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The U.S. Government's Global Hunger & Food Security Initiative



TRANSPARENCY AND ACCOUNTABILITY

RATE Summary

This document presents the findings of the Regional Agricultural Trade Environment (RATE) assessment conducted in the ASEAN region in 2012 by the Maximizing Agricultural Revenue through Knowledge, Enterprise Development, and Trade (MARKET) Project.



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Transparency and Accountability

Regional Agricultural Trade Environment (RATE) Summary

USAID Maximizing Agricultural Revenue through Knowledge, Enterprise
Development and Trade (MARKET) Project

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On the cover: A government official speaks to village leadership about their complaints of irrigation theft.
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In Brief

TRANSPARENCY AND ACCOUNTABILITY

Why Transparency and Accountability? Formal and informal mechanisms of transparency and accountability encourage officials to act in the public interest, or in the case of companies, in the interests of their shareholders. Without public access to records of governance and other information, scarce resources may be squandered or mismanaged. In the agricultural trade environment, producers require transparent systems of land ownership and transfer and access to public resources (such as water for irrigation and roads for transport), as well as consistent, predictable treatment by officials charged with licensing, inspecting, or otherwise regulating their work. Processors and traders require clarity and consistency in how they are regulated by government, as well as accuracy in the information provided by government. Potential suppliers, customers, and investors need to trust the representations of firms with which they do business to equip themselves adequately to trade on world markets.

ASEAN's Approach: ASEAN's efforts at promoting transparency of institutions generally take form through anticorruption and pro-corporate governance activities. In Section A of the 2009 ASEAN Political Security Blueprint, ASEAN encourages its members to take a series of actions, including sharing of best practices. The ASEAN Economic Community Blueprint (2008) does not specifically reference anticorruption efforts, but instead flags ASEAN's various efforts to promote transparency in regional and international trade, including with respect to non-tariff barriers, trade facilitation and standards and technical barriers to trade. Although the AEC Blueprint is silent in reference to corporate governance, efforts to strengthen governance in the region's large publicly held companies have long been underway.

Regional Findings. Despite numerous examples of transparency and accountability being strengthened in ASEAN, official corruption permeates everyday life in a number of Member States, from the "petty" to the "grand." Anticorruption laws enacted by ASEAN Member States are out of sync with one another. Private enterprises, including processors and traders of all sizes, are increasingly aware of the transparency demands associated with doing business in regional and international markets. These include the need for solid bookkeeping, supply-chain traceability, and certification of standards. The supply of business and management professionals who are capable of meeting these demands has increased in recent years, although these workers are less available in rural areas.

Opportunities for ASEAN and Regional Entities

- Set strong examples of transparency in governance of regional institutions
- Encourage full participation of all Member States in key regional anticorruption initiatives
- Strive for harmonization of Member State anticorruption laws
- Integrate principles of anticorruption into future editions of AEC Handbook for Business
- Encourage use of the Corporate Governance Scorecard and the integration of good governance lessons into best practices for governance of all ASEAN enterprises

Opportunities for Member States

- Strengthen domestic systems for transparency and accountability
- Encourage public dialogue and inquiry into issues of transparency and accountability

AT ISSUE: REINFORCING COMMITMENTS TO TRANSPARENCY AND ACCOUNTABILITY AMONG ALL PUBLIC AND PRIVATE INSTITUTIONS THAT PARTICIPATE IN ASEAN'S MARKETS FOR FOOD AND AGRICULTURE

For more than a decade, an international consensus has been in place, holding that, throughout the world, corruption and poor governance deter foreign investment, cripple economic growth and development, and even fuel state failure.¹ Through government, nongovernment, and commercial networks, the international community has banded together to promote transparency and accountability as the best precautions against and remedies for corruption and poor governance. Formal and informal mechanisms of transparency and accountability encourage government officials to act in the public interest. Without public access to records of governance and other information, public resources may be squandered and mismanaged.

Transparency and accountability are considered critical not only to the workings of government, but also to the success of commercial enterprise, including in the agriculture sector. Through the practice of internationally established standards of corporate governance, private and state-owned enterprises can support robust foreign investment in agribusiness, along with economic growth.

Transparency refers specifically to the substantive and administrative procedures through which institutions perform their functions, and whether they are documented, accessible, and—where the government and publicly held companies are concerned—open to public scrutiny. Accountability pertains to the relationship between citizens and government officials—or, in the commercial context, shareholders and boards of directors—along with a sense of obligation and a public service ethos among officials and the power of citizens or shareholders to sanction, impose costs, or remove officials for unsatisfactory performance or actions.

In Association of Southeast Asian Nations (ASEAN) Member States, the transparency and accountability of government institutions hold enormous significance with respect to agricultural production, processing, and trade. Farmers, farming associations, and cooperatives require transparent systems of land ownership and transfer and access to or distribution of public resources (such as water for irrigation and roads for transport), as well as consistent, predictable treatment by public officials charged with licensing, inspecting, or otherwise regulating their work. Processors of agricultural products similarly require clarity and consistency in how they are regulated by government, as well as accuracy in the information provided by government.

For their part, domestic traders need transparency and accountability in the state institutions that oversee the roadways and other transportation systems and provide marketing information, among other services. International traders need confidence that border agencies are transparent and accountable, so that their transactions are not devalued by informal fees and other forms of corruption.

Transparency is about shedding light on rules, plans, processes and actions. It is knowing why, how, what, and how much. Transparency ensures that public officials, civil servants, managers, board members and businessmen act visibly and understandably, and report on their activities. And it means that the general public can hold them to account. It is the surest way of guarding against corruption, and helps increase trust in the people and institutions on which our futures depend.

—*Transparency International*
(www.transparency.org)

Moreover, in all links of agricultural value chains, potential suppliers, customers, and investors need to trust the representations of the firms with which they seek to do business. The OECD, which has led the emergence of international consensus on the issue, identifies the four components of sound, effective governance of enterprises as responsibility, accountability, fairness, and transparency. Although discussion of corporate governance tends to emphasize the obligations of larger, publicly owned companies (such as private joint-stock companies and both “equitized” and centrally held companies found throughout ASEAN), these principles offer similar value to such formal enterprises as producer cooperatives, private supermarkets, public fresh-market facilities, and small, medium-sized, and large producers and distributors, including those that ship to markets in other countries.

[T]he concept of accountability involves two distinct stages: answerability and enforcement. Answerability refers to the obligation of the government, its agencies and public officials to provide information about their decisions and actions and to justify them to the public and those institutions of accountability tasked with providing oversight. Enforcement suggests that the public or the institution responsible for accountability can sanction the offending party or remedy the contravening behavior. As such, different institutions of accountability might be responsible for either or both of these stages

—World Bank, *Governance and Public Sector Management*

This RATE topical analysis summarizes the state of transparency and accountability in ASEAN and its Member States, in particular as they pertain to agriculture-related commerce. This paper suggests opportunities for action, including harmonization of government practices and more guidance for enterprises on transparency and accountability.

WHAT IS ASEAN’S CURRENT APPROACH TO TRANSPARENCY AND ACCOUNTABILITY?

To a limited extent, ASEAN has established policies on transparency and accountability through the lenses of anticorruption policy and corporate governance. Most ASEAN Member States also participate in other regional and international initiatives that are oriented toward transparency and accountability.

Anticorruption

The incorporation of anticorruption policy into ASEAN’s regional agenda began in December 2004, when anticorruption agencies from Brunei, Indonesia, Malaysia, and Singapore signed the Memorandum of Understanding for Preventing and Combating Corruption, thereby establishing the foundation for cooperation in combating corruption in Southeast Asia. As of December 2012, all ASEAN Member States except Laos and Burma had signed the MOU, pledging to work together through information sharing and capacity building.² ASEAN’s goals for combating corruption are spelled out in Section A of the 2009 ASEAN Political Security Blueprint, through which all ASEAN members are encouraged to take action. The practical result of the ASEAN MOU for Preventing and Combating Corruption is that, on occasion, representatives of participating countries join to discuss issues of mutual interest.

In fact, more regional activity on the issue takes place in coordination with Asian Development Bank and the Organization for Economic Cooperation and Development. The ADB/OECD Anticorruption Initiative, established in 1999, consists of 29 Asian and Pacific countries, including seven ASEAN Member States (Brunei, Laos, and Burma do not belong).

According to the OECD, membership in the initiative

is open to any economy in Asia and the Pacific that: recognizes the need for action against corruption and the benefits of sharing knowledge and experience across borders; is actively taking steps to implement anticorruption measures; commits to undertake reforms to implement the Initiative’s “strategic principles”; and to participate in the Initiative’s review mechanisms.³

The initiative engages in four main activities: (1) regular meetings of its Steering Group and self-reporting; (2) thematic reviews and scoping exercises; (3) capacity-building seminars; and (4) regional anticorruption conferences.

The operations and outcomes of the ADB/OECD Anticorruption Initiative are covered through media outlets based in most ASEAN Member States, which in turn invite public discourse and political response to the issues raised. In addition, through the initiative, government officials charged with enforcing anticorruption laws in the region are increasingly known to one another.

In contrast to the ASEAN Political Security Blueprint, the ASEAN Economic Community Blueprint does not specifically refer to anticorruption efforts. The AEC Blueprint, however, does flag ASEAN’s efforts to promote transparency in regional and international trade, including with respect to nontariff barriers, trade facilitation and standards, and technical barriers to trade.⁴ Similarly, the 2012 AEC Handbook for Business does not refer to anticorruption policy or law but it does underscore ASEAN’s commitment to strengthening transparency in its regional trade regime.⁵

As of December 2012, all ASEAN members other than Burma had signed the United Nations Convention Against Corruption (UNCAC). In addition, the ASEAN Member States that participate in the Asia-Pacific Economic Cooperation (APEC) pact—that is, all but Cambodia, Laos, and Burma—benefit from the activity of APEC’s Anticorruption and Transparency Working Group. Established in 2011, this group coordinates implementation of APEC’s Santiago Commitment to Fight Corruption and Ensure Transparency and its associated Course and Transparency Standards.⁶ It also promotes cooperation in

When considering ASEAN countries, it is interesting to note that most have implemented, amended, or have otherwise modified their anti-corruption laws or procedures in the last decade. For example, Brunei revised Chapter 131 of its Prevention of Corruption Act in 2002. In 2009, Malaysia adopted important revisions to its Malaysian Anti-Corruption Act, effecting important changes to its 1997 predecessor, while the Cambodian Anti-Corruption Law was enacted in November 2010 as a supplement to the Cambodian Penal Code. In addition, the Organic Act on Counter Corruption, which is the main anti-corruption legislation in Thailand, was implemented in 1997, and for the first time, was revised in 2011 after Thailand signed the UNCAC. In its efforts to update its anti-corruption laws, the Thai government has issued numerous notifications to cover topics including, but not limited to, ethics for state officials, protection for whistle-blowers, and rules regulating gifts and benefits under Thai law. These are limited but positive examples of the slow movement in some ASEAN member countries toward a more comprehensive anti-corruption program supported by the law.

In contrast, some other ASEAN member countries have not amended their laws for many years and have done little to move toward regional harmonization of anticorruption laws. Myanmar, for example, which has faced political difficulties for several decades, relies only on its Penal Code when it comes to prosecution in corruption cases. Indonesia has a limited anti-corruption law dating back to 1960, the Anti-Graft and Corrupt Practices Act Republic Act No 3019, which has only recently been supplemented by revisions to the Penal Code – revisions that fail to cover the controversial issue of facilitation payments. Finally, while Singapore has not made any significant changes to its primary anti-corruption law in almost 20 years, there is arguably little real need for change, as Singapore has one of the best anticorruption enforcement records in the world and is unquestionably the ASEAN leader.

—Clémence Gautier and Michael Ramirez, *Overview of ASEAN Anti-Corruption Legislation: The Uneven Road to Harmonization*

extradition, legal assistance and judicial/law enforcement (especially asset forfeiture and recovery).

Notwithstanding the dialogue and cooperation on corruption throughout Southeast Asia, there is little harmonization among the anticorruption laws enacted by ASEAN Member States. Nor has ASEAN developed significant guidance on anticorruption law and policy. For example, although bribery is banned in all Member States, considerable ambiguity remains about the legality of “facilitation payments”—that is, gifts or payments to government officials in exchange for service—and even the very meaning of the term.⁷ Prevailing custom in many areas involves routine payments to government officials—in Cambodia, for example, bags of rice are treated as a form of payment to certain regulators; in Malaysia, government officials are accustomed to accepting gifts at family weddings—and there is little consensus in law or practice on the acceptability of these practices and the extent to which efforts should be made to stop them.

Corporate Governance

Although the AEC Blueprint is silent on corporate governance, efforts to strengthen governance in the region’s large, publicly held companies have been underway for a long time. Established in 2004, the ASEAN Capital Markets Forum (ACMF) is a committee of securities regulators convened under the umbrella of the ASEAN Finance Ministers. The ACMF aims to provide ASEAN capital market regulators with a platform to work toward capital market integration and harmonized standards.

One of the most prominent efforts of the ACMF is the ASEAN Scorecard for Corporate Governance, developed in 2011 with support from ADB and OECD. The scorecard is meant to promote more unified corporate ranking and assessment and showcase the viability of companies based in ASEAN Member States. It addresses the following aspects of corporate governance:

- Rights of shareholders and ownership functions
- Equitable treatment of shareholders
- Role of stakeholders (including employees) in corporate governance
- Disclosure and transparency
- Responsibilities of the board of directors.

Several ASEAN Member States have implemented their own national scorecards or assessment exercises.⁸ The ASEAN Scorecard is a preparatory effort to align stock exchanges in ASEAN and a means of presenting the ASEAN brand to international investors.⁹

2009 ASEAN Political Security Blueprint

A.1.7. Prevent and combat corruption

Actions

- I. Identify relevant mechanisms to carry out cooperation activities in preventing and combating corruption and strengthen links and cooperation between the relevant agencies;
- II. Encourage all ASEAN Member States to sign the Memorandum of Understanding (MoU) on Cooperation for Preventing and Combating Corruption signed on 15 December 2004;
- III. Promote ASEAN cooperation to prevent and combat corruption, bearing in mind the above MoU, and other relevant ASEAN instruments such as the Treaty on Mutual Legal Assistance in Criminal Matters (MLAT);
- IV. Encourage ASEAN Member States who are signatories to the United Nations Convention against Corruption to ratify the said Convention; and
- V. Promote the sharing of best practices, exchange views and analyse issues related to values, ethics and integrity through appropriate avenues and fora and taking into account inputs from various seminars such as the ASEAN Integrity Dialogue.



Governments focus more on corporate governance as more large companies open their doors.

Although formal ASEAN activity pertaining to corporate governance applies chiefly to publicly traded companies, the underlying principles of corporate governance—responsibility, accountability, fairness, and transparency—are also critical to the success of agricultural cooperatives and SMEs. The Asian Roundtable on Corporate Governance, facilitated by the OECD, since 2001 has promoted governance principles throughout ASEAN through the reform of company and securities laws, strengthening of professional standards for accounting and auditing, and sharing of best practices. Of the 13 members of the roundtable, six are from ASEAN (Thailand, Vietnam, Malaysia, Singapore, Indonesia, and the Philippines).

TRANSPARENCY AND ACCOUNTABILITY IN ASEAN MEMBER STATES: HIGHLIGHTS FROM THE RATE ASSESSMENT

The RATE team reviewed transparency and accountability in ASEAN's agriculture and agricultural trade sectors using a four-part analysis: legal framework, implementing institutions, supporting institutions, and social dynamics.¹⁰ Questions centered on the presence of a formal legal and institutional framework for transparency and accountability that is in step with international best practice and on aspects of transparency and accountability in the agriculture sector, such as agricultural production statistics, governance of enterprises, and prevailing attitudes. The findings are set forth below.

A dual challenge: ASEAN Member States face petty and grand corruption in government

Perceptions of corruption on the 2012 Transparency International Corruption Perceptions Index (CPI) range in ASEAN from nearly the most positive in the world (in Singapore) to the most negative (in Burma). The rankings on perception of corruption indicate a striking correlation between perceived corruption and per capita GDP, illustrating the long-documented relationship between poverty and corruption. Four ASEAN Member States—Singapore, Brunei, Malaysia, and Thailand—rank in the top half of the countries surveyed. Four Member States showed improvement over their 2011 rankings (Malaysia, Philippines, Cambodia, and Burma); five diminished in rank (Brunei, Thailand, Indonesia, Vietnam, and Laos), and one, Singapore, stayed the same. The rise in the Philippines’ ranking—24 places—is noteworthy, as is Indonesia’s loss of 18 places.

In its examination of agriculture and agricultural trade, the RATE assessment found that, among the six lower-ranking ASEAN Member States, official corruption permeates everyday life, from the petty (when bureaucrats meet the public directly and require facilitation payments to perform their official duties), to the grand (at higher levels of government, including where policy and financial decisions are made). In Malaysia and Thailand, where in-country RATE inquiries were made, petty corruption has diminished significantly in recent years. Indeed, both countries present sound examples for eradicating petty corruption in other environments. The grand corruption observed in both countries, however, remains troubling.

Petty corruption in agricultural trade

To the small-scale farmer or trader of agricultural products, no corruption is petty. As one scholar notes, “police shakedowns in a public market, or roadblocks in the countryside where farmers must pay up in order to transport produce to the city, may yield seemingly trivial sums of money, but they help keep poor people poor.”¹¹ The RATE assessments found repeated examples of such conduct, particularly in ASEAN’s poorer Member States.

In Laos, for example, informal payments to low-level officials to expedite time-sensitive activities, such as transport of perishable items and licensing requirements, are common. At the district level, small payments to facilitate government action takes place every day. At the village level, however, communities are so tightly knit that petty corruption is reportedly less of an issue. Farmers interviewed during the RATE assessment typically said that they generally trust their neighbors and village leadership.

View from Cambodia

Too early to tell: The impact of Cambodia’s new anticorruption law

There are varying perceptions of how Cambodia’s new anticorruption law, which entered into force in early 2012, will affect petty corruption. Traders interviewed for the RATE assessment contend that informal fees paid routinely to customs officials have simply gone up as a consequence of the threat of enforcement of the new law. But some business leaders express optimism that corrupt practices will decrease as a result of enforcement of the new law. The national anticorruption agency has publicized the new law forcefully and threatened rigorous enforcement against powerful and more remote government officials alike. In many government offices, cameras reportedly will be installed to discourage bribe solicitation. Already, an assortment of government officials has been arrested for corruption—among them, a powerful land administrator—and workers for national and local agencies are aware of the change.

In Cambodia, few services may be procured without gifts, favors, or informal fees paid to public servants who hold positions of authority, ranging from licensing officials to school administrators to police. Mistrust of regulating officials keeps many Cambodian enterprises in the “gray” economy. Even donors that work with SMEs do not usually encourage them to take on the expense of formalization, because the process is considered cumbersome, expensive, and corrupt.

In Indonesia, a tradition of informal “transaction fees” paid in public agencies remains entrenched in many institutions, including the police, the courts, the customs administration, and municipal authorities. A common belief that government action requires “speed money” or other illegal fees undermines public confidence in municipal government throughout the country. “Voluntary fees” are sometimes required by government officials for inspections or for transport of containers across provincial and even municipal borders.

In Vietnam, corruption is considered especially pervasive at the local level. Although local officials are required to declare their assets, they have been implicated in bribe-taking schemes pertaining to land administration and public procurement. In early 2012, for example, an investigation by the ruling party found a \$7.6 million shortfall in funds spent to support a local water management project implemented by a state-owned enterprise in the Mekong Delta.

ASEAN Rankings on Transparency International
Corruption Perceptions Index (2011 and 2012)
and GDP Rankings (PPP, 2011)

Country	CPI Rank, 2012	CPI Rank, 2011	Change	Per capita GDP Rank
Singapore	5	5	no change	5
Brunei	46	44	-2	9
Malaysia	54	60	+6	75
Thailand	88	80	-8	114
Philippines	105	129	+24	162
Indonesia	118	100	-18	157
Vietnam	123	112	-11	166
Cambodia	157	164	+7	188
Laos	160	154	-6	174
Burma	172	180	+8	204

Note: 176 countries surveyed

Sources: Transparency International; CIA World Factbook

Farmers, entrepreneurs, and traders alike often discuss petty corruption as a way of life that will never change. Yet Thailand and especially Malaysia have shown that steps can be taken to strengthen the professionalism and integrity of public institutions and officials. In Malaysia, all public servants who work for the national government must display name tags and clock in and out of duty, thereby establishing a climate of accountability. Entrepreneurs in Malaysia do not complain of corruption or informal fees in the business registration process, which can take place online, is unambiguous, has a single set of fees, and presents little to no opportunity for public servants to intervene and request extra fees.

The national government is also committed to simplifying the business licensing process, including by expanding coverage of its e-business licensing system. Moreover, the fact that Malaysian national and regional governments offer so many incentives to commercial formalization—including capacity building, connections to networks, and even grants and loan assistance—means that they are perceived not as predators or usurpers of capital, but as true facilitators of doing business.

Thailand has also succeeded in diminishing many aspects of petty corruption in recent years, although not to the same degree as Malaysia. According to agribusiness professionals interviewed during the RATE assessment, fewer facilitation fees are requested for permission to import seed and for the approval of new plant varieties than in the past. In the customs process, bribes and other illegal fees necessary to cross borders have decreased considerably, according to traders interviewed by the RATE team. Food processors similarly contend that ministries charged with issuing licenses for meeting health and production quality standards after having inspected farms do so with transparency, predictability, and fairness.

The persisting problem of grand corruption

As defined in USAID’s 2004 anticorruption strategy, grand corruption typically involves exchanges of resources, access to rents, or other advantages for high-level officials, privileged firms, and their networks of elite operatives and supporters. The size of transactions is usually significant. Moreover, the key distinction between petty and grand corruption is that petty corruption usually reflects specific weaknesses in systems, while grand corruption can involve “the distortion and manipulation of entire systems to serve private interests.”¹² In fact, grand corruption continues to directly impact agriculture and agricultural trade in several ASEAN economies.

In Cambodia, for instance, nontransparent land concessions that benefit a small group of empowered people are common and have resulted in significant economic displacement and disruption to rural communities. For example, in one well-known case in 2007, the Cambodian government leased the 133-hectare Boeng Kak Lake to local developer Shukaku Inc., in a \$79 million, 99-year deal. The deal was opaque and involved the eviction of many people who lived and worked on the land, including those holding titles. As a result, at the end of 2010 the World Bank halted funding for proposed country projects valued at \$128 million.¹³

In Malaysia, international anticorruption professionals report a “significant disconnect” between the transparent and accountable practices the Malaysian government encourages in the private sector, particularly among SMEs, and its own opaque mechanisms of conducting certain activities.¹⁴ Suspicions of grand corruption are particularly pronounced with respect to national and regional infrastructure initiatives. In December 2011, when Malaysia’s score and ranking on Transparency International’s Corruption Perceptions Index fell for the third year in a row, the local TI office said

While the government has launched a number of initiatives to address corruption including recently the Corporate Integrity Pledge for the business sector, the CPI results show that our leaders and public institutions are not doing enough to combat corruption, especially grand

View from Vietnam

The private sector and corruption: Part of the solution or the problem?

In Vietnam, there seems to be a significant divide between anticorruption policies generally espoused or accepted in principle by business associations and the actual practices of most members of these associations. A study released by the Vietnam Chamber of Commerce and Industry and Radio Free Asia in spring 2012 confirmed that corruption in Vietnam remains pervasive. According to AsiaNews.IT (April 10, 2012), the chamber of commerce survey of 270 enterprises, associations, and government officials found that most private sector actors are aware of the negative impacts of corruption on the local business environment, while still engaging in corrupt practices themselves. About 40 percent of respondents said that “unofficial expenditures” account for about 1 percent of their total annual business expenditures, while 13 percent said such expenses constitute up to 5 percent. More than 60 percent of the parties surveyed reported that corruption occurred between enterprises and government agencies during business registration and in the complicated and ambiguous licensing processes.

corruption. Elements of state capture which facilitate grand corruption are still prevalent. These include the continuing and snowballing practice of awarding megaprojects and contracts without open tenders or competitive bidding, limited access to information which contributes to a culture of secrecy and lack of transparency, allegations of inflated pricing in military purchases and the continued close nexus between business and politics in Malaysia.¹⁵

In Indonesia, as in several ASEAN Member States, courts have a reputation for corruption, with allegations widespread of attorneys bribing judges, court clerks, and other court staff. In 2011, the Judicial Commission chief estimated that at least 20 percent of Indonesian judges participate in bribes or otherwise fail to judge cases with integrity and impartiality. Corrupt practices are reportedly especially pronounced in the provinces, where the appointment and rotation of judges are considered business opportunities. Notwithstanding efforts in the courts to diminish official corruption, the poor reputation of the courts continues to undermine confidence generally in the rule of law in Indonesia.¹⁶

Transparency in agricultural enterprises: Abundant opportunity for reform

Although the RATE assessment did not examine corporate governance as a discrete issue in publicly held agricultural enterprises, it did consider a number of aspects of enterprise stewardship, behavior, and capacity relating to transparency and accountability. Across ASEAN, the assessment found that processors and traders of all sizes are increasingly aware of the transparency demands associated with doing business in regional and international markets, including the need for solid bookkeeping, supply-chain traceability, documentation of standards, and so forth. When their books are not maintained according to international accounting standards, companies are less likely to attract investors. If producers and processors cannot identify the sources of their inputs, they are less likely to gain access to regional and international markets. When documentation of standards is inaccurate or falsified, a supplier's reputation can be ruined.

In most ASEAN Member States, the supply of business and management professionals who are capable of supporting formal enterprises has increased significantly in recent years, although these workers are considerably less available in rural areas. In Vietnam, a number of services aim to strengthen the transparency and accountability of agricultural enterprises, including government and donor-sponsored programs, business association-sponsored programs, NGOs, and for-profit services. Their impact is uneven. Most private services—including consultants, accountants, IT services, and others—are aimed at larger, formally registered enterprises. These services are far more accessible in urban areas, while rural enterprises tend to rely more on the assistance of extension agents, producer organizations, and NGOs. Some larger companies that seek higher-quality products, including supermarkets and international traders, are eager to see the development of small, private consulting companies that could serve the smaller agricultural enterprises that supply their industries.

In Thailand, despite significant higher education reforms since the 1990s, business representatives contend that the pool of competent professionals to fulfill agriculture industry needs is insufficient, including in the auditing, accounting, legal, and quantitative analysis professions. Even when the local workforce fulfills technical needs, there are many cases where the government or enterprise systems conspire to undermine the integrity of their work. Many private testing and certification services, for example, reportedly accept bribes and issue certificates for businesses that do not meet health and quality standards.

Indeed, enterprises throughout ASEAN must routinely choose between the “shortcuts” offered by corrupt officials through bribes and facilitation fees, and the hard and often thankless work of actually meeting international standards and national and local requirements. Both individual enterprises and associations of enterprises are generally wary of pressing for greater transparency and accountability in government, fearful of the potential repercussions on their ability to do business. In Cambodia, for example, while various business associations regularly advocate certain legal and regulatory reforms on behalf of their stakeholders, they are conspicuously quiet concerning the matter of predatory behavior on the part of government officials, fearing retribution if they speak up. The American Chamber of Commerce is a notable exception. The fact that many foreign companies are subject to prosecution by their own governments if they engage in corrupt practices means that they are already committed to transparency and accountability, and thus feel less vulnerable discussing such matters than their domestic counterparts. The American Chamber of Commerce has provided an important forum for discussion and promotion of Cambodia’s new anticorruption law.

Media freedom in ASEAN Member States: An issue with few local champions

The relationship between media freedom and corruption is considered axiomatic: the greater the press freedom, the lower the prevalence of corruption. In fact, the relationship is more complex than the axiom suggests: Singapore is an example of a highly restricted media coexisting with low perceived presence of corruption. Still, a generally direct relationship can be detected between countries that permit media scrutiny of government and private sector activity without fear of punishment and such measures as overall prosperity, strength of business environments, and absence of corruption. Freedom House has long documented that freedom of the press is not generally supported in most ASEAN Member States. In its 2011 Freedom of the Press survey, no ASEAN Member State was rated as “free”; just two—Indonesia and Philippines—are rated as “partially free”; and the remainder were called “not free.”

Although the issue is one that has yet to find a place in ASEAN’s efforts at regional harmonization, absence of media freedoms can indeed impact ASEAN’s long-term potential for significant participation in world markets, according to multinational representatives interviewed during the RATE assessments. Where information emerging from national media sources cannot be trusted for accuracy, and where governments actively oppose this aspect of transparency and accountability, potential trading partners are less likely to have confidence in representations of governing authorities. Private services have emerged in ASEAN that, to some degree, make up for poor transparency of government. These include branch offices of international testing and certification services, along with multinational traders, that produce independent verifications of quality and quantity based on international standards.

OPPORTUNITIES FOR ACTION

In ASEAN and its Member States, there are many pathways to change. Important reforms can be moved forward by a single, visionary champion or by a groundswell of stakeholders. Some reforms may take a number of years to take root, while others are a matter of empowered actors acting quickly and decisively in a way that reflects both public demand and international best practice. In most cases, a “big idea” – including the type that is often promoted by international organizations such as Transparency International or the World Bank – can be broken down into many smaller tasks, which, again, can be seized by a variety of public and private actors. Accordingly, the Opportunities for Action set forth below are intended to be multifaceted. They may be accessed as a foundation for regional or domestic policy development, as a resource for private-sector initiatives, as a benchmark for tracking change, as a reference for academic instruction, and, most immediately, as a “jumping off point” for stakeholder discussion and consensus-building.

Opportunities for ASEAN and Regional Entities

Set a strong example of transparency in governance of regional institutions

Including ASEAN itself, an increasing number of organizations – including business associations, think tanks and university associations, and civil society organizations – work at the regional level for the purpose of building consensus, identifying shared priorities, harmonizing structures and practices, and otherwise furthering the concept of a single Community to take shape by 2015. Nearly all of these institutions have the opportunity to implement best practices and new technologies that afford greater transparency and accountability in institutional governance. These include the following:

- Commit to sharing, making publicly accessible, and regularly updating information about the institution’s mission, priorities, leadership, activities, and events.

Transparency and accountability in agricultural production statistics: A lack of confidence

Many agricultural professionals interviewed complained about a lack of transparency and accountability in agricultural production statistics, although this rarely rises to the level of corruption that could be prosecuted under anticorruption or criminal law.

In Indonesia, agricultural production statistics, in particular for staple crops, are considered unreliable. Processors and traders feel that local authorities overstate statistics for political reasons, which leads to unreliable conditions for setting trade and agricultural policy and private sector priorities. There are reportedly systemic incentives to over-report production; for example, subsidies for seed and other inputs may be greater for regions that report higher yields.

Vietnam’s General Statistics Office presents regular and easily accessible agricultural and trade-related statistics. These statistics, however, are regarded by many experts as unreliable. Throughout the country, information-gathering systems are often informal, inconsistent, or unreliable. In addition, some observers believe that local officials submit overly rosy portraits of agricultural production. For example, GSO statistics provided since 2000 for key crops show increases in production for most products nearly every year. Even if these statistics are true and accurate, provincial and other officials are not trusted not to overstate production.

Malaysia’s agricultural production is dominated by the industrial crops, palm oil and rubber, which are traded on international markets. Statistics for these products are considered reliable because they can be verified against statistics issued by trade partners and international organizations. Production statistics for food crops are less reliable. Data are inconsistently gathered, and certain critical information, such as rates of cross-border smuggling, does not always enter official calculations. The Malaysian extension service is supposed to help farmers keep better statistics but this is challenging because the average farmer is 53 years old and not inclined to change his practices.

- Through various mechanisms – including both on-line and in person – seek input from key stakeholders on the priorities and progress of the institution.
- In a straightforward fashion, publish key financial information, such as budgets, expenditures, and general sources of funds. Submit to regular audits of funds.
- To the extent that the regional organization engages in contracting practices, implement a transparent, competitive bidding process for contracts of an agreed-upon minimum value.
- For certain regional organizations, because computer based internet access, while growing, is still constrained in developing countries, explicit efforts should be made to make information available on public notice boards, on popular mobile phone platforms, and in conjunction with other mass media (e.g. FM radio) and mass institutions (e.g. faith bodies, fast moving consumer goods companies)

Encourage full participation of all ASEAN Member States in key regional anticorruption initiatives

Most ASEAN Member States formally participate in the region's major anticorruption initiatives, including the MOU for Preventing and Combating Corruption and the ADB/OECD AntiCorruption Initiative. But Burma and Laos, in particular, are not yet included – and, along with Cambodia, they similarly do not benefit from APEC's anticorruption activities. Long placed at the bottom of Transparency International's Corruption Perceptions Index, their absence from these important, region-wide conversations can only reinforce world perceptions that they are not ready to embrace international standards of transparency and accountability. ASEAN leaders should also welcome Brunei's participation in the ADB/OECD AntiCorruption Initiative.

Strive for harmonization of Member State anticorruption laws

Inclusion of anticorruption priorities in the 2009 ASEAN Political Security Blueprint demonstrates ASEAN's commitment to bringing regional consistency to treatment of the issue. Recent scholarship has highlighted, however, the disparity among national anticorruption regimes, including differences in scope, application, mechanisms for enforcement, and terminology. The relative success of some Member States in minimizing corruption – particularly the petty corruption that impacts the lives of farmers and small enterprises on a daily basis – can provide guidance for others. Although harmonization of law will take time, guidance from ASEAN on key issues – such as the legality or acceptability of “facilitation fees” and gifts – would

How Transparency and Accountability relates to other RATE Topics

Informal Economy. Where corruption persists in government offices, enterprises are discouraged from joining the formal economy.

Access to Finance. Absence of transparency and accountability in the governance of financial institutions can lead to financial crisis; in recent years, banks in ASEAN have strengthened their practices.

Infrastructure. The presence of grand corruption in ASEAN Member States is significantly associated with infrastructure projects.

Competition. Free and fair competition is often inhibited by a lack of transparency in government regulatory and procurement activities.

Trade Facilitation. ASEAN has worked vigilantly in recent years to bring greater transparency and accountability to trade facilitation processes.

Food Security. The close association between corruption and poverty threatens the food security of ASEAN's food-insecure populations.

strengthen ASEAN's reputation generally in world markets and improve the lives of the region's poorest citizens. The ASEAN body that leads this initiative should incorporate the experiences and perspectives of private enterprise in all sectors and at all stages of their respective value chains.

Integrate principles of anticorruption into future editions of AEC Handbook for Business

Although anticorruption priorities are found in ASEAN's objectives for regional political security, they are conspicuously absent from most objectives espoused by the ASEAN Economic Community. Future editions of the AEC Handbook for Business should speak more directly to the issue of corruption, especially since petty corruption is such a pronounced aspect of doing business in several Member States. ASEAN's experience in promoting increased transparency in trade-related areas – including trade facilitation, NTBs, standards and technical barriers to trade – can provide guidance in encouraging transparent practices in other aspects of the agricultural trade regime, including in the creation and licensing of small enterprises and the domestic transport of agricultural products. The handbook may notify potential business partners of the region-wide resources available to support those local and international companies which are committed to transactions that are entirely free of bribery and facilitation payments.

Encourage robust use of the Corporate Governance Scorecard along with the integration of good governance lessons into best practices for governance of all ASEAN enterprises

ASEAN's newly established Corporate Governance scorecard, which is currently employed by Malaysia, Singapore, Thailand, Indonesia, and, most recently, the Philippines, promotes a unified methodology for corporate assessment that will highlight the viability and potential of ASEAN-based companies to domestic and foreign investors alike. Publication and public dialogue concerning the scorecard will promote healthy competition among publicly owned companies to strengthen their systems of governance. The lessons from this exercise can lead to important guidance for non-publicly owned companies, as well. The ASEAN Capital Markets Forum (ACMF) may enhance its efforts by working closely with ASEAN's SME Working Group to share best practices in governance and opportunities for governance support that may emerge from regional and international sources.

Opportunities for Member States

Strengthen internal systems for transparency and accountability

Most ASEAN Member States have taken steps in recent years to improve their conditions for transparency and accountability, not only through the establishment of anticorruption legislation, but also through the increased use of sensible policies, such as posting of bureaucratic fees and “zero-tolerance for bribes” notices, requirements for financial disclosure by public officials, uniform requirements of professionalism by government regulators, and more transparent and accountable systems of procurement. Still, particularly in the poorest states, petty corruption remains a way of life. With respect to the agricultural arena, Member States can reduce the invidious presence of corruption by doing the following:

- Take advantage of anticorruption activities and resources offered in rural areas by international donors, such as the ADB, the World Bank, and USAID. The transparent practices encouraged by these groups aim directly at combatting poverty, which correlates directly with high rates of corruption.
- Enable full independent enforcement authority on the part of national anticorruption authorities.
- In local communities, set examples for eradicating corruption in those agencies that exercise the most power over farmers and their children, including land authorities, rural schools, and police.
- Require, in all government offices, posted fees and timetables for provision for service.
- Support independent offices of ombudsmen or inspectors general.
- Support private-sector-sponsored anticorruption activities, such as “no bribe” initiatives launched and publicized by local chambers of commerce.

Encourage public dialogue and inquiry into issues of transparency and accountability

In most ASEAN Member States, the international values of transparency and accountability, both in government and

Progress in the Philippines: Why the jump?

Although the Philippines still ranks in the lower half of countries surveyed by Transparency International’s Corruption Perceptions Index, its rank has improved dramatically – by 29 spaces – in just two years. Since taking office in 2012, the Philippines’ new government has focused intensively on transparency, accountability, and more responsible management of public finances. Factors related to transparency and accountability observed during the RATE assessment include the following:

The Anti-Red Tape Act of 2007 provides for greater transparency of institutions charged with enterprise formalization. It requires local governments to implement a comprehensive public awareness program – including the display of their charters and work processes prominently at city hall and other government offices.

The Philippines Business Registry is a newly established, web-based system that will serve as a one-stop shop for entrepreneurs who need to interact with several agencies to be able to start operating a business. Each of the agencies’ computerized registration systems will be interlinked so that applicants need not physically visit each agency to register their businesses.

On the other hand, the country’s agricultural bureaucracy is continuously beset with problems related to over-centralization, fragmentation of agencies, weak coordination, overlapping of functions, politicization and corruption, making it ineffective in spurring growth and development for the sector.

Reports of corruption and other irregularities in customs processing also persist, including undue and costly delays, irregularities in the valuation process.

commercial activity, are not widely discussed, analyzed, and shared. There is considerable opportunity, supported by both internal NGOs and international organizations, for Member States to engage in a broad and concerted effort to enhance public dialogue on the matter. There are many international best practices for informing and educating academics, business people, political leaders, the media, and others who can work together to advocate on behalf of the issue. By way of think tanks, universities, and business associations, certain questions from a local perspective: What is the relationship between transparency, accountability, and poverty? What is the relationship between transparency and accountability and trade? What skills does our society need to develop the “tools” of transparency, including skills for auditing, accounting, enforcing, and so forth? Examples from low-corruption states, both within and beyond ASEAN, can prove instructive in promoting the public search for consensus and solutions.

¹ USAID Anticorruption Strategy (2004) (Foreword).

² Clemence Gautier and Michael Ramirez, “Overview of ASEAN Anti-Corruption Legislation: The Uneven Road to Harmonization,” International Bar Association, Asia Pacific Regional Forum News (September 12, 2012).

³ See ADB/OECD Anti-Corruption Initiative, Asia and Pacific (information at <http://www.oecd.org/site/adboecdanti-corruptioninitiative>).

⁴ ASEAN, *ASEAN Economic Community Blueprint* (2008).

⁵ ASEAN, *AEC Handbook for Businesses* (2012).

⁶ See APEC, Ant-Corruption and Transparency Working Group, information at <http://www.apec.org/Groups/SOM-Steering-Committee-on-Economic-and-Technical-Cooperation/Working-Groups/Anti-Corruption-and-Transparency.aspx>.

⁷ See Clémence Gautier and Michael Ramirez, “Overview of ASEAN Anti-Corruption Legislation: The Uneven Road to Harmonization,” International Bar Association, Asia Pacific Regional Forum News (September 12, 2012).

⁸ See, e.g., IFC, Corporate Governance Scorecard for Vietnam 2011; Fat Reyes, “PH adopts use of ASEAN scorecard to boost investments,” Inquirer Global Nation (September 11, 2012).

⁹ Fat Reyes, “PH adopts use of ASEAN scorecard to boost investments,” Inquirer Global Nation (September 11, 2012).

¹⁰ For a full description of the methodology, see the RATE methodology document.

¹¹ Michael Johnson, “Poverty and Corruption,” Forbes.com (January 22, 2009).

¹² USAID Anticorruption Strategy (2004) at 8.

¹³ BBC News Asia-Pacific, “World Bank blocks Cambodia Loans amid Boeung Kak row,” (August 9, 2011).

¹⁴ Global Integrity, *Global Integrity Report, Malaysia* (2010).

¹⁵ Transparency International, Malaysia (2012).

¹⁶ American Bar Association, Access to Justice Assessment for Indonesia - South Sulawesi Province (January 2012).