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**Anti-Corruption Agencies: Achievements, Threats and
Challenges in a Diverse Environment**

Panelists:

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Transcription

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I would now like to handover the Plenary Session to the Secretary General of Transparency Thailand, Dr. Juree Vichit-Vadakan. Thank you.

Juree Vichit-Vadakan

Well, the show can go on now, as I have my microphone.

Ladies and gentleman, we are extremely pleased that this plenary session this afternoon. I think that you are, like myself, must be quite excited at listening to the actual implementers of anti corruption,....people who do the suppression of corruption in different countries, in a different context. I think that after we have anti-corruption commissions sometimes society does not understand the role or do not quite know what they do unless there are highly publicized cases of prosecution. But, in fact, anti-corruption commissions do so many different things and continuously as well, and so it is a very good occasion for us this afternoon to listen to them who are the real practitioners. We can listen to the challenges that they face and also the successes they have made over the years. Some of the anti-corruption agencies are fairly new; some are older; but all of them have different stories to tell us. So I would like you to give them a warm welcome. Please give them a big hand before we start.

I would like to invite Mr. Panthep Klanarongran, President of the Thai anti-corruption commission, to be the first speaker. I think we honour the host institution. So Mr. Panthep will begin and we can ask questions later after all the presenters have presented their cases.

Panthep Klanarongran

Dr. Juree, ladies and gentleman, I'm pleased to be here with you all today, with our experts in anti-corruption activities. I think this a good opportunity for us to share with you all my experience, problems and issues from all the anti-corruption agencies in Thailand and also we will have a chance and opportunity to come up with solutions along with all these experts from other countries.

Regarding what I would like to talk today, I would like to touch on the role of the anti-corruption committee and our past performances, including problems and issues we have encountered in our actions, in our job, so that you can understand what we do. It will be an overview. I would like to start by saying this: the National Anti-Corruption Commission is an independent agency according to our Constitution. According to our constitution B.E. 2540 [1997] there is a law, an organic law, to incorporate the establishment of this NACC. This particular commission of which I am the president

was established was back in B.E. 2549 [2007] and in the Constitution of B.E.2540 [1997]: we were legalized by that Constitution as well.

Now I would like to touch on the actual job and responsibilities that we have so that you understand what we do. First of all we do the investigations and inquiring and then we have to conclude the case along with our opinion before we submit it to the Thai Senate, in case that we have to remove political figures or high ranking officials from their jobs. If we have a request from the Senate to perform the investigation, then we do accordingly.

Secondly, we do the fact-finding and conclude the case before we submit it to the Attorney General in order to prosecute any political figures, including high-ranking government officials if they are accused of bribery.

Thirdly, this is of no less importance, we have to inquire and conclude about wrongdoing against accused to the politicians and high-ranking officials if they are shown to have acquired something unusual during their terms. So these are our three major functions that we do. And the fourth one is that we have to validate and verify the acquisition of assets during their terms in office of those Cabinet members. So basically we do not have a role in prosecuting directly any individuals. Our basic job is to perform investigation and do fact-findings and conclude what we find to relevant agencies, for example the Attorney General and the Court of Law. I would like to say that once the NACC of Thailand started our job, we have done our best during the past few years....the past years... we have tried to do our best according to our job responsibilities so that the level of corruption in our country could be less. Because corruption is a bad thing.....it is a cancer in our society. We try our best to minimize corruption in our society. I would like to say that after the NACC's term of four years, we have quite a few achievements. We have concluded regarding wrongdoings and unusual wealth acquisition of some 200 individuals in Thailand. These cases are mostly related to high-ranking officials and politicians in Thailand. We have done as I just told you. I would like to say that once we pointed out and concluded the wrongdoing, then all these individuals have been prosecuted, they have been disciplined, and some of them have been taken to court. They are being prosecuted for criminal offences and many of cases have been sentenced, some of them are in the process of being prosecuted. So basically we have done our job and many wrongdoers have been prosecuted.

Now I would like to touch on what we do. I would say that what we do is similar to other investigating agencies. We have problems of our own....The NACC we have some problems and issues and challenges because we have to go in and investigate individuals and agencies and that effects people in the politics, and many of them would try their best to antagonize what we are trying to achieve. So basically we have dealt with problems and issues in doing our job.

Number one: We are overloaded with cases. NACC deals with an average of 200 cases a month. So that is overwhelming. There are too many cases and we don't have enough workforce to cope with this kind of workload, so there are many back-up of our cases.

Second, we need an office with modern technology so that we can maximize our efficiency. We also need people with better knowledge and literacy so that they can catch up with wrongdoers.

Number three: this is something that we have to state the facts of the matter: we definitely need cooperation from government agencies in order to investigate all these cases. Basically, we have received minimal cooperation from government agencies. This is something that we seek the most so that we can achieve our job....we can do our job well....so that we can work together to manage, to fight against corruption.

Number four, we have many laws in Thailand in dealing with corruption, but most of them are not modern, not up to date, and they cannot deal with modern day corruption. We need to get all these laws updated so that we can work more efficiently. But as you know to get legislation done is time consuming.

Number five, we have encountered movements against our action, resistance from many agencies, from people who are being accused of wrongdoing and some of us are taken to court because we are accused of intimidating those accused individuals. So I would like to say that something like this happens to NACC but I believe that it happens to similar agencies in other countries as well.... simply details may be different.

I think this is a good opportunity for us to talk and share experiences so that we can learn how to do our job better. I think the anti-corruption activities are something that overseeing agency cannot ignore...it is something on which we need cooperation from all sectors involved, like Dr. Juree here. We need civil society to help us because this is something that is very important and would allow us to work better so that we can achieve our goals and objectives. At the NACC, we recognise the significance of civil society. We need them to work with us. The way it is right now, the NACC along with the Royal Thai Government we have tried to come up with a National Strategy to dealing with corruption. We started some three years ago and this National Strategy we have many plans. Plan One is dealing with integrating all sectors, public and private alike, to work together against corruption in Thailand. Therefore, according to our national plans what we have implemented for over three years, we have learnt that there are many things that need to be corrected. I would like to be modified....there are things that we have to do.

Number one: Anti-corruption agencies must do everything seriously to achieve social trust and social confidence in what they are doing. So we need public trust. Basically, we have to do our job

professionally and with fairness and we need to have cooperation from civil society and media.....members of the press.

Number two: We have to promote social awareness...we have to provide public education, we have to perform public relations to let people know what we are doing so that the public can have an access to available information. We also need a coordinating centre so that the public can report any anti-corruption resistance so that we can do our job more conveniently or better.

Number three: Besides doing public education, we need to encourage public network such that people can perform surveillance, so that they can become a watchdog and so that they can help us do our job. And finally we need cooperation from the public sectors: if it is possible in Thailand at the moment, we must try to elevate the activity of anti-corruption to become a national agenda so that all sectors, public and private alike, can participate.

This basically is what I would like to touch on. It is an overview of what our National Anti-Corruption Commission has been doing. I'm confident that with good cooperation from all relevant sectors, particularly the civil society, we will be able to perform our job better....I'm talking about the National Anti-Corruption Commissionand that would also allow us to work with the private sector to drive our National Strategy to be implemented in private sectors as well.

Why are we here today? Because we have support from international agencies and international organizations on this: we have to work together in order to fight against any interference, any corruption and then we become a watchdog and help each other out. Anything that would compromise our activity we can fight against it.

I sincerely hope that Thailand's experiences in dealing with cooperation amongst relevant agencies, public sector and civil society, whatever we do domestically and internationally, all these lessons, all these experiences should be productive for other societies as well. I'm quite sure that whatever we discuss today would help anti-corruption agencies worldwide so that we can progress, so that we can move....we can drive our activities to its maximal result.

I would like to end my discussion here. Thank you.

Juree Vichit-Vadakan:

Thank you very much, that was President Panthep

Dragos Kos:

Thank you very much. I will try to give you a brief overview of what is going on in the Arab anti-corruption agencies in Europe. Being the chairman of GRECO means that I am in a position to follow

what is going on in this area. We in GRECO, “we”... that means 48 states...47 Council of Europe member states plus the U.S.....we are waiting for what our country members are doing in this area and in Round 1 we dealt explicitly with anti-corruption institutions, in Round 2 we dealt with public administration in this area. So basically, we know pretty well what is going on. The basic feature is that so-called old Europe, those are the older EU member states, they are not very much interested in fighting corruption, well...they are not very much interested in establishing anti-corruption agencies. So just lately, some countries started to establish such agencies: Belgium, France, have agencies within broader institutions....They have a very promising anti-corruption agency in a part of Spain called Catalonia....Luxemburg has also established something last year.

On the contrary to that, in new Europe we see plenty of anti-corruption agencies but the problem there is something else. All new Europe member states—that means the countries established after the big fall of the Iron Curtain in the 90’s which would like to join EU—have to follow the requirements of the European Union and fighting corruption is a political criteria to join the EU. That means it is non-negotiable so for all those countries, in order to get into the EU, they are establishing these agencies. When I can see the slides I would like to figure out what is going on....

So basically almost all of them have anti-corruption agencies with different powers. And the problem is that basically they are at the peak of their anti-corruption efforts on the day of their accession, because they are under a very strict monitoring mechanism, and the day after this the monitor mechanism does not exist anymore and, of course, they can do whatever they want to do. It will be very interesting to see if the United Nations will bring any change into that because it has very clear requirements for the establishment of anti-corruption agencies, either preventive ones or repressive ones.

The result, the consequence of the fact that the EU has no standards in this area is, of course, a very different picture. So we have some countries which do not have anti-corruption agencies at all. You have the list of the countries, some of them at least. You have some countries which have very strong anti-corruption agencies, basically following the examples from Singapore, Hong Kong and so on. And then you have countries which do not...which have agencies but the agencies don’t have real powers and of course the consequence of that is that there are very different results based on the work of the agencies. In countries where they have very strong agencies, if possible with police investigative powers, then there is also very clear, very obvious.... and if you follow generally the CPI....Transparency International’s CPI....you will see that these countries are advancing. The levels of corruption there are decreasing. For the agencies where they don’t have real powers, improvement is very slow, they’re weak and nothing serious happens there. Of course, in countries where they do not have any anti-corruption agencies, all they have is the traditional police forces and the prosecution services. And there basically nothing changes.

If you try were to see what are the main challenges in establishing and functioning of anti-corruption agencies, of course you will see different things. The first one of course is the legal basis. The most ideal situation is what we have here in Thailand, as you have heard from the previous speaker. If the anti-corruption agency is anchored into the Constitution, it is the best possible solution. Then the next one—and this is happening in more and more countries—is that there is a special law establishing the anti-corruption agency. And we should not go lower than that. Why? Because if an anti-corruption agency is established by a governmental decree, the government can easily change its mind and adopt a new decree tomorrow, or the day after tomorrow, abolishing or changing the agency. That has happened several times. Let's say in Italy, when the current prime minister took the power from the last time, he just needed three weeks to abolish the then existing anti-corruption agency. Luckily, following international pressure, he was forced to establish a new one after some months but of course he did not give the same powers to the new agency afterwards.

The next one, which is the crucial one: independence of the anti-corruption agency or let's call it "operational autonomy". If any..if all of the agencies are independent, autonomous, but in practice there are many, many difficulties, and governments are very, very, let's say, innovative, when they have to find ways how to deal with this independence...how to press agencies. So what they do is the following: they either change the position of the agency in the governmental structure in order to get rid of very unpleasant head of the agency....Very unpleasant for them, of course, basically meaning that he was doing his job in a proper way as we expect him to do so. Then they can use re-organization, again in order to get rid of the head of the agency which is not very friendly to the decision-makers. They can adopt new legislation, abolishing the agencies. They can give them new tasks or new powers and they can say, well, since this is changing the nature of the agency, we need new management for it. They can wait until the mandate of the managements of the agency expired, then of course, learning their lesson, they will not appoint the persons who are fighting corruption, which were doing their jobbut they will appoint political appointees.

And, of course, at the top of that, as we heard already, they will do everything needed to discredit the anti-corruption agencies which are doing their job—either the agency as such, or the management of the agency—in order to present themselves as the good ones fighting the bad ones.

The next challenge is the powers. So when do we give an agency police powers? I will be very cautious with that. Only in the countries where the police have absolutely no trust from the population, because establishing a new agency and giving it police powers raises a lot of problems, and if there's no real and serious need to do so, don't do it, because you will really increase the volume of the problems. Which powers should they have? Investigation? Criminal one? Or administrative ones? Or should they even be in the position to sanction some misbehaviour?

Resources: some consider this question as a very trivial question. But the fact is that if the government wants to influence the position and the work of the agency, they use this one. Due to the economic crisis in the world, due to budgetary restrictions, they don't give the resources agencies need and, of course, you cannot work if the working force you have is equipped only with 10, 15, 20 or 30 percent of staff. If you cannot hire the premises, if you do not buy the equipment you need, you cannot work, and work together. If you run the statistics and if you produce a short analysis of what is going on, you will see that all the major threats developed, at least in Europe, after the agencies achieved their biggest success stories. So I knew... we have a guy here who already said once, "Success is danger". Yes, it is! Also in Europe when the agency starts to become successful, they become an endangered species and..ah....what to do? It's difficult to preach.... It's difficult to tell you what to do....but that's only one way. We have to keep on.... we have to keep on doing our job....we have to try to be more efficient.... And we have to be persistent, because, at the bottom line, sometimes even the general public in our countries might help us to survive, and might help us to continue our work.

Thank you for now and I will look forwarding to answering your questions afterwards.

Juree Vichit-Vadakan:

Thank you so much and I am so sorry we are short of time so that our speakers may feel pressure to speak in a very short time. Thank you, Mr. Kos.

May I now invite Mr. Jasin from Indonesia. You have been in the news a lot...the Indonesian Corruption Eradication Commission has been in the news, so we hope to hear from you about the different things that have happened. And I would like you to know that he is the vice chairperson of the commission, of the commission of Indonesia, please.

Mochammad Jasin:

Thank you, Madame Juree....

Distinguished guests, ladies and gentlemen, good afternoon. We have a slide that is titled "Experience and Achievements in Combating Corruption in Indonesia." Our content.....the content of our presentation is public trust, the achievements, the threats and challenges. I'm sorry, could I just stand here?

I would like to introduce some features in our organization. We are an independent organization, an anti-corruption agency, this is free from the influence of the executive, the legislative, the judiciary and any other power. We are responsible not to the president but to the public. But we should prepare a report—this is an annual report—for President as the Head of State, parliament and also the Supreme Auditor, and KPK focuses on the corruption crime. And we have actually five commissioners—but we

are four commissioners until now—and our institution has more or less 700 staff in our headquarters in Jakarta. And now I will move on to reporting our present activities.

Our task and duty is not only repression but also prevention. So our core duty is prevention and repression and we have power to prosecute. So we have police powers, we have a pre-investigation, investigation and prosecuting of corruption cases...two special Corruption Courts, not general courts.

We are facing threats and challenges of course. Why? Because we are very serious in combating and preventing corruption: maybe the answer is this. So this is the heavy test during 2009. The heavy test, you know, during 2009 and our corruption cases because KPK is handling very high ranking official corruption cases. Yes, we a number of corruption cases done by members of the parliament; and eight ministers or of the ministerial level; a number of governors; 20 mayors and heads of the region or district; 8 commissioners—coming from the Commission of General Election, and the Judicial Commission, Anti-Monopoly Commission; 4 ambassadors—one of them is former Chief National Police; and one governor of the Central Bank and 4 deputy governors of the Central Bank, one of them is the brother-in-law of the son of the president. And judges, we got red-handed a judge and a prosecutor from an international Office; and Defence Council including KPK's investigator....our own investigator we got red-handed, and many other high-ranking officials including one or two Secretary-Generals...a number of Directors...and also a high-rank CEO coming from the private sector, and also state-owned company. And our performance until now, five years after our establishment, because we were established in 2003.. 100 percent conflicts and risks. So that is why we scrutinize everybody, every institution, government institutions.

In other regional offices and also individuals in the national police, and also from the House of Representatives, and of course from the business people (power point slide). So we have threats and challenges that KPK has with CEO in the private sector, who collaborated with corruption mafia with including law. And the police was fabricated.....this is just artificial cases against 2 KPK commissioners. The alerts, wrongdoing is abuse of power or abuse of authority, and suspected to prevent KPK. KPK is within the authority and within the law to request from particular corruptors. Then the case is followed by the arrest my two fellow commissioners, Messrs. Pipit and Jandra, since we have four commissioners, but two commissioners have been arrested by the national police for, you know, alerts of abuse of power or receiving of bribes, but this is just a fabricated or artificial cases only.

And then...next slide...it was disclosed by during the court... Constitutional Court. These are our two commissioners, this is Pipit and Jandra, and then after they were arrested. We have proceedings in the Constitutional Court to disclose the wire-tapping done by the KPK to you know, law enforcement and also by the private sector that suspected, you know, suspected by the KPK.

The public media support, this is support from the public...this important thing from the civil society will get engage in anti-corruption activities supporting us. Next slide....

And corruption fights back. So this is Facebook, within one week one million and five hundred thousand supporting us from the public, from individual persons, also from civil society and NGOs. (Next slide) this is the people movement supporting KPK everyday across cities nationwide, peoples's support during the KPK crisis in 2009. (Next slide)...and also some of them are anti-corruption campaigns cloned in KPK, or pleased to defend...to defend KPK by the two law enforcement agency. (Next slide) this is important to the civil society during the 3rd COSP (Conference of the State Parties) in Doha. Next...this is just supporting movement in support in protecting KPK from undue influence. (Next...Next.....Next) the conclusion....(next slide).

Lesson learnt from challenges....So we need the stable political commitment—we do not have it yet until now—and we need an independent anti-corruption agency..actually by the law we are very, very independent and we need the public, NGO, media support. You see that we are receiving very, very positive support from NGOs and also international agencies, international support...and of course the security and professionalism of the personnel of our anti-corruption agency is supposed to be maintained and supposed to be having international technology support to conduct wire-tapping.

Next....So major challenges...this is my last slide...The major challenges in our ACA in the supporting the anti-corruption movement is political will, willing to take part in the anti-corruption mechanisms, and law on integrity, law enforcement in the Republic of Indonesia fighting back against local government agencies and also the corruptors. Internal oversight systems in the relevant government agencies in Indonesia is still very weak.

Thank you, to keep moving in this fight against corruption...this is our address, website international@kpk.gov.id

Thank you very much.

Juree Vichit-Vadakan

Thank you so much Mr. Jasin....

Can we now move on to Mr. Ugaz....I hope I pronounce your name correctly. Would you like to....

Jose Ugaz:

When the world started knowing about the results of the Independent Commission against Corruption of Hong Kong, many Latin American governments got very excited about this idea, not because they were thinking of improving the anti-corruption environment of their countries but because they are a very valuable product to be introduced into their political speeches and assure impunity for them, and

I think that's the reason why, in Latin America, the ACAs have been a total failure....I mean, I think we cannot show one successful experience. Argentina was probably the country with a better picture, is now not in the same situation because the guy in charge resigned because of political interference and now the agency is not producing any results.

So in the current situation I would say that in Latin American mainly the debate is about if it is the moment to maintain or create independent anti-corruption agencies that would concentrate these efforts against corruption, or some other existing institution should be empowered in order to deal with corruption...and I'm referring to the Attorney General's Office, or the Comptroller-General's Office, or the Ombudsman. This debate has not been clarified yet, but I can assure you that at the present moment not even one country in the region has a successful agency. I just pick three models of these agencies around the world: the ones of Hong Kong, Korean and Argentinean. The three of them had almost the same features, I mean, their presidents or chairmen were appointed by the president, or the governor in the case of Hong Kong, and they combined two types of activities... prosecutorial activities and preventive ones, and those preventive activities will be linked to education or administrative assessment of laws and do some kind of a research in order to detect and diagnose where corruption was growing in the countries.

My country, Peru, didn't have an anti-corruption agency when we had the problem of Fujimori and Montesinos. So it was necessary at that point to create a special State Attorney Office that had an absolutely prosecutorial profile in order to begin these investigations and try to deal with these huge criminal organizations. This is started in 2000 but there was no other task on the scope of this office. After...oh, I have to go quickly! *[Laughs]* ...after this special State Attorney Office was put in place and started dealing with the Fujimori cases, that government that overcame, created a Tsar—an anti-corruption Tsar—and this was really a mess. The first attempt to create a Tsar made a lot of confusion about what the roles of this office were, whether it was a prosecutorial office with investigative powers, or only a preventive office.

And the second attempt, after this one failed, was just a year ago with this new government that had the same problems so now this office has been closed again and the law has been dismissed. What worked in our case, I think, worked the prosecutorial model of the Fujimori anti-corruption office because it was a political key moment.... But mainly because it was an independent office, and I think this is a key issue to the debate in this pane: Who appoints the leaders of these offices? Because who are going be the clients of the ACAs? Mainly the governments, so if the government appoints someone to investigate corruption we have a problem there because probably they would try to generate an office that could be manipulated or someone in the office obeys orders from the government. It must be that was the Peruvian experiment...leadership and teamwork working together and this efforts had clear tasks and making a lot of networking locally, with local institutions, and requesting international cooperation as has been said by the people that preceded me. So

strategic alliances have proved to work in these cases... What failed? What failed mainly in the countries where these efforts were intended and are not working now is that most of these agencies were subordinated to governments, so they had no possibility of doing real investigations. It happened what I'll call an "identity theft"...the government stole the identity of these agencies and tried to pull them under control. And this was the case of Peru but I understand that it happened in other Latin American countries, there's a legal problem because the Constitutions don't accept our constitutional models, don't accept these kinds of agencies who should go through a constitutional reform and that's a big issue, so when these offices are put in place a main struggle starts with the Attorney General's Office, controversy, you will not take my investigative powers.

So I would say that the challenges here for the region is to clear the profile of these agencies, assure them independence and, this is as I said before and was mentioned also, how are these people going to be appointed and develop important networking to the locally and international levels. Thank you.

Juree Vichit-Vadakan:

Thank you very much. Thank you Mr. Jose Ugaz....

I would like to move on and invite Michela Wrong to do the presentation.

Michela Wrong:

Hi! I don't run an anti-corruption commission but I wrote a book about John Githongo who was meant to be here, the famous Kenyan whistleblower, and in the process I followed what was going on at the Kenyan Anti-Corruption Commission quite closely so I will give my take on it...which is going to be a jaundiced one, partly because that's what journalists do. This is actually a very interesting time to be talking about the KACC, Kenyan Anti-Corruption Commission, because there's been a huge amount of activity in Kenya recently, with the foreign minister suspended, the education minister suspended, the mayor of Nairobi has been hauled into court, and the head of the commission, Patrick Lumumba, is promising that he has aims on four other cabinet ministers and 45 heads of parastatals. So there's more to come. But I think we should bear in context what he's doing in view of the history of anti-corruption agencies in Kenya, which is pretty spotty.

I was the Financial Times correspondent in the mid 1990s, working in Nairobi, and I used to get a lot of off the record briefings from IMF people and other donors who were very, very keen that Moi, the former president Daniel arap Moi, should introduce an anti-corruption agency and I always thought it was puzzling because they seemed to think that this was going to be a quick route to justice and an end to corruption which had really undermined the economy under Moi. But it seemed to me that there was an obvious reason if the Attorney General and the judiciary and the police couldn't do their job in Kenya it was because Moi didn't want them to. So why was the anti-corruption agency going to solve these problems? Moi did set up an agency, the head of that agency was a very colourful

controversial figure, probably the least appropriate appointment you could imagine. He was suspended six months later and the agency was declared unconstitutional quite soon after. Then in 2002 we had new elections: the opposition comes to power and there is a great drive to clean up corruption, John Githongo's appointment in state house being part of that drive and everything was looking very good and the Kenya Anti-Corruption Commission was revitalized under the leadership of Justice Aaron Ringera, who had impeccable credentials. Yet what we see happening was a major corruption scandal breaking under Aaron Ringera's watch, under John Githongo's watch, and when John Githongo goes to Aaron Ringera and says "I've discovered this corruption scandal: we have to do something about it . It involves cabinet ministers," Ringera tells him to shut up. Ringera undermines the evidence, the taking of evidence that John Githongo was ready to do, advises him to keep away from Kenya when he goes into exile and basically does all the opposite of what you would expect an anti-corruption commission director to do.

And I think at that point people in Kenya began to look very closely and think, well, Aaron Ringera this is a very ethnic-ized country... people are obsessed with ethnic identity and the division of public spoils was seen in that light, and people began to say, "Well, Ringera does belong to the Kenya Mafia, the group of people who come from that area, and that's where his loyalties lies." So I think you always have this problem of the loyalty of the director, the loyalty to the president being the key issue in Kenya. So eventually Ringera was reappointed by Kibaki and parliament refused to accept that reappointment and there was major showdown and in 2009 he accepted the inevitable and left that job. And Lumumba took over the role. So how credible are these new investigations that Lumumba has announced? I think we have to take it with a massive pinch of salt....There is a lot of political score settling taking place in Kenya at the moment because if you are the subject of an investigation by the KACC, you are not going to be able to run in future elections so it's a great way of eliminating people who are viewed as troublesome or potentially important players and that's what's been happening to some of these people.

There is also a desire to please the donors, because there's a lot of money needed to institute a new constitution, that it's going to create new layers of bureaucracy and there is also a huge public demand for this action, people are really, really fed up. But I personally don't hold out great hopes. I think we've been here before and, as the American ambassador to Kenya has the great tendency of saying on television, there is not a single public profile figure in Kenya today who has ever been prosecuted for corruption, and I don't see that that is going to change. Thank you.

Juree Vichit-Vadakan:

Thank you very much Michela....thank you for keeping good time.

We have heard from our panelists about the different problems and perils that anti-corruption commissions face: too much power; too little power; being controlled by the state; or trying to stake

out the independence. The Indonesian case, perhaps, provides the most intriguing and heartwarming situation, where the people and civil society actually come out to support the anti-corruption commission.

I would now like to open up the floor for discussions. We only have a few minutes...we are truly, truly very sorry that this is the way.....the session has been given very little time.

1st Questioner:

...in case that we....so that it is appointed by a president in most of the cases, and in some countries it is appointed by the parliament: but both have an interest in appointing favourable figures except with the Indonesian case. Is it that maybe judicially, should somebody who is elected by the top judicial body could be a president or top of such a commissions? Would that be an alternative? Thank you.

Mochammad Jasin:

Thank you for your question. Actually we are an independent organization... The president is nothing to do with our performing and duty. So we are not consulting with the president, but we just leave it to the judiciary system. Supposing if our commissioners are committing a crime....a corruption crime or another crime...it is supposed to be handled by law based on the type of the crime. So we are very, very independent...it's a different case with another law enforcement agency or anti-corruption agency in several countries and we have been elected by open recruitment. The selection process is done by an independent committee and then final, under, you know, person who had been elected by the committee, is submitted to the parliament, and parliament is elected for example. So we are very independent and so that's why the president is nothing to do with our cases.

2nd Questioner

Hello, I'm Kidal Katka from Nepal, an NGO representative. I have heard so many ideas and experiences from the different parts of the world, from Peru to Indonesia to Korea and different organizations and I really appreciate this. And we are at the final juncture of the making of a new constitution in Nepal but the state we are in of turmoil, political turmoil, in the country, and even though independent organizations can make a difference in anti-corruption campaigns....I would, still...I have a question for the panelist...anyone who can respond to my question...We have a independent organization called CIAA, which is stand for the Commission for the Investigation of Abuse of Authority, which occurs in our Constitution. But debates are going on and, as other panelists have said, when any institution or persons become active, he or she or that organization try to make weak by the political leader, (Moderator's voice: Please ask the question) Yes sir, yes madam, same thing is happening in my country, so anyone can respond to that question in this juncture how we can.... because we are in the final stages of the frontier Constitution-making process. So would you recommend that, in the globe, different regimes have different powers and they have cosmetic

institutions do every institution we exist in the country.... But what regime, what kind of regime, would be most effective in an anti-corruption campaign? Would you have some recommendation or saying? Thank you very much.

Juree Vichit-Vadakan:

Who would like to answer this? Mr. Kos? Or Mr. Ugaz? The question...I believe the question was, "What kind of regime would be most susceptible to having a good anti-corruption commission?" Right? Was that the question?

Dragos Kos

Well, this is a difficult question to answer. You see, if you have it already anchored in the Constitution, that is the biggest achievement you can even imagine because nobody will be in a position to abolish it. Of course, this just gives you the framework for the work in the anti-corruption area. So what else you have to do, you have to give it independence, powers and resources. That basically sounds very easy, but it is very, very difficult. The ways how to fight for such institutions are known and also the ways how to fight against such an institution are also known. We would need much, much more time than we have got at our disposal...we can continue afterwards....but this is something which is happening all over the world, so we might continue this discussion afterwards.

3rd Questioner

Jeremy Carver from Transparency International. There's a growing amount of academic research demonstrating that the creation of an anti-corruption commission actually marks the beginning of a real steep decline in many countries in the standards of ethics and behaviour and an increase in corruption. What can the few honest anti-corruption commissioners in the world....what advice can they give to other anti-corruption commissions to insulate them from state capture and to insulate them? And I am talking about practical advice. How do you resist state capture and the abuse of your own powers as an anti-corruption commissioner?

Jose Ugaz

Well I think that a key issue there is to have ...to institutionalize the agency, because what has made the difference in most of the countries has been that personalities of the people who have been appointed. Most of the cases that have been successful is because there were strong people dealing with these agencies, but not because there was a solid institution. And the proof is that when they stepped out, the institutions just disappeared! So independence, and independence also means allocating resources if there is not a good budget in order to put ...to invigorate an office, this is of course going to fail. So what I believe is that in some cases, as you mentioned, it is better not to have an anti-corruption agency and just empower some other institutions that have to deal with crime and corruption.

Mochammad Jasin

Yes, in our experience the purpose of establishing of anti-corruption agency is because of the weaknesses of the two law enforcement agencies, that is the regional office and the national police. So the purpose of establishing an ACA was as stated in an article of our regulations is to enhance the productivity and effectiveness in combating corruption. So it is proof, in our case, that we are very, very independent and we are able to combat very, very high-ranking officials in doing corruption, which includes members of parliament, ministers, governors and the head of the regions and it is the proof of our office...But it comes with another threat, threat by every other organization who did not agree with our movement. So this is the problem, as I presented here. So there's a need to be supported by the civil society and non-governmental organizations. This is the key one.... In proposing, in amending the regulations, to propose that is civil society and non-governmental organizations support our case. Thank you very much.

Juree Vichit-Vadakan:

I think Michela would like

Michela Wrong

I was just going to say that when I was in Kenya recently, a diplomat I was talking to likened the role the KACC played along with the Attorney General's Office and the justice minister to a shell game....you know....that game where you move around the shells and you lose the pea.... because it just allowed everyone to bounce the excuses off each other and the reason the file was never really complete and there was never any prosecution was always someone else's fault. So the AG blamed the justice minister, the justice minister blamed the KACC, the KACC said that it is not our fault, the AG, I mean, these files are fine. So I think in Kenya, it has been an extra layer of concealment, of disguise, of obfuscation. The fact that the head of the KACC was earning US\$34,000 a month was what made it particularly obscene.

Juree Vichit-Vadakan

I would only take two more quick questions... I think we're running out of time. This gentleman was there before and then you.... The two last questions.....

4th Questioner

OK...I'll be very quick...Leslie Holmes from Melbourne. To Mr.Kos, the question about the influence of the EU after a country has joined because we've been hearing anti-corruption agencies are rather....its serendipity in some particular countries but external agents can sometimes play a role. So my question is, the way the EU treated Bulgaria *after* it joined the EU....they way it fined it and subjected it to substantial, financial penalties.... I wonder if you think that is a positive step forward. Thanks.

Dragos Kos

Well, unfortunately I think this is the only possible step forward. See, when Bulgaria and Romania entered the EU, the EU had already learnt a lesson from the 10 countries which entered in 2004. So they had established some kind of post-accession mechanism and as a result of such mechanism Bulgaria has suffered a lot because all the EU funds for Bulgaria were frozen, also including because of corruption, and of course Bulgaria has learnt some lessons but not all of them. So still, Bulgaria doesn't have an independent anti-corruption agency. Some conditions have improved, but this is the only way forward and, as far as I know, the European Commission is not planning how to deliver this future accessions because they're planning to have, again, for the new countries which are about to join the EU, post-accession monitoring mechanisms, not only in the area of fighting corruption but also some other areas. As I said, unfortunately, but there's no other way.

Juree Vichit-Vadakan

Last question.

5th Questioner

Merci....I come from the Democratic Republic of Congo, where I am in charge of an agency dealing with ethics and I've been a coordinator for the activities of the national forum in respect of the anti-corruption fight in my country. I have read this through the literature of about twenty countries in terms of national strategies against corruption, and I have generally found that there are two major models developed in Africa—I'm not too sure how this situation is in Asia. Type one is the donor, such as the IMF or World Bank, initiates a process where the government, the recipient government, is requested to create such an agency and the government then sets up the structure. But there is a second model, that involves a certain type of legitimacy and I find it more important, and this is legitimacy given by the public....A national forum must be organized on issues of corruption. And it is members of civil society, members of the NGO community under the private sector that need to be involved. This model is much more efficient because it enables members of civil society to have a voice right at the bottom of the pyramid rather than at the end exposed factor. I'm concluding.... My question is as follows: Should we have two such models then: one is independent and there you will have all the three components; or simply the second structure where the government has a freehand in controlling corruption, and it may also be supervised thereafter by civil society.

Juree Vichit-Vadakan

OK, I think that we will need to conclude the session, simply because, I'm sorry that you know we will have no time to answer the last question, but we arewe have been pressured by the....[A female voice: Madam... no lady has spoken the whole afternoon].... I don't even see you.I'm sorry....I'm a woman too...[Female voice: I'm here.] One minute? [Female voice: Yes...]

6th Questioner

Lena Kalima from Kenya...I just want this congregation to know that if the world has lost hope in Kenya, we have hope in Kenya with our new constitution....we've got an assertive parliament....the judges are going to be vetted...we have an angry population for change. And it was unfortunate that Ringera did not make any impact because he was resisted by the judiciary. So what is plain is that Kenya will soon be an anti-corruption free country.

Juree Vichit-Vadakan

Thank you. Thank you very much. I would like to just conclude that from the different panelists, some places have no success, like in Latin America, simply there was no political will. In other situations, there are anti-corruption agencies do not really have enough power or personnel resources, like in the case of Thailand. In the case of Indonesia, because it is highly powerful, it has created lots of enemies, and as a result of that they were discrediting them..there was an agenda among certain parties. Fortunately, civil society and the people have come out in strength to support them.

So I think let's end this session by saying that without civil society and without the people, from the grassroots up, anti-corruption agencies will not be able to operate efficiently because they are really investigating the people in power. Thank you very much. I would like to invite you to give the panelists a big hand. Thank you very much. I'm so sorry that about the time limitation as well. Thank you.

Voranai Vanijaka

Thank you very much Dr. Juree, the panelists. The Q and A session is normally the most fun and action-packed section of any conference and perhaps in the next panel we will have more of that.

Emma Suwanarat

Certainly I hope we do...but swiftly moving on, now I would like to invite the speakers for the next plenary session, entitled Peace and Security, to please take the stage and the moderator for this session will be Ms. Melinda Crane, from Deutsche Welle. But before that we have a short little special announcement that we'd like to make

Voranai Vanijaka

After the second panel there will be just a couple of minutes where we will arrange the stage and then HRH the Princess will arrive to give her welcoming speech so everyone please stay put.....don't go anywhere just yet....

Disclaimer:

These documents are verbatim taken from live audio recordings during the 14th IACC. We have tried to be as accurate as possible, and apologise should there be any errors in the transcription.