

CHAPTER 2

Sanctioning and Prosecuting Corruption and Related Offenses

- A. Criminalizing bribery, money laundering and illicit enrichment
- B. Detecting, investigating and prosecuting corruption

Sanctioning and Prosecuting Corruption and Related Offenses

Corruption will not be overcome if preventive measures are not accompanied by effective deterrents. A comprehensive legal framework acts as a deterrent for corruption and enables prosecution. To this end, countries must criminalize all forms of corruption and related offenses, such as money laundering, and establish efficient mechanisms and institutions capable of enforcing these regulations. Reform in this sector has been propelled mostly by international efforts that address such issues. Important progress has thus been achieved, for example, in the fight against money laundering, a priority for the international community. Yet various loopholes in anti-corruption legislation remain.

Efforts in Asia and the Pacific with respect to law enforcement have focused on the establishment of centralized and specialized institutions responsible for tackling corruption or money laundering. On the other hand, few countries have undertaken the reform of existing procedural and institutional provisions in recent years.

A. Criminalizing bribery, money laundering and illicit enrichment

Criminalizing bribery and money laundering not only clearly draws the line between acceptable and unacceptable behavior by way of sanctions; it is also the key precondition for various procedural measures, such as the confiscation of ill-gotten gains and international legal assistance (*see* section B.II.2.c below on the dual criminality rule). All parties to the Action Plan, like most countries around the world, have established legal provisions addressing corrupt practices, and recent international trends show a move toward amending such provisions to include transnational bribery where this is not yet the case. In many countries, however, loopholes or ambiguous regulations continue to impede efforts to prosecute bribery effectively. Reform efforts to ensure that laws and regulations are as concise and comprehensive as possible therefore remain crucial to the efficient deterrence of corruption.

I. Criminalizing active and passive bribery

Criminalizing active and passive bribery has a triple function: it sets clear rules as to what behavior is acceptable, it enables law-enforcement agencies to take punitive and remedial action and, last but not least, it is a precondition for sanctioning other actors involved, for instance, in money laundering. To be effective, laws against bribery must clearly define the scope of the offense, identify the actors punishable for its perpetration and set forth the consequences for violation.

1. Scope of the penal provisions

All endorsing countries have criminalized active and passive bribery of domestic public officials and most countries have clearly defined the constituent elements of the offense. Singapore and Hong Kong, China are also among the few jurisdictions that have penalized active and passive bribery of members of parliament.

However, differences in the scope of criminalization exist when it comes to bribery of foreign public officials. Active bribery of foreign public

officials is criminalized in only a few countries, namely Australia, Japan, Korea and Singapore.

In all countries covered by this report, perpetration entails fines and/or prison terms. As regards the monetary sanctions, most countries have limited the maximum fine to a fixed sum. Taking into account that the impact of monetary sanctions depends on the wealth of the individual, the fine up to this ceiling is often determined in relation to the amount paid as a bribe. In Korea, for instance, those who accept or solicit bribes are sentenced to a fine of up to USD 8,000 or an imprisonment of up to five years, and the larger the bribe received or paid, the more severe the punishment becomes.

2. Criminal responsibility and civil and administrative liability of legal persons

In many cases of bribery or corruption, it is a legal person who has the economic interest in the corrupt behavior. As criminal prosecution against individuals does not sufficiently deter such practices, some countries hold legal persons criminally liable, or impose administrative or civil liability, for the bribery or corruption. In order to implement these sanctions thoroughly, they are made independent of the conviction of the natural person who has committed the act. Such provisions are in place in Australia, Japan and Korea; in Japan and Korea, however, these provisions are limited to legal persons involved in active bribery of foreign public officials. Since the imprisonment of a legal person is not possible, a fine is imposed on the legal person in addition to (and not on the condition of) a possible conviction and consequent sanction of the natural person committing the offense. As mentioned above, some countries punish bribery attributed to legal persons by administrative and civil sanctions; such sanctions include disqualification from bidding on government contracts.

3. Disqualification to hold public office

As complementary sanctions to fines and imprisonment, some countries have enacted regulations disqualifying offenders from holding office in the public service (Fiji Islands, Korea, Malaysia, Mongolia, Papua New Guinea, Pakistan, Vanuatu; Kazakhstan is also working toward establishing such regulations). In Korea, for instance, a person who resigns or is dismissed from office for an act of corruption in connection with his duties is disqualified from taking up a job in any public institution, and even some private businesses, for five years. Papua New Guinea and Vanuatu apply such sanctions to very senior officials. In Mongolia, a person convicted of bribery may be disqualified from holding certain

positions in the public service and prohibited from engaging in certain business activities for three years.

4. Confiscation of proceeds

Confiscation of the proceeds of a crime constitutes an important additional deterrent that often has a greater impact than fines or prison terms. Threatening confiscation also entails preventive effects, as it makes committing the crime less attractive.

Some countries, such as Hong Kong, China; Indonesia; Japan; Korea; Malaysia; Nepal; Pakistan; the Philippines and Singapore, allow or require confiscation of the bribe or other relevant proceeds. The authority to freeze assets during the investigation phase complements these provisions in most countries. The implementation of this provision, however, is rendered difficult when the bribe has been converted or consists in an intangible advantage, such as the appointment to an important post. Countries apply different solutions to this problem: Korea allows the judge to order the confiscation of property equivalent in value if the bribe has been converted. Japan, by contrast, limits confiscation to the bribe. In Japan and Korea, rules on confiscation of proceeds extend to legal persons.

II. Criminalizing money laundering

Ill-gotten gains are usually passed through other transactions to camouflage their origin. Third parties are often involved, thereby considerably aiding corrupt individuals in their criminal behavior. Criminalizing money laundering deters such conduct and thus constitutes an important instrument against corruption. This issue looms large on the agenda of most parties to the Action Plan. As a result, legal provisions have recently come into force, or are being prepared, in Nepal and Pakistan. Since a number of countries from Asia and the Pacific have committed themselves to regional or international initiatives, such as the Financial Action Task Force and the Asia/Pacific Group on Money Laundering, most of the existing laws adopt similar standards.

To facilitate the detection of money laundering, a number of countries, such as the Cook Islands; Fiji Islands; Hong Kong, China; Indonesia; Japan; Korea; the Philippines, Samoa and Singapore require financial intermediaries to exercise vigilance. In this context, certain countries have been actively cooperating with the Basel Committee on Banking Supervision, an international body aiming at promoting sound banking supervisory systems. Hong Kong, China; India;

Indonesia; Korea; Malaysia; and Singapore were closely associated with the drafting of the committee's Core Principles for Effective Banking Supervision. A number of Pacific countries – among them the Fiji Islands, Papua New Guinea, Samoa and Vanuatu – have recently launched a regional initiative, the Association of Financial Supervisors of Pacific Countries, aimed at strengthening banking supervision in their countries. Some countries, such as Cook Islands and Fiji Islands, aim to amend their laws in order to meet the relevant international standards for anti-money laundering legislation. Indonesia and the Philippines passed amendments to their respective anti-money laundering laws in October and March 2003, respectively.

Reporting mechanisms that impose an obligation on financial organizations and professions to declare suspicious transactions may serve as a useful additional tool in detecting potential offenders. A number of countries, such as Bangladesh; Cook Islands; Fiji Islands; Hong Kong, China; Indonesia; Japan; Korea; Pakistan; the Philippines; Samoa and Singapore have established such a reporting obligation. The reports are processed by specialized anti-money laundering agencies, the central bank or other institutions that trigger investigations when necessary. In order to reduce disincentives to such reporting, most countries have specifically excluded the application of administrative, criminal or civil sanctions for false accusations made in good faith.

In order to act as a deterrent for corruption, the anti-money laundering legislation must provide for corruption as a predicate offense. This is not yet or not fully the case in many countries.

Some countries have extended the criminalization of money laundering to legal persons acting as intermediaries, such as banks. Penal sanctions in such cases are by nature limited to fines. However, considering the wealth of some of these actors and the comparatively low levels of the fines, it is doubtful whether they are a sufficient deterrent. In order to remedy this deficiency, the Cook Islands and Samoa have enacted a provision that extends individual responsibility to the legal persons' representatives who act in an official capacity and have knowledge of the suspicious transaction. Indonesia applies administrative sanctions (revocation of business license or dissolution) to companies involved in money laundering.

III. Criminalizing illicit enrichment

Detecting an act of bribery, and especially providing sufficient evidence of such an act in court, is a particularly difficult endeavor. Concealed assets held under the name of a family member or other agents are difficult to detect and confiscate. By contrast, unexplained wealth and luxurious lifestyles of, say, public officials or politicians are relatively easy to discover. Consequently, some countries have criminalized the public officials' very possession of unexplained wealth; monitoring systems and procedural rules complement these provisions.

Illicit enrichment – wealth of public officials that is manifestly out of proportion to his or her present or past official emolument – is criminalized in Bangladesh; Hong Kong, China; India; Malaysia; Nepal; Pakistan; the Philippines and Singapore. To enhance the effectiveness of this provision, India, Malaysia, Nepal, Pakistan and the Philippines have shifted the burden of proof to the accused. Papua New Guinea is preparing similar legal provisions. When a public officer or employee during his incumbency has acquired property that is manifestly disproportionate to his or her salary level and other lawfully earned income, such assets are presumed *prima facie* to have been unlawfully acquired, unless the official can justify their legitimacy. Such assets may be frozen during investigation and confiscated after conviction.

To give criminalization of illicit enrichment even more effect, governmental and civil society actors in the Philippines have engaged in systematic monitoring of public officials' lifestyles to detect cases of unexplained wealth and subsequently trigger prosecution.

B. Detecting, investigating and prosecuting corruption

Laws and penal codes are only as effective as their enforcement. Consequently, law enforcement agencies equipped with sufficient means to detect, investigate and prosecute corruption are a crucial precondition to effective criminalization. Acknowledging the importance of effective prosecution and its inherent difficulties, Bangladesh, Japan, Malaysia, Nepal, Pakistan, Papua New Guinea and the Philippines have targeted this issue as a priority area for reform under the Action Plan. Until now, reforms in law enforcement and prosecution have mainly centered on establishing specialized institutions whose sole task is to combat corruption. Existing institutions and their ability to fight corruption have rarely been the focus of recent reform.

The clandestine nature of corruption and the absence of an individual victim that could trigger an investigation render the detection of corruption particularly difficult. Perpetrators, especially very senior officials, politicians or executives, are often able to employ powerful methods of camouflaging their illicit activities or obstructing investigations. Use of financial havens and anonymous, quick transfer of assets, combined with the slow processes of international legal assistance, further delay or inhibit prosecution. Moreover, immunities may shield perpetrators from conviction. Under these circumstances, successful investigation, prosecution and sanctioning of corruption require independent and competent law enforcement agencies and powerful investigative methods and techniques.

I. Law enforcement agencies

The success or failure of law enforcement agencies depends on three key factors: the competence and skills of their staff, their independence and ability to resist undue interference and influence, and the efficient cooperation of all actors and agencies involved in the proceedings.

1. Competent law enforcement agencies

Recent developments in corporate law and the rapid evolution of international economic operations and transactions, as well as advanced technological breakthroughs, open new possibilities not only for doing business but also for criminal activities. Corruption and other financial crimes take particular advantage of these developments. To prosecute financial crimes effectively in this rapidly changing environment, law enforcement agencies have to continuously train their staffs in legal, economic and technical matters and related investigative techniques. The Fiji Islands; Hong Kong, China; Kazakhstan; Malaysia; Nepal; Pakistan; and the Philippines make intensive efforts to conduct specialized training programs for prosecutors dealing with these crimes. The anti-corruption agencies of Hong Kong, China; Korea; Malaysia; the Philippines; and Singapore engage in cooperation and partnerships with other countries' peer organizations, including the active exchange of experience in these matters.

Regular staff training, however, is not sufficient to enhance capacity within law enforcement agencies. As low wages and heavy workloads make it difficult to attract highly qualified candidates, some countries, such as Kazakhstan and the Philippines, pay particular attention to improving the working conditions and social and economic situation of the prosecutorial agencies' staffs so as to attract highly qualified personnel and prevent outflow of the workforce to the private sector.

2. Independence and protection against undue influence

The powerful role of law enforcement agencies renders them particularly vulnerable to undue influence. Independence of prosecution and effective protection against political or administrative interference are preconditions to successful conviction of high-profile criminals. Most countries have adopted special organizational schemes to enhance the independence and competence of the law enforcement authorities entrusted with investigating and prosecuting corruption: they have established either a centralized, specialized anti-corruption agency or specialized units within the prosecutors' offices.

A growing number of parties to the Action Plan have opted for a centralized anti-corruption agency. In fact, anti-corruption agencies seem to be a current trend in the region: Malaysia, Nepal, Singapore and Hong Kong, China have been working with this model for decades; Indonesia, Korea, the Kyrgyz Republic,

and Pakistan have established them more recently; and Cambodia and Mongolia are taking steps to create them. In Bangladesh, an act establishing an independent Anti-Corruption Commission passed in 2004. Although the Philippines, India and Vanuatu have not opted for explicit anti-corruption agencies, they have set up similar specialized institutions. In Papua New Guinea, the Philippines and Vanuatu, the ombudspersons have a mandate similar to that of anti-corruption agencies. The Philippines' ombudsperson is also equipped with the requisite investigative means. India has set up decentralized vigilance institutions, responsible for the prevention and investigation of corruption cases.

Like supreme audit institutions, most countries' anti-corruption agencies enjoy a constitutional status that aims to ensure their independence. Their directors are appointed directly by the head of government or head of state in a number of countries (Bangladesh; Hong Kong, China; Malaysia; Pakistan; Singapore). Certain immunity regulations also aim to protect the independence of these institutions.

Because a number of anti-corruption agencies have been inspired by the models of similar agencies in Australia; Hong Kong, China; and Singapore, they have several features in common. Usually, they investigate upon receiving information on alleged corruption cases and related misconduct in the public or private sectors. The agencies of Hong Kong, China; the Philippines and Singapore are also empowered to investigate any other significant offense uncovered in the course of a corruption investigation; Bangladesh's agency will have similar powers once it has taken up its duties. In such cases, the anti-corruption agencies investigate the allegations and then transfer the files to the public prosecutor or the competent court for prosecution. In this function, the agencies either support or act as a substitute for other law-enforcement agencies and may prepare disciplinary action. None of the countries covered by this report has mandated its anti-corruption agency to rule on cases themselves. Because they have a complementary role, the success of the anti-corruption agencies' work largely depends on good cooperation and communication with, and the proper functioning of, other law-enforcement agencies, especially the police, public prosecutors and the courts.

As mentioned earlier, most anti-corruption agencies also perform research and counseling services for the legislature and/or government (Hong Kong, China; Korea; Malaysia; Nepal; the Philippines; Singapore). Some

also provide training for the public service (Hong Kong, China; Korea; Philippines; Singapore), the private sector (Hong Kong, China; Korea) and non-governmental organizations (Philippines).

Countries that have not opted for a centralized, specialized anti-corruption agency have set up alternative institutions to assure specialized competence in detecting and investigating corruption. India, for instance, has established vigilance commissions at the federal and state level and vigilance officers in each government department. These institutions complement and supervise the federal investigation authority in matters related to corruption. Japan has created specialized investigation departments within the prosecutors' offices in major cities. These offices, staffed with specialists, investigate financial crimes.

3. Effective cooperation of law enforcement agencies

Irrespective of the institutional setup a country has chosen, effective cooperation of the involved actors determines whether prosecution is successful. Improvement of cooperation between existing law enforcement agencies is thus a current priority in many countries of the region: such measures include, in the Philippines, the establishment of formalized information exchange between relevant law-enforcement agencies so as to enhance their cooperation, the setting up of inter-agency consultative bodies and ad-hoc task forces and/or the organization of joint training programs. Papua New Guinea is setting up an anti-corruption alliance that pools and coordinates resources of different law enforcement agencies. Korea is operating an anti-corruption policy coordination body composed of ten related agencies, such as ministries and supervisory bodies.

II. Investigative tools

The capacity of law enforcement agencies to investigate corruption is strongly determined by the procedural means and mechanisms set forth under the law. Thus, in order for an investigation to be successful, such laws must take into account the characteristics of corruption and provide adequate means. Considering the particular difficulties in detecting corruption, information plays a vital role. At a later stage of the investigation, specific instruments for obtaining evidence become important.

1. Sources of information

The clandestine nature of corruption renders the inflow of information from external sources essential. Reporting obligations and rewards systems may provide intelligence; however, sources of information remain dry if informers fear repression or retaliation. Those who have become aware of criminal behavior and want to disclose it to the public authorities may run the risk of being identified by the accused. Similarly, a person claiming knowledge of an offense who is called to give evidence during a preliminary investigation or at the trial stage may fear retaliation by the accused, particularly if the services responsible for administering the criminal law cannot guarantee that the identity of the witness will remain secret in the course of the proceedings.

a. Reporting obligations

Reporting obligations are a common tool to collect information about alleged crimes and misconduct. As mentioned above, most countries' laws set forth reporting obligations with respect to the detection of money laundering. The extent to which the countries make use of such reporting obligations to detect corruption differs widely. Fiji Islands and Indian law, for instance, makes it mandatory for any person, regardless of occupation or professional status, to report to a magistrate or officer of the law any act of corruption committed by a public servant. Failure to do so is a criminal offense. In Hong Kong, China; Japan; Malaysia; and Singapore, only public officials are under the obligation to report acts or attempted acts of corruption. In Singapore and Hong Kong, China, this duty is not contingent upon the context in which the public servant has gained knowledge of the incident, i.e., whether in his or her official capacity or when off duty. By contrast, in addition to limiting the reporting obligation to public servants, Japanese law further limits it to incidents that have occurred while the reporting official was acting in his or her official capacity. These reporting obligations are enforced by penal or disciplinary sanctions.

b. Rewards and exclusion from criminal prosecution upon disclosure

In addition to or in place of reporting obligations, some countries – under the condition that the received information proves to be true – reward informants either with cash or by absolving them from penal sanctions, thereby creating an incentive to disclose corrupt practices. Nepalese law, which contains no reporting obligations with respect to corruption, provides for the offering of rewards for

relevant information, as does Pakistani law. In Korea, these rewards for reports on corruption reach up to approximately USD 160,000. In some countries, the informant is absolved from criminal responsibility for participation in a crime if he or she discloses the act and the other persons involved. Mongolia, Nepal and the Philippines, for instance, grant such privileges to bribers and their accomplices in bribery cases against public officers, so that they may freely testify about corruption in the public service. Korea's anti-corruption act allows mitigating or remitting penal and disciplinary sanctions against whistleblowers who are themselves involved in the disclosed act. Cook Islands and Malaysia have enacted similar provisions for any person engaged in money laundering.

c. Confidentiality and immunity provisions – whistleblower protection

Fear of retaliation is the main disincentive to what is commonly called “blowing the whistle” and to reporting on others’ misconduct and corruption. With the aim of eliminating this obstacle to effective detection, legal and physical protection of “whistleblowers” is gaining growing attention in the region and worldwide. Such protection can take many forms: a guarantee of confidentiality or anonymity, immunity against defamation, and reinstatement after dismissal.

Many countries grant an informant confidentiality or anonymity (Cook Islands, Fiji Islands, India, Korea, Kyrgyz Republic, Malaysia, Nepal, Papua New Guinea, the Philippines, Singapore). The Kyrgyz Republic and Papua New Guinea run trust hotlines, enabling citizens to make anonymous reports. Aware that citizens do not always trust guarantees for protection, Korea and Hong Kong, China have penalized the disclosure of the informer’s identity or any information that leads to his or her discovery. Furthermore, they have given responsibility for receiving and processing informers’ reports to their anti-corruption agencies because these institutions benefit especially from the public’s trust.

In practice, confidentiality cannot always be assured, and despite the regulations, whistleblowers run the risk of being identified. Material protection of the informant’s rights and personal security are thus important complements to confidentiality. Such protection may comprise immunity against criminal proceedings for false accusations and defamation; Malaysia and Singapore exempt informers from administrative, criminal or civil charges if the information was disclosed in good faith. Material protection in some countries also includes protection against discrimination or dismissal – a particularly

important feature, as employees who report on corruption at the workplace are particularly vulnerable to reprisal. Yet only Korea and some Australian jurisdictions have enacted specific provisions concerning corruption under which dismissal and other discriminatory action are subject to reinvestigation. Indonesia, Japan and Nepal are preparing bills to address this lack. In Papua New Guinea and the Philippines, civil society is pushing for whistleblower protection laws, sometimes with the support of or jointly with certain public authorities, such as the Office of the Ombudsman and some legislators in the Philippines. Pending approval of specific whistleblower legislation, the Indian Government has made public a resolution as an interim arrangement for acting on complaints from whistleblowers; this resolution looks toward the designation of a specific agency to which public officials and employees of corporations and state-owned enterprises can deposit complaints and provides for redress and physical protection of whistleblowers.

d. Witness protection

Witness protection laws and programs pursue the same aim as the provisions discussed above, but become useful at a later stage of the criminal procedures. Granting protection to witnesses in court or judicial proceedings is considered by many countries of the region, and worldwide, as constituting an important complement to the instruments mentioned above. To date, Hong Kong, China; Korea; and the Philippines have enacted protection laws or programs for witnesses whose personal safety or well-being may be at risk; Indonesia and Malaysia are preparing similar bills. Such laws and programs, where they exist, most often provide for police protection, relocation and provision of a new identity to the witness, and to his or her family members if they are also endangered or likely to be threatened or harassed.

2. Special investigative means and procedural provisions

Some countries have equipped their law enforcement agencies with special investigative tools in order to uncover evidence of corruption. In addition, provisions of the penal procedure have been modified, particularly in respect of access to bank accounts and rules on evidence admissible in court.

a. Access to bank accounts

Investigations into corruption often necessitate access to bank accounts to trace bribes and obtain incriminating evidence. Bank secrecy regulations can hamper investigation and prosecution. Hence, the Action Plan explicitly points

to the importance of empowering law enforcement authorities to order that bank secrecy be lifted for bank, financial or commercial records. The anti-money laundering agency in the Philippines and the National Accountability Bureau in Pakistan, for example, are empowered to access information about bank accounts. The Cook Islands' Financial Intelligence Unit also has broad powers to obtain information from a financial institution. In Hong Kong, China; Korea; Malaysia and Nepal, search of bank records and seizure of documents is permitted. In Hong Kong, China; Korea and Malaysia, a prior judicial ruling is required. Japan's law enforcement agencies are empowered to access public officials' bank accounts to check for suspicious activity.

b. Rules of evidence

Codes of penal procedures contain strict rules about the admissibility of evidence in court. Meant to protect the defendants' rights, these rules sometimes constitute insurmountable obstacles to prosecution; this is particularly true for the prosecution of corrupt individuals and has led some countries to modify these regulations to facilitate prosecution. Indonesia, for instance, has expanded the types of evidence allowed in corruption cases, admitting hearsay and the content of electronic communications as evidence. India, Indonesia and Nepal have also enacted a provision shifting the burden of proof in corruption cases to the suspect. Nepal, Singapore and Hong Kong, China similarly hold any government official with unexplainable assets liable, a measure that also represents a considerable change in the rules on the burden of proof. In the Philippines, when a public officer or employee has acquired property during his incumbency that is manifestly disproportionate to his or her salary level and other lawfully earned income, such property is presumed *prima facie* to have been unlawfully acquired and is confiscated unless the official can prove its legitimacy.

c. International legal assistance in criminal procedure

Corruption and related offenses, such as laundering a bribe and its proceeds, often have a transnational character. Thus, in many cases, international judicial cooperation is a crucial precondition to successful prosecution. International legal assistance may involve the taking of evidence, the confiscation and repatriation of the illicit assets and the extradition of suspected perpetrators.

According to the countries' reports, regional cooperation in this respect is still very limited and unsatisfactory. Some countries, such as the Philippines, have

entered into a number of agreements to combat money laundering. In the absence of such agreements, Hong Kong, China, as well as Japan and Korea, provide legal assistance only on a case-by-case basis and on the condition of reciprocity. Fiji Islands, Malaysia, Singapore and Vanuatu have recently enacted legislation that allows their governments to negotiate with other countries to establish such agreements or other arrangements in corruption proceedings. Informal networks and exchange of information, as fostered in particular by the regular meetings of the ADB/OECD Anti-Corruption Initiative's Steering Group, and by complementing initiatives such as the International Anti-Corruption Agency Forum for the Asia-Pacific region, in which are represented anti-corruption agencies of Hong Kong, China; Malaysia; Korea; Singapore; and New South Wales, Australia, further contribute on a practical level to enhancing the provision of mutual legal assistance in corruption matters.

As a prerequisite for granting legal assistance, the crime being investigated by the authorities of the requesting state usually has to constitute a criminal offense in the requested country (dual criminality rule, hence the importance of comprehensive penal provisions on bribery). Korea also requires that the granting of judicial assistance to a foreign country not entail the risk of violating Korea's sovereignty, national security, peace and order or established customs. As a general rule, even when these conditions are present, the decision to grant legal assistance is still discretionary (as in Australia, for instance).

III. Impeachment procedures and limitation of immunities

In many countries, members of parliament and other high-ranking civil servants enjoy immunity privileges. While such privileges are meant to protect them from arbitrary prosecution and interference, they can also represent serious obstacles to the prosecution of corruption. To enable law enforcement agencies and the public to hold these individuals accountable and to revoke their mandate in case of alleged corruption, some countries' constitutions provide for impeachment procedures. The Philippine constitution, for example, allows removal from office of the president, the vice-president, the ombudsperson and the members of the Supreme Court and the constitutional commissions upon impeachment for, and conviction of, *inter alia*, bribery and corruption. Nepal's constitution provides for similar impeachment procedures for a selected number of senior officials. However, despite the existence of such regulations, experience shows that their enforcement remains difficult in practice; as in many

countries worldwide, lack of political will is often seen as the root cause. Some exceptions exist to the immunities provisions, however: in Pakistan, the anti-corruption law recognizes legislators as “public office holders” against whom criminal proceedings can be initiated, and Malaysia maintains that no special immunities apply to politicians.