GAP ANALYSIS
Study Report

Identification of Gap between Laws / Regulations of the Republic of Indonesia and the United Nations Convention Against Corruption

KPK
Komisi Pemberantasan Korupsi

CORRUPTION ERADICATION COMMISSION
THE REPUBLIC OF INDONESIA

GAP ANALYSIS STUDY REPORT

Identification of Gaps between Laws/Regulations of the Republic of Indonesia and the United Nations Convention Against Corruption

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Foreword

The Indonesian people has fought corruption for years, unfortunately with little succes so far. Seven major attempts to fight corruption were taken since 1957, starting with a special military operation aimed at corruption in logistics. In 1967 a Corruption Eradication Team (TPK) was set up with a mandate for repression and prevention. In 1970 an advisory team, the so-called “Team of Four” (Tim Empat), was established, but its recommendations were not fully followed up. In 1977 the Disciplinary Operation (Opstib) was initiated to combat corruption through administrative and operational disciplinary action. In 1987 a special re-audit for the tax restitution (Pemsus Restitutsi) was launched to eradicate corruption in taxation. In 1999 a Joint Corruption Investigation Team (TGPTPK) was formed under the Attorney General. The same year the Public Officials Wealth Examiner Commission (KPKPN) was set up and later integrated into the Corruption Eradication Commission (KPK).

In 2002 the KPK was established with the mandate to coordinate and supervise all institutions in fighting corruption; to investigate and prosecute corruption offenses; to review corruption-prone systems and to develop prevention measures. In addition to the KPK, the Government established the Coordinating Team for Corruption Eradication (Timtas Tipikor) in 2005. Only the latter two organizations, KPK and Timtas Tipikor, pursue their mandates as of today.

The Indonesian Government and the KPK welcome the coming into force of the United Nations Convention against Corruption (UNCAC). It is considered an important tool to both improve standards in prevention and repression of corruption in Indonesia. Therefore Indonesia has ratified the convention and seeks to

comply with the provisions set by the convention as soon as possible.

To achieve compliance the KPK initiated a study on the gaps between the standards set by the UNCAC and the current Indonesian legislation and institutional framework. This study is meant as a first step towards effective implementation.

Being part of the international communitty, Indonesia seeks to share its experience in conducting this study, particularly with countries suffering equally from corruption.

The KPK hopes that this gap analysis study, “Identification of Gaps between Laws/ Regulations of the Republic of Indonesia and the UNCAC”, may be of benefit beyond the borders of Indonesia.

Jakarta, November 2006

KPK Commissioners:

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The Process of the Gap Analysis Study

The same month the Indonesian Government signed the United Nations Convention against Corruption (December 2003 in New York) the Commissioners of the independent Corruption Eradication Commission (KPK), established by Law 30 of 2002, were sworn in before the President of the Republic of Indonesia. The Commission was provided with a far-reaching mandate in both prevention and repression by the Law.

In 2004 newly elected President Susilo Bambang Yudhoyono declared the fight against corruption as one of the priorities of his Government. On the first International Anti-Corruption Day, 9 December 2004, he issued Presidential Decree 05/2004 on the Acceleration of Corruption Eradication. By this decree the National Planning Board was instructed to coordinate the development of a National Action Plan against Corruption. This action plan was developed during the first months of 2005 and included the drafting of a law on the ratification of the UNCAC by the Ministry of Justice and Human Rights and the Department of Foreign Affairs.

At that time no comprehensive overview on the implications of the Convention on Indonesian domestic legislation and practices existed. Therefore in mid 2005 the KPK developed terms of reference for a study to identify the gaps between the provisions of the UNCAC and the existing Indonesian legislation and institutional reality. As part of the terms of reference KPK determined the format of the matrix to be used for the gap analysis.

It was planned from the very beginning to assign an independent expert team, consisting of both Indonesian and international experts, to gather and analyze the relevant legislation and conduct interviews with relevant stakeholders. Adopting a team approach the international consultancy would provide expertise on the

background and genesis of the UNCAC and internationally accepted good practices, while the Indonesian consultancy would provide knowledge of the local legislation and procedures and facilitate access to important stakeholders.

In conducting this study the KPK received support from German Technical Cooperation (GTZ) and the European Union. GTZ supported the recruitment and funding of the international consultant team. The European Union through the Partnership for Governance Reform in Indonesia (PGRI) provided funding for the Indonesian Consultant Team, Seminar/Course and project management under the so-called “Crash Pogram”.

By late 2005 suitable candidates were identified and taken under contract. In late January 2006 GTZ and KPK discussed and agreed the terms of reference and the assignment of the international expert team consisting of Prof. Dr. Mark Pieth, Gretta Fenner and Dr. Zora Ledergerber from the Basel Institute on Governance, Switzerland. The Indonesian team consisting of Prof. Dr. Romli Atmasasmita, Dr. Rudi Satryo and Dr. Chairul Huda started to analyze relevant legislation in February 2006 following the matrix format determined by the KPK. The consultant team and relating activities would be administratively supported by the project management of the “Crash Program”, led by Ary Nugroho.

The matrix in Chapter II follows a simple analysis scheme: The first column states the article of the UNCAC in chronological order, the second column the articles’ provisions. In the third column the relevant current Indonesian legislation is listed. The fourth column compares the UNCAC with the Indonesian legislation and points out differences (gaps), whereas in a fifth column aspects that are not of a strictly legally-comparative nature, but for example refer to existing practices are stated. A sixth column states recommendations.

From March 7 to 10, 2006 Gretta Fenner, Director of the Basel Institute on Governance, met for intensive discussions with the Indonesian Team and conducted a first round of interviews with key stakeholders: Ministry of Administrative Reform (MenPAN), Indonesian Corruption Watch (ICW), Financial Transaction Report and Analysis Center (PPATK), Partnership for Governance Reform in Indonesia (PGRI), the Asian Development Bank (ADB), and the Ministry of Legal Affairs and Human Rights.

In late April 2006 the English version of the matrix could be shared electronically among the consultants based in Jakarta and Basel. From 23 to 26 May 2006 Prof. Dr. Mark Pieth and Dr. Zora Ledergerber conducted another series of interviews in Jakarta with ADB, Ministry of Legal Affairs and Human Rights, the Embassy of France, the Indonesian Chamber of Commerce and Industry (KADIN), the Business Competition Supervisory Commission (KPPU), PGRI, and the Indonesian National Police (POLRI). In late June the international consultants submitted their draft report.

This draft report and the matrix were then presented by Prof. Dr. Romli Atmasasmita during a seminar conducted in cooperation with the Ministry of Legal Affairs and Human Rights on July 12-13, 2006 and discussed in detail during a two-day workshop. Its dual purpose was to promote the UNCAC as a reference for improving anti-corruption policies in Indonesia and increasing general awareness of its possible implications, on the other hand the insight and practical experience of concerned public officials was sought in order to strengthen and enrich the expert team's analysis. 175 participants from various state institutions attended the seminar and later discussed the implications of the UNCAC on the Indonesian legal and institutional framework in four groups: Prevention, Criminalization, Asset Recovery and International Cooperation. The discussions followed the chronology of the UNCAC articles and were documented, summarized and presented

to all participants during a plenary session. The event was closed by a speech of the Minister of Legal Affairs and Human Rights.

The results were then accommodated into the matrix by the Indonesian expert team who also added recommendations for follow-up into the sixth column.

Since the first seminar and the workshop involved mainly legal experts, academics and practitioners from various state institutions, and civil society awareness and knowledge about the UNCAC is very limited in Indonesia, a special two-day course was held with 31 non-governmental organizations (NGOs) and journalists from all over Indonesia to explain the importance and implications of the UNCAC for Indonesia. This course was met with high interest and might be repeated to increase public awareness of the UNCAC. This is considered important in order to push and monitor the actual implementation of UNCAC provisions and recommendations in Indonesia.

Although the actual study presented in this volume was completed in August 2006, the KPK will strive to increase awareness of public officials and the public likewise and push for the necessary legal amendments and policy changes and their implementation, needed to comply with the international standards set by the UNCAC.

Beyond the gap analysis study several initiatives regarding the UNCAC have started. The Indonesian Government has formed an UNCAC Implementation Team which is coordinated by the Indonesian National Development Planning Agency (Bappenas), and a Team for the Amendment of the Anti Corruption Law to harmonize the legislation with the UNCAC, coordinated by the Ministry of Legal Affairs and Human Rights and supported by the French Government.

I. Implementing the UN Convention Against Corruption (UNCAC) 2003 in Indonesia

A. Executive Summary

It is widely recognised within and outside the country that Indonesia has suffered from an endemic corruption problem, in particular in the Soeharto era (1966-1998). A system of deeply embedded patronage cultures in the administrations and their close ties to business tycoons linked to the president can be characterised as "crony capitalism". The early administrations in the post 1998 era have struggled with the problem, but have, according to many observers, not managed to rid the country of the quasi-feudal structures. New efforts of the Government of Susilo Bambang Yudhoyono (since 2004) combined with a considerable increase in the number of corruption prosecutions – especially triggered by the Corruption Eradication Commission (Komisi Pemberantasan Korupsi – KPK) are **giving rise to hope**. The recent ratification of the UN Convention against Corruption (UNCAC) of 2003 is also an indication of these developments.

Considering the UNCAC a helpful guidance for further anti-corruption and governance reform, and in the aim of complying with the obligations under the Convention, KPK with the support of the Partnership for Governance Reform in Indonesia ("Partnership"), the European Union and the German development

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I. This Chapter was prepared by Gretta Fenner, Dr. Zora Ledergerber, Prof. Dr. Mark Pieth from the Basel Institute on Governance as the International Consultant Team.

agency GTZ have commissioned a gap analysis to evaluate the level of compliance of the present Indonesian legal and institutional framework with the standards and principles of UNCAC and to identify corresponding remedies. The present report is prepared by a team of experts of the Basel Institute on Governance in supplement to the detailed analysis conducted by a team of Indonesian experts which resulted in the annexed matrix (cf. *Annex 1*).

The **findings** are addressing three main areas: prevention, law enforcement and international cooperation. In the sector of **prevention** a lot remains to be done, especially with regard to the civil service reform (including such issues as sanctioned wealth reports and codes of conduct), and an urgent need for justice sector reform has been signalled by near to all interlocutors. Closely related to this area is the overhaul of public procurement rules, currently underway, though the actual problem lies less in the existence of appropriate laws than in their enforcement.

The main focus in the **criminalisation** area was placed on the issue of simplifying legislation through unification and by introducing it into the criminal code. Some very specific deficiencies in the current legal framework further need to be addressed, such as the lack of a legal provision criminalizing transnational bribery. Furthermore, the Indonesian legislator needs to consider implementing some additional optional provisions addressing related forms of cronyisms like trading in influence. The introduction of the offence of illicit enrichment could possibly also prove helpful as a supplement to the wealth reports.

In **international cooperation** the report finds that the present Indonesian approach to require a treaty as a condition for mutual legal assistance or extradition is somewhat at odds with the otherwise civil law orientation of the Indonesian legal system. Furthermore, detailed analysis is necessary to ensure that the

Indonesian understanding of 'dual criminality' does not go beyond the UN standard, as this could result in additional barriers to efficient mutual legal assistance. In **asset recovery,** Indonesia must be able to act both on the requesting and on the requested side. The Convention focuses in particular on the obligations of the requested party.

Overall, the newly created structures (especially KPK) need to be strengthened to serve as a driver against corruption, the legal system has to be made more coherent and a credible and concrete effort in the public sector, especially in terms of civil service and justice reform, will be necessary to change the negative reputation of police, judiciary and the wider public service.

B. Introduction

Corruption is considered a very serious challenge in Indonesia. The country has in the past acquired a reputation of being one of the most corruption-prone countries in the world. This impression results from perception studies involving the (foreign) business sector and the local population.[1] Analysts have described the system established during Soeharto's "New Order" regime as a form of "crony capitalism", relying on patronage and nepotism, and creating quasi-feudal structures in the civil service. The consequence was endemic corruption, even if the system was able to provide relative economic stability for a large part of the population over the 30 years of its existence.[2]

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1 E.g. Transparency International's Corruption Perceptions Index (CPI)

2 Schuette, Sofie Arjon (forthcoming), "Government Policies and Civil Society Initiatives against Corruption" in: *Indonesia's Democratization: Complexities of a Hybrid Regime*, Institute of Asian Studies, Hamburg.

When President Soeharto stepped down under popular pressure in 1998, the following Governments created anti-corruption units and action plans; the new institutions were, however, typically left with limited resources, insufficient competencies and a lack of competent staff. There was no real commitment to break with the past. In consequence, the quasi-feudal structures remained largely in place even with President Soeharto no longer in power.

The fate of the "Joint commission for corruption eradication", created in 2000 to take decisive action against corruption, may serve as an example of these difficulties: When this body decided to investigate certain members of the Supreme Court, the Supreme Court decided that the legal basis for this action was insufficient. The Commission was dissolved in 2001.[3]

In the eyes of many commentators, the new anti-corruption policy of President Susilo Bambang Yudhoyono (SBY) stands a better chance of success[4]. This is explained, on the one hand, with the further reaching powers with which the new authorities, notably the KPK, have been granted and, on the other hand, with the strong commitment of the SBY Government to the fight against corruption, voiced in the President's Instruction (INPRES) 5/2004). To implement this instruction, the Indonesian National Development Planning Agency (Bappenas) and others have recently completed a National Action Plan for Eradicating Corruption (RAN-PK). Besides, special task forces have been set up and, very recently, also a Judicial and Prosecutorial Commission. Whether these measures will be effective, however, remains to be proved.

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[3] KPK, Annual Report 2005, 12; Schuette, forthcoming (see note 2); Bhargava and Bolongaita, Challenging Corruption in Asia: Case Studies and a Framework for Action, Washington, D.C.: The World Bank 2004:222.

[4] Bhargava and Bolongaita 2004:228 (see previous note).

This Report is part of an effort by KPK, with the funding of the EU through the Partnership for Governance Reform and of the Federal German Ministry for Economic Cooperation and Development (BMZ) through the German Technical Cooperation (GTZ[5]), to identify potential gaps and loopholes in the Indonesian legal and institutional anti-corruption framework with regards the standards and principles set forth by the UNCAC. The authors do not claim completeness and, while the recommendations for reform as suggested in the present report should normally contribute to enhancing Indonesia's efforts to combat corruption, additional measures not mentioned in this report may be necessary to further enhance the efficiency of the Government of Indonesia (GOI)'s anti-corruption strategy.

C. Method

A team of national consultants led by Prof Romli Atmasasmita has conducted a detailed micro-analysis of relevant existing Indonesian legislation with a view to comparing this to the provisions and standards of the UNCAC. Based on this analysis, the national consultant team established a matrix (cf. *Annex 1*), originally produced in Bahasa Indonesia and translated into English, composed of a listing of the UNCAC provisions and relevant laws of Indonesia, an analysis of possible deficits thereof, and recommendations for remedies.

A second team of international experts from the Switzerland based Basel Institute on Governance (Basel Institute)[6] was tasked to

[5] Support for Developing and Transition Countries in Implementing the United Nations Convention against Corruption (UNCAC).

[6] Prof. Mark Pieth, Gretta Fenner, Dr. Zora Ledergerber

provide further insight into international standards to combat corruption and money laundering, and to support the local consultant team with an enhanced understanding from other countries' approaches to implementing these standards. For this purpose, the international consultants visited Indonesia twice and met a variety of key stakeholders from government and public administration, non-government organisations, donor institutions, the private sector and international organisations (cf. *Annex 3*).

The international team of the Basel Institute has studied the matrix produced by the local consultants, read the referenced laws and provided extensive comments and recommendations on the findings of the matrix. With the present text, the international consultant team is placing its comments into the wider context of international action against corruption. It seeks to provide a more abstract discussion of certain identified deficits, while concentrating on certain key areas only perceived by the international consultants as being of particular relevance.

Prof Romli Atmasasmita of the local consultant team has further prepared an executive summary of the matrix' findings from his own perspective (cf. *Annex 2*).

With regard to both matrix and the present report, it has to be noted that many UNCAC provisions are non-binding respectively non-mandatory in nature. Therefore, in the case of non-mandatory provisions, adapting the legal framework might not be necessary by legal standards, but may well be important in relation to an effective fight against corruption in Indonesia.

D. United Nations Convention Against Corruption

After two years of intense negotiations, the United Nations Convention against Corruption (UNCAC) was adopted by the General Assembly in its Resolution 58/4 and opened for signature on 9 December 2003 in Merida (Mexico). The UNCAC is the last in a series of international anti-corruption conventions established over the last ten years, such as the Inter-American Convention Against Corruption of 1996, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of 1997, the Council of Europe Criminal and Civil Law Conventions (1999), and the African Union Convention on Preventing and Combating Corruption (2003). All these treaties share a common goal but differ in terms of their geographical reach, the range of their provisions, their binding respectively non-binding character and in terms of their monitoring mechanism.

The UNCAC clearly reaches out to the greatest possible number of countries, and – with currently 140 signatories and thereof 60 parties[7] – has succeeded within little time to obtain adherence on a worldwide level. The relatively rapid entry into force in December 2005, only two years after its adoption, has for some come as a surprise who have been sceptic as to the ability to gather sufficient ratifying states within the required time. It is a clear statement as to the commitment of states around the world to the fight against corruption, and an expression of the level of acceptance and awareness that the fight against corruption has achieved since it has first been put on the international agenda in the 1990s. On

[7] Status as of August 7, 2006. Cf. http://www.unodc.org/unodc/crime_signatures_corruption.html.

the other hand, the low number of OECD member countries that have ratified the Convention so far (Australia, Austria, Finland, France, Hungary, Mexico, Spain and the United Kingdom) has been a matter of concern especially to the developing world. Critics say that developed countries apply different standards to themselves than they do to their development partner countries, and that they are reluctant to irrevocably commit to the Convention's provisions on asset recovery.

In terms of thematic reach, the UNCAC broadens its approach compared to earlier anti-corruption conventions. The UNCAC calls for extensive preventive measures and the criminalization of the most prevalent forms of corruption in both public and private sectors. However, unlike other Conventions, the UNCAC provides for many non-mandatory provisions, an issue which has raised concerns as to the actual impact of the Convention and the level of translation of its non-mandatory provisions into domestic legislation.

In terms of substance, the major breakthrough of this Convention is the fact that it asks Member States to return assets generated through corruption and other offences criminalized by the Convention to the country from which these stolen funds originate. These provisions introduce the obligation for asset recovery as a fundamentally new international legal principle. Implementation of this chapter is sought to be obtained by means of extensive provisions setting out a framework for stronger cooperation between States to prevent, detect, and return the proceeds of corruption. Chapter V, which deals with the issue of asset recovery, is of particular importance for many developing countries, including Indonesia, where corrupt officials have plundered the national wealth, and where these resources are badly needed to reconstruct and rehabilitate the societies.

In December 2006, at the first Conference of the State Parties, the parties to the UNCAC will discuss the implementation of a monitoring process as required by Article 63 UNCAC, a process which will be of crucial importance if the momentum of the UNCAC is to be maintained and translated into concrete progress in the international fight against corruption.

Independently from the monitoring mechanisms, countries that are serious about their commitment under the Convention have to engage in a thorough review of their legal and institutional anti-corruption structures in order to evaluate their compliance with the UNCAC and to identify potential need for reform. Other countries, such as Singapore and a great number of OECD member states have opted to reverse this process and postpone ratification until such review has been finalised and potential legal gaps and loopholes have been remedied.

The present report seeks contribute to this efforts in Indonesia to thoroughly implement the Convention into domestic regulation and practice. Indonesia has been among the first countries to sign the Convention, only a few days after the opening of the Convention for signature, on December 18, 2003. Some two and a half years later, the Indonesian Parliament ratified the Convention by adopting law 7/2006. The UNCAC has been translated into Bahasa Indonesia by the Monitoring Forum 2004 on Combating Corruption in Indonesia chaired by Prof Romli Atmasasmita, a measure that will clearly increase the public understanding and awareness of Indonesia's obligations under the UNCAC, and facilitate external oversight over implementation.

E. Gap Analysis

1. General Provisions (Chapter I, Articles 1-4 UNCAC)

1.1 The UNCAC approach

Articles 1-4 contain provisions with regards the overall commitment by State Parties to the fight against corruption and to implementing the UNCAC and provide an overview of key areas covered by the Convention. They explain the goal of the UNCAC As being the creation of a world-wide integrated and compatible system of anti-corruption measures. Obviously, depending on the particular situation of State Parties, some areas of the Convention will be more relevant than others. However, ratifying the UNCAC means for each state party to assume the obligation of fully implementing the Convention, at least as far as its provisions are mandatory.

1.2 General issues for Indonesia

A key issue under discussion in the preparation of the implementing legislation in Indonesia is whether to reorganise and concentrate the dispersed anti-corruption rules in a single law. The local consultant team is advocating such a step and the Minister of Justice and Human Rights is working on this matter.

A project under joint French and US sponsorship, implemented by an Indonesian and French joint working party, has embarked on an ambitious reorganisation of the law enforcement side of combating corruption. In a nut shell it attempts to distinguish clearly between substantive criminalisation rules and criminal procedure. In substantive law it adopts a broad notion of corruption, which is merely seen as a subset to an even broader concept of economic

crime. In procedural law it attempts to reorganise the law of evidence and to reinforce measures of constraint according to international standards.

So far, Indonesian anti-corruption laws, regulations and institutions have been created as a sequence of historically grown layers. Many institutions coexist and retain parallel competences, others gradually frayed away. While the foreign consultants clearly support the quest for a coherent legal framework, the real challenge for the GOI and the legislator is to strike a balance between analytical correctness and effectiveness: Bad laws do not help on the long run, because they create loopholes for cunning defendants and well paid lawyers representing them. On the other hand, overdoing synthetic neatness at the price of political stale mate in parliament would be detrimental for the current thrust to actually make a difference felt in everyday life by the population within a reasonable time frame.

2. Prevention (Chapter II, Articles 5-14 UNCAC)

2.1 The UNCAC approach

Corruption derives from and prospers on systemic weaknesses. Consequently, anti-corruption efforts seek to address these flaws through preventive measures that reduce opportunities for corruption. This is sought to be achieved through measures enhancing transparency (to render attempts of corruption visible) and strengthening integrity (to instil a culture in which corruption is no longer an accepted behaviour).

The UN Convention rightly places particular emphasis on the prevention of corruption and in this respect goes clearly beyond the reach of most other international anti-corruption instruments that focus mostly on criminalization. With a view to effective

corruption prevention, the UNCAC foresees the establishment of an effective anti-corruption body or bodies, steps to enhance transparency in the public administration (access to information) and to increase participation of civil society, and institutional measures for the public sector including the judiciary (codes of ethics, the reporting of cases of corruption and conflict of interests, public procurement) as well as for the private sector. Prevention of money laundering is also addressed in this section.

2.2 Issues for Indonesia

With respect to the situation of Indonesia adjustments in several minor areas need to be made to better reflect the purpose of the Convention (for details see *Annex 1*). This report however suggests that priority is given to four issues identified as being of particular concern to Indonesia when seeking to increase the efficiency of its fight against corruption and to comply with the mandatory provisions of the UNCAC:

- Defining the responsibilities for prevention (Article 6);
- Civil service reform (Articles 7,8), with particular focus on measures in law enforcement and the judiciary (Article 11);
- Public procurement reform (Article 9); and
- Preventive anti-money laundering provisions (Article 14).f

In all these areas, efforts to overhaul legal provisions and those targeted at ensuring their enforcement have to be carefully evaluated and balanced.

i) Anti-corruption body (Article 6)

According to this provision, the State Parties shall establish one or several anti-corruption bodies with the task to implement, oversee and coordinate the State's anti-corruption policies, as well as to

increase and disseminate knowledge about the prevention of corruption. This body/these bodies shall be granted the necessary independence, the necessary material resources and specialised staff with adequate training.

Indonesia has an eventful history in relation to anti-corruption bodies. Before the current Corruption Eradication Commission (KPK) was established on 29 December 2003 (under the Law 30/2002), a few institutions had already been mandated with similar tasks, albeit rather unsuccessfully; e.g. the Corruption Eradication Team (1967), the Joint Investigation Team (2000-2001) and the Public Officials Audit Commission (2001-2004). At present, there are mainly two bodies responsible for corruption prevention in Indonesia. One of them is the above mentioned KPK, the other one is the National Ombudsman Commission (NOC). This latter independent institution reports directly to the President and is tasked with receiving reports and information on the malpractice of state and government officials. In addition, the NOC conducts studies to evaluate ways for improving the functioning of the public service. However, the NOC's status is based on a presidential decree only and its financial support is very limited. So far, the NOC is said to be ineffective, and will continue to be so until there is law on the statute books that strengthens its powers. More promising to date are local initiatives, such as the local Ombudsman in the Special Region of Yogyakarta, an initiative that has been endorsed by the Governor and enjoys a high degree of local support.

The KPK on the other hand receives great public confidence and is said to have high credibility among the population. The public counts strongly on KPK's ability to curb corruption and KPK is perceived as being the only truly non-corrupt state entity in Indonesia. In the early days of its existence, KPK faced some

difficulties in regard of capacity-building and implementation of its mandate due to a lack of clarity in Law 30/2002 (who is admitted as investigator, issue of gratifications etc.) The overall impression now is that the law 30/2002 equips KPK with a wide range of rather far reaching mandates and that KPK seems to enjoy a comparatively high level of independence. However, the human resources and the infrastructure available to KPK could still be improved. In addition, compared to its mandate, the tasks which KPK presently exercises seem rather limited. It would help to examine what measures need to be taken to allow KPK to become fully operational and to fully exercise the wide range of authority it has been provided with. For example, KPK is quite effective and highly engaged in investigating and prosecuting corruption cases. This is clearly important especially against the background that the police is perceived as highly corrupt and thus should not be solely trusted with investigating corruption cases in Indonesia.

However, KPK needs to advance on (accepted) second mandate, the prevention of corruption. It is recommended that KPK considerably intensifies its efforts in this area, including through capacity building of KPK staff. Furthermore, KPK might wish to consult with anti-corruption agencies of other countries from the region that have fully fledged programmes for prevention of corruption, such as Hong Kong, China, South Korea or Malaysia. Notably efforts in the educational sector that succeed in reaching out to the future generations have proven to be successful in such countries as Singapore, though it should also be considered to expand such educational measures to other interested parties from the general public, such as from the private sector. Many agencies from the Asia-Pacific region today further work through radio and TV broadcasting to raise awareness and educate the general public. Finally, a typical preventive programme of anti-corruption agencies often encompass regular and in-depth studies of practices

and procedures of public sector organisations, and the issuing of recommendations as to the implementation of adequate corruption prevention measures to those organisations identified as particularly exposed.

Further preventive measures on which Indonesia should engage, ideally with the involvement of KPK, as leading or associate institution as appropriate, follow in the next sections.

ii) Civil service reform (Articles 7, 8)

Corruption prevention in public administration usually consists of efforts striving to enhance integrity in the civil service, measures aimed at harmonizing and clarifying procedures and at reducing discretion, including through control and supervisory mechanisms, and thirdly of a thorough review of the regulatory environment in order to minimize opportunities for corruption created by ambiguous or possibly overlapping regulations. Of these three elements, neither can be dealt with individually as they are mutually dependent, but most likely the integrity and competence of public officials is the most fundamental prerequisite for a reliable, efficient and transparent public administration.

In Indonesia, the public administration is perceived to be thoroughly corrupt and as a consequence, this report suggests that particular emphasis is put on civil service reform in the overall framework of the country's corruption prevention strategy. This tendency has also been acknowledged by the National Action Plan (RAN-PK) developed in 2005, though its implementation lags behind.

Openness, equal opportunity and transparency in recruitment and staff management in the public service are essential to ensure an honest, competent and independent public service. Corrupt practices in this regard may take various forms, including nepotism

and cronyism, which are both practices well known around the world. Consequently, Article 7 UNCAC addresses policies on the recruitment, hiring, retention, promotion and retirement of civil servants. This includes adequate remuneration, equitable pay scales, education and training programmes as well as measures to manage conflicts of interests.

As regards hiring and promotion, defining the criteria, procedures, and institutional framework by law is an essential precondition for transparent and fair selection and promotion procedures. Advertising posts in the media and through channels that are equally accessible to all potential candidates is a fundamental principle in this regard. In this context, in a growing number of countries Internet has gained in importance as a means of informing of job opportunities, though in countries with a low level of access to this communication tool, Internet can only be considered an additional rather than the prime information platform. In general, it is advisable that the Government reviews and optimizes the organizational structures and standards for promotion and hiring. For instance, it is recommended to add provisions to the Indonesian legal framework which establish the criteria of “never have been involved in corrupt activities” for hiring and promoting public officials. Finally, the training and education program for public servants should be reviewed in order to include corruption prevention matters into the regular curriculum.

As inadequate remuneration not only renders posts in the public service uninteresting to qualified candidates but also opens the door to corruption as a necessary evil through which to make a living, notably in the lower levels of civil service, the Government should be encouraged to reform the staff allocation and compensation policies. Adjustments should take into account changing costs of living, overall economic development, and

comparable remuneration schemes in the private sector. In addition, and in particular in a tight macro-economic situation, priority may be given to particularly corruption prone areas. The approach chosen by Indonesia, which has prioritized salary adjustments in law enforcement and tax authorities, is therefore encouraged and continuing in this direction is recommended.

Article 7 UNCAC addresses the issues of corruption in politics, i.e. the funding of political parties and candidatures for public offices. This matter is tackled in Indonesia through the Law on Political Parties, the Law on General Election and the Law on Regional Government which seem, from a purely legalistic view, to provide a sufficiently sound legal basis.

Article 8 UNCAC deals with codes of conduct for public officials, the reporting of acts of corruption by public officials, wealth (inter alia) declarations as well as disciplinary or other measures to sanction violations of the codes. Codes of conduct are important to clarify rules, responsibilities and behavioural norms in these regards, and they should also provide for an effective sanction regime against public officials who violate the codes. Although the application of codes of conduct is only a voluntary provision of UNCAC, establishing such codes, or reinforcing them where they exist, is in the Indonesian context especially recommended in relation to the judiciary and the police.

In relation to the reporting of acts of corruption by public officials, it is recommended to facilitate the reporting of corruption by enacting provisions to protect whistleblowers, including if they are public officials (for further comments on this matter, cf. chapter 3.2., section v.).

Wealth is often apparent, while corruption is a hidden crime. Consequently, screening public officials' wealth is in many countries considered a useful tool to prevent and detect corruption. While some countries require all public officials to file asset declarations, others such as Belgium, Nepal and the Philippines extend these reporting duties to public officials' families and relatives to prevent and detect formal transfer of assets. Yet other countries, including Japan, Korea, and Thailand, only apply these provisions to officials at higher levels. There are advantages and disadvantages to all three approaches. In Indonesia, however, it is highly recommendable to review whether sufficient resources are available to accurately analyze the filed reports, or whether in order to maintain credibility and effectiveness of the measure, further limiting reporting obligations to certain exposed categories of public officials such as in the judiciary (Supreme Court) may make sense. Also, legislation should be enacted to provide for effective sanctioning of non-compliance with the reporting obligation, and it should be considered whether wealth reports should be made available to the public, e.g. on the internet.

Further guidance on civil service reform may also be found in relevant international standards such as those developed by the OECD.

iii) Judiciary and law enforcement agencies (Article 11)

Article 11 UNCAC requires of the State Parties to strengthen the integrity of the judiciary and in the prosecution services as a means to prevent corruption. The establishment of codes of conduct is listed as an example through which to implement this provision. In Indonesia, this provision is of particular importance given that within a public service already perceived to be highly corrupt, the judiciary and the law enforcement agencies (with the exception of the KPK) have the doubtful reputation of an even higher level of corruption.

Studies have indicated that the justice sector lacks the necessary professionalism and experience to handle corruption cases in an effective and efficient manner. Low salaries in the public service in general, and in the judiciary in particular, further undermine the professionalism, capability, neutrality and independence of judges.[8] This leads to a low quality of court decisions. In addition, the situation in relation to backlogs is particularly unsatisfying; the backlog of cases pending with the Supreme Court as per March 2006 stood at 13,997 cases.

Additionally, there are weak and unclear regulations and partially overlapping mandates of prosecutors, police, and the KPK, and the absence of effective mechanisms for whistleblower and witness protection further undermines the effectiveness of law enforcement, although the latter is addressed, at least in parts, in the Law on The Protection on the Witness and Victims which has recently been passed by Parliament. Another challenge is, according to observers, low morale and lack of integrity among those mandated to uphold the rule of law; as well as the poor facilities and infrastructure especially in rural areas.[9]

Overall this leads to a lack of trust in the judiciary and the law enforcement agencies. In acknowledgement of this fact, a number of efforts to strengthen integrity in the judiciary and within law enforcement agencies are underway with the aim of restoring trust in these crucial public institutions: The National Mid Term Development Plan (RPJM) 2004-2009 for instance foresees a number of legal and judicial reform measures. According to different

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[8] UNODC, Strengthening Judicial Integrity and Capacity in Indonesia, Proceeding Document, First Provincial Integrity Meeting for the Justice System of South East Sulawesi in Kendari, 7-8 October 2004, 8.

[9] See previous note, UNDP 2004, 9.

interlocutors, their implementation shows certain progress, but their long-term impact cannot be evaluated as of yet. Under the auspices of the Supreme Court and with the participation of senior officials from the legal, judicial and law enforcement sector, three Law Summits have been held so far. At this occasion, a blueprint for judicial reform in Indonesia as well as an action plan for the reform of the Supreme Court has been developed. The “Blueprint for the Reform of the Supreme Court in Indonesia” has been issued by the Supreme Court in 2003 and a “Reform Team” has been established as central coordinating body responsible for planning, coordinating and overseeing the reform which aims at the creation of a fair and independent Court system.

Continuous and rather promising efforts are further underway to build capacity within the Attorney General’s office and the Indonesian National Police. For this purpose and with the support of the Partnership and the involvement of civil society institutions, the 2005-2006 Republic of Indonesia Prosecution Reform Agenda has been developed, and a Prosecutorial Commission and a National Police Commission were established for the purpose of evaluating performance and recommending improvement of these agencies.

Since the performance of the judiciary in relation to corruption cases has not been satisfying yet, an independent special court has been established tasked to examine corruption cases prosecuted by KPK. The anti-corruption court enjoys high credibility and seems to be functioning well. However, scarce resources limit the ability of the Anti-Corruption Court to deal adequately with the current case load. As the proper functioning and capacity of courts ultimately determines the success in settling cases brought forward by the KPK, it seems important that resources of the anti-corruption court are increased adequately.

Another example of efforts to enhance coordination and efficiency of law enforcement is the Coordinating Team for Corruption Eradication (Timtas Tipikor – Tim Lintas Pemberantasan Tindak Pidana Korupsi) that targets possible corruption in the State Secretariat, the Presidential Palace, four distinct departments (Religious Affairs, Education, Health, and Communications and Information), sixteen state-owned enterprises and three private companies. Established by the President in May 2005, Timtas Tipikor comprises representatives from the Attorney General's Office, the National Police and the Internal Audit Board (BKPK). One of the principal aims in setting up this coordination body is to ensure synergies and avoid duplication between the prosecutors' office and the police, and with other law enforcement agencies, with a particular focus on investigating and prosecuting high-level corruption cases.

Despite these many efforts in this area, corruption in the judiciary remains one of the central challenges in Indonesia's fight against corruption. Policy makers are well advised to ensure proper coordination among the above mentioned reform projects as well as other on-going programmes in the same area, to ensure maximum use of resources and avoid additional confusion among the involved bodies.

iv) Public Procurement and Management of Public Finances (Article 9)

Public procurement and public finances are among the most corruption prone areas of public administration. Throughout the world, reform in these two areas has been identified as a priority in any anti-corruption strategy. Article 9 UNCAC consequently defines requirements for a transparent and efficient public procurement system and outlines mechanisms to ensure transparency and accountability in the management of public finances. Corruption

in public procurement and in public finance has been highlighted by near to all Indonesian interlocutors as one of the most fundamental problems in Indonesia, in addition to corruption in the judiciary and law enforcement already dealt with earlier in this report.

Measures undertaken by the GOI with a view to enhancing transparency and preventing corruption in public procurement include the introduction of a national procurement office, training and certification of procurement officers and the development, by Bappenas, of an e-procurement system. The current procurement scheme, as defined by Presidential Decree 80/2003, is overall considered to be in compliance with international standards, although some suggest that anchoring the procurement related provisions at the level of parliamentary law would enhance transparency and stability of procurement processes.

While the legal provisions therefore can be considered to largely satisfy international standards, their implementation remains deficient. A number of procedural measures would clearly contribute to countering this remedy: For instance, the development of standard bidding documents is much advised, including standard contracts and guidelines for conducting calls for tender and their evaluation, and applicable to all forms of tender and at all levels of state administration. In addition, the Integrity Pact System, in Indonesia supervised by Transparency International and Procurement Watch, is yet to be fully implemented. Finally, as mentioned by different interlocutors, further capacity building within the State Audit Institution (BPK) is required on particular techniques for procurement audit.

As regards the management of state finances and property by the executive and legislative, the UNCAC provides for the adoption of

a set of procedures related to the adoption and review of the national budget; minimal standards of financial statements and other documents related to public expenditure and revenue; prevention of falsification of documents; and the existence of appropriate sanctions at administrative and civil law level. Indonesian Law 17/2003 on State Finances and Law 1/2004 on the State Treasury stipulate provisions that are designed to improve public expenditure management and to deter fraud, mismanagement or corruption leading to financial losses for the state.

However, according to different interlocutors, implementation of these laws is not very strict and transparency in and accountability of managing public funds are limited, though major progress has been made at the institutional and legal level in this regard over the past two years. The lack of a modern state audit law has long been criticized in Indonesia, a problem that was addressed with the enactment of State Audit Law No. 15/2004 stipulating the role of the Indonesian Supreme Audit Agency (BPK). This law is said to significantly strengthen state finances and audit and oversight over public funds. Three recent implementing regulations for the State Finance Law completed and used for the first time to issue the 2005 budget further assisted in unifying the format of public funds and as such facilitating budget oversight.

Also, the effectiveness of Laws 17/2003 and 1/2004, in combination of Law 31/1999 to deter fraud leading to financial losses for the state is questioned by a number of interlocutors. They seem to contain contradictory provisions with regards the potential sanctions applicable to a public official convicted for having caused financial loss to the state, and whether returning the damage to the state and putting the convicted official to jail can be applied cumulatively. Provisions with regards the creation of financial loss

to the state are seen by the UNCAC as a highly effective tool to deter corruption in the public official. Accordingly, it is strongly recommended that the relevant provisions are analyzed carefully and that practice in other countries is assessed. In certain countries, such as Japan, Mongolia and Papua New Guinea, the audit boards are entitled to initiate or carry out disciplinary action when an official has caused a "grave loss" (or violated a law or budgetary rules). In other countries, such action is exclusively in the hands of law enforcement and entails criminal sanctions in addition to potential disciplinary action.

v) Public reporting (Article 10) / Participation of society (Article 13)

An important precondition for enabling citizens to scrutinise public administration and as such to contribute to detecting and diminishing corruption is a meaningful right to access information. Article 10 UNCAC consequently deals with enabling citizens to access information and encourages states to publish relevant information, in particular with regards combating corruption. The particular relevance of access to information with regards the participation of society in the fight against corruption is underlined in Article 13 UNCAC again, which further stipulates that State Parties should encourage civil society to actively participate in anti-corruption activities and should undertake citizen education programmes.

In Indonesia, KPK is tasked with providing corruption education. As mentioned before, KPK has focused on repression during its first two years of existence due to high public demand and is now engaging more actively in preventive measures. Given the importance of public support for and understanding about the fight against corruption, this situation should hopefully become more balanced in the medium term future.

As regards the situation in Indonesia at the legislative level, it is strongly recommended to pass the law on freedom of information which is presently in Parliament, and to ensure that access to corruption-relevant information is included in these provisions. Concerns have been raised by civil society[10] regarding potential overlaps, ambiguity and limitations to the provisions of the Freedom of Information legislation as a result of the Draft State Secrecy Bill and State intelligence Bill. Policy makers are advised to carefully evaluate this risk and to take countermeasures where appropriate.

Finally, Article 13 UNCAC contains a provision on the reporting of corruption related incidents. In Indonesia, corruption cases can be reported to KPK through various channels, including several hotlines. However, no protection exists in Indonesia for whistleblowers that may fear to endure retaliations as a result of their reporting of corrupt activities. As corruption reporting by the public as well as public servants is central to enhancing the effectiveness of corruption detection and prosecution, the enactment of an adequate whistleblower protection law is strongly advised.

vi) Private Sector (Article 12)

As in most countries around the world, anti-corruption efforts in Indonesia have so far concentrated mainly on the public sector. However, as in every case of public sector corruption – except for petty corruption – a private sector entity is usually involved.

[10] There are several non-governmental organisations in Indonesia active in curbing corruption, such as Coalition for Witness Protection, Indonesian Corruption Watch, the Indonesian Forum for Budgetary Transparency, the Indonesian Chapter of Transparency International, Indonesia Procurement Watch and many others on national and local level. There is further the organization "Monitoring Forum on Combating Corruption 2004", based in Jakarta and comprising prominent Indonesian citizens including Prof Romli Atmasasmita, the then of Head of the Selection Committee on the Chairman of the KPK, and team leader of the Indonesian consultants involved in this study.

Enhanced measures to prevent corruption in the private sector could usefully supplement existing anti-corruption efforts. In particular regulations governing company accounting, internal control and disclosure of information can importantly contribute both to prevention and detection of corruption, and an in-depth evaluation of existing accounting and auditing standards as compared with section 3 of Article 12 UNCAC and with regards their effectiveness in preventing and detecting corruption could thus usefully contribute to strengthening the responsibility of the private sector.

Finally, and this could be part of an enhanced preventive strategy to be developed by KPK, the UNCAC calls for the promotion of codes of conduct and other procedures designed to safeguard the integrity of private entities. Examples from public institutions of other countries that have developed draft corporate codes of conduct and cooperate closely with the private sector in spreading their application, such as the anti-corruption commission of Hong Kong, China (ICAC Hong Kong) and Singapore's Corporate Governance Commission, may provide useful guidance. Listed companies in Singapore and Thailand have to disclose and explain in their annual reports where they have deviated from these sample codes.[11] ICAC Hong Kong provides training in the application of these codes upon request by private companies and Malaysia's Anti-Corruption Agency (ACA Malaysia) is engaged in integrity and ethics training for company executives. Another interesting model, also developed by ACA Malaysia, is the temporary dispatching of staff to major companies and institutions to assist them in ethics and anti-corruption matters.

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[11] *Anti-Corruption Policies in Asia and the Pacific: Progress in Legal and Institutional Frameworks in 25 Countries*, ADB/OECD Anti-Corruption Initiative for Asia-Pacific, 2006, p. 49.

vii) Anti-money laundering prevention (Article 14)

Article 14 UNCAC is about a comprehensive regulatory and supervisory regime for banks and non-bank financial institutions, the management of information through Financial Intelligence Units (FIUs) as well as the detection and monitoring of illicit cash movements. Since the establishment of the Indonesian FIU 'PPATK', considerable progress has been made. PPATK is a focal point tasked with coordinating prevention and eradication of money laundering in Indonesia. PPATK started operating in October 2003, as a result of which Indonesia was taken off the Financial Action Task Force's (FATF) list of non-cooperating countries and territories (NCCT) in February 2005. With the 2005-2009 PPATK Blue Print, its independence and authority is bound to increase. PPATK is also a member of the Egmont Group, an informal group of FIUs from around the world set up for the purpose of stimulating international co-operation among FIUs. The overall impression is that Law 15/2002 succeeds in addressing most issues and systems promoted by relevant international organisations and their standards, and that adequate measures have been put in place to prevent money laundering. However, some specific details as highlighted in comments to Article 14 listed in the appended matrix require further work in order to enhance the effectiveness of PPATK and implementation of the Indonesian anti-money laundering regime.

Notably, one of PPATK's weaknesses relates to the fact that it presently operates almost exclusively with seconded staff from other Government departments. This is in particular problematic with regards the long-term development of capacity and stability. It is therefore recommended to enable PPATK to a minimum number of permanent staff and to establish a performance-based human resources system.

3. Criminalisation and Law Enforcement (Chapter III, Articles 15-42 UNCAC)

3.1 The UNCAC approach

An effective anti-corruption strategy needs to adequately balance between preventive and repressive means. Corruption will not be overcome if preventive measures are not accompanied by effective deterrents. Comprehensive legal provisions against corruption act as an effective deterrent against corruption and enable successful prosecution of corruption. To this end, Chapter III of UNCAC provides for a wide range of standards for the criminalisation of all forms of corruption, and for the effective enforcement of these laws. As regards criminalization, the provisions on active and passive domestic bribery, and active foreign bribery are mandatory, as well as some other core provisions with regards the fight against corruption (embezzlement and misappropriation, obstruction of justice). A series of other provisions, such as on trading in influence, the abuse of public function, illicit enrichment, private sector bribery and private sector embezzlement, is offered as optional.

The UNCAC further sets forth standards on a number of important investigative and prosecutorial means, such as in terms of mandatory provisions the liability of legal persons, an adequate statute of limitation, jurisdiction, the handling of immunity provisions, witness protection, freezing, seizure and confiscation and inter-agency cooperation. With regards its non-mandatory provisions, the UNCAC suggests whistleblower protection mechanisms and debarring as an economic sanction.

Finally, as to the institutional set-up for law enforcement, the UNCAC provides for each State Party to ensure the existence of a body or bodies or persons specialised in combating corruption through law enforcement.

3.2 Issues for Indonesia

i. Domestic and transnational bribery (Articles 15 and 16)

Indonesia's provisions on domestic corruption overall meet the requirements of Article 15 UNCAC, while Article 16 UNCAC criminalizing foreign bribery, i.e. the active bribing of a foreign public official or an official of an international organisation, is yet to be translated into domestic law in Indonesia. It is therefore recommended that in the next revision of law 31/1999, this lacuna is remedied. As the concept of foreign bribery has first been introduced by the OECD Working Group on Bribery, Indonesia may wish to resort to already existing cooperation with the OECD Secretariat in the context of the ADB/OECD Anti-Corruption Initiative for Asia-Pacific in order to get proper guidance in this respect. Regarding the concrete drafting of legal provisions, the joint Indonesian-French team mentioned has made some very valuable contributions.

ii. "Graft" (Articles 17-20)

The issue of graft, a term frequently used to address different forms of abuse of power by public officials, such as the abuse of functions, embezzlement, misappropriation of funds or illicit enrichment, is covered in Articles 17-20 UNCAC. At the exception of Article 17 on embezzlement and misappropriation of funds, all these provisions are however non-mandatory. Nevertheless, and in particular in a country with an established patronage culture, translating the provisions on 'trading in influence' and abuse of public functions into domestic law is likely to proof highly useful to enhance the success rate of corruption prosecution.

Similarly, in relation to "illicit enrichment", a meaningful provision on wealth reports by public officials can greatly increase the

detection rate and provide useful evidence in court (cf. Chapter 2.2.ii.). In severe cases, it is suggested to apply the criminal provisions on illicit enrichment (Article 20 UNCAC) and/or the removal of such public officials from public service as proposed in UNCAC. In this context, Indonesia should consider whether reversing the burden of proof in case of unexplained substantial wealth is compliant with the basic legal principles of the Indonesian system. In order to ensure compliance with basic human rights, and especially the presumption of innocence, it will be crucial to ensure that clear explanations as regards wealth reporting obligations and respective sanctions are included in public official's contracts and clarified at the moment of hiring or nomination. Article 31 UNCAC further suggests a non-conviction based confiscation regime of inexplicable wealth, which is often thought to be an effective means to achieve a turn around in systems where wealth reports are often to almost systematically filled in untruthfully.

iii. Private to Private Bribery (Article 21)

The distinction between private-to-public and private-to-private bribery is increasingly coming to be seen as irrelevant and is generally considered illegitimate by the general public. Both active and passive private bribery cause major damage to the economy and indirectly also to the public budget (since it reduces revenue and taxes). However, private-to-private bribery is a form of corruption which is not yet criminalized in many countries around the world. Similarly, hardly any of the relevant international standards and treaties provide for its criminalization, at the exception of the Council of Europe Criminal Convention against Corruption. The UNCAC suggests that private-to-private corruption should be criminalized, but this provision is non-mandatory.

Businesses seem to be one step ahead of governments in this regard. The ICC Rules to Combat Extortion and Bribery (ICC Rules) clearly state that any form of bribery goes against the concept of open competition. Therefore the ICC Rules make no exception for private to private bribery. Similarly, codes on conduct of many multinational enterprises clearly state that "bribery is bribery regardless of the recipient" and therefore make no distinction between public and private bribery when it comes to the rules applicable to their employees and business conduct. Such behaviour clearly goes beyond what is legally expected from them.

Such developments indicate clearly that the tendency at international level clearly goes towards criminalizing private-to-private corruption, although the relevant provision of UNCAC is not mandatory. It also shows that the distinction between public and private corruption is difficult to explain and makes less and less sense, including for companies who are at the very heart of the provision. Therefore, and despite its non-mandatory nature, it is strongly recommended to translate the UNCAC provision on private-to-private corruption into domestic Indonesian law.

iv. Laundering of Proceeds of crime (Article 23)

From the point of view of the Indonesian FIU (PPATK), some major deficiencies with regards investigating and prosecuting money laundering in Indonesia relate to the fact that the "follow the money" approach to investigation is not yet well understood and used within Indonesian law enforcement agencies. Capacity building in such specific techniques as forensic accounting, as well as basic training in finance and accounting would much improve this situation and also have a helpful spill-over impact on the quality of corruption investigation.

Furthermore, PPATK considers that the fight against money laundering would benefit if more often law enforcement agencies would aim at bringing in cumulative charges for corruption and money laundering. In general, the level of awareness about the seriousness of money laundering and its wide-spread character in Indonesia is apparently still rather low, and the integration of certain aspects of money laundering into awareness raising and education campaigns conducted in the context of corruption prevention could help considerably in improving understanding and knowledge about the interrelatedness of these two offences.

The local consultant team considers the lack of investigating power of PPATK and consequently its dependence on the police a major weakness of PPATK. They recommend that such investigative powers should be given to PPATK, and that one should consider whether a distinct commission for the eradication of money laundering, comparable to KPK for the crime of corruption should be established.

Such reform would entail a shift from the “administrative-type FIU” presently in place to a hybrid form of the “law-enforcement-type FIU” and the “judicial or prosecutorial-type FIU”. The Egmont definition of a Financial Intelligence Unit states that the activities performed by an FIU include “receiving, analysing, and disseminating” information, without excluding other activities, such as investigating or prosecuting violations indicated by a disclosure received from a financial institution. However, if such step should be considered in Indonesia, advantages and disadvantages of expanding the mandate of PPATK should be carefully evaluated:

The “administrative-type FIU” are a buffer, or neutral interface, between the financial industry and law enforcement agencies, as such avoiding the creation of direct institutional links between these institutions while bringing disclosures to the attention of law

enforcement agencies. According to an IMF/World Bank analysis[12], the advantage of this model is, amongst others, that financial institutions are more confident about disclosing information if they know that dissemination will be limited to cases of money laundering and financing of terrorism and will be based on the FIU's own analysis rather than the reporting institution's limited information. Furthermore, the "administrative-type FIU" is considered a neutral, technical and highly specialised interlocutor for the reporting parties, as such instilling further confidence. Finally, and of importance in the context of international judicial assistance, information can be easily exchanged with all types of FIUs.

The advantage of forms of FIUs that are equipped with certain investigative powers is that they usually ensure a quicker law-enforcement reaction to indications of money laundering and that they have easy access to criminal intelligence. Depending on the extent to which investigative powers are granted, they further allow the judiciary's powers (e.g. seizure and freezing, interrogations, detention, searches) to be brought immediately into play. The downside of such forms of FIUs are that they will encounter difficulties in exchanging information with FIUs without similar powers, that reporting institutions may be reluctant to disclose information on transactions that are no more than "suspicious", and that generally FIUs with investigative powers tend to focus too little on preventive measures.

In the case of Indonesia, equipping PPATK with investigative powers may well prove worthwhile considering, especially in the light of its dependence on an institution - the police - known to be among the most corrupt elements of Indonesian law enforcement, if not the

[12] For further information on the different models of FIUs, cf. *Financial Intelligent Units: an Overview*, International Monetary Fund, 2004, pp. 9 ff.

entire public service. However, before taking such a step, the above mentioned considerations should be carefully assessed, and budgetary implications evaluated.

In any event, it is finally recommended to further strengthen cooperation with other government agencies and in particular law enforcement agencies including, where appropriate, by signing MoUs such as those signed with KPK and the Attorney General's Office, and by further developing the system of exchanging liaison officers with relevant law enforcement bodies.

v. Liability of legal persons (Article 26)

According to the local experts, existing provisions in relation to the liability of legal persons are unclear, notably with regard to threshold and sanctions. In this regard, Indonesia is no exception. Still the majority of countries from around the world does not or inadequately provide for the liability of legal persons, and this despite the fact that in most cases, it is a legal person who has the economic interest in the corruption scheme. In this situation, criminal prosecution of individuals clearly does not sufficiently act as a deterrent and criminal, administrative and civil liability of legal person comes to play an important role.

It is recommended to enact clear rules on the liability of legal persons and provide for adequate sanctions. In order to facilitate prosecution, it is crucial that these sanctions against legal persons can be handed out independently from success in convicting the natural person who committed the act. Also, an adequate level of sanctions, including of monetary nature, will be important to trigger the deterring effect of the provision on liability of legal person.

In addition to introducing criminal liability of legal persons, and to further its efficiency, it may further be worthwhile to review existing

provisions on administrative or civil sanctions that may be imposed on legal persons in the context of corruption and bribery. Such sanctions include disqualification from bidding on government contracts (temporary or permanent blacklisting), and withdrawal of business permits or contracts and licenses.

vi. Protection of witnesses and whistleblowers (Articles 32, 33, 37)

Articles 32 and 33 UNCAC address the protection of witnesses, experts, victims and whistleblowers. While the protection of witnesses is a mandatory provision of the UNCAC, whistleblower protection in Article 33 is non-mandatory. Nevertheless, the authors of this report strongly recommend the translation of both articles into domestic legislation. At the moment of the on-site visit of the international consultant team to Indonesia, no law existed in Indonesia that would have protected either witnesses or whistleblowers from retaliation. In the meantime, a witness protection law has been enacted by Parliament on 18 July 2006.

As witness and whistleblower protection pursue the same aim but enter into play at different stages of the criminal procedures, the new witness protection law will have to be carefully evaluated as to whether it adequately covers both matters. Consideration might have to be given to whether a distinct piece of legislation on whistleblower protection is required. In either situation, the following elements of witness and whistleblower legislation must be covered:

Whistleblower legislation must contain adequate provisions to protect against physical threats. In addition, however, it should consider exempting whistleblowers from administrative, civil or criminal charges if information was disclosed in good faith (protection against defamation claims). Furthermore, it should contain provisions to penalise the disclosure of a whistleblower's identity

or other type of information that leads to the discovery of the whistleblower. This is particularly important as many citizens do not always trust guarantees for protection. Finally, care should further be taken in selecting the public body tasked with receiving reports from whistleblowers. Presently these reports are made to KPK and, in light of the good reputation of this institution and the guarantee of anonymity, this seems a reasonable solution.

Certain countries instead of or in addition to reporting obligations have reverted to creating an incentive to report corrupt acts, either by rewarding informants with cash or by granting them immunity from prosecution. Countries where such incentive schemes exist include Korea, Nepal, Pakistan and Vietnam. Other countries such as Thailand and PR China are reportedly in the process of establishing similar systems.[13]

Witness protection laws contain many of the same elements as whistleblower protection laws. Granting protection to witnesses in court or judicial proceedings are two central aspects thereof. Allowing a witness to revealing its identity to a very limited circle of individuals involved in the court proceedings is often considered to trigger confidence among witnesses and victims and to reduce the risk that the protection mechanisms are hampered with. Protection should further be extended, to the extent possible, to family members if these are endangered or likely to be threatened. Finally, and in light of the fact that in particular police protection, relocation and possibly the provision of new identities to witnesses, all integral parts of an effective witness protection law, are often costly, any witness protection law can only be successful in improving the conviction rate if sufficient resources are made available to enforce the law if need be.

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[13] Cf. footnote 11, p. 68.

vii. Creating a specialised organisation and ensuring cooperation (Articles 36 and 38)

While the authors neither advocate the single-agency approach nor advise against it for that matter, a higher level of coordination at the law enforcement level would most likely increase the effectiveness of criminal proceedings in corruption matters in Indonesia. Presently, a rather high level of competing and overlapping competencies among involved bodies sometimes seems to result in confusion and a waste of already scarce resources.

It is recommended that an institution is identified with the necessary prestige and equipped with adequate resources to coordinate among all concerned law enforcement bodies in order to clarify and streamline law enforcement in Indonesia. Such body would further have to be able to rely on clear and unambiguous political backing at the highest level.

At present, KPK seems to naturally offer itself to take over this role, including for its good reputation and its relative success in prosecuting corruption in the short time since its inception, but mainly because KPK is theoretically assigned with precisely this task. According to Article 6 of law 30/2002, KPK is entrusted with coordinating with other entities active in the fight against corruption such as the Attorney General's Office, the Police, the Financial Development and Supervisory Board (BPKP), the Supreme Audit Board (BPK), the Inspectorate General and the Regional Audit Agency (Bawasda). In reality, however, this task does not seem to be fully recognised by other institutions including in the law enforcement sector, nor backed at the political level. KPK for instance is not part of some of the specialised inter-agency taskforces set up to conduct certain special types of corruption

investigations (e.g. Timtas Tipikor). Clarifying this matter and communicating publicly and to all concerned institutions about it would help to improve efficiency of law enforcement.

viii. Cooperation among national authorities and with the private sector (Articles 38, 39)

Cooperation and the exchange of information (Article 38 UNCAC) among national authorities is also one of the crucial points in the fight against corruption in Indonesia. The number of anti-corruption actors and stakeholder has increased over the last years, but the level of coordination among them is from the outset perceived to be rather low and inconsistent.

Similarly to the closed circle of law enforcement, it is recommended to put a stronger emphasis on promoting cooperation and coordination among institutions from the public sector and in particular between institutions of the public sector and the private sector (Article 39 UNCAC) and civil society, as well as between local and national level organisations. The exchange of liaison officers on the may be a useful tool to this end, as well as the clear designation of responsibilities among concerned institutions.

ix. Bank secrecy (Article 40)

Investigation into corruption often requires access to information on bank accounts in order to trace bribes and ideally obtain incriminating evidence, but bank secrecy regulations often hamper investigation and prosecution. According to Article 40 UNCAC, bank secrecy should not pose an obstacle to corruption investigations. In certain countries, such as in Singapore, the relevant authority (in Singapore: Corrupt Practices Investigation Bureau) may even access the bank accounts not only of a suspect but also of his or her relatives. In certain countries, on the other hand, a judicial

ruling is required before bank information can be accessed (Hong Kong China, Korea, Malaysia)

In Indonesia, KPK as well as other law enforcement agencies are authorised to order that bank secrecy be lifted and that access is given to bank, financial or commercial records. However, two problems have been identified in the Indonesian context, namely that every law enforcement agency is empowered with different rights in this regard, thus creating confusion among financial intermediaries. Also, KPK does not seem empowered to sanction banks for refusing to provide the required information. Consequently, the level of compliance by banks with requests for the lifting of bank secrecy is said to still be rather low. Acting on the two issues above – sanctions for refusal to cooperate, and simplifying powers of law enforcement agencies to lift bank secrecy – could importantly enhance effectiveness of corruption investigation, especially in complex, possibly international cases.

4. International Cooperation (Chapter IV, Articles 43-50 UNCAC)

4.1 The UNCAC approach

Corruption and related offences, including money laundering, often have a transnational character. In particular in a globalized world, when physical travel for criminals and virtual travelling of funds has become easier than ever before, effective international cooperation in criminal matters is a crucial precondition to successful prosecution. International judicial assistance may involve the taking of evidence, joint investigations and special investigative techniques, the extradition of suspected perpetrators and transfer of sentenced persons.

These matters are covered in Articles 43-50 UNCAC. State Parties are further encouraged to the extent possible to cooperate also in respect to the investigation of and proceedings in civil and administrative matters relating to corruption. The Convention also addresses the question of "dual criminality". This provision is of importance because dual criminality can pose a real obstacle to international cooperation if interpreted in a narrow way. Dual criminality, for instance in the context of extradition, requires that an accused be extradited only if the alleged criminal conduct is considered criminal under the laws of both the surrendering and requesting nations.

4.2 Issues for Indonesia

i. Mutual Legal Assistance, Extradition and the Dual Criminality Concept

There are different concepts to address the need for effective mutual legal assistance (MLA) and extradition (cf. Article 44 UNCAC) in corruption cases. Asia-Pacific countries have chosen different solutions in this regard. Some have based their approach to extradition and MLA on bilateral treaties, while more recently greater emphasis is placed on multilateral instruments. A growing number of countries have signed or ratified UNCAC, and several countries are also signatories to the ASEAN 2004 Mutual Legal Assistance Treaty. These instruments have sometimes been supplemented by domestic legislation which for instance designate certain countries as extradition partners without treaties. This is for example the case for countries that are part of the Commonwealth, or for member countries of the Pacific Islands Forum.[14]

[14] Cf. footnote 11, p. 72.

It is recommended that Indonesia adopts a generous approach to granting international cooperation in general, and in relation to extradition in particular. Indonesia has signed the ASEAN 2004 MLA Treaty and has entered into bilateral extradition treaties with all country of ASEAN, except with Singapore, and with Australia, PR China and Korea. More of such treaties would be required at least with those countries to which criminals from Indonesia are known to flee or where they tend to hide their illegally acquired funds. In addition, and to simplify and expedite matters, however, it is also recommended that Indonesian legislation is amended in order to provide for UNCAC to be considered a sufficient legal basis for MLA and extradition if no such treaty exists with the requesting State.

UNCAC, in essence, codifies an extensive current practice by stating that the requirement of dual criminality shall be considered fulfilled if the crime in question is also a crime according to UNCAC (Article 43). In addition, the concerned criminal acts do not need to be defined in exactly the same terms or be placed in the same category of offence. Furthermore, in some countries, extradition can be possible even if dual criminality is not fulfilled if the law of the requested State permits it.

In the context of extradition, Indonesian law 1/1979 on extradition provides for a strict interpretation of the dual criminality principle. In consideration of the importance of comprehensive international cooperation in extradition matters in relation to a corruption investigation, it is recommended to lower the requirements of the domestic law in relation to dual criminality according to the standards set forth in the UNCAC.

Indonesia has further recently adopted law 1/2006 on mutual legal assistance. Similarly to extradition matters, requirements in this law for granting mutual legal assistance are narrowly defined and

do not fully encompass the standards of UNCAC. It is recommended to review the law on mutual legal assistance in order to grant the fullest extent of mutual legal assistance.

ii. Cooperation in relation to law enforcement (Article 48)

Article 48 addresses the necessity of effective international cooperation among law enforcement agencies of State Parties in order to investigate international corruption cases. While it is assumed that in Indonesia cooperation between the Indonesian National Police and law enforcement agencies of other State Parties is sufficiently effective, KPK with its investigative mandate should be provided with more adequate access to this international cooperation network. It should notably be authorised and enabled to exchange information with law enforcement agencies of other UNCAC State Parties in regard to international investigations into acts criminalized by the Convention.

iii. Special investigative techniques (Article 50)

Article 50 UNCAC addresses special investigative techniques such as controlled delivery, electronic and other forms of surveillance, undercover operations, and the admissibility of evidence in court. In this regard, and in the aim of enhancing the success rate of prosecution of corruption in Indonesia, it is important that the offences established under the UNCAC are considered by Indonesian legislation as severe enough crimes to allow the employment of such special investigative techniques.

In general, powers to employ special investigative techniques, in particular for KPK, should be reviewed and possibly extended for the purpose of investigating corruption cases. Furthermore, a clear lack of available technical equipment as well as know-how in using these tools where they are available has been identified and needs

to remedied, possibly with the assistance of experienced counterparts from abroad. Notably training in forensic accounting is increasingly provided to their officials by many foreign anti-corruption agencies. It may be worthwhile exploring training cooperation in such highly specialised matters with other countries, either in the context of regional programmes or, for example, with the recently established Malaysian anti-corruption academy and similar institutions.

5. Asset Recovery (Chapter V, Articles 51-59 UNCAC)

Asset recovery is a fundamental principle of the UNCAC and also the most innovative concept of the Convention. High-level corruption plunders national wealth and has devastating effects in countries where resources are badly needed for social and economic development. Effective asset-recovery provisions will support the efforts of countries to redress the worst effects of corruption while at the same time sending the message that criminals will no longer find a place to hide their illicit assets. Repatriation of such stolen assets from their hiding place in foreign jurisdictions is a difficult endeavour because of the complexity of international judicial proceedings highlighted in the previous chapter, but also because no adequate legal basis existed in most cases for repatriating corrupt or embezzled funds.

Chapter V of UNCAC is therefore a major breakthrough in international efforts to find a solution to this global problem. Negotiation of this chapter was particularly difficult and delicate as the result needed to take adequate account both of the needs of countries seeking the illicit assets and of the legal and procedural safeguards of the countries whose assistance are sought.

5.1 The UNCAC approach

Despite the numerous corruption scandals involving high level public officials looting the assets of their country and placing them in foreign bank accounts, the number of cases in which these assets were successfully returned to their rightful owners is sparse. Fundamental difficulties with regards to asset recovery lie primarily with the identification of the stolen assets and of their rightful owner(s).

UNCAC focuses predominantly on the obligations of the requested party. For many countries, the UNCAC provisions on asset recovery entail significant changes in domestic law and institutional arrangements. For developed countries, where the rule of law system is usually highly effective but where the necessary legal basis for asset recovery is most often missing, the enactment of legislation in compliance with the Convention will mean major financial centres will be in a better position to help developing countries in tracing, confiscating and recovering assets. Both in the financial centres of the North as well as in the requesting countries in the South, technical assistance will however be necessary in order to enable the provisions of Chapter V UNCAC to become effective.

In addition to the obligation of financial institutions to detect suspicious transactions by identifying customers and beneficial owners who are politically exposed (PEPs) (Article 52), UNCAC also rules on the direct recovery of property (Article 53), and the recovery of property through international cooperation in confiscation (Articles 54, 55). State parties can also agree to special cooperation and disclose information that helps another State Party to initiate or carry out investigations, prosecutions or judicial proceedings without prior request (Article 56). The return and disposal of assets is regulated in Article 57 and Article 58 states

that State Parties shall consider establishing a Financial Intelligence Unit. Finally, State Parties shall consider concluding bilateral and multilateral agreements to enhance international cooperation (Article 59).

5.2 Issues for Indonesia

Former President Soeharto is said to have deprived the State of Indonesia of enormous amounts of public funds through corruption and embezzlement. In the course of seeking to resolve this highly disputed and complex case, Indonesia is therefore likely to have to revert to international judicial assistance and, in the long run, to engage in procedures to request the return of these stolen funds from the jurisdictions where they are hidden. While the exact location of these funds does not yet seem to be known, or at least not for all the funds suspected to having been transferred abroad, it is clear that in this case, Indonesia will be in the role of the requesting state rather than in that of the requested state. The same will most likely be true for the majority of other asset recovery cases in which Indonesia will be involved over the coming years.

At the same time, the provisions of Chapter V of the UNCAC focus principally on measures to be taken by the requested state rather than the requesting side. The chapter on asset recovery is therefore not necessarily of primary importance to Indonesia in its mission to enhance the effectiveness of its fight against corruption. It is however indeed in the interest of Indonesia that those State Parties where the Soeharto accounts are suspected, such as Singapore, Switzerland and various other financial centres around the world, amend their legislation to fully implement Chapter V of UNCAC.

Of particular difficulty in seeking to return assets stolen by Soeharto will be to determine the precise nature of the crime through which

the assets have been stolen. With regards embezzlement, the UNCAC provisions are quite straightforward in that such embezzled funds according to the UNCAC would be returned to the state requesting it. In the case of any of the other offences covered by the Convention, such as active and passive bribery, the procedures are slightly less precise: Property must be returned provided that the ownership of the state can be proved, or the damage caused to the requesting state is recognized. In all other cases, priority consideration will be given to the return of confiscated property to the requesting state, to the return of such property to the prior legitimate owner(s) or to compensation of the victims. Regardless of the situation, it is recommended that Indonesia analyses past practice in the countries where funds are suspected, and notably the Abacha case in Switzerland which is internationally recognised as a pioneer effort and has importantly influenced negotiations of the UNCAC.

On the other hand, and despite its possibly lower immediate urgency in the context of enhancing Indonesia's effectiveness in combating corruption, Indonesia must also be able to act on the requested side in order to fully comply with UNCAC. A minimal standard in relation to international cooperation for the purpose of recovering stolen assets should therefore be ensured in line with applicable standards and international practice. Banks and other financial institutions in Indonesia should apply the appropriate care to detect suspicious transactions. In addition, Indonesia should ensure that the exchange of information on the international level operates smoothly and without too many bureaucratic obstacles for the requesting state.

II. Gap Analysis Findings

A. Executive Summary

Gap Analysis of the UN Convention against Corruption 2003, compared with Indonesia's existing legislation on anti-corruption

Introduction

The objective of the project on GAP ANALYSIS (hereinafter, the GAP) is to find out whether there are similarities and/or differences between the United Nations Convention Against Corruption (UNCAC,2003) and Indonesian laws and regulations on anti corruption matters. Secondly, the project will address the discrepancy between both subjects, and thirdly, the project will come up with conclusions and recommendations which hopefully substantially contribute to the government and KPK in dealing with the prevention and combating corruption in the year to come.

The UNCAC 2003 comprises 8 (eight) chapters and its most significant chapters are the chapter on preventive measures, asset recovery mechanism, and the chapter on international cooperation especially for the asset recovery mechanism.

The summary will, in general, describe those chapters as to compare them with Indonesia's laws and regulations on preventing and combating corruption.

II. The Executive Summary of this Chapter was prepared by Prof. Dr. Romli Atmasasmita, SH, LLIM, as Team Leader of the Indonesian Consultant Team. The Matrix of the Gap Analysis was prepared by the Indonesia Consultant Team Consisting of Prof. Dr. Romli Atmasasmita, SH, LLM, Dr. Rudi Satryo, Dr. Chairul Huda

Review and Comments (the Gaps)

Chapter I article 2,"Use of terms", introduces new terms such as, "foreign public officials", "official of a public international organization". The new terms should be inserted in the revision of the anti corruption law, and therefore, the scope will have a broader subject. The other terms have already been inserted in Indonesia's existing legislation on anti corruption. However, it needs some clarification and explanation further based on the draft legislative text-guide on the Convention against Corruption. Among this, the CAC 2003 has included the law on money laundering which has different elements from corruption. The question is, whether some articles of the law on money laundering should be inserted in the law on anti corruption, or should the revision of the law on anti corruption consider seriously some articles of the law on money laundering.

Chapter II on the Preventive Measures, mainly addresses capacity building in the public sector as well as in the private sector. However, law number 31 year of 1999 which was amended by Law number 20 of 2001 addresses mainly the public sector and, it will substantially change the law number 31 year of 1999. Law number 31 year of 1999 did not have a provision on code of conduct for public officials. Indonesia did regulate it in the Law number 43 of 1999 on Civil Servants.

Chapter III on the Criminalization and law enforcement, covers comprehensively new offences which are of significant subjects: bribery of national public officials and bribery of foreign public officials and officials of public international organizations, trading in influence, and bribery in the private sector. Since the government has ratified the UNCAC 2003 by Law number 7 year of 2006, subsequently chapter III should be inserted in the revision of Law

number 31 of 1999. The revision should also take note of the draft text legislative guide on the UN CAC prepared by UNODC. The draft explicitly differentiates between mandatory offences and non-mandatory offences. All new offences should consider in the revision of the law number 31 of 1999 since it affects the article on jurisdiction.

Article 20 on “Illicit Enrichment Offence”, defines, “a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income”. This article is of vital importance in our strategy of preventing and combating corruption and should be applied to all public officials that have to make wealth declarations. To this end, Law number 31 of 1999 permits the onus of proof at the trial. At present, it has not yet been implemented since there are no rules of procedure for it.

Article 31 to 42 are concerned with the criminal procedure which most of it is new as compared to the Indonesian Criminal law System based on Law number 8 of 1981. Among these new procedures are the protection of witnesses, experts and victims, the protection of reporting persons, compensation of damage, cooperation with law enforcement authorities, and jurisdiction.

The article on the protection of witnesses, experts and victims (art.32) mainly concerns the physical protection and the security of witness, experts or victims which could encourage them to provide substantial cooperation in the process of investigation, the prosecution, and during the trial process. Indonesian law on anti corruption (law 31/1999) has not yet provides this protection. The Law on the Protection of witnesses and victims has been promulgated in 2006, therefore, it will strengthen the implementation of Law 31/1999..Along with article on the protection that is

mentioned above, the article on the compensation for legal entities or a person is of much importance. And it should consider seriously the new revision on the Law number 31 of 1999. Law number 30 of 2002 on the Commission on the Eradication of Corruption provides compensation to the defendant's cause of abuse of the investigation and the prosecution by the Commission. On the contrary, article 35 of the UNCAC 2003 provides compensation for the third party who has suffered damage as a result of corruption. New revision of the Law number 31 year of 1999 should add this article on the third party's compensation.

Article 37 on cooperation with law enforcement authorities seems controversial when compared to Law number 31 of 1999. Article 4 of law number 31 of 1999 stipulates that the money returned to the state by the defendant does not nullify the prosecution. On the contrary, article 37 of The UNCAC 2003 provides for the possibility, in appropriate cases, to mitigate punishment or grants immunity to the defendant from prosecution. Therefore, the article will, subsequently, have much impact on the strategy of combating corruption that has been implemented up to the present.

The Article on the scope of Jurisdiction (article 42) includes the extraterritorial jurisdiction which is divided into, mandatory as well as optional jurisdiction. Mandatory jurisdiction is the jurisdiction which is based on the "locus delicti" of the offences, and involves foreign elements. Optional jurisdiction is based on the nationality principles (the offenders or victims), and for offences committed in another country with a view that the offence is committed in the territory of the said country. On the contrary, Law number 31 year of 1999 is much more concerned with the "locus delicti" principle which is territorial-based jurisdiction and the nationality-based principle of jurisdiction. However, Indonesia's Criminal Legal System retains its territorial principle as of prime importance in the

implementation of Law number 31 of 1999. Even though, the Indonesian Penal Code acknowledges the nationality principle and the principle of universality, but in certain cases the territoriality principle should prevail. It seems that The UNCAC 2003 also complies with the Indonesian Penal Code or other criminal code in other countries in the world. The trans-nationality of the offence is the focus of and mainly addressed by the UNCAC 2003.Therefore, the provision of the implementation of some principles of jurisdiction should be revised so as to comply with the new concept of jurisdiction which is adopted by the UNCAC 2003.

Chapter IV on International cooperation, which is very important for the purpose of asset recovery which is derived from corruption, has been stipulated in detail in the UNCAC 2003. Some articles are very new considering the Indonesian criminal law system such as the transfer of sentenced persons and the transfer of criminal proceedings. Indonesia's criminal law system has acknowledged other international cooperation, such as extradition and mutual legal assistance. However, Indonesian law number 1 year of 1979 on extradition, and also draft law on mutual assistance in criminal matters that has been adopted by the parliament, acknowledge general principles of international extradition. The UNCAC 2003 articles on extradition as well as on mutual legal assistance apply some exceptions to the said principles. These exceptions include dual criminality principles, non-existence of treaty, nationality principle which may be difficult to apply within Indonesia criminal law system. The other issue which is also important and might hamper the effectiveness of international cooperation is about its scope of cooperation. By inserting the word, "may" in article 46 para 3, the obligation to cooperate under the mutual assistance in criminal matters, is very weak so as to discourage State Party to bind into a treaty.

Chapter V on Asset Recovery is a major breakthrough in the prevention and combating of corruption. Most of the substance in chapter V is new, particularly, direct recovery provisions. Article on direct recovery (article 53 and article 54), has adopted civil confiscation procedures for the purpose of recovery. On the contrary, Law number 31 of 1999 acknowledges only criminal confiscation. Most of Chapter V is mandatory provisions, and subsequently, a new revision of law number 31 of 1999 will be of significance in regard to changes of the criminal law procedure in the future.

In conclusion, the UNCAC 2003 substantially will give a tremendous impact on the strategy of prevention and combating corruption in Indonesia which has been designed in the Law number 31 year of 1999 and Law number 20 year of 2001 as well as in the Law number 30 year of 2002 on the Corruption Eradication Commission. To this end, the Government should seriously consider the existence of the UNCAC 2003 within the Indonesia Criminal Law system so as to change fundamentally all laws and regulations which are relevant to address the prevention and combating corruption in Indonesia, particularly corruption which is trans-national in nature.

B. Matrix of The Gap Analysis

Chapter I: General Provisions

UNCAC	Contents	Indonesian Laws and Regulations	Analysis	Other Aspects for Consideration	Recommendation
Chapter I **General Provisions** **Article 1** Statement of Purposes	The purposes of this Convention are: (a) To promote and strengthen measures to prevent and combat corruption more efficiently and effectively;	Consideration: in view of point c Law No. 20 of 2002: "needs to change with a new corruption law, so that it may prevent and eradicate corruption crime more effectively" Consideration: in view of points b and c Law No. 30 of 2002: "that government institution dealing with corruption has not	Indonesian law determines separately between the definitions of corruption crime, and provision on investigation, persecution and trial at court (Law No. 31 of 1999 in conjunction with No. 20 of 2001) and regulation on the institution competent for eradicating corruption crime, such as Corruption Eradication Commission (Law No. 30 of 2002), Police (Law No. 2 of 2002) and Attorney's Office (Law	GOI should consider to maximize /empower the existing national prevention agency (Ministry of Administrative Reform, National Ombudsman Commission and KPK). Court for Corruption Crime: To set up court for corruption crime in selected provinces.	Determine clearly, strictly and comprehensively in one regulation, regarding formulation of corruption, prevention and overcoming (investigation, persecution and court session) and institutions competent for it, as an effort to enhance and strengthen measures for preventing and eradicating corruption effectively and efficiently. Regulating corruption issues in one

UNCAC	Contents	Indonesian Laws and Regulations	Analysis	Other Aspects for Consideration	Recommendation
		functioned effectively and efficiently in eradicating corruption crime" "…needs to set up an independent Corruption Eradication Commission with a function and competence to eradicate corruption crime"	No. 16 of 2004) This matter may affect the effectiveness and efficiency of corruption prevention and eradication, in view of the resulting potential for conflict of investigating, or trying authorities (between the State Court and Special Court for Corruption)		regulation is a real need which is based on at least three reasons: a In light of enhancing effectiveness and efficiency of corruption eradication, regulation which substance covers all of the above aspects is required; b Regulation on institutions in corruption law (Police, Persecutor, Corruption Eradication Commission as well as Court for Corruption Crime) is required to enhance coordination and supervision of corruption eradication effort c Obligation of the country signing UNCAC for reporting periodically the progress of corruption eradication so that it needs clarity about the national institution responsible for it (*central authority*).

UNCAC	Contents	Indonesian Laws and Regulations	Analysis	Other Aspects for Consideration	Recommendation
	(b) To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery;	Article 3 Law No. 1 of 1979 on Extradition: (1) One that can be extradited is one requested by a competent official of a foreign country for being suspected having committed a crime or for undergoing punishment or order for detention; (2) Extradition may also be done to a suspect or one already punished for assisting, trying and making conspiracy as mentioned in point (1), as far as assisting, trying, and making conspiracy for committing a crime can be subjected to punishment according to the law of The Republic of Indonesia and according to the law of the country requesting for extradition. Law on "*Mutual Legal Assistance"*	Bilateral cooperation and mutual assistance in the field of criminal law among countries generally include all kinds of crime, and there is still no special cooperation agreement with regard to eradication of corruption. Criminalization of conduct stated in article 16 Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 is aimed at preventing and eradicating international or trans- territorial corruption crime so that any kind of transfer of finance or property gained from transnational corruption crime can be prevented to a maximum. However, a regulation on international cooperation for preventing and overcoming corruption crime has not been provided in the Law on Corruption Crime. As if a new cooperation arises only after laundering of money resulted from corruption, and not the corruption crime itself.	Second purpose of this convention needs to be anticipated by Government by enhancing effectiveness among ministry offices such as Ministry of Justice and Human Rights, Ministry of Politic and National Secure Coordinator, Attorney General Office, the Indonesian National Police and KPK. Institutional Strengthening becomes important when a fast, effective and efficient national cooperation is needed to prevent and to trace asset of corruption resides in beyond country. as consequence, *umbrella act* is needed both in mutual Legal assistance (Law No. 1 of 2006) and to revise Law No. 1 of 1979 on Extradition, Law Number 62 of 1958 on citizenship, and law which covers provisions of Palermo Convention in 2000.	We need to regulate regarding "international cooperation" in Corruption Eradication Law. Prior to making the regulation we need to carefully consider the international cooperation principles in Law No. 1 of 1979 on Extradition and Law on *Mutual Legal Assistance* recently approved by DPR RI (Indonesian Parliament), has not fully referred to the UNCAC terms

UNCAC	Contents	Indonesian Laws and Regulations	Analysis	Other Aspects for Consideration	Recommendation
		Article 13 Law No. 30 of 2002; Article 16 Law No. 31 of 1999 in conjunction with Law No. 20 of 2001: "Everyone outside the territory of the Republic of Indonesia giving assistance, opportunity, facility or information for occurrence of corruption crime as provided in Article 2, 3, 5-14 of this Law Consideration; in view of point d Law No. 15 of 2002 in conjunction of Law No. 25 of 2003: "In preventing and eradicating money laundering crime a mutual assistance cooperation may be established through bilateral or multilateral forum"			

UNCAC	Contents	Indonesian Laws and Regulations	Analysis	Other Aspects for Consideration	Recommendation
	(c). To promote integrity, accountability and proper management of public affairs and public property.	Consideration: in view of Law No. 28 of 1999: "That practice of corruption, collusion and nepotism is not only done by the State Officials but also done between the State Officials and other party that may harm the pivotal life of the society, nation and state and also endanger the existence of the state, so that it is necessary to have a legal basis for preventing it" Article 3 point 7 Law No. 28 of 1999: "The principles of running a state include the principle of accountability" Article 5 point c Law No. 30 of 2002: "In carrying out the duty and authority, the Corruption Eradication Commission is based on the accountability principle"	Law No. 28 of 1999 on State Governance Free From Corruption, Collusion, and Nepotism and Law No. 30 of 2002 on Corruption Eradication Commission is part of regulations to promote integrity, accountability and management of state's assets and state's property, as part of public property. However, considering part of the material of Law on Clean Governance and Free From Corruption, Collusion, and Nepotism was cancelled based on Law on Corruption Eradication Commission, it needs to re-harmonize and re-synchronize, in order not to impede the corruption eradication effort. Synchronization and harmonization are also required with the various regulation related to state finance. Meanwhile, one of the principles in implementing both regulations is the use of accountability principle, both in running the state as well as law enforcement	Government of Indonesia possesses Law No. 1of 2004 on State Treasury which purposes to regulate general state's property and assets. Problem for Indonesia according to UNCAC is whether the return of assets of corruption classifies as non revenue state's income or directly become state's property? It needs to be thoroughly analyzed both in the perspective of administrative law or criminal law. Besides, with this third purpose, Law No. 43 of 1999 on Civil Servant need to be reviewed and sharpened especially in sanction for civil servant, and public officials.	Need to investigate to obtain synchronization and harmonization of regulating material in law on implementation of governance free from Corruption, Collusion, and Nepotism, Law on Corruption Eradication Commission. Need inclusion of "accountability principle" as basis for implementing the authority of Police and Persecutor in carrying out investigation and/or persecution of corruption crime.

UNCAC	Contents	Indonesian Laws and Regulations	Analysis	Other Aspects for Consideration	Recommendation
		Law No. 17 of 2003 on State Finance Law No. 1 of 2004 on State Treasury Law No. 15 of 2004 on Auditing State Finance Management and Responsibility	against corruption by the Corruption Eradication Commission. The meaning of accountability principle is the principle determining that any activity and the end result of state executive or Corruption Eradication Commission should be accountable to the community or the people as the supreme holder of state sovereignty according to the applicable regulations. However, considering that law enforcement against corruption is not only carried out by the Corruption Eradication Commission, but also by the Police and Attorney's Office, then the accountability principle should be also applicable to those institutions.		
Article 2 Use of terms	For the purposes of this Convention: (a) "Public official" shall mean: (i) any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether	Article 1 Law No. 31 of 1999 in conjunction with Law No. 20 of 2001: Government Employees include: a Government Employees as mentioned in the Law on Employee Affairs.	Indonesian law relating to corruption crime does not use the terminology of "public official", but basically it has the same scope with "civil servant" or "state executive"	Object of corruption crime is not restricted only for bribery crime. The subject of corruption crime is "each person". It doesn't purpose to "civil servant" or "public official" which is mentioned is Law No. 31 of 1999 and Law No. 28 of 1999, but also includes private sector.	Need harmonization of terminology in Indonesian law, particularly regarding use of terminology of "public official" in the Convention, against the terminology of "civil servant" or "state

UNCAC	Contents	Indonesian Laws and Regulations	Analysis	Other Aspects for Consideration	Recommendation
	permanent or temporary, whether paid or unpaid, irrespective of that person's seniority; (ii) any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party; (iii) any other person defined as a "public official" in the domestic law of a State Party. However, for the purpose of some specific measures contained in chapter II of this Convention, "public official" may mean any person who performs a public function or provides a public service as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party;	b Government Employees as mentioned in Criminal Code c Those earning salaries or wages from state or local finance. d Those earning salaries or wages from a corporation receiving aid from the state or local finance. e Those earning salaries or wages from other corporation using capital or facility from the state or society. Article 2 Law No. 28 of 1999: State Officials include: 1. State Official of Supreme State Institution. 2. State Official of High State Institution. 3. Ministers. 4. Governors. 5. Judges. 6. Other state officials according to applicable regulations. 7. Other officials having strategic functions in relation with the running of the state according to applicable regulations.	The difference in this terminology can affect the law enforcement process, considering misinterpretation may occur in determining whether a conduct is within the scope of a crime definition. Example, a person working for an NGO which in many instances doing public services, such as Legal Counselling Institutions or Consumers Assistance, according to convention can be categorized as "public official", but not included in the understanding of "civil servant" and/or "state executive" in Indonesian law. While a certain type of corruption crime, such as "bribery" is presumably done by various circles, including state executives, to certain persons who become leaders, management or working for certain NGOs,	Corruption case in Private sector which has been decided by the court is indictment to the chairman of Indonesian Forestry Entrepreneur Association on behalf of Adiwarsita Adinegoro. The shortcoming of this convention is its inapplicablebility on Directors and Commissioners of State owned Company who have double status both as state official and private official. As consequence, private law (company law) and criminal law (anti corruption law) regime is applicable on them.	executive".

UNCAC	Contents	Indonesian Laws and Regulations	Analysis	Other Aspects for Consideration	Recommendation
	(b) "Foreign public official" shall mean any person holding a legislative, executive, administrative or judicial office of a foreign country, whether appointed or elected; and any person exercising a public function for a foreign country, including for a public agency or public enterprise; (c) "Official of a public international organization" shall mean an international civil servant or any person who is authorized by such an organization to act on behalf of that organization;	The Indonesian Law has not regulated on inclusion of "foreign public official" and "official of international public organization" as subject of corruption crime.	This provision extends the possibility for corruption crime to occur not only with "local public official" but also "foreign public official" and "official of international public organization". This has to be regarded in relation to diplomatic immunity of "foreign public official" having diplomatic status based on Convention on Protection of Foreign Officials or Convention on International Relations and needs further observation. As if UNCAC wants to emphasize that provision on diplomatic immunity is not applicable in case the person concerned commits a crime.	In Implementing of this regulation, we need to prepare national legislations which regulate extraterritorial principle to be adapted.	Need to investigate the extent the UNCAC can be applied to "foreign public official" with diplomatic status having diplomatic immunity. Need to expand the subject of corruption so that it also includes "foreign public official" and "official of an international public organization".
	(d) "Property" shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets;	Article 37A point (1) and point (2) Law No. 31 of 1999 in conjunction with Law No. 20 of 2001: "The defendant/accused is	The law does not define "property". However, from this provision we can conclude that "property" according to Indonesian law, is "the whole property of the defendant, wife	This provisions need to be referred to the Law No. 1 of 2004 on State Treasury which regulates on State assets and defines 'State loss" in particular. Restrictions among separated	Need to formulate the understanding of "wealth" in the corruption regulations, following the understanding of the terminology in the

UNCAC	Contents	Indonesian Laws and Regulations	Analysis	Other Aspects for Consideration	Recommendation
		obliged to provide information on his/her whole property and the property of the husband/wife, children, and the property of everyone or every corporation supposed to have relationship with the case being charged". "In the case the defendant is unable to prove the wealth which is imbalanced relative to the earning or the source of additional wealth, then the information as stated in point (1) may be used to confirm the available evidence that the defendant had committed corruption crime" Article 1 point 4 Law No. 25 of 2003 is using the terminology of "property", namely "any movable and immovable goods, tangible and intangible" Law No. 28 of 1999 is using the terminologies of both "property" and "wealth"	or husband, children or corporation having relation with the case being charged" Referring to the terminology of "assets" an interpretation may arise that "property" according to Indonesian law is limited to what is mentioned in the Convention as "tangible and intangible assets, movable or immovable assets or corporeal assets", and is not yet included in "*intangible asset"* Besides that, from linguistic point of view the terminology of "wealth" is more precise than "property and wealth"". Considering the word "property" is part of the definition or understanding of "wealth"	State Assets and general state assets in case of state owned and non state-owned company are important in legal matters, especially for determining criminal responsibility of both directors and commissioners who are involved in corruption cases.	Convention. In the regulations it is sufficient to use the terminology of "wealth" instead of "property and wealth"

UNCAC	Contents	Indonesian Laws and Regulations	Analysis	Other Aspects for Consideration	Recommendation
	(e) "Proceeds of crime" shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence;	Article 18 point (1) a Law No. 31 of 1999 in conjunction with Law No. 20 of 2001: In addition the additional punishment as mentioned in the Criminal Code, is:: "expropriation of movable goods tangible and intangible or immovable goods used for or gotten from corruption crime, including corporation owned by the defendant/accused where the corruption is committed, and also substituting goods" Law No. 15 of 2003 is using the terminology of "proceed of corruption", namely the property obtained from corruption (certain and mentioned limitedly, including corruption)	Indonesian law has not fully regulated about "proceeds of crime", including "proceeds of crime" derived from corruption crime. The provision in Corruption Eradication and Money Laundering Law is limited to "proceeds of a crime" which determined limitedly, including but not limited to proceeds of corruption crime. In relation with the terminology of "wealth" as mentioned previously, the provision on additional punishment in the Corruption Law is not including wealth of "*intangible asset*" yet. Besides that, the provision also has not fully included what is mentioned in the Convention as "wealth derived from or obtained indirectly through committing a crime". If observed, seizure can only be done upon the "wealth of the defendant" not including the "wealth of the wife, husband, or	Even though Law No. 15 of 2002 which amended by Law No. 25 of 2003 on Money Laundering has regulated money of criminal result as a crime, this law does not strictly regulate on status of money of criminal result itself according to Law No. 1 of 2004 on State Treasury.	Need to add or clarify the provision on additional punishment in the Corruption Law, in addition to those provided in the Criminal Code that seizure can also be done upon the wealth of the wife or husband or children of the defendant, which is strongly supposed to derive from corruption.

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			children". But, Indonesian law as far as it relates to "substitution goods" of wealth derived from or obtained through corruption, contains a wider provision than the Convention.		
	(f) "Freezing" or "seizure" shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority;	Article 1 Criminal procedure Code: "Seizure is a series of measures taken by the investigator to take over and or keep under the custody movable and immovable goods, tangible and intangible for the interest of authentication in investigation, persecution and judicature. Article 42 Law No. 7 of 1992 in conjunction with No. 10 of 1998 on Banking Article 32 Law No. 15 of 2002: "Investigator, general persecutor, or judge is authorized to give order to financial service provider to	"Freezing" or confiscation" in the Convention has a wider understanding than "confiscation" in the Criminal Code. For this, the regulation on Corruption crime should regulate the understanding of "confiscation" which is the *specialization* of the same determined in the Criminal Code which is still *general*. Meanwhile, in the Law on Money Laundering Crime "seizure of wealth" derived from a crime is explicitly provided, but this has not been provided in the corruption law.	This is very susceptible to cause abuse and corruption when there is no intensive supervisory in implementation.	Need a separate regulation which is *lex spesialis* about "confiscation", "freezing" or "blockading" in corruption law by following the definition in the Convention and Money Laundering Law.

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		freeze the property of anyone reported by PPATK (Report Center for Financial Analysis and Transaction) to the investigator, of the defendant/accused or suspect known or believed to be proceeds of a crime.			
	(g) "Confiscation", which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority;	Article 10 Criminal Code: Additional punishment - Confiscation of certain goods Article 18 sentence (1) Law No a letter. 31 of 1999: Besides additional punishment as referred to in KUHP, other additional punishments are: Seizure of movable both tangible and intangible; or unmovable which is used to or obtained	Regulation on "permanent seizure" in Indonesian law is only relating to expropriation of goods used, obtained or resulted from a crime, expropriated for the state, destroyed or returned to those who deserve. This may be done as additional punishment, namely additional to the main punishment, so that its application should be by order of the court. In the Convention, it may be done not limited to trial stage (by judge), but it may also be done by other competent authority.		Need to regulate more strictly, clearly and comprehensively in the corruption law, regarding "permanent confiscation"

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		from corruption, including convicted person's company where corruption conducted and also its substituted goods. Article 38 B sentence (2) Law No. 31 of 1999 jo. Law No. 20 of 2001 In the case of defendant can not prove that good and chattel as referred to in sentence (1) is not obtained from corruption, the good and chattel is assumed to be obtained also from corruption and the judge has authority to decide entire or particular is seized for the state.	Meanwhile, permanent confiscation or seizure by judicial decision may also be done on assets which belong to the convicted person of corruption including its substituted goods. Similar to this, property which can not be proved as non corruption property by defendant, only can be seized if accused by persecutors and stated by the judge as asset of corruption and must be seized. Basically, possibility still can be created in order to seize asset of corruption without judicial decision both by criminal and private law procedure.		
	(h) "Predicate offence" shall mean any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in article 23 of this Convention;	Article 2 point (1) Law No. 25 of 2003: Proceed of a crime is Property obtained from crime: a Corruption b Bribery c Etc	The provision on "Proceed of Crime" of certain crimes, implies the existence of "crime of origin", that when used, transferred and so forth, could constitute another crime.		Need to regulate more strictly, clearly and comprehensively in the corruption law, regarding "crime of origin".

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		committed in the territory of the Republic of Indonesia or outside the territory of the Republic of Indonesia and the crime is also one according to Indonesian law.			
	(i) "Controlled delivery" shall mean the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence.	Article 3 point (1) f Law No. 25 of 2003: "anyone who purposely: brings the property known or believed to be a proceed of a crime overseas with a purpose to hide or disguise the origin of the property known or believed to be a proceed of a crime, condemned for money laundering with minimum imprisonment of 5 (five) years and maximum 15 (fifteen) years and a minimum fine of Rp. 100,000,000 (one hundred million rupiah) and maximum	In Indonesian corruption laws, "controlled delivery" has not been promulgated, though it once been practised in a bribery case involved the members of the Indonesian Commission of General Election. Yet, this technique has been regulated on in Law number 22/1997, in case of illegal drugs-selling.		Need to regulate more strictly, clearly and comprehensively in the corruption law, regarding "controlled delivery".

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		Rp. 15,000,000,000 (fifteen billion rupiah)".			
Article 3 Scope of application	1. This Convention shall apply, in accordance with its terms, to the prevention, investigation and prosecution of corruption and to the freezing, seizure, confiscation and return of the proceeds of offences established in accordance with this Convention. 2. For the purposes of implementing this Convention, it shall not be necessary, except as otherwise stated herein, for the offences set forth in it to result in damage or harm to state property.	Article 1 point 3 Law No. 30 of 2001: "eradication of corruption is a series of measures taken to prevent and eradicate corruption crime through coordination effort, supervision, monitor, investigation, interrogation, persecution, and trial at court, with participating role of the community based on applicable law.	The understanding of "corruption eradication in Indonesian law has not directly pointed out that the effort includes what is mentioned in the Convention as "freeze, seize, confiscate and return proceeds of offences". This indicates that there is a different and fundamental approach between Indonesian law and the Convention. In Indonesian law "the process in the system of criminal trial" constitutes as the main instrument for corruption eradication, while the Convention acknowledges both the above and other approach with the purpose to recover assets deriving from corruption.		Need to investigate carefully regarding acceptance of the concept of "recovery of proceeds derived from corruption" without any process in the penalty system for the doer

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Article 4 Protection of sovereignty	1. States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States. 2. Nothing in this Convention shall entitle a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law.	Article 2 – 8 Criminal Law Article 9 Criminal Code: "The validity of articles 2 – 5, 7 and 8 is limited by exceptions admitted by the international law".	Indonesian criminal law may be applied outside Indonesia, not based on extraterritorial principle, but based on active nationality and protection of interest. The high tendency of corruptors to escape overseas, or corruption committed overseas by Indonesian citizens, has caused the urgency to recognize the extraterritorial basis.		Need careful investigation regarding acceptance of extraterritorial principle in corruption eradication law.

Chapter II: Preventive Measures

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Article 5 Preventive anti-corruption policies and practices	1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anticorruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability. 2. Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption. 3. Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption. 4. States Parties shall, as appropriate and in accordance with the fundamental principles of their legal system, collaborate with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this article. That collaboration may include participation in international programmes and projects aimed at the prevention of corruption.	Article 6 Law No. 30/2002 Concerning KPK: "Commission for Eradicating Corruption has the following tasks: a. coordination with institutions authorized for eradicating corruption (preventive and repressive) b supervision. (preventive and repressive) c. conducting investigations and prosecutions d. Pursuing measures for preventing crimes of corruption" Article 13 Law No. 30/2002 in conjunction with Article 3 paragraph (4) Decision of the Head of Commission for Eradicating Corruption of the Republic of Indonesia Number: KEP-07/P.KPK/02/2004:	KPK's Authority to carry out "coordination in eradicating corruption" comprises not only repressive aspects (investigation, and prosecution) but also preventive aspects (prevention). Prevention on any criminal act, including crimes of corruption, does not only mean passive prevention namely prevention through empowerment of criminal court system, but also active prevention, namely prevention through implementation of "good governance" principles. Therefore, policies associated with prevention of crimes of corruption, do not only place KPK as coordinator in law enforcement against crimes of corruption, but further make coordination with various state bodies and government	In the effort to eradicate corruption in Indonesia, the National and Regional Action Plan developed by certain government institutions, such as the Ministry of Administrative Reform and the National Planning Board, should be apprehended as well.	It is necessary to more clearly formulate policies on prevention of crimes of corruption, particularly in association with implementation of tasks of the law enforcement forces other than KPK, such as Polri in Law on Police and Attorneys in Law on Attorneys, as well as in laws and regulations serving as bases for the state authorities and administration both in the center and in the regions, particularly associated with State Finance management. It is necessary to establish legal instruments which regulate: - Freedom of obtaining public information; - Standards of profession in public services; - Internal regulation of

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		"In carrying out prevention tasks as referred to in Article 6 letter d, Commission for Eradicating Corruption is authorized to pursue the following prevention steps or efforts: a. To register and check report on wealth of state officials; b. To receive report and to determine status of gratification; c. To organize anti corruption education program at every level of education; d. To design and encourage the implementation of socialization program for eradicating crimes of corruption; e. To carry out anticorruption campaigns to the community; f. To pursue bilateral or multilateral cooperation in eradicating crimes of corruption". Article 41 paragraph (1) of the Law No. 31/1999 in conjunction with Law No. 20/2001:	institutions, both at the center and in the regions, in encouraging the implementation of clean government free from corruption, collusion and nepotism practices. Other than in the Laws of KPK, policies for the prevention of criminal acts are not yet reflected in the laws and regulations associated with law enforcing bodies. In the Police Law, the issues on prevention of criminal acts are only placed in general in association with order and tranquillity in the community. Whereas in the Law No. 16/2004 Concerning Attorneys of the Republic of Indonesia, this issue is nearly untouched. Various Laws associated with supervision in the implementation of general administration or Laws associated with control of State Finance Management do not yet formulate explicitly any		profession in every environment of officials, such as code of ethics for profession.

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		"Community may play a role and help the efforts of preventing and eradicating crimes of corruption". Article 2 paragraph (1) of the Government Regulation No. 71/2000: "Every individual, Community Organization, or Non Government Organization is entitled to search, obtain and give information on suspected crimes of corruption and submit suggestions and opinions to the law enforcement forces and or Commission for corruption cases." Article 2 of the Law No. 2/2002 Concerning Police of Republic of Indonesia:	association with policies on prevention of crimes of corruption, much less associate them with KPK's authority to carry out coordination in the efforts of preventing crimes of corruption. The Indonesian Law system has not yet been composed within the spirit of prevention and control (eradication) crimes of corruption. Until after the new laws on anti corruption will be promulgated in compliance with the UNCAC, the Law of KPK will be the legal basis for policies and programmes of the prevention of corruption policy. The most important one in this regard is on regulation of community access to various public information, standards of profession in public services, internal regulation of profession in every field of civil service,		

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		"Function of police is one of government's functions in maintaining security and order in the community, law enforcement, protection, guidance, and services to the community" Article 1 point 5 of the Law No. 2/2002: "Security and order of the community is a dynamic condition of community as one of prerequisites for the holding of the national development process in order to achieve the national objectives marked by the guaranteed security, order and upholding of laws and the maintain of tranquillity containing capability to guide and develop potential and power of the community in avoiding, preventing, and handling all forms of illegal acts and other forms of disturbance in the community"			

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		Considering letter c of the Law No. 1/2004 concerning State Treasury: "that in the framework of state's financial management and accountability, administrative legal principles which regulate the state treasury are needed" Article 1 point 1 of the Law Number 17/2003 concerning State Finance: "State Finance includes all rights and obligations of the state which may be judged with money, and all such things as money or goods which may belong to the state in association with the implementation of such rights and obligations." Article 3 paragraph (1) of the Law Number 17/2003:			

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		"State Finance is orderly managed, in compliance with the laws and regulations, in efficient, economic, effective, transparent, and responsible way by taking into account the feeling of justice and Reasonableness". Considering letter a of the Law No. 15/2004 concerning Examination in Management and Responsibility of State Finance: " that in order to support the success in the organization of state administration, State Finance is obligatorily managed in orderly, efficient, economic, effective, transparent and responsible way by taking into account the feeling of justice and reasonableness". Presidential Instruction No. 5 of 2004 on Acceleration in Corruption Eradication			

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Article 6 Preventive anti-corruption body or bodies	1. Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as: (a) Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies; (b) Increasing and disseminating knowledge about the prevention of corruption. 2. Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided. 3. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing	Article 3 of the Law No. 30/2002 Concerning KPK: "Commission for Eradicating Corruption is a state body performing tasks and its authorities are independent and free from any influence from any power." Article 1 of the Law No. 5/1973 concerning Supreme Audit Agency: "Supreme Audit Agency is a Supreme State Body in which the implementation of its tasks is free from any influence and power of the Government, however it does not stand above the Government" Article 3 Article 1 of the Law No. 5/1973 concerning Supreme Audit Agency:	According to the Indonesian Law, so far the authorized bodies for handling the crimes of corruption are the National Police, the Attorney General's Office and KPK. However, the institution explicitly has normative authority for the prevention (in the active sense) of crimes of corruption is only KPK. Meanwhile Police and Persecutors have the authority of prevention only in the passive meaning, namely prevention of repetition of criminal act through the process of investigation and/or criminal prosecution. In the wide sense, the role of passive prevention of crimes of corruption is also played by judges in trying the cases, namely imposing appropriate criminal sentence upon defendant of crimes of corruption. Similarly, passive prevention may also occur through the criminal sentencing (imprisonment).		Confirmation on KPK's authority in carrying out the task of prevention of crime, in association with pro justitia institutions (Polri, Attorneys, Supreme Court, Penitentiary Department of Justice and Human Rights), or in association with non justitia institutions whose main task is conducting control upon state bodies or government institutions in the center and in the regions. At the beginning while waiting for adequate laws and regulations, KPK and the institutions may enter into a Memorandum of Understanding or Cooperation Agreement, particularly to guarantee access for information in carrying out active prevention of crimes of corruption.

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	specific measures for the prevention of corruption.	"If an audit discloses items which cause suspected criminal act or act harming the State finance , Supreme Audit Agency notifies this matter to the government" Article 13 of the Law No. 15/2004 Concerning Audit on Management and responsibility of State Finance: "Auditor carrying out investigative audit to disclose any indication of losses upon the state/regions and/or elements of crime"	Meanwhile, other institutions which are non judicial, but have contribution in preventing crimes of corruption, are among other things: 1. Supreme Audit Agency (BPK); 2. Development Finance Controller (BPKP); 3. Judicial Commission (KY); 4. Center for Reporting and Analysis of Financial Transactions (PPATK) 5. Inspectorate General of the Department or similar controlling institutions of non department institutions; 6. Regional Controller (Bawasda) at Province and Regency/City; Indonesian Law does not quite clearly regulate the relationship of KPK with state bodies and government institutions, whose scope of tasks are particularly associated with supervision, hence resulting in tight relation with the prevention of crimes of corruption.		It is necessary to declare KPK as "central authority" for eradicating crimes of corruption, particularly in association with United Nations and International Cooperation for Eradicating Corruption in general.

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Article 7 Public Sector	1. Each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, endeavour to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials: (a) That are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude; (b) That include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions; (c) That promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party; (d) That promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the	Article 17 paragraph (2) of the Law No. 8/1974 in conjunction with the Law No. 43/1999 concerning Employees: "Nomination of Civil Servants in a function is carried out in accordance with the principle of professionalism based on competence, work achievement, and rank stipulated for the function and other objective requirements without differentiating any sex, tribe, religion, race or group. Article 23 paragraph (1) of the Law No. 8/1074 in conjunction with the Law No. 43/1999 concerning Employees: "Civil Servants may be discharged with honour not based on their own request or without honour because of: a. serving a sentence based on a court's judgment that has an absolute legal effect because of committing criminal act crime threatened	The Law on Employees has not yet entered the principle of efficiency and transparency in the recruitment of Civil Servants. Currently the principle of objectivity is only understood as appraisal without differentiating sex, tribe, religion, race or group, whereas achievement, feasibility and intelligence not as part of the objective criteria. Meanwhile, regulation associated with considerations on "promotion, rotation, mutation of and demotion" of Civil Servants is not built directly in association with issues on criminal violations, including crimes of corruption. This regulation only comprises considerations on "dismissal" of Civil Servants because of committing criminal act in general, and not specifying crimes of corruption. It can be said that the Regulation		In the Law on Employees and Law on Clean Government Free from Corruption, Collusion and Nepotism, it is necessary to put the criteria of "never involved or committing crimes of corruption" as basis of appointment and/or promotion of every public function. It is necessary to enter the subject of "prevention and introduction of dangers of crimes of corruption" in the curriculum of Training and Education of Civil Servants in every level and grade. It is necessary to establish policies in regulations and laws that temporary suspension of Civil Servants and State officials may be imposed upon those having the status of suspects/defendants, whether

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	performance of their functions. Such programmes may make reference to codes or standards of conduct in applicable areas. 2. Each State Party shall also consider adopting appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to prescribe criteria concerning candidature for and election to public office. 3. Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties. 4. Each State Party shall, in accordance with the fundamental principles of its domestic law, endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.	with a sentence of 4 (four) years or more; or b. Committing heavy disciplinary violation." Article 23 paragraph (4) of the Law No. 8/1974 in conjunction with the Law No. 43/1999 concerning Employees: "Civil Servants is discharged without honour because of: Serving a sentence or imprisonment based on a court's judgment that has an absolute legal effect because of committing a crime related to a function or criminal act associated with his (her) function". Article 24 of the Law No. 8/1974 in conjunction with the Law No. 43/1999 concerning Employees: "Civil Servants arrested by the police because of suspected criminal act until obtaining a court's judgment that has an absolute legal effect, shall be liable to a temporary suspension."	on Civil Servants remuneration is not clear enough whether it has taken into account the state's economic level. Whereas in regard to training and education of Civil Servants, it has not yet explicitly entered the materials which comprises early introduction on danger of crimes of corruption hence becoming an effective and efficient medium of prevention. Temporary suspension of Civil Servants involved in crime, is only limited to those arrested. Whereas in order to guarantee the quality of services to the community, this must be applied for at every Civil Servant having the status of suspect or defendant, either arrested or not arrested. The same treatment must also be applied to the state officials in the status of suspects or defendants. This may apply particularly if the corresponding person commits a crime of corruption.		arrested or not.

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		Article 28 letter d of the Law No. 32/2004 concerning Regional Government: "Head of Region and Deputy Head of Region are prohibited: c. to commit any corruption, collusion, nepotism and to receive any money, goods and/or services from other parties which affect decision or act to be taken;" Article 29 paragraph (2) letter f of the Law No. 32/2004 concerning Regional Government: "Head of Region and/or Deputy Head of Region as referred to in paragraph (1) letter c are discharged because of: d. violating prohibition for the head of region and/or deputy head of region;" Article 30 paragraph (1) of the Law No. 32/2004 concerning Regional Government:	Quite fundamental progress associated with the prevention of crimes of corruption organizational structure in the Law on Regional Government, namely associated with the appointment and dismissal of Head of Region and/or Deputy Head of Region and Members of Regional House of Representatives (DPRD). In this case, dismissal of the public officials may be directly carried out when the corresponding persons violated the prohibition of committing crimes of corruption. To follow the example of this provision, this must also be applied to other public functions such as minister, whether directing a department or not directing a department, and head of non department government body, head / chairman of state bodies and so on or every Civil Servant in general. However, temporary suspension upon Head of Region and/or Deputy Head of Region can only be carried out if		

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		"Head of Region and/or Deputy Head of Region are temporarily discharged by President without passing through the proposal of Regional House of Representatives (DPRD) if they are declared to have committed criminal act threatened with a sentence of minimum 5 years or more based on a court's judgment" Article 31 paragraph (1) of the Law No. 32/2004 concerning Regional Government: "Head of Region and/or Deputy Head of Region are temporarily discharged by the President without passing through the proposal of Regional House of Representatives (DPRD) because of suspected crimes of corruption, terrorism, maker and/or criminal act against the state's security". Provisions similar to the provisions for Head of Region and/or Deputy Head of Region	the corresponding persons have the status of defendants. Whether this should have been applied since they have the status of suspect (investigation). Such temporary suspension must have been carried out to maintain the integrity of law enforcement forces, as well as to maintain the quality of services to the community under the responsibility of the corresponding officials. Meanwhile, the prevention of crimes of corruption through transparency of finance and funding in the election of public officials elected through general election has been quite clearly regulated in Law on Political Parties, Law on General Election and Law on Regional Government.		

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		shall apply to members of Regional House of Representatives (DPRD) based on Article 54 paragraph (3), Article 55 paragraph (2) letter from of the Law No. 32/2004 concerning Regional Government. Article 9 Law No. 31/2002 Concerning Political Parties: h. to make bookkeeping, to keep a list of contributors / donors and total amount of donation received, and open for examination by the community and government; i. to periodically make financial report every year to the KPU after audited by public accountant; j. to have a special account and campaigns for general election and to submit financial balance sheet report already audited by public accountant to the KPU at the latest 6 (six) months after the general election day;			

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		Article 17 of the Law No. 31/2002: Finance of Political Parties originating from: a. contributory from members; b. lawful donation according to the laws; and, c. assistance from the state's budget. Article 19 paragraph (3) of the Law 31/2002: "Political Parties are prohibited: a. to receive donation, either goods or money, from a party without mentioning clear identity; b. to receive donation from individual and/or company/legal entity exceeding the stipulated limit; Government Regulation No. 37 of 1979 .			

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Article 8 Codes of conduct for public officials	1. In order to fight corruption, each State Party shall promote, inter alia, integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system. 2. In particular, each State Party shall endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions. 3. For the purposes of implementing the provisions of this article, each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, take note of the relevant initiatives of regional, interregional and multilateral organizations, such as the International Code of Conduct for Public Officials contained in the annex to General Assembly resolution 51/59 of 12 December 1996. 4. Each State Party shall also consider, in accordance with the fundamental principles of its domestic law, establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions. 5. Each State Party shall endeavour, where appropriate and in accordance	Article 12 B paragraph (1) of the Law No. 31/1999 in conjunction with the Law No. 20/2001: "Every gratification to the Civil Servant or state officials is considered a bribery, if it is associated with their function and in contradiction to their obligation or duty, under the following conditions: a. At the value of Rp. 10,000,000 (ten million rupiah) or more, the proving that the gratification is not a bribery is conducted by the recipient of gratification; b. At the value of less than Rp. 10,000,000 (ten million rupiah) proving that the gratification is not bribery is conducted by public prosecutors. Article 12 C paragraph (1) of the Law No. 31/1999 in conjunction	Regulation on gratification in Law on Crimes of Corruption becomes ineffective due to the clause "if it is associated with his (her) function and associated with his (her) responsibilities or tasks". In principle a provision concerning gratification should comprise all gifts, not only money but including also things which can be valued with money. Besides, it also becomes ineffective if the gratification is given in phases or gradually, reaching less than Rp. 10,000,000 (ten million rupiah), due to the fact that the cost of proving is with the Public Prosecutors, this provision serves only as if articles of "bribery". In order to support the provisions concerning gratification, it is necessary to have code of ethics and behaviour for Civil Servants and State officials. Code of Ethics for Civil Servants has been regulated in Article 28 of the Law No. 8/1974 in conjunction with the Law No.		It is necessary to correct the formula concerning gratification in the Law on Crimes of Corruption, hence: - viewed from its essence gratification comprises all gifts, without taking into account whether this is associated with his (her) official, or associated with his (her) obligation or tasks; - viewed from its object gratification may be in the form of money or other matters which may be valued with money; - viewed from the method of giving, gratification comprises one given at once or gradually, in cash or non cash. It is necessary to draw up Law concerning Government Ethics, determining ethics and standards of behaviour of Civil Servants and State Officials. Besides, for every state body and government institution, both in the center and in the regions, it is

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	with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials. 6. Each State Party shall consider taking, in accordance with the fundamental principles of its domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article.	with the Law No. 20/2001: "Provision as referred to in Article 12 b paragraph (1) shall not apply, if the recipient reports the gratification he (she) receives to the KPK". Article 16 letter a of the Law No. 30/2002: "Every Civil Servant or state officials receiving gratification shall report it to the KPK, with the following procedures: a. The report is submitted in writing by filling out the form as stipulated by KPK by enclosing documents associated with gratification; b. ….." Article 5 of the Law No. 28/1999: " Every state official shall: 1. say oath or promise according to his (her) religion before holding a function; 2. have his (her) wealth checked before, during, and after holding a function;	43/1999 concerning Employees. Whereas so far the legal provision which may be said to approach the code of ethics for State officials is provision of Article 5 of the Law No. 28/1999 concerning Clean Government Free from Corruption, Collusion and Nepotism. These norms of behaviour must be further implemented in the form of code of ethics, by taking into account the uniqueness in the scope of duties, authority and responsibility of every institution. However, in general they are not yet owned by institutions whose state officials, either those elected through general election, election of head of region or with other methods, that have certain tasks, authority and responsibilities hence requiring code of ethics as standards of behaviour. Meanwhile, cooperation with regional and international organization particularly in the framework of eradicating corruption, is not yet regulated in the laws.		necessary to draw up Code of Ethics by taking into account the uniqueness of each duty, authority and responsibility.

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		3. report and announce his wealth before and after holding a function; 4. not commit any act of corruption, collusion and nepotism; 5. perform his (her) tasks without differentiating tribe, religion, race and group; 6. perform his (her) task with full of responsibility and not commit any disgraceful act, without expecting anything in return either in the interests of himself (herself), family, crony, or group, and not expecting any reward in any form associated with provisions of the applicable laws and regulations; and, 7. serve as witness in cases of corruption, collusion and nepotism and other cases in accordance with the provisions of the applicable laws and regulations. Article 28 of the Law No. 8/1974 in conjunction with the Law No. 43/1999 concerning Employees: "Civil Servants have Code of Ethics as guidance for attitude, behaviour, and acts inside and outside functional affairs."			

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Article 9 Public procurement and management of public finances	1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia: (a) The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders; (b) The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication; (c) The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures; (d) An effective system of domestic	Article 2 of the Presidential Decree No. 80/2003 in conjunction with No. 61/2004 Concerning Guideline for the Procurement of Government Goods/Services: (1) The purpose of enactment of this Presidential Decree is to regulate the procurement of goods/services, either entirely or partly paid from APBN (State Budget) / APBD (Regional Budget); (2) The objective of enacting this Presidential Decree is the procurement of goods/services, either entirely or partly, financed by APBN (State Budget) / APBD (Regional Budget) in efficient, effective, open and competitive, transparent, fair / non discriminative and accountable way. Article 48 of the Presidential Decree No. 80/2003 in conjunction with No. 61/2004	So far the provisions associated with procedures for procurement and new contract are limited in the administrative provisions (Presidential Decree), hence not giving any criminal sanction. The existing procedures have been in fact adequately supporting policies on prevention of crimes of corruption, but due to their supervision being handed over to the initial supervision institutions, the implementation is not yet effective.		It is necessary to reformulate provisions associated with guidance for the procurement of government goods/services, in higher laws and regulations, hence allowing KPK, particularly directorate / prevention division to directly monitor the implementation, in the form of receipt of report and/or request of information thereof, to enhance effectiveness of the provisions.

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	review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed; (e) Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements. 2. Each State Party shall, in accordance with the fundamental principles of its legal system, take appropriate measures to promote transparency and accountability in the management of public finances. Such measures shall encompass, inter alia: (a) Procedures for the adoption of the national budget; (b) Timely reporting on revenue and expenditure; (c) A system of accounting and auditing standards and related oversight; (d) Effective and efficient systems of risk management and internal control; and (e) Where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph.	Concerning Guidance for the procurement of Government Goods/Services: (1) User of goods/services immediately after his (her) appointment, prepares organization, clear description of tasks and functions, activities which must be carried out, forms of work relation, targets which must be achieved, administration and work procedures in writing, and submitted to direct superior and internal supervision unit of the corresponding institutions; (2) Users of goods/services shall make recording and financial reporting and results of work at every activity/project, either progress or direct superior from internal supervision unit; (3) Users of goods/services shall keep and maintain all documents on procurement of goods/services including minutes of tender/selection; (4) Government Institution shall provide security for			

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	3. Each State Party shall take such civil and administrative measures as may be necessary, in accordance with the fundamental principles of its domestic law, to preserve the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue and to prevent the falsification of such documents.	users of goods/services and procurement committee /officials in the environment of each institution, and assign the functional supervision apparatus to carry out inspection in accordance with the applicable provisions; (5) Internal supervision units at government institutions supervise activities/project, accommodate associations with problems or deviations in the procurement of goods/services, then report the results of examination to the corresponding minister/head with copies to the Head of BPKP; (6) Users of goods/services shall provide responses /information concerning procurement of goods/services in their limits of authority to the participants of procurement / community filing a claim on procurement or requiring clarification; (7) Community dissatisfied with the response or information concluded by users of goods / services may file a claim to the Minister / Commander of			

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		Indonesia National Army (TNI) / Police Chief / Head of Institution / Governor / Regent / Mayor / Board of Governors of BI / Head of BHMN / Board of Directors of BUMN/BUMD.			
Article 10 Public reporting	Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia: (a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public; (b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the		Indonesian Law has not yet adequate laws and regulations to guarantee the community's right to get information on public policies.		It is necessary to make Law which guarantees the Right to get information for public.

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	competent decision-making authorities; and (c) Publishing information, which may include periodic reports on the risks of corruption in its public administration.				
Article 11 Measures relating to the judiciary and prosecution services	1. Bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary. 2. Measures to the same effect as those taken pursuant to paragraph 1 of this article may be introduced and applied within the prosecution service in those States Parties where it does not form part of the judiciary but enjoys independence similar to that of the judicial service.	Considering letter b of the Law No. 22/2004 Concerning Judicial Commission: "that Judicial Commission has an important role in order to materialize the power of free justice through transparent and participatory nomination of supreme judges and supervision of judges to uphold the dignity and, to maintain the behaviour of judges". Article 20 of the Law No. 22/2004 Concerning Judicial Commission: "In implementing the authority as referred to in Article 13 letter b the Judicial Commission has the	Prevention of crimes of corruption in the judiciary is limited because Law on Judicial Commission number 22/2004 does not clearly stipulate consequences of disobedience to the implementation of authority of the Commission. Meanwhile, in the Indonesian Law system Attorneys as institution serving of prosecution, are free from the court's power, therefore the supervision of their behaviour is outside the Judicial Commission's authority. Supervision of behaviour of Public Prosecutors is carried out by Deputy Attorney General for Supervision and his lines and	In the effort to prevent money laundering and corruption, there are some technical obstacles related to the Prosecution Office's organization which can affect its prosecution process. Based on The Prosecution Office's structure of command, corruption is being categorized as special crime so it is put under the special crime coordination, which is in hierarchy comprised of Chief of Special Crime Section (at the District Prosecutor level), Assistant of Special Crime (at the Provincial Prosecutor level), and Junior Attorney General of Special Crime (at the Attorney General level). Meanwhile, money laundering is being categorized as common crime, thus the prosecuting	It is necessary to draw up more adequate regulation on public accountability of judges and Public Prosecutors (also the Indonesian Police (Polri) and KPK) in the implementation of duties and use of authority they have.

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		following tasks: to supervise the behaviour of judges in order to uphold the dignity and prestige, and to maintain the behaviour of judges."	Commission for Attorneys, based on the Law No. 16/2004. However, based either on the Law No. 22/2004 or the Law No. 16/2004, there is not yet adequate regulation concerning public accountability of judges and Public Prosecutors in the implementation of their tasks and authorities, particularly the discretionary ones.	coordination is put under the Chief of Common Crime Section. So then, if the money laundering case emerges from the corruption crime, it is technically considered as the Common Crime authority for handling it, despite the crime itself is under the special crime authority. A less different instance is the authority of the Corruption Eradication Commission which is excluded money laundering.	
Article 12 Private sector	1. Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures. 2. Measures to achieve these ends may include, inter alia: (a) Promoting cooperation between law enforcement agencies and relevant private entities; (b) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private		Indonesian Law has not yet entered the issues associated with regulation of private / civil legal entities in scope of prevention of crimes of corruption. Either the Law No. 1/1995 concerning Limited Liability Company, Law No. 8/1997 Concerning Corporate Documents or Law No. 3/1992 Concerning Corporate Registration Obligation, does not yet associate various provisions therein with policies on prevention of and eradicating crimes of corruption.		It is necessary to introduce in the Law on Limited Liability Company, Law on Foundation, and Law which regulates other private sectors, associated with Article 12 of this Convention. It is necessary to have regulation concerning ex Civil Servants, judges, prosecutors or members of Indonesian Police (Polri) / Indonesian National Army (TNI) who after retired are working as

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	entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State; (c) Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities; (d) Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licences granted by public authorities for commercial activities; (e) Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those		However in the practice of law enforcement against corruption acknowledges “every person”, either Civil Servants, state officials or individual and/or private corporation as the addressat / recipients of bribery of crimes of corruption. Associated with ex officials in charge of certain profession, after retired, this tendency is quite rampant. For example, ex judges, prosecutors or members of Indonesian Police (Polri) / TNI working as advocates.		advocates.

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	public officials during their tenure; (f) Ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures. 3. In order to prevent corruption, each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences established in accordance with this Convention: (a) The establishment of off-the-books accounts; (b) The making of off-the-books or inadequately identified transactions; (c) The recording of non-existent expenditure; (d) The entry of liabilities with incorrect identification of their objects; (e) The use of false documents; and (f) The intentional destruction of				

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	bookkeeping documents earlier than foreseen by the law. 4. Each State Party shall disallow the tax deductibility of expenses that constitute bribes, the latter being one of the constituent elements of the offences established in accordance with articles 15 and 16 of this Convention and, where appropriate, other expenses incurred in furtherance of corrupt conduct.				
Article 13 Participation of society	1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as: (a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;	Article 41 of the Law No. 31/1999 in conjunction with the Law No. 20/2001: (1) Community may play a role and help the efforts of preventing and eradicating crimes of corruption; (2) Role of the community as referred to in paragraph (1) is materialized in the following forms: d. Right to search, obtain, and give information on suspected crimes of corruption; e. Right to obtain services in searching, obtaining and giving information on suspected crime of corruption to the law	The community's participation in eradicating crimes of corruption in Indonesian Law has been established in line with the convention.	In the effort to prevent corruption in Indonesia, some stake holder, whether personally, NGO's or epistemic society, take their part. Below are several NGO's which quite active running their programs to prevent corruption: 1. Indonesian Transparency Community, 2. Indonesian Corruption Watch, and 3. Independent Committee on General Election Watch Meanwhile, an epistemic society	

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	(b) Ensuring that the public has effective access to information; (c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula; (d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary: (i). For respect of the rights or reputations of others; (ii). For the protection of national security or *ordre public* or of public health or morals. 2. Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention.	enforcement forces handling crimes of corruption; f. Right to submit suggestions and opinions in responsible way to the law enforcement forces handling crimes of corruption; g. Right to get answers to the questions concerning report given to the law enforcement forces at the latest 30 (thirty) days; h. Right to obtain legal protection in: 1) carrying out the rights as referred to in letters a, b and c; 2) being requested to attend in the process of investigation, and in the trial as reporting witness, witness or expert witness, in accordance with the provisions of the applicable laws and regulations. 3) The community as referred to in paragraph (1) has the rights and responsibilities in the efforts of preventing and eradicating crimes of corruption; 4) Rights and responsibilities as referred to in paragraphs (2) and (3) are carried out by tightly holding the principles or provisions regulated in the applicable laws and		which focused its activity in preventing corruption is Corruption Eradication Watch Forum (Forum 2004).	

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		regulations and by complying with the religious norms and other social norms. 5) Provisions concerning administration of participation of the community in preventing and eradicating crimes of corruption as referred to in this article, shall be further regulated in a Government Regulation. Government Regulation as referred to in Article 41 of the Law No. 31/1999 in conjunction with the Law No. 20/2001 is the Government Regulation No. 71/2000 concerning Administration of Participation of the Community in Preventing and Eradicating Crimes of corruption.			
Article 14 Measures to prevent money-laundering	1. Each State Party shall: (a) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons that provide formal or informal services for the transmission of money or value and, where appropriate,	Law No. 15/2002 Concerning Criminal Act of Money Laundering	Regulation on criminal act of money laundering, namely in regard to formulation of criminal acts and agencies for the prevention and control thereof, including but not limited to Center for Reporting and Analysis of Financial Transactions (PPATK), has been	In Indonesian law practice, there is no common understanding yet between the Police Department and the PPATK for the status of money laundering as an independent crime away from its origin crime. Some law enforcement officers have their own opinion that money	

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	other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer and, where appropriate, beneficial owner identification, record-keeping and the reporting of suspicious transactions; (b) Without prejudice to article 46 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering. 2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders,		comprehensively regulated in the Law on Criminal Act of Money Laundering.	laundering is always depends on the prior reveal of its origin crime. But, some others say that it is because the money laundering is an independent crime, so there is no need to reveal its origin crime first.	

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	subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments. 3. States Parties shall consider implementing appropriate and feasible measures to require financial institutions, including money remitters: (a) To include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator; (b) To maintain such information throughout the payment chain; and (c) To apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator. 4. In establishing a domestic regulatory and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering.				

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	5. States Parties shall endeavour to develop and promote global, regional, sub regional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.				

Chapter III: Criminalization and law enforcement

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Chapter III **Criminalization and law enforcement** **Article 15** Bribery of national public officials	Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally: (a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties; (b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.	Law Number 31/1999 as already amended by the Law Number 20/2001 Similar subject has been mentioned in ⋐ Article 5 paragraph (1) points a and b ⋐ Article 5 paragraph (2) for Civil Servant or state officials ⋐ Article 6 paragraph 1 a particularly destined to the Judges; ⋐ Article 6 paragraph (1) b. for advocates ⋐ Article 6 paragraph 2 for judges and accepting advocates. Law number 31/1999 and Law number 20/2001 To give or to promise something to civil servants or government officer	Provisions in the products of the Indonesian Law are more detailed and have wider coverage.		Rules stipulated in the Law Number 31/1999 as already amended by the Law Number 20/2001 are maintained.

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		An improper profit. A problem rises from this "improper profit" term. Is it related to its quantity so we can decide it proper and lawful?			
Article 16 Bribery of foreign public officials and officials of public international organizations	1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business. 2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue	If a legal subject is a foreign public official or an official from a public international organization, has not yet obtained the regulation in the laws and regulations in Indonesia	It is necessary to have provisions on crimes of corruption for a foreign public official or an official from a public international organization foreign official. However, consequently, this will change the definition on legal subject of the laws and regulations on corruption. By using the principle of territorial of Article 2 of the Criminal Code (KUHP), criminal act committed by a foreign public official or an official from a public international organization in Indonesia, may be tried by using Indonesian criminal law.		It is necessary to state it in the Law on Crimes of corruption.

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	advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.				
Article 17 Embezzlement, misappropriation or other diversion of property by a public official	Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.	∉ Article 8 had governed it, however using the term "money or commercial papers" ∉ Article 9. contains acts of falsifying the objects of "books or lists especially for administrative check ∉ Article 10 contains acts of embezzling, destroying, damaging, or rendering unusable any goods, deeds, letters, or lists used to convince or prove before the authorized officials	Rules applicable in Indonesia apparently have wider coverage because not only covering "wealth, public or individual funds or valuable securities", but also "books or lists especially for administrative check, but also comprising goods, deeds, letters, or lists used to convince or prove before the authorized officials.		To maintain the provisions already stated in the Law Number 31/1999 as already amended by the Law Number 20/2001
Article 18	Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal	∉ This article has no similarity in the Law Number 31/1999 as already amended by the Law Number 20/2001 or in other Laws	This provision is close to the content of article 3 of the Law Number 31/1999 as already amended by the Law Number		∉ If the purpose is similar to the content of Article 3 of the Law Number 31/1999 as already amended by the Law Number 20/2001, then

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	(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person; (b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.				∉ In regard to the term "an undue advantage", because this is not yet included as element of article in crimes of corruption, therefore it should be entered in the amendment to the Law on Crimes of Corruption.
Article 19 Abuse of functions	Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally,	In line with the content of Article 2 of the Law Number 31/1999 as already amended by the Law Number 20/2001			It has been mentioned in the Law Number 31/1999 as already amended by the Law Number 20/2001, and maintained.

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	the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.				
Article 20 Illicit enrichment	Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may Be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.	In line with the content of Article 2 of the Law Number 31/1999 as already amended by the Law Number 20/2001. In this convention "unlawful" being similar to "against the law" has different definition.	This provision serves as efforts for knowing further the wealth belonging to public officials which does not conform to their official earnings and this cannot be reasonably clarified.		This provision is highly needed as the continuance of the obligatory reporting of wealth by public officials at certain level. The principle of Reversed Burden of Proof shall be included in the particular article of the proposed new corruption law or the proposed amendment of the Law Number 31/1999 as already amended by the Law Number 20/2001.

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Article 21 Bribery in the private sector	Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities: (a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting; (b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.	This article has no similarity with Law Number 31/1999 as already amended by the Law Number 20/2001 or in other Laws	Because the sector in the implementation of economic, finance or trade activities, is most prone to corruption However if an individual directing or working in a capacity for a body that is engaged in private sector conducting economic, finance or trade activities and obtaining financial supports from the state, then it is similar to the content of Article 2 or Article 3 of the Law Number 31/1999 as already amended by the Law Number 20/2001		Economic, finance or trade activities, is the most prone to corruption
Article 22 Embezzlement	Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic,	This article has no similarity with Law Number 31/1999 as already amended by the Law Number 20/2001 or in other Laws			Embezzlement in the private sector related to economic, financial or commercial activities shall be included in the particular article of the

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of property in the private sector	financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position.				proposed new corruption law or the proposed amendment of the Law Number 31/1999 as already amended by the Law Number 20/2001. (Acc)
Article 23 Laundering of proceeds of crime	1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally: (a) (i) The conversion or transfer of property, knowing that such properties the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action; (ii). The concealment or disguise of the true nature,	The content of this article is not found in the Law Number 31/1999 as already amended by the Law Number 20/2001, however it is mentioned in the Law Number 15/2002 and the Law Number 25/2003 Concerning Criminal Act of Money laundering particularly in: ⋐ Article 3 paragraph (1) point b; ⋐ Article 3 paragraph (1) point g ⋐ Article 6 paragraph (1) ⋐ Article 3 paragraph (2) ⋐ Article 2 paragraph (1) and (2)			In line with this convention, some articles stated in the Law Number 15/2002 and the Law Number 25/2003 Concerning Criminal Act of Money laundering should be entered in the Law on Crimes of corruption.

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	source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime; (b) Subject to the basic concepts of its legal system: (ii). The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime; (iii). Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article. 2. For purposes of implementing or applying paragraph 1 of this article: (a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences; (b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;				

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	(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there; (d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations; (e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.				

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Article 24 Concealment	Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.	Similar article is found in Article 6 paragraph (1) of the Law Number 15/2002 and the Law Number 25/2003 Concerning Criminal Act of Money laundering			In line with this convention, some articles stated in the Law Number 15/2002 and the Law Number 25/2003 Concerning Criminal Act of Money Laundering, should be entered in the Law on Crimes of Corruption
Article 25 Obstruction of justice	Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally: (a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;	This provision is identical to the content of Article 21 of the Law Number 31/1999 as already amended by the Law Number 20/2001. The term used is "prevent, hamper or foil"	This provision is associated with the issue of protection of witness and or reporting witness		Should be constantly maintained in the Law Number 31/1999 as already amended by the Law Number 20/2001 As provision stated in the Law on Protection of Witness No 13/2006, Law Number 31/1999 as already amended by the Law Number 20/2001

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	(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.				

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Article 26 Liability of legal persons	1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention. 2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative. 3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences. 4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.	Legal entity – corporation – as legal subject has been acknowledged in the Law Number 31/1999 as already amended by the Law Number 20/2001 as mentioned in : ⋐ Article 1 point1 and Article 2. ⋐ Article 20	It can be seen viewed from the words "---therefore claim and criminal sentence may be pursued upon corporation and or the management thereof"		There must be better clarification on when it is the responsibility of the corporation and when it is the responsibility of its management
Article 27 Participation and attempt	1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention. 2. Each State Party may adopt such	In the Law Number 31/1999 as already amended by the Law Number 20/2001 as mentioned in	Associated with the issue of "delneming" participation which in general complies with Articles 55 and 56 of the Criminal Code (KUHP). However it is possible to govern it differently, see article 103 of the Criminal Code (KUHP).		Constantly maintaining those measures already regulated in the Law Number 31/1999 as already amended by the Law Number 20/2001

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	legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention. 3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.	⋐ Article 15 particularly for criminal act regulated in Articles 2, 3, 5 up to 14; ⋐ Article 12 point i			
Article 28 Knowledge, intent and purpose as elements of an offence	Knowledge, intent or purpose required as an element of an offence established in accordance with this Convention may be inferred from objective factual circumstances.	Not specifically regulated in the Law Number 31/1999 as already amended by the Law Number 20/2001, however it appears in the lecture of criminal law and is applied in claim, defence and judges' judgment	In Indonesia's system of criminal law, the elements of criminal act are already inserted in the Indonesia Penal Code which is inherited from the Dutch. The Convention' s non mandatory approach to this article will not change significantly the existing system of criminal law in Indonesia, particularly, in the new anti corruption law which is now being drafted.		Such regulation is necessary in the Amendment to the Law on Crimes of corruption

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Article 29 Statute of limitations	Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.	The statute of limitation in Indonesian's criminal law system is stated differently. It depends on the seriousness of the criminal act. For crime of corruption, the statute of limitation is 10(ten) years. But the draft new law on anti corruption will be prolonged or abolish it.			
Article 30 Prosecution, adjudication and sanctions	1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.		Something commonly carried out if the Public Prosecutors makes a prosecution, legal advisor makes a defence and judges makes a sanction	In the effort to eradicate corruption, the status of "the payment of outstanding leave and entitlements" can be less effective since it is only an additional punishment. Principally, additional punishment can only be added from its primary punishment, thus make the return of state loss extremely depend on the passing of a primary punishment to the accused.	Existing practices and provisions are maintained

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				Beside that, in the court practice, there is a time when the stipulation of "the payment of outstanding leave and entitlements" is smaller than the state loss. This matter derives from Art. 18 verse (1) letter b of the Law number 31/1999, stipulates that "the payment of outstanding leave and entitlements which maximum amount is at the same amount of estate gained from the corruption". The phrase "maximum amount is at the same" is not always meant "similar" to the state loss, in contrary it can be "less" if compared to the real loss of the state. Meanwhile, the status of "the payment of outstanding leave and entitlements" in the corruption crime considered as a debt of the convicted, has been introduced, due to it stipulation on the Supreme Court 'Fatwa' number 37/T4/88/66/1988.	

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	2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.	Article 25 the investigation of Criminal Acts is prioritized Article 28 Obligation for the suspect to give information about his (her) wealth; article 29 request of information at Bank; t death of defendant does not stop the process of returning the state's losses; Article 38 paragraph (1) investigation and judgment may be taken without the presence of defendant – in absentia –			
	3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.	⋐ Rights of suspect / defendant as regulated in the Law Number 8/1981 concerning Criminal Code Chapter VI Articles 50 through 68 ⋐ Article 38 paragraph (1) investigation and judgment may be taken without the presence of defendant – in absentia –			

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	4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.				
	5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.	See provisions in Articles 15; 15 a; 15 b and 16 of the Criminal Code (KUHP) concerning conditional release and Law on Penitentiary	Provisions in the Criminal Code (KUHP) are clear.		It is felt that no special regulation is or articles in the Law on Crimes of Corruption are needed.
	6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned	There are regulations in the Law Number 43/1999 Concerning Basic Provisions of Employees in Article 24 concerning temporary suspension of Civil Servant involved in a criminal act	Application of this provision is a very big violation against the principle of "presumption of innocence"		It is not necessary to apply except for cases where the investigation by the apparatus of law enforcement forces disturbs works or public services.

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	by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.				
	7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from: (a) Holding public office; and (b) Holding office in an enterprise owned in whole or in part by the State.	There are regulations in the Law Number 43/1999 Concerning Basic Provisions of Employees in Article 23 concerning additional criminal sanction of dismissal without honour for Civil Servant that has been convicted of committing criminal act	It must be clarified for what kind of mistake that additional criminal sanction of dismissal without honour for Civil Servant is applicable.		This should be carried out
	8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.				

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	9. Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in accordance with that law.	Guarantee of legal certainty			
	10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.				

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Article 31 Freezing, seizure and confiscation	1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of: (a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds; (b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention. 2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation. 3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.	In the Law Number 31/1999 as already amended by the Law Number 20/2001 - Article 30 on authority of investigator to open, check and seize letters - Article 38b on seizure of property for the state - Article 29 paragraphs (4) (5) blocking / freezing of account in a bank - Article 37 concerning reversal of the burden of proof. Law Number 8/1981 concerning Criminal Code - Article 39 paragraph (1) concerning various thins of which seizure may be applied; - Article 46 returning of seized and apprehended goods for the state	As long as it is not specifically regulated in the Law Number 31/1999 as already amended by the Law Number 20/2001, then the provisions stated in the Law Number 8/1981 concerning Criminal Code are applicable.		No separate regulation is needed in the Law on Crimes of Corruption. As long as it does not need any reasons which are different from the Law Number 8/1981 concerning the Criminal Code.

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	4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds. 5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds. 6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime. 7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.				

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	8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings. 9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties. 10. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a State Party.				
Article 32 Protection of witnesses, experts and victims	1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.	⋞ See in Article 21 and Article 31 paragraphs (1) and (2) of the Law Number 31/1999 as already amended by the Law Number 20/2001. Term used is "prevent, hamper or foil" ⋞ There is no provision regulating the protection of witness, expert witness ⋞ See also what has been regulated in the Law Number 8/1981 concerning Criminal Code on rights of the suspect	Provision as stated in Article 21 is highly limited for the one associated with protection of witness.		Further regulation is required concerning protection of witnesses whether specifically for crimes of corruption or as independent Law (optional) Comments: Law on the Protection of Witness & Victims has already

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	2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process: (a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons; (b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means. 3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article. 4. The provisions of this article shall also apply to victims insofar as they are witnesses. 5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings	and defendant Articles 50 through 68. Also provisions concerning rules on proof see Article 183 – Article 202.			been promulgated by Parliament (Law No 13/20006). However, it needs immediate action to establish Witness Protection Institution as instructed by such Law.

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	against offenders in a manner not prejudicial to the rights of the defence.				
Article 33 Protection of reporting persons	Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.	See regulation stated in Article 31 of the Law Number 31/1999 on Crimes of Corruption	Only limited in not mentioning / notifying the identity of reporter		It can be carried out more than those mentioned in Article 31 as part of the efforts of protecting witness. Comments: Whistleblower protection shall be included in the particular article in the Law of Protection of Witness & Victims (UU 13/2006).
Article 34 Consequences of acts of corruption	With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.	No regulation in the Law governs crimes of corruption as well as in other Laws	As long as also taking into account the interests of third parties, then one which is necessary to give additional sanction in association with cancelling or terminating a contract, re-withdrawing concession(-s) or other similar instruments, or taking other corrective acts.		It is necessary to state it as amendment to the Law on crimes of corruption

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Article 35 Compensation for damage	Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.	The existing provision is in the Law Number 8/1981 concerning Criminal Code Chapter XIII Merging of Cases of Compensation Suits Article 98 – 101	From this provision, there has been at least a proceeding (mechanism) for victims or family of victim to file a compensation suit to the offender for losses they suffer. This provision shall certainly apply to the victims of crimes of corruption It must be realized that losses suffered from crimes of corruption do not only state "may result in financial or economic losses to the state" but also may harm the body or people of community – and individuals.		The right to file a legal suit against the parties responsible for losses for compensation. should be given to bodies or people suffering losses resulting from corruption. Or it may be considered to assign the public prosecutor on behalf of the State Owned Enterprises (SOE) which has suffered damage as a result of corruption.
Article 36 Specialized	Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in Combating corruption through law	With the presence of KPK as mandated in Article 43 of the Law Number 31/1999, and the Law Number 30/2002 concerning Commission for	"The required freedom is obligatorily given, in accordance with the basic principles of the legal system of the party State" still needs further review		It is necessary to review regulations and practices associated with Tasks, Authorities and Obligations of KPK in accordance with

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authorities	enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.	Eradicating Crimes of Corruption Added with the Instruction of the President of RI Number 5/2004 Concerning Acceleration in Eradicating Corruption	whether the authority belonging to the KPK as regulated in Chapter II Articles 6 through 15 has fulfilled the request or content of the Convention		UNCAC and to maximize corruption eradication efforts., such as its role in the recovery mechanism of assets derived from corruption because the practice of bilateral cooperation in criminal matters is done by the AGO and the Police NCB.
Article 37 Cooperation with law enforcement authorities	1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds. 2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.	Not yet functioning as provision in the law on crimes of corruption Associated with application of "principle of opportunity" belonging to the Attorney General, see Article 35 c of the Law Number 16/2004 concerning Prosecutor	This provision serves as basis for relieving criminal sentencing because an individual participating in committing act will act as "crown witness" hence consequentially he (she) must obtain relief in the sentence.	All law enforcement agencies (KPK, Police, General Attorney) should establish a mechanism to ensure better coordination and supervision.	It should be stated in the Law on Crimes of Corruption, because it highly helps the apparatus of law enforcement forces in disclosing criminal act and recovery of goods as evidence

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	3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention. 4. Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention. 5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.				

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Article 38 Cooperation between national authorities	Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include: (a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or (b) Providing, upon request, to the latter authorities all necessary information.	The pattern of cooperation among law enforcement forces in association with Criminal Court System has been obtained and carried out. See the Law Number 8/1981 concerning Criminal Code. Particularly relation between the investigator and Public Prosecutors	However this pattern of relationship is apparently not effective and efficient because police amended prosecutors are not engaged in the investigation phase.		In order to reach the objective of effectiveness and efficiency of work, police (investigator) and prosecutors (claimant) have to sit at one table to discuss a case as occurred during the Dutch Regulations for the Indigenous peoples of Indonesia.

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Article 39 Cooperation between national authorities and the private sector	1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention. 2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.	This has been regulated in Chapter V Participation of Community in the Law Number 31/1999 Concerning Crimes of Corruption .	Chapter V of Law31/99, only regulates community participation and does not specifically state or include private sector.		
Article 40 Bank secrecy	Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.	This has been regulated in Article 29 of the Law Number 31/1999 Concerning Crimes of Corruption			The regulation is maintained

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Article 41 Criminal record	Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.	Not yet regulated in any Indonesian Law on criminal records which may be used by other state	Would it be possible to enter the issue of "repetition of criminal act" – recidivist (repeat offender) – as regulated in Articles 486 - 487 of the Criminal Code (KUHP)?		If possible, a special regulation must be provided in the Law on Crimes of Corruption for matters associated with "repetition of criminal act" in which the first criminal act occurs outside the territory of Indonesia.
Article 42 Jurisdiction	1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when: (a) The offence is committed in the territory of that State Party; or (b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed. 2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when: (a) The offence is committed against a national of that State Party; or	⋐ This is not particularly regulated in the Law Number 31/1999 or the amendment thereof, however it has been regulated in Articles 2 – 9 of the Criminal Code (KUHP) ⋐ Principle of Territory in Articles 2 and 3; ⋐ Principle of Active Nationality Articles 5, 6 and 7 of the Criminal Code (KUHP) ⋐ Principle of Passive Nationality, Article 4 of the Criminal Code (KUHP); ⋐ Universal Principle Article 4	Provision in Article 4 of the Criminal Code (KUHP) must be added with matters associated with crimes of corruption		Jurisdiction Provisions in Articles 2 through 9 of the Criminal Code (KUHP) are maintained with the amendment of Article 4 with the addition of crimes of corruption.

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	(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or (c) The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory; or (d) The offence is committed against the State Party. 3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals. 4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.				

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	5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions. 6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.				

Chapter IV: International Cooperation

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Chapter IV **International Cooperation** **Article 43** International Cooperation	1. States Parties shall cooperate in criminal matters in accordance with articles 44 to 50 of this convention. Where appropriate and consistent with their domestic legal system, States Parties shall consider assisting each other in investigations of and proceedings in civil and administrative corruption.		Extradition must be granted with respect to offences covered by this convention, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting and the requested State parties.	International cooperation in preventing and eradicating corruption is the most important to make asset recovery become effective. Asset recovery which is known as "the major breakthrough" of the convention. Even though 162 countries have ratified this convention, implementation of this convention in each country depends on political will and commitment. Generally, state parties of this convention would rather feel more "favourable" to conduct bilateral cooperation to multilateral with the exception of countries of the European Union. So with dispute settlement, the Government of Indonesia would rather choose bilateral cooperation to international procedure through the United Nations. As International cooperation is the most important form for	

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				Government of Indonesia in conducting asset recovery of corruption, so comprehensive and completed documentation of corruption cases is necessary and a valid database needed.	
	2. In matters relating to matters of international cooperation whatever dual criminality is consider a requirement, it shall be deemed fulfilled irrespective of whether the laws of the requested state party place the offence within the same category of offence by the same terminology as the requesting State Party, if the conduct underlying the offence for which assistance is sought is a criminal offence under the laws of both States Parties.		Dual criminality will automatically fulfil with respect to offences established in accordance with the convention. Note also, that States may extradite without dual criminality, if their domestic law allows it.		
Article 44 Extradition	1. This article shall apply to the offences established in accordance with this Convention, where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is		Indonesia' law on extradition number 1 year of 1979, acknowledges the dual criminality principle which strictly applies to extradition. Nothing in the said law permits an exception such as in article 44		Law number 1 year of 1979 should be revised. The revision should address to add articles on the principle of lex specialis to the general principle on extradition.

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	punishable under the domestic law both the requesting State party and the requested State Party. 2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.		CAC 2003. The GAP analysis shows that there is a big difference of principle between the law of extradition 1, 1979 and the CAC 2003 which will eventually hamper seriously the effectiveness of extradition of some offences established in the convention. Another issue of extradition is a treaty based-extradition. The article on extradition of CAC 2003, stipulates the possibility of having international cooperation without such treaty of extradition between State parties.		
	3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.		The articles on extradition as well as mutual legal assistance are of prime importance in international cooperation. The absence of these two international cooperations will become a stumbling block to the success of the prevention and combating corruption especially the asset recovery.		

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	4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.				
	5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies. 6. A State Party that makes extradition conditional on the existence of a treaty shall: (a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of		State party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies. The article mentioned above, is a non-mandatory obligation, because it depends on the domestic law of the party.		Therefore, Indonesia should seriously consider this article with respect to the fact that Indonesia has not yet entered into treaty of extradition with many State parties.

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	the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and (a) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.				
	7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves. 8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.				

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	9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies. 10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings. 11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and				

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	evidentiary aspects, to ensure the efficiency of such prosecution. 12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article. 13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof. 14. Any person regarding whom proceedings are being carried out in connection with any of the offences				

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	to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present. 15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons. 16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters. 17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation. 18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.				

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Article 45 Transfer of sentenced persons	States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.		Transfer of sentenced persons is a non-mandatory obligation but the practice of international cooperation shows that it is necessary to consider it seriously since Indonesia and some countries are discussing the possibility of having such treaty. Based on this consideration it should take notes that Indonesia should also an umbrella act for it.		
Article 46 Mutual legal assistance	1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention. 2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance		Recently Indonesia has promulgated Law on Mutual Assistance in Criminal Matters as an umbrella act, but the substance is not fully complying with the CAC 2003. Some of it refers to the exceptions about the principle of dual criminality and of the applicable law on certain offences between requesting and requested state parties.		The recommendation is that Indonesia should consider this exception and insert it in the new revision to the new law on mutual assistance.

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	with article 26 of this Convention in the requesting State Party. 3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes: (a) Taking evidence or statements from persons; (b) Effecting service of judicial documents; (c) Executing searches and seizures, and freezing; (d) Examining objects and sites; (e) Providing information, evidentiary items and expert evaluations; (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records; (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes; (h) Facilitating the voluntary appearance of persons in the requesting State Party;		Besides, the law on mutual assistance did not have such article on the suspension of the request form mutual assistance treaty. It only has two options, first the requested state party, refuse or may refuse the request for mutual assistance. Some reason for not accepting the request of mutual assistance which are stipulated in the law on mutual assistance are not compliant with the article on Mutual Assistance of the CAC 2003 such as it did not include tax offence and the reason that the request was contrary to the legal system.		

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	(i) Any other type of assistance that is not contrary to the domestic law of the requested State Party; (j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention; (k) The recovery of assets, in accordance with the provisions of chapter V of this Convention. 4. without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention. 5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a				

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	request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay. 6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance. 7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply those paragraphs if they facilitate cooperation.				

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	8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy. 9. (a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1; (a) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a *de minimis* nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention; (b) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.				

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	10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met: (a) The person freely gives his or her informed consent; (b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate. 11. For the purposes of paragraph 10 of this article: (a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred; (b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party				

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	from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties; (c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person; (d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred. 12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.				

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	13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such				

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	requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible. 14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith. 15. A request for mutual legal assistance shall contain: (a) The identity of the authority making the request; (b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority				

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	(c) conducting the investigation, prosecution or judicial proceeding; (d) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents; (e) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed; (f) Where possible, the identity, location and nationality of any person concerned; and (g) The purpose for which the evidence, information or action is sought. 16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution. 17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request. 18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and				

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	has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party. 19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested				

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	State Party of the disclosure without delay. 20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party. 21. Mutual legal assistance may be refused: (a) If the request is not made in conformity with the provisions of this (b) article; (c) If the requested State Party considers that execution of the request is (d) likely to prejudice its sovereignty, security, *ordre public* or other essential interests; (e) If the authorities of the requested State Party would be prohibited by its (f) domestic law from carrying out the action requested with regard to any similar (g) offence, had it been subject to investigation, prosecution or judicial proceedings (h) under their own jurisdiction;				

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	(i) If it would be contrary to the legal system of the requested State Party (j) relating to mutual legal assistance for the request to be granted. 22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters. 23. Reasons shall be given for any refusal of mutual legal assistance. 24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.				

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	25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding. 26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions. 27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen				

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	consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will. 28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne. 29. The requested State Party: (a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public; (b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems				

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	appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public. 30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.				
Article 47 Transfer of criminal proceedings	States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.		Article on the transfer of criminal proceedings is a new form of international cooperation that many countries have not yet entered.		Indonesian law on anti corruption did not need this form of cooperation since many countries have different legal systems.

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Article 48 Law enforcement cooperation	1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures: (a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities; (b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning: (i). The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned; (ii). The movement of proceeds of crime or property derived from the commission of such offences;				

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	(iii). The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences; (c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes; (d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities; (e) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers; (f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.				

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	2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies. 3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology				
Article 49 Joint investigations	States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial				

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	proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.				
Article 50 Special investigative techniques	1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived there from. 2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary,				

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	appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements. 3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned. 4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.				

Chapter V: Asset recovery

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Chapter V **Asset recovery** **Article 51** General provision	The return of assets pursuant to this chapter is a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard.		Provisions in this chapter especially regulate recovery of corruption perpetrator's assets which are beyond country. Thereby, this chapter represents link of rule of international cooperation in corruption eradication and prevention. According to article 41 Law No. 30 of 2002, international cooperation which be conducted by KPK is limited in the case of investigation, and prosecution of corruption. Meanwhile, "asset recovery" as result of corruption is closely related to judicial action through judicial decision. Thereby, "asset recovery" can not be fully conducted if solely relying on existing authority with reference to international cooperation, especially in the field of investigation and prosecution, because in general it can only be endorsed through judicial decision, both in criminal and civil law.	Require to be performed regulation concerning asset recovery of corruption. Not merely which is beyond country, but also which still residing in Indonesia, especially in the case of corruption suspects or defendant who cannot be judged with any reason.	

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			Besides, referring to the convention on international cooperation, asset recovery is indirectly relevant with facts of legal instrument requirements in recovering asset of corruption in Indonesia. Anti corruption law in Indonesia which requires to be amended is its legal procedure in order to overcome difficulties, especially in recovering proceeds of corruption which still reside in Indonesia. This should be applicable to suspects, defendants or accused persons who have been judged and who have not yet been tried like former President Soeharto. So far, UNCAC is still unable to be adapted as guidance in formulating the mechanism.		
Article 52 Prevention and detection of transfers of	1. Without prejudice to article 14 of this Convention, each State Party shall take such measures as may be necessary, in accordance with its domestic law, to require financial institutions within its jurisdiction to verify the identity of customers, to take reasonable steps to determine	The Law Number 15/2002 and the Law Number 25/2003 Concerning Criminal Act of Money laundering Chapter IV Reporting Part One Obligation To Reporting, Part Two, Identity	Arrangement of this matter exists in the Law on Money Laundering, but it does not regulate corruption.		These provisions require to be regulated in Law on Corruption.

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proceeds of crime	the identity of beneficial owners of funds deposited into high-value accounts and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates. Such enhanced scrutiny shall be reasonably designed to detect suspicious transactions for the purpose of reporting to competent authorities and should not be so construed as to discourage or prohibit financial institutions from doing business with any legitimate customer. 2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall: (a) Issue advisories regarding the types of natural or legal person to whose accounts financial institutions within its jurisdiction will be expected to apply enhanced scrutiny, the types of accounts and transactions to which to pay particular attention and appropriate account-	of Customer, Chapter V Reporting Center and Analysis of Financial Transactions			

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	opening, maintenance and record-keeping measures to take concerning such accounts; and (b) Where appropriate, notify financial institutions within its jurisdiction, at the request of another State Party or on its own initiative, of the identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny, in addition to those whom the financial institutions may otherwise identify. 3. In the context of paragraph 2 (a) of this article, each State Party shall implement measures to ensure that its financial institutions maintain adequate records, over an appropriate period of time, of accounts and transactions involving the persons mentioned in paragraph 1 of this article, which should, as a minimum, contain information relating to the identity of the customer as well as, as far as possible, of the beneficial owner. 4. With the aim of preventing and detecting transfers of proceeds of offences established in accordance with this Convention, each State Party shall implement appropriate and effective measures to prevent, with the help of its regulatory and oversight bodies, the establishment				

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	of banks that have no physical presence and that are not affiliated with a regulated financial group. Moreover, States Parties may consider requiring their financial institutions to refuse to enter into or continue a correspondent banking relationship with such institutions and to guard against establishing relations with foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group. 5. Each State Party shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non-compliance. Each State Party shall also consider taking such measures as may be necessary to permit its competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover proceeds of offences established in accordance with this Convention. 6. Each State Party shall consider taking such measures as may be necessary, in accordance with its domestic law, to require appropriate public officials having an interest in or signature or other authority over a financial account in a foreign				

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	country to report that relationship to appropriate authorities and to maintain appropriate records related to such accounts. Such measures shall also provide for appropriate sanctions for non-compliance.				
Article 53 Measures for direct recovery of property	Each State Party shall, in accordance with its domestic law: (a) Take such measures as may be necessary to permit another State Party to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an offence established in accordance with this Convention; (b) Take such measures as may be necessary to permit its courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another State Party that has been harmed by such offences; and (c) Take such measures as may be necessary to permit its courts or competent authorities, when having to decide on confiscation, to recognize another State Party's claim as a legitimate owner of property acquired through the commission of an offence	No regulation is found in the existing laws and regulations. It is possibly associated with civil code – HIR (Civil Procedure Code) – to file a suit by granting a power to a law firm. Article 1365 of Civil Code Article 32 sentence (1) Law No. 31 of 1999: In the case of investigator find and have a notion that one or more corruption element do not have complete evidence,	This a regulation associated with the opportunity of a party state to sue the parties "controlling" the property belonging to the state in corruption case Article 32 sentence (1) Law No. 31 of 1999: In the case of investigators find and have a notion that one or more corruption element do not have complete evidence, meanwhile, state's loss has been manifested, investigator shall immediately deliver lawsuit document as result of the		In order to get certain legal foundations, the provisions concerning this must be regulated in the Law on Crimes of Corruption

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	established in accordance with this Convention.	meanwhile, state's loss has been manifested, investigator shall immediately deliver lawsuit document as result of the investigation to Attorney General of Prosecutions to conduct lawsuit or delivered them to harmed institution to bring a lawsuit to the court.	investigation to Attorney General of Prosecutions to conduct lawsuit or deliver them to harmed institution to bring a lawsuit to the court. In Indonesian civil procedure law, suit can be raised to legal entity or a person which is domiciling in Indonesia and or in the case of dispute to asset residing in Indonesia, either by plaintiff representing Indonesian residence/citizen or foreigner. In this case, legal argument to suing is the existence of deed contempt of court (onrechtmatigedaad) as determined in article 1365 of Civil Code. But that way, there is need for further study in the case of its plaintiff is a state". Besides, in corruption law, civil suit can to be conducted in the case of existence of financial loss of the state, but when deed of perpetrator does not fulfil element of corruption. It can only		

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			be conducted by Attorney General Prosecutions of Indonesia or other relevant institution. It is not yet existed at all if the suing conducted by "foreign state".		
Article 54 Mechanisms for recovery of property through international cooperation in confiscation	1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law: (a) Take such measures as may be necessary to permit its competent authorities to give effect to an order of confiscation issued by a court of another State Party; (b) Take such measures as may be necessary to permit its competent authorities, where they have jurisdiction, to order the confiscation of such property of foreign origin by adjudication of an offence of money-laundering or such other offence as may be within its jurisdiction or by other procedures authorized under its domestic law; and (c) Consider taking such measures	Criminal procedure code regulated in the Law Number 8/1981 in Article 46 states that: (1) Goods on which re-seizure is imposed to a person or to those from whom the goods are seized, or to a person or to those mostly entitled …….. (2) If the case has been decided, the seized goods are returned to the person or to those mentioned in the decision aforesaid ……." Article 38 C Law No. 31 1999 jo. Law No 20 Year 2001: If after justice decision have obtained legal force remain to, but known there are still existed good and chattel property of accused which is assumed or	The content of the article regulates to where the goods or materials resulting from crime that have been seized will be handed over. This is stipulated in the judges' judgment. Confiscation may be conducted through civil law procedure when criminal court decision has been final and binding, but found extant convicted person assets which has not been confiscated or seized obviously. It is limited on corruption assets which is located in Indonesia and belong to suspect, defendant or convicted person. However, this confiscation only can be done by law enforcer of Indonesia.		It would be better if it is mentioned and regulated in more details such as in the convention in the Law on Crimes of Corruption.

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	as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases. 2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law: (a) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a freezing or seizure order issued by a court or competent authority of a requesting State Party that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article; (b) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a request that provides a reasonable basis for the	proper to be assumed come from corruption which not yet been imposed to seize for the state of as referred to article 38 B sentence (2). Hence, state may conduct civil suing to the accused or its heir.	Based on Eradication Corruption Law, confiscation of corruption assets which suspect or defendant has passed away or fled or is absent or by other reason he/she can not be tried at court, is not regulated yet. Thus, cases like former president Soeharto cannot be finished through civil procedure, because there is no criminal verdict. According to civil law system of procedure the “Confiscation" can be conducted only after a criminal verdict for assets resulting from corruption, if these assets have not been frozen or confiscated yet. This is only applicable for assets in Indonesia by Indonesian offenders and can only be confiscated by Indonesian authorities.		

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	requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article; and (c) Consider taking additional measures to permit its competent authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such property.				
Article 55 International cooperation for purposes of confiscation	1. A State Party that has received a request from another State Party having jurisdiction over an offence established in accordance with this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system: (a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or (b) Submit to its competent authorities, with a view to giving	∉ See the Law Number 8/1981 concerning Criminal Procedure Code on procedure of seizure as regulated in article 7 and Chapter IV Seizure in Articles 38 – 46; ∉ See provisions concerning mutual agreement ∉ Article 6 letter c Law No. 30 of 2002 Commission Eradiation Corruption has duty: To investigate and to persecute on corruption case.	Consider article 6 letter c, article 12 sentence (1) letter h, article 38 and article 41 Law No. 30 of 2002 jo. Article 7 sentence (2) Criminal Procedure Code, KPK has authority to conduct International cooperation in order to conduct a confiscation. In this matter KPKis authorized to conduct confiscation and freezing (temporary) on asset (different from permanent confiscation or seizure) which is assumed as corruption asset both located in Indonesia and overseas.		The regulation is needed in the Law on Crimes of Corruption

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	effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with articles 31, paragraph 1, and 54, paragraph 1 (a), of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, situated in the territory of the requested State Party. 2. Following a request made by another State Party having jurisdiction over an offence established in accordance with this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party. 3. The provisions of article 46 of this Convention are applicable, mutatis mutandis, to this article. In addition to the information specified in article 46, paragraph 15, requests made pursuant to this article shall contain: (a) In the case of a request	∉ Article 12 sentence (1) letter h Law No. 30 of 2002 In performing tasks of investigation and prosecution as mentioned in article 6 letter c, KPK authorizes: Ask for assistance of Interpol of Indonesia or other law enforcement agency over countries to search, to arrest, and to confiscate and to seize evidences in other countries. ∉ Article 38 sentence (1) Law No. 30 of 2002 Article 38 sentence (1) Law No. 30 of 2002 ∉ Article 41 law No. 30 of 2002 Commission Eradication Corruption is able to conduct joint cooperation on investigation and persecution of Corruption crime with other law enforcement agency of countries associated with			

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	pertaining to paragraph 1 (a) of this article, a description of the property to be confiscated, including, to the extent possible, the location and, where relevant, the estimated value of the property and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law; (b) In the case of a request pertaining to paragraph 1 (b) of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested, a statement specifying the measures taken by the requesting State Party to provide adequate notification to bona fide third parties and to ensure due process and a statement that the confiscation order is final; (c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested and, where available, a legally admissible	Indonesian positive law or based on international treaty which is acknowledged by Government of Indonesia.			

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	copy of an order on which the request is based. 4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral agreement or arrangement to which it may be bound in relation to the requesting State Party. 5. Each State Party shall furnish copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations. 6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis. 7. Cooperation under this article may also be refused or provisional measures lifted if the requested State Party does not receive sufficient and timely evidence or if the property is of a *de minimis* value. 8. Before lifting any provisional measure taken pursuant to this article, the requested State Party				

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	shall, wherever possible, give the requesting State Party an opportunity to present its reasons in favour of continuing the measure. 9. The provisions of this article shall not be construed as prejudicing the rights of bona fide third parties.				
Article 56 Special cooperation	Without prejudice to its domestic law, each State Party shall endeavour to take measures to permit it to forward, without prejudice to its own investigations, prosecutions or judicial proceedings, information on proceeds of offences established in accordance with this Convention to another State Party without prior request, when it considers that the disclosure of such information might assist the receiving State Party in initiating or carrying out investigations, prosecutions or judicial proceedings or might lead to a request by that State Party under this chapter of the Convention.	Regulated in Chapter VIII International Cooperation Article 44 of the Law Number 15/2002 and the Law Number 25/2003 on Money Laundering	Regulation and description stated in this article are too simple		Further regulation is needed

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Article 57 Return and disposal of assets	1. Property confiscated by a State Party pursuant to article 31 or 55 of this Convention shall be disposed of, including by return to its prior legitimate owners, pursuant to paragraph 3 of this article, by that State Party in accordance with the provisions of this Convention and its domestic law. 2. Each State Party shall adopt such legislative and other measures, in accordance with the fundamental principles of its domestic law, as may be necessary to enable its competent authorities to return confiscated property, when acting on the request made by another State Party, in accordance with this Convention, taking into account the rights of bona fide third parties. 3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall: (a) In the case of embezzlement of public funds or of laundering of embezzled public funds as referred to in articles 17 and 23 of this Convention, when confiscation was executed in accordance with article 55 and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return	Criminal Code regulated in the Law Number 8/1981 in Article 46 states that: (1) Goods on which seizure is imposed are returned to the person or to those from whom the goods are seized, or to the person or to those most entitled …….. If the case has been decided, then the goods on which seizure is imposed will be returned to the person or to those mentioned in the judgment ……."	The content of the article regulates to where the goods or materials resulting from the criminal act that have been seized will be handed over. This is stated in the judges' judgment.		It will be better if it is mentioned and regulated in more detail, such as in the convention, in the Law on Crimes of Corruption.

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	the confiscated property to the requesting State Party; (b) In the case of proceeds of any other offence covered by this Convention, when the confiscation was executed in accordance with article 55 of this Convention and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party, when the requesting State Party reasonably establishes its prior ownership of such confiscated property to the requested State Party or when the requested State Party recognizes damage to the requesting State Party as a basis for returning the confiscated property; (c) In all other cases, give priority consideration to returning confiscated property to the requesting State Party, returning such property to its prior legitimate owners or compensating the victims of the crime. 4. Where appropriate, unless States Parties decide otherwise, the requested State Party may deduct reasonable expenses incurred in investigations, prosecutions or				

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	judicial proceedings leading to the return or disposition of confiscated property pursuant to this article. 5. Where appropriate, States Parties may also give special consideration to concluding agreements or mutually acceptable arrangements, on a case-by-case basis, for the final disposal of confiscated property.				
Article 58 Financial intelligence unit	States Parties shall cooperate with one another for the purpose of preventing and combating the transfer of proceeds of offences established in accordance with this Convention and of promoting ways and means of recovering such proceeds and, to that end, shall consider establishing a financial intelligence unit to be responsible for receiving, analysing and disseminating to the competent authorities reports of suspicious financial transactions.	In the Law Number 15/2002 and the Law Number 25/2003 concerning Criminal Act of Money laundering has been stated the regulation in Chapter V Reporting Center and Analysis of Financial Transactions in Articles 18 – 38. Although the term is not intelligence unit , its function and tasks are nearly similar to the content of convention			May be entered in the Law on Crimes of corruption

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Article 59 Bilateral and multilateral agreements and arrangements	States Parties shall consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this chapter of the Convention.	Regulated in Chapter VIII International Cooperation Article 44. The Law Number 15/2002 and the Law Number 25/2003 on Money Laundering and Law number 30/2002 article 13(f). However, it needs to be explored in detail the scope area of cooperation.			
Article 60 Training and technical assistance	1. Each State Party shall, to the extent necessary, initiate, develop or improve specific training programmes for its personnel responsible for preventing and combating corruption. Such training programmes could deal, inter alia, with the following areas: (a) Effective measures to prevent, detect, investigate, punish and control corruption, including the use of evidence-gathering and investigative methods; (b) Building capacity in the development and planning of strategic anticorruption policy; (c) Training competent authorities in the preparation of requests for mutual legal assistance that meet the requirements of this Convention;	Regulated in Chapter VIII International Cooperation Article 44 of the Law Number 15/2002 and the Law Number 25/2003 concerning Money Laundering.			Highly needed to enhance the capability of human resources

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	(d) Evaluation and strengthening of institutions, public service management and the management of public finances, including public procurement, and the private sector; (e) Preventing and combating the transfer of proceeds of offences established in accordance with this Convention and recovering such proceeds; (f) Detecting and freezing of the transfer of proceeds of offences established in accordance with this Convention; (g) Surveillance of the movement of proceeds of offences established in accordance with this Convention and of the methods used to transfer, conceal or disguise such proceeds; (h) Appropriate and efficient legal and administrative mechanisms and methods for facilitating the return of proceeds of offences established in accordance with this Convention; (i) Methods used in protecting victims and witnesses who cooperate with judicial authorities; and (j) Training in national and international regulations and in languages.				

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	2. States Parties shall, according to their capacity, consider affording one another the widest measure of technical assistance, especially for the benefit of developing countries, in their respective plans and programmes to combat corruption, including material support and training in the areas referred to in paragraph 1 of this article, and training and assistance and the mutual exchange of relevant experience and specialized knowledge, which will facilitate international cooperation between States Parties in the areas of extradition and mutual legal assistance. 3. States Parties shall strengthen, to the extent necessary, efforts to maximize operational and training activities in international and regional organizations and in the framework of relevant bilateral and multilateral agreements or arrangements. 4. States Parties shall consider assisting one another, upon request, in conducting evaluations, studies and research relating to the types, causes, effects and costs of corruption in their respective countries, with a view to developing, with the participation of competent authorities and society, strategies				

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	and action plans to combat corruption. 5. In order to facilitate the recovery of proceeds of offences established in accordance with this Convention, States Parties may cooperate in providing each other with the names of experts who could assist in achieving that objective. 6. States Parties shall consider using sub regional, regional and international conferences and seminars to promote cooperation and technical assistance and to stimulate discussion on problems of mutual concern, including the special problems and needs of developing countries and countries with economies in transition. 7. States Parties shall consider establishing voluntary mechanisms with a view to contributing financially to the efforts of developing countries and countries with economies in transition to apply this Convention through technical assistance programmes and projects. 8. Each State Party shall consider making voluntary contributions to the United Nations Office on Drugs and Crime for the purpose of fostering, through the Office, programmes and projects in developing countries with a view to implementing this Convention.				

Chapter VII: Mechanisms of Implementation

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Chapter VII **Mechanisms of Implementation** **Article 63** Conference of the States Parties to the Convention	1. A Conference of the States Parties to the Convention is hereby established to improve the capacity of and cooperation between States Parties to achieve the objectives set forth in this Convention and to promote and review its implementation. 2. The Secretary-General of the United Nations shall convene the Conference of the States Parties not later than one year following the entry into force of this Convention. Thereafter, regular meetings of the Conference of the States Parties shall be held in accordance with the rules of procedure adopted by the Conference. 3. The Conference of the States Parties shall adopt rules of procedure and rules governing the functioning of the activities set forth in this article, including rules concerning the admission and participation of observers, and the payment of expenses incurred in carrying out those activities. 4. The Conference of the States Parties shall agree upon activities, procedures and methods of work to achieve the objectives set forth in paragraph 1 of this article, including:		The establishment of the Conference of the Parties bears a strategic position in the implementation of CAC 2003 since its main task i.e. (e) review periodically the implementation of this Convention by its State Parties; and (d) Making Recommendations to improve this Convention and its implementation. (the rest to be deleted) The COP should encourage the GOI to designate one central authority that has the ability to coordinate all LEAs, and to maintain data-base as well as to implement efficiently and effectively cooperation in extradition and mutual assistance request from or to the Foreign State Party.		In Indonesia, the CA for UNCAC matters should be KPK regardless Law number 1 year of 2006 which has designated the Ministry of Justice as CA for Mutual Legal Assistance in Criminal Matters. Its considerations are, firstly, the implementation of the UNCAC needs a comprehensive and credible governmental institution which is independent and maintains high integrity. Secondly, the KPK has a very strategic role in the preventing and combating corruption, more than any other LEA. Thirdly, the assignment to KPK as CA could minimize the interference of the GOI to the implementation of the of reporting and information mechanism, internally as well as externally.

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	(a) Facilitating activities by States Parties under articles 60 and 62 and chapters II to V of this Convention, including by encouraging the mobilization of voluntary contributions; (b) Facilitating the exchange of information among States Parties on patterns and trends in corruption and on successful practices for preventing and combating it and for the return of proceeds of crime, through, inter alia, the publication of relevant information as mentioned in this article; (c) Cooperating with relevant international and regional organizations and mechanisms and non-governmental organizations; (d) Making appropriate use of relevant information produced by other international and regional mechanisms for combating and preventing corruption in order to avoid unnecessary duplication of work; (e) Reviewing periodically the implementation of this Convention by its States Parties; (f) Making recommendations to improve this Convention and its implementation; (g) Taking note of the technical assistance requirements of States Parties with regard to the implementation of this				

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	Convention and recommending any action it may deem necessary in that respect. 5. For the purpose of paragraph 4 of this article, the Conference of the States Parties shall acquire the necessary knowledge of the measures taken by States Parties in implementing this Convention and the difficulties encountered by them in doing so through information provided by them and through such supplemental review mechanisms as may be established by the Conference of the States Parties. 6. Each State Party shall provide the Conference of the States Parties with information on its programmes, plans and practices, as well as on legislative and administrative measures to implement this Convention, as required by the Conference of the States Parties. The Conference of the States Parties shall examine the most effective way of receiving and acting upon information, including, inter alia, information received from States Parties and from competent international organizations. Inputs received from relevant non-governmental organizations duly accredited in accordance with procedures to be decided upon by the Conference of the States Parties may also be considered. 7. Pursuant to paragraphs 4 to 6 of this article, the Conference of the States Parties shall establish, if it deems it necessary, any appropriate mechanism				

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	or body to assist in the effective implementation of the Convention.				
Article 64 Secretariat	1. The Secretary-General of the United Nations shall provide the necessary secretariat services to the Conference of the States Parties to the Convention. 2. The secretariat shall: (a) Assist the Conference of the States Parties in carrying out the activities set forth in article 63 of this Convention and make arrangements and provide the necessary services for the sessions of the Conference of the States Parties; (b) Upon request, assist States Parties in providing information to the Conference of the States Parties as envisaged in article 63, paragraphs 5 and 6, of this Convention; and (c) Ensure the necessary coordination with the secretariats of relevant international and regional organizations.				

Annex I : Institutions Met by International Consultant Team

Asian Development Bank (ADB)

Business Competition Supervisory Commission of Indonesia (KPPU)

Corruption Eradication Commission (KPK)

Directorate General of Law and Legislation, Ministry of Legal Affairs and Human Rights

Embassy of France

Financial Transaction Report and Analysis Centre (PPATK)

GTZ (Gesellschaft für Technische Zusammenarbeit) Indonesia

Indonesia Corruption Watch (ICW)

Indonesian Chamber of Commerce and Industry (KADIN)

Indonesian National Police (POLRI)

Ministry of Foreign Affairs

Ministry of Administrative Reform (MenPAN)

Partnership for Governance Reform in Indonesia (PGRI)

Annex II : Curriculum Vitae

Prof. Dr. Romli Atmasasmita S.H., LL.M

Romli Atmasasmita is a Professor of International Criminal Law at the Faculty of Law University of Padjadjaran since 1973. His specialization is International Criminal Law; Comparative Criminal Law; and International Criminal Court. He has served as Chairman of the Criminal Law Division for the Master Degree Program and as Coordinator of the Doctor of Law Program at the University of Indonesia. Presently, he is assigned as Legal Adviser to the Minister/Head of the Indonesian National Development Planning Board, as well as a member of the Bank Indonesia Supervisory Board.

Moreover, he is a member of the Expert Meeting Group (EGM) of the UNODC-UNICRI on the Composing a Technical Guide for the UNCAC; a Consultant/Indonesian Legal Expert for the Indonesian Specialized Court Reform and Strengthening Activity (SCORCA) /In-ACCE project in Cooperation with USAID and a Coordinator of the Community-based organization on- Monitoring Forum on Combating Corruption 2004 (Forum 2004).

As an official and later as a consultant to the Indonesian Government he has acquired extensive experience in international forum, as Indonesian Head Delegate to the negotiation of the Draft-text of the UNCAC and Draft Text of UN TOC; as a member of Asia Pacific Expert on International Criminal Court (ICC) and many others.

From 1988 – 2004, Prof. Romli Atmasasmita worked with the Ministry of Justice and Human Rights RI, he was Coordinator of the Legal Expert Team and Director General of Law and Regulations (1988-2000), Director General of Administration of Common Law (2000 – 2002) and retired as

the Head of the National Reform Agency Department (2002 – 2004). During his tenure as official at the Ministry of Justice and Human Rights, he was also head of the ASEAN Legal Officer Meetings; and was actively involved in the drafting process of the various laws such as Indonesia's current Anti-Corruption, Money-Laundering and Anti-Terrorism Laws.

Dr. Rudy Satriyo Mukantardjo, S.H., MH

Rudy Satriyo Mukantardjo, father of one son, was born in Kediri, East Java, in November 1958, obtained his bachelor degree from the Faculty of Law at the University of Indonesia in 1984 and graduated with his masters thesis on "The Criminal Procedure on Crimes concerning the Media in Indonesia" in 1990 and a PhD on "Restraints against the Freedom of Opinion in the Form of Criticism by the Media against the Government", also at the Faculty of Law at the University of Indonesia.
Since 1986 Rudy Satriyo bears civil servant status at the Univesity and is a lecturer on Criminal Law. From 1982 to 2004 Rudy acted as legal advisor to the Legal Consultancy and Aid Unit of the Law Faculty of the University of Indonesia (LKBH-FHUI), he was one of the founders and former head of the NGO Indonesian Police Watch (IPW), he is member of Sentra HAM FHUI, a human rights association, and has spoken at many seminars, workshops and conferences.

Dr. Chairul Huda, SH., MH

Chairul Huda is one of a few young criminal law experts in Indonesia. Born in October 1970, he obtained a bachelor in criminal law at the University Muhammadiyah in Jakarta in 1993, a Master of Law in 1997 and a PhD in law with his dissertation "False and Criminal Responsibility" in 2004, both from the Law Faculty of the University of Indonesia.

As a student he was under the direct supervision of late criminal law expert Prof. Roeslan Saleh and became his assistant for Criminal Law and Comparative Criminal Law in 1994. Later Chairul Huda became lecturer in this field at his *alma mater* and continued to develop the dualistic view that became the fundamental theory of the draft criminal law.

Having defended his dissertation *cum laude*, Chairul Huda was appointed member of the criminal code drafting team in 2004. His experiences as a legal expert were enriched by speaking opportunities during various national and international seminars, debates and workshops and by legal opinion he gave to prosecutors and at court. Under the supervision of Prof. Dr. Romli Atmasasmita and Forum 2004 he was actively involved in conducting legal reviews.

To date he is still acting head of the team “Annotations on Verdicts on Crimes against State Finance” at the Agency for National Legal Development (BPHN).

Prof. Dr Mark Pieth

President of the Board, Basel Institute on Governance

Professor of Criminal Law and Criminology, University of Basel

Mark Pieth (born 1953) is Professor of Criminal Law and Criminology at the University of Basel, Switzerland, where he has also obtained his PhD and his habilitation thesis on sanctioning and broader criminological topics. After an extensive period abroad and a time in private practice at

the Bar, he was Head of Section on Economic and Organised Crime in the Swiss Federal Office of Justice from 1989 to 1993.

As an official and later as a consultant to governments he has been involved with a wide range of international fora, e.g. the Financial Action Task Force on Money Laundering, the Chemical Action Task Force on Precurser Chemicals, and the UN Intergovernmental Expert Group tasked to determine the extent of illicit trafficking in drugs. He has also assumed various presidencies and memberships of national commissions in Switzerland. Since 1990 Prof. Pieth has been chairing the OECD Working Group on Bribery in International Business Transactions. From 2003-2005 he had been appointed, by UN Secretary General Kofi Annan, a Member of the UN's Independent Inquiry Committee into the Iraq Oil-for-Food Programme.

Mark Pieth co-founded the Basel Institute on Governance of which he is President of the Board. He has been a consultant to corporations, international organisations and foreign governments on issues related to governance. He further participates in the Wolfsberg AML Banking Initiative as a facilitator and is Board Member of the World Economic Forum Partnering against Corruption Initiative. Prof Pieth has published extensively in the field of economic and organised crime, money laundering, corruption, sanctioning and criminal procedure.

Gretta Fenner

Director, Basel Institute on Governance

Gretta Fenner is a political scientist by training and holds a masters degree from the Otto-Suhr-Institute for political science (Otto-Suhr-Institut für Politikwissenschaften) of the Freie Universität Berlin, Germany, and a bachelors degree from the Paris Institute for Political Science (Institut d'Etudes Politiques - IEP, or "Sciences Po"). Her main research interests

at university included aid effectiveness, development and corruption, and international security policy, with a geographical focus on Sub-Saharan Africa.

Before joining the Basel Institute on Governance, she worked at the Anti-Corruption Division of the Organisation for Economic Co-operation and Development (OECD), where she was responsible for cooperation with non-OECD member countries from Asia and the Pacific. Together with the Asian Development Bank, she in particular developed and accompanied the implementation of the ADB/OECD Anti-Corruption Initiative for Asia-Pacific. In this framework, she assisted countries from the region in designing and implementing legal and institutional anti-corruption and governance reform. She further oversaw capacity building programmes in such diverse areas as prosecution of corruption, prevention of corruption in public procurement, and implementation of the UN Convention against Corruption, and directed and contributed to various publications on anti-corruption reform and institutions in the Asia-Pacific region. Also at the OECD Anti-Corruption Division, she has also been involved in similar projects in Central and Eastern Europe, South-East Europe, and the Middle East-North Africa region.

Zora Ledergerber, PhD

Legal and Policy Analysis, Basel Institute on Governance

Born in Zürich in 1973, Zora Ledergerber studied Law at the universities of Zürich and Nanterre (Paris X). After her graduation (masters degree), she joined the Swiss Peace-Keeping mission in Bosnia-Herzegovina in the capacity of legal advisor, press and information officer and adjutant to the Commander.

Developing anti-corruption strategies and capacity building in cooperation with anti-corruption stakeholders in Switzerland and internationally were some of her tasks as Managing Director of TI-Switzerland, the Swiss chapter of the international non-governmental anti-corruption organisation Transparency International.

Triggered by her experience with TI-Switzerland, Zora Ledergerber completed her doctorate thesis on “Whistleblower Protection as Part of an Effective Anti-Corruption Strategy”, which won the annual award 2004 for the best doctorate thesis in law from the University of Zürich.

Prior to joining the Basel Institute on Governance in October 2005 as Programme Manager (Legal and Policy Analysis), she had worked as consultant for a wide range of institutions, including the Stability Pact Anti-Corruption Initiative, the OECD Anti-Corruption Network for Transition Economies, and the Independent Inquiry Committee into the UN Oil-for-Food Programme in Iraq.

ANNEX III : Efforts Other than the Gap Analysis Conducted in Indonesia since the Signing of the UNCAC

The UNCAC gap analysis study was not the only effort conducted in Indonesia after the signing of the UNCAC by the Government of the Republic of Indonesia in December 2003. Some other efforts had been taken involving various agencies aiming at complying with the UNCAC.

I. The Indonesian Parliament: Passing of Law Number 7/ 2006 on the Ratification of the UNCAC

The passing of Law Number 7/ 2006 on 20 March 2006 by the House of Representatives on the ratification of the convention constitutes the national commitment to comply with international standards set by the convention and to improve the international image of the Indonesian people. The ratification is important for:

- increasing international cooperation, particularly in tracing, freezing and confiscating and returning assets resulting from corruption;
- increasing international cooperation in realizing good governance;
- increasing international cooperation in reaching agreements on extradition, mutual legal assistance, transfer of sentenced persons, transfer of criminal proceedings and law enforcement cooperation;

- pushing for technical cooperation and exchange of information in preventing and repressing corruption under the umbrella of development cooperation and technical assistance on bilateral, regional and multilateral level;
- and the harmonization of national legislation on corruption prevention and repression in line with the convention.

Actually, there were two possibilities for ratification of the UNCAC. First, amend the existing laws to comply with the UNCAC provisions then ratify the convention, or second, ratify the convention then to amend the existing laws to comply with the UNCAC provisions. In this case Indonesia chose to ratify the to amend the existing laws to show to the public that strong commitment to fight against corruption is there.

II. Support from the French Government to KPK in reviewing the existing Anti Corruption Laws

Since French was the central of the Civil Law system, while Indonesia follows the Civil Law System, the KPK seek an assistance from the French Government. A real cooperation between the KPK and the French Governments regarding the harmonization and reformation of Indonesian legislation started with a working visit by a French Delegation from 23 to 29 October 2005. During this visit direct information on Indonesian legal system and its application was gathered by the French Delegation. At the end of the visit the French Government stated its commitment to support the Indonesian Government in law reformation aiming at the fighting against corruption, including the possible amendment of the criminal law and criminal procedures law relevant to anti-corruption.

As a follow-up of this working visit the French Government established a working group consisting of:

1. Mr. Pierre-Christian SOCCOJA (Secrétaire Général Service Central de Prévention de la Corruption as the Team Leader);
2. Mr. Jean-Pierre ZANOTO (Vice-President du T.G.I. de Paris as a Team Member);
3. Mr. Jean-Pierre BERNARD (Vice-Procureur Póle Financier du T.G.I. de Paris as a Team Member);
4. Mr. Jean-Luc DEZA (Adjoint au Chef de la Brigade Centrale de Lutte Contre la Corruption as a Team Member);
5. Mr. Guillaume DAIEFF (de Ministère de la Justice as a Team Member) ; and
6. Mr. Xavier COUSQUER (Magistra as a Team Member).

The working group translated and studied all Indonesian Criminal Laws and Criminal Procedure Laws and laws related to Corruption Eradication. Prior to the study, all laws written in Bahasa Indonesia were compiled and translated to French by a team in the French Embassy in Jakarta lead by Marc Passoti. At the end the working group provided the Indonesian Government with recommendation for improvement on the articles in the existing Law relevant for corruption eradication, in particular considering the UNCAC provisions.

To discuss the results of the study by the French working group in detail, a Technical Team was established on the Indonesian side, headed by Syamsa Adisasmita (Deputy for Data and Information at the KPK) with the following members:

1. Qomaruddin (Ministry of Legal Afairs and Human Rights);
2. M. Iswandi Hari (Indonesian National Police / Corruption Eradication Coordination Team);
3. Reda Mantovani (Attorney General Office / Corruption Eradication Coordination Team);
4. Anatomi Muliawan (Corruption Eradication Commission).

III. Ministry of Legal Affairs and Human Rights: Establishment of a team for the amendment of the anti-corruption laws

Upon the signing of the UNCAC in 2003 and the passing of Law Number 7/ 2006 on the Ratification of the UNCAC the government sees the need to harmonize relevant laws, particularly the anti-corruption law, to bring them in line with the provisions of the UNCAC. To achieve this objective the Ministry of Legal Affairs and Human Rights has established a team for the amendment of Law Number 31/1999 jo. Law Number 20/2001 on the Eradication of Corruption. The team led by Prof. Dr. Andi Hamzah, S.H. consists of a number of legal experts from different institutions relevant to corruption eradication, namely:

- Prof. DR. Romli Atmasasmita, SH, LLM (Legal Expert)
- Abdul Wahid, SH (Ministry of Legal Affairs and Human Rights)
- Taufiequrachman Ruki, SH (Corruption Eradication Commission)
- Hadi Supriyanto, SH (Ministry of Legal Affairs and Human Rights
- Prof. DR. Indriyanto Seno Adji, SH (Legal Expert)
- Djapiten Nainggolan, SH (Supreme Audit Board)
- Representative from the Attorney General

- Representative from the Indonesian National Police (POLRI)
- Drs. Wiharto, MBA (Ministry of Administrative Reform)
- Luhut M. P. Pangaribuan, SH, LLM (Legal Practicisioner)
- Yunus Husein, SH (Financial Transaction Report and Analysis Centre)
- Anatomi Muliawan, SH (Corruption Eradication Commission)
- Jusrida Tara, SH (Ministry of Legal Affairs and Human Rights)
- Dr. Wicipto Setiadi, SH, MH (Ministry of Legal Affairs and Human Rights)
- Linus Doludjawa, SH (Ministry of Legal Affairs and Human Rights)
- M. Aliamsyah, SH, S.SOS (Ministry of Legal Affairs and Human Rights)
- Mualimin, SH (Ministry of Legal Affairs and Human Rights)

IV. The National Development Planning Board: Establishment of the Tim for the Implementation of the UNCAC

To prepare the implementation of the UNCAC systematically and to ensure that its impact is beneficial and visible to the people the Indonesian Government through the National Development Planning Board established a Team for the Implementation of the UNCAC that has the following tasks:.

- To review the national Action Plan to Fight Corruption 2004-2009 and to bring it in line with the UNCAC.
- To coordinate the preparations for the Implementation of the UNCAC with all relevant institutions, civil society representatives and experts.

- To comprehensively identify obstacles and challenges as well as supporting factors for the implementation of the UNCAC.
- To establish a coordination and consultation mechanism for the implementation of the UNCAC.
- To develop a reporting system for both preventive and repressive measures in line with the UNCAC for the CoSP of the UNCAC.
- To develop a comprehensive system for awareness and knowledge raising to establish common perceptions and commitment on the implementation of the UNCAC in Indonesian and in regard to international cooperation.
- To report regularly on the preparations of the UNCAC implementation to the State Minister of the national Development Planning Board to be used as reference for the review of the National Action Plan to Fight Corruption 2004-2009 and the formulation of legislation related to prevention and repression of corruption.

The UNCAC Implementation Team consists of :

Advisory Team

Chair	:	Prof. Dr. Romli Atmasasmita, SH, LLM
Secretary	:	Deputy for Politic, Law, Defense and Security, National Development Planning Agency
Members	:	• Director General for Multilateral Affairs, Ministry of Foreign Affairs • Deputy of Attorney General for Special Crime • Deputy for Law and Human Rights, Ministry of Coordinating for Politic, Law and Security

- Deputy of Prevention, Corruption Eradication Commission
- Deputy for Represion, Corruption Eradication Commission
- Director General for Laws and Regulations, Ministry of Legal Affairs and Human Rights
- Chairman of Financial Transaction Report and Analysis Centre
- Deputy for Monitoring, Ministry of Administrative Reform
- Head of Criminal Investigation Division, Indonesian National Police

Technical Team :

Head	:	Director for Research and Development, Corruption Eradication Commision
Secretary	:	Director for Law and Human Rights, National Development Planning Agency
Members	:	• 28 officials from different institutions

Expert Team :

- Prof. Dr. Andi Hamzah, SH
- Prof. Dr. Yudha Bhakti, SH, MH
- Prof. Dr. Ahmad Ramlie
- Dr. Nono Anwar Makarim
- Dr. Ir. Anny Ratnawati
- Dr. Rudy Satrio, SH, MH
- Dr. Subrata, MH

GAP ANALYSIS STUDY REPORT

It is widely recognized within and outside the country that Indonesia has suffered from an endemic corruption problem. Efforts to eradicate corruption were undertaken in Indonesia with little success for decades, such as a military operation in 1957, the Corruption Eradication Team in 1967, the Team of Four in 1970, the Disciplinary Operation in 1977, the Special Re-Audit on Tax Restitution in 1987, and the Joint Corruption Investigation Team in 1999. Today, the Corruption Eradication Commission (KPK), established by Law in 2002, and the Coordinating Team for Corruption Eradication (Timtas Tipikor) set up in 2005 together with the police and public prosecutors, continue these efforts with increased mandate and verve.

The ratification of the United Nations Convention Against Corruption (UNCAC) by the Republic of Indonesia has opened ample opportunity as the UNCAC constitutes a helpful guide for further anti-corruption and governance reform in Indonesia. To achieve compliance with the UNCAC the KPK initiated a study to evaluate the gaps between the existing Indonesian legal and institutional framework and the standards of the UNCAC and to recommend corresponding remedies.

The report addresses four main areas:

- Prevention
- Criminalization and Law Enforcement
- International Cooperation
- Asset Recovery

In conducting this study, KPK was assisted by a team of consultants comprising national and international experts. The gap analysis study report is the product of the review of UNCAC provisions and relevant Indonesian laws and regulations, interviews with stakeholders, a national seminar, workshops and a short course on the UNCAC.

The UNCAC will substantially impact on the strategy of preventing and combating corruption in Indonesia. With the ratification, the Government of Indonesia manifested its serious consideration of the implications of the UNCAC on the Indonesian Criminal Law system, particularly concerning the necessary compliance of all laws and regulations addressing the prevention and criminalization of corruption in Indonesia

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