

“Analysis of Anti-Corruption Measures in Myanmar”

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THESIS DECLARATION

STUDENT

I hereby declare that this thesis comprises my own original work and does not exceed 12,000 words (Master of Criminology, Master of International Relations, Master of Public Policy & Management, Master of Social Policy) or 15,000 words (Honours & Postgraduate Diploma in Criminology, Politics & International Studies, Sociology, Anthropology & Social Theory, Development Studies, Master of Development Studies).

(Student's signature)

SUPERVISOR

I hereby declare that I have approved this thesis for submission.

(Supervisor's signature)

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Abstract

The purpose of this research is to explain why Myanmar's Anti-Corruption Law (enacted in 2013) and its Anti-Corruption Commission (formed in 2014), are unable to effectively address corruption in Myanmar. This thesis examines the extent and nature of corruption in Myanmar as well as the circumstances and political context in which the new anti-corruption measures have been introduced. Then, it explores the limitations and weaknesses of these measures by evaluating them against anti-corruption guidelines published by international organisations, non-governmental organisations and academics. The anti-corruption measures initiated in 2013 seem to have been motivated by the willingness of the government to show compliance with anti-corruption guidelines and to attract foreign investors. However, the 2013 Anti-Corruption Law is unlikely to have a positive impact on corruption due to the absence of provisions regarding protection of whistleblowers and witnesses; a right to information; and anti-corruption education. Similarly, the Anti-Corruption Commission may not fulfil its objectives because it lacks a strong political will from the government to tackle corruption, as well as political independence, impartiality and accountability. This thesis suggests that the creation of an anti-corruption agency was not an adequate anti-corruption strategy for Myanmar considering its environment and the weaknesses of its existing institutions. Prior reforms intending to improve good governance in the civil service; enhance the rule of law and legal information; simplify the regulatory system; strengthen collaboration of the public sector with civil society, the media and the private sector would more successfully address corruption in Myanmar. Considering the scarcity of academic research on the issue of corruption in Myanmar, this thesis responds to the gap in academic literature on this topic and provides recommendations to reduce corruption in Myanmar.

List of Acronyms

ACA: Anti-Corruption Agency
ACAB: Myanmar's Action Committee Against Bribery
ACC: Myanmar's Anti-Corruption Commission
ACL: Myanmar's 2013 Anti-Corruption Law
ADB: Asian Development Bank
ALRC: Asian Legal Resource Centre
ALTSEAN: Alternative Asean Network
ASEAN: Association of Southeast Asian Nations
BACP: Business Anti-Corruption Portal
BSI: Myanmar's Bureau of Special Investigation
CIA: United States' Central Intelligence Agency
CPI: Corruption Perceptions Index
CPIB: Singapore's Corrupt Practices Investigation Bureau
EITI: Extractive Industries Transparency Initiative
ENC: Ethnic Nationalities Council
EU: European Union
FCPA: United States' Foreign Corrupt Practices Act
IAACA: International Association of Anti-Corruption Authorities
ICAC: Hong Kong's Independent Commission Against Corruption
INGO: International Non-Governmental Organisation
IO: International Organisation
IPD: Institutional Profiles Database
KPK: Indonesia's Corruption Eradication Commission (Komisi Pemberantasan Korupsi)
LRWC: Lawyers' Rights Watch Canada
MCRB: Myanmar Centre for Responsible Business
NGO: Non-Governmental Organisation
NLD: National League for Democracy
OECD: Organisation for Economic Co-operation and Development
P4: Public Property Protection Police
RRT: Refugee Review Tribunal
SIAB: Special Investigation Administrative Board
SPDC: Myanmar's State Peace and Development Council
TI: Transparency International
UN: United Nations
UNAFEI: United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders
UNCAC: United Nations Convention Against Corruption
UNDP: United Nations Development Programme
UNODC: United Nations Office of Drugs and Crimes
US: United States
USAID: United States Agency for International Development
WEF: World Economic Forum
WJP: World Justice Project

Introduction

The introduction briefly describes the research topic, the context and rationale, as well as the aims and the significance of the research. The central research question of this thesis is: why are the anti-corruption measures initiated in 2013 unable to effectively address corruption in Myanmar? Since 2003, Myanmar is ranked at the bottom of the Corruption Perception Index (CPI) published annually by Transparency International (TI). It is perceived as one of the most corrupted countries in the world (ranked 147 among 168 countries surveyed in 2015) (TI 2016c). Nonetheless, the issue of endemic corruption in Myanmar has not received much academic scrutiny and 'not enough investigative work is being done to expose corruption in the country' (Phoe Thauk Kya 2014). After more than four decades of military rule, Myanmar made a crucial step towards democracy in 2012, when it held its first democratic elections since 1962. These elections were part of major political, economic and administrative reforms (Freedom House 2012). Myanmar is indeed embarking on an important transition, and it benefits from increasing foreign investment and development programs. In 2012, the United States (US) and the European Union (EU) lifted trade embargoes against the country. While this provides many opportunities for investment and growth, it also creates new and growing forms of corruption (Freedom House 2012)¹.

Myanmar's private sector is underdeveloped and despite the reforms, the difficult investment climate remains a critical limiting factor for private sector development. Corruption is one of the most serious barriers to investment and commerce (World Bank 2014b), and 'the top concern for businesses, in Myanmar' (*Reuters*, 6 May 2014). Little business can be accomplished without resorting to illegal payments (World Bank 2014b). Myanmar is a resource-rich country with agriculture and extractive industries, which provide the major portion of national income. Foreign direct investment grew from \$329.6 million received in 2009/2010 to US\$8.1 billion in 2014/2015 (Aung Hla Tun 2015). However, living standards have not improved for the majority of the population, and Myanmar remains one of the poorest countries in Asia with nearly one third of the population living in poverty (CIA 2016). Peter Pedersen and Clare Wee from the Asian Development Bank (ADB)'s Office of Anti-corruption and Integrity, argue that fighting corruption and fraud is crucial to achieving the goal of reducing poverty in the Asia-Pacific region. This is because corruption usually has a negative impact on development projects (ADB 2012), undermines sustainable development, and prevents the benefits of economic growth from being widely shared (ADB 2014).

The landslide victory of Aung San Suu Kyi's political party, the National League for Democracy (NLD), at the November 2015 national legislative elections, can be regarded as a step towards an opening for the country. Nevertheless, establishing effective anti-corruption measures remains crucial for Myanmar's development process and to protect future investment. After the signature of the United Nations Convention Against Corruption (UNCAC) in 2005 and its ratification in 2012 (UNODC 2013), Myanmar's government enacted a new Anti-

1 □ In January 2014, the World Bank warned Myanmar about corruption after it unveiled a US \$2 billion aid package (*Radio Free Asia*, 25 February 2014).

Corruption Law (ACL) on 7 July 2013 and formed a new Anti-Corruption Commission (ACC) on 25 February 2014 (Ei Ei Toe Lwin 2014). However, so far, in the most prevalent surveys related to corruption undertaken by International Organisations (IOs) and International Non-governmental Organisations (INGOs), Myanmar's score has not significantly improved (TI 2016c; World Economic Forum (WEF) 2015; World Bank 2015b)². Since its creation, the ACC has been criticised by Myanmar's journalists and political opposition, particularly for its lack of independence (*Eleven Myanmar*, 1 July 2015; Ei Ei Toe Lwin 2014; Naing Ko Ko 2014). The perceived effectiveness of an anti-corruption agency (ACA) is usually linked by academics to its ability to act independently (Schütte 2012, 23). Thus, the thesis examines the entrenched nature of corruption in Myanmar, its political culture and the limitations of the ACL and of the ACC.

Aims and Significance of the Research

The objective of the research is to explain why the new anti-corruption measures initiated in 2013 have been unable to successfully address the issue of corruption in Myanmar. In order to do so, the research first tries to determine the nature and extent of corruption in Myanmar. Then, the thesis considers the former anti-corruption measures established before 2013, and examines the political context and the motivations, which led the government to implement new anti-corruption measures. It focus on the period from when Myanmar start transitional reforms in 2010, until the introduction of the new anti-corruption measures in 2013. The thesis reviews the features of the ACL and of the ACC, determines their weaknesses and limitations and ascertains why corruption persists. The thesis, then identifies some potential strategies to make the ACC more effective by examining the challenges and the performance of ACAs in other countries such as Hong Kong, Singapore, Indonesia or Vietnam. Finally, the research analyses the alternatives for addressing the issue of corruption in Myanmar.

Since the early 1990s, academic and policy interest in corruption in developing countries has greatly increased. Several international institutions such as the Organisation for Economic Co-operation and Development (OECD) and the United Nations (UN), INGOs such as TI, and national governments, have proposed various strategies intended to reduce corruption in the Global South. Despite the prevalence of publications on corruption in Asia, there is a lack of research or academic literature on corruption in Myanmar. This is, despite the fact that it is one of the highest-ranking Asian countries in terms of official corruption. There is also little available evidence of the specific forms and patterns of corruption in the country. Consequently, although recent political and economic reforms initiated by Myanmar's government can be regarded as a first

2 □ From 2014 to 2016, Myanmar's score in the CPI ranged from 21 to 22 (scores ranging from 100 (highly clean) to 0 (highly corrupt)) (TI 2016c). In the 2014-2015 WEF's Global Competitiveness Index, Myanmar's rank in terms of 'Ethics and corruption' is 121 among 144 countries with a score of 2.6 (scores ranging from 1 (lowest) to 7 (best)) (WEF 2015). Between 2013 to 2014, Myanmar's rank in terms of 'controlling corruption' in the World Bank's Worldwide Governance Indicators, increased slightly from 12.4 to 17.3 but remained very low (percentile rank among all countries ranges from 0 (lowest) to 100 (highest) rank) (World Bank 2015b).

step to democratisation, the country continues to face a major corruption issue, which threatens its development. As there is a dearth of research on corruption and anti-corruption initiatives in Myanmar, this thesis is important because it will provide a comprehensive assessment of the legal and institutional anti-corruption framework. It will focus specifically on the anti-corruption measures initiated by the government in 2013, which have not yet been analysed in publications, by any organisation or institution.

Structure of the Thesis

Chapter One defines the methodology and the sources of data used, as well as the major concepts relevant to the research question. Additionally, this chapter examines the existing literature on the research topic. Chapter Two determines the nature and extent of corruption in the country, and the political context in which new anti-corruption measures have been implemented. Chapter Two also evaluates the provisions of the ACL in light of the UNCAC. Chapter Three explores possible ways to make the ACC more effective by identifying reasons for the ACC's poor performance. Furthermore, this chapter analyses whether an ACA is the most effective tool to address corruption in Myanmar, by comparing it with other ACAs established in the region. In concluding, the thesis reviews the contributions of the research undertaken and the implications of its findings, and proposes opportunities for future research.

Chapter 1: Analytical Framework

This chapter sets out the analytical framework for the thesis. It describes the methodology, sources, and key concepts used in this research and provides a literature review.

1. Methodology and Sources

Considering the scarcity of literature on the subject area of the thesis, it is necessary to adopt a research methodology that generates detailed descriptions of the subject. The case study approach has been selected because it involves 'the detailed examination of an aspect of a historical episode to develop or test historical explanations that may be generalizable [sic] to other events' (George & Bennett 2005, 5). The case study approach is meant to identify and describe before analysing and theorising, i.e. 'understanding the case rather than generalizing' (Torrance 2005, 33), and to examine 'the hypothesized [sic] role of causal mechanisms in the context of individual cases' (George & Bennett 2005, 19). In the thesis, the case study of Myanmar is used to explore the question of whether anti-corruption measures (in particular, anti-corruption legislation and agencies) are effective, in states that are in the process of undergoing political transition.

Furthermore, a case study approach allows focusing on the social and historical context of action (Torrance 2005, 34). The thesis explores the political context in which Myanmar's anti-corruption measures have been introduced, in order to understand the reasons for their ineffectiveness. In doing so, the thesis makes use of the 'process tracing' method which 'attempts to trace the links between possible causes and observed outcomes', by examining 'histories, archival documents, interview transcripts, and other sources' (George & Bennett 2005, 6). This thesis reviews reports and surveys published by IOs and INGOs in order to identify socio-economic factors, which may explain the ineffectiveness of Myanmar's anti-corruption measures. Nevertheless, the case study method has some potential drawbacks or disadvantages. For example, selecting only one case study casts doubt on the ability to make generalisations. There is also the issue of the balance between parsimony and richness in selecting the number of variables and cases to be studied (Bennett 2004, 19). Despite these limitations, there are also advantages to exploring one case in depth. This analysis of Myanmar's anti-corruption measures focus specifically on the 2013 ACL and the new ACC.

A key source for reviewing anti-corruption measures, is Myanmar's existing legislation and policy as it relates to corruption. This data is available through the websites of the Online Burma Library and the Alternative Asean Network on Burma (Altsean-Burma). Another important resource is the publications of the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI), which are available online. UNAFEI publishes transcripts of its annual regional seminars, at which government officials from various Asian states, discuss the anti-corruption measures they implement in their respective countries. These publications are useful for comparing Myanmar's anti-corruption measures, with measures taken by other

Asian states. The thesis also examines academic literature related to Myanmar's legal reforms, as it provides insight on the political context, which led to the establishment of new anti-corruption measures. In addition, publications by IOs and INGOs such as the World Bank, ADB, and TI provide further essential information regarding the nature and extent of corruption in the country.

Myanmar's anti-corruption measures are evaluated with reference to the recommendations provided in the UNCAC; guidelines and reports elaborated by IOs and INGOs such as UNODC or TI; and academic publications on corruption and ACAs. This highlights the limitations and weaknesses of Myanmar's anti-corruption measures. Academic publications are available from the print and digital collections of the Baillieu, Giblin Eunson and Law Libraries of The University of Melbourne. Articles from newspapers and journals, as well as reports and publications from IOs and INGOs are accessed online. In order to obtain information on ACC's performance, articles from Myanmar's newspapers, such as *The Irrawaddy*, *Myanmar Times* and *DVB* available online, and government websites, are used. Regarding ethical issues, due to restrictions on time and resources, primary interviews were not conducted for this research and ethics clearance was not necessary.

2. Key Concepts

Analysts do not agree on one definition of corruption. The most commonly cited definition is from TI, used until 2012 for its annual CPI: 'the abuse of public office for private gain' (TI 2016d). Many other agencies, such as the World Bank, use similar definitions. However, since 2013, TI uses a broader definition: 'the abuse of entrusted power for private gain' in order to include corruption within the private sector (Holmes 2015, 2). Nevertheless, the conceptions of what constitutes corruption can vary across countries. Patronage and clientelism, for instance, are not always regarded as corruption (Holmes 2015, 5). Furthermore, while in western countries gifts can be considered as corruption, it is not necessarily the case in many Asian cultures (Holmes 2015, 13).

In order to analyse the effectiveness of anti-corruption measures, it is necessary to make a distinction between 'petty' (low level) and 'grand' (high level or elite) corruption. 'Petty' corruption refers to the type of corruption the ordinary citizens face in their everyday lives, whereas 'grand' corruption defines corruption among the political elite. According to Holmes (2015, 11), the World Bank distinguishes between 'administrative (or bureaucratic) corruption' and 'state capture'. The former is defined as ' "petty" forms of bribery in connection with the *implementation* of laws, rules, and regulations [emphasis in original]', while the latter refers to 'firms shaping and affecting *formulation* of the rules of the game through private payments to public officials and politicians [emphasis in original]' (Hellman, Jones & Kaufmann cited in Holmes 2015, 11). Myanmar's anti-corruption measures are meant to target both 'petty' and 'grand' corruption.

The distinction between bribery and corruption is also relevant, since some forms of corruption such as, improper professional relationships or taking

advantage of one's position to misappropriate funds from the government, do not involve bribery (Holmes 2015, 12). However, Myanmar's 2013 ACL seems to treat the terms 'corruption' and 'bribery' interchangeably. The ACL does not provide a definition of corruption but defines bribery as follows (Burma Library 2013, 1):

'the promising, offering or discussing or giving to an authorized [sic] official, directly or indirectly, of an undue advantage, for the official himself or another person or entity, in order that the official acts or refrains from acting in the exercise of his official duties, in order to obtain or retain business or other undue advantage'

The ACL also provides a definition of a 'bribe': 'the consideration or receiving without giving reasonable price, with the purpose of bribery or giving money, property, gift, service fee, entertainment and other illegal benefit' (Burma Library 2013, 1).

In this thesis, 'anti-corruption measures' include anti-corruption laws and the operation of ACAs. De Sousa (2009, 5) defines ACAs as:

'public (funded) bodies of a durable nature, with a specific mission to fight corruption and reducing the opportunity structures propitious for its occurrence in society through preventive and/or repressive measures'.

As mentioned before, this thesis particularly focuses on Myanmar's 2013 ACL and its new ACC formed in 2014. They are not the first anti-corruption measures implemented in Myanmar but they are significant because they are part of Myanmar's political transition and democratisation. We may, therefore reasonably expect them to be more effective in addressing corruption (given the importance, as a general principle, of the eradication of corruption in the democratisation process (Doig 1999, 24)).

3. Literature Review

The following section provides a literature review of corruption in Myanmar, Myanmar's anti-corruption measures introduced in 2013, and of anti-corruption measures in general.

3.1. Corruption in Myanmar

Academic literature on corruption in Myanmar is extremely limited. Myanmar is usually not mentioned in scholarship related to corruption in Asia (Kidd & Richter 2002; Lim & Stern 2002). When it is mentioned, it is usually in a superficial manner (Kidd & Richter 2003; Lindsey & Dick 2002; Gong & Ma 2012). Myanmar is also rarely examined in journal articles related to corruption in Asia. For instance, Myanmar is ignored in *Asian Politics & Policy's* (2014) Special Issue on Corruption in Southeast Asia or in Quah's (2015) comparative study of ACAs. A review of 1,312 studies on corruption in Asian countries undertaken by Quah in 2009, revealed that only 11 studies (0.84 per cent) referred to Myanmar (Quah 2009, 19). However, one article regarding corruption in Myanmar was included in Tarling's (2005) edited volume on corruption in Asia. This article by Perry (2005, 186-197) suggests that the prevalence of corruption in Myanmar is due to its socio-economic problems, as well as the economic and political measures enforced by the military regime,

since its accession to power. Accordingly, the dysfunctional economic and administrative system undermines the success of anti-corruption measures.

Despite the fact that Myanmar is included in most IOs' and INGOs' surveys related to corruption, Myanmar is often forgotten in their reports. For instance, Myanmar was not included in the publications of the ADB/OECD's Anti-Corruption Initiative for Asia and the Pacific (2006) or in recent TI (2012, 2014a, 2014b) publications. UNAFEI (2016) publishes some material relating to the anti-corruption measures carried out in Myanmar since 2008. However, these are transcripts of UNAFEI annual regional seminars, at which Myanmar's government officials discuss the anti-corruption measures they have implemented in their country. They do not analyse these measures. The U4 Resource Centre³ has also published an article in 2012, related to corruption in Myanmar, which has not been updated so far (Chêne 2012). Similarly, the Strategic Studies Department of the Union of Burma's Ethnic Nationalities Council (ENC) published a report in 2011, on the results of interviews with 53 Myanmar citizens (ENC – Union of Burma 2011, 44-49). The United Nations Economic and Social Commission for Asia and the Pacific published a working paper in 2015, which is an econometric analysis of the survey related to corruption in Myanmar it conducted. This paper is meant to understand the structure of corruption in the country (Soans & Abe 2015). These publications provide an overview of the various sectors affected by corruption in Myanmar, but do not evaluate the recent anti-corruption measures introduced in the country.

The neglect of Myanmar in academic literature is likely due in part, to the fact that many researchers have faced difficulties while trying to collect reliable data about the country (Tegenfeldt 2001, 112). Government information is not transparent and statistics published by the regime were distorted in the past (Steinberg 1999, 108; Collignon 2001, 86; Perry 2005, 188). Collignon (2001, 107) emphasised the need for accurate research, information dissemination and analysis of the country. More recently, Crouch and Lindsey (2014, 1) pointed out the necessity for more scholarly analysis on the legal system of Myanmar. Available reports and country profiles state that corruption in Myanmar is widespread, affecting different sectors in a variety of forms. However, there is limited research and data available on sectors most affected by corruption (Perry 2005, 188), due to the resistance by the regime to such scrutiny (Chêne 2012). Corruption is a sensitive topic in most countries but more specifically in Myanmar, where journalists risk imprisonment for defamation when denouncing corruption scandals. For example, on December 2013, Ma Khine, a newspaper reporter, was sentenced to three months in prison while working on a corruption story (*The Guardian*, 7 January 2014).

Given the obstacles encountered by academic researchers in accessing the country during military rule, academic literature on Myanmar is generally narrow. According to Perry (2005, 188), in the period between 1962 and 1988,

3 □ The U4 Anti-Corruption Resource Centre is operated by the Chr. Michelsen Institute in Bergen, Norway, which is 'a private social science research foundation working on issues of development and human rights. TI's Secretariat in Berlin is responsible for the U4 Help Desk' (U4 2016).

there were 'very few research visits, restrictions (...) on journalists', 'very little research' by comparison with other Southeast Asian countries, and Myanmar was often missing in surveys of the region. In 2010, Hudson-Rodd and Htay (2010, 153-154) outlined the absence of freedom of expression, of free academic research, and of the ability to disseminate research findings, as well as the heavy censorship of all writing. Myanmar citizens lived in an insecure environment in which it was difficult to contest the regime's actions, to discuss publicly violations of their rights, or to have recourse to independent observers (Hudson-Rodd & Htay 2010, 157). Because of the 'difficult operating environment' (Wilson 2010, 295), relatively few organisations were conducting activities in the country aimed at promoting change and reforms. The 2008 Constitution, allows freedom of association and assembly, but only as long as the exercise of these rights does not violate existing security and emergency laws. In spite of recent improvements, civil society and the media are still controlled and repressed. According to Lawyers' Rights Watch Canada (LRWC) and the Asian Legal Resource Centre (ALRC), judicial harassment is a common method in Myanmar for silencing human rights defenders and civil society actors, including retaliation against lawyers and other defenders (ALRC 2015). The incidence of corruption in the police and courts is a subject of significant interest and important documentation in some Asian countries (ALRC 2015). However, in Myanmar, despite the outspread view of systemic corruption of courts, this issue has obtained little attention (ALRC 2015). This would be explained by the difficulty of reliably documenting its incidence, due to the nature of corruption, as well as the low priority that it has been given in research on the country (ALRC 2010b). Crouch and Lindsey (2014, 8) argue that little so far, has been written about the courts and the judiciary in Myanmar, with few substantive analysis of judicial backgrounds or public perceptions of court.

The focus of academic attention has been less on corruption and more on issues related to democratisation; the 2008 humanitarian disaster Cyclone Nargis; the recent political and legal reforms; ethnic conflicts; the rule of law or human rights abuse. Cheesman, Skidmore and Wilson (2010, 11) state that 'remarkably few detailed assessments have been done on governance issues in Myanmar'.

Even research and articles related to Myanmar's transition and reforms generally, do not focus on corruption. Publications, such as *Lawka Pala* (Legal Journal on Burma), despite being one of the major resources on Myanmar legal issues, has only one article (Sen 2005) specifically related to corruption, since its creation in October 1997. Sen describes the preponderance of corruption in Myanmar and the sectors where corruption is the most rampant. He provides some examples of famous corruption scandals in the country and lists the different laws related to the fight against corruption, which existed at the time. He also explains how corruption hinders economic development in Myanmar. He points out the lack of adequate anti-corruption actions and proposes some anti-corruption strategies, such as the anti-corruption measures implemented in India. However, his article does not provide much detail on how to address corruption in Myanmar.

While the issue of corruption is often cited in most publications on Myanmar, in

the last five years, fewer than five academic articles have been published on this topic. Apart from the historical study of corruption in Myanmar during the colonial period by Saha (2013) and the article by Nwe (2012) about the role of the media in curbing corruption in Myanmar, the succinct article by Khin Ma Ma Myo (2011) is worthy of attention. Myo argues that trade restrictions, price controls, low wages in the civil service, natural resources endowments and sociological factors are the major causes of corruption in Myanmar. Vlasic and Atlee (2013, 446) suggest that the Dodd-Frank amendments to the Foreign Corrupt Practices Act (FCPA) in the US can offer a possible legal framework model for Myanmar, and for including its citizens in the fight against corruption. They also recommend some strategies in order to make anti-corruption measures initiated by the government more efficient.

Yet, despite the scarcity of academic literature on corruption in Myanmar, academic literature on Myanmar in general can furnish some insights on the circumstances in which the 2013 anti-corruption measures have been introduced. For example, the volume by Crouch and Lindsey (2014) describes in detail the legal reform process initiated in Myanmar in 2010. Jones (2014, 795) analyses the circumstances and the reasons for Myanmar's government instigation of a legal and political transition. He argues that this transition has been motivated by the military's will to safeguard its preferred socio-political and economic order, and to protect its corporate interests. This argument can help to understand some of the features of the anti-corruption measures, which make them ineffective, such as the fact that the ACC members are former military officials.

3.2. Myanmar's Recent Anti-corruption Measures

Since the anti-corruption measures initiated in Myanmar are very recent, only one scholar so far, has published analysis of these measures (Quah 2016). Quah explains Myanmar's unfavourable policy context, examines the perceived extent and causes of corruption in Myanmar, and evaluates the effectiveness of its anti-corruption measures. In his opinion, Myanmar's geographic constraints such as, its vulnerability to natural disasters and the fact that it is surrounded by corrupt countries, would justify its difficulties in enforcing anti-corruption laws. Myanmar also suffers from the 'resource curse', i.e. 'the tendency of natural-resource-exporting countries to underperform economically, have nondemocratic governments as well as poor governance, and a higher propensity for involvement in conflicts' (Shaffer 2012, 2 cited in Quah 2016). Corruption is one of the typical symptoms of states with a 'resource curse'. Myanmar's ethnic conflicts and the legacies of five decades of military rule contribute further to its unfavourable policy context.

In order to examine the perceived extent of corruption in the country, Quah distinguishes corruption during the British colonial period and in contemporary Myanmar. He emphasises the opportunities for corruption in the public service and defines corruption as 'a way of life in Myanmar'. In his opinion, 'red tape' increases the likelihood of corruption. 'Red tape' is defined as 'bureaucratic procedures characterised by mechanical adherence to regulations, excessive formality and attention to routine, and the compilation of large amounts of

extraneous information resulting in prolonged delay and inaction' (Chandler and Plano 1988, 233 cited in Quah 2016). Additionally, Quah considers that the major causes of corruption in Myanmar are low salaries of civil servants, some cultural factors (such as the custom of gift-giving, the importance given to the family, personal connections or status differences, leading to nepotism) and a weak political will to curb corruption. All the factors of corruption identified by Quah can explain, in part, why the recent anti-corruption measures are unable to effectively address corruption in the country.

Quah then evaluates the anti-corruption measures initiated in the country in 2013. He summarises the history of former Myanmar's anti-corruption legislation, describing the context in which it was established, and its provisions. He outlines the weaknesses of the Bureau of Special Investigation (BSI) (the previous ACA created in 1951) and examines the formation of the new ACC. Quah highlights the lack of information provided by the ACC regarding its operation, its lack of independence and the absence of anti-corruption education measures. He argues that the extent of corruption, poor governance and ineffectiveness of the civil service, are other potential reasons why the ACC has failed. This thesis agrees with these hypotheses and provides some recommendations to address these issues.

Quah concludes by providing some suggestions for making the ACC more effective. In his opinion, the ACC needs more personnel, increased financial resources and independence, as well as a real political will from the government to curb corruption. It is also necessary to address the causes of corruption in the country, such as the low salaries of civil servants, 'red tape' and other cultural factors, to initiate administrative reforms, and lift restrictions on media and civil society. This thesis provides similar recommendations, with a specific focus on the importance for the ACC to be politically independent. Quah also sees the result of the 2015 elections as an opportunity to enhance the effectiveness of anti-corruption measures. This thesis questions this suggestion in the conclusion, since democratisation does not necessarily correlate with corruption reduction.

Quah provides a succinct overview of corruption in Myanmar and of its recent anti-corruption measures. Although his analysis is very useful, he pays insufficient attention to the political context, which led the government to establish a new anti-corruption legislation and the ACC. The thesis extends his arguments by examining more deeply Myanmar's government political motivations. The political context is indeed useful to demonstrate whether the government had a strong political will to address corruption when implementing new anti-corruption measures, and to explain the current ineffectiveness of these measures. This thesis also provides an in-depth evaluation of the weaknesses of the ACL; of the limitations and poor performance of the ACC; and makes a comparison with ACAs in other Asian states, specifically with Indonesia and Vietnam.

3.3. Anti-Corruption Measures

The broader literature on anti-corruption measures highlights common

limitations faced by ACAs, such as the lack of independence, accountability and impartiality, and can assist in identifying the weaknesses of Myanmar's ACC (De Sousa 2009; Doig, Watt & Williams 2007). Several articles also suggest recommendations for making ACAs more effective (Pope & Vogl 2000; Gregory 2015; Quah 2015; Doig & Norris 2012; Wescott 2003), which can be applied to Myanmar's ACC. For example, Quah (2015) reviews ACAs in China, Japan, Philippines, Singapore, and Taiwan. He explains why some of them are more effective than others and suggests some policy recommendations for addressing their limitations.

However, the most interesting country for comparison is probably Indonesia. Some literature has been published recently on the new Indonesian Corruption Eradication Commission (Komisi Pemberantasan Korupsi, KPK), which was established in 2002 (Schütte 2011; Butt & Schütte 2014; Butt 2011; MacMillan 2011; Kuris 2012). Lindsey (2014, 344) finds many similarities between Myanmar and Indonesia. In his opinion, Myanmar's transition from an army-dominated authoritarianism to a more open and democratic system recalls the transition initiated by Wirajuda in Indonesia. As such, he argues, Myanmar's leaders look at Indonesia as a model for political transition. Therefore, this thesis uses literature on ACAs in general, and on anti-corruption measures implemented in other states. This literature helps to identify similar weaknesses and characteristics between the ACAs assessed, and Myanmar's ACC. It also provides potential remedies for making Myanmar's ACC more effective. Thus, this thesis fills the gap of research on corruption in Myanmar, and attempts to understand the reasons why corruption is so prevalent in Myanmar, despite the recent anti-corruption measures introduced by the government.

Chapter 2: Corruption and Anti-Corruption Legislation

This chapter provides an overview of the nature and extent of corruption in Myanmar. Then, it explores the circumstances and political motivations, which led the Myanmar's government to introduce new anti-corruption measures. Finally, it analyses the features and limitations of the ACL and the ACC.

1. Nature and Extent of Corruption in Myanmar

This section reviews Myanmar's performance as reported by the various IOs and INGOs publications related to corruption. It examines the sectors most affected by corruption in Myanmar, and helps to understand the political motivations behind the introduction of new anti-corruption measures.

Various IOs' and INGOs' surveys demonstrate how serious is the issue of corruption in Myanmar. As mentioned, Myanmar has remained at the bottom of the CPI list published annually by TI, since 2003, and is perceived as one of the most corrupted country in the world (TI 2016c). Similarly, in the 2014 World Bank's Worldwide Governance Indicators, Myanmar is ranked 17 in terms of 'controlling corruption', (percentile rank among all countries ranges from 0 (lowest) to 100 (highest)) (World Bank 2015b). In the ADB's Country Performance Assessment Ratings 2014, Myanmar's score is 3.0 in terms of 'Transparency, Accountability and Corruption in the Public Sector', while the average score among all the countries cited is 3.4 (ADB 2015). In the 2012 Institutional Profiles Database (IPD), regarding 'petty corruption (citizens/administrations)', 'political corruption' and 'corruption: between administrations and local businesses', Myanmar's score is 3. In terms of corruption between administrations and foreign businesses, Myanmar's score is 2 (CEPII 2012). Scores ranging between 0 (very low level of corruption) and 4 (high level of corruption), Myanmar's score in the IPD seems better than in the CPI but remains worrying. In the 2015 WEF's Global Competitiveness Index, Myanmar's rank for 'Ethics and corruption' is 121 among 144 countries with a score of 2.6 (scores ranging from 1 to 7 (best)) (WEF 2015), this confirming Myanmar's serious corruption issue. In the World Justice Project (WJP) Rule of Law Index 2015, in terms of 'absence of corruption', Myanmar's score is 0.42 (WJP 2015a) with a particularly low score in terms of 'no corruption in the judiciary' (0.19) (WJP 2015b), scores ranging from 0 (lowest) to 1 (highest). IOs and INGOs publications demonstrate that Myanmar suffers from rampant corruption.

The level of corruption in Myanmar is regarded as systemic at both national and local levels (Freedom House 2016). Since the beginning of military rule, everyday life and the political and administrative apparatus in Myanmar have been thoroughly corrupted (Perry 2005, 193). Regarding 'grand' corruption, the Junta leaders, their families, and associates of senior officials are deeply involved in economic activities (Sen 2005) and control the multibillion-dollar jade trade, which is weakly regulated (Freedom House 2016). The military government also ignored tax evasion by the country's richest companies and individuals. The dominance of the informal and illicit economy suggests strong links between the ruling elite and organised crime groups, which function with virtual impunity, thanks to the collusion between traffickers and

the military (Chêne 2012). In the civil service, decisions concerning recruitment, transfer, and retirement of civil servants are influenced by the payments of bribes (Sen 2005). High-level jobs are reserved for families of military officials (Khin Ma Ma Myo 2011), who play a role in the selection process (Chêne 2012, 3). It is part of Myanmar's culture for public officials to favour their relatives.

'Petty' corruption is widespread in any interaction of a Myanmar's citizen with the government (Sen 2005). All administrative services are corrupted and public servants demand bribes for performing their basic duties (Englehart 2010, 11 cited in Quah 2016, 180). In the private sector, corruption is regarded as 'a routine cost of doing business' (World Bank 2014a). Businesses face corruption when seeking permission for investment in the country, in the taxation process or when applying for licenses (Chêne 2012), whose awards depend on the discretionary powers of public officials (Business Anti-Corruption Portal (BACP) 2016b). It is almost impossible for large firms to secure a government contract, without being requested to pay a bribe (World Bank 2015a). Myo Khaing Swe (2014, 254) argues that there is a culture of corruption in the country. He suggests that while the economy is developing, corruption is also evolving and increasing. Companies also confront a high risk of corruption in the judicial sector. It is common for businesses to proceed with irregular payments and bribes to gain favourable court decisions (BACP 2016b). In Myanmar, only 30.9% of firms believe that the country's Court System is fair, impartial and uncorrupted (World Bank 2015a).

Corruption also prevails in the health system (Sen 2005). The government does not support hospitals financially, so the population has to pay bribes to benefit from health services (ENC – Union of Burma 2011). The education system is also corrupt. Parents pay bribes to the teachers for their children to pass their exams, to get better grades, extra tuition or educational materials (ENC – Union of Burma 2011). Myanmar's Police force enjoys impunity, since there is traditionally a lack of effective legal mechanisms to investigate or punish police abuse. Police must collect funds for their operations and require victims to pay for crime investigations. They routinely intimidate and extort money from the population (Quah 2016, 180). Army and Police officials are involved in the 'smuggling of goods and drugs, money laundering, and corruption' in the border areas (Wylar 2008, 3 cited in Quah 2016, 180). Myanmar's system of administration of justice is seriously flawed (ALRC 2010a). Almost every step in an ordinary case can be accompanied by payments (ALRC 2010b) and there is no possibility of winning a case without giving bribes to the court (Quah 2016, 184). Officials misuse laws, and the courts are manipulated for political ends (Refugee Review Tribunal (RRT) – Australia 2009). Thus, in Myanmar, corruption is endemic in every sector of the civil service, as well as in the business sector. Anti-corruption measures must target corruption in these sectors, in order to be effective.

2. The Impetus to Address Corruption: Circumstances, Political Motivations

This section examines the anti-corruption laws and bodies implemented in Myanmar before 2013, and the reasons why they have not successfully addressed corruption. It then explores the circumstances and the political motivations which led the government to initiate new anti-corruption measures in 2013.

2.1. History of Ineffective Anti-corruption Legislation and Bodies (Before 2010)

When Myanmar was governed by kings before the colonisation by the British in the 19th century, the kings distinguished four kinds of corruption: corruption of greed; of anger; of fear and of delusion. The kings directed their ministries in a way that they would not commit these four offences (Khin Myo Kyi 2015, 95). The 1861 Penal Code provides a penalty of imprisonment for up to three years and/or a fine for public servants involved in corrupted acts and for individuals who try to corrupt, or to exercise their personal influence to obtain a favour from, a public servant (Myo Khaing Swe 2014, 252). A Bribery and Corruption Enquiry Committee issued a report in 1940, but as the report involved many prominent politicians, the passages implicating them were deleted before publication (Quah 2016, 179). In 1947, the government established the 'Civil Supplies Thefts Preventive Committee' and the 'Public Property Protection Police' (P4), which worked on cases related to bribery, and corruption in the civil service (Myo Khaing Swe 2014, 252). Thus, Myanmar has a set of anti-corruption laws since the late 19th century. Corruption has been officially a crime (punishable by imprisonment) in Myanmar since 1948, when the government enacted the Suppression of Corruption (Bribery) Act. Before the enactment of the ACL in 2013, Myanmar Penal Code Volume 8, Public Property Protection Volume 2, the anti-money laundering law, and the anti-drug law were among the relevant legal anti-corruption instruments. In total, there are 21 laws in Myanmar, which contain provisions related to corruption (Myo Khaing Swe 2014, 253-254)⁴.

In 1951, while promulgating the Bureau of Special Investigation Act, the government formed the Special Investigation Administrative Board (SIAB) and the Bureau of Special Investigation (BSI) which included 31 staff members and was under the direct control of the Prime Minister's office. The SIAB was abolished in 1963 and the BSI was then supervised by the Ministry of Home Affairs and became the Special Investigation Department in 1972 (Myo Khaing Swe 2014, 253). The objectives of the BSI were to investigate and prosecute corruption and economic crimes involving trading, tax evasion, and bribery. However, the BSI was 'weakened by divisive politics and economic exigencies' and 'operated in effect as a specialised, autonomous police department' (Cheesman 2012, 233-234, cited in Quah 2016, 186), this undermining its anti-corruption efforts. There is no publicly available information on the number or status of the BSI investigations (Chêne 2012).

During the last ten years, there has been limited prosecution of officials for corruption. In a 2007 campaign against corruption, more than 500 custom officials

4 □ Sections 161 to 165 of the Penal Code, 1861; the Commercial Tax Law, 1990; the Forest Law, 1992; the Narcotic Drug and Psychotropic Substances Law, 1993; the Myanmar Police Force Maintenance of Discipline Law, 1995; the Fire Services Law, 1997; the Control of Money Laundering Law, 2002; the Anti-Trafficking in Person Law, 2005; the Criminal Code of Procedure, 1898; the Myanmar Official Secrets Act, 1923; the Public Property Protection Act, 1947; the Amendment Act of the Criminal Law, 1951; the Defence Services Act, 1959; the Protection of Public Properties Law, 1963; the Law taking Action against the Ownership of Sale of Property Obtained by Illegal Means, 1986; the Myanmar Financial Institutions Law, 1990; the Saving Bank Law, 1992; the Law Amending the Law Relating to the Fishing Rights of Foreign Fishing Vessels, 1993; the Law Amending the Myanmar Marine Fisheries Law, 1993; the Central Bank of Myanmar Law, 2013; Anti-Corruption Law, 2013 (Burma Library 2016).

were arrested, but some 370 of them were later released (RRT – Australia 2009). Between 2007 and 2009, some officials in the trade, customs and tax departments have been arrested and imprisoned or reassigned. Disciplinary actions were taken against corrupted school teachers (RRT – Australia 2009). The government decided to increase salaries of public servant but that initiative was eventually undermined by inflation. Any improvements seemed ephemeral, particularly because they were not accompanied by a simplification of the bureaucracy, which could decrease opportunities for graft. Some well-known government figures and their families appeared to be untouchable, annihilating the credibility of any anti-corruption initiative (RRT – Australia 2009). Military officials misused anti-corruption laws and prosecutions to evict political opponents (Chêne 2012, 6; Quah 2016, 185) or challenge 'the state power apparatus' (James 2010, 442 cited in Quah 2016, 185). This is illustrated by the arrest in 2004, of then-Prime Minister General Khin Nyunt and many of his colleagues and family members by the State Peace and Development Council (SPDC), on charges of corruption (Chêne 2012, 6; Quah 2016, 185).

In 2003, the military regime initiated a political transition with its 'roadmap to democracy' (Jones 2013, 782). Myanmar signed the UNCAC on 2 December 2005. From 2006, Myanmar's senior officials regularly attended the International Association of Anti-Corruption Authorities (IAACA)'s annual meetings, to help the implementation of the UNCAC (Myo Khaing Swe 2014). The BSI had started the draft of an anti-corruption bill in 2005 and submitted it to the Attorney-General Office for legal advice, and to the Parliament for approval (Quah 2016, 186). As such, it seems that the ambition of the Myanmar's government was to use the UNCAC as the benchmark to implement a new anti-corruption law.

2.2. Political Transition and New Legal Anti-Corruption Framework (from 2010)

This section examines Myanmar's socio-economical and political context from 2010, in order to understand the current transition process and the enactment of the ACL in 2013. In 2008, the government enacted a new constitution, which came into force in 2011. This new constitution is regarded as a first step to the transitional process, even if it lacked public support (Crouch & Lindsey 2014, 9; Lindsey 2014, 355). Following the November 2010 general elections (the first after 22 years of military dictatorship), political reforms were introduced by the regime. In accordance with the 'roadmap to democracy', the SPDC was formally dissolved and power was transferred to a new government headed by President Thein Sein (Crouch 2014, 47). His administration introduced extensive economic reforms; released many political prisoners; abrogated media and internet restrictions; established freedom of association and assembly; incorporated some civil society groups and former opponents into advisory bodies; and established 'open public discussions on issues such as corruption' (Crouch 2014, 47; Jones 2013, 781). Most observers were surprised by this transition considering that only a few years before, in 2007, demonstrations by monks prompted a harsh government repression named as the 'Saffron Revolution' (Crouch 2014, 47). A consequence of the reforms was the release in 2012 of Aung San Suu Kyi from house arrest, and her participation in by-

elections of the same year. NLD landslide victory changed 'the nature of politics and Parliament overnight' (Taylor 2012 cited in Harding 2014, 380). Meanwhile, trade sanctions were progressively reduced by Western countries in response of the reforms (Harding 2014, 380).

These reforms can be regarded in part, as a response to the international pressure exerted on Myanmar from the economic sanctions imposed by the EU and the US, as well as a mean to ensure its own survival (Quah 2016, 190). Poor economic performance may have prompted Myanmar's transition which occurred after decades of weak economic management and isolation (Lindsey 2014, 346). In addition, according to Jones (2013, 780), the military regime 'sought to create a "disciplined democracy" to safeguard its preferred social and political order', by creating institutions which encourage elite power-sharing or opposition co-optation (Jones 2013, 782).

The enactment of the ACL was partly motivated by the government's desire to open up economically, and to satisfy foreign investors who were demanding for new laws facilitating business in Myanmar (Harding 2014, 388). Since 2011, some laws addressing issues of foreign investment, farmland, labour rights, micro-finance, the media, higher education, and civil society organisations were introduced (Crouch 2014, 47). The laws enforced during this period usually provide the formation of a committee to control some processes. These committees, which are 'given extremely broad discretion', generally include Members of Parliament and are not independent from the government (Crouch 2014, 47-48). The formation of the ACC in 2014 continued this trend.

Since President Thein Sein has taken presidential office in 2011, he has emphasised the importance of transparency, good governance and anti-corruption efforts, notably in his inaugural speech (Khin Myo Kyi 2015, 96). In October 2012, the Parliament started working on the draft of a new Anti-corruption Law with legal assistance from the United Nations Office on Drugs and Crimes (UNODC) and the United Nations Development Programme (UNDP) (UNODC 2012). The government was motivated to make a representation that it was pursuing full compliance with the UNCAC. Myanmar eventually ratified it in December 2012, the last member of the Association of Southeast Asian Nations (ASEAN) to do so (UNODC 2012). The UNCAC provides an extensive framework to fight corruption through preventive measures, law enforcement and international cooperation and asset recovery. The reasons for Myanmar's government to select the UNCAC as a benchmark cannot be determined. However, adoption of the UNCAC correlated with the 'third phase of reform' initiated by President Thein Sein, which address the issue of corruption (UNODC 2013). The enactment of the ACL was considered as a manifestation of the government commitment to increase transparency and accountability, consistent with its 'Good Governance, Clean Government' policy (Chia 2013).

In 2013, Myanmar joined the South-East Asian Parties Against Corruption (Pyaë Thet Pyo 2015), and started the process of joining the Extractive Industries Transparency

Initiative (EITI)⁵, and the Open Government Partnership⁶ (Hendrix & Noland, 2015, 8). During this period, President Thein Sein created a working group in his office 'to make necessary preparations to meet these standards of transparency, accountability, citizen participation' (Clapp and DiMaggio 2013, 4 cited in Hendrix & Noland 2015, 8). In 2012, the national budget was publicly debated in parliament and published in newspapers for the first time, reflecting a push for the government to be more accountable to the public (Hendrix & Noland 2015, 8). A new Anti-Money Laundering Law was enacted in March 2014 and a new Central Board responsible to fight against Money Laundering was formed (Soe Naung Oo 2015, 104).

According to Quah (2016, 186), the first serious effort to introduce anti-corruption reforms in Myanmar was the formation by the President's Office, of a nine-member Action Committee Against Bribery (ACAB), on 8 January 2013 (*Global Times*, 9 January 2013). The aim of the ACAB is to eradicate bribery and corruption in public organisations. It is headed by the Vice President and members include high-level government officials (Myo Khaing Swe 2014, 254-256). The ACAB's mandate includes investigation of corruption acts; seizure of relevant documents, money and property; collection of expert opinion; advice to the relevant departments; and prosecution (Myo Khaing Swe 2014, 254-256). A declaration from the Ministry of Home Affairs that victims of corruption could complaint to the ACAB was published in daily newspapers (Myo Khaing Swe 2014, 254-256). Myo Khaing Swe (2014, 255-256) reports that between its creation in January 2013 and the establishment of the ACC in March 2014, the ACAB has received 52 complaint letters related to bribery and has taken action against 450 offenders, including 362 under the State Service Personal Law, 2013. 69 individuals were transferred to another department, 18 individuals have been forced to retire and 1 individual has been sentenced to imprisonment. However, the ACAB has been criticised for lacking civil society representatives (Nan Tin Htwe 2013) and for not releasing 'any findings' (Zin Linn 2014).

In November 2013, Myanmar adopted the ASEAN Memorandum Of Understanding on Cooperation for Preventing and Combating Corruption. It attempts to enhance collaboration between ASEAN states to curb corruption, by sharing information and capacity building (TI Defence & Security 2015). In August 2014, Myanmar's Government and UNODC signed an integrated Country Programme for 2014-2017. This programme establishes a strong partnership between Myanmar and UNODC to strengthen the rule of law and consolidate UNODC assistance into five sub-programmes including anti-corruption (UNODC 2014).

Even though influence of the military in politics has decreased recently, Myanmar's reform process was 'controlled by senior regime figures' (Lindsey 2014, 354). Therefore, their motivations for initiating anti-corruption measures while being themselves involved in corruption, could be questioned. Poor economic performance

5 □ The EITI is an international organisation, which maintains 'a global standard to promote the open and accountable management of natural resources' (EITI 2016).

6 □ The Open Government Partnership is 'a multilateral initiative that aims to secure concrete commitments from governments to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance' (Open Government Partnership 2016).

and rampant corruption in the business sector were the main reasons to introduce new anti-corruption measures. The aim of the government was to demonstrate its commitment to make Myanmar's economic environment more transparent to the international community, and attract foreign investment. Accordingly, the UNCAC has been selected as a benchmark for the implementation of new anti-corruption measures, since it is the main international anti-corruption legal instrument. The way in which Myanmar implements its new anti-corruption measures will determine whether the government has a strong political will to make them more effective than former anti-corruption initiatives (Crouch 2014, 48).

3. Anti-corruption Legislation: Analysis

As Myanmar's government decided to use the UNCAC as a benchmark, this section evaluates the provisions contained in the ACL against the provisions of the UNCAC. Then, this section argues that the ACL is unlikely to have a real impact on corruption in Myanmar because of its lack of provisions regarding: the protection of whistleblowers⁷ and witnesses; a right to information⁸; and anti-corruption education.

As noted, the government enacted the ACL on 7 July 2013. It came into force on 17 September 2013 and replaced The Suppression of Corruption Act, 1948 (Myo Khaing Swe 2014, 254). The ACL consists of 11 chapters and 73 sections (Burma Library, 2013). Its objectives are 'to eradicate bribery as a national cause'; 'to provide clean and good governance'; 'to promote prestige and accountability'; 'to prevent the impairment of State property, and citizens' rights and interests resulting from bribery'; 'to take effective action against those who commit bribery'; and 'to encourage transparency in order to encourage economic development by local and foreign investments' (Burma Library, 2013, 4). The law includes some provisions regarding the formation of: the ACC; a Preliminary Scrutiny Body relating to Money and Property obtained by bribery; an investigation body; and the ACC's secretariat.

One of the major legislative innovation consists of section 47 of the ACL which stipulates that public officials must declare the money, property, liability and assets they own, to the ACC. This reflects article 8 of the UNCAC which advises that public officials 'make declarations to appropriate authorities regarding [...] their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions' (UNODC 2004, 11). The ACL also establishes the confiscation of money and property obtained by bribery (Myo Khaing Swe 2014, 257), and section 32 allows the ACC to investigate the bank accounts related to the accused (Burma Library 2013, 10). This reflects article 31 of the UNCAC (UNODC 2004, 24) and will certainly help to detect

- 7 'Whistleblowing' is defined by TI (2016b) as 'making a disclosure in the public interest by an employee, director or external person, in an attempt to reveal neglect or abuses within the activities of an organisation, government body or company (or one of its business partners) that threaten public interest, its integrity and reputation'.
- 8 'The 'Right to Information' is defined by TI (2016b) as 'the right by law – often through freedom of information legislation (acts or laws) – to access key facts and data from the government and any public body based on the notion that citizens can obtain information which is in the possession of the state'.

properties or money obtained by corrupted means.

As a preventive corruption practice, section 16 (n) prescribes that the ACC should collaborate with IOs, regional organisations and other foreign countries. Similarly, article 5 of the UNCAC promotes collaboration between State Parties of the Convention, and participation in international anti-corruption programmes and projects (UNODC 2004, 9). Article 49 of the UNCAC also points out the usefulness of bilateral or multilateral agreements or arrangements (UNODC 2004, 41), which are not specifically mentioned in the ACL. The ACL does not mention a potential cooperation with civil society organisations or the private sector, proposed by the UNCAC (UNODC 2004, 6). As will be later discussed, developing a strong collaboration between the public sector, civil society and private sector could strengthen anti-corruption measures.

The ACL covers most forms of bribery in the public sector, extortion, attempted corruption, and abuse of office. However, it fails to cover facilitation payments⁹ (BACP 2016b), which are common practice in Myanmar, and which should be criminalised according to the OECD recommendations (Vanderbruggen & Miller, 2014, 2-3). Myanmar's Penal Code covers some public sector bribery offences but it remains uncertain how these provisions are used in conjunction with the ACL (BACP 2016b).

Concerning penalties, an individual found guilty of corruption is liable to a fine and/or imprisonment for a term of up to 15 years for political office holders; of up to 10 years for other public officials; and of up to 7 years for non-public officials who are involved in corrupt dealings with public officials (Myo Khaing Swe, 2014, 258). The ACL extends the penalty for bribery offences for these three categories (Quah 2016, 186; Chia, 2013). However, extending penalties for corruption acts produce a deterrent effect and reduce the level of corruption, only if the ACL is properly enforced. Pyae Thet Pyo (2015) reports that only one among the 450 civil servants punished for corruption in the first four years of President Thein Sein administration, has received a jail term. Most of them received administrative penalties.

While the UNCAC emphasises the importance of educating the public about the negative effects of corruption, the ACL contains only limited provisions related to education, in section 41 (Burma Library 2013, 12). The UNCAC promotes education and training programmes on corruption for public servants. Article 10 of the UNCAC suggests that states publish information on the risks of corruption (UNODC 2004, 13). Article 13 of the UNCAC encourages the participation of individuals, civil society, Non-Governmental Organisations (NGOs), and community-based organisations in public education on corruption (Gregory 2015, 135). Some of Myanmar's cultural characteristics such as gift-giving being an important social custom, contribute to the widespread corruption in the country (Quah 2016, 184). Thus, measures intended to educate the population about the pervasive effects of corruption and to change the

9 □ A facilitation payment is 'a payment made to a government official to facilitate approval of some type of business transaction or activity'. In some countries, small facilitation payments are considered unofficial fees rather than bribes, but most countries do not make this distinction (Business Dictionary 2016).

mentalities could be an efficient strategy to lower corruption in Myanmar.

Similarly, the ACL does not provide a clear 'right to information', or freedom to seek, receive, publish and disseminate information concerning corruption, to the public. However, article 10 of the UNCAC suggests that States must ensure that the public obtain information about the processes of their public administration (UNODC 2004, 13). The 'right to information' is a fundamental element in the fight against corruption. When citizens do not have access to information, they cannot hold public officials to account for their actions (TI 2014b, 3).

Additionally, the ACL does not provide any protection for people who lodge complaints to the ACC, whistleblowers or witnesses who testify in ACC's investigations. In contrast, article 32 of the UNCAC recommends the establishment of protection of witnesses, experts and victims from potential retaliation or intimidation (UNODC 2004, 25). Section 59 of the ACL does, however, provide a 5-year prison term and a fine for those found guilty of impairing or defaming any person, giving or creating false evidence (Burma Library 2013, 15). Moreover, everyone who lodge complaints to the ACC must provide their identity (Nyein Nyein 2014a). These provisions and the absence of protection for witnesses may deter citizens to report corruption acts. When there is a lack of meaningful protection for whistleblowers, the chances of detecting corruption behaviours are low, since corruption acts are not reported (TI 2014b, 4).

The wave of reforms launched by President Thein Sein in 2010 led to a multiplication of new laws. As Crouch (2014, 48) notes, most of these new laws are 'drafted in such broad terms that they have little effect until they are fleshed out in greater detail by government regulations', whose implementation is dependent on ministerial departments. The ACL is part of this trend and lacks crucial provisions to decrease corruption. Its potential effectiveness depends on the manner it will be used by the population and decision-makers, and enforced by the ACC. So far, Myanmar's government has not demonstrated a strong political will to address corruption. This is reflected in the weaknesses of the ACC, which are examined in the next chapter.

Chapter 3: Evaluation of Myanmar's Anti-Corruption Commission and Recommendations

This chapter evaluates the main features and performance of the ACC. It argues that the poor performance of the ACC is due to the lack of strong political will from the government to address corruption, and to the fact that the ACC is not politically independent. This chapter also questions the relevance of creating an ACA in Myanmar to reduce corruption, considering the weaknesses of its existing institutions and the failure of other countries' ACAs. Finally, this chapter provides recommendations to make the ACC more effective and lower corruption in Myanmar.

1. Features and Performance of Myanmar's Anti-Corruption Commission

The ACC was formed in February 2014 and consists of 15 members, including five who are selected by the President, five by the Speaker of the Pyithu Hluttaw (Lower House) and five by the Speaker of the Amyotha Hluttaw (Upper House), after approval of the Pyihtaungsu Hluttaw (Parliament). They are limited to one term and cannot be current public officials (Myo Khaing Swe 2014, 258). The ACC is responsible to the president. It has a mandate to investigate bribery and illicit enrichment cases assigned by the President, or by the relevant Speakers of an Hluttaw after a proposal of representatives, when the case involve a political office holder. For other cases, the ACC must investigate all complaints submitted by aggrieved persons, to the ACC; the Preliminary Scrutiny Board; the Investigation Board (formed by the Anti-corruption Act); or any working committee, working group or relevant government department and organisation, which then transfer the cases to the ACC (Khin Myo Kyi 2015, 98-99). High-level public officials are prosecuted in the High Court of the Region or the State. Other individuals are prosecuted in the juridical competent courts (Khin Myo Kyi 2015, 100). Any person related to the case cannot be assigned as an investigation authority. The ACC is expected to cooperate with the government departments and agencies, the state-owned enterprises, as well as with international and regional organisations and foreign countries, in elaborating anti-corruption plans and programmes. The ACC can request information and assistance from the government and civil society, and summon witnesses to assist in its investigation (Quah 2016, 187).

The Union Attorney General is responsible for prosecution matters; is appointed by the President with the approval of the Parliament; and is responsible to the President (Khin Myo Kyi 2015, 96-97). Public Prosecutors are also responsible for prosecution of anti-corruption offences (Khin Myo Kyi 2015, 98). The ACC must inform immediately the President, the Lower House Speaker and the Upper House Speaker about the decision relating to issuance of an order (section 28 of the ACL). Chapter 6 of the ACL authorises the President to form the composition of the ACC's office, and to appoint the chief investigator, according to the ACC's advice (Burma Library 2013). Thus, the operating system of the ACC allows the government to be involved in almost all of the ACC's actions. The structure of the ACC does not allow it to perform its functions independently from political influence.

It is difficult to evaluate the performance of the ACC, because it has not provided

information on its personnel, budget and activities since its creation (Quah 2016, 187). The BACP¹⁰ (2016b) claims that Myanmar's anti-corruption laws are inadequately enforced. For example, so far, only two judges have been dismissed for corruption in 2015, despite the prevalence of corruption in the judiciary, (which has already been discussed). These weak results raise the question about the reasons for the ACC's poor performance.

2. Reasons for Myanmar's Anti-Corruption Commission's Poor Performance

This section argues that the ACC is unlikely to perform effectively because the government does not demonstrate a strong political will to combat corruption and because the ACC lacks political independence, impartiality and accountability.

Myanmar's military regime has not yet demonstrated a strong desire to tackle corruption. As TI (TI Defence & Security, 2015) notes, 'there needs to be further evidence of political will and activity on the part of the Myanmar authorities to show compliance with anti-corruption instruments'. Mobilising the necessary political will is the primary challenge in many countries but is essential for anti-corruption initiatives implemented by the Myanmar's government, to be successful (Pope & Vogl 2000, 7).

International declarations provide some guidelines on the elements required for an ACA to perform effectively. Section 20 of the Marrakech Declaration adopted by the IAACA in 2011, advises that ACAs must 'function with the necessary independence, secure and stable funding and specialised staff with professional training, in order to operate effectively and free from any undue influence' (IAACA 2011, 4). The Jakarta Statement of Principles of Anti-Corruption Agencies drafted in 2012 has similar provisions (Gregory 2015, 125).

Political independence is regarded as a fundamental element for guaranteeing the effectiveness of ACAs, particularly in countries where corruption is rampant (Quah 2011 cited in Gregory 2015, 125). Independence in this context, refers to an ACA's 'operational autonomy' or its 'capacity to carry out its mission without political interference' (De Sousa 2009, 13) and free from any influence, as recommended by article 36 of the UNCAC (UNODC 2004, 26). However, as Gregory (2015, 126) notes, the possibility of any government agencies to be entirely politically independent could be questioned. ACAs carry out functions that threaten political interests and will inevitably suffer from political pressures, while a fully autonomous ACA might not be regarded as threatening and be inefficient (Gregory 2015, 128). On the other hand, widespread political interference in the work of ACAs and the judiciary makes them ineffective, since they will not be able to prosecute corrupted government officials (TI 2014b, 4). Political independence must be granted to ACAs, the judiciary and the public prosecutors (Pope & Vogl 2000, 8). ACAs must also be allowed to prosecute all public officials, irrespective of their ranks (Pope & Vogl 2000, 8). However, in Myanmar, the President and the speakers of the relevant Hluttaw can order the investigation of a corruption case. The ACC cannot prosecute a political

10 □ The Business Anti-Corruption Portal is an online tool for global anti-corruption compliance. 'It is funded and produced by GAN – a global software and consulting services company shaping how industry leaders manage regulatory compliance risks' (BACP 2016a).

office holder without the prior consent of the government (Myo Khaing Swe 2014, 258).

ACAs' political independence needs to be considered along with their operational impartiality and capacity; public accountability; transparency and systemic legitimacy (Gregory 2015, 125). If anti-corruption initiatives lack these elements, they will be 'misused and abused for illegitimate purposes' (Gregory 2015, 139). Anti-corruption measures are usually inefficient in an environment in which politicians are not accountable to their citizens. ACAs should be able to be reviewed by the media and civil society (Pope & Vogl 2000, 6). It is necessary to create mechanisms which prevent the ACA itself from being corrupted (Pope & Vogl 2000, 8). In Myanmar, there is no right to judicial review and only a few executive decisions can be challenged in courts (Crouch 2014, 47-48). The appointment of ACAs' leaders is also crucial for its credibility (Doig & Norris, 263). ACAs' leaders should be persons of integrity and protected from political pressures while they are in office (Pope & Vogl 2000, 8). The ACL prescribes that ACC's members are expected to be honest and fair. However, the ACC's members appointed by President Thein Sein include former ambassadors, civil servants and military generals who have been involved in bribery themselves (Nyein Nyein 2014b). The ACC chairperson, Mya Win, is a former general who has been criticised for committing bribes while serving in the military (*Eleven Myanmar*, 1 July 2015). Win Tin, the co-founder of the NLD, stated that it is 'like appointing the head prostitute as the chairman of the commission for the elimination of the prostitution' (Nyein Nyein 2014b). Thus, if anti-corruption strategies are perceived as 'elitist political opportunism', they will not get public support or trust (Gregory 2015, 139). Similarly, failure to recruit appropriately qualified or trained staff diminishes the chances of an ACA to perform successfully. In Myanmar, former military officers with no anti-corruption expertise or experience have been appointed members of the ACC, undermining its potential effectiveness.

In addition, if an ACA is not politically independent, it will not be able to act impartially. To act impartially is to not be influenced by, and to treat people alike irrespective of, special relationships and personal preferences (Gregory 2015, 129). Myanmar fits Johnston's (2005 cited in Gregory 2015, 132) model of corruption syndrome of 'Oligarchs and Clans', where a small number of elites exercise authority in a weak institutional environment. In this model, the members of the ACA are part of the elite and the ACA is meant to protect their interests. Myanmar's ACC has been criticised for targeting low-level corruption without investigating the top ranks of the government (*Eleven Myanmar*, 1 July 2015). Eight of the ACC members are former military officials who may be unwilling to investigate their former colleagues (Thompson 2014). Therefore, Myanmar's ACC has low political independence and low impartiality, which is common in countries where state institutions are weak.

Organisational autonomy and inter-agency relationships are also requirements for ACAs (Gregory 2015, 134). In order for an ACA to preserve its organisational autonomy, it must maintain a high degree of political and public legitimacy, a favourable organisational reputation and cooperative support of the public (Gregory 2015, 129, 134). Quah (2010 cited in Doig & Norris, 262) considers that 'the credibility of ACAs is dependent on consideration of all complaints; public perceptions

of the ACA's professionalism; enforcement of the anti-corruption laws; and the public image of the ACA'. In Myanmar, public opinion has been disappointed by the (or lack of) actions of the ACC which is seen as a facade (McLaughlin & Aung Shin 2014; Pyae Thet Phyo 2015). This suggests that the ACC lacks public legitimacy. Six months after the ACC was established, it announced that it had received 533 complaint letters but took action in only three of these cases (*Eleven Myanmar*, 1 July 2015). The ACC cannot work on its own and must transfer all the complaints it receives to the relevant ministries and departments (Nyein Nyein 2014a). The ACC's unreliable and unclear investigations have decreased public trust that it effectively prevents bribery within the government (Quah 2016, 187). Another issue is that the ACC does not seem to focus on corruption education (Quah 2016, 187). However, public education programmes reinforce public intolerance of corruption, and are necessary to gain public support and cooperation for its activities (Gregory 2015, 135). The ACC's personnel does not have the expertise and resources to conduct events to educate the public on the negative effects of corruption (Quah 2016, 187).

The OECD (2008 cited in Gregory 2015, 133) correlates the level of required independence of an ACA with the level of corruption, notions of 'good governance', the rule of law, and the strength of the state institutions existing in the country. ACAs' political independence is even more essential in countries suffering from grand corruption, where high-level corrupt officials attempt to diminish ACA's capacities, and are subject to weak media scrutiny (Gregory 2015, 133-134). Considering the significant 'grand' corruption in Myanmar and the fact that the ACC is led by two former military generals, the ACC has little chance of operating without political interference. The next section argues that, before establishing an ACA, the government should have first addressed Myanmar's poor institutional governance and lack of rule of law.

3. Is an Anti-Corruption Agency the Adequate Tool to Address Corruption in Myanmar?

This section argues that Myanmar's ACC is unlikely to address corruption since ACAs usually suffer from the same problems as any other public institutions (Doig, Watt & Williams 2007). This section also suggests that global institutional reforms should have been undertaken prior to the creation of the ACC.

Since the 1990s, governments, IOs and INGOs have attempted to harmonise anti-corruption legal frameworks to improve international judicial cooperation. Article 6 of the UNCAC recommends the formation of an anti-corruption body, which is regarded as 'the ultimate institutional response to corruption' (De Sousa 2009, 6). Many developing countries have implemented these 'strong normative provisions but no effective means of enforcing them' (De Sousa 2009, 10). In developing countries suffering from systemic corruption, such as Myanmar, there is usually an incompatibility between the newness of the ACA, the expectation regarding its performances and the nature and extent of corruption to be addressed (Doig & Norris, 260). Most ACAs created in a context of rampant corruption have failed to achieve their objectives because of their institutional design and their environment (De Sousa 2009, 6). De Sousa (2009, 20) refers to the 'institutional irrelevance' of

ACAs. Issues of 'unadapted transferability'; 'suitability of existing conditions'; prevailing external political, social and economic conditions; specificities of the institutional and cultural context; government support; and available resources have an impact on ACAs' potential efficiency (Doig, Watt & Williams 2007, 252-253; De Sousa 2009, 7).

Therefore, creating a new public institution does not appear as the most appropriate solution when all governance structures are already under-performing and suffering from mismanagement and corruption. ACAs 'share in practice many of the organisational development and management weaknesses of the public sector institutions they are intended to investigate' (Doig, Watt & Williams 2007, 255). The issues of inadequate funding; absence of experience and technical expertise among the staff; lack of cooperation between the ACA and other agencies; political interference; patronage; corruption; misappropriation; and the discrepancy between expected results and achievable ones, prevent ACAs from operating efficiently (Doig, Watt & Williams 2007, 252, 254; De Sousa 2009, 7). Governance and public sector service reforms are essential (Doig, Watt & Williams 2007, 252). Myanmar's poor governance and dysfunctional civil service is one of the main causes for its endemic corruption. In *Freedom in the World*¹¹, Myanmar's score in terms of 'Functioning of Government' is 3 (score ranging from 12 (highest) to 3 (lowest)) (Freedom House 2016). The UNDP estimated that Myanmar's civil service suffered from poor organisation; irrational and arbitrary decision-making processes; 'mismanaged, undertrained and underutilised staff'; 'weak accountability mechanisms'; 'poorly designed public policy programmes'; and 'badly implemented policies' (Mutebi 2005 cited in Quah 2016, 189).

The creation of the ACC seems also irrelevant considering that most ACAs face difficulties in 'unveiling corruption via complaints'; 'obtaining information about corruption and its opportunity structures from other state bodies/agencies'; and 'establishing a good working relationship with the political sphere' (De Sousa 2009, 7). It is therefore legitimate to question the value-added of ACAs; their location and resourcing within institutional anti-corruption landscape; their specific expertise; their ability to address different types of corruption and their support (Doig & Norris 2012, 256). While in theory ACAs have an ample mandate, investigative powers and statutory autonomy, they often lack the resources to operate adequately in practice (De Sousa 2009, 7). Governments frequently create ACAs without providing them with the special powers that they need because they represent a potential threat and a loss of competences for governments (De Sousa 2009, 16). The formation of an ACA is sometimes 'a desperate cosmetic manoeuvre to regain trust' from the population (De Sousa 2006 cited in Doig & Norris, 261) or 'to divert attention away from other possible reforms' (Heilbrunn 2004 cited in Doig & Norris, 261). As argued in chapter 2, the formation of the ACC in Myanmar, was an attempt from the government to fulfil international anti-corruption guidelines such as the UNCAC, and to attract foreign investors.

There are only few successful examples of ACAs and most of them do not meet the

11 *Freedom in the World* is the annual standard-setting comparative assessment of global political rights and civil liberties published by Freedom House (Freedom House 2016).

principles set out in IOs and INGOs guidelines (De Sousa 2009, 11-12; Doig & Norris 2012, 261). IOs and INGOs encouraged many developing countries to replicate the Hong Kong's Independent Commission Against Corruption (ICAC) and the Singapore's Corrupt Practices Investigation Bureau (CPIB) models. The ICAC and the CPIB are considered by many experts as successfully carrying out their anti-corruption functions (Doig, Watt & Williams 2007, 252). This can be explained by the fact that they have benefited from a strong political will from their governments to eradicate corruption, favourable policy contexts, and abundant resources (Gregory 2015, 128, 143). However, the ICAC and the CPIB are not relevant models for Myanmar because Myanmar's socio-economical, political and institutional context is extremely different.

The Indonesian KPK could serve as a better model for Myanmar. Despite not being politically independent, the KPK has maintained relatively impartial operations. Following its prosecution of many corrupt politicians, the KPK has enjoyed some degrees of public support, while its parliamentary support and funding have decreased (Quah 2013, cited in Gregory 2015, 133). The examples of successful ACAs in Hong Kong, Singapore and Indonesia demonstrate that political will to address corruption, by providing the ACA with operational autonomy and high capacity, is more important than political independence (Gregory 2015, 137). Accordingly, Myanmar's ACC should enhance its credibility and public accountability in order to get support from the citizens. The political context of Myanmar could also be compared with that of Vietnam, where the political elite exert a strong influence on the operations of public institutions, and where ACAs are not politically independent (Gregory 2015, 136). In Vietnam and in Myanmar, the political elite needs to temper its power and privilege for any anti-corruption effort to be effective (Gregory 2015, 137-139). It is also necessary to realise significant legal and institutional framework reforms, as well as a radical political change (Gregory 2015, 139), which has started in Myanmar after the November 2015 general elections.

Nevertheless, it is legitimate to raise doubts about the ability of the ACC to fulfil its objectives, since many ACAs have had a limited impact on the level of corruption. ACAs in India, Nepal and Sri Lanka have been all accused of selecting cases for political motives (TI 2014b, 4). They are deliberately weakened by systematic political interference and manipulation, 'either through deliberate restrictions on their powers [...] or through tight government control over appointments, transferrals and removal from office of senior staff', which are politically motivated (TI 2014b, 4). Similarly, according to Persson *et al.* (2010 cited in Gregory 2015, 138), introducing ACAs in some African countries, is a 'mischaracterisation of the problem'. It has been unsuccessful because populations have no real incentive to address corruption (Gregory 2015, 138). People are discouraged by the 'perceived cost of rectifying the problem, including the social vilification – or worse – of whistle-blowers' (Gregory 2015, 138). Therefore, the effectiveness of anti-corruption initiatives depends greatly on the willingness of political leaders and citizens to implement the required measures to curb corruption (Quah 2015, 157). In order for Myanmar's ACC to achieve its goals, the decision-makers and the population must share a common ambition to eradicate corruption.

An ACA should also benefit from the following elements: an 'enabling environment'; 'where corruption is not entrenched in the whole system'; with 'functioning courts'; 'free and active media'; 'energetic community of NGOs and public interests groups'; 'supreme audit institutions'; 'freedom of information law'; 'legislation and practice that supports freedom of expression and decriminalizes [sic] defamation'; 'macroeconomic and political stability'; public order; and absence of conflict (USAID 2006 cited in Doig & Norris, 261-262). Myanmar does not fulfil any of these prerequisites. In the absence of information regarding Myanmar's ACC personnel and budget, it is not possible to determine whether the ACC has been provided with the adequate human and financial resources to perform its functions effectively (Quah 2016, 189). This seems very unlikely considering the lack of funding suffered by other institutions and agencies in the country. Therefore, considering the weaknesses of Myanmar existing institutions and the poor performance of the ACC, it seems that the creation of the ACC in 2014 was not an adequate anti-corruption strategy for Myanmar. Some other reforms and measures could have been more adequate to address corruption.

4. Anti-Corruption Strategies for Myanmar

This section provides some recommendations to make the ACC more effective. Then, it argues that in order for anti-corruption initiatives to be successful in Myanmar, the government must first address Myanmar's lack of rule of law and legal education; guarantee a right to information; simplify its regulatory system; enhance the role of the civil society and the media; and improve good governance in the civil service.

4.1. How Can Myanmar's Anti-Corruption Commission Be More Effective?

In order to fulfil its objectives, the ACC should prioritise its functions and maintain a realistic and realisable strategy, coherence, and credibility. The ACC must adjust its objectives with its competences; its resources and capabilities; its performance; and its operating environment, including the roles and responsibilities of other institutions involved in anti-corruption work (Doig, Watt & Williams 2007, 257-258). The ACC should not attempt to fulfil a broad range of tasks for which it does not possess organisational competency and which could be transferred to other agencies (Doig & Norris, 268). Recently, new specialised anti-corruption bodies have been created at the local level in various countries (De Sousa 2009, 20). Accordingly, rather than centralising all anti-corruption activities into the ACC, Myanmar could form local ACAs. It is also necessary to identify and apply appropriate performance measurements (Doig, Watt & Williams 2007, 258) and to make the ACC results visible. The ACC should search for alternative manners to exercise its duties. It needs 'a flexible statutory framework', allowing it to innovate without a legislative revision of its competences, and political commitment from decision-makers (De Sousa 2009, 19). The ACC should go beyond identifying and prosecuting corrupt officials, by emphasising prevention of corruption and assisting in the creation of a more transparent and integrated environment.

It is essential for the ACC to be granted the necessary independence, as well as the

powers to investigate and prosecute corruption cases on its own initiative, without prior government approval (TI 2014b, 5). Decisions on appointments, transfers and removal of the ACC should be made by a body acting independently of the executive and the legislature, rather than by the government. These appointments should be transparent, objective, inclusive with the participation of various stakeholders (TI 2014b, 5). The ACC needs to establish adequate recruitment of staff with anti-corruption expertise and experience, as well as training procedures (De Sousa 2009, 15; Doig & Norris, 264). ACC's leadership must hold the adequate management expertise and experience, as well as knowledge of capacity assessment (Doig & Norris, 267).

Integrity is also crucial for the ACC to be effective, and it must have an exemplary behaviour (Pope & Vogl 2000, 8). It is necessary to establish accountability mechanism limiting the opportunity for partial operations (Gregory 2015, 129). The ACC needs to be fully transparent and open with the press, by publishing frequent report on its activities, and benefiting from media coverage (Pope & Vogl 2000, 9). Whistleblowers should be ensured protection. Anonymous complaints should be permitted and anyone accused of false complaints needs to be provided with an appeal process. In order to ensure its long-term durability, the ACC must get continuous public and political support (De Sousa 2009, 18) not only from the president, but also from a broad range of national political leadership. At the ceremony of the ACC members in Parliament on 3 March 2014, the ACC Chairman outlined the need for cooperation between the government and the population (Min 2014 cited in Quah 2016, 187). Civil society and private sector involvement in the formulation of prevention policies and their execution is essential (Pope & Vogl 2000, 9). Collaboration between the ACC and other institutions and ACAs allow them to share their experiences and develop greater knowledge and best practices (Pope & Vogl 2000, 6).

4.2. Recommendations to Address Corruption in Myanmar

In order to tackle corruption, Myanmar's government needs to address as a priority Myanmar's lack of rule of law. Myanmar's judiciary is not independent, impartial or effective (Chêne 2012, 7). Until the 2008 Constitution came into force in 2011, there was no formal separation of powers, or independence of the judiciary over which, the SPDC exercised control (Chêne 2012, 6). However, the 2008 Constitution still prescribes that judges of the highest courts are nominated by the President (Freedom House 2016; Burma Library 2008). There is also a correlation between systemic corruption in the justice system and the failure of procedures on which the system is dependent (ALRC 2010b). Therefore, it is essential that the government implements measures that aim to reduce opportunities for bribery, and strengthen independence of the judiciary. For instance, appointments of the judges could be made by a body acting independently of the executive and the legislature, rather than by the government.

Enacting new laws such as the ACL, does not seem to be an adequate solution to prevent corruption considering that during decades of military rule, Myanmar's citizens have been used to perceive law as 'an instrument of oppression' (Harding

2014, 384). Measures intended to enhance 'the natural abilities, concerns and enthusiasm' of the citizens are a more suitable approach in some areas, than enacting 'new laws benefiting foreign investors only' (Harding 2014, 390). A 'good example of the rule of law being built from the ground up, rather than top down' is when, as reported by Harding (2014, 390-391) a group of lawyers in a provincial area have agreed between themselves that they would not corrupt a judge. Similarly, in 2013, Myanmar's Police force has launched telephone hotlines for the public to complaint about corruption acts (*The Irrawaddy*, 16 September 2013). There is a lack of legal information, education and knowledge in Myanmar. Laws are not easily accessible by the population (Harding 2014, 381). If Myanmar's population is not aware of the ACL and of the functions of the ACC, they will not lodge complaints to the ACC, which therefore reduces its utility and its effectiveness. Laws and legal information should be more accessible to everyone (Harding 2014, 393). Political parties have formed a network of lawyers who provide free legal consultation and create legal handbooks for communities (Harding 2014, 392). This type of initiatives could help reinforcing public knowledge of the ACL, and public support of the work of the ACC. Similarly, a right to information must be implemented in Myanmar and the public needs to be educated on how to use this right. Public officers should be trained about their responsibilities under the law, and provided with the means to respond systematically to public requests (TI 2014b, 5).

Myanmar also needs to address 'red tape', which is another cause of its endemic corruption, and to simplify its administrative procedures, as recommended in article 10 of the UNCAC (UNODC 2014,3). Myanmar has a 'complex and capricious' regulatory system and essential information to do business is sometimes not publicly available (Chêne 2012, 4). For example, most firms are unaware of the rate of tax or current tax laws (World Bank 2014b). Registration policies and procedures for companies are complicated, outdated and cumbersome. Regulations changes frequently, sometimes without notice (BACP 2016a). Myanmar's bureaucracy needs reform and significant capacity building (Hendrix & Noland 2015, 15). In 2013, President Thein Sein has established the Public Services Performance Appraisal Task Force to review the operations of all government ministries dealing with the public; decrease 'red tape'; reorganise institutions, to ameliorate the delivery of public services (Hendrix & Noland 2015, 8). The same year, the government has formed the Board of Scrutinising and Monitoring Tax Collection to review the tax system and prevent tax evasion (Htet Naing Zaw 2013). These initiatives will certainly help to reduce corruption, but further reforms of the tax and the overall public financial management systems are still necessary (Findlay, Park & Verbiest 2015). The government shall also try to diminish the influence of cultural factors on corruption, by regulating the acceptance of gifts.

Civil society, the media and political parties must be given the necessary space and protection, since their roles are essential in the fight against corruption (TI 2014b). Myanmar's military regime 'has imposed severe restrictions on the role of civil society organisations and the mass media in combating corruption' (Quah 2016, 179). The creation of the Myanmar Development Resource Institute has enhanced the right to assemble and protest, as well as, the influence of opposition parties and civil society in policy formation and advising process (BACP, 2016a; Hendrix & Noland 2015, 21).

The Press Scrutiny and Registration Division was abolished in 2012, as was the state's monopoly on daily print media (Hendrix & Noland 2015, 20). Nevertheless, Myanmar is ranked 143 (among 180 countries) in the Reporters Without Borders' 2016 World Press Freedom Index. The Burmese-language state media continue to censor themselves and avoid any criticism of the government or the military (Reporters Without Borders 2016). Corruption scandals are usually reported by foreign journalists only (Quah 2016, 179). Similarly, the presence of international civil society groups is expanding but they do not have strong roots and many are co-opted by the military (Chêne 2012). Therefore, restrictions on the media and the civil society must be completely lifted in order for them to act as watchdogs on corruption.

Cooperation with the private sector is also important to create a corruption-free business environment. Myanmar could extend the involvement of the private sector in the policy formation process, and use international initiatives such as the EITI, to strengthen its anti-corruption efforts (Hendrix & Noland 2015, 30-31). In March 2016, the Myanmar Centre for Responsible Business¹²(MCRB) and ASEAN CSR Network¹³ hosted a workshop in Yangon, to inform senior managers of Myanmar companies on anti-corruption practices (MCRB 2016b). Information concerning procurement procedures and contracts must be publicly distributed, as advised in article 9 of the UNCAC. Article 12 of the UNCAC recommends to enhance accounting and auditing standards, and to establish penalties for non-compliance. It is also useful to elaborate codes of conduct, and measures regarding the identity of legal and natural persons involved in corporate entities (UNODC 2004, 14).

In order to improve good governance in the public sector, Myanmar must implement civil service reforms by developing institutional capacity; building integrity systems; upgrading the policy capacities; and strengthening all branches of power. Article 9 of the UNCAC also prescribes the adoption of a national budget; timely reporting on revenue and expenditure; a system of accounting and auditing standards; systems of risk management and internal control; and corrective action in case of failure to comply with these requirements (UNODC 2004, 12). The 2008 Constitution stipulates that the budget drafted by the President be submitted to the Parliament for approval (Burma Library 2008, 35). In 2012, the national budget was publicly debated in parliament and published in newspapers for the first time, but was subject to limited scrutiny and remains opaque. Sources of budget revenues remain undisclosed, notably because there are no independent auditing of state spending (Chêne 2012,

12 □ The Myanmar Centre for Responsible Business is a joint initiative of the Institute for Human Rights and Business and the Danish Institute for Human Rights, to encourage responsible business activities throughout Myanmar. 'Based in Yangon, it aims to provide a trusted, impartial forum for dialogue, seminars, and briefings to relevant parties as well as access to international expertise and tools' (MCRB 2016a).

13 □ The ASEAN CSR Network (ACN) is a regional organisation 'established in 2011 with support from the ASEAN Foundation and the Japan-ASEAN Solidarity Fund, in line with the achievement of an ASEAN Community in 2015' and 'an integral strategy in ensuring sustainable and inclusive socio-economic development in ASEAN'. ACN 'provides a platform for networking and cooperation at the ASEAN level, supports capacity-building and training activities, helps to rally collective action on key issues, and provides a link with regional and international bodies interested in supporting the advancement of CSR in the region' (ACN 2016).

6). Furthermore, the 2011 Special Funds Law allows the military to avoid parliamentary control to access additional funds.

Myanmar should consider increasing the salaries of its civil servants, since their low salaries are one of the main causes of systemic corruption in the civil service (BACP 2016b). Article 7 of the UNCAC recommends that states grant adequate remuneration and equitable pay scales to their civil servants (UNODC 2004, 10). In Myanmar, monthly salaries of civil servants range from 35,000 kyats (US\$30) for the lowest position to 220,000 kyats (US\$185) for the highest selection grade (Quah 2016, 182). They are encouraged to request bribes to 'make ends meet' (Quah 2016, 182) and corruption is 'a survival mechanism' (Perry 2005, 193). Therefore, increasing civil servants salaries could be a successful anti-corruption measure, as has been the case in Singapore (Hendrix & Noland 2015, 30). Myanmar could also develop 'an elite cadre of senior civil servants'¹⁴ as has been put in place in South Korea and Malaysia (Hendrix & Noland 2015, 30-31). The selection and promotion of civil servants must rely on merit rather than patronage. Complementary measures with a lesser effect on current government expenditure and on inflation could be implemented, such as offering delayed rewards (attractive pensions and retirement benefits), rewarding performance, and subsidised insurance (Hendrix & Noland 2015, 18).

To conclude, Myanmar's government must display a strong political will to address corruption and focus on the main causes of endemic corruption. Administrative reforms initiated by President Thein Sein must go further to improve civil service's efficiency and reduce opportunities for bribery. The role of the mass media and the civil society in anti-corruption activities must be enhanced. In order for the ACC to effectively address corruption, it should be granted the required budget and personnel, operational impartiality and autonomy to perform its duties without interference.

14□ 'Career-based elite civil services' are 'staffed via entry-level recruitment according to performance on an elite exam, with small proportions being nominated to serve from within the existing civil service' (World Bank 2012 cited in Hendrix & Noland 2015, 18).

Conclusion

This thesis responds to the gap in academic research on corruption in Myanmar. Its aim is to demonstrate how serious is the problem of corruption in Myanmar and how it affects the lives of its citizens. Fighting corruption is essential for Myanmar's development. Despite being rich in natural resources, most of Myanmar's population lives in poverty. Corruption allows the elite to exert control on every business, preventing the country from economic development. Since the taxation system is dysfunctional, civil services do not get the funding they need and civil servants are motivated to request bribes. These bribes are paid by the citizens who are already deprived of their income. Therefore, curbing corruption in Myanmar is crucial to reduce poverty.

This research demonstrates that the anti-corruption measures introduced in 2013 are not sufficient to address corruption in Myanmar. Nevertheless, considering the decades of military rule, it is already extremely positive that Myanmar's government starts talking about the issue of corruption. It is worth noting that this would have been unthinkable twenty or even ten years ago. This thesis suggests some strategies not only to improve the existing anti-corruption measures, but also to develop transparency in all sectors. This thesis emphasises the necessity to strengthen the will of both the decision-makers and the population, to eradicate corruption. This aspect is undoubtedly the key for anti-corruption initiatives to be successful. Changing mentalities is even more crucial than changing the laws.

The NLD won the last general elections on 8 November 2015 and captured almost 80% of the seats in the National Assembly and People's Assembly (Quah 2016, 179). NLD's victory reflects Myanmar's citizens' 'dissatisfaction with decades of corrupt, inefficient, abusive rule by the military' (Ostwald & Schuler 2015 cited in Quah 2016, 190). The new government has an unprecedented opportunity to improve the effectiveness of anti-corruption measures. However, the 2008 constitution guarantees that the military still retains 25% of seats in both houses of parliament (Quah 2016, 179) and the military will probably not abandon its privileges. All the key ministries are still controlled by the military (Aung Zaw 2016). Moreover, democratisation does not necessarily correlate with corruption reduction, as the example of Indonesia has demonstrated, and has sometimes led to a corruption increase (Rock 2009; Campbell & Saha 2013). Thus, the NLD must show a strong political will to address corruption. Considering the lack of effectiveness of the anti-corruption measures initiated by President Thein Sein, the new government must consider some alternatives. For instance, rather than centralising anti-corruption operations in one ACA, the government could create ACAs of smaller size at the local level, closer to the population. The government also needs to include civil society and the private sectors in their decisions. In April 2016, three days after the NLD officially took power, it issued guidelines related to gifts offered to civil servants (*The Irrawaddy*, 9 April 2016). This demonstrates the interest in the fight against corruption of the new government but it remains to be seen how these guidelines will be enforced.

It is necessary for academic researchers to keep paying attention to Myanmar and to the issue of corruption. Myanmar is in transition and it is important to stay abreast of

the changes. It could be useful to evaluate anti-corruption initiatives in Myanmar in two or three years, and explore whether the arrival of the new government had an impact on the level of corruption and on the performance of the ACC.

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