some of them are not good, and some of them are prestigious and much-sought after, but beyond that, when you're in secondary school, the placement in the secondary school is entirely based on merit. For instance, I have no influence, even though I have been a member of parliament for twenty years, as to where would my son would go. After he passes primary school, he goes to secondary school based on his exam result. He will be placed in school based on his performance.

So it's very clear to my child that a father in this eminent position cannot exert influence for him at all. I think that is one way that he will learn that the

system is very clean, that no influence can be put to get him into the university or get in into a good job. That's how we educate our children.

MR. ULRICH: Thank you very much. I would like to thank you all. This has been an absolutely fascinating discussion. And I thank the staff for the work this afternoon. Thank you all.

MR. ENCANTO: Ladies and gentlemen, thank you very much for this morning's session.

AT 12:32 P.M., THE MORNING SESSION WAS CLOSED

Proceedings from Second Day of the SEAPAC Conference

(At 8:46 a.m., Mr. Mervyn Encanto called the Conference to order)

PLENARY SPEECH

by Secretary Ma. Merceditas N. Gutierrez

Chief Presidential Legal Counsel, Philippines

Good morning, my friends. The instances of corruption I remember reading or hearing about when I was still in law school through the early 70s included the following:

- Traffic policemen receiving bribe money to let go of offending drivers
- Provincial commanders conniving with the governor and mayors and local financiers to allow illegal gambling
- Revenue agents receiving pay-offs from businessmen, allowing the latter to pay much reduced taxes
- Customs officials escorting smugglers so their importations would not be subjected to strict scrutiny
- Procurement officials conniving with private businessmen in order to rig government bidding procedures in favor of pre-selected suppliers
- Lawmakers authoring bills that directly favor political contributors
- Local government executives awarding choice positions at the capitol to cronies, who remit a monthly tribute to their bosses in banks abroad
- Bureaucrats at city hall who would not move permit applications unless "certain requirements" are met
- School officials charged for under-deliveries or, worse, ghost deliveries of school books
- Bridges and roads supposedly paid for by congressional pork questioned due to substandard materials used.

Same story today. As I said, these were the instances of corruption that I read or heard about more than three decades ago. However, saying them again is just like talking about recent incidents. Indeed, these are the same problems

we had before. Nothing much seemed to have changed, except perhaps there are more of them today than before.

We should not be ashamed to admit there is much corruption in our country. Especially because, despite perceptions to the contrary, we have had honest-to-goodness attempts in the past to combat corruption. Only, the battle had proven itself too tough to wage.

Why is corruption so tough, widespread, and so intractable in our country?

First of all, we must go to our attitude toward corruption and examine them. As I said in an earlier speech, many of us Filipinos today still regard corruption as a currency that shortcuts waiting periods, lessens tax burdens, or clears up regulatory conundrums.

For government suppliers, corruption is a way of getting profitable contracts. For low-salaried, low-level bureaucrats, it is a way to supplement meager income; for high government functionaries, it is a way of making businessmen happy and making themselves happy too in the process. For many small- to medium entrepreneurs, corruption is a method of triggering efficiency and "value-added" cooperation with bureaucrats whose friendly disposition toward them spells survival for their businesses.

Corruption is even seen as prelude to respectability.

When I was young, our elders looked down upon people who became rich through illegal or immoral means. Not anymore. Today, as long as you're rich and you display your largesse frequently enough, supporting causes when the opportunity comes, careful to become a member or official of a well-known civic group, maintaining an air of respect towards other people—all these seem to cast you almost automatically as part of the openhearted and supportive members of the community. No critical thought is given as to how you became so rich and whether or not your refined manners are not just pretenses to mask the kind of greedy person you really are.

Besides who gets hurt in corruption? We don't see its victims. Maybe there is no victim. The people, ultimately? They are nameless and faceless, and more likely they themselves are on the take somewhere, somehow, sometime. And where corruption is accepted as not just a fact of life but as a way of life, where to be in high position is considered as God's gift of good fortune, to be "clean" is to be an odd ball worthy only of disbelief and ridicule for squandering precious opportunity and missing the action. Worse, to be "clean" may even

spell out danger for you, because you may squeal out on your officemates who consider corruption normal. Then you have to watch out.

Is being clean worth the danger? Is it a virtue or a liability? Many of our people no longer seem to know.

Victimless corruption is a myth. Corruption as victimless is very, very far from the truth. It may buy individual cases of convenience and financial savings in government dealing, but in the overall lessens the quality of public service, and virtually all of us who at one time or another need to transact official matter with government are the ultimate sufferers.

Corruption results in school buildings that are veritable death traps to our children, to substandard infrastructure facilities that are dangerous to use, are expensive, inefficient, and prone to failure. Repair costs alone consume funds that otherwise could be devoted to other equally pressing concerns like housing, health and security.

Corruption causes local and foreign businessmen to suspend or altogether avoid investing, for fear that the costs of doing business in the country would be too high compared with the returns expected from it. This results in loss of potential jobs to our workers and the progressive weakening of the productive sectors of our society. More families then fall annually below the threshold of poverty, and more and more of us find the need to go abroad just to find that job that would enable us to keep body and soul together and give a decent life to our families. Long separation not only is emotionally painful but has social costs as well, in terms of spoiled children, broken families and Filipinos who, to say the least, are more proud of their countries of work than their own native land.

Corruption, in the end, alienates the citizenry from their government; the former sees the latter as incapable of really advancing their welfare. This makes it difficult for citizens to support government programs. When this happens, the more government services deteriorate, the wider the division between the people and the government becomes. This manifests itself, among others, in lessened tax revenues despite threats of court against tax evaders.

Need for effective government communication

I believe that government in our country has not at all been effective in communicating to the general public just how evil and pernicious corruption really is. For people like us, who are personalistic in outlook, before we accept

that corruption is a real crime we always seem to need to see first a real, live victim mangled by corruption.

One way to convince our people of the painful price we have to pay for corruption is a study that graphically points out how corruption has consigned our once promising country into the Third World status that it is in today.

A sure indication of this Third World status is the proliferation of NGOs and other civil society organizations, with self-mandates that are related to good governance. Because these entities are forms of collective self-help, their proliferation means government institutions are inadequate to promote the public weal and need help to perform their tasks.

What then needs to be done? And how should we go about it?

Executive initiatives

Many of you must have already heard about the so-called lifestyle checks that Her Excellency Gloria Macapagal Arroyo has initiated to clean up the ranks of the executive department. Basically, the checks look into the kind of life that a government official, suspected of amassing wealth while in the office, leads and enables him to enjoy a style of life that his employment, considering all his other legitimate sources of income, could not have possibly afforded. He is deemed to be involved in illicit money-making activities and is immediately dismissed or charged in court.

The lifestyle checks have evolved into one of the most dreaded weapons in the arsenal of government in its fight against corruption and its campaign to bring public service back to the people where it belongs.

Other initiatives from the executive department include:

- The recent signing of the instrument for Senate concurrence to the U.N. Convention Against Corruption;
- The Philippine Medium-Term Development Plan that incorporates measures on good governance and anti-corruption;
- Appointment of an anti-corruption czar to coordinate anti-corruption efforts in the executive department;
- A call for the more visible frontline executive agencies, including law enforcement bodies, to submit a report on office-specific corruption activities, the methods, players, causes and opportunities involved, and what solutions are being put in a place to stem or eradicate corruption in their offices; and
- The operationalization of partnership arrangements among major agencies

under the executive department and select civil society groups, under which groups, such as the member organizations of the Coalition Against Corruption, could act as watchdogs in strategic and delicate functions performed by the mentioned executive agencies.

That is as far as the executive department is concerned. The other two big departments of government, the Legislature and the Judiciary, have also put in place their own initiatives to combat corruption and lessen graft in their own spheres of influence.

Let me, however, discharge a few remarks that largely underline the importance of good lawmaking.

The aid that comes from legislation

I believe we need to revisit our laws that are designed to prevent and fight corruption. We need to review those we already have, and then enact those we still need, to strengthen our position in the battle. In our review of laws, let's root out those that either don't work or are unrealistic, or laws that mirror what a former national security chief once described as the "conceptual gap between what we are and what we ought to be." It may happen that some of our anti-corruption laws may be good on paper but may actually conflict with who we are, our collective character, our needs, values, and aspirations.

For instance, can we really enforce a law that makes it a crime for a public official to receive gifts just because, with due regard to the superior merits, say, of a bid, he made a fair decision that just happened to make a contractor happy? In our culture, *utang na loob*—the recognition of moral debt—is a trait that defines a sensitive and decent person. Should this trait be repressed so that Filipinos could be moulded into a people who no longer know how to express their sense of gratitude?

When a law cannot be enforced because the standards it sets are too high, the whole regime of laws becomes the subject of ridicule, and sometimes outright contempt, for not squaring with reality. Worse, the habit of fealty to the laws which every society must inculcate in its members (because it makes obedience to the law automatic and second nature) becomes shot.

Let's also root out laws, regulations, and government procedures that are too long and complex that just to get, say, the permit or certification you need, you have to tread through a puzzling regulatory maze, to escape which requires establishing friendly relations with bureaucrats who can make things a lot easier.

I believe congressional oversight is a real privilege that, when exercised properly and in diplomatic tandem with similar oversight groups within both the executive and judicial department, could result in every government agency using its rule-making powers only in ways that are truly directive and genuinely helpful to the segment of the public that transacts official business with them.

Next, we consider the laws we need in the fight against corruption. It is a fact, for instance, that our prosecutors are hampered in the prosecution of corruption cases because the law-protected secrecy of bank deposits prevents them from examining even the deposits of suspect grafters. What action is then required of our legislators?

Our bidding laws for infrastructures invariably authorize bid committees to provide the specifications for a project and determine its cost range. In the name of realistic adjustments, these specs and costings are then changed or lowered after the contract is awarded, inflicting unfairness to the other bidders who have already lost in the bidding because they could not meet the previously announced criteria. Should not in some instances government simply describe a project and bidders be allowed to submit their own designs and specs, along with their costings? It would then be a simple matter of government accepting the best offered design and cost estimates.

Legislation should be inventive and bold enough to trek new paths toward achieving maximum gain for government while encouraging private-sector innovativeness in technical solutions to technical problems, and at the same time giving unfairness little chance to go into play.

How about new legal protection to witnesses in corruption cases involving high government officials? It may happen that if a whistleblower is another government official, the respondent may use his influence to get his friends in government to initiate a lifestyle check on his accuser. The move, of course, is to scare the witness into thinking that to be a witness to corruption is not at all worth all the hassles that one may get from whistleblowing. A law that essentially would put a stop to all lifestyle and other checks on witnesses to corruption cases would go a long way into enabling witnesses who take the bold first step in exposing corruption to maintain their resolve to remain as witnesses.

And how about legislation that would make it mandatory for all departments of government, including all the myriad agencies under them and a defined class of local government units, to submit to the Executive, the Congress, and

the Chief Justice a once-every-three-year report on the status of corruption in their areas of responsibilities, to include what the problems had been and how they came about and how they were addressed? Since corruption is one of the most pervasive, if not the most pervasive, of all public crimes but one that is also most quiet and hidden, this would force government officials to clean up their agencies regularly, just as an auto-owner subjects his vehicle to a regular check-up to ensure that it delivers the performance it was meant to.

Many of these matters and others that are similar or have the same reformative thrust are addressed to our legislators.

Changing our mindsets toward corruption and boosting the drive against corruption with proper legislative aids and weapons are very important. But we should keep in mind also the primordial need to teach moral values early on to our children. The teaching should start at home and be supplemented at school. Every Filipino home and elementary-grade school should be a forum where honesty is pictured as a prime value in life, where due consideration for the rights of others—even though we have no direct contract with them—is stressed, and where children are taught to express a principled opposition to every kind of wrongdoing.

The teaching of right values and basic concepts such as the common good is critical because many times the ills of government do not come from the incompetence of public servants, but from competence that is misused for individualistic ends.

Corruption often thrives because people who see it not only do not express a principled stand against it but also even signal their admiration to those who artfully know how to make profitable but "safe" uses of their high government positions.

And of course in the fight against corruption the power of example cannot at all be downplayed. Human beings react all the time to their environment and duly adjust their behavior to what is happening around them. If superiors in a government agency are seen as corrupt and get away with it, you can bet that everyone else down the line is making his bit to get more than his legitimate take-home pay. Conversely, if superiors are seen as collectively honest, eschewing opportunities to get rich while focusing solely on making their agency do its mandated tasks, subordinates down the line would focus the same way. In an agency where everyone simply does his work and is happy to do just that, you

have the sure makings of a government arm that is institutionally strong and one that immeasurably adds up to public trust in government.

One way to fight corruption, maybe, is to train government employees, no matter how high or low their position, how to love their work and see their importance in an overall scheme whose ultimate result is government that is truly helpful to the people and promotive of their interests, and where, because of the people's support to a credible government, official programs are working, the economy is strong, jobs are plentiful, and the basic pay is a real living wage.

This kind of training would also help a vital segment of our society, the bureaucrats, to decide who they are and what they want to be, and what their broader mission in the life of the nation is, so that narrow values like cronyism, extreme familism and *kanya-kanya*—individuals solely acting in their own interests—would have no room to assert themselves.

The power of example in the fight against corruption is also seen in government people being stunned to learn that some highly positioned officials and individuals have been convicted and jailed by the graft court. Filipinos, of all races, are creatures of example. That is why in other countries where laws are habitually obeyed, Filipino expatriates are one of the most law-abiding members of the community.

In this connection, it's always said that to jail a few top people political will is needed, but that it is very difficult to master that will. I suspect these difficulties are largely a myth and, in any case, overrated. To a simple and determined mind, to jail a few corrupt officials requires nothing more than letting graft prosecutors do their job by giving them the resources, the numbers, the training and independence they need to perform their tasks well.

Let me end my talk today the way I always end when asked to talk about how to combat corruption. I end with a call that once again puts to the forefront the power of example. And this time, it is the kind that comes from our leaders.

I call on every leader in all segments of our society, not just government officials but also those belonging to industry, commerce, and the professions, to set the example to the rest of our society to lead lives that are not touched by corruption and graft.

It makes no sense to urge all those below you to be incorrupt, when you yourself who occupy a high position are corrupt. Besides, like high education, all high stations in life carry a burden. That burden is to be a model for the rest

of humankind for upright and principled living.

For bureaucrats, especially those tens of thousands who occupy meager positions, I have an added call: Carry on, although for the moment you are underpaid and overworked. You are the real forces of the government machinery, and it is your example of steadfast service that will make the people develop their confidence in government. Government exists primarily to serve the people, but loyalty, discipline and honesty in service turn the situation around and position the machinery of government to support you in turn.

Life is full of paradoxes. Truth itself is paradox. To end up being served—and not only you but also your children and your children's children—just because you have faithfully served is one of them.

Thank you so much for inviting me to share with you my thoughts.

Thank you and good day.

[*Applause*]

THE ASIA-PACIFIC ANTI-CORRUPTION INITIATIVE

by Jak Jabes
Director, Governance and Regional Cooperation
Asian Development Bank

I am very honored to be invited and very happy to be here to talk about one of my favorite subjects, corruption, and one of my favorite applications, what we call the ADB-OECD Anti-Corruption Action Plan and Anti-Corruption Initiative. I hope that all of you, parliamentarians from around Southeast Asia, will have a chance both to discover new initiatives in your countries and to be able to discuss and test some of the premises. I have my own view as to what one needs to do in a country to reduce corruption, but I have never run for office, so it is very easy for me to be able to say, "This is what I should do." I am sure that if I were in power it may not be as easy as the formula seems to be.

Let me start with corruption and why we should fight it.

Corruption has devastating effects on political stability and economic growth. We know from many studies that it raises the costs of doing business. This is a well-established situation. The more bribe-giving exists, the more the cost of doing business goes up.

It deters foreign investment. There is a relationship that is demonstrable: in most countries where corruption is high, foreign investment has gone down. The World Bank has called it the Wolfensohn study, although I suppose he is soon no more the head of the World Bank. Anyway, Wolfensohn called corruption as "cancer on development." And while it is very difficult to get donor-organizations to agree on anything—a few years ago, all donors have felt that attacking corruption was not worthwhile—they realized that fighting corruption was something that really was necessary because of all its evil effects.

This study shows that in Asia corruption can cost up to one-sixth of a country's GDP. This is a high cost and it is, of course, not an exact amount because the cost of bribery and other unethical behavior is not always very easy to put a number to. There are other factors such as the erosion of the rule of law, trust in government institutions, and political stability.

Another study—this time by Cleet, who is someone who has done a lot of

work on corruption—shows that in Asia 20 to 100 percent more is paid by government for goods and services due to corrupt procurement practices. As we all know, when we talk of corruption in government, there are a few areas which one looks at immediately: one is procurement and another one is customs, the third one is tax collection. These are areas where the likelihood of corruption and bribery occurring is very high. In procurement—what with the established 20 to 100 percent . . . with multilateral institutions there are numbers being thrown out—we do no know how much of our support to countries is wasted in corruption in procurement.

Now this is something that perhaps not all of you will agree with, but I will say it anyway. I think no country in this region, except Singapore, does well on objective or subjective indices of corruption. And I say that because in my view when I raised my children I told them: "You better be in the top five of the class. If not, don't come home; I am not interested." I wanted them to be competitive; I wanted them to be good. That is what they had to strive for. None of them became first in the class, none of them were in the top five, but that is okay; they have done well, and that is what I cared about. And I think that is the kind of goals you have to set. And so if we look at it, Singapore is doing well. But other countries in Asia are not doing that well.

Now let me very briefly talk of what we do at the Asian Development Bank. There are three types of corruption-related activities we get into. One is what we call Regional Technical Assistance, which includes more than one country. One example is the ADB-OECD Anti-Corruption Initiative—I had spent most of my time talking about that. We have also done other regional technical assistance projects. For instance, our studies on money laundering a few years ago led to adoption of an anti-money laundering policy in banks in the region.

Another thing we do is provide loans and technical assistance to countries. And most of our government loans these days have a strong anti-corruption dimension.

We also have an internal group that looks at corruption within our projects and ethics of our staff. And very recently we have taken a number of measures to strengthen it, whether it is on procurement and contracting procedures, whether it is on random projects of which ADB has some twenty resident missions these days. And we have done our best to strengthen our capacity in these resident missions to deal with corruption and trace money trails.

Let me then go through something that I say is close to my heart because it was the first major project that I was associated with after I joined the ADB, what I call the ADB-OECD Anti-Corruption Initiative.

In 1999, before I joined the bank, there was a conference that was organized at ADB in Manila on combating corruption. In 1998, ADB had passed an anti-corruption policy but, as an institution, knew little about the subject. And so this was a sort of an awareness-raising for the institution, in much the same way it was for countries of Asia and the Pacific that were invited. Now, anyone of you who has come to ADB will know how people would put on a good show—wined and dined for a view of intellectual papers. And so at the end of the conference, everybody was happy and they decided to go home, but they said, "We should do this again." You know, I'm a former academic, when we get together in conferences like this we have a good time and say we should do it next year somewhere else. And so the following year the conference was in Seoul on the invitation of the government of Korea, and this time participants in the 2000 conference asked that action be taken. They said, "We have heard a lot of information about things that are good and bad about corruption, but let's see some action." Basically, they said that an action plan to deal with corruption should be prepared by experts in the region.

Now, OECD got into this act since 1999 because we did not have a lot of knowledge in our own institution. Since OECD, through its convention and in the work that it had been doing, had quite a bit of expertise and knowledge on the subject, we basically partnered with them in this initiative.

There was a third conference in 2001 which took place in Tokyo. And in that conference we put an action plan on the table. This action plan was prepared by about twelve to thirteen different experts from twelve to thirteen different countries, not all of whom finally ended up coming to the conference endorsing the plan. But this plan was put on the table for endorsement. It was the joint work of experts, but it also had inputs from the international civil society and business community. And this plan, which was distributed, was endorsed by 17 countries when we were in Tokyo, end of November 2001. Since then, six other countries of the region have endorsed it, and now the ADB-OECD Anti-Corruption Action Plan has 24 countries that have endorsed it. This is an international agreement, but unlike many international agreements, it doesn't have a legal obligation. In other words, we cannot make any country that

doesn't abide by this plan to endorse it. We are not the United Nations Anti-Corruption Convention—but that's maybe why we are successful.

The ADB-OECD Anti-Corruption Action Plan is based on three pillars. The first pillar deals with public service, effective and transparent system, mostly with what public servants would do and things that directly relate to them, what is the content of public service laws, procurement laws, et cetera.

The second pillar deals with strengthening anti-bribery actions and promoting integrity in business operations.

The third one ensures that there will be active public involvement.

So basically three aspects: (1) ensure that the public, through NGOs, through civil society organizations, through citizens, has an opportunity to have inputs and its own say on corruption; (2) ensure that business has a level playing field and that environment which may reward bribery is basically non-existent; and (3) ensure that we have decent public servants because there is an environment, a legal system and a ministry of culture that supports that.

And none of these, none of these happens by miracle; none of these happens by laws; and none of them happens by chance. The first and most important *sine qua non* condition is political will. You can put any law that you wish; but without political will, this will not happen. And if you want one good example in the region, please study Singapore. It is an incredible example of what political will can do. In political will, of course you have to say, "I want to eradicate"—*eradicate* is a strong word, I think we should not use it—"I want to reduce corruption and I'm going to put all my efforts towards that."

In Southeast Asia we have a good sense of what works and what doesn't work. It is not as if we need to try. There are countries in which things are working much better, and by looking at them you may draw some conclusions. I'm not going to suggest that what works in one country can easily be imported to another. But I think there are lessons. I'm not even going to use the word *best practice*. But there are approaches, and I think some approaches are adoptable.

Now, the Anti-Corruption Action Plan, which you have in hand, is basically based on good practice. It tries to put together what we know from around the globe about good practice. It is similar to a compact in the Balkans and it is also based on a maxim—if I had anything to do with this plan, I will take credit for it – which is: *The best is the enemy of the good*. I did not want the best

plan, I wanted something that countries would agree on as good enough. And I think we have something good enough, the likelihood of perhaps abiding by this plan. And if you try for the best . . . but then the best may mean academic.

So, that's what this action plan is based on.

Now let me give you a sense of believing.

(At this juncture, a PowerPoint presentation was flashed on the screen.)

This is a listing. Not because I believe that the Transparency Internationnal Corruption Perception Index is the best instrument—it probably is not—but it's used so often by everybody who kind of talk about corruption that I thought maybe we should show this.

Here are a number of countries, about seventeen of them. As I said, there are twenty-three countries that have endorsed the action plan. These are the countries that have endorsed it, and it shows why they are endorsing it. Basically, there's one conclusion from this, which is an important conclusion. Some countries are doing very well, some are doing so-so, and some are not doing well at all. I think instead of ranking, if TI would have used an approach like that, I would have been much more comfortable because I'm not sure what these small, miniscule differences between countries mean, what it means to be number 132 or 133.

But basically what I would like to say is that the ADB-OECD Anti-Corruption Initiative takes into its midst countries that do very well and countries that are not doing well at all. And I think it's also important because there is quite a bit of learning from each other.

There are five mechanisms that we use in the initiative. These are strategy documents. We have a medium-term strategy which is endorsed by the group. There's an action plan which I distributed. The steering group is made up of the twenty-three endorsing countries. Each government has appointed a focal point and the focal point comes to the steering group. The advisory group is made up of donors, the international civil society, and business organizations. And we hold a biannual conference—we gave up the annual conferences even though it was nice to get together; we now meet once every two years. We felt that countries that have endorsed the action plan have an obligation to report every on a 12- to 18-month cycle. In reality, that sometimes moves a bit every two years, but we are able to report on progress.

The strategy is basically based on a number of mechanisms. One is country

ownership. This is not something that the ADB or the OECD is leading—they only act as secretariat to countries and they, the countries, decide what reforms they want to undertake. We do not go, even though we are a donor, and tell countries within the secretariat, "This is what you should be doing." Country ownership is important.

The second important mechanism is regional cooperation. We are thinking of sub-regional roundtables very much similar to what you are doing here, that is, bring the Southeast Asian countries together to discuss their own rules. We have a regional policy dialogue which takes place within the biannual conference, and we have an outreach effort through our website.

Another important aspect of the strategy is to stress that civil society and the international donors are part of this effort and they have shown their allegiance to it by attending every steering group meeting.

And finally, one of our ideas—I mean, something that we are trying to work on—is enlarging regional participation, ensuring that other countries also participate. And I must say to some countries around the table here who are not members that we would like to see them.

Let me give you very quick examples of projects in selected countries that are part of SEAPAC. Malaysia: this is a project that Malaysia reported on. It's a survey. Malaysia conducted a survey of perceptions of the Malaysian public towards corruption. This was something that was done through a university in Malaysia. It's an example of our Pillar 3, public participation, and the expected result is to increase the effectiveness of the anti-corruption agency. Interesting point, if I may say so—the advice that were always given, once you say the first most important thing to have in an anti-corruption program is political will.

The second thing is to have an independent anti-corruption agency. The anti-corruption agency of Malaysia is not independent. It reports directly to the prime minister and the appointments are made through the civil service and for the prime minister's office. But I must say that it has been quite effective, and over the years, Malaysia has become less and less corrupt, if one looks at its industries like Transparency International did.

An example from Indonesia, where a partnership for governance reforms was put in place, bringing in a lot of the key players, resulted in an increased awareness through media and broadcast campaigns for the public.

Cambodia only about a year-and-a half ago initiated a program of

administrative reform to improve or address some public service—ensure integrity especially, in certain procedures to improve hiring and managing staff in the public sector.

Philippines. I will not really go into the details. I think that you have had the opportunity to listen this afternoon to the person that is in charge of all these. The Philippine advocacy skills development program tries to help the development of effective and transparent systems in the public service. The aim is to increase the capacity of prosecution officers in the Ombudsman Office. The Ombudsman's Office in the Philippines is one of many organizations dealing with anti-corruption. And, as I said, I am not an elected official so I have the right to say these things and dig their ideas and deal with them as I wish. I said political will is important. I said an independent anti-corruption unit is important.

The third mechanism is to reduce the number of units in the government, in the public service, that deal with corruption. The more you have, the more diverted it becomes. It's much better to have one, I suppose, than many.

Vietnam: Vietnam joined the anti-corruption action plan endorsed to me only last year, but it has been a very keen player since. They have invited us to hold the sixth steering group of the initiative in Hanoi, which will take place towards the end of April. It has the project on anti-money laundering legislation—that's on October 2—and it's putting in place criminal penalties for laundering proceeds of corruption and crime.

Singapore does not really report very much because it feels that it has a pretty decent system, but nevertheless it's still looking at the appropriate transparent procedures for public procurement and ensuring that public resources are spent through a good conduct.

Final point that I'd like to make is, when we started this initiative, the idea was basically to get countries to endorse the action plan and take action for reform. But since the steering group has been meeting, one of the things that have come out to the fore is that there is a big need for capacity development, especially in countries which are more corrupt. So the secretariat decided to seek some funding, get the advice of the steering group and the adviser group, and start putting in place what we call "master training seminars." The first one, with a general theme *On Effective Prosecution of Corruption*, took place in India. We offered the second one—on curbing corruption in public

procurement—in Manila.

We just finished one in Pakistan—on looking at international standards and especially what countries have to do in order to ratify the UN Convention.

Now, the UN Convention is a long document. There are a number of articles that clearly and directly overlap with our action plan. We have now been working together to help the twenty-three endorsing countries on what needs to be done. There are fifteen countries that have ratified the UN Convention; you need thirty to ratify it before it becomes a law. The UN is hoping that within another year this will happen. Only very few of the most developed countries have ratified it. Yet they are looking carefully at what needs to be done in their legislation before they ratify it. The first country that ratified the Convention— the day that it was endorsed by 110 countries in Mexico, in December 2003— was Kenya. I think it is important to say that Kenya is well-known in Africa to be in the absolute bottom when it comes to corruption. Singapore, which is one of the least corrupt countries in the world, has not even endorsed it yet. It is looking at the document carefully to see what endorsement means, because endorsement would lead to ratification. These are legal instruments, and countries are taking quite a bit of attention before they do it.

Now, you will hear politicians, senior public servants, especially those tasked with anti-corruption campaigns, saying that it's important to eradicate corruption. But will government practice what they preach?

First of all, you really do need to generate domestic will. It is important that awareness go up. One interesting thing that has been said is that some countries have really gone down in the Corruption Perception Index of Transparency International since this index was made available over the years. One explanation is that more and more of the citizenry are becoming aware of corruption, and that's why it's more critical of its own country because this perception index is based on basically perception of citizens and businesses. We need to recognize that countries move at their own phase. It is not feasible, especially with donors, to go into a country and say, "You shall not be corrupt." It doesn't work that way; a country moves at its own phase. You need to work with issues of culture. The fact that there is culture, which country would say, "This is my culture, it's not entirely anti-corruption."? I have a difficulty with that.

We do not raise our children to be ethically and morally corrupt. So something

must have gone wrong somewhere along the line. I am not sure that this is based on culture. It is perhaps based on a tacit understanding that that's a pretty decent way of advancing in life if we can do it that way.

I think the international community is prepared to help now, more than at any time in its history. This is the common strategy; it helps all of us. And we have to keep in mind the economies of the region are still somewhat weak; weak economy means bribery, and corruption can still be rampant. So what I am trying to say in this is: We are all jointly making efforts. I think more can be done. I think we know some of the pieces of puzzle now and we can try to put the whole thing together. And political will is more than just making statements.

Thank you for your attention.

[*Applause*]

OPEN FORUM

MR. WANG: Mr. Chairman, I would just like to comment on the presentation of the two speakers. I gathered that all of you understood the issue of corruption very well and identified some of the measures a country can take. But I recall a Chinese proverb which says that when you build a house, the main beam must be straight. And if your primary beam is crooked, then the whole house will be crooked. In other words, while we are focusing on political will to carry out anti-corruption, the top person must be perceived to be impeccably clean. Then we have a good chance to eliminate or exterminate corruption from a country. I think the word *eradicate* is a good one.

I have presented in our paper from Singapore yesterday that we continue to carry on this eradication process. In fact, I reported that last year, in 2004 we still had a hundred of cases brought to court but these were minor cases. I thought I will share with delegates here that it is important not only to have political will but also the top person must be perceived to be impeccable. I also mentioned yesterday in my presentation that the elected officers automatically occupying top positions in the country should not have the inherent tendency to encourage the system that one has to pay back favors to

be elected. In the process, if you are elected you owe a lot of favors to people because of political donations, contributions, then you have a system that encourages corruption in your country.

I also heard in some presentations that poverty is a cause of corruption, and that in economies that are too weak it is difficult to eradicate corruption.

Our opinion is quite different. We believe that poverty is not the source of corruption. Actually corruption is a cause of poverty. It should be the other way around, because in Singapore, when we started in eradicating corruption in 1959, we were really quite poor, a Third World country. Because Singapore has been able to effectively eliminate major corruptions and reduce the cost of government's expenditure, infrastructure and so on, we have been able to benefit from various government development projects. As a result, we became developed.

So maybe some of us will say, "We are a poor country and, therefore, it is difficult to eradicate corruption." I think we should say, even more so, because we are poor, we must eradicate corruption in order to break up this vicious cycle and totally avoid it. Thank you.

MR. FLAVIER: For Secretary Gutierrez. You have in the Palace a consultant adviser from Hong Kong who is advocating the "shaming" process to curtail graft and corruption. Can you just comment on the mechanics of its implementation. I am bothered that this may be used in situations where we might be shaming somebody who turns out not to be guilty because the process has not been completed. Can you just comment, please?

MS. GUTIERREZ: Yes, we have Mr. Tony Kwok, who is advising the Ombudsman and the Office of the President in addressing corruption in the country. He was formerly the head of the Independent Commission Against Corruption in Hong Kong. He mentioned that there should be a shame campaign. But I think we have to consider that that can be done only maybe after conviction. Because when you file and you already conduct the shame campaign, that would put you in trouble because you are not sure yet whether the case filed would merit conviction by the courts. So I don't think that the stage when the case is filed is the right time when the shame campaign can be done.

MR. WANG: I would like to comment on that too. I think the shame campaign should not be a shame campaign, but perhaps the development of a culture of shame. In other words, the person should be so ashamed of being

even investigated that it becomes a major deterrent in the course of corruption. I think it will be erroneous to say that once you investigate, you conduct a shame campaign. Unless and until the person is prosecuted and convicted, he should be assumed innocent. In Singapore, however, our culture is such that the shame factor is very crucial. I shared with the delegates yesterday that in my early years as MP, one minister was investigated for corruption. He was not even convicted. But even before the hearing became public, he killed himself. He committed suicide. That's one. Another incident was that of a candidate who was our government party candidate. He committed suicide also even before he was elected, and he was not even involved in corruption. That candidate for election entered into an unfortunate commercial transaction and became bankrupt, so he committed suicide as well. So perhaps the gentleman may not be referring to a campaign of shame but a cultural shame in an individual in high office who is afraid of being shamed. That becomes a crucial and major deterrent.

MR. DZUNG: I am from Vietnam. I'd like to add to the comment of the delegate from Singapore. The "shame" issue is really Asian, but please bear in mind that we are now in the modern century. Young people now have a different attitude in life. Among the old people, it is quite understandable that they have this culture of shame if they commit any kind of corrupt act. But the young people are difficult to educate with this ethical philosophy. That is why we need also to learn from the experience of Singapore.

I have some comments and questions to the two speakers. First, to Ms. Gutierrez. You mentioned about oversight activities in regard to the combat against the corruption. Could you please tell us some more about the role of the parliament in the oversight activities and the role of press and media, because in our country, the press plays an important role when they discover cases of corruption. They are maybe number one among the people fighting against corruption. It is very important that we should carry out oversight activities, but on the other hand you also mentioned about the responsibilities of the executive branch because it has the power and the capability of executing anything it likes.

Second, you told us that there are cases where high-ranking officials are difficult to put into jail. Could you tell us why? Is it because there is no legal framework to execute or carry out the anti-corruption policy? Or is it the

Asian mentality that it is very difficult to touch high-ranking people. In our case we have put some high-ranking people to jail because of corruption. It is not so easy—but we can do it.

To Mr. Jak Jabes, I have also two questions. Could you explain us why—because you are a bank and you have money—you have no policy of coming out with a kind of punishment or sanction against the government does not apply the policy against corruption? Aside from political will, we also need good instruments to guarantee that political will is carried out successfully. Could you advise us or give us some examples of some of the countries in the region that have very good political will, very good measures to be executed to carry out this political will?

Thank you very much.

MR. ENCANTO: Secretary Gutierrez will answer first.

MS. GUTIERREZ: When I mentioned the oversight functions of Congress, I know that after a law is passed, there is an oversight committee that is incorporated in the law. That is a committee composed of legislators that would see to it that the law is effectively implemented. I say that this is important because then our legislators would be able to see how the law is being effectively carried out and, of course, the members of the oversight committee can call for the implementors on what measures are being taken, whether the provisions, as enshrined in the laws are being carried out effectively to the fullest. An example is the Procurement Law that was sponsored by Senator Angara. I think there is an oversight committee there. In fact, an oversight committee can be a potent weapon in finding out whether the purpose of the law is achieved by the executive implementors. So that's what I am saying—the oversight committee can be a tool in addressing corruption, specifically in the area of procurement, as contained in that law that was sponsored by Senator Angara.

Now, on my statement that it would really be difficult to pin down high-ranking officials. The information on corruption would normally come from the low-ranking officials or even from the employees, from the subordinates. And I don't think it would really be easy for the low-ranking employees or officials to be whistle-blowing or be giving information, because they would really be up against their boss who has influence over the other officials in, say, a department and would have all these documents at his disposal. But I think that can be done. It is difficult, but it can be done. That's why I also said that

government officials, the high-ranking ones, the department heads, should be the example. Because if you, being the boss, institute measures in a department, of course, they will all follow. And if they see that the leader is really against corruption and really means business, then the subordinates, the low-ranking officials and employees, will really be scared to do something wrong within the department.

But my problem is that even if the head of the department institutes measures that would really curb corruption in the office, there is no continuity of measures against corruption. Department heads change; sometimes they are there for just six months, more than six months, a year. But the problem is how to continue the changes that have been instituted by a model head of the department.

MR. JABES: Why I said we were successful: The UN Convention is a legally binding instrument, and so when it becomes law—in other words, when 30 countries ratify it—then its provisions will become mandatory. If a country, any country, doesn't abide by it, what are the sanctions that the UN will apply? I don't know the answer. As I said, I'm not really sure that the Convention, in terms of that kind of application, will be followed. I have some doubts but let's hope it would be.

Now, the ADB-OECD Action Plan is a non-legally binding document, which means that countries, if they will abide by their commitments, do it because they want to, rather than because they are legally obliged. You know, I'm a development specialist. I am not an economist, I am not a political scientist, I'm not any of those subjects that people usually study to go into this skill. I'm an ecologist, that's my background. And I believe strongly that if you do things because you want to, as opposed to because you have to, it's much better. That's what the Action Plan is all about. So that's why I somewhat jokingly said we are more successful.

The other question is: political will—yes, but what else? And I think it's very appropriate. When I say that political will is a *sine qua non* condition, if you don't have it, forget any other instrument. If you don't have very strong political will, forget any other condition. But once you have it, then you need to start putting in place a number of things. One, as I said, is an anti-corruption commission, an independent one if possible. And when I say independent, I mean not only on paper. In other words, not with a third cousin of the President

and all of that being appointed. Basically they should be people that are really independent and that can do the work.

Second, you have to have clarity about the legal framework and the institutional framework. You don't need many laws; you only need very few but good laws. You need only very few institutions, not many institutions. The more institutions I have, the more I can go around and ensure that the left hand doesn't know what the right hand is doing.

The other important issue is, of course, you need to pay your public servants decently. You don't need to make them millionaires. You don't join the public service the same way you join IBM: to get shares in the company. We don't get shares in public service. But you have to ensure, as Singapore has done so well, that your public servants are decently paid. I'm not going to say though that decent pay will eradicate corruption. It will not. It will certainly help, but it's not enough because there is a culture of even getting more pay. It's also important, I think, to separate prosecution and police work. Make sure that those that put some money in jail are not the ones that are prosecuted. You separate that again for bribery purposes.

As in any organization, when I came to ADB, there was a process of interview. In Pakistan—that was the example that was given—there is a lot of loss in the electricity system because people are stealing the power in their homes. But even if they are not stealing, when the collector comes around to get the money for the monthly bill or three monthly bills, he would receive a small bribe and people don't pay their bill. And I was asked, "How would you deal with that?" And I answered that I'm not really that concerned with salary adjustment; what that tax collector is doing is deciding on his own of what his salary adjustment would be. Now, I was told, "Don't be funny." And I said, "I don't think that there is much you can do at the level of that electricity bill collector per se. Ultimately, yes, but not directly at that level because that is the result of years and years of what we call an administrative culture that has gone really a lot."

I believe very strongly that you have to reinforce what is taught at home, at school, as well. You need to ensure that at school these issues are discussed, dealt with, and that the kids are educated to strongly defend values. Now, in my introduction, they said that I was Turkish and my friend Mr. Ulrich was surprised because he knows that I'm Canadian. I'm proudly Turkish and Canadian. I was born in Turkey but I have two citizenships. My older son, since the age of 10 or

12, I knew that he was going to be a politician. He had it in his blood. So, as the years went by and I saw that he was studying and enjoying the parties and all of those kinds of things, I said to him, "You know what I want you to do, when you get into politics, is become the Minister of Public Works in Canada." And he asked me, "Why Dad?" I said, "So that you can take care of me in my retirement." [*Laughter from the Delegates*] He got extremely upset and said, "Dad, don't even joke like that! Don't do it in public and don't do it at home."

Now, what is interesting is, he clearly has that education. And I think that is really important. I was certainly joking, but it was interesting to see the reaction. He didn't take it as a joke. He was upset. He still gets upset when I say it.

MR. ENCANTO: Thank you very much, Mr. Jabes. We will now recognize Senator Angara and then the gentleman from Cambodia, then we go back to Thailand.

MR. ANGARA: Thank you. Well, first of all, I would like to congratulate both presentors for an excellent presentation. I just want to put two questions to Mr. Jabes.

The first one is, when you said that no country in the region except Singapore has developed a good objective and subjective in the indices, what that does mean?

Then the second question is about political will. I heard you repeatedly mentioning political will, and some of us here are wondering what really is political will.

My simple understanding of political will is that it is exerted by political leaders. And if you don't touch and reach out to the political leaders, whether they're national or local, you'll never get anything done in our culture. I don't know about the culture in other countries.

You said, political will is a necessary *sine qua non* for an independent anti-corruption agency. I accept that. But I think you have forgotten to tell us that one must also embrace the political establishment because they are the ones who make things happen, who pass the laws, who make policies on the national level as legislators. At the provincial and municipal level are the mayors, governors and the local agencies. And yet, your presentation indicates that you have been touching so many sectors except the political sector. I find that a little elitist, and I think that may explain why this very valuable, very important—and, to me, very path-blazing—study you have is not really known in the Philippines.

It's the first time I've heard of an Asia Pacific ADB-OECD and I've been involved in reform in this country for as long as I can remember. So I think you must, as they say, get down on the ground.

We academics seem to operate in a higher level, not realizing that we cannot get things done on an operating level unless we know the situation on the ground. And I think I have that advantage over you, because I've been in politics for almost so many years. But I'm proud to say that I'm able to get things done because I know the practicabilities on the ground as well as the theory and philosophism in the air.

Now, in the Philippine context, what I think happens is that despite the many laws against corruption, despite the many agencies against corruption, we still rank in the bottom. Why? Because I think there is no coalition against corruption at the grassroots level. The public really don't appreciate what we are doing.

Yesterday, SWS gave us an excellent survey result. The business managers of this country say that up to 85 percent in their respective sectors evade taxes and only 15 percent are paying taxes, and that corruption is not limited to the public sector but it's also pervasive in their own respective fields.

We have not really, I believe, advanced a bit. In fact, the survey shown to us yesterday showed that we are really retrogressing rather than advancing in our efforts at fighting corruption. So that's my second point. You cannot have political will or domestic will, as you put it, unless you mobilize a domestic coalition of reformers, at the very least. And they should include not just the NGOs or the Makati Business Club types which you multilaterals are very fond of funding unless you bring in also the political establishment. Of course, politicians don't enjoy equal good reputation but there are some politicians, whether here in Manila or in my home province of Aurora, who are good politicians and are reform-minded. Thank you.

MR. JABES: Thank you. What I'm trying to say about Singapore is really a very simple one. I basically said that based on objective or subjective studies that are being done, Singapore ranks high. That's all I was saying there. So it's ranks high in the corruption perception in those studies. That's all it meant.

Political will, the role of multilaterals, what we do right, what we do wrong and why you don't know anything about the ADB-OECD Anti-Corruption Action Plan is the much more complicated issue.

I'm not sure why you don't know anything about the ADB-OECD Anti-Corruption Action Plan because your government has endorsed it and has appointed a focal person. As in every government, especially at the parliamentary level, there is a degree of ignorance and I think that government—the elected government—ought to do something about it. Nothing is your fault too. This knowledge ought to exist because it's also part and related to the oversight responsibility that exist in parliaments.

Second, about multi-sectoral organizations—yes, I think you have a very important point that we have not usually engaged politicians. It is not the approach of multilaterals because their charter says they should not be political, etcetera, etcetera, and all of that tends to keep us away. We cannot advance much even if we want to. And when I say "we," I mean multilaterals.

MR. ANGARA: Mr. Jabes, let me interrupt you immediately because you have a gross misconception of what I am saying.

First when I say that you must engage the political sector, I say that institutionally. That doesn't mean that you've got to engage politicians on an individual basis. But the implication of your statement is that you are neutral, you don't talk to politicians. I think that's absolutely wrong. You misread my statement.

Secondly, I think you also grossly misunderstand the political structure of our government. When you say that our government is represented in the drafting of this, you are really referring to the executive branch of government. And as you know, we have branches of government according to our political system. We are separate and independent of each other. So you've got to deal again institutionally—not individually—with the Legislature. That's what I mean. So it's no answer to say, "Well, your government is represented in what you are doing so I am surprised why you don't know it." Especially me, I belong to the opposition. They will not probably share their information with me.

MR. JABES: Let me say again that I am not surprised that you don't know it, but I think the ADB-OECD Anti-Corruption Institute is done in a shoestring budget. In terms of what multilaterals do, the amount of money that is dedicated to this is really close to nothing to our business. We've wanted it this way because we think, as I said, that this is a voluntary participation by governments, and that they should put the ownership on them to participate. We are only facilitators. We do not fund anything. We do not fund any projects. The OECD

anyway is not an organization. It is not a funder, so they don't have money, to begin with. This is all a forum for advancing a common cause. And we can only have one representation from each country. We hope—and it's a two-person secretariat—we hope that persons in the country will bring this to the fore. I fully understand the system in the Philippines, we cannot fill in that way.

Now, political way: You are discussing on political way, and inclusion, I think, is an important one and that needs to be done. But again, it needs to be done at the level of the country. You say, we have done many, many things. And it's true that the Philippines has many laws, maybe too many. It has many institutions, maybe it has too many, based on what we know, perhaps too many. But you are saying, we have all of these and still we are not perceived to be doing very well.

What is interesting, though, is that most of these surveys are the results of what your citizens are saying. It's not what others are saying, it's what your citizens are saying. So that's an interesting piece of data. Perhaps the other side of the coin is also important—that while it is politicians who will bring about the change, it is also incumbent for politicians to reach out to the public more, to show and explain all the efforts that have been done. I don't know the answer but I try to understand why that perception exists, and that's where I find it.

MR. ENCANTO: Cambodia, yes. Let's hear the inputs of Cambodia.

MR. THAVY: Thank you. My name is Thavy Nhem – Nhem Thavy, I am from Cambodia and I have some comments and some questions for both of you.

It seems that the Philippines and Singapore—especially Singapore—have been very successful. And also the Philippines has many laws and maybe has already started battling corruption. Now, with all these things, two questions for Madam Secretary.

What efforts have you done to eradicate corruption or make the public aware of it? The issue is also becoming a moral issue, and public awareness is very important in combating corruption.

Secondly, with all the laws you have had enacted, would you be able to implement the UN Convention when the Philippines ratifies it? I want to know also why Singapore is taking time to review the Convention before ratifying it. We'd like to know and to learn also.

For Mr. Vetere: We Cambodians became the 19th member of the ADB, I

mean, the initiative in Jakarta in 2003. They have studies done by independent international agencies in cooperation with our leaders, but these studies seem to be just kept for themselves, not released nor were they willing to discuss them publicly. Does not ADB, being a donor or a lender to the government, say, "All right, share this because public awareness is very important in combating corruption."? Thank you

MS. GUTIERREZ: Before I answer your questions, may I react to the comments of Senator Angara. After that, maybe I would suggest something that can be done with respect to your comments. Well, I know that the supposed outcome of this forum would be to come up with a regional plan of action to be adopted by the participants. But I think the problem is we lack a national plan of action

There are so many initiatives being undertaken by government. The Executive Department is doing its own thing. The Legislature, of course, as well as the Judiciary have their own measures to combat corruption. In fact, there is a big project being undertaken by the Supreme Court in cooperation with the World Bank, and this is the Judicial Reform Project, So I think, Mr. Angara, we should come up with a national plan of action that will be participated in by the Executive, the Legislative and the Judicial branches of government. Of course, the mechanics will have to be formulated by representatives coming from the three branches of government. Similar to the regional plan of action that will be the product of this forum, I think it should be along the lines and measures being espoused or enshrined in the UN Convention Against Corruption.

On the questions you raised, Mr. Thavy, well, I think it's only now that the problem of corruption is being seen as a moral issue, because in the past, corruption is just being considered as just a violation of the Anti-Graft and Corrupt Practices Law in the Philippines. But I think now it's more than a violation; it's more than that. It's now a moral issue that the Church should play a big role towards informing the public, raising the awareness of the citizenry that this is a moral issue. This is a cancer that should be treated because it impacts on the economic development of the country. That is why in my statement I said that we are in this situation: we are a Third World country now because of the corruption that has been going on in our government.

Now, on the U.N, Convention Against Corruption, I said that the President had already signed the instrument of ratification. And that instrument of ratification, I think, has been forwarded to the Senate, and the Senate will

concur with that instrument of ratification so that we can say that we have ratified the Convention and are ready to comply with its provisions and the obligations under it. When we become a party to the Convention, of course, we are bound to abide by the provisions of that instrument. And if there are legislations that would have to be enacted in order to comply with the obligations under the Convention, then, of course, our legislators would be ready to enact those remedial or harmonization laws to be able to comply with the Convention. Thank you.

MR. BOONTON: Yesterday, we didn't have the chance to review what our friends from Singapore and Malaysia had presented. And today we have two presentors. It seems that we are in the same boat now. And then when talked of political will, of morality. But my conclusion is that my friend from Singapore has answered our question very easily. He brings us back to the basics, the very basics. It's not like the Convention from UN, and does not involve big money from ADB. Just give money to us. That is my problem—what we call policy corruption, national and international. IMF, World Bank, ADB—they have something in there. But it is not clear.

My friend from Singapore said that, first, is meritocracy. If the leader is not corrupt, that is clear. Lee Kwan Yew, when he was 35 years old, became a prime minister. He is not corrupt. If somebody is corrupt he is put to jail. The problem, as I said yesterday, is that there is corruption everywhere, from the U.N. down to the local government. This is the problem, sir. This is the real problem, the nature of the human being. Therefore, I appreciate the merit system, as you have been saying it. The fact that you are a psychologist, an executive and a lawyer has different interpretations, and I find it very interesting.

The second one is market-based payment. This is very important. You can give adequate income or salary to the civil officers especially in the Philippines, but in Thailand, where we have more officers, the income is low.

And the last one is the rule of law, enforcement of law, real punishment. Thailand is similar to Malaysia and the Philippines: we have more laws and more corruption.

Thank you, sir.

MR. ENCANTO: Thank you very much. One last comment from Singapore and then we take a break.

MR.WANG: Thank you. I would like to respond to our friend from Cambodia,

who is asking why Singapore thinks corruption is a national crusade. It did not, first of all, sign the UNCAC. Of course, we are still too far away from ratification. I think Singapore supports the UNCAC *en toto,* in spirit and in principle. We really think that it is a very good initiative, and the principals endorsing the UNCAC are good ones. So Singapore will definitely be a signatory when the time comes. But we are holding back for several reasons.

First, we are looking at the implications of all those binding clauses. The articles—we do have certain concerns about some of the articles which we are about to amend because they may conflict with our domestic laws. And we would like to take time to study the implications. We would like to see how the more developed countries like Europe and U.S. will respond to some of these clauses because they have more experience in dealing with such matters.

Secondly, we also would like to send a message to the UN and the other signatories, that perhaps jumping the gun to sign it so soon may be putting the horse ahead of the cart. We noticed that the first few signatories, the countries that Mr. Jabes had mentioned, are mostly from Africa. So we felt that perhaps some of these countries are signing on for good purposes, maybe some of them for show. But more importantly, maybe they are trying to avoid the real difficult task of putting their own house in order. So if the UN Convention becomes ratified and becomes an international law, some of these countries may take an even slower pace to reform their domestic corruption measures to deal with their own problems. These are the reasons we are not in the forefront signing the UNCAC. Thank you.

MR. JABES: I think what the gentleman from Singapore said is really important and explains why any country should really take its time before it ratifies the Convention. It would be great if countries ratify the convention once they are convinced that their internal legal system responds to it. And inadvertently for every country, that means changes and it is much better to make the change just before you ratify than after. That I think is absolutely clear.

One other point about these international agreements of which I have been trying to talk about. It seems there is a proliferation of the legal framework dealing with corruption. We have the UN Agreement, we have the ADB-OECD, we have the agreement for the Asia-Pacific. We now have an APEC Action Agenda for Anti-Corruption. Soon, we'll have one for ASEAN. This is taxing for countries because you have to represent yourself, you have to respond

to obligations. Again, I am afraid that it may lead to some degree of delusion.

I'd like to close with one point. We're serious about the business we undertake, and next week we're going to have a meeting in Jakarta which brings six countries that had been affected by tsunami, along with the private sector of those countries, civil society, government representatives and the donor community, to discuss the prevention of corruption in a relief operation. We want to use the opportunity not only to respond to the issue in relation to tsunami, but we want to use it also to be put together a manual, a guidebook for government, private sector, and civil society for relief operations because there will be other instances where this kind of information can be used. Thank you.

MR. ENCANTO: Thank you very much. We now close the open forum. The discussions have been very interesting, profound, and conducted with all seriousness. We have exceeded the time, but I think it is time well spent and it's a good investment.

And thank you very much for your inputs. Let's give everyone and our two presentors a round of applause.

[*Applause*]

THE STATUS OF COMBATING CORRUPTION IN THE PHILIPPINES

by Atty. Simeon V. Marcelo
Ombudsman, Philippines

The Government is, undoubtedly, expected to perform multifarious functions and initiate a myriad of reforms if only to better serve the needs of its constituents. In a situation of very limited resources, however, as in the Philippines, the matter of emphasis and of determining priority areas of reform arises and becomes a dividing, rather than a rallying factor among bureaucrats. Indeed, rightly or wrongly, the different offices in the government may even compete, if not for individual public approval, then for the limited resources needed in any bureaucracy-wide reform. Different agencies, therefore, lobby for different agenda in what is perceived to be a contest of competing interests for resource-allocation.

In the Philippines, anti-corruption agencies like the Office of the Ombudsman compete with other agencies for funding. The Office's severe need for resources is supported by the independent studies and findings of various organizations. The Asia Pacific Group on Money Laundering confirmed the Office's severe need for massive resources and stressed, in its Mutual Evaluation Report on the Republic of the Philippines, that "the Office of the Ombudsman . . . is severely under-resourced." Likewise, the Feliciano Commission, constituted to investigate the Oakwood incident, emphasized in its Report that "the Office of the Ombudsman must be given the budgetary and other support that it needs, with all possible dispatch. . . ."

Along this line, the recently published Political and Economic Risk Consultancy, Ltd. Survey (Issue No. 667) identified the apparent weakness of the anti-corruption initiatives in the Philippines:

> Of course, even if the government really wanted to get serious about corruption, it would not be able to do so unless it spends a lot more money beefing up the country's ill-equipped anti-corruption forces. There is currently a backlog of around 2,000 cases swamping the country's anti-graft court and those responsible for fighting corruption simply do not have the financial resources to do their jobs efficiently.

In lobbying for additional resources, the Office of the Ombudsman highlights the fact that corruption is one of the most pressing problems of our country today. In fact, it is considered as one of the most difficult stumbling blocks to economic development. The World Bank Development Report for 2005 reported that corruption is the top investment constraint in the Philippines. This is confirmed by the 2004 Corporate Performance Survey conducted by the Wallace Business Forum, which reported that corruption is the most serious disadvantage to investment in the Philippines.

In a study on investment climate in the Philippines conducted by the Asian Development Bank in collaboration with the World Bank, it was reported that, "corruption affects 34% of the firms, ranking it as a major or severe burden." [3]

For good reason, however, budget officials and bureaucratic fund managers invariably distribute available resources to its projects, without giving top priority to anti-corruption programs. We do quite understand that our government, it seems, is caught in a dilemma, considering the Philippines's very limited resources and difficult fiscal position.

Eduardo T. Gonzales, Ph.D., president of the Development Academy of the Philippines, provides an insight into how we as a people, as well as the government, can paddle through a seemingly unforgiving course. Dr. Gonzales asserts:

> Taken together, the building blocks of reform appear overwhelming, as they entail significant changes in the nexus of relationships within the government and between government and society, and in the current policy practices of government. The lock opener is not a singular capacity to pursue reforms all at once. The choice and sequencing of reforms must be in harmony with both the limits and possibilities of governance in the country.

ANTI-CORRUPTION: A UNIFYING REFORM FOR THE POOR

The Office of the Ombudsman in the Philippines advances the view that, in reality, there is no such dilemma. Recent studies have shown that corruption

directly and positively impacts on poverty. "There is a sufficient consensus around the world regarding the link between good governance and poverty reduction goals." Further, a working paper of the International Monetary Fund, entitled "Does Corruption Affect Income Inequality and Poverty?", concludes that there is a statistically significant positive association between corruption and poverty; that statistical "evidence shows that corruption increases poverty." Thus, it is our position that in investing substantial funds in the anti-corruption campaign, the government is effectively helping in alleviating poverty.

Drawing from the insight of Dr. Gonzales, it is clear that it is impossible to pursue all reforms all at once in our country. This is obviously logical considering that the government simply does not have enough resources with which to initiate and sustain all the needed reforms all at the same time. Given our country's fiscal predicament, the proper sequencing of reforms may, thus, be indispensable. To our mind, therefore, the "lock opener," carefully considering the "limits and possibilities of governance in the country," is simply a massive rechanneling of focus, priority and resources to anti-corruption reform initiatives. Again, a study conducted under the United Nations Development Programme stressed the nexus between good governance and poverty reduction:

> . . . There is consensus that good governance is crucial in improving the efficiency and equity of poverty alleviation projects. This is because governments are more suitably placed to command and harness the resources needed to address poverty. Unfortunately, many developing country governments suffer from a lack of (among other things) transparency, accountability and people participation. They also tend to be burdened with graft and corruption, partisan politics and inefficient bureaucracies. All these have worsened the situation of poverty in many developing countries such as the Philippines.

The link between corruption and poverty is thus clear. In the language of Prof. Henedina Razon-Abad, however, "the difficulty is in actualizing this link." Examples of Philippine corruption scenarios are, therefore, in order.

Corruption in infrastructure projects would, for example, make farm-to-market roads substandard—make them virtually impassable sooner than expected and altogether causing a negative impact on the livelihood and productivity of the people. Also, the smuggling of vegetables, onions, etc. has forced local farmers to sell their produce at prices lower than their cost of production. On

the other hand, if corruption is substantially eradicated at the revenue-generating agencies, tax collection will surely increase drastically, thus, providing fresh funds for anti-poverty programs.

In its 2004 Common Country Assessment, the United Nations Development Programme said that about 13 percent of the P781-billion Philippine national budget (or about P100 billion) was at risk of being lost to corruption. However, it is estimated that the greatest loss happens at the revenue generation agencies, namely, the Bureau of Internal Revenue and the Bureau of Customs. This is "loss" in terms of uncollected revenues that can be used by the government for its projects. The same matter was noted in the *Philippines: Moving Toward A Better Investment Climate*:

> . . . Transactions at the customs bureau are especially and commonly perceived to be riddled with corruption, with more than 50% of exporting and foreign firms surveyed in the Philippines regarding customs administration as a moderate to major obstacle to business. . . .
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> * * *
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> Corruption is equally prevalent in the tax system with its more painful costs reflected in the continuing insufficient collection of government revenues. Around one-third of firms find taxation a major or severe strain. . . . By evading payment of more taxes, firms within the same industry undermine competition. On the other hand, the slow and overburdened courts work in the favor of noncompliance because even if the government pursues cases against them, settlements are normally made at a compromise that could, in fact, result in savings for the firm.

This observation is confirmed by a study made by the Philippine Center for Investigative Journalism relating to smuggling. According to said study, "the total revenue loss for the government could reach as much as P200 billion":

> The amounts of money involved are staggering. Last year, for example, a report by the United Nations Conference on Trade and Development or UNCTAD showed that, based on the records of the country's trading partners, imports to the Philippines totaled $45.4 billion.
>
> Philippine government records, however, reported imports of only $34.5 billion. The discrepancy of $10 billion could most likely be accounted for by smuggled goods. This translates into a P86-billion tax revenue loss for the government, given an average duty rate of 6.19

percent in 2003 according to the Tariff Commission, 10 percent value-added tax, and an exchange rate of P54.20 to the dollar for that year.

That P89.4 billion, however, would cover only the unpaid duties and taxes on the $10 billion worth of "missing" goods. As much as 60 percent of all imports may be assumed to be non-dutiable, with some of them supposedly meant for reexport. But reexporting often doesn't happen, as the imported goods end up being sold locally. Even if one assumes that only one-fourth of all non-dutiable imports involved some form of fraud, the total revenue loss for the government could reach as much as P200 billion.

Thus, if an adequately funded anti-corruption initiative is able to substantially reduce such budgetary leakages and revenue "losses", the immediate effect will be the accrual of "savings" and increased revenue collection for the government, which can, in turn, be used for poverty-alleviation projects. Further, reduced graft and corruption spells higher investor confidence which will, accordingly, translate to more investments and employment for the people.

The Office of the Ombudsman, therefore, posits the view that a massively funded anti-corruption campaign should be seen as an investment and not as an expense, where the primary beneficiaries are the poor and the marginalized sectors of society, and where the direct and immediate effect is the alleviation of poverty in our country. Indeed, if the government is to engage in a campaign to stump out corruption at all, it must do so with every bit of resource committed to this initiative. After-all, "well-meaning initiatives that are not realistically backed with sufficient resources and know-how will likely boomerang".

Anti-corruption initiatives, therefore, constitute the "lock opener" of any intended bureaucracy-wide reform from which all other reform agenda can be realized, considering that an effective anti-corruption campaign can generate the needed resources, either in terms of savings from unsound expenditures or leakages, or increased revenue collection, as outlined earlier. These "unlocked" resources, thus, become available to initiate and/or sustain the much needed reforms in the other areas of the bureaucracy.

CURRENT INITIATIVES AGAINST CORRUPTION

To put the Office of the Ombudsman's anti-corruption initiatives during the past two years in proper perspective, allow me to give you the hard facts when I assumed office in October 2002:

- The OMB had only 32 full-time prosecutors handling approximately 2,000 cases at the Sandiganbayan;
- It had no training program for its prosecutors;
- There was no supervisory/monitoring system of cases and prosecutors' performance; and
- Its prosecution arm did not even have a docketing/routing/case management system.

Many of the cases pending at the Sandiganbayan are quite complicated and demand great and extra effort and time from the prosecutors handling them. Worse, apart from being overworked, our prosecutors are underpaid. Our senior prosecutors, who have about ten to fifteen years of experience as lawyers, receive approximately P500,000.00 a year. Said annual compensation is equivalent to the compensation being received by first year lawyers at major Makati law firms. [Worth mentioning also is the fact that the increase in the compensation of the members of judiciary and of the prosecutors of the Department of Justice has been approved. If no commensurate increase in salary is likewise given to Ombudsman prosecutors and investigators, we stand to lose the few lawyers we have to either the judiciary or the Department of Justice.]

To further illustrate how severe the Ombudsman OMB's lack of resources, a comparison with Hong Kong's Independent Commission Against Corruption (ICAC), one of the most successful anti-corruption agencies in the world, is in order:

- *Total Personnel*

  ICAC – 1,326 for a bureaucracy of 174,175 officials and employees and a population of 6.8 million.

  OMB – 1,141 for a bureaucracy of approximately 1,500,000 officials and employees and a population of 82 million, more or less.
- *Field Investigators* (the personnel responsible for securing evidence against corrupt government officials)

  ICAC – 837 for a bureaucracy of 174,175; the ratio is 1:208.

  OMB – 8,813 for a bureaucracy of approximately 1,500,000 officials and employees; the ratio is 1:17,045.
- *Budget*

  ICAC – $90 Million or P4.94 Billion for 1,326 personnel watching 174,175 public sector officials and employees.

OMB – P480 Million for a 1,141 personnel watching a bureaucracy of approximately 1,500,000 officials and employees. (Based on the reenacted budget for 2004)

It must be emphasized that despite the lack of resources to fight corruption, there are certain developments that inspire hope that the evil of corruption may be curbed effectively in the future. These are: (a) the current reforms being instituted by the government to improve governance and address the problem of graft and corruption; and (b) the increasingly active and vigilant non-governmental organizations (NGOs) and civil society organizations.

A. The Office of the Ombudsman

The Office of the Ombudsman, as the primary office mandated by the Constitution to curb graft and corruption, despite its severe lack of resources, has commenced an aggressive, even ambitious, campaign against graft and corruption in early 2003.

1. Augmented Number of Personnel and Resources. With the assistance of the Office of the President, through the Department of Budget and Management, the Office of the Ombudsman was able to hire 30 prosecutors, in addition to the original 32 in October 2002. Likewise, the Office of the Ombudsman was able to hire 51 additional field investigators that now comprise the Field Investigation Office (FIO) created in 2004. The FIO is patterned after the Operations Department (Field Investigation Department) of Hong Kong's Independent Commission Against Corruption. The 2005 budget approved by the President allows the Office to hire 48 additional prosecutors and 200 additional field investigators. (It should be noted, however, that due to the complexity and heavy volume of corruption cases, we need at least 200 prosecutors to handle about 2,000 cases at the Sandiganbayan. The Field Investigation Office should have, at the very least, 500 field investigators as soon as possible. In fact, using the Independent Commission Against Corruption of Hong Kong's ratio of investigator to government officials/employees, i.e., 1:208, our Office should have at least 7,000 field investigators.)

2. Strengthened Individual and Institutional Competence and Effectiveness. We crafted and institutionalized training programs for: (a) our prosecutors on trial advocacy; (b) our field investigators on forensic accounting, conduct of financial and fraud audits, as well as field surveillance and investigation, among others; and (c) our other employees on computer literacy and proficiency

programs. Also, we introduced case monitoring and records management systems to ensure accountability and supervision in the handling of cases by the Office of the Special Prosecutor.

More particularly, in early 2003, the Office institutionalized its training program for its prosecutors:

- periodic and regular trial advocacy skills seminar
- videotaped our last three seminars and edited the tapes by selecting the best lectures and mock hearings to be used as a teaching aid and training
- crafting of model "questions and answers" forms for the common and usual graft offenses

Institutional reforms and restructuring had also been commenced at the Office of the Special Prosecutor (OSP), which prosecutes cases against high-ranking government officials, to ensure accountability and supervision:

- supervisory and monitoring system for prosecutors
- docket and records management system
- created its own administrative office

The training program for our field investigators on the latest skills and techniques of field investigation and evidence-gathering is also well under way:

- seminar on Financial Investigation and Forensic Accounting sponsored by the American Bar Association
- various trainings on corruption detection and investigation conducted by Messrs. Tony Kwok and Paul Dickenson, both former senior officials of Hong Kong's Independent Commission Against Corruption
- lecture on surveillance by agents of the United States Federal Bureau of Investigation
- forensic accounting lecture by experts from the United States Customs
- workshops conducted by the Philippine Drug Enforcement Agency on setting-up entrapment operations
- actual field surveillance and basic intelligence seminar conducted under the Philippine Air Force's Intelligence Service
- training seminar conducted by GMA 7-*Imbestigador.*

The strategy really is, if you have less than the necessary personnel complement, to enhance your personnel's skills, build up their capacities, expand their capabilities and add on their competencies—with a view to allowing them to be able to efficiently do more work and discharge more responsibilities in

terms of effective investigation and prosecution.

3. Streamlining and Rationalization of Administrative Adjudication and Preliminary Investigation Powers and Procedures. It is a sad reality that due to clogged dockets and the limited number of justices and judges, the trial of erring public officials take years to complete that the same falls out of the sphere of public interest, concern and knowledge and is, therefore, merely relegated to history – like old news buried in the sands of time – irrelevant and inconsequential to the everyday lives of our people.

Our current efforts aimed at streamlining and rationalizing our preliminary investigation and administrative adjudication procedures intend to partially remedy this situation, at least, with respect to administrative cases:

- administrative adjudication is now summary
- formal hearing is not necessary and availed of only where the hearing officer himself is of the opinion that it is needed
- complaints are doubly-docketed as both administrative and criminal cases, if possible
- the guilty respondent can be either suspended or dismissed immediately from government service upon finding of substantial evidence, or probable cause, if with a criminal indictment
- decisions of the Office of the Ombudsman in administrative cases are immediately executory even pending appeal

4. Creation of the Internal Affairs Board. The Ombudsman Internal Affairs Board was created under OMB Administrative Order No. 16 to handle complaints against incumbent and former officials and employees of the Office. It seeks to ensure the highest degree of integrity among officials and employees of the Office of the Ombudsman.

5. Adoption of the Integrity Development Review (IDR) Project–Pursuing Reforms Through Integrity Development (PRIDE). The IDR is an in-depth and comprehensive management systems audit developed by the Development Academy of the Philippines (DAP) that will provide government agencies with the diagnostic tools that can assist them in assessing their systems integrity and in identifying their corruption vulnerabilities, with a view to finding ways to prevent the same.

During the second quarter of 2004, the DAP undertook an integrity review of the Office of the Ombudsman, as project guinea pig, with a view to applying

the same in other agencies in the future. As a result of the said IDR, the Office of the Ombudsman has implemented and is implementing a number of internal reforms and control mechanisms, among which are the adoption of: (a) its own specialized Code of Conduct; (b) stricter internal policies, prohibitions, procedures and requirements of disclosures as to receipt of gifts and benefits by its officials and employees; and (c) policies, rules and procedures on whistle-blowing, internal reporting and investigation.

6. Assistance From The International Donor Community. In this connection, many of the foregoing reform initiatives and projects were implemented through the help of the international donor community, among which are: United States Agency for International Development (USAID), United Nations Development Programme (UNDP), European Union, World Bank-ASEM (Asia Europe Meeting) Trust Fund and The Asia Foundation.

B. Other Reforms in the Government

Reform in Government Procurement. The enactment of Republic Act No. 9184, otherwise known as the Government Procurement Reform Act, in January 2003, is one of the most significant steps taken by the government to curb corruption. It provides for the modernization, standardization and further regulation of public procurement. The procurement reform is based on the enunciated principles of transparency, competitiveness, uniform, simplified and streamlined procurement process, accountability, and susceptibility to post-award monitoring during the implementation of awarded contracts. Among its innovative provisions is the requirement of having two private sector representatives who will act as observers at all stages of the procurement process. This procurement reform has provided the impetus for the emerging strategic collaboration between the government and the civil society in the area of assuring transparency and accountability in government procurement.

Senator Edgardo J. Angara, the principal proponent in the Senate of this much-needed procurement reform measure, captured the magnitude of corruption in the procurement system in his sponsorship speech of Senate Bill No. 2248:

> The magnitude of the loss to corrupt procurement, by the government's own estimate, is at least P22 billion a year, or twice the budget of the Department of Health. This is equivalent to 520 million textbooks for our school children or 63,000 new classrooms. Or 1,500

kilometers of concrete farm-to-market roads. . . .

Financial Management Reforms. The government is starting to make significant strides in reforming the government's financial management system. The adoption of the National Government Accounting System (NGAS) and the automated information system component, E-NGAS, through the efforts of the Commission on Audit, will hopefully address several accountability issues in government agencies not just at the level of transaction integrity but also at the level of program and institutional performance. Reforms in the government procurement system and its computerization are intended to improve the transparency, competitiveness, efficiency and integrity of the government procurement process. Also, efforts at streamlining budget preparation and budget release procedures and computerization of the budget processes spearheaded by the Department of Budget and Management will hopefully reduce opportunities for, and vulnerability to, graft and corruption in the budget preparation and execution processes and strengthen the transparency and accountability of budgetary transactions, decisions and performance.

Judicial Reform Program. The Judiciary has embarked on a comprehensive Judicial Reform Program that is aimed at achieving the Judiciary's vision of providing fair, speedy and impartial justice system that is accessible to all. Started by Chief Justice Hilario G. Davide, Jr. in 1999, the reform program is now in its implementation stage. The Judicial Reform Program is anchored on a clear and shared vision and has consistent top management direction and leadership.

The SOLANA Covenant. Another anti-corruption initiative was forged among the Constitutional Offices, namely: the Office Of The Ombudsman, the Civil Service Commission and the Commission on Audit. On 16 March 2004, these Constitutional Offices entered into what is called the "Solana Covenant" which embodied said offices' anti-corruption mandates, specific mission and strategic objectives, as well as the concrete and doable initiatives which shall be undertaken jointly and by each institution as a united front against graft and corruption.

Among the Solana Covenant anti-corruption initiatives are: (a) establishment of a Statement of Assets Liabilities and Net Worth database to be run by the Civil Service Commission; (b) establishment of an integrity vetting system; (c) the conduct of inter-agency audits; and (d) efficient sharing of information.

The Civil Service Commission. It is worth emphasizing that the Civil Service

Commission has made substantial strides in instituting good governance, among which are: (a) revision of the Performance Management System; (b) institution of reforms in the Examination System; (c) intensification of the Honor Awards and Client Satisfaction Programs; and (d) stricter enforcement of the Code of Conduct and Ethical Standards for Government Employees. Other reforms include CSC Resolution No. 040275 dated 16 March 2004 adopting the guidelines on whistle-blowers' immunity from prosecution and CSC Resolution No. 040676 dated 17 June 2004 adopting the policy guidelines to govern the liquidation of cash advances and the penalties imposable. The CSC and the Office of the Ombudsman also entered into an agreement for the smooth and efficient handling and monitoring of administrative cases.

Responses from Congress. Congress has been quite receptive recently to our Office's plea for additional funding. The Lower House, through the initiative of Speaker Jose De Venecia, approved a very substantial increase (P140 Million) in the budget of the Office of the Ombudsman. The House version of the budget was approved in toto by the Senate under the leadership of Senator Franklin M. Drilon. Said increase will enable our Office, inter alia, to hire additional 48 prosecutors, 13 lawyer-investigators and 187 field investigators. This clearly shows our legislators' strong determination to aid the Office of the Ombudsman in curbing graft and corruption.

In terms of legislative reform, parallel positive initiatives are also seen in various proposed legislations in the House of Representatives and in the Senate, among which are:

a. Legislation increasing the number of Justices/Divisions in the Sandiganbayan. In this connection, Senate Bill No. 1970 introduced by Senator Roxas seeks to increase the divisions of the Sandiganbayan from 5 to 15.

It must be emphasized that the "Sandiganbayan plays a critical role in fighting graft and corruption committed by high-ranking public officials. A survey on caseload funded by the World Bank showed that the median time for the processing of cases (from filing to closure) is 6.6 years; the minimum duration was 1.6 years and maximum being 11 years. It was the trial phase that took the longest time which had a median of 2.4 years and the second longest was the decision making itself which had a median of 8 months." Said delay, despite the diligent efforts of the incumbent justices, is unavoidable due to the heavy case load and the fact that the Sandiganbayan has only 5 divisions. [Right

now, a study of the Office's thirty (30) high- profile cases presently pending at the Sandiganbayan revealed that towards the end of last year, there was an alarming average of four (4) months interval between scheduled hearings in every case.]

b. Legislation rationalizing the criminal jurisdiction of the Sandiganbayan to allow more expeditious resolution of cases involving high-ranking officials and those involving huge amounts of money. It is proposed that cases involving local and national officials with Salary Grade "27" and "28" where: (i) the case does not involve damages or bribes or the same are unquantifiable or not quantified; or (ii) said damages or bribes are no more than P1Million, should be transferred to regional trial courts. There are about 793 cases which fall under these classifications. Relieved of hearing these cases, the Sandiganbayan will be able to devote more time hearing and resolving bigger cases involving more senior officials. It is further suggested that the remaining cases, which involve damages or bribes which are less than P5 Million, should be tried and resolved by individual justices, leaving the more complicated ones for the division of three justices. (Of the 14 incumbent justices, 10 are former regional trial court judges who already have vast experiences in trying and resolving cases involving amounts higher than P5 Million. As to the other 4 justices, they were veteran lawyers prior to their appointment.) In this connection, Senator Mar Roxas has filed Senate Bill No. 1890.

c. Legislation allowing the appearance of private lawyers to assist the Office of the Ombudsman in the prosecution of its cases. Senator Mar Roxas has introduced Senate Bill No. 1737 in this regard. Senator Francis N. Pangilinan also has filed a similar bill. A bill on the same subject matter was filed by Representatives Marcelino Libanan and Rodriguez Dadivas.

C. Enhanced Strategic Collaboration and Partnership with Active and Vigilant Non-Governmental Organizations and Civil Society Organizations

Another very important development in the war against corruption is the increasing participation of the private sector in the fight against corruption. It is an understatement to say that government alone cannot successfully wage war against corruption. Government resources are far too limited compared to an arsenal of combined public and private sector initiatives. Indeed, private sector involvement is indispensable in any anti-corruption agenda:

Working with nongovernmental actors is a crucial component to broadening

an anticorruption coalition. In countries with poor-to-fair-quality governance where there is an increasingly strong civil society and a developing free press, an anti-corruption agenda cannot do without the support of nongovernmental organizations (NGO) and the mass media (see Stapenhurst 2000). Civil society groups, such as NGOs, academic institutions, and research organizations, have proven themselves in various cases to be powerful partners in counter-corruption coalitions. The work and findings on anticorruption by researchers, analysts, and other scholars may become the bases for investigation by government agencies, hearings by the legislative assembly, social mobilization by NGOs, and may draw the spotlight of media coverage.

Recent history would show the increasing intensity in interest and participation of NGOs, civil society organizations and media in detecting and exposing corruption in government and in clamoring for the prosecution of the guilty. What is more, the results of a recent SOCIAL WEATHER STATION Survey reveal that most businesses are willing to give 3% of their net income to fund anti-corruption programs.

The Philippine Center for Investigative Journalism, the Philippine Institute of Journalism, Newsbreak, and various public interest television programs like Imbestigador of GMA Network, Inc., Probe Team of Channel 5, *Linawin Natin* of Channel 13 and other television and radio programs which expose graft and corruption, continue to increase in number and coordinate with the proper government agencies.

"The clergy, particularly the Catholic Church, are also becoming vigilant in watching the conduct of government officials." The Philippine Province of the Society of Jesus, for example, published the book, entitled "Ehem!": A Manual for Deepening Involvement in Combating Corruption". In this connection, the Office of the Ombudsman partnered with the Philippine Province of the Society of Jesus on 13 October 2003 for the propagation and implementation of the *Ehem! Manual.* The Manual aims to establish a graft intolerant culture through the process of cultural sensitivity and discernment through reforms in individual and institutional orientation, attitude and behavior.

Also, on 7 July 2003, "the Catholic Bishops' Conference of the Philippines (CBCP) issued a pastoral statement, 'Let Integrity Flow Like a Stream', enunciating recommendations to combat corruption and particularly promoting the creation of new organizations, challenging the faithful to do more than just creating

awareness", and to take action. (As will be discussed later, the Catholic Bishops Conference of the Philippines is one of the founding members of the COALITION AGAINST CORRUPTION which was launched on 21 September 2004.)

IV. Partnership with the Private Sector

A. Broadening and Strengthening Public and Private Sector Partnership

As earlier stated, government alone cannot successfully wage war against corruption. The desirability of having the private sector and civil society organizations as effective partners in the fight against graft and corruption is exemplified by some of the collaborative efforts of the Office of the Ombudsman with such NGOs and professional, research and civil society organizations.

1. Lifestyle Probe

The first concrete project under the term of the current Ombudsman, which called for active private sector involvement is the life-style probe program. Under said project, private citizens and church and/or community-based NGOs and people's organizations would provide the network of people who will gather data and provide information. They can readily identify possible corrupt public servants and their ill-gotten wealth and assets.

The Lifestyle Probe Project was made a priority project of the Inter-Agency Anti-Graft Coordinating Council, which is presently chaired by the Ombudsman. A Memorandum of Agreement was signed on 20 March 2003 with an expanded group composed of church and civil society organizations and other law enforcement agencies.24

Considering that the Office of the Ombudsman had only 17 field investigators in 2003 at our office here in Metro Manila, the Office decided to engage in strategic agency targeting, i.e., focusing our limited resources on 3 agencies/ department perceived to be among the most corrupt in the government, i.e., the revenue-generating agencies: the Bureau of Internal Revenue and the Bureau of Customs, and the Department of Public Works and Highways.

By focusing our limited resources, as to this program, to three (3) pre-identified agencies, we hoped to effectively and frequently uncover illegally acquired wealth, cause their immediate forfeiture and prosecute the corrupt public officials, until a critical number is reached sufficient to deter others from engaging in corrupt activities. Our office data indicate the following:

Dismissed Officials from the DPWH: an Undersecretary and a Regional Director.

Dismissed Officials from the Bureau of Customs: a Deputy Commissioner, the Chief of Customs Operations Office, the Chief of the Miscellaneous Division, a Customs Operations Officer, and a Customs Collector.

Dismissed Officials from the Bureau of Internal Revenue: one Assistant Commissioner, one Regional Director, a Chief of a Regional Revenue Office, a Legal Officer, a Revenue Regional Head Executive Assistant, and an Assistant Regional Director

Also, our Office has already rendered resolutions finding probable cause and directing the filing of cases with the Sandiganbayan against a number of the foregoing personalities for Perjury, Falsification, violation of Republic Act (RA) No. 3019, or the Anti-Graft and Corrupt Practices Act and the Tariff and Customs Code, and forfeiture of ill-gotten wealth under RA No. 1379. Said public officials, together with other BIR and BOC officials and employees, were also placed under preventive suspension, while their cases were pending and prior to their dismissal.

Other cases and respondents include, inter alia, retired Major General Carlos Garcia for four counts of perjury and forfeiture of ill-gotten assets amounting to more than P143,000,000.00; Lt. Col. George A. Rabusa, who is Maj. Gen. Garcia's former aide, for perjury and a petition for forfeiture of unexplained wealth; and former AFP Chief of Staff, Gen. Lisandro C. Abadia, for unexplained wealth and perjury.

Recently, the Office of the Ombudsman preventively suspended Bureau of Customs Deputy Commissioner Reynaldo Nicolas for charges of unexplained wealth. The case is currently pending administrative adjudication and preliminary investigation for determination of the respondent's administrative and criminal liability. Many more lifestyle check cases are expected to be resolved within the next few months.

2. Development of Agency-Specific Anti-Corruption Initiatives

Civil society organizations, especially NGOs from the academe and from professional and research organizations, provide a ready pool of talents and expertise that can offer the government needed information, and working anti-corruption models and systems. This expertise can also translate in the adoption of internal and agency-specific reform programs that are aimed at streamlining and increasing its efficiency and responsiveness in delivering services to the public. In this connection, the Office of the Ombudsman has partnered with

Transparency and Accountability Network Foundation (TAN).

In 2002 to 2003, TAN, in partnership with the Office of the Ombudsman, the Presidential Anti-Graft Commission and the Presidential Committee for Effective Governance, took part in the development of agency-specific anti-corruption plans of 31 national government offices by identifying their respective corruption vulnerabilities and formulating strategic measures to address these vulnerabilities. This led to the crafting of agency-specific corruption prevention reform measures (CPRM) for ten critical agencies. These CPRMs were evaluated, validated and subjected to discussions with Ombudsman personnel, experts and stakeholders, and the programs therein prioritized. Finally, monitoring mechanisms were discussed to ensure implementation of these CPRMs, which are expected to evolve until corruption is significantly reduced in the bureaucracy.

3. Transparency in Procurement

As previously stated, Republic Act No. 9184, the Government Procurement Reform Act, requires two observers from the private sector to sit in the bids and awards committees (BAC) of government agencies. Private sector assistance can also extend to providing monitors in the implementation of the awarded contracts.

In this connection, the Office of the Ombudsman has partnered with Procurement Watch, Inc. (PWI) for the latter to train volunteer observers for the BAC. PWI has already given training seminars to several groups nationwide. Also, the Asia Foundation granted funding for the operationalization of the Complaints Handling Mechanism for handling the reports of BAC observers. This mechanism is intended to: (a) translate observations into concrete actions for systems enhancement; (b) propose recommendations for corrective improvement; or (c) cause retributive action for any violation of procurement laws or corrupt practices.

For monitoring the implementation of awarded contracts and training monitors, there is the G-Watch, or Government Watch. G-Watch is an independent monitoring, research and advocacy project that addresses governance and public management concerns. It specializes in the monitoring of the contract implementation side of procurement. At present, it monitors the procurement of the Department of Education, Department of Public Works and Highways, Department of Health and Department of Social Welfare and Development. Its proponent and implementor is the Ateneo School of Government.

Among the major projects of G-Watch is the monitoring of the textbook

deliveries purchased by the Department of Education. Volunteer Boy and Girl Scouts, working with G-Watch, check the quality and delivery of the textbooks. Inspections are conducted on-site and, after inspection, a Book Quality Control Inspection Report is prepared, a portion of which is filled out by the civil society monitor.

On actual delivery, and informed of the dates thereof, the volunteer scouts ensure that the correct type and number of books are delivered to the proper school district. The volunteer scouts, using a monitoring report form, witness and record the date and time of delivery of the textbooks. Report for any defective, "under-delivery" or oversupply of books is immediately made via SMS to the Department of Education. This independent monitoring by the volunteer scouts, who are barely in their teens, has deterred or minimized resort to "ghost" or "under-deliveries" of textbooks. It is quite admirable how the participation of even very young people can be utilized to greatly aid in deterring corruption.

It is reported that the results have been positive, thus far. In two instances, 100,000 textbooks were rejected because of poor binding. Several defects were also found and immediately rectified. The participation of end-users and civil society organizations have resulted in putting pressure on suppliers to raise the quality of the textbooks to ensure satisfaction of the end-users.

4. Project Case Assist/Operation Big Fish

Competent private lawyers are being recruited to assist the Ombudsman prosecutors in handling the "big fish" cases at the Sandiganbayan. The common criticism against the Office has been that despite its 15 years of existence, it has failed to indict and successfully prosecute the proverbial big fish. As earlier stated, however, the main reason, even now, is that only 62 public prosecutors are handling about 2,000 cases. As earlier emphasized, we need about 200 prosecutors as soon as possible.

The Office of the Ombudsman has identified about 50 of the most prominent and high impact cases at the Sandiganbayan which involve high ranking government officials who are represented by the best lawyers that money can buy.

Among the "big fish" cases are: (1) President Diosdado Macapagal Boulevard Case; (2) the RSBS Pension Fund Case; (3) the PEA-AMARI Scam; (4) the Tax Credit Scam Cases; (5) DPWH Vehicle Repair Scam Case; (6) the PCGG Cases;

and (7) the Maj. Gen. Carlos F. Garcia cases.

The intended involvement of private lawyers is patterned after the Estrada Plunder Case Model. Despite the avalanche of pleadings filed and the demands of continuously presenting 76 witnesses in this plunder case over a period of almost four years, the prosecution never asked for a single postponement. This was made possible by the active assistance given pro bono by private prosecutors.

On 15 June 2004, the Office of the Ombudsman and the Philippine Bar Association (PBA) entered into a Memorandum of Agreement with respect to the prosecution of some of these "big fish" cases. Later, sixteen lawyers from the PBA volunteered. At two lawyers per major case, the Office would need at least 100 volunteer lawyers for its 50 "big fish" cases.

On 25 February 2005, the Office of the Ombudsman and the Coalition Against Corruption signed an agreement whereby the Coalition undertook to recruit private lawyers who will assist the Ombudsman in prosecuting its "big fish" cases.

The moment we have sufficient legal support from volunteer lawyers, our Office intends to ask the Sandiganbayan to have continuous trials in these cases.

5. Bridging the Gap

Many of the existing NGOs and research, professional, and civil society organizations have already developed working models and mechanisms against corruption. However, despite their expertise and tested programs, they are unable to reach every part of the country and implement their programs due to lack of members or volunteers.

It is necessary, therefore, for such anti-corruption NGOs to organize, and establish a working relationship with, the general population, so that together, they can form an anti-corruption network that is nationwide in scope and reach. In the Philippines, the Catholic Church, with its nationwide ready network of the "faithful", is the obvious choice to bridge this gap. Indeed, in almost every local community, no matter how remote, one can always find the Catholic Church at work.

In view of the foregoing, the Tanodbayan had meetings with several leaders of the Catholic Church, including His Eminence Ricardo J. Cardinal Vidal. As a result, on 10 July 2004, the Tanodbayan was given the opportunity to make a presentation before the Catholic Bishops' Conference of the Philippines. He

discussed with the bishops his proposal to reorganize religious and other church-based organizations into anti-corruption bodies whose members can sit as observers in bids and awards committees, act as monitors in assuring the faithful execution of awarded contracts, and assist the Office of the Ombudsman in the conduct of the lifestyle checks.

On the same occasion, NAMFREL was also present and apparently had the same idea of getting involved in the fight against corruption. (In fact, it has been involved in several past anti-corruption projects.) Thus, the Coalition Against Corruption, mentioned earlier, was born and, on 21 September 2004, launched the Combating Corruption Conference. Its mission is to "implement and support counter-corruption projects, initially in the area of procurement and delivery of essential public services."

The Coalition is presently composed of the Makati Business Club, Code NGO, NAMFREL, CBCP-National Secretariat for Social Action, Bishops-Businessmen's Conference for Human Development, Transparency and Accountability Network and the TAG Project.

The initial projects of the Coalition are: Textbook Count, Bids and Awards Committee Observers' Training, Medicines Monitoring, Internal Revenue Allotment Monitoring, Pork Barrel Monitoring, Lifestyle Check Program, Volunteer Lawyers' Prosecution Support, and Advocacy on COMELEC Cases

An example of a reorganized group is the Cebu-based NGO, *Barug! Pilipino*. The prime mover of *Barug! Pilipino* is His Eminence Ricardo J. Cardinal Vidal, Archbishop of Cebu, while its managing director is Fr. Carmelo O. Diola.

On 6 October 2004, 2 agreements were entered into by the Office, whereby *Barug! Pilipino* volunteers undertook to gather data and detailed information on the properties of government officials and employees for the lifestyle checks, and act as bidding observers and implementation monitors for DEPARTMENT OF EDUCATION procurement contracts.

The initiatives of *Barug! Pilipino* has since borne fruit:

a. Volunteers from the Prelature of Ipil organized the Inter-Faith Coalition for Good Governance that has a regular Wednesday radio program anchored by a priest. They also organized LOGCCO for Peace, or Local Government, Churches and Communities For Peace, which focuses on values education and information dissemination.

b. Volunteers from the Diocese of Maasin got involved in the monitoring of

textbook deliveries to public schools.

c. In the area of value formation, moral reconstruction and strengthening personal conviction, Barug! Pilipino has partnered, on 04 January 2005, with the Brotherhood of Christian Businessmen and Professionals (BCBP).

Further, the model structure of *Barug! Pilipino* has since been replicated. Thus, on 27 November 2004, with the blessings of Archbishop Angel N. Lagdameo, D.D., a Memorandum of Agreement was executed among the People's Graftwatch of Iloilo City, the People's Graftwatch of Iloilo Province, and the Office of the Ombudsman. Under the said agreement, members of the People's Graftwatch will sit as observers in government bidding committees, act as monitors in the implementation of awarded contracts and assist the Office of the Ombudsman in the conduct of its lifestyle check.

Finally, representatives from church-based civil society organizations from Regions I, II and the Cordillera Autonomous Region (CAR) met with the Tanodbayan last month. They expressed their desire to help the Office of the Ombudsman in its battle against graft and corruption. Inspired by the success stories of the Concerned Citizens of Abra for Good Government (CCAGG), their church-based civil society organizations and nongovernmental organizations from thirteen dioceses in Regions I, II and CAR have formed an alliance, led by Bishop Ramon Villena of the Diocese of Bayombong (Nueva Vizcaya), called the Northern Luzon Coalition for Good Governance (NLCGG). NLCGG has mobilized the Social Action Centers of the thirteen dioceses of Northern Luzon and partnered with active NGOs like the CCAGG, an active anti-corruption partner of the office.

As soon as NLCGG is registered with the Securities and Exchange Commission, the Office will sign a Memorandum of Agreement with NLCGG's representatives.

Finally, our Office is now initiating talks with other religious groups with the intention of making the fight against corruption an inter-faith project.

All told, strategic collaboration with the private sector extends and multiplies the otherwise limited and finite resources of the government, as well as empower, expose, educate and embolden those involved to commit more of their time, expertise and resources in the fight against corruption.

Indeed, people are already taking note of various private sector initiatives, including those from the business sector, as part of social responsibility and good corporate citizenship, noting the initiatives of, among others: NAMFREL,

G-Watch of the Ateneo School of Government, Transparency and Accountability Network, Boy Scouts and Girl Scouts, the Bishops-Businessmen's Conference, Procurement Watch, Makati Business Club, and the Center for Contextualized Theology and Applied Ethics of the University of Santo Tomas. As observed by the *Philippine Daily Inquirer*:

> "All of these initiatives show that different sectors are coming together creatively in order to check corruption. If it is true that in 2001 the nation lost P95 billion through graft, then corruption is the most important cause of our poverty, and it is only right that all sectors deal with the monster single-mindedly and forcefully."

It is no wonder then that, despite the recent report of the Political and Economic Risk Consultancies, Ltd. that Philippines is perceived by foreign expatriates as the second most corrupt country in Asia, local residents have noted a positive development in our efforts against graft and corruption. Thus, in June 2004, the Social Weather Station 2003/04 Survey revealed that the Office of the Ombudsman received the highest trust rating among agencies where the public can complain. Also, in the same survey, the Office of the Ombudsman received the second highest positive increase in terms of net sincerity, as compared to the previous years, second only to the Securities and Exchange Commission. If at all, these indicate that the initiatives thus far taken by the government and the internal reforms being instituted by the Office of the Ombudsman are hopefully in the right direction.

What is more, in 2004, contrary to some published reports, Transparency International's corruption rating of the Philippines did not continue to deteriorate, or go down from its 2003 rating. Instead, there was a slight improvement from a comparative rating of 2.5 to 2.6 in 2004. This slight improvement of 0.1, however, is not something to crow about. Nonetheless, from a positive perspective, it shows that, unlike in the past 3 years, the situation did not deteriorate. This is confirmed by the observation in a very recent editorial:

In recent months some progress has been made in the campaign against corruption, with much of the credit going to the renewed zeal of the Office of the Ombudsman. Military generals are being court-martialed and facing graft charges in civilian courts. Ranking government officials have also been indicted, suspended or dismissed for unexplained wealth. Graft busters mean business, but their message is slow in getting out, and it is being muddled by continuing

corruption at all levels of the bureaucracy. It is also being muddled by the slowness of the prosecution of graft cases, including the trial of Estrada and Garcia.

CONCLUSION

It is evident, therefore, that two primary things should be done:

First, the government must invest massive resources in anti-corruption initiatives. Its current budgetary support to anti-corruption initiatives must not only be sustained, but also increase steadily and drastically, and snowball as more inroads are made against graft and corruption. As earlier discussed, the "lock opener", in our currently difficult situation, and carefully considering the "limits and possibilities of governance in the country", is simply a massive rechanneling of focus, priority and resources to anti-corruption reform initiatives. It must be stressed, however, that while there has been a substantial increase in the Office's 2005 Budget, i.e., about P140 million, the foregoing discussion inevitably leads to the conclusion that much more is needed. Hong Kong ICAC's annual budget of about $90 million or P4.94 billion easily comes to mind.

Rechanneling of resources should also include the enactment of legislative reforms in the Sandiganbayan enumerated earlier. Indeed, as already observed, the initial partnership between the government and the private sector had proven very effective and fruitful. From this collaboration, more graft and corruption can be unearthed and more cases are expected to be filed. This progress must, however, flow through the prosecution stage which has been observed and described as slow-grinding. To be truly effective, therefore, our anti-corruption campaign must include the efficient and speedy resolution of cases by the courts. There is, therefore, a need for the passage of the pertinent bills rationalizing and streamlining further the jurisdiction of the Sandiganbayan and drastically increasing the number of justices and divisions in the Sandiganbayan to ensure the swifter resolution of corruption cases through continuous trial.

The importance and indispensability of this reform is confirmed by the analysis of Mr. Tony Kwok himself: "Any successful fight against corruption must start with effective enforcement and successful prosecution on major targets, so as to demonstrate to the public the government's determination to fight corruption at all costs."

Second, both the government and the private sector must earnestly help each other in fighting graft and corruption. Government, considering its lack

of resources, should, as much as it can, allow the greatest latitude for private sector participation in procurement and governance. Further, the government should be able to recognize and tap ready and available private sector resources, organizations and structures that can be recast and used in the fight against graft and corruption. Thus, great efforts should be exerted by the government to convince private citizens and civil society organizations that they should not content themselves with just being able to complain or criticize the government: more importantly, they should make themselves part of pro-active and concrete anti-corruption initiatives and programs.

This active and fruitful collaboration with the private sector and civil society organizations can best be realized through the mechanism provided under the Government Procurement Reform Act, which allows the active involvement of our private citizens in the procurement process, either as observers in the bids and awards committees, or as monitors in the implementation of awarded contracts. Indeed, the Government Procurement Reform Act is a very potent vehicle to prevent corruption in the procurement process - snuffing out its life before it even starts. In the words of its Senate sponsor, Senator Angara: "And while we may not be able to fight graft and corruption at all levels, we are nevertheless in the best position to nip its greatest bloom in the bud."

Clearly, a combined, parallel or even complementary anti-corruption initiatives in the private and public sectors is indispensable – a partnership best illustrated in a recent editorial:

But we don't need surveys to tell us corruption is bad. Everyone knows this, and have known it since time immemorial. The equally age-old question in the light of this perennial observation is, why aren't inroads being made in the fight against corruption? Tony Kwok, former deputy commissioner of the Hong Kong Commission Against Corruption, has come forward with the clearest reason. Speaking during a recent anti-corruption workshop, Kwok said, "I am confident that given the effective enforcement and successful prosecution by the [Office of the Ombudsman] and the partnership approach in this corruption prevention project, it is possible that this three-year project will see a marked improvement in the eradication of corruption in this country."

The key word in his statement is not a call for political will—which is indeed required, but not enough—but the concept of partnership.

What emerges, therefore, is the indispensability of a holistic, strategic and

even complementary approach to anti-corruption. A complete expeditious cycle of efficient corruption prevention, detection, successful prosecution and swift judicial resolution is indispensable if only to make whole, effective and lasting any anti-corruption reform initiated. Thus, a graft-free society is still possible. But only if the government will commit massive resources and widen, to the greatest extent possible, private sector participation; and if the private sector: citizens, groups and organizations, will actively commit their talents and resources to concrete anti-corruption initiatives.

In closing, a word of caution: in this struggle against graft and corruption, it is easy to despair and, metaphorically, to see the glass as half-empty. We should, however, realize that the glass is half-full. But, more importantly, with all the public and private sector initiatives steadily increasing, we should see the water rising and the glass as filling-up.

OPEN FORUM

MR. BOONTON: It is a very academic paper, but I would like to give some comments. I firmly respect what you have done, economically and practically, in the Office of the Ombudsman.

Allow me to say that the Ombudsman is a paper tiger. In my hometown, the Ombudsman is also a paper tiger. Your paper clearly defines what corruption is, but the problem is in terms of implementation. Are you sure that increasing the budget and personnel, including the best lawyers, NGO, civil society, will help solve corruption in our land? I think if those people don't come together, the best lawyers, the Ombudsman like you, will find it difficult to control an expanding bureaucracy and huge budget as in Thailand.

Therefore, one way to do it is to give the power to all levels of self-government. Increase people to oversee the project, and empower the people. Now, we rather not to believe in the legislative body and executive body, because they are bound together by corrupt people. They have no check and balance; they are friends, they work and live together. Therefore, the only thing that I trust is people power. The media in Cambodia are also working towards the goal of stopping or eradicating corruption through their Ombudsman. They set up new paradigms, new strategies and told the whole government and people that corruption is increasing. We need everybody. Even in Western civilized countries

or in Singapore, only the people will be responsible for themselves, therefore, if people are themselves responsible, openness and full democratic system can help solve the problem of corruption.

Thank you very much.

MR MARCELO. That's really true. If you look at the at the Office of the Ombudsman, it may appear like a paper tiger. My joke, whenever I speak, is that if you look at the powers of the Ombudsman, it' really very, very powerful; it's even called the second most powerful, next to the Office of the President. But that's only on paper. My joke is that I am a five-star general with only five soldiers. But that's the reason why we have approached the legislature, and for 2005 we are for the first time getting a big increase in our budget from the legislature. So we are very grateful to the House of Representatives and to the Senate for this development.

In terms of absolute figures, it's still low, it's not a big amount. But if you look at it from percentages, my office is actually getting almost a 50-percent increase in budget. For this year, we re getting P200 million. So that's almost 50 percent. This is the first time it ever happened. That's why I am very, very hopeful that right now our legislature is very sincere in helping us fight graft and corruption.

Secondly, regarding the participation of the private sector, it's really up to us, given the limited resources of the government. It's really very important to get the private sector involved. As I have said, the Philippine Bar Association has members whom I ask for help. A lot of them are from the big law firms, really top lawyers. And I am not saying this because Senator Angara is here. His former partner, Rolly Vinluan, has helped us a lot in training our lawyers We had several training programs because what we did was to develop a training program which was funded by USAID. One of our most noted litigators, Atty. Vinluan, told us he must be crazy because he is teaching the opposition how to become better lawyers. But he was very helpful for us. Even right now, he is also helping us to prosecute a case against a Marine general.

What we are trying to do now at the Sandiganbayan is to try to level the playing field. As I have said, the accused in the Sandiganbayan, our anti-graft court, are usually represented by top criminal lawyers in our country, so we trying to recruit top lawyers also to help our own prosecutors in prosecuting these cases.

MR. BOONTON: Sorry, but I don't know the meaning of Sandiganbayan.

MR. MARCELO: The Sandiganbayan is our anti-graft court where high-ranking government officials are prosecuted. If there's a case involving high-ranking government officials, it should be filed and tried at the Sandiganbayan.

MR. PIMENTEL: I think the point really raised by the delegate from Thailand is more fundamental than the approach that the Ombudsman is trying to do. I mean, he is one of the few high-ranking officials of the government that I have publicly, as a member of the opposition, expressed admiration for.

And having said that, the point of the gentleman from Thailand is that devolution of power, sharing of power among the people, would even probably hasten the fight against corruption than centralizing the effort here in Manila, which is where the Ombudsman is located. In other words, we in the Senate, for example, could give him all the personnel that he wants, but most of them would probably be concentrated here in Manila because this is the seat of government. Whereas, if the regions, the provinces, the cities in this country were duly empowered to have their own set of functions that can fight against corruption in their areas more effectively, then probably we will really see a reduction, in real terms, of the incidence of corruption in this country.

As the Ombudsman has pointed out, he has started to mobilize even the private sector, which is a good thing. Because of the central nature of his functions, he really can do only so much. That we have to admit. I don't know if you were present at lunch today where Speaker De Venecia spoke. He touched on the need to amend the Constitution of this country so that more powers are really delegated and devolved to the regions of this country.

I'd like to thank the gentleman from Thailand for his incisive opinion.

MR. CHAROEN: I'm Charoen Kanthawongs from Thailand. So we come to the fundamental cause of corruption: the underpaid civil servants. In Thailand, in Bangkok, as I mentioned earlier, we have an election committee which is composed of five people. And then they are dispatched to other provinces to oversee the elections, all kinds of elections. What we are afraid of is that those officials, once they are in the other provinces, may get paid to rig the elections. So if we use the theory mentioned by our distinguished delegates from Singapore, if we increase the income of the people who are holding offices, perhaps that could prevent some kind of corruption. Even the Ombudsman would like to work as hard, but if he is underpaid, it could be dangerous. We would like to

hear your comment on that.

MR. MARCELO: The problem is what you call chicken-and-egg problem. I think the government would like to increase the compensation for all government officials. But where do you get the money? That is why we are offering this theory of the "lock opener." Where do you start? Where do you make the initial move? So what we're saying is that perhaps we should make the initial move by giving more to the Office of the Ombudsman so that right at the beginning it can focus on the revenue-generating agencies.

We have a very good investigative institution here, which is called the Philippine Center for Investigative Journalism. In a study they made, even at the Bureau of Customs, the revenue collection loss is estimated to reach as much as P200 billion. So my theory is that there should be substantial funding given to the Office of the Ombudsman. And then the Office of the Ombudsman should first zero in on just the Bureau of Customs and the Bureau of Internal Revenue. If we can reduce drastically or substantially the corruption at the customs and at the internal revenue bureaus, that will logically result in additional revenue collection. And then when you have additional revenue collection, you will already have additional funds for all reform initiatives, including paying government officials higher compensation, and even for all our poverty alleviation projects. Given the limited resources, prioritization should be made. So here in our country we have to decide where we should make the initial step, where the first battle should be waged in order to win the war.

MR. ANGARA: Thank you very much. I guess as the principal author of the law that created this institution, I am entitled to ask at least two questions.

My first question—I want to put this on public record and because I have already raised this several times—is that the original conception of the Ombudsman really is for public assistance, taking care of the ordinary citizens who are frustrated in following up official action on their papers or lack of action on their papers. It should be an office that they can run to. It is supposed to be the tribune of the people in the Roman tradition. But as it developed over the years, it has become primarily a prosecutory office which it was never intended to be, because prosecution was intended to remain with our network of public prosecutors in the provincial and city level, and on the national level with the Department of Justice. So my question is, are you developing that public assistance system that this law was originally created for?

The second is probably a more delicate question. In the Philippines it is very difficult to be a public servant because if you act you can be charged with anti-graft. If you don't act, you are equally liable to an anti-graft case. And in our case, even an anonymous complaint should be acted upon by the Ombudsman. So you see a situation where the bureaucracy is practically terrorized and afraid to act, and with your request for additional manpower, which you are entitled to, don't you feel that you may be unwittingly setting up a Big Brother institution that will even terrorize more the bureaucracy from acting? Now you will have practically field officers in practically every government office, watching over the shoulder of our public officials. So you've got to strike, it seems to me, a balance between achieving a public efficiency and the discharge of functions and the correction of public wrongdoing. One should not tilt it in favor of simply going after the wrongdoing, because you may also be committing a greater wrongdoing by preventing the discharge of public service more effectively.

So how do you do that? I know it is a very delicate balancing and we in the Senate—the majority and the minority leaders are with us today—are more than glad to help the institution grow and become effective, but we have our own idea of how it can become efficient. For starters, with your P140 million you could perhaps invest it largely in training people you already have, in acquiring more computers, and perhaps in reviewing that system of honoring every anonymous complaint that goes your way. These anonymous complaints are saddling you with a 2,000 case load. That is almost impossible to dispose of.

MR. MARCELO: Thank you for your incisive questions; they really are very complicated. Actually the idea came from Senator Angara when I had the chance to talk to him more than a year ago. In the long term, that should be the concept of the Office of the Ombudsman, that it should be a friend, not a Big Brother in a totalitarian government. That is in the long-term.

To the second question then: That part of the P50 million out of the P140 million we're getting will be used to hire about 150 personnel so that we can set up public assistance centers in three regions. These are pilot regions—one in Visayas, one in Luzon and one in Mindanao. Hopefully, if the project is successful, then we can replicate it in all the regions in the country.

What does one do before corruption can arise? For example, I am an ordinary citizen and I want to set up a small store. I have to get a mayor's permit and they are giving me a hard time so that I will give a bribe. You can always go to

the public assistance center and say, "Can you help me with this?" Then the people there at the Ombudsman's Office should be able to tell you what the requirements are. And if the requirements are all present, they can accompany the citizen to the mayor's office and say, "You know he has completed all the requirements, maybe you should give it to him." That will prevent graft from happening. Otherwise, you will probably have a complaint for anti-graft. Or for example, a citizen just bought a piece of property, and he has to go to the registrar's office to get a new title. Again he is given a hard time, or maybe he just couldn't understand the procedures. He can go to the public assistance center.

In the long run, that is also my concept of what the Ombudsman should be. It should be more on graft prevention. That is why I am very, very upbeat about the concept of having private sector representatives in the bidding committee.

In my prior life in the private sector as a litigator, the only criminal cases I had handled involved fraud cases. And you know, the stockholders, the bank, will tell you to prosecute and send one to jail. That does not really matter much. What is important is you prevent money from being lost or stolen. What is important is preventing the fraud from happening. This is the same concept that we're using, and I think that is perhaps the same concept that Senator Angara had in mind with the Government Procurement Law. Before fraud happens, before graft happens, you prevent it already from happening. It is so hard to prosecute people, to recover stolen money. That's also the concept about public assistance centers. In the long term, that should be the main focus of the Office of the Ombudsman—graft prevention and education.

We have 2,000 cases at the Sandiganbayan, and we just need the prosecutors to prosecute them. My hope is that if we are able to get those 200 prosecutors and finish all these cases, hopefully, the number of cases will dwindle, especially if we have private sector initiative. For example, right now we have one project with the Department of Education. The department has been getting the good Cabinet heads starting with Brother Andrew, then Raul Roco, and then E.J. de Jesus, and now Butch Abad, and they have been very cooperative in graft prevention. Because of the graft-prevention projects with the civil society organization, they were able to bring down the cost of books. From P92 to P47—that's almost a 50-percent drop. So if you have active civil society

organization and using the Procurement Reform Law, then you can really limit the commission of graft.

In the meantime, we have this problem—we have 2,000 cases and we have to solve that. With respect again to the prosecution, that's why we need the investigators. Right now, what happens is that the cases go to preliminary investigation and then to the court. What we want is to have field investigators who will first go through some sort of paralegal proceedings. They will be trained to first look at the anonymous complaint and all complaints before they go to the hearing officers so they can see through it and find out what are the cases that should be thrown away. It is very unfortunate that at the Office of the Ombudsman we receive about 13,000 cases a year, but I think about 60 percent of them are really what we call garbage cases. The problem is that we just have to study them. That's the only way to find out whether they are garbage or not.

And as I have said, just imagine, for the lawyers doing preliminary investigation and administrative adjudication, with the addition of maybe about 50 lawyers, we will have enough lawyers already, if we don't have this kind of harassment cases. But unfortunately, that's the situation. I think 60 percent of the cases are just garbage cases. But if we can have enough investigators—these are non-lawyers who will be trained for investigation—they will be the first ones who will go through these and screen first the cases before they go into preliminary investigation.

Thank you.

MR. WANG: I just have one or two questions. You were talking about the workload of cases. How long does it take for one case brought to your attention—garbage case or not—and the time left for prosecution? In Singapore our target date was about 90 days, and today we have brought it down to 60 days.

MR. MARCELO: Our problem really is the lack of investigators. Like when we did the lifestyle checks, our investigators only averaged, if I'm not mistaken, about three cases a year. It takes a lot of time, firstly because we just hired our investigators last year. These are fresh college graduates. And then with the help of some international donors, we were able to get foreign experts to train them. Hopefully, as our investigators gain expertise and as we are able to recruit more investigators, the time period will shorten.

The main problem really in the prosecution of cases is at the Sandiganbayan.

Our justices at the Sandiganbayan, I think, are among the most diligent in our juries. But they have 2,000 cases and they have only five divisions. They are required to act as a collegiate body. So you have three justices per division, and you only have five divisions. To handle 2,000 cases, actually you have only five courts. And as I have said, based on the study made by the Supreme Court, it takes them almost seven years on the average. That's way too long. That's why we are endorsing a bill filed by Senator Roxas wherein the number of justices in the Sandiganbayan should be tripled so that the period within which to try a case should be shorter.

MR. BOONTON: What is the difference between the Sandiganbayan and the Ombudsman?

MR. MARCELO: The Ombudsman is actually on the prosecution side function. First is what we call the fact-finding investigation. We are also like the police. Although we don't have law enforcement powers, we are tasked to gather the evidence. That's the first phase. And the second one is, we do the preliminary investigation. We look at the evidence, we ask the government official to present his evidence, then we decide whether to file the charges in court. For high-ranking government officials, if criminal charges are warranted, these are filed in the Sandiganbayan, which is the anti-graft court. And at the anti-graft court, it is also the lawyers of the Ombudsman who act as the prosecutors.

MR. BOONTON: And the second question: who will be responsible for their security?

MR ANGARA: I think you should ask the Ombudsman to supply the answer. We are only in lawmaking, Professor, we are only in lawmaking. But he is also in enforcement so he can answer that.

MR. MARCELO: For our security, we get from our police. We get from the Special Action Force, which is the elite unit of our Philippine National Police. Although I have said we cannot stop a determined assassin no matter what precautions we take. But I take precautions; I don't want to tempt the fates. This is something that goes with the turf when I accepted the job.

MR. ANGARA: If there are no other questions, may we ask you, ladies and gentlemen, to join me in showing our Ombudsman our appreciation in the usual way.

[*Applause*]

ROUND TABLE DISCUSSION ON THE SEAPAC REGIONAL PLAN OF ACTION

MR. PIMENTEL: This session will now come to order. Our task for this session is to discuss the adoption of the Regional Action Plan. Then we will have the signing of the Manila Declaration, as well as the announcement of the venue of the next conference—three major items which are set out in the various documents that have been furnished to all of you. It is proper therefore that we open the floor for discussion. The chair is now ready to recognize anyone who might wish to state a point. We'd like to first recognize our chairman, Mr. Ed Angara to say a few words.

MR. ANGARA: Thank you, Mr. Chairman. I would like to lead off the discussion on the proposed Regional Action Plan. The draft is in the kit of everyone and I hope everyone has read it.

Mr. Chairman, the action plan for the next two years contemplates four aspects. The first is how we can institutionalize, how we can make permanent, this vehicle, SEAPAC, for information and exchange so that it will become the permanent channel of exchange of information and experience among us in South Asia.

Its institutionalization will involve the establishment of a local chapter in each of the member countries. For instance, in the Philippines, what we did ahead of this regional meet was to establish GOPAC Philippines, Inc. It's the local chapter of GOPAC Ottawa. Our plan is to organize also the local councils—the provincial, city, and municipal councils—to form a mini-GOPAC in their own respective cities so that the network of anti-corruption fighters will become nationwide in the Philippines.

The second feature of the institutionalization is the choice and selection and establishment of a working Secretariat, one that will handle the back office, as it were. Of course, the most important part in institutionalizing any organization is how you fund it. We're not prescribing any mode of funding or who you would tap to fund your organization; we leave that to your respective initiatives.

At the SEAPAC regional level, we can discuss our source of funding and financing in the board meetings. So that would be the institutionalization phase.

The second part of the action plan is capacity- and knowledge-building. This simply means that we'd like to know more and more about the state of laws or regulations, even culture, in each of our countries that impact or relate to anti-corruption or corruption.

We'd like to build a database on that, which we can put not only in our archives but also in the website of SEAPAC. We'd like to be able to make an inventory of the success stories in each country. For instance, what did Singapore do in order to build up the culture of integrity that they are now enjoying? How much of what they did or are doing can we copy and import into our own milieu and tradition?

The third component of this action plan is a reform dialogue. We'd like to be able to learn not only from among ourselves but also from the other regions about their experiences. And part of this mutual learning is the biennial global conference of GOPAC. In this case, the next global conference would be in Kenya in January of 2006. The reform issues will be regularly tackled during our meetings of the executive board.

Finally, in the reform component of the regional action plan, we'd like to see our respective parliaments—or whatever organs in our respective countries that are authorized to ratify treaties and conventions—to push for the ratification of the UN Convention Against Corruption.

That, Mr. Chairman, is the proposed regional action plan for year 2005–2007, which we would like to recommend to our colleagues for consideration and approval.

MR. PIMENTEL: Any comment or suggestions from the floor? Yes, Dr. Wang.

MR. WANG: Mr. Chairman, to begin with, I'd like to congratulate Senator Angara for having taken the effort to prepare a very detailed and thorough proposed regional action plan for year 2005 to 2007. Reading through it, I think we are given a time frame, a very strict timetable and very comprehensive action plan.

In particular, I like the activities that involve institutionalization, capacity-building and knowledge-sharing, and reform dialogue, among others. I would like to congratulate Senator Angara because the delegates have a concrete

framework to work on. I will support the adoption of this action plan.

My only comment is the fourth component, which actually asks for the contribution of SEAPAC to the immediate implementation of UNCAC. As I said earlier, we ultimately support the ratification of the UNCAC and its implementation. The issue I personally have is the word *immediate*. Quite a number of us, I'm sure, have signed the Article of Ratification, but our legislature may not be ready for immediate ratification. So perhaps we can adopt another word in lieu of this word *immediate*. Perhaps one proposal could be the word *eventual*. Maybe I can ask around the table whether other delegates have other terms in mind.

MR. PIMENTEL: How about *ultimate approval of*—or something to that effect. Meaning, sometime in the future, not immediately.

MR. YUEN: Yes, a sense of tomorrow.

MR. PIMENTEL: That's correct. The opinion of Dr. Wang is well taken, and we will accommodate the view of our Singaporean colleagues and try to modify the wording. The Chair is waiting for suggestions from the floor.

MR. ANGARA: What about this, Mr. Chairman: *contribution of SEAPAC to the eventual and ultimate implementation...* or *eventual and ultimate ratification*.

MR. PIMENTEL: Is that all right, Mr. Wang?

MR. WANG: We can accept that language.

MR. PIMENTEL: If there are no other comments, can we hear a motion from the floor?

MR. CHAROEN: Repeat the amendment, please.

MR. PIMENTEL: Senator Angara?

MR. ANGARA: The fourth component, Mr. Chairman, is the *contribution of SEAPAC to the eventual and ultimate implementation of the UN Convention Against Corruption*. I didn't use the word *ratification* because it's already in the last line: *which requires the ratification of a number of member-countries*. So just delete the word *immediate* before *implementation* and insert *eventual and ultimate*.

MR. PIMENTEL: Are we comfortable with that amendment? Yes, it looks like that Dr. Wang and our colleagues from Singapore are amenable to the change. And so, if there are no other comments or reservations from the other delegates . . . yes, Senator Ngo from Vietnam?

MR. DZUNG: I have some comments and some points of clarification on the draft of the proposed Regional Action Plan. The first component, institutionalization, is too much for us because we are not fully mandated by our parliament. Some of us attended the forum in our individual capacities. But institutionalization is something that our whole political system has to address.

Second, we are talking about the establishment of a network among parliamentarians of South East Asia. I think it requires more than a network. A framework for dialogue is very important among the parliamentarians in the region in fighting against corruption. With this, I propose to cross out the second line. May I read: "The first component covers the establishment of the dialogue framework among parliamentarians in South East Asia."

MR. PIMENTEL: Is that okay with you?

MR. DZUNG: Yes. Then maybe *institutionalization of a support* should be crossed out because we cannot institutionalize an individual member-parliamentarian.

The third component describes the establishment of conferences and dialogues in the member-countries. It is not clear what *member-countries* means. ASEAN member-countries?

MR. PIMENTEL: ASEAN member-countries.

MR. DZUNG: In SEAPAC, we can only represent our country in our capacity as individual parliamentarian members. But here, it might be misunderstood that we are representing the country when, in fact, we are not. So maybe it is better to cross out *member-countries* and replace it with *among the ASEAN parliamentarians*. It's up to you to choose to be more clear.

With this amendment, I think we settle this and the paragraph starting with *A*. The third line from top: *through contacting reform-minded members of parliaments*. It is very difficult to choose who are the reform-minded members. So can we say *all members*, not only those who are reform-minded?

MR. PIMENTEL: Where is that please?

MR. WANG: "Through contacting reform-members of parliaments...." Why choose only the reform-minded?

MR. PIMENTEL: This is the second component?

MR. WANG: The "A. Institutionalization," third line from bottom. "The

institutionalization component consists of strengthening...." First page.

MR. PIMENTEL: Yes, yes. I see that.

MR. WANG: "Through contacting reform-minded members...." I suggest to cross out *reform-minded*. We can contact all members, mobilize more masses for us, why choose only such sectors of people?

Next please, second one, in "Resource Generation," the last line. Its reads: "...establishes itself as a credible and effective vehicle for change and reform in South East Asia." It's too much for us. We cannot change everything. The whole political system can change some but we, as parliamentarians, we cannot change. So I suggest to delete *for change and reform* so that the line reads: *an effective vehicle in the combat against corruption in South East Asia.* Our purpose is to combat corruption, not to change anything.

I'll now read the two last lines: "*...establishes itself as a credible and effective vehicle in the combat against corruption in South East Asia.*" It's up to you to decide on my proposal.

And paragraph B, the third paragraph from "B. Capacity and knowledge building." The third line from down, "...share experiences and discuss issues such as: developing independent anti-corruption agencies, parliamentary immunity, political party financing, or access to information." I have my doubts about the clause *developing independent anti-corruption agencies*. It is better to cross out *independent* because we have in our parliament an anti-corruption agency. It belongs to the parliament; it is not independent. Because it is not independent, for whom it is independent, for what it is independent, for others, it is not independent. It's very difficult, so that maybe there's no need to be independent.

MR. ANGARA: I think that descriptive word *independent* is very important because it means that one can act impartially and objectively. And that is an ideal that we want to attain. I think it will not harm our plan. In fact, it will add meaning by keeping that word.

MR. DZUNG: Let me go further on, if possible. Paragraph 4, last two lines, I think, is too ambitious for SEAPAC. Is it possible for us to render financial support for attending all international events. Where will we get the money? Impossible. So may I propose to just remove this, put a stop after *events*, and cross out *and financial support to attend them whenever such support is not available from the events' organizers*, because for sure we cannot do it.

MR. PIMENTEL: Yes, okay.

MR. DZUNG: Second paragraph, "Local Chapters," first line: "The participants in the Manila Conference will constitute the core group." I doubt about this word *constitute*. May I suggest that we replace it by *work*. I read: "The participants in the Manila Conference will *work* as the core...." We, as individual members, can work; we cannot constitute because from a legal point it is impossible to constitute.

MR. ANGARA: Mr. Chairman, I agree that that is not the appropriate word. In lieu of the word *core*, let us adopt the language of the Constitution as we approved it, that those who attended this conference become founding members. We will remove the word *core*.

MR. DZUNG: I think we have to keep *core*.

MR. PIMENTEL: It is the word *constitute* that he wants to delete.

MR. DZUNG: ... *to work as a core*—

MR. PIMENTEL: In other words, *work*, instead of the word *constitute*. It is okay with me.

MR. DZUNG: And the last subtitle, "Secretariat." It is interesting because you are mentioning about Transparency International as hosting our secretariat, while what we are saying is we want to be independent.

MR. PIMENTEL: Yes?

MR. DZUNG: *Transparency International*. We have to be careful with this wording.

MR. PIMENTEL: Excuse me. I think we will have to go page by page, for a more systematic amendment. Perhaps that is better than allowing a delegate to talk about the entire draft, so that everybody can participate at a particular page where his points of view might be necessary. So, with your permission, I'd rather go back to page 1, and I will recognize Mr. Boonton.

MR. BOONTON: I go along with my counterpart from Vietnam, but I have to explain. The word *institutionalization* means the organization which we are setting up to run the program of anti-corruption. That is a common word, a management term.

MR. PIMENTEL: So in lieu of *institutionalization*, you are suggesting what word?

MR. BOONTON: No, I agree.

MR. PIMENTEL: Excuse me, sir. You are agreeable to keep it?

MR. BOONTON: Yes, yes.

MR. PIMENTEL: Okay, all right. Now, in relation to the amendment introduced by Member of Parliament Ngo: "The fourth component is the contribution of SEAPAC *to the eventual and ultimate* implementation of the UN Convention Against Corruption, which requires the ratification of ASEAN...."

MR. DZUNG: That is correct.

MR. PIMENTEL: So this is correct. There is no change here?

MR. DZUNG: Correct.

MR. BOONTON: The third one, establishment of conferences and dialogues in the member-country.

MR. PIMENTEL: Yes?

MR. BOONTON: To this one I say that we open these words to welcome the other countries which would like to come to join us, instead of being limited to ourselves on this matter. I do believe that *member-countries* is okay.

MR. DZUNG: What member-countries?

MR. BOONTON: Any country can come because we are open for them.

MR. DZUNG: Yes. Thank you.

MR. ANGARA: Maybe as a compromise language, just to be faithful to our belonging to South East Asia, instead of using *ASEAN or member-country*, we say, *any South East Asian Parliament,* or *among South East Asian Parliaments.*

MR. BOONTON: We remove *member-countries*?

MR. ANGARA: Yes, we delete *member-countries.*

MR. PIMENTEL: Let me try to clarify that. "The third component describes the establishment of conferences and dialogues *among member SEAPAC Parliaments....*"

MR. ANGARA: —among *South East Asian parliamentarians* so that can accommodate all other countries which may ultimately belong to us.

MR. PIMENTEL: Is that all right? Okay, as agreed? Yes, Dr. Wang. Is your comment related to what we are talking about now?

MR. WANG: Yes.

MR. PIMENTEL: All right, please.

MR. WANG: The word *parliamentarians* pertains to persons. The line runs: "The third component describes the establishment of conferences and dialogues

..." We should be in the country, so I suggest that we say *in the South East Asian countries*.

MR. PIMENTEL: "South East Asian *countries*" instead of "South East Asian Parliamentarians." Is that correct? Is that acceptable?

All right. So, in light of the acceptance of this view from Dr. Wang, the amendment is approved. The sentence now reads: "The third component describes the establishment of conferences and dialogues among South East Asian countries."

MR. ANGARA: No. "...*in* South East Asian countries."

MR. PIMENTEL: "...*in* South East Asian countries." Okay.

MS. LOW: Mr. Chairman.

MR. PIMENTEL: Yes, Miss Low, please.

MS. LOW: It appears that as we go through each of the paragraphs, there might be more interventions from delegates. May I suggest that, for clarity, we put the Proposed Regional Action Plan up on the PowerPoint and someone could also do the ratification straight away.

MR. PIMENTEL: Yes, that would be better indeed if we are ready for that. We will ask the Secretariat to accommodate your suggestion. In the meantime, may we proceed and hear out the other delegates.

Yes, Professor.

MR. BOONTON: On page 2—

MR. PIMENTEL: We are done with page 1?

MR. CHAROEN: The fourth on page 1 is not finished yet. I think someone said something that we agreed on. No one could understand well. So, repeat it, please. The fourth.

MR. PIMENTEL: Senator Angara will please repeat.

MR. ANGARA: There is a substitution in the fourth component. Eliminate The word *immediate* was deleted, and in lieu thereof, the words *eventual and ultimate* were inserted. So the sentence will now read: "The fourth component is the contribution of SEAPAC to the eventual and ultimate implementation of the U.N. Convention Against Corruption, which requires the ratification of a number of member-countries."

MR. PIMENTEL: Is that all right? Can we deem that as ratified by the members? So we can now go to page 2.

MR. NGO: Mr. Chairman, I was asking about the phrase *reform-minded.*

MR. PIMENTEL: We already deleted that. In the last paragraph, *reform-minded* was deleted by motion of Mr. Ngo. Can we now go to page 2?

MR. NGO: Okay, page 2.

MR. PIMENTEL: All right, page 2.

MR. BOONTON: I agree on the "Resource Generation," but I would like to keep the term *independent.* The word is very important because we have to be an independent organization to see the corruption problem.

MR. PIMENTEL: Where will you insert that word?

MR. BOONTON: I agree on this word *independent.*

MR. PIMENTEL: Where is that, on page 2?

MR. VETERE: Mr. Chairman, page 2 (b) is where "Capacity and Knowledge Building" is. Okay? Then after that you have the first paragraph, second paragraph, and the third paragraph. The third paragraph, third line from the bottom up. So, "developing independent anti-corruption agencies." I think that's what he–

MR. PIMENTEL: The gentleman wants the word *independent* retained–that's my understanding. So, if we have no objection to that, we will deem it ratified. The word *independent* remains. Is that okay?

MR. NGO: Mr. Chairman, about the second paragraph, I was asking about the replacement of *for change and reform in Southeast Asia.*

MR. PIMENTEL: May I read the proposed amendment. "The projects of SEAPAC..." etcetera down to "and sustain the operations of SEAPAC as it establishes itself as a credible and effective vehicle in combating corruption in Southeast Asia." Since the Chair does not hear any objection, the Chair will now consider that approved.

MR. CHAROEN: Sorry, I cannot follow. Where is it?

MR. PIMENTEL: Second paragraph, sir. We are on page 2, second paragraph, from the top.

MR. CHAROEN: From the top?

MR. PIMENTEL: May I read the whole paragraph then?

MR. CHAROEN: Yes, please.

MR. PIMENTEL: "The projects of SEAPAC for the next two years will certainly need funding, and there is a need to build on this goodwill with funding agencies

in order that they will give continuous support beyond the Manila Conference, and sustain the operations of SEAPAC as it establishes itself as a credible and effective vehicle in combating corruption in Southeast Asia."

I'm sorry. I think there is a . . . I was reading page 3 which should be page 2. I'm really sorry for that. With your permission, can we go back then to page 2, which starts with "As the bulk of the members..." Does everybody have that? There is no page number here.

The amendment that was proposed on page 2 was in the line that has "Local Chapters." Does everybody see that? "Local Chapters," page 2. Some of you may have the same mistaken sequence that I have.

MR. CHAROEN: I think they mixed it up. How about "Resource Generation"? As you earlier said, page 2 becomes page 3 now?

MR. PIMENTEL: That's correct.

MR. CHAROEN: Okay, we change "Resource Generation." Originally, we said this is page 2; now we change that to page 3. The next page says "As the bulk of the members..." Before it was page 3, now I'll change to that to page 2.

MR. PIMENTEL: We're really very sorry for that. All right, can we go then to page 2, under the caption "Local Chapters." Does everybody see that? The proposed amendments were the following: "The participants in the Manila Conference will work as the *core* ..." in lieu of the word *constitute*. Is that acceptable? The word *constitute* is deleted, and *work as* is inserted in lieu of the word *constitute*.

Let me then read so everybody is clear on this: "The participants in the Manila Conference will work as the core group of parliamentarians..." etcetera.

Is that particular line accepted without amendment? All right then, so it is so accepted.

Yes, Professor Boonton?

MR. BOONTON: My friend from Vietnam has a question about the Secretariat.

MR. PIMENTEL: Secretariat. Yes, okay.

MR. BOONTON: If I am correct, I believe that this is the SEAPAC, you know. I will read it: "The SEAPAC will be supported by a dynamic Secretariat, initially hosted by Transparency International–Manila, and thereafter by the Transparency International chapter in the country where the elected president of SEAPAC belongs."

Do you mean to say that Transparency International will be a partner or ally in terms of helping to set up meetings? I want to be clarified, sir.

MR. PIMENTEL: May I respond to that? The initial amendment was precisely to delete the words *initially headed by Transparency International,* up to the word *belongs,* so that the amended provision will now read as follows: "The SEAPAC is supported by a Secretariat which will be responsible for the following:" One, two, three, four.

Is that acceptable? So, page 2 then will be considered approved. Yes, Mr. Secretary?

MR. VETERE: I think that just for the question of reflecting what was discussed, probably the best way to say it would be: "The SEAPAC will be supported by a dynamic Secretariat...."

MR. PIMENTEL: Mr. Ngo, you have some observations here earlier.

MR. DZUNG: Mr. Chairman, letter C. "Reform Dialogues" is difficult to understand. By whom is reform dialogue needed? What country needs it? It's up to them to decide to make the reform. I don't have a concrete suggestion but I put the question forward in order to be clarified. Second line: "on needed reform legislation...." Thank you.

MR. PIMENTEL: Will it help if we say, *for needed legislation* or *for necessary legislation*? So this particular sentence will now read: "The SEAPAC will spearhead a dialogue among its members in the region on necessary legislation." It's up to them to determine the necessity of that legislation.

Yes, sir?

MR. DZUNG: Mr. Chairman, the following paragraph.

MR. PIMENTEL: All right. Let us first approve that. No objections?

MR. BOONTON: I would like to be clarified on what *needed reform* means. That's why I want it to be explained. I did not get it.

MR. PIMENTEL: Sir, please.

MR. DZUNG: The idea "needed reform legislation" is difficult to define. By whom is it needed? What country needs reform? So it's better to keep it in a general way. *Necessary legislation* has a broad meaning. In some countries, we don't have enough legal framework; we have to adopt more laws. We are in the process of learning not only reform but also the creation of new laws?

MR. PIMENTEL: Will it help if we will adopt that proposal with that

understanding, as explained by Mr. Ngo? Is that all right with you, sir?

MR. BOONTON: I came to know but I am in doubt, you know. Because, country might problem then, you know, even then, and then they adopt the resolution; even a country want to need reforms. My friend said, what country? ASEAN. What else? The world, if they are in need. If they are in need, so there is no reform. That's my understanding that is why this word might be a broader concept than necessary. Because every country had necessary, but need or not need, if they need, we will help you, the principle will help you. That's why I would like to maintain the old word.

MR. PIMENTEL: The words *needed reform*. We will ask Mr. Ngo whether he is amenable to accepting that explanation, that it is up to the member-countries to determine the kind of legislation that they need to reform the drive against corruption in their respective countries.

MR. DZUNG: The statement is not clear. You read the whole paragraph—

MR. VETERE: Mr. Chairman, probably the line could be restated like this: "spearhead a dialogue among its members in the region on needed reforms, legislation, and tools," so that there is the possibility of whatever options open.

MR. PIMENTEL: Is that okay?

MR. DZUNG: Okay.

MR. PIMENTEL: It's good to hear from Italy once in a while. So, now the paragraph will read: "The SEAPAC will spearhead a dialogue among its members in the region on needed reforms, legislations and tools to be adopted by the various parliaments represented in SEAPAC." Maybe we can eliminate *SEAPAC* again.

MR. CHAROEN: You have to listen to UN.

MR. PIMENTEL: Yes, it's only a grammatical observation that the repetition of *SEAPAC* in the beginning and at the end of the sentence, I think, can be avoided. Okay, *by the member parliaments.*

So we will read it for clarification. "The SEAPAC will spearhead a dialogue among its members in the region on needed reforms, legislations and tools to be adopted by the member parliaments."

MR. DZUNG: I am sorry, Mr. Chairman. It's not *member parliaments* because SEAPAC is not having parliaments as members. SEAPAC has parliamentarians as members.

MR. PIMENTEL: Ah, okay.

MR. DZUNG: So keep it on the original.

MR. PIMENTEL: "...may be adopted by the..."

MR. DZUNG: "...various parliaments." It is in the original.

MR. PIMENTEL: "...by the various parliaments concerned." Will that be all right? Final run down: "The SEAPAC will spearhead a dialogue among its members in the region on needed reforms, legislations and tools to be adopted by the various parliaments concerned."

Is that okay in Italy, Mr. Vetere?

MR. VETERE: In Italy, everything will be okay.

MR. PIMENTEL: Can we now go to the next paragraph?

MS. LOW: I am just wondering whether it might be better to change it to "legislations and tools to be *recommended to* the various parliaments concerned" rather than *adopted by.*

MR. PIMENTEL: "To be recommended"– that will even be better in the mind of the Chair. Yes, Mr. Wang?

MR. WANG: In fact, I have to disagree with my colleague. Because at this point, it was....in fact, I won't bring it up, but if you read the sentence very carefully, I agree with my feminist colleague. It is may mean that SEAPAC would be the pro-active party to initiate needed reform in the parliament. So it would be SEAPAC that will decide whether in those parliaments certain laws have shortcomings and, therefore, we will spearhead the dialogue to ensure that such dialogue shall be adopted by the parliament. If my colleague agrees to that, then we will have to be active in recommending it to them whether they want it or not.

So, my question to the participants here is whether SEAPAC should take such a pro-active role. If it is the intent, then the sentence by itself will stand. But if that is not the intent, then perhaps we have to tone down the whole sentence, the whole paragraph.

I suggest that maybe we should review and use SEAPAC as a resource. So if a parliament views that it needs some help in getting some ideas, some recommendations for legislation, tools or whatever, then it can come to SEAPAC to seek this resource. As the line reads now, SEAPAC will spearhead the dialogue.

MR. PIMENTEL: Dr. Wang, the idea, as far as I could gather, is to enable

SEAPAC to be a distiller of ideas, as it were, to spur member-parliamentarians precisely to promote and urge the passage of anti-corruption legislation in their respective parliaments. Would that be objectionable to your mind? I mean, for SEAPAC to sort of gather all its members, have dialogues precisely in an attempt to distill a program of legislation that will address corruption in their respective countries without in any way imposing on the parliaments. As Ms. Low suggested, it should be recommendatory.

MR. WANG: My view is actually Singapore has no objection to this because we are already in an advance stage of development as far as anti-corruption is concerned. I am putting more emphasis on to the other member-countries who might feel like, "Who are you tell me what to do in my fight against corruption?" It might be better for them or for the other member-countries to say, "I need help. SEAPAC is a resource, so I come to you," rather than have SEAPAC taking active role and saying, "I think you have a problem and this is my recommendation. These are the rules and laws that we have passed in my country and you should follow this."

The word *recommend* we suggest.

MR. PIMENTEL: Yes, Mr. Boonton.

MR. BOONTON: My friend from Singapore seems concerned about this. But for me, the meaning of *spearhead*, I mean, *advocate*, is to let the other country know that such so and so could be done. It's the same meaning, but in American usage, usually they use this word.

MR. ANGARA: Take the lead, spearhead.

MR. BOONTON: Yes, to lead, to let them know, to tell them the good word from Singapore, from Malaysia, and we take it and tell them to correct and to improve for the benefit of the whole ASEAN.

MR. PIMENTEL: Will it help if we say, "The SEAPAC will promote the holding of dialogues among its members," etcetera? In other words, the whole idea is just for SEAPAC to be a sort of promoter of exchange of ideas on how to combat corruption among its member-countries.

MR. BOONTON: If we use the word of Dr. Wang, it would seem clear.

MR. PIMENTEL: So how will you word the proposal now?

MR. BOONTON: I propose to keep it.

MR. PIMENTEL: Yes, Dr. Wang?

MR. WANG: Mr. Chairman, actually I have an objection. I just want to clarify. This is indeed the intent of SEAPAC: to spearhead. If it is indeed the intent, it is okay with me.

MR. PIMENTEL: So it looks like that we are in agreement about spearheading dialogues on legislation and tools among members in the region, unless—Penny, do you want to change the word *adopted* to *recommended* ?

MS. LOW: Well, the reason I want to change the word *adopted* to *recommended* is because I think *adopted* is literally to ensure implementation as well. Whereas, *recommended* means that we are recommending that these are some of the areas or necessary measures to be done. But it is up to the country, the other parliament, to adopt it finally.

MR. PIMENTEL: Yes, Professor?

MR. BOONTON: I agree with her.

MR. PIMENTEL: So, with that observation, may— yes, sir?

MR. THAVY: Let me be clear. Are you proposing to change *adopt* to *recommend* ?

MR. PIMENTEL: Yes.

MR. THAVY: I don't see it that way. The issue here is what kind of issue we are going to bring in for dialogue between members, issues that are going to be adopted by the government, by the parliament. Their decision is done or they intend to do it. We, members of the SEAPAC, are only going to spearhead, talking about that among us. To recommend is to be involved, but only as far as saying, "Okay, take this and then discuss, debate it in the parliament."

Help me in this, because I would like to keep the same wording. We only talk about issues that a parliament may consider or contemplate talking about. We take the issue and talk among ourselves. Whatever are their likings or shortcomings that we can interject in their discussion, we are not going to recommend. Once you go into recommending them, then you are telling the good man, "Do this for the future. This is what the parliament is going to do, subject to be adopted by the parliament, yes. Now, let's talk about it."

MR. PIMENTEL: What help if we say "for possible adoption"?

MR. BOONTON: I see your point. The reason I favor the word *recommended* by Penny is because we spearhead, we advocate, and then we recommend them what to do or not to do. We cannot tell them to adopt what we are offering

because it depends on the individual country. "This is a good thing. This is a good thing from Manila, take it or not." To recommend is better than to adopt; that is why I agree with her.

MR. PIMENTEL: I hope we don't have to divide the house here. I mean, if we can come to an agreement that would be interpreted in such a way that whatever is taken up in the dialogues initiated by or spearheaded by SEAPAC will be recommendatory in nature, not in effect as *fait accompli* that is binding on the respective parliaments of our countries.

Dr. Wang?

MR. WANG: If we agree that SEAPAC adopts this advocacy role, I will accept the word *spearhead*. And once we accept the word *spearhead* I suggest that we use the word "to be *adopted* by the respective..." *Adopted* is correct because the words *spearhead* and *recommend* combined together mean a stronger advocacy. That is my interpretation.

MR. PIMENTEL: So, in the opinion of Dr. Wang, the sentence will now read: "The SEAPAC will spearhead a dialogue among its members in the region on needed reforms, legislations and tools to be adopted by the various parliaments concerned." Is that okay? So we can move on.

MS. LOW: Mr. Chairman, I just want to ask whether that is indeed the intent because I am hearing two things. The first concern is that the words *spearhead* and *adopted* are too strong when they are together. And that is why, on that basis, I used the word *recommended* to tone it down. Then, of course, with the intervention—I am not quite sure whether you actually want that we set a stronger tone or a weaker tone because, as one of my colleagues has said, to advocate is to actually push all the way.

MR. ANGARA: If I may interject at this point. I think we ought to use strong terms here because this is an internal document. And the stronger the language is framed, the better the fighting spirit we will be in. But if you become so wishy-washy about your language here and become so unclear, the role of advocacy that we want to perform may be so tame and petty.

MS. LOW: I think whatever language we use must be reflective of what SEAPAC wants to do.

MR. ANGARA: Yes. And I think this is the intention when we proposed this language.

MR. NGO: Mr. Chairman, perhaps ... may I propose as a new version to replace *to be adopted* by *that could be adopted* because it would then be up to the parliament to decide if what is being offered could be adopted.

MR. PIMENTEL: Earlier, I was suggesting *for possible adoption*. I mean, exactly that was the tenor of my suggestion.

MR. NGO: But here you say, "to be adopted—"

MR. PIMENTEL: How about "for possible adoption"? Will that be all right?

MR. BOONTON: What possible?

MR. PIMENTEL: Possible adoption.

MR. BOONTON: What possible?

MR. PIMENTEL: I mean the needed reforms.

MR. BOONTON: I am not hardheaded, you know. But I just would like to be clear, that's all. And that will depend on what to do if we are together, you know.

MR. PIMENTEL: "...*that could be adopted* by the various parliaments concerned." Is that okay?

MS. LOW: I have no objection. All I wanted to also do was to clarify the intent of SEAPAC, whether indeed we want to go all the way or we want to be too polite about it. *Possible adoption*—I'm happy with it.

MR. BOONTON: Anyway, I'm happy with it.

MR. PIMENTEL: Whatever makes the lady happy makes you happy too. So, okay, let us clarify: "The SEAPAC will spearhead a dialogue among its members in the region on needed reforms, legislation and tools for possible adoption by the various parliaments concerned."

We consider that approved. Any other comment on the rest of the page? Yes, sir.

MR. NGO: Mr. Chairman, in the following paragraph, we are talking about one or two reform issues. May I suggest to replace our wording because we talk on all issues, not only one or two.

MR. PIMENTEL: That's correct.

MR. NGO: May I repeat? "The dialogues shall feature issues...."

[*A brief power interruption occurred*]

MR. PIMENTEL: "The dialogue shall feature reform issues ..." So, if that is accepted by the body it will be in our report.

And then the final two paragraphs under "Ratification of the UN Convention Against Corruption." This is just a declaratory statement: "The United Nations Convention Against Corruption was signed and launched in Mexico in December 2003. The parliamentarians in SEAPAC will promote, in their respective countries, the ratification of the Convention."

Yes, sir.

MR. VETERE: Mr. Chairman, in line with what you have said at the beginning, can I suggest to put a comma after *ratification of the Convention*," then add the phrase *as well as its full implementation*. As you have said before, once the Convention is ratified, its proposals will be properly implemented.

MR. PIMENTEL: So the words *as well as its full implementation* will be added—

MR. VETERE: Comma, then *as well as its full implementation.*

MR. PIMENTEL: So the last sentence will read: "The parliamentarians in SEAPAC will promote, in their respective countries, the ratification of the Convention and its full implementation."

MR. ANGARA: No. Comma after *Convention*, then add *as well as its full implementation.*

MR. PIMENTEL: We remove the words *as well.*

MR. ANGARA: Ah, we removed it already.

MR. PIMENTEL: "...Convention and its full implementation."

MR. ANGARA: That's right. "... and its full implementation."

MR. PIMENTEL: All right, can we consider the Action Plan approved now? Let us give it a big hand.

[*Applause*]

THE MANILA DECLARATION

The next item will be the Manila Declaration. This is a one-page document, but considering its tenor, I'm sure that we will welcome the input of our colleagues in this regard. So, for easier discussion, I will read it line by line. We'll start from the Preamble: "We, the representatives of the legislatures of the countries of the ASEAN Region" – *SEAPAC* maybe...

MR. ANGARA: No, that's not correct. *South East.*

MR. PIMENTEL: "...legislatures of the countries of South East Asia...?

MR. ANGARA: Yes.

MR. PIMENTEL: Instead of *ASEAN.*

MR. ANGARA: Correct.

MR. PIMENTEL: "...South East Asian Region..."

MR. ANGARA: South East Asia–without the *n.*

MR. PIMENTEL: "... countries of the Southeast Asia Region, determined to extend to our peoples belonging to different cultures and societies the benefits of peace, progress and growth." Yes, sir?

MR. WANG: Mr. Chairman, the Manila Declaration–in such a declaration, do we need a preamble? I don't know where a preamble starts and where a preamble ends. So I propose that we delete the word *Preamble.*

MR. PIMENTEL:. All right, so we delete the word *Preamble* and just go direct to the statement.

MR. WANG: The first paragraph says: "We, the representatives of the legislatures of the countries of the Southeast Asia Region ... " Personally, I don't consider myself a representative of my parliament. I am a legislator from my parliament. So, may I, with your concurrence, suggest: "We, the representative from the legislatures of the countries of the South East Asia Region."

MR. PIMENTEL: *From*, instead of *of.*

MR. WANG: *From.*

MR. ANGARA: Yes, correct.

MR. WANG: I'm a representative of my people from my parliament.

MR. PIMENTEL: Okay. So let me repeat: "We, the representatives *from* the legislatures of the countries of the South East Asia Region, determined to extend to our peoples belonging to different cultures and societies the benefits of peace, progress and growth." Okay?

VOICES: Approved.

MR. PIMENTEL: Now, two: "Convinced that corruption debilitates economies and undermines political and social institutions." Approved?

VOICES: Approved.

MR. PIMENTEL: "Conscious that corruption wastes scarce resources, deprives people of needed infrastructure and basic services, and engenders inequality, inequity and injustice."

VOICE: Yes.

MR. PIMENTEL: All right. "Realizing that corruption distorts the distribution of the fruits of growth, and consequently deepens the divide between the privileged and the impoverished masses."

MR. NGO: Mr. Chairman.

MR. PIMENTEL: Yes.

MR. NGO: May I propose to delete the words *between the masses*. We in our parliament, we have...parliamentarian privilege...immunity. It's difficult to define.

MR. PIMENTEL: You are focusing your observation on the word *privileged* ?

MR. NGO: Yes. *Between the masses* is enough. More general.

MR. PIMENTEL: That may not reflect the intention. Maybe, instead of *privileged*, "*between the affluent and the impoverished masses*."

MR. NGO: Maybe.

MR. ANGARA: Yes. *Affluent* is a better word.

MR. PIMENTEL: All right, unless there are violent objections, we will consider that approved.

MS. LOW: I just think that *affluent* itself relates to wealth. Perhaps, it's between the privileged and the non-privileged, rather than *the affluent and the impoverished*.

MR. PIMENTEL: The observation is that the word *affluent* relates only to wealth basically. Okay: "...between the *powerful and the unimpowerful.*

MS. LOW: Maybe just *privileged and most privileged* would quite—

-MR. VETERE: *Privileged and unprivileged.*

MR. PIMENTEL: But that is exactly what Mr. Ngo was objecting to—the word *privilege*—because he says that as parliamentarians, we enjoy certain privileges. That's what you're saying. So I'm trying to look for a more neutral term which will reflect the great divide that we see in our respective societies.

MR. VILLANUEVA: *Between the rich and poor.*

MR. PIMENTEL: Pardon?

MR. VILLANUEVA: *Between the rich and poor.* That's the simplest. "...that deepens the gap *between rich and poor.*

MR. PIMENTEL: All right. With that observation, the sentence will now read: "Realizing that corruption distorts the distribution of the fruits of growth, and consequently deepens the divide between the rich and the poor."

MR. VILLANUEVA: "...deepens the *gap* between the rich and the poor."

MR PIMENTEL: All right. *Deepens* instead of *divides*. Widens the gap. Widens? All right: "Realizing that corruption distorts the distribution of the fruits of growth and consequently widens the gap between the rich and the poor." Is that okay?

We can move on to the next, "Acknowledging that corruption increases production costs and results in substandard goods and inferior service." Okay.

"Determined to reverse the culture of corruption, restore the dignity of our peoples and establish in our region a regime of integrity, transparency and accountability." Okay.

And, "Realizing that collaboration among countries is essential in the fight against corruption. Do hereby resolve to commit ourselves collectively and individually to the following program of action..."

MR. DZUNG: Mr. Chairman, I doubt that we can establish...

MR. ANGARA: No, it doesn't literally mean that that is the objective of that statement. There's an ideal that we want–

MR. PIMENTEL: Yes, yes. It is what we are aspiring for..

MR. DZUNG: (*inaudible*)

MR. ANGARA: Yes, but people are also moved by noble words, and it may be that the words sound "beautiful," but people are moved by beauty.

MR. PIMENTEL: That's why when McArthur said, "I shall return," we were hoping that he would return soon. Anyway, can we pass on?

So: "Do hereby resolve to commit ourselves, collectively and individually, to the following program of action:"

No. 1: "To call for, endorse and support the immediate ratification..."

MR. ANGARA: Eventual.

MR. PIMENTEL: Eventual.

MR. VETERE: Can you say *real and eventual* because otherwise you are speaking of ratification early. So that everybody is happy–

MR. PIMENTEL:–Just remove the word *immediate*. Then support the ratification.

No. 2: "To foster closer collaboration among legislatures in the region and with international multilateral agencies in order to forge a sustainable common front against corruption." Is that okay?

No. 3: "To establish the South East Asia Parliamentarians Against Corruption

as a mechanism for cooperation and collaboration, as a vehicle for exchange of information and"—please let me just read through it—"expertise and a center to assist the regions, legislatures in the review, appraisal, enactment of legislation towards our realization of our international commitments."

MR. DZUNG: Yes, Mr. Chairman, we are talking about mechanism?

MR. PIMENTEL: Yes.

MR. DZUNG: I doubt that. Should it not be *framework*—

MR. PIMENTEL: As a...?

MR. DZUNG: *Framework.*

MR. PIMENTEL: *Framework*. I think that's right. Yes. So *framework*, instead of *mechanism*,

MR. DZUNG: Then, on the third line, SEAPAC is at the center, I doubt. Is the center for... I propose to delete *and as a center*—

MR. ANGARA: *And to assist.*

MR. PIMENTEL: *And to assist.* All right. Okay, I shall we read Paragraph 3, to clarify it for everyone: "To establish the South East Asia Parliamentarians Against Corruption (SEAPAC) as a framework for cooperation and collaboration, as a vehicle for exchange of information and expertise and to assist the region's legislatures in the review, appraisal, and enactment of legislation towards the realization of our international commitments." If that is approved, we can go to No. 4.

"To thoroughly review our respective state of the laws, standards, systems and strategies to determine their adequacy and consistency with our international commitments against corruption and with the principles of transparency, accountability and integrity."

Is that okay? Then we move on No. 5.

MR. BOONTON: I have some observations.

MR. PIMENTEL: Yes?

MR. BOONTON: Can we rephrase *transparency, accountability and integrity* in No. 4, to—

MR. PIMENTEL: So how will it read, sir, in your proposal?

MR. BOONTON: Instead of *transparency, accountability and integrity*, we say, *in accordance with the aforesaid principles of transparency...*

MR. PIMENTEL: So how will it read, please?

MR. WANG: I think the word he said is *aforesaid principle.*

MR. PIMENTEL: Ah! *aforesaid.* All right. In other words, the stated principles. Yes.

MR. ANGARA: "...principles." Period.

MR. PIMENTEL: No, *with the aforesaid,* meaning to say, it has been said before.

MR. ANGARA: Okay.

MR. PIMENTEL: So, this paragraph will now read: "To thoroughly review our respective state of laws, standards, systems and strategies to determine their adequacy and consistency with our international commitment against corruption and with the aforesaid principles." How about inserting *in accordance with*?

MS. LOW: Could we actually shorten it even further to say, "To thoroughly review our respective state of laws, standards, system and strategies to determine their adequacy and consistency with our aforesaid principles."?

MR. PIMENTEL: Okay. Amended to include *consistency with our aforesaid principles.*

MS. LOW: Yes. It is just a repetition of what you have said.

MR. PIMENTEL: All right. So there's a proposal to even simplify it further: "To thoroughly review our respective state of laws, standards, system and strategies to determine their adequacy and consistency with our aforesaid principles."

MS. LOW: That's fine.

SEN. PIMENTEL: Maybe *with the principles above stated* or *mentioned above.* You know, *aforesaid* is—

MS. LOW: Or as you have suggested, Mr. Chairman, *in accordance with the principles.*

MR. PIMENTEL: Yes, *in accordance with the principles abovestated.* So now the sentence will now read: "To thoroughly review our respective state of laws, standards, system and strategies to determine their adequacy and consistency with our international commitments against corruption in accordance with the principles abovestated."

MS. LOW: No. Actually, "to determine the adequacy and consistency in accordance ..."

MR. PIMENTEL: That's correct. "... in accordance with the principles abovestated..."

All right, is that clear to everyone? Can we move forward to No. 5?

"To promote the participation of all sectors of society in advancing the Rule of Law, and transparency accountability, and integrity in the conduct of public affairs."

MR. DZUNG: Mr. Chairman, sorry. For me, the word *principle* is too much. For SEAPAC to guide the whole country with a principle is impossible. So I suggest to modify the word with *spirit.*

MR. PIMENTEL: Spirit?

MR. DZUNG: Spirit, yes Because *principle* is too much for the SEAPAC to guide all the parliamentarians

MR. PIMENTEL: So: "...in accordance with the *spirit* of the principles abovestated."

MR. DZUNG: Spirit of?

MR. PIMENTEL: No, the principles. This must end: *of* something, as in *spirit of the principles abovestated.*

MR. DZUNG: We put *spirit* in that?

MR. PIMENTEL: That's right.

MR. DZUNG: Followed by *principles* ?

MR. PIMENTEL: *Spirit of the principles abovestated.* Okay, we go back to No. 5: "To promote the participation of all sectors of society in advancing the Rule of Law, and transparency, accountability and integrity in the conduct of public affairs."

MR. BOONTON: Sir, it can be like this: "To promote participation of all sectors of society, advancing... *good governance* instead of "rule of law," then cross out *transparency and integrity,* and then "in the conduct of public and private affairs."

MR. PIMENTEL: All right, so, as amended, the sentence will now read: "To promote the participation of all sectors of society, advancing good governance in the conduct of public and private affairs." Is that so?

MR. VETERE: Can we say *in advancing the rule of law and good governance*? They are two different concepts. I think the rule of law is basically for respect of legality in general. Good governance is more of principles related to good administration, etcetera. I think that both of them can be equally important.

MR. BOONTON: Because the rule of law is the principle that is encouraged

to be used by the United Nations and the whole management process. The rule of law has its factors. Good governance has also its factors. But still the rule of law is in the envelope of good governance.

MR. PIMENTEL: It is included in our opinion?

MR. BOONTON: Yes, sir.

MR. PIMENTEL: With that understanding, I think we can proceed that the word *good governance* includes *the Rule of Law*.

So we approve the first page of the Manila Declaration. We go now to the second page where our names are indicated for our signatures.

"And we hereby further resolve to call on our respective peoples for their support and to join us in this challenging undertaking."

Any strongly held views that you want to propose for amending this particular sentence? If there is none, shall we consider all of the Manila Declaration approved. Thank you. Subject to the Secretariat giving us the clean copy. But I'll already begin so sign this.

And the final thing is the announcement of the venue of the next conference. Who is going to announce that? Certainly, I am not going to announce it. Somebody has to announce it. Where is the venue of the next conference?

MR. CHAROEN: Thailand proposes that it has to be the venue of the next conference.

MR. PIMENTEL: Yes, sir. Will that be Bangkok?

MR. CHAROEN: I don't know exactly, but in Thailand.

MR. PIMENTEL: Thailand is okay. Away from tsunami. So is there other opinion on that? If there is none, then we approve the suggestion that Thailand be the next venue of the SEAPAC.

MR. BOONTON: Beforehand, I have a proposal to the president of SEAPAC that every six months we have to meet each other to discuss—

MR. PIMENTEL: Can we approve first the particular motion?

MR. BOONTON: Yes, that Bangkok will be our venue.

MR. PIMENTEL: Can we approve that Thailand will be our next venue? Thailand, not Bangkok. Thailand, away from Phuket. Yes, Mr. Wang.

MR. YUEN: I'd like to join in approving that the next venue location in Thailand. I also want to thank our Thai delegates for agreeing to host the next congress.

MR. PIMENTEL: I think Dr. Wang is expressing his sentiment already. All of us appreciate the offer and we approve the offer for Thailand to be the next venue. [*Applause*] So with that, my job is done.

MR. ANGARA: Not yet, Mr. Chairman. Just one more item, as requested by our colleague from Thailand. He is recommending that we meet after six months, and what I will recommend is for the Executive Committee to meet once every six months during the entire term of three years so that we will be meeting for four times during the two-year period. And we will determine...if you will give me the authority, I will consult with you on the site of the next on the venue of the next Executive Committee.

MR. BOONTON: Mr. Chairman, I would like to ask permission. May I be allowed to propose that all documents that have been received from the various members that presented their papers here to be printed, if possible in book format as learning reference for my doctorate students. I will ask permission, if any country so agrees, through a formal letter. For my students. I am requesting from all of you, sir.

MR. PIMENTEL: I don't think there will be any objection, especially from us politicians. No objection at all. No question.

MR. DZUNG: Mr. Chairman, I like to come back to the Executive Committee meeting. I say once again: not to be too ambitious to meet again after six months. I don't know what is the financial situation of the delegates and also the host country. And we have many other meetings also, our parliament members have many international and regional sectors meetings to attend. To be realistic, six months for us is impossible. That's all I can say. Thank you.

MR. PIMENTEL: We appreciate the concerns of the delegate from Vietnam. But I think we should give it a try.

MR. ANGARA: I share your view, Mr. Chairman. Because we are a young organization, maybe in the immediate few months we ought to meet more often as we can. I realize there are logistical and other difficulties that we may encounter but I think it is good for our development that we meet as often as possible. I am sure we are not going to lack for topics or subjects or reports to make during these six succeeding months. And as the chairman said, let us give it a try. If it is not possible, then we can consult again and say, let's move the meeting to another date.

MR. PIMENTEL: So the President of SEAPAC is given that authority, unless there are other thoughts to the contrary. Now, with that, I think can we thank the participants now.

MR. ANGARA: Yes.

MR. PIMENTEL: In behalf of the organizers of this meeting, I would like to thank all of you for the graciousness of your attendance.

MR. WANG: Mr. Chairman, this being the last item in the agenda, may I take this opportunity to call for a vote of thanks to the chair from the delegates, and also to the Philippine chapter of SEAPAC, as well as the senators, for the excellent organization and the hospitality here during the last two days. So perhaps the other delegates can join me to give the local chapter a round of applause.

[*Applause*]

MR. PIMENTEL: Thank you for that. May we ask the heads of the delegation to please come over.

[*The signing of the Manila Declaration followed immediately after the photo session.*]

THE CONFERENCE WAS DECLARED OFFICIALLY CLOSED AT 5:10 P.M.

REGIONAL ACTION PLAN
OF THE SOUTH EAST ASIA PARLIAMENTARIANS AGAINST CORRUPTION

Following the establishment in Manila, Philippines of the SEAPAC as the regional chapter of the Global Organization of Parliamentarians Against Corruption (GOPAC) from among parliamentarians in the South East Asia Region, there shall be an action plan to be implemented over a two-year period ending at the next regional conference in Bangkok, Thailand.

The action plan shall have four main components, namely:

1. Institutionalization;
2. Capacity and knowledge building;
3. Reform dialogues; and
4. Ratification of the UN Convention Against Corruption.

The first component covers the establishment of the network among parliamentarians in South East Asia, and the institutionalization of a support office for the smooth functioning and sustainability of the activities of SEAPAC.

The second component proposes research on anti-corruption related legislation and good practices in parliaments of South East Asia, and capacity building activities for its members.

The third component prescribes the establishment of conferences and the holding of dialogues in countries in the South East Asia Region.

The fourth component refers to the contribution of SEAPAC to the eventual and ultimate implementation of the UN Convention Against Corruption, which requires the ratification of a number of member-countries.

A. Institutionalization

The institutionalization component consists of strengthening the network of parliamentarians belonging to GOPAC from South East Asia, through

contacting members of parliaments from the region. The aim is to expand the network as the work materializes and SEAPAC establishes itself as an authority on the issue.

As the bulk of the members of SEAPAC will be invited based on their reputation and track records in fighting corruption, they shall set the tone of the SEAPAC and serve as examples to other parliamentarians.

Local chapters

The participants in the Manila Conference will work as the core group of parliamentarians from their respective countries, organizing for the purpose their local chapters which will be registered and incorporated as a non-profit organization in accordance with their local laws.

The local chapters will formulate their respective mission statements, design a constitution, and adopt a code of conduct to be applied to their members.

Throughout the two-year period, each local chapter will conduct its activities in accordance with its mission statement, its general goal of curbing corruption, and the objective of becoming a developed chapter based on GOPAC guidelines.

Secretariat

The SEAPAC will be supported by a working secretariat responsible for the following:

- Provision for logistics and technical support to SEAPAC and to its members on issues related to their membership.

- Building and hosting a website for SEAPAC, and ensure communication among the members.

- Organization of the activities of SEAPAC, such as its regular meetings and conferences.

- Coordination of the projects undertaken by the chapter and the regional research conducted under its supervision.

The Secretariat will report directly to the President of SEAPAC.

Resource Generation

The Manila Conference was supported by several international funding agencies who are at the forefront in many initiatives in the fight against corruption.

The projects of SEAPAC for the next two years will certainly need funding, and there is a need to build on this goodwill with funding agencies, in order that they will give continuous support beyond the Manila Conference, and sustain the operations of SEAPAC as it establishes itself as a credible and effective vehicle in combating corruption in South East Asia.

B. Capacity and knowledge building

The legislative frameworks in most countries of South East Asia already provide for laws and regulations that can be used to curb corruption or institute reforms. However, due to political circumstances, lack of public awareness, and other reasons, such laws and regulations have either been ignored or under-implemented.

Hence, it is important to provide the members of SEAPAC with the necessary resources to map out such legislation and to document the good practices in the region in order to use them as tools for reform. This will be initiated by pilot studies, conducted by legal and administrative experts, in selected countries in South East Asia. Each pilot study will be presented and discussed at one of the conferences of SEAPAC.

This internal rehabilitation process needs to be combined with an adaptation and adoption process of the good practices developed in other regions and by other GOPAC chapters. For this end, SEAPAC will invite parliamentarians, and resource persons from other regions in order to share experiences and discuss issues such as: developing independent anti-corruption agencies, parliamentary immunity, political party financing, or access to information.

On a broader level, it is necessary for the members of SEAPAC to be acquainted with the international good practices and legislation aimed at curbing corruption. For this end, SEAPAC will provide its members with information on relevant international events.

C. Reform Dialogues

The SEAPAC will promote the holding of dialogues among its members in the region on needed reforms, legislations and tools that could adopted by the various parliaments concerned.

These dialogues shall feature reform issues, which will cross-fertilize with the practical experiences brought in by the participants from other regions.

D. Ratification of the UN Convention Against Corruption

The United Nations Convention Against Corruption was signed and launched in Mexico in December, 2003.

The parliamentarians in SEAPAC will promote, in their respective countries, the ratification of the Convention and its full implementation.

Adopted on April 1, 2005 in Manila, Philippines.

THE MANILA DECLARATION

WE, THE REPRESENTATIVES from the legislatures of the countries of the South East Asia Region, determined to extend to our peoples belonging to different cultures and societies the benefits of peace, progress and growth,

Convinced that corruption debilitates economies and undermines political and social institutions;

Conscious that corruption wastes scarce resources, deprives people of needed infrastructure and basic services, and engenders inequality, inequity and injustice;

Realizing that corruption distorts the distribution of the fruits of growth, and consequently widens the gap between the rich and the poor;

Acknowledging that corruption increases production costs and results in substandard goods and inferior service;

Determined to reverse the culture of corruption, restore the dignity of our peoples, and establish in our Region a regime of integrity, transparency and accountability; and

Realizing that collaboration among countries is essential in the fight against corruption;

DO HEREBY RESOLVE to commit ourselves, collectively and individually, to the following programme of action:

1. To call for, endorse, and support the ratification of the United Nations Convention Against Corruption so as to hasten its coming into force.

2. To foster closer collaboration among legislators of the Region and with multilateral organizations in order to forge a sustainable common front against corruption.

3. To establish the South East Asia Parliamentarians Against Corruption (SEAPAC) as a framework for cooperation and collaboration, as a vehicle for exchange of information and expertise, and to assist the Region's legislatures in the review, appraisal, and enactment of legislation towards the realization of our international commitments.

4. To thoroughly review our respective state of laws, standards, system and strategies to determine their adequacy and consistency with our international commitments against corruption in accordance with the spirit of the principles above stated.

5. To promote the participation of all sectors of society in advancing the Rule of Law, and good governance in the conduct of public and private affairs.

AND WE HEREBY FURTHER RESOLVE to call on our respective peoples for their support and to join us in this challenging undertaking.

Done in Manila, Philippines, on April 1, 2005.

CHEA CHETH Cambodia	EDGARDO J. ANGARA Philippines	WANG KAI YUEN Singapore
CHEA KIM Cambodia	AQUILINO Q. PIMENTEL, JR Philippines	PENNY LOW Singapore
THACH SETHA Cambodia	EMMANUEL JOEL J. VILLANUEVA Philippines	BOONTON DOCKTHAISONG Thailand
NEAV SITHONG Cambodia	JUAN PONCE ENRILE Philippines	CHAROEN KANTHAWONGS Thailand
NHEM THAVY Cambodia	JUAN M. FLAVIER Philippines	PRATIN SANTIPRABHOB Thailand
IMAM ANSHORI SALEH Indonesia	RICHARD J. GORDON Philippines	NOD ANH DZUNG Vietnam
ENI KHAIRANI Indonesia	OSCAR L. GOZOS Philippines	HO THI TUYET VAN Vietnam

UNITED NATIONS CONVENTION AGAINST CORRUPTION

Preamble

The States Parties to this Convention,

Concerned about the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law,

Concerned also about the links between corruption and other forms of crime, in particular organized crime and economic crime, including money-laundering,

Concerned further about cases of corruption that involve vast quantities of assets, which may constitute a substantial proportion of the resources of States, and that threaten the political stability and sustainable development of those States,

Convinced that corruption is no longer a local matter but a transnational phenomenon that affects all societies and economies, making international cooperation to prevent and control it essential,

Convinced also that a comprehensive and multidisciplinary approach is required to prevent and combat corruption effectively,

Convinced further that the availability of technical assistance can play an important role in enhancing the ability of States, including by strengthening capacity and by institution-building, to prevent and combat corruption effectively,

Convinced that the illicit acquisition of personal wealth can be particularly damaging to democratic institutions, national economies and the rule of law,

Determined to prevent, detect and deter in a more effective manner international transfers of illicitly acquired assets and to strengthen international cooperation in asset recovery,

Acknowledging the fundamental principles of due process of law in criminal proceedings and in civil or administrative proceedings to adjudicate property rights,

Bearing in mind that the prevention and eradication of corruption is a responsibility of all States and that they must cooperate with one another, with the support and involvement of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, if their efforts in this area are to be effective,

Bearing also in mind the principles of proper management of public affairs and public property, fairness, responsibility and equality before the law and the need to safeguard integrity and to foster a culture of rejection of corruption,

Commending the work of the Commission on Crime Prevention and Criminal Justice and the United Nations Office on Drugs and Crime in preventing and combating corruption,

Recalling the work carried out by other international and regional organizations in this field, including the activities of the African Union, the Council of Europe, the Customs Cooperation Council (also known as the World Customs Organization), the European Union, the League of Arab States, the Organisation for Economic Cooperation and Development and the Organization of American States,

Taking note with appreciation of multilateral instruments to prevent and combat corruption, including, inter alia, the Inter-American Convention against Corruption, adopted by the Organization of American States on 29 March 1996, 1 the Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union, adopted by the Council of the European Union on 26 May 1997,[2] the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, adopted by the Organisation for Economic Cooperation and Development on 21 November 1997,[3] the Criminal Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 27 January 1999,[4] the Civil Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 4 November 1999,[5] and the African Union Convention on Preventing and Combating Corruption, adopted by the Heads of State and Government of the African Union on 12 July 2003,

Welcoming the entry into force on 29 September 2003 of the United Nations Convention against Transnational Organized Crime,[6]

Have agreed as follows:

Chapter I
General Provisions

Article 1
Statement of purpose

The purposes of this Convention are:

(a) To promote and strengthen measures to prevent and combat corruption more efficiently and effectively;

(b) To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery;

(c) To promote integrity, accountability and proper management of public affairs and public property.

Article 2
Use of terms

For the purposes of this Convention:

(a) "Public official" shall mean: (i) any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority;

(ii) any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party; (iii) any other person defined as a "public official" in the domestic law of a State Party. However, for the purpose of some specific measures contained in chapter II of this Convention, "public official" may mean any person who performs a public function or provides a public service as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party;

(b) "Foreign public official" shall mean any person holding a legislative, executive, administrative or judicial office of a foreign country, whether appointed or elected; and any person exercising a public function for a foreign country, including for a public agency or public enterprise;

(c) "Official of a public international organization" shall mean an international civil servant or any person who is authorized by such an organization to act on behalf of that organization;

(d) "Property" shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets;

(e) "Proceeds of crime" shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence;

(f) "Freezing" or "seizure" shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority;

(g) "Confiscation", which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority;

(h) "Predicate offence" shall mean any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in article 23 of this Convention;

(i) "Controlled delivery" shall mean the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence.

Article 3
Scope of application

1. This Convention shall apply, in accordance with its terms, to the prevention, investigation and prosecution of corruption and to the freezing, seizure, confiscation and return of the proceeds of offences established in accordance with this Convention.

2. For the purposes of implementing this Convention, it shall not be necessary,

except as otherwise stated herein, for the offences set forth in it to result in damage or harm to state property.

Article 4
Protection of sovereignty

1. States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

2. Nothing in this Convention shall entitle a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law.

Chapter II
Preventive Measures

Article 5
Preventive anti-corruption policies and practices

1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.

2. Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption.

3. Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.

4. States Parties shall, as appropriate and in accordance with the fundamental principles of their legal system, collaborate with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this article. That collaboration may include participation in international programmes and projects aimed at the prevention of corruption. • 5

Article 6
Preventive anti-corruption body or bodies

1. Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as:

(a) Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies;

(b) Increasing and disseminating knowledge about the prevention of corruption.

2. Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of

its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided.

3. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption.

Article 7
Public sector

1. Each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, endeavour to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials:

(a) That are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;

(b) That include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;

(c) That promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;

(d) That promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions. Such programmes may make reference to codes or standards of conduct in applicable areas.

2. Each State Party shall also consider adopting appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to prescribe criteria concerning candidature for and election to public office.

3. Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.

4. Each State Party shall, in accordance with the fundamental principles of its domestic law, endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.

Article 8
Codes of conduct for public officials

1. In order to fight corruption, each State Party shall promote, inter alia, integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system.

2. In particular, each State Party shall endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions.

3. For the purposes of implementing the provisions of this article, each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, take note of the relevant initiatives of regional, interregional and multilateral organizations, such as the International Code of Conduct for Public Officials contained in the annex to General Assembly resolution 51/59 of 12 December 1996.

4. Each State Party shall also consider, in accordance with the fundamental principles of its domestic law, establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions.

5. Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.

6. Each State Party shall consider taking, in accordance with the fundamental principles of its domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article.

Article 9
Public procurement and management of public finances

1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in theirapplication, shall address, inter alia:

(a) The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;

(b) The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;

(c) The use of objective and predetermined criteria for public procurement decisions,

in order to facilitate the subsequent verification of the correct application of the rules or procedures;

(d) An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed;

(e) Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.

2. Each State Party shall, in accordance with the fundamental principles of its legal system, take appropriate measures to promote transparency and accountability in the management of public finances. Such measures shall encompass, inter alia:

(a) Procedures for the adoption of the national budget;

(b) Timely reporting on revenue and expenditure;

(c) A system of accounting and auditing standards and related oversight;

(d) Effective and efficient systems of risk management and internal control; and

(e) Where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph.

3. Each State Party shall take such civil and administrative measures as may be necessary, in accordance with the fundamental principles of its domestic law, to preserve the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue and to prevent the falsification of such documents.

Article 10
Public reporting

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:

(a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;

(b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and

(c) Publishing information, which may include periodic reports on the risks of corruption in its public administration.

Article 11

Measures relating to the judiciary and prosecution services

1. Bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary.

2. Measures to the same effect as those taken pursuant to paragraph 1 of this article may be introduced and applied within the prosecution service in those States Parties where it does not form part of the judiciary but enjoys independence similar to that of the judicial service.

Article 12

Private sector

1. Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.

2. Measures to achieve these ends may include, inter alia:

(a) Promoting cooperation between law enforcement agencies and relevant private entities;

(b) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State;

(c) Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;

(d) Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licences granted by public authorities for commercial activities;

(e) Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure;

(f) Ensuring that private enterprises, taking into account their structure and size,

have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.

3. In order to prevent corruption, each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences established in accordance with this Convention:

(a) The establishment of off-the-books accounts;

(b) The making of off-the-books or inadequately identified transactions;

(c) The recording of non-existent expenditure;

(d) The entry of liabilities with incorrect identification of their objects;

(e) The use of false documents; and

(f) The intentional destruction of bookkeeping documents earlier than foreseen by the law.

4. Each State Party shall disallow the tax deductibility of expenses that constitute bribes, the latter being one of the constituent elements of the offences established in accordance with articles 15 and 16 of this Convention and, where appropriate, other expenses incurred in furtherance of corrupt conduct.

Article 13
Participation of society

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

(a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;

(b) Ensuring that the public has effective access to information;

(c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;

(d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:

(i) For respect of the rights or reputations of others;

(ii) For the protection of national security or ordre public or of public health or morals.

2. Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention.

Article 14
Measures to prevent money-laundering

1. Each State Party shall:

(a) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer and, where appropriate, beneficial owner identification, record-keeping and the reporting of suspicious transactions;

(b) Without prejudice to article 46 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.

2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.

3. States Parties shall consider implementing appropriate and feasible measures to require financial institutions, including money remitters:

(a) To include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator;

(b) To maintain such information throughout the payment chain; and

(c) To apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.

4. In establishing a domestic regulatory and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering.

5. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financialregulatory authorities in order to combat money-laundering.

Chapter III
Criminalization and Law Enforcement

Article 15
Bribery of national public officials

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

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

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

Article 16
Bribery of foreign public officials and officials of public international organizations

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.

2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

Article 17
Embezzlement, misappropriation or other diversion of property by a public official

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.

Article 18
Trading in influence

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;

(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.

Article 19
Abuse of functions

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.

Article 20
Illicit enrichment

Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

Article 21
Bribery in the private sector

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

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

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

Article 22
Embezzlement of property in the private sector

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position.

Article 23
Laundering of proceeds of crime

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

(ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

(b) Subject to the basic concepts of its legal system:

(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;

(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

2. For purposes of implementing or applying paragraph 1 of this article:

(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

(b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;

(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;

(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.

Article 24
Concealment

Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.

Article 25
Obstruction of justice

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;

(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.

Article 26
Liability of legal persons

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions. • 15

Article 27
Participation and attempt

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.

2. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.

3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.

Article 28
Knowledge, intent and purpose as elements of an offence

Knowledge, intent or purpose required as an element of an offence established in accordance with this Convention may be inferred from objective factual circumstances.

Article 29
Statute of limitations

Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.

Article 30
Prosecution, adjudication and sanctions

1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.

2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.

3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.

5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.

6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.

7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:

(a) Holding public office; and

(b) Holding office in an enterprise owned in whole or in part by the State.

8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.

9. Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in accordance with that law.

10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.

Article 31
Freezing, seizure and confiscation

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;

(b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.

2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.

4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.

9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.

10. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a State Party.

Article 32
Protection of witnesses, experts and victims

1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

(b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

4. The provisions of this article shall also apply to victims insofar as they are witnesses.

5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

Article 33
Protection of reporting persons

Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

Article 34
Consequences of acts of corruption

With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.

Article 35
Compensation for damage

Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.

Article 36
Specialized authorities

Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

Article 37
Cooperation with law enforcement authorities

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.

2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

4. Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention.

5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

Article 38
Cooperation between national authorities

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

(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or

(b) Providing, upon request, to the latter authorities all necessary information.

Article 39
Cooperation between national authorities and the private sector

1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.

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

Article 40
Bank secrecy

Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.

Article 41
Criminal record

Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.

Article 42
Jurisdiction

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

(a) The offence is committed in the territory of that State Party; or

(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national of that State Party; or

(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or

(c) The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory; or

(d) The offence is committed against the State Party.

3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.

5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.

6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

Chapter IV
International Cooperation

Article 43
International cooperation

1. States Parties shall cooperate in criminal matters in accordance with articles 44 to 50 of this Convention. Where appropriate and consistent with their domestic legal system, States Parties shall consider assisting each other in investigations of and proceedings in civil and administrative matters relating to corruption.

2. In matters of international cooperation, whenever dual criminality is considered

a requirement, it shall be deemed fulfilled irrespective of whether the laws of the requested State Party place the offence within the same category of offence or denominate the offence by the same terminology as the requesting State Party, if the conduct underlying the offence for which assistance is sought is a criminal offence under the laws of both States Parties.

Article 44
Extradition

1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.

2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.

3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.

4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.

5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

6. A State Party that makes extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

7. States Parties that do not make extradition conditional on the existence of a

treaty shall recognize offences to which this article applies as extraditable offences between themselves.

8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.

13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.

14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.

16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

Article 45
Transfer of sentenced persons

States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.

Article 46
Mutual legal assistance

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(a) Taking evidence or statements from persons;

(b) Effecting service of judicial documents;

(c) Executing searches and seizures, and freezing;

(d) Examining objects and sites;

(e) Providing information, evidentiary items and expert evaluations;

(f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;

(g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;

(h) Facilitating the voluntary appearance of persons in the requesting State Party;

(i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;

(j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;

(k) The recovery of assets, in accordance with the provisions of chapter V of this Convention.

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.

7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply those paragraphs if they facilitate cooperation.

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

9. (a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;

(b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;

(c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent;

(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

11. For the purposes of paragraph 10 of this article:

(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;

(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;

(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where

a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.

15. A request for mutual legal assistance shall contain:

(a) The identity of the authority making the request;

(b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;

(c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;

(d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;

(e) Where possible, the identity, location and nationality of any person concerned; and

(f) The purpose for which the evidence, information or action is sought.

16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

21. Mutual legal assistance may be refused:

(a) If the request is not made in conformity with the provisions of this article;

(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;

(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;

(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

23. Reasons shall be given for any refusal of mutual legal assistance.

24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State

Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

29. The requested State Party:

(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;

(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

Article 47
Transfer of criminal proceedings

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

Article 48
Law enforcement cooperation

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;

(ii) The movement of proceeds of crime or property derived from the commission of such offences;

(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;

(c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;

(d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;

(e) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;

(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.

Article 49
Joint investigations

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

Article 50
Special investigative techniques

1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.

2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.

Chapter V
Asset Recovery

Article 51
General provision

The return of assets pursuant to this chapter is a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard.

Article 52
Prevention and detection of transfers of proceeds of crime

1. Without prejudice to article 14 of this Convention, each State Party shall take such measures as may be necessary, in accordance with its domestic law, to require financial institutions within its jurisdiction to verify the identity of customers, to take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates. Such enhanced scrutiny shall be reasonably designed to detect suspicious transactions for the purpose of reporting to competent authorities and should not be so construed as to discourage or prohibit financial institutions from doing business with any legitimate customer.

2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall:

(a) Issue advisories regarding the types of natural or legal person to whose accounts financial institutions within its jurisdiction will be expected to apply enhanced scrutiny, the types of accounts and transactions to which to pay particular attention and appropriate account-opening, maintenance and record-keeping measures to take concerning such accounts; and

(b) Where appropriate, notify financial institutions within its jurisdiction, at the request of another State Party or on its own initiative, of the identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny, in addition to those whom the financial institutions may otherwise identify.

3. In the context of paragraph 2 (a) of this article, each State Party shall implement measures to ensure that its financial institutions maintain adequate records, over an appropriate period of time, of accounts and transactions involving the persons mentioned in paragraph 1 of this article, which should, as a minimum, contain

information relating to the identity of the customer as well as, as far as possible, of the beneficial owner.

4. With the aim of preventing and detecting transfers of proceeds of offences established in accordance with this Convention, each State Party shall implement appropriate and effective measures to prevent, with the help of its regulatory and oversight bodies, the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group. Moreover, States Parties may consider requiring their financial institutions to refuse to enter into or continue a correspondent banking relationship with such institutions and to guard against establishing relations with foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group.

5. Each State Party shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non-compliance. Each State Party shall also consider taking such measures as may be necessary to permit its competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover proceeds of offences established in accordance with this Convention.

6. Each State Party shall consider taking such measures as may be necessary, in accordance with its domestic law, to require appropriate public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship to appropriate authorities and to maintain appropriate records related to such accounts. Such measures shall also provide for appropriate sanctions for non-compliance.

Article 53
Measures for direct recovery of property

Each State Party shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit another State Party to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an offence established in accordance with this Convention;

(b) Take such measures as may be necessary to permit its courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another State Party that has been harmed by such offences; and

(c) Take such measures as may be necessary to permit its courts or competent authorities, when having to decide on confiscation, to recognize another State Party's claim as a legitimate owner of property acquired through the commission of an offence established in accordance with this Convention.

Article 54
Mechanisms for recovery of property through international cooperation in confiscation

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to give effect to an order of confiscation issued by a court of another State Party;

(b) Take such measures as may be necessary to permit its competent authorities, where they have jurisdiction, to order the confiscation of such property of foreign origin by adjudication of an offence of money-laundering or such other offence as may be within its jurisdiction or by other procedures authorized under its domestic law; and

(c) Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a freezing or seizure order issued by a court or competent authority of a requesting State Party that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article;

(b) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a request that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article; and

(c) Consider taking additional measures to permit its competent authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such property.

Article 55
International cooperation for purposes of confiscation

1. A State Party that has received a request from another State Party having jurisdiction over an offence established in accordance with this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention situated in its territory shall,

to the greatest extent possible within its domestic legal system:

(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or

(b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with articles 31, paragraph 1, and 54, paragraph 1 (a), of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, situated in the territory of the requested State Party.

2. Following a request made by another State Party having jurisdiction over an offence established in accordance with this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

3. The provisions of article 46 of this Convention are applicable, mutatis mutandis, to this article. In addition to the information specified in article 46, paragraph 15, requests made pursuant to this article shall contain:

(a) In the case of a request pertaining to paragraph 1 (a) of this article, a description of the property to be confiscated, including, to the extent possible, the location and, where relevant, the estimated value of the property and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;

(b) In the case of a request pertaining to paragraph 1 (b) of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested, a statement specifying the measures taken by the requesting State Party to provide adequate notification to bona fide third parties and to ensure due process and a statement that the confiscation order is final;

(c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested and, where available, a legally admissible copy of an order on which the request is based.

4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral agreement or arrangement to which it may be bound in relation to the requesting State Party.

5. Each State Party shall furnish copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.

6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.

7. Cooperation under this article may also be refused or provisional measures lifted if the requested State Party does not receive sufficient and timely evidence or if the property is of a de minimis value.

8. Before lifting any provisional measure taken pursuant to this article, the requested State Party shall, wherever possible, give the requesting State Party an opportunity to present its reasons in favour of continuing the measure.

9. The provisions of this article shall not be construed as prejudicing the rights of bona fide third parties.

Article 56
Special cooperation

Without prejudice to its domestic law, each State Party shall endeavour to take measures to permit it to forward, without prejudice to its own investigations, prosecutions or judicial proceedings, information on proceeds of offences established in accordance with this Convention to another State Party without prior request, when it considers that the disclosure of such information might assist the receiving State Party in initiating or carrying out investigations, prosecutions or judicial proceedings or might lead to a request by that State Party under this chapter of the Convention.

Article 57
Return and disposal of assets

1. Property confiscated by a State Party pursuant to article 31 or 55 of this Convention shall be disposed of, including by return to its prior legitimate owners, pursuant to paragraph 3 of this article, by that State Party in accordance with the provisions of this Convention and its domestic law.

2. Each State Party shall adopt such legislative and other measures, in accordance with the fundamental principles of its domestic law, as may be necessary to enable its competent authorities to return confiscated property, when acting on the request made by another State Party, in accordance with this Convention, taking into account the rights of bona fide third parties.

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

(a) In the case of embezzlement of public funds or of laundering of embezzled public funds as referred to in articles 17 and 23 of this Convention, when confiscation was executed in accordance with article 55 and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party;

(b) In the case of proceeds of any other offence covered by this Convention, when the confiscation was executed in accordance with article 55 of this Convention and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party, when the requesting State Party reasonably establishes its prior ownership of such confiscated property to the requested State Party or when the requested State Party recognizes damage to the requesting State Party as a basis for returning the confiscated property;

(c) In all other cases, give priority consideration to returning confiscated property to the requesting State Party, returning such property to its prior legitimate owners or compensating the victims of the crime.

4. Where appropriate, unless States Parties decide otherwise, the requested State Party may deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposition of confiscated property pursuant to this article.

5. Where appropriate, States Parties may also give special consideration to concluding agreements or mutually acceptable arrangements, on a case-by-case basis, for the final disposal of confiscated property.

Article 58
Financial intelligence unit

States Parties shall cooperate with one another for the purpose of preventing and combating the transfer of proceeds of offences established in accordance with this Convention and of promoting ways and means of recovering such proceeds and, to that end, shall consider establishing a financial intelligence unit to be responsible for receiving, analysing and disseminating to the competent authorities reports of suspicious financial transactions.

Article 59
Bilateral and multilateral agreements and arrangements

States Parties shall consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this chapter of the Convention.

Chapter VI
Technical Assistance and Information Exchange

Article 60
Training and technical assistance

1. Each State Party shall, to the extent necessary, initiate, develop or improve specific training programmes for its personnel responsible for preventing and combating corruption. Such training programmes could deal, inter alia, with the following areas:

(a) Effective measures to prevent, detect, investigate, punish and control corruption, including the use of evidence-gathering and investigative methods;

(b) Building capacity in the development and planning of strategic anti-corruption policy;

(c) Training competent authorities in the preparation of requests for mutual legal assistance that meet the requirements of this Convention;

(d) Evaluation and strengthening of institutions, public service management and the management of public finances, including public procurement, and the private sector;

(e) Preventing and combating the transfer of proceeds of offences established in accordance with this Convention and recovering such proceeds;

(f) Detecting and freezing of the transfer of proceeds of offences established in accordance with this Convention;

(g) Surveillance of the movement of proceeds of offences established in accordance with this Convention and of the methods used to transfer, conceal or disguise such proceeds;

(h) Appropriate and efficient legal and administrative mechanisms and methods for facilitating the return of proceeds of offences established in accordance with this Convention;

(i) Methods used in protecting victims and witnesses who cooperate with judicial authorities; and

(j) Training in national and international regulations and in languages.

2. States Parties shall, according to their capacity, consider affording one another the widest measure of technical assistance, especially for the benefit of developing countries, in their respective plans and programmes to combat corruption, including material support and training in the areas referred to in paragraph 1 of this article, and training and assistance and the mutual exchange of relevant experience and specialized knowledge, which will facilitate international cooperation between States Parties in the areas of extradition and mutual legal assistance.

3. States Parties shall strengthen, to the extent necessary, efforts to maximize operational and training activities in international and regional organizations and in the framework of relevant bilateral and multilateral agreements or arrangements.

4. States Parties shall consider assisting one another, upon request, in conducting evaluations, studies and research relating to the types, causes, effects and costs of corruption in their respective countries, with a view to developing, with the participation of competent authorities and society, strategies and action plans to combat corruption.

5. In order to facilitate the recovery of proceeds of offences established in accordance with this Convention, States Parties may cooperate in providing each other with the

names of experts who could assist in achieving that objective. 6. States Parties shall consider using subregional, regional and international conferences and seminars to promote cooperation and technical assistance and to stimulate discussion on problems of mutual concern, including the special problems and needs of developing countries and countries with economies in transition.

7. States Parties shall consider establishing voluntary mechanisms with a view to contributing financially to the efforts of developing countries and countries with economies in transition to apply this Convention through technical assistance programmes and projects.

8. Each State Party shall consider making voluntary contributions to the United Nations Office on Drugs and Crime for the purpose of fostering, through the Office, programmes and projects in developing countries with a view to implementing this Convention.

Article 61
Collection, exchange and analysis of information on corruption

1. Each State Party shall consider analysing, in consultation with experts, trends in corruption in its territory, as well as the circumstances in which corruption offences are committed.

2. States Parties shall consider developing and sharing with each other and through international and regional organizations statistics, analytical expertise concerning corruption and information with a view to developing, insofar as possible, common definitions, standards and methodologies, as well as information on best practices to prevent and combat corruption.

3. Each State Party shall consider monitoring its policies and actual measures to combat corruption and making assessments of their effectiveness and efficiency.

Article 62
Other measures: implementation of the Convention through economic development and technical assistance

1. States Parties shall take measures conducive to the optimal implementation of this Convention to the extent possible, through international cooperation, taking into account the negative effects of corruption on society in general, in particular on sustainable development.

2. States Parties shall make concrete efforts to the extent possible and in coordination with each other, as well as with international and regional organizations:

(a) To enhance their cooperation at various levels with developing countries, with a view to strengthening the capacity of the latter to prevent and combat corruption;

(b) To enhance financial and material assistance to support the efforts of developing countries to prevent and fight corruption effectively and to help them implement this Convention successfully;

(c) To provide technical assistance to developing countries and countries with economies in transition to assist them in meeting their needs for the implementation of this Convention. To that end, States Parties shall endeavour to make adequate and regular voluntary contributions to an account specifically designated for that purpose in a United Nations funding mechanism. States Parties may also give special consideration, in accordance with their domestic law and the provisions of this Convention, to contributing to that account a percentage of the money or of the corresponding value of proceeds of crime or property confiscated in accordance with the provisions of this Convention;

(d) To encourage and persuade other States and financial institutions as appropriate to join them in efforts in accordance with this article, in particular by providing more training programmes and modern equipment to developing countries in order to assist them in achieving the objectives of this Convention.

3. To the extent possible, these measures shall be without prejudice to existing foreign assistance commitments or to other financial cooperation arrangements at the bilateral, regional or international level.

4. States Parties may conclude bilateral or multilateral agreements or arrangements on material and logistical assistance, taking into consideration the financial arrangements necessary for the means of international cooperation provided for by this Convention to be effective and for the prevention, detection and control of corruption.

Chapter VII
Mechanisms for Implementation

Article 63
Conference of the States Parties to the Convention

1. A Conference of the States Parties to the Convention is hereby established to improve the capacity of and cooperation between States Parties to achieve the objectives set forth in this Convention and to promote and review its implementation.

2. The Secretary-General of the United Nations shall convene the Conference of the States Parties not later than one year following the entry into force of this Convention. Thereafter, regular meetings of the Conference of the States Parties shall be held in accordance with the rules of procedure adopted by the Conference.

3. The Conference of the States Parties shall adopt rules of procedure and rules governing the functioning of the activities set forth in this article, including rules concerning the admission and participation of observers, and the payment of expenses incurred in carrying out those activities.

4. The Conference of the States Parties shall agree upon activities, procedures and methods of work to achieve the objectives set forth in paragraph 1 of this article, including:

(a) Facilitating activities by States Parties under articles 60 and 62 and chapters II to V of this Convention, including by encouraging the mobilization of voluntary contributions;

(b) Facilitating the exchange of information among States Parties on patterns and trends in corruption and on successful practices for preventing and combating it and for the return of proceeds of crime, through, inter alia, the publication of relevant information as mentioned in this article;

(c) Cooperating with relevant international and regional organizations and mechanisms and non-governmental organizations;

(d) Making appropriate use of relevant information produced by other international and regional mechanisms for combating and preventing corruption in order to avoid unnecessary duplication of work;

(e) Reviewing periodically the implementation of this Convention by its States Parties;

(f) Making recommendations to improve this Convention and its implementation;

(g) Taking note of the technical assistance requirements of States Parties with regard to the implementation of this Convention and recommending any action it may deem necessary in that respect.

5. For the purpose of paragraph 4 of this article, the Conference of the States Parties shall acquire the necessary knowledge of the measures taken by States Parties in implementing this Convention and the difficulties encountered by them in doing so through information provided by them and through such supplemental review mechanisms as may be established by the Conference of the States Parties.

6. Each State Party shall provide the Conference of the States Parties with information on its programmes, plans and practices, as well as on legislative and administrative measures to implement this Convention, as required by the Conference of the States Parties. The Conference of the States Parties shall examine the most effective way of receiving and acting upon information, including, inter alia, information received from States Parties and from competent international organizations. Inputs received from relevant non-governmental organizations duly accredited in accordance with procedures to be decided upon by the Conference of the States Parties may also be considered.

7. Pursuant to paragraphs 4 to 6 of this article, the Conference of the States Parties shall establish, if it deems it necessary, any appropriate mechanism or body to assist in the effective implementation of the Convention.

Article 64
Secretariat

1. The Secretary-General of the United Nations shall provide the necessary secretariat services to the Conference of the States Parties to the Convention.

2. The secretariat shall:

(a) Assist the Conference of the States Parties in carrying out the activities set forth in article 63 of this Convention and make arrangements and provide the necessary services for the sessions of the Conference of the States Parties;

(b) Upon request, assist States Parties in providing information to the Conference of the States Parties as envisaged in article 63, paragraphs 5 and 6, of this Convention; and

(c) Ensure the necessary coordination with the secretariats of relevant international and regional organizations.

Chapter VIII
Final provisions

Article 65
Implementation of the Convention

1. Each State Party shall take the necessary measures, including legislative and administrative measures, in accordance with fundamental principles of its domestic law, to ensure the implementation of its obligations under this Convention.

2. Each State Party may adopt more strict or severe measures than those provided for by this Convention for preventing and combating corruption.

Article 66
Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Convention through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Convention, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations. • 42

Article 67
Signature, ratification, acceptance, approval and accession

1. This Convention shall be open to all States for signature from 9 to 11 December 2003 in Merida, Mexico, and thereafter at United Nations Headquarters in New York until 9 December 2005.

2. This Convention shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Convention in accordance with paragraph 1 of this article.

3. This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Convention is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Convention. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 68
Entry into force

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Convention after the deposit of the thirtieth instrument of such action, this Convention shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Convention enters into force pursuant to paragraph 1 of this article, whichever is later.

Article 69
Amendment

1. After the expiry of five years from the entry into force of this Convention, a State Party may propose an amendment and transmit it to the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to

the States Parties and to the Conference of the States Parties to the Convention for the purpose of considering and deciding on the proposal. The Conference of the States Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties present and voting at the meeting of the Conference of the States Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Convention. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Convention and any earlier amendments that they have ratified, accepted or approved.

Article 70
Denunciation

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

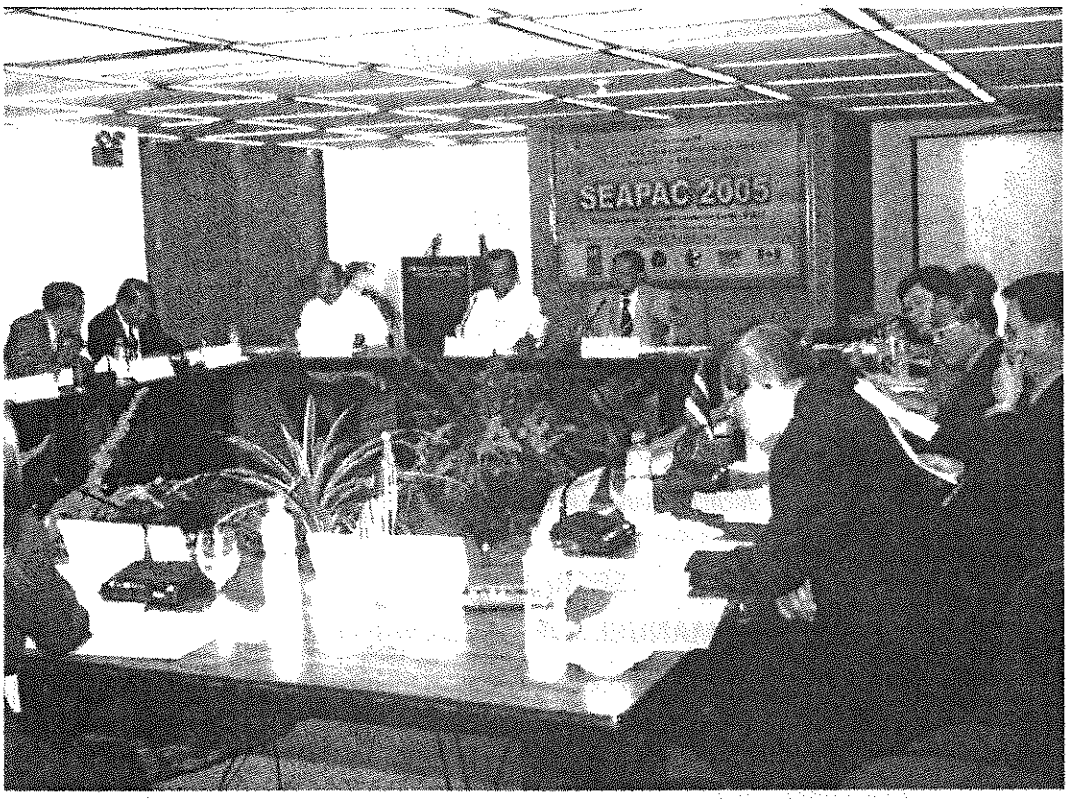
2. A regional economic integration organization shall cease to be a Party to this Convention when all of its member States have denounced it.

Article 71
Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Convention.

2. The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.



Round table discussion on items in the Regional Plan of Action

Signing of the Manila Declaration

SOUTH EAST ASIA PARLIAMENTARIANS AGAINST CORRUPTION

PRESIDENT

EDGARDO J. ANGARA

Senator, Republic of the Philippines

VICE PRESIDENT

CHAROEN KANTHAWONGS

Member, House of Representatives, Thailand

SECRETARY

EMMANUEL JOEL VILLANUEVA

Member, House of Representatives, Republic of the Philippines

TREASURER

OSCAR GOZOS

Member, House of Representatives, Republic of the Philippines

MEMBERS OF THE EXECUTIVE COMMITTEE

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Member of the Parliament, Singapore

NHEM THAVY

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AQUILINO Q. PIMENTEL

Senator, Republic of the Philippines

IMAM ANSHORI SALEH

Member, Peoples's Consultative Assembly, Indonesia

BOONTON DOCKTHAISONG

Member of the Senate, Thailand

SOUTH EAST ASIA PARLIAMENTARIANS AGAINST CORRUPTION

DELEGATES

Chea Cheth
Chairman, Commission of Interior, National Defense, Investigation and Anti-Corruption
Cambodia

Chea Kim
Member, Commission of Foreign Affairs, International Cooperation, Media and Information
Cambodia

Thach Setha
Member, Commission of Legislation
Cambodia

Neav Sithong
Secretary, Commission of Foreign Affairs, International Cooperation and Information
Member, Commission on Finance and Banking
Cambodia

Nhem Thavy
Member, National Assembly
Cambodia

Imam Anshori Saleh
Member, People's Consultative Assembly
Indonesia

Eni Khairani
Member, People's Consultative Assembly
Indonesia

Lee Chong San
Deputy President, Transparency International
Malaysia

Wang Kai Yue
Member of the Parliament
Singapore

Penny Low
Member of the Parliament
Singapore

Booton Dockthaisong
Member of the Senate
Thailand

Charoen Kanthawongs
Member of the House of Representatives
Thailand

Pratin Santiprabhob
Member of the Senate
Thailand

Pakpoom Mingtir
Secretary to the Delegation
Thailand

Ratchanee Leumprapas
Assistant Secretary to the Delegation
Thailand

Ngo Anh Dzung
Vice Chairman, Foreign Affairs Committee
National Assembly Office
Vietnam

Ho Thi Tuyet Van
Member of the Parliament from Quang Nam Province
Vietnam

DELEGATES FROM THE CONGRESS OF THE PHILIPPINES

Franklin M. Drilon
Senate President, Philippine Senate

Edgardo J. Angara
Convenor, SEAPAC Conference
Member, Philippine Senate

Juan M. Flavier
Senate President Pro-Tempore, Philippine Senate

Aquilino Q. Pimentel, Jr.
Senate Minority Leader, Philippine Senate

Richard Gordon
Member, Philippine Senate

Jose C. De Venecia, Jr.
Speaker, House of Representatives

Leovigildo Banaag
Member, House of Representatives

Oscar Gozos
Member, House of Representatives

Emmanuel Joel Villanueva
Member, House of Representatives

SPEAKERS AND PRESENTORS

Mahar Mangahas
President, Social Weather Station

Eduardo Vetere
Director, UN Division of Treaty Affairs

Martin Ulrich
GOPAC Executive Secretary

Nicasio Conti
President, Anti-Graft Commission, Philippines

Ma. Merciditas N. Gutierrez
Chief Presidential Legal Counsel, Philippines

Jak Jabes
Director, Governance and Cooperation Division
Asian Development Bank

Simeon V. Marcelo
Ombudsman, Republic of the Philippines

CONFERENCE SECRETARIAT

Organizing Committee

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Transparency International

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Journal Officers

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Stenographers

Eleuteria N. Mirasol
Cecil T. Sotto
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Maybelle T. Balagne

Conference Site Security

Prudencio Gerardino
Ronald Jiz
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Tirso Rosales
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Charlie Montilla
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Pages

Manuel G. Parlade
Darwin Lorilla
Edgardo Ardiente
Relindo Lopez
Carlos Begino
Elmore Mercurio
Nelson Dimayuga
Rolando Nucup
John Herrera
Raul Herrera
Jaime Baniqued

Encoders/Clerks

Anna Degesica
Jose Aristoteles
Trinidad Abrasaldo
Anthony Delejiro
Mel Concepcion

Typesetters and Layout Artists

Leonando R. Cruzate
Joey D. Santos

ABOUT GOPAC

The Global Organization of Parliamentarians Against Corruption (GOPAC) is an international organization with the primary goal of bringing together parliamentarians and goverment leaders, international organizations and individuals to combat corruption and promote transparency and accountability in government.

GOPAC was established at the October 2002 Global Conference Against Corruption in Ottawa, Canada. The conference was supported by the Parliament of Canada, the World Bank Institute, and the Canadian International Development Agency. Over 170 parliamentarians from 60 countries participated. GOPAC is presently chaired by Mr. John Williams of Canada.

The program regions of GOPAC include Asia, Africa, Canada, Eastern Europe, and the Middle East. Each region is represented in the GOPAC Executive Committee. Representing Asia in the Executive Committee is Senator Edgardo J. Angara of the Philippine Senate.

Parliamentarians of countries in South East Asia have organized the South East Asia Parliamentarians Against Corruptions (SEAPAC) in a conference in Manila, Philippines, on March 31- April 1, 2005.

Parliaments which have members in the GOPAC and SEAPAC are encouraged to organize a national chapter in their respective countries. In the Philippines the parliamentarians who attended the conference in Ottawa have organized the Global Organization of Parliamentarians Against Corruption (GOPAC) Philippines, Inc. and registered it as a corporate body with the Philippine Securities and Exchange Commission.