

## **Combating Corruption in Southeast Asia**

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### **Introduction**

This chapter will examine recent progress of Cambodia, Laos, Thailand and Viet Nam to set up effective institutions to fight corruption in the public sector, drawing on governance assessments recently carried out by the Asian Development Bank. It will make recommendations both for improving ongoing efforts at the country level, and for joining forces at the regional level. Anti-corruption efforts in these four countries reveal both similarities and differences, making the sub-region interesting for comparative analysis of the causes and consequences of different approaches.

### **Background**

The effort to combat corruption has moved to the center of the debate about good governance, economic growth and poverty reduction. The impetus behind this move has come from many sources. Increasing flows of aid and foreign investment have increased the temptations for gatekeepers. The end of the cold war has reduced the willingness of donor countries providing aid to

overlook financial improprieties in light of broader geopolitical interests. Donor country fatigue has placed increasing pressure upon foreign assistance agencies to demonstrate that they are delivering maximum value for the money. The negative example of a handful of “kleptocratic” regimes has underscored the danger of political and social collapse if widespread corruption is allowed to fester unchecked.

Another factor is that in an era of increasing trade liberalization, an economic crisis such as occurred in the region in 1997 may be precipitated by pent-up structural weaknesses, including a combination of financial market, corporate and governance problems. For years, governance weaknesses had been eating away at the foundations of east Asia. Aside from the inherent fragility of a macroeconomic framework increasingly financed by short-term external debt, there was outward tolerance of the deterioration of public/private co-operation into closed circles of influence and privilege. Further, there was obliviousness to the mounting, and largely invisible, economic costs deriving from the lack of transparency and accountability and the shrugging acceptance of corruption. Indeed, there was even a benevolent view of rent-seeking and private collusion as necessary lubricants for the system. The weaknesses were not limited to the government or to lax supervision of the banking system, but included grave problems of corporate governance in the private sector itself, stemming from a lack of transparency and absence of strong competitive checks and balances.

Citizens in the region have served notice that they are no longer willing to tolerate such gross abuses of the public trust for private gain. The liberalization of the press has enabled journalists to write more freely about official indiscretions. Improvements in education and increased information flow between countries have made their public more aware of anticorruption efforts in other countries and less willing to tolerate systematic abuses at home. The rise of new global nongovernment organizations (NGOs) dedicated to fighting corruption has helped to bring and keep the issue in the spotlight. Foreign investors are also favoring countries that make concrete progress in their structural reforms.

### **The Countries in Focus**

The four southeastern Asian countries covered in this chapter (namely — Cambodia, Laos, Thailand and Viet Nam) have expressed concern at the highest level about the need to combat corruption. These countries make up part of the Greater Mekong sub-region. With the onset of peace in the 1990s, there have been rapid changes and improvements in living standards and conditions, although setbacks have occurred since 1997. For instance, the Mekong countries are gradually shifting from subsistence farming to more diversified economies, and to more open, market-based systems. In parallel with this are the growing commercial relations among the Mekong countries in terms of cross-border trade, investment, and labor mobility. Moreover, natural resources, particularly hydropower, are beginning to be developed and utilized on a sub regional basis. However, because of the legacy of conflict in the region, the militaries of the 4 countries are large, and in a position to take advantage of their prominent positions.

All of these dynamic factors pose major challenges to governance the sub-region. In 1995 the Asian Development Bank (ADB) adopted its governance stance in its Sound Development Management policy, which defines governance as

“the manner in which power is exercised in the management of a country’s social and economic resources for development.”

The policy specifies four conditions necessary for good governance: accountability, participation, predictability, and transparency. Later, ADB’s anti-corruption policy was approved in 1998, defining corruption as:

“the misuse of public or private office for personal gain.”

To get an initial view of the challenges in each country, ADB has carried out governance assessments. These assess the effectiveness of past assistance from the Bank and other donors, so as to formulate a role for the Bank in addressing future governance challenges.

The governance assessments are being done collaboratively with the World Bank, the United Nations Development Programme (UNDP), and other donors by providing isolated diagnoses so as to avoid duplicating efforts and thereby creating confusion in these countries. Both the ADB and the World Bank have recently adopted performance allocation systems for dividing scarce concessional lending resources: in the case of the ADB this is the Asia Development Fund. This work is going ahead despite the difficulties of making comparisons between countries based on governance. Of the four GMS countries discussed here, three are Asia development fund borrowers: Cambodia, Laos, and Viet Nam. As of 2002, the fund's allocations to these countries will take into account their performance on a number of governance indicators.

In the assessments of the four Southeast Asian countries, ADB examines the strength of each government's commitment to good governance, including sound macroeconomic and financial management, participatory and pro-poor economic policies, effective delivery of public services, and enforcement of contractual and property rights. Since the poor depend heavily on basic services in the public sector — such as health clinics, schools, courts and police — weak governance affects them the most. The ADB's (1999a) recently approved poverty reduction strategy highlights that good governance facilitates participatory pro-poor policies, as well as sound macroeconomic management.

Since 1997, it is clear that the best performing regional economies are the ones most successful in carrying out structural reforms, including the combating of corruption. The People's Republic of China (PRC), for example, has slashed state-owned enterprise and civil service employment, forced the military out of most businesses, and increased government revenues by nearly a half (in terms of percentage of GDP). South Korea has carried out drastic reforms in its banking system and of its largest companies. Both countries have toughened measures to combat (still serious) corruption. An outcome of these reforms has been better economic performance than in neighboring countries.

Attempts are also underway in the four southeast Asian countries to combat corruption by strengthening public administration, expenditure management, and by the enforcement of a sound legal framework at the national level. To effectively fight corruption, every public organization needs to build in safeguards to protect the public interest in all their policies, procedures and plans. Progress to date is uneven, with some countries performing better than others, and there are some better-performing sectors within countries.

### *Cambodia*

A recent study carried out at the request of the supreme council on administrative reform of the council of ministers (World Bank, 2000a) found that Cambodian households believe that public sector corruption is Cambodia's leading problem, and it is worse than three years ago. However, the enterprises surveyed found it by a close margin the second worst problem after street crime. Households, enterprises, and government officials surveyed all rank the courts as having the least integrity, followed by the Officer of the Prosecutor and the Customs Authority. Yet for the poor households surveyed, which among all households pay the largest percentage of their income in bribes, the largest bribes go to health and education authorities.

Further analysis shows that corruption is reduced in agencies with merit-driven personnel systems that reward skills, competence and performance. Corruption is increased where there are low public sector salaries, delayed salary payments, weak performance evaluation and disciplinary procedures, extra-budgetary funding mechanisms, and lack of complaint mechanisms leading to disciplinary action. Thus, there is reason to hope that corruption will decline as a result of broad-ranging reforms to the State that were launched in 1999.

At a meeting (Royal Government of Cambodia, 2001) chaired by Prime Minister Samdech Hun Sen, the ADB (2001a) launched

its Cambodia governance assessment. ADB (2001b) updated the findings of the governance study on Cambodia in a new study launched in May, which compares governance challenges in four countries of the Mekong sub-region.

The Cambodia governance study has been useful to the Government (council for administrative reform, 2001) in preparing its *Governance Action Plan* (GAP). These studies have led to Cambodia taking major steps in the past year to promote good governance and to improve public sector performance. Some examples include:

- Budget implementation in priority social sectors is gradually improving, while maintaining an overall expenditure restraint;
- The financial sector has seen bank restructuring and steps have been initiated to close non-viable banks;
- Public administration reforms include a civil service census, identification of ghost workers, the first phase of military demobilization, and crystallizing the concept of priority mission groups;
- In the area of natural resources, a widely consulted immovable property Law has been submitted to the National Assembly for Adoption, and a draft forestry, fisheries and water laws are now under preparation; and
- The Seila program has instituted decentralized planning, financing and management in 100 commune development committees in six provinces encompassing over 1,000 villages.
- An independent supreme audit authority is being set up, reporting to the National Assembly.
- An anti-corruption unit has been set up in the Council of Ministers, and an anti-corruption law has been drafted.
- A legal framework and enforcement mechanisms are being established.

The broad-ranging reforms underway in Cambodia, if fully implemented, would go a long way toward reducing corruption. But what are the chances that they will be fully implemented? Reforms are never easy to implement by any government. Yet there is at least one important reason to anticipate that implementation

will be even more difficult in this case — Cambodia has a recent tragic legacy of civil conflict, and there is the need to prevent future conflict. We recall that Cambodia has experienced frequent, and unusually drastic, changes in its political and economic regimes, culminating in the *Kymer Rouge* period from 1975–79 when more than 1 million people were killed or starved to death, this was about 15% of the population.

The United Nations Transitional Authority in Cambodia (UNTAC) officially arrived in March 1992 to help govern the country until a new, legitimate government was established after general elections. The UNTAC operation was undertaken under extremely difficult and complex conditions: 360,000 returning refugees had to be repatriated, and the *Khmer Rouge* pulled out of the election process and resumed their civil war in the jungle.

General elections under UNTAC took place in May 1993. Following post-election turmoil and intensive negotiations, the three major political parties — the National United Front for an Independent, Neutral, Peaceful, and Cooperative Cambodia (FUNCINPEC), the Cambodia People's Party (CPP), and the Buddhist Liberal Democratic Party — formed a coalition government. This political compromise resulted in an uneasy arrangement of two co-prime ministers as well as co-ministers of the interior and defense. Fighting between the *Khmer Rouge* and the Royal Cambodian Armed Forces continued sporadically.

Serious political tension emerged within the CPP-FUNCINPEC coalition government in 1997 leading to fighting among the armed forces in Phnom Penh. The prime minister fled the country, foreign donors suspended or terminated a number of assistance programs, and many foreign private investors lost confidence and left Cambodia. Through 1997 and 1998, Cambodia's growth rates were virtually zero.

In late 1997 agreement was reached to hold Cambodia's second national election in 1998. Forty political parties ran for office, and three parties — the CPP, FUNCINPEC, and the Sam Rainsy Party — gained seats in the National Assembly. A new CPP-FUNCINPEC

coalition government was formed in November 1998. Then mass defections by Khmer Rouge soldiers, and the death of Pol Pot in early 1998, ended for the most part three decades of civil war.

This legacy of conflict makes governance reforms difficult for at least two reasons. First of all, the destruction of the economy and skilled human resource base has eroded the necessary foundation for reform. During the Khmer Rouge period, Cambodians wearing glasses or other symbols of professional status were systematically murdered; others left the country. Thus, there are now severe shortages of qualified personnel in all skill categories needed for effective public institutions. In addition, because of the weak state of the economy following the conflict, Cambodia's GDP per capita is one of the lowest in the region. The combination of skill shortages and a weak economy hinders institutional development, and contributes to a low level of tax collection, leading *inter alia* to average salaries of government officials of US\$18 per month. This must be compared to a minimum cost of living for an average family in Phnom Penh of around US\$200 per month.

With these constraints, the government's reform capacity is dependent on assistance from international donors. For example, donors typically give *ad hoc*, extra-budgetary incentive payments to Cambodian counterparts (Godfrey, 2000). Counterparts surveyed received average donor supplements of \$194. When their respective donor projects were completed, some found other projects, which continued the supplements. Those that did not find new donors had to find income from other sources, and thus became, in effect, part-time government employees. This roller-coaster income stream and the 'projectizing' of government ministries and provincial departments are seriously hindering the establishment of governance reforms: it sidelines the required build-up of capabilities.

A second factor hindering the implementation of reforms is the legacy of civil conflict itself. Collier (forthcoming) points out that because of the inter-group hatred left over from indoctrination during the conflict period, the chances of further conflict in a society like Cambodia's is high. Political disputes that would be minor in other countries can escalate easily to violence in Cambodia,

as evidenced by an attempted coup in November 2000, and two hotel bombings in July 2001. To reduce the risk of such violence, the government is careful to address the needs and grievances of the leaders of major factions. Since many state reforms are at least initially opposed by certain leaders, the government has to walk a tightrope — trying to move steadily forward on its reform agenda, while ensuring that there is robust constituency of support powerful enough to outweigh opponents, and to dissuade them from resorting to violence.

For example, one goal of the GAP is to complete a nation-wide demobilization and reintegration program of its military personnel to reduce defense spending, to allow for increases in public expenditures in other areas (including institutional changes to combat corruption), and to increase public security. Yet unless the program is perceived by factional leaders in the military as fair, then violent confrontations could ensue. This risk has slowed down implementation both by the government and by donors.

The staff of institutions in charge of managing valuable natural resources (including national parks and environmental protection) have not received sufficient living wages. This creates incentives for them to abuse their authority, for instance, by charging unofficial payments for services. In addition, the effective implementation of reforms requires the Government to address some sensitive issues such as political conflicts, the continuing military interests in logging activities, and cross-border smuggling activities. Again, the government needs to tread carefully to ensure that factional leaders perceive the process to be fair.

Because of Cambodia's post conflict situation, *inter alia*, reforms have been delayed, and delays are likely to continue.

### *Laos*

Corruption in Laos is a key constraint at all levels:

“The politically powerful avoid paying tax, accept ‘commissions’ for facilitating projects or awarding contracts, and pocket pay-offs for

reducing charges, duties or taxes for family and friends” (Stuart-Fox 1997, p. 207).

Donor-funded procurements are rigged to include funds for cars for personal use and ministers try to commandeer cars provided to support donor projects for their personal use. This sets an example for lower-level officials, who supplement their low salaries through similar behavior.

New opportunities for corruption opened up as economic reforms started to take hold in the 1980s. For example, giving provinces the right to trade directly with neighboring countries has opened the way for trade-related graft. The opening up to foreign investment has introduced opportunities to collect money to facilitate required authorizations, and the enhanced political and economic role given to the army has provided new opportunities for smuggling. Corruption has also spread to personnel management, leading to the rapid promotion of those close to powerful leaders (Stuart-Fox 1997). This behavior reduces government revenues, misallocates expenditures, reduces foreign investment, and erodes public trust. Many people believe that corruption has become so pervasive that it is now the main impediment to reform (Evens 1998). Naturally officials fear that their own actions will be discovered, and are uncertain what their status would be in a setting with less corruption.

The current government has taken many actions to address the problem, including setting up an anti-corruption commission in 1993, placing new controls on illegal logging, and publicly condemning lavish consumption (*Khaosan Pathet Lao*, news bulletin cited in Stuart-Fox, 1997).

Laos experienced its share of conflict until 1975, when the Lao people’s democratic republic (PDR) was established. Since then, and unlike the situation in Cambodia, the ruling Lao people’s revolutionary party (LPRP) has shown itself to be remarkably resilient. Transitions of power have tended to be smooth, the new generation of leaders has proven more open to reform, and the Politburo now has some ethnic diversity. Organized opposition to the LPRP is

weak. A number of small guerrilla groups exist, bandits launch occasional attacks, and a few dissident groups are based in the USA and Eastern Europe. The media are entirely State controlled.

This political stability has helped to underpin the gradual development of institutions that could address corruption, although the necessary achievements are far from complete. There is some progress in three areas: establishing a constitutionally-based foundation for rule of law, a gradual expansion of political participation, and improvements in public financial management. A more robust system of rule of law can begin to punish corrupt officials. Expanded participation can expose and challenge leaders to rein in corrupt behavior, and improved financial management provides tools both to prevent corruption, and to catch corrupt officials in the act.

### *Constitutional Foundation*

The foundation for an integrity system based on rule of law in Laos came when the supreme people's assembly adopted the constitution in 1991 (Savada, 1994), declaring the country to be a people's democratic state. Although the assembly had been charged with drafting a constitution in 1975, it gave the task a low priority. However, international development agencies were reluctant to invest in Lao PDR in the absence of fixed, knowable law.

Following Politburo approval in 1990, a draft constitution was made public. Despite calling for discussions of the draft, first among party and government officials and then among the public, the LPRP viewed disagreement with its party line unfavorably, and reiterated that a multiparty system would not be forthcoming.

While the 1991 constitution contains elements of an earlier revolutionary orthodoxy, it is clearly influenced by the economic and political liberalization within Lao PDR and the dramatic changes in the wider socialist world.

The constitution establishes the legality of a set of authorities that resemble the traditional differentiation between executive, legislative, and judicial branches of government. The delineation

does not imitate any particular model (neither Vietnamese, nor Russian, nor French), but it pays respect to the idea of basic responsibilities lodged in designated institutions.

Even though the constitution has not changed the imbedded patterns of the Laotian political system or threatened the party's dominant role, it has the potential to protect human rights and respect for the law, by the rulers as well as the ruled. It is expected that the observation of crumbling of communist regimes elsewhere, accompanied by widespread pro-democracy movements, will direct that Lao PDR will accede to growing demands for a more dependable rule of law.

Some heartening legal and judicial improvements have taken place, including the evolution of an identifiable system of legislation, the publicizing of laws and decrees, the expansion of legal training, the completion of a bench book for judges, and the development of a private Bar. However, the vast majority of new laws have not yet been enforced.

The legal system's overall capacity remains weak and faces many of the same systemic problems as the civil service. These problems cannot be addressed with donor-funded projects alone, but require political commitment and financial support. As a result, businesses will continue to be hampered by ambiguous rules, opaque enforcement procedures, and opportunities for administrative intervention and discretionary actions. Laws tend to be enforced in ways that benefit vested interests.

### *Political Participation*

A gradual expansion of participation is another feature of the emerging integrity system. Lao PDR is, at best, at the very beginning of democracy. At present, the public participates in only two elections, namely, those for the National Assembly and for village heads. Even so, within this apparent democracy the party controls elections and determines the outcomes by pre-selecting the candidates.

At the national assembly election in December 1997 only four nonparty candidates were selected to stand, of which only one gained

a seat. Since then, some positive changes have taken place: members now discuss and vote on draft laws and do not enact all those submitted; an electronic voting system allows secret ballots; microphones permit members to speak from their seats, thereby promoting more debate. A department of citizens' complaints and petitions has been established.

Nevertheless, much more work is needed to make the national assembly a truly effective legislative body. Agenda setting needs to be more systematic and validated through nationwide public consultation; legislative drafting and floor deliberation processes need to be streamlined and legal draftspersons should be better trained. Legislative committees should be given more technical skills; session proceedings should be documented; and new laws, regulations, and session proceedings should be disseminated more widely and systematically. The National Assembly is proceeding to address these and other improvements with support from a UNDP project (Reyes 1999).

### *Improving Financial Management*

Improvements in public financial management constitute a third feature of the integrity system. Lao PDR is a member of the International Monetary Fund (IMF), which in 1998 laid down an international code for public financial management (IMF, 1998). The code covers four broad requirements: clarity of roles and responsibilities; public availability of information; open budget preparation, execution, and reporting; and independent assurances of integrity. The government has made some progress in moving toward these requirements.

As concerns role clarity, the constitution requires the national assembly to approve both the budget and the development plan, but contrary to the code, the national assembly does not receive detailed information on the budget. There is also no indication that the national assembly approves or reviews extra-budgetary spending, quasi-fiscal activities, or government equity holdings.

Lao PRD generally does not comply with the code's requirement for public availability of information. While a budget document was released to the public for the first time in 1997 for fiscal year (FY)1997/98, it did not cover extra-budgetary activities, contingent liabilities, tax exemptions, quasi-fiscal activities, or original and revised estimates for the preceding two years, or fiscal reporting practices as required by the code. Nevertheless, publishing the budget was a promising step toward compliance, although no such publication was released for FY1998/99.

The FY 1997/98 budget did not conform to the code's requirement for open budget preparation, including public disclosure of economic forecasting assumptions, fiscal risks, overall budget balance, and accounting standards.

As concerns independent assurances of integrity, government accounts are incomplete, inconsistent, and difficult to comprehend, and there is no independent audit authority (World Bank, 1997: pp. 99–113). The ministry of finance's department of financial inspection only inspects the accounts of government organizations where financial problems are known to have occurred. This limited role is reportedly due to the lack of staff and expertise. The ADB has provided technical assistance to help set up a national audit office; however it is under the office of the Prime Minister, and thus not in compliance with the minimum standard of independence.

The IMF's code also calls for the administrative application of tax laws to be subject to procedural safeguards. Here the situation has recently improved with assistance from a UNDP/IMF project (IMF/UNDP, 1999). Various reforms have reportedly improved the filing rate from 30 to 80 percent and increased collections significantly. Customs procedures have also improved, although customs revenues have not, probably because of low [quoted] valuation of imported goods, smuggling, and the tariff reductions required by ASEAN.

Largely because of problems on the revenue side, the fiscal deficit has gradually worsened since the late 1980s, and reached 14.8 percent of GDP in 1998, excluding grants. For the first time, part

of this deficit was not covered by foreign assistance and had to be financed by the Central Bank.

Even when the government is determined to move on a specific issue, capacity for market-oriented development management, including indicative planning, policy formulation, and coordination, is limited. Until conditions change, significant progress is doubtful.

### *Thailand*

Thailand is undergoing its most fundamental political change since 1932 when the monarchy was replaced by a constitutional system. The hallmark of the change is the new constitution, which reflects broad Thai aspirations for greater democratization and more responsive and accountable government. Important reforms since the new constitution was promulgated include 11 new economic bills as part of the nation's response to the economic crisis. These bills lay the framework for improved functioning of the economy, modernized bankruptcy (reorganization and restructuring) procedures, and establishing strong regulatory frameworks for banks and other financial institutions.

Under the new constitution, five institutions will play an important role in advancing accountability and integrity at all levels of government: the national counter corruption commission (NCCC), the freedom of information commission, the national audit commission, the judiciary, and the ombudsmen. The constitutional requirements of increased decentralization and role for civil society and the media are also contributing to combating corruption. However, making progress in fighting corruption will require going beyond such watchdog mechanisms. Every public organization needs to build in safeguards to protect the public interest in all their policies, procedures and plans.

### *National counter corruption commission*

Prior to 1975, anticorruption activities fell under police jurisdiction. Although the law provided for heavy punishment if officials were

convicted, loopholes made detecting and prosecuting corruption difficult, and regulations hampered police investigations. To strengthen the effort to combat corruption, the counter corruption commission was established in 1975. Its activities were divided into three areas: suppression (complaint investigation), prevention, and public relations, but it also had limited effectiveness.

The NCCC is a new constitutional body, separate from the executive and reporting directly to the national assembly, with powers to address corruption and reverse its deleterious effects on growth and development. It has the power to request asset and liability statements (ALS) from politicians and senior bureaucrats, and to remove them from office if a statement is deemed false. The NCCC can also investigate and prosecute cases of corruption, abuse of power and malfeasance.

Recent Thai and ADB governance studies confirm the importance given by the new constitution to combating corruption (ADB, 1999b and 2000; Pasuk and Sungsidh, 1999; Borwornsak, 2001; National Democratic Institute, 2000). The new government that came into office February 2001 has avowed its commitment to prevent and suppress corruption by strengthening the NCCC, and by amending laws and regulations to facilitate investigations, to prevent conflicts of interest, and to encourage citizens to expose corrupt officials. (Kingdom of Thailand, 2001).

The NCCC estimates that up to 30 percent of government procurement budgets may be lost due to corrupt practices. At the lower end of this range, the "corruption" budget would nearly equal that of the ministry of agriculture. At the upper end, it would exceed the combined budgets of agriculture and public health.

In carrying out its new mandate, the NCCC faces the challenges of transforming itself from a branch of the office of the Prime Minister into a public autonomous organization, developing new and more flexible practices in management, personnel administration, and budget and financial management. The NCCC needs the capacity to prevent, investigate, and deter corruption at the local level. It must have additional training in appropriate investigative techniques and the recruitment of staff in disciplines such as money

laundering and forensic accounting. The NCCC currently has a staff of 400, including 200 investigators. It is governed by a nine-member commission, appointed by the government and serving for a four-year term (NCCC, 1999 and interviews). The ministry of interior has agreed to provide 300 staff to help the NCCC combat corruption in government procurements, particularly at the sub national level. Although the additional expertise from the ministry will be welcome, extra care must be taken to ensure that the independence of the NCCC isn't compromised.

The NCCC has had some early successes, including the forced resignation of a senior minister for alleged corruption. The Constitutional Court narrowly rejected another high profile case against the serving Prime Minister. He had been charged with concealing assets from scrutiny by the NCCC prior to attaining office.

### *Freedom of Information Office*

In addition to the NCCC, four other institutions will play an important role in advancing accountability and integrity at all levels of government: the freedom of information commission, the national audit commission, the judiciary and the ombudsmen.

Among the earliest reforms to be implemented was the freedom of information (FOI) Act, developed and passed prior to the passage of the 1997 constitution. Several high-profile cases have highlighted the value to the public of the Act, tested its coverage, and developed important precedents in its application. NGOs and businesses have indicated their frustrations with the lack of availability and timeliness of information on government proceedings, budgets and activities.

Nonetheless, members of the FOI Commission view the progress as quite good. However, staff capacity development is needed to develop effective understanding of legal principles and precedents, to create a first-class office, which responds quickly and effectively to public requests, and to create procedures within government agencies that specifically strengthen information sharing with the public.

### *National Audit Commission*

The office of the auditor general, previously part of the executive, became an independent public agency in 1999. In 2000, it was reconstituted as the national audit commission. It is responsible for conducting compliance, financial, and performance audits of ministries, government agencies and departments, SOEs, and sub national government units.

The national audit commission (NAC) is now also required to report its audit findings to parliament and to make them public. In addition, the commission's role has changed considerably from that of its predecessor: it is implementing global standards on government auditing, emphasizing performance auditing, and the development of adequate internal controls.

However, the national audit commission currently lacks teeth to enforce its findings. Few of the cases of potential criminal misconduct that the commission uncovers are forwarded by the parliament to the proper authorities for prosecution or other disciplinary action. At a minimum, the commission's efforts to track the disposition of cases should be strengthened and given greater transparency and publicity. In addition, methods of improving systems, procedures, and internal controls must be enhanced. Greater attention must also be devoted to strengthening interagency cooperation in response to audit findings.

Another major issue confronting the commission is its ability to ensure that proper controls and monitoring arrangements are in place to prevent the misuse of resources under decentralization. The commission staff are concerned that their ability to monitor resource use at local levels may not be adequate, and argue that decentralization must be done gradually.

### *Judiciary*

Unlike previous constitutions, the new constitution firmly establishes the principle of constitutional supremacy; thus any law, act, or decree that is contrary to or inconsistent with the constitution will be

unenforceable. A new constitutional court will ensure the constitutionality of all legislation and the functioning of state organs in accordance with the constitution. It also rules on high-level corruption cases referred by the NCCC, such as the alleged asset concealment case against the Prime Minister mentioned above. The new constitution also provides for the courts to be self-administered rather than by the Ministry of Justice. New administrative courts will be able to adjudicate disputes between state entities or officials and private citizens. Finally, the constitution provides for a supreme administrative court and administrative tribunals, plus the creation of an appellate administrative court if necessary. An independent judicial commission of administrative Courts will regulate their activities.

### ***Ombudsman***

According to the new constitution, a maximum of three ombudsmen will be appointed for a single six-year term. They will inquire into complaints when a government ministry or agency, an SOE, or a local government entity stands accused of failure to comply with the law or to perform its duties effectively, and has caused injury to the public or to the individual originating the complaint. The ombudsmen will also be empowered to refer cases to the constitutional and administrative courts.

### ***Sub-national Institutions, Civil Society, and the Media***

In addition to the four main accountability institutions, there are other constitutional mechanisms that can help to combat corruption. Take, for example, the new emphasis on decentralization. By the end of the 8th Plan period (2001), the share of local spending (including intergovernmental transfers and relative to total government revenues) will increase to 20 percent from approximately 14 percent in 2000. Local spending is expected to increase to 35 percent of total government revenues by the end of the 9th Plan period (2006).

Both NGOs and the World Bank-funded social investment fund (SIF) have developed a considerable body of experience in working with local villages. The SIF experience suggests that significant cost savings may be realized by devolving local procurement to the local level. One example of this is the local construction of community childcare centers. Following government standards of construction, community bidding on projects has resulted in building such centers for 300,000 Baht, compared to the “standard cost” of 700,000 Baht. Thailand development research institute staff indicates that villagers involved in their pilot project did not support “standard cost” approaches, identifying them [or this] as a significant source of corruption, which once identified could be controlled.

SIF management does not claim that *all* communities are able to realize such savings by eliminating corrupt procurement practices. The SIF internal evaluation indicates that some local leaders have not acted transparently, and where transparency is low, the opportunities for corruption continue. The broader dissemination of the village transparency manual would provide strengthened tools for villagers. In pilot villages, this alone has triggered major changes in village political economy, vastly reducing the role of local “influential people.” The term “influential people” is used in Thailand to indicate local strongmen who skirt the law, often under the protection of provincial or national level politicians, for whom they act as campaign canvassers.

Civil society can help ensure government accountability in other ways. Citizens can initiate through a petition an investigation by the NCCC with the intent of impeaching an official; or call for an investigation by the NCCC to inspect and ascertain anomalies of the ALS of the council of ministers (Kingdom of Thailand, 1997). Among other areas for investigation are new ethical standards provided in the NCCC Act of 1999, which prohibit officials from engaging in any activity that results in a conflict of interest. It is clear that no single organization or group of citizens can develop expertise to effectively oversee the vast array of government policies and programs.

Civil society can also play a critical role in communicating through the media to a broader public. Civil society's understanding of specialized issues often exceeds that of journalists. Civil society provides an important counter to the perspective of government. Some associations and NGOs have independent capacity to undertake research on issues of concern to their membership. It is still essential to develop a non-partisan network of civil society organizations that specialize in various aspects of governance and, can provide effective, accountable oversight to supplement the efforts of the NCCC. The organizations should develop a non-adversarial, partnership relationship with government agencies for which they provide oversight, as well as with the NCCC.

### *Viet Nam*

As in Laos, new opportunities for corruption have opened up as economic reforms started to take hold in the 1980s. Unlike PRC, Viet Nam has a weak track record in implementing structural reforms to address the problem.

Viet Nam ended over three decades of conflict in 1975, but paid a steep price for victory, including an estimated 1.5 million deaths and the loss of another 1 million citizens who fled the country after the war, including many skilled professionals and technicians. For this and other reasons, the unified government did not succeed in achieving its initial goals for economic development and poverty reduction.

To address these problems, the fifth national party congress held in 1982 sanctioned privately-held small enterprises and the "family economy" for agriculture. The latter gave greater scope for individual initiative, and began to lead to increased agricultural production. Building on this, a major economic reform process known as the Doi Moi renovation was launched in 1986.

Analysts of Viet Nam's policy reforms since 1986 (Fforde and de Vylder, 1996; McCarty, 2001) find a number of reasons for the rapid, largely successful transition from a planned to a market

economy. These included the timing and gradualist approach of policy reforms, the fact that central planning had only been partially implemented and the ability to benefit from being located in a rapidly growing region aided by the credibility and advantages of citizens perceiving the reforms as being of domestic origin. Another factor was the maintenance of political stability since, unlike in Cambodia, the Viet Nam regime has been in power since 1975.

Naturally, Viet Nam's impressive accomplishments have been accompanied by an increased awareness of corruption. It was widely reported that nearly one third of Vietnam's public investment expenditure in 1998 — equivalent to 5 percent of GDP — was lost to fraud and corruption, and the situation hasn't improved since then. Among efforts to reform the integrity system in Viet Nam are improvements in public administration, sub-national government, and the legal and judicial framework.

### *Public Administration*

Corruption in Viet Nam thrives because of complicated and unclear administrative procedures, excessive regulations, the opaque nature of decision-making, lack of public information, bureaucratic discretion on the part of middle-level officials, and long delays. State agencies and individuals regularly violate laws, and those responsible for law enforcement also often violate the law in their adjudication practices. Corrupt practices are also exacerbated by the weak accountability of the State enterprise sector. Another contributing factor is low public sector pay. Despite some recent increases, the basic salary is equivalent to about US\$12 per month, while the most senior civil servants receive around US\$104 per month. However, salaries represent only part of civil servants' remuneration. They also receive allowances (including for housing) and collect various payments for services rendered in their work. In some cases, the ministry or agency pools these unofficial payments and distributes them to staff at the end of the month. Despite this, many civil servants cannot make ends meet without a second income. This results in civil servants pursuing various strategies to augment

their incomes, ranging from holding multiple public sector offices or maintaining other employment through to petty bribe taking and corrupt practices.

Businesses report many types of corruption, including “speed money”, e.g. payments to move a tax matter more rapidly through the tax bureaucracy, payments to secure a rapid, true estimate of taxes owed, or bribes requested in exchange for under-stating tax obligations. There is also reportedly embezzlement through falsification of records, such as tampering with official receipts for tax payments. There are reports of overprinting of documentary strip stamps, auxiliary labels, and cigarette stamps. There are also cases of the selling of choice positions, delaying remitting taxes to benefit from the “float”, paying bribes to investigators to sit on cases, delay investigations, or dismiss complaints, and irregularities in public procurement.

Both government and Vietnamese communist party (VCP) policies emphasize their opposition to public sector corruption, and the government has issued new decrees on corruption and on the elimination of wasteful practices in the public sector. Disciplinary actions as a result of investigations by the state inspectorate and the VCP are also increasing. Recent achievements also include simplifying administrative procedures in ministries and agencies at the central and local levels, restructuring ministries through mergers, defining roles and functions more clearly, and introducing more transparent personnel procedures. In 1990, 18,000 officials were dismissed or charged with corruption. In 1998, the ordinance against corruption was approved, and the Prime Minister established a hot-line to receive business complaints. In addition to the general state inspectorate, several ministries now have units for tackling grievances and corruption. The VCP launched an anticorruption campaign in 2000, but results have been limited. Promulgation of the civil code in 1998 provided the public with avenues for redressing complaints and for mediation in disputes with government administrators. Additional measures are needed, for example, minimizing red tape and arbitrary discretion, increasing the amount of information in the public domain, harnessing citizens’ groups to fight corruption,

and developing an appropriate legal framework (World Bank, 2000b). The government's efforts to turn state enterprises into shareholding companies could help to reduce corruption, but the process has been slow. 5,991 state enterprises remain; in comparison, only 502 have been "equitized" (PERC, 2001). By comparison, the PRC by 1999 had cut state enterprise employment by nearly half in 2 years.

The government's recently completed public administration review (PAR) review proposes a number of additional reforms. The review's recommendations include a variety of provisions, such as obtaining public comments on draft legislation, improving the dissemination of information about new legislation and about court judgements, streamlining the corporate regulatory framework, and professionalizing the civil service. However, targets being set are modest, and progress toward achieving them slow. Again, the comparison with PRC is instructive; while Viet Nam targets a 15% drop in civil service employment, PRC is on track to achieve a 50% drop.

Improvements in public financial management are also underway. Transparency lies at the heart of the Vietnamese constitution; however, achieving this vision will require changing how decisions in the public sector are taken and communicated. Progress made includes an improvement in external debt management and agency reporting of financial information, and the drafting of new accounting standards that are 95 percent in compliance with international accounting standards, the publication of some budgetary information, and development of the National Audit Office.

These initial steps provide a basis on which to build. Given that the budgetary system allocates financial resources according to society's goals, the need to improve budgetary data and information flows is imperative. Some of these measures could be undertaken immediately, such as the publication of more detailed information about the budget and public accounts. Also, as in other countries, every public organization needs to build in safeguards to protect the public interest in all their policies, procedures and plans.

### *Sub-National Government*

Another factor that increases the risk of corruption is the strong autonomy of major provincial areas. For example, some municipalities have set up dozens of public enterprises, many of which are nonproductive vehicles for rewarding loyal cronies. The government has tried to cut back on the creation of such new enterprises through stricter regulations, with only intermittent success. Viet Nam's local administration system is divided into three levels: provinces (61 units), districts (600 units), and communes (10,330 units). Each locality at all three levels has a representative body, the people's council, and an executive body — the people's committee — which correspond to the National Assembly and the government at the central level. Although they are set up as separate bodies, the people's committees and people's councils often have overlapping membership. The local people elect the people's councils, with candidates usually nominated by the Viet Nam fatherland front. The people's councils select the chairs and vice-chairs of the people's committees.

While ultimate legislative authority rests with the National Assembly, provincial and local government departments report to the local people's committees and assemblies and to the central line ministries. Responsibility for planning, implementation, and operation of facilities is also split, although large urban centers and a number of provincial governments enjoy a high degree of autonomy. Overall, the interrelations between different levels of government are complex in terms of supervision, accountability, reporting, and allocation of tax revenues.

Complexity with respect to the relations between different government agencies is increased by the unclear demarcation of the mandates of various agencies, leaving room for discretion in the interpretation of responsibility and accountability, and resulting opportunities for corruption. This makes more coherent the decentralization of management to local administrations, which is a high priority goal of the PAR. However, the lack of capacity within local authorities to provide public services efficiently presents a

hindrance to decentralization. Problems with efficiency and accountability in part reflect the low morale of underpaid local officials and their lack of training, along with inadequate recurrent funding (Rondinelli and Hung, 1997).

### *Legal and Judicial Framework*

As mandated by the 1992 constitution, Viet Nam has been engaged in building a state ruled by law. Many laws have been passed, courts and legal aid centers established, courthouses built, standards set for judges, lawyers educated, prosecutors and law enforcement officials trained, legal information systems developed, programs to disseminate legal information to the public instituted, and legal education and professional training institutions created and/or expanded and improved. The international donor system has complemented Viet Nam's own heavy investments in developing its legal system by providing substantial assistance to all the main components of the legal and judicial system. Although much has been achieved, officials and donors agree that much remains to be done.

Current efforts in developing the legal and judicial system have the following shortcomings that hinder efforts to combat corruption: the lack of a clear law development strategy; an inadequate institutional framework for effective implementation and enforcement of the law, especially in regard to the quality and independence of trials; and the lack of a coordination strategy and action plans. In the legal reform area, Viet Nam's and PRC's track records are both weak.

The quality of laws and regulations is weak in several respects. Superior and subordinate regulations are often inconsistent, and sometimes provisions contradict each other. The resulting uncertainty is aggravated by the practice of not precisely specifying what provisions of previously issued legal documents are to be abrogated when a new legal document takes effect. Provisions in superior regulations are sometimes too general, leaving too much discretion to lower-level regulations. In other cases superior regulations may

be too detailed and cause difficulties in implementation and the need for a lengthy process to revise inappropriate provisions.

The process of preparing legal documents sometimes fails to encourage active participation by relevant state organs and entities with legal expertise, and public opinion is also not sought. The mechanism for reviewing draft legal documents to check their constitutionality, legality, uniformity, consistency, and enforcement feasibility is also still weak. Another weakness is that preparation tends to be done without proper policy studies and research, which means that legal documents often have to be revised shortly after their promulgation. In addition, subordinate regulations are often not prepared together with superior regulations, causing implementation delays and uncertainties. These weaknesses are caused partly by inappropriate rules and procedures and partly by a lack of capability on the part of those entrusted with the tasks.

Local authorities play an important role in implementing legal institutions; however, they issue too many legal documents, which leads to the fragmentation of administrative power and non-uniform application of legal provisions. One reason for this situation is that no law regulates the promulgation of legal documents by local authorities. The situation is similar at the national level, in that there is no requirement that legal documents must have been published before they take effect.

Many administrative procedures are cumbersome and excessively regulated, creating opportunities for abuse of power and corruption by state officials, and the quality of services provided does not yet meet the expectations of people and business. State agencies have been slow to implement reforms in this area, perhaps because of a lack of awareness of the needs, an inability to find ways to improve procedures, and a lack of motivation.

Fundamental attitudes in relation to respect of the law have not yet developed. State agencies and individuals regularly violate laws, and those responsible for law enforcement also often violate the law in their adjudication practices.

An additional problem in addressing corruption is that Viet Nam's judicial system is centralized with ultimate decision-making authority

resting with the national assembly. The system has not yet developed the predictability and quality of decision-making needed to support a market-based system in areas such as contract dispute resolution. Only the national assembly is authorized to interpret its legislation and the concept of precedents has not been established. Neither the reasoning underlying decisions nor the decisions themselves are published in a systematic way for the record: there is thus no public record, as we would understand it.

Many judges do not have legal training and their appointments are based on patronage. The credibility of the system is thus low, and viewed as open to bribery. Modernizing this system is essential to provide a foundation of relative certainty for private investment decisions, but to date the necessary reforms have received only limited attention.

### *Next Steps*

Now that Viet Nam has succeeded in the mainly unguided emergence of unregulated markets, it faces different challenges in developing a sound basis for market-led growth, including the rule of law, transparency, effective government regulation, and successful anti-corruption strategies. This is proving difficult because, among other things, Viet Nam's prior reform success was mainly in response to external economic pressures and bottom-up societal changes. However, the next stage of reform requires a more proactive approach for which the government has little preparation or precedent. Further, the *nomenklatura*, who enjoy rents and privileges under the present system, having much to lose from cutting back the remaining market distortions and opaque bureaucratic systems, also cause delays.

Many of the important early reforms involved dismantling controls where the political decision was difficult, but implementation was straightforward. By contrast, some of the administrative reforms now required are less controversial in principle, but are complex to implement. Some require new institutions, which necessitate agreement about appropriate models and the translation

of agreed principles into appropriate legislation. The institution-building tasks are lengthy, involving deep-seated changes in systems, practice, and understanding, or they require parallel movement on a number of fronts.

These reforms do not lend themselves to simple conditionality, nor can they be fully accomplished within the time frame of a typical technical assistance project or loan. Viet Nam's partners need to adapt their procedures to support this lengthy process.

### **Regional Efforts**

In addition to country-based efforts, these four countries all participate in regional efforts to combat corruption. For example, the Asia-Pacific forum on combating corruption was launched in 1999 at a workshop held in Manila attended by 250 participants from over 35 ADB (2000a) and OECD countries and economies. Since then, the forum works to co-ordinate anti-corruption activities amongst regional anti-corruption practitioners and with the international donor community, and to strengthen public-private partnership and support civic organizations in their fight against corruption. Its objective is to put in place the framework conditions for effectively combating corruption by identifying appropriate political, institutional, and other reforms necessary for the various participating countries

The forum is a partnership of Asia-Pacific governments, businesses, media, and NGOs, along with a range of sponsoring international organizations including, in addition to ADB, department for international development (UK), foreign ministry of the government of Japan, Konrad Adenauer Foundation, office of the Prime Minister of the republic of Korea, organization of economic cooperation and development, Pacific Basin economic council, transparency international, United Nations development program, United States agency for international development, and the World Bank.

At a conference planned for December 2001 in Tokyo, a number of forum members are expected to sign an anti-corruption action

plan for Asia-Pacific, a legally non-binding document that contains a number of principles and standards towards policy reform that interested governments politically commit to implement. The action plan will build on existing relevant regional and international instruments and good practices such as the anti-corruption policy of the ADB, the APEC public procurement principles, the 40 recommendations of the FATF as supported by the Asia/Pacific Group on money laundering, the OECD convention on combating bribery of foreign public officials in international business transactions and the revised recommendation, the OECD council recommendation on improving ethical conduct in the public service, the OECD principles on corporate governance, the PBEC charter on standards for transactions between business and government, the United Nations convention on transnational organized crime and the WTO agreement on government procurement. This process will be supported by a web site ([www.oecd.org/daf/ASIAcom](http://www.oecd.org/daf/ASIAcom)) that provides information on ongoing and planned assistance programmes and initiatives.

### Conclusions

This chapter has examined recent progress of Cambodia, Laos, Thailand and Viet Nam to set up effective institutions to fight corruption, drawing on governance assessments recently carried out by the Asian development bank. These countries make up part of the greater Mekong sub-region, and it is an important regional grouping roughly lying between two huge countries — India and China — and bridging their cultures also. We find corruption hinders economic development and poverty reduction in all four countries. Earlier, economic reforms involved dismantling controls where the political decision was difficult, but implementation was straightforward. By contrast now, some of the structural reforms needed to combat corruption are less controversial in principle, but are complex to implement. Some, for instance, require new institutions, which necessitates agreement about appropriate models and the translation of agreed principles into appropriate legislation.

All four countries have taken steps to combat corruption, with Thailand the furthest advanced; yet concrete results are hard to obtain. Anti-corruption efforts in these four countries reveal similarities but a striking range of variation, making them an interesting site for comparative analysis of the causes and consequences of different approaches. For example, the recent legacy of civil conflict adds a particular challenge to Cambodia.

In addition to national efforts to combat corruption, regional efforts can provide knowledge and support for the national champions, and will help to measure relative progress.

### Note

The views expressed herein are the personal views of the author and may not reflect the views of the institution with which he is affiliated.

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