Procurement Conspiracies and Procurement Governance: Some Lessons from Thailand

Sirilaksana Khoman

Introduction

Network relationships are nothing new. Worldwide social networking has indeed exploded within the past decade. Network relationships facilitate efficient interaction by reducing the three components of transactions costs: information and search costs, negotiating and contracting costs, and policing and enforcement costs. Whether in business or politics, or any other area of interaction, network relationships play an important role and help to create efficiency. Indeed, investment into creating trust, brand loyalty, recognition and reputation, whether in personal or business relationships, are part of the process of networking. Trust implies confidence that some person or institution will behave in an expected way. But there are also built-in dangers when networking turns into conspiracy aimed at siphoning public funds into private coffers, particularly through connected dealings in public procurement. Often the status quo is preserved and situations of monopoly are created to facilitate transactions with corrupt intent.

This chapter focuses on a public project as fertile ground for both petty corruption and "grand state capture," and examines the role of network relationships in facilitating corrupt activity. The characteristics of network relationships are examined to ascertain the aspects of group or network relationships that are conducive to corrupt activity. The case of Klong Darn wastewater treatment is used to illustrate the pattern of patron-client networks that can affect a government project. The institutional and legal framework in Thailand is also briefly explored, and possible measures to alleviate current problems are considered. The chapter argues that although procurement regulations are clear and seemingly strict, loopholes can be found that allow patron–client networks to engage in wrongdoing with impunity, to the detriment of Thailand's development. Blatant violations also occurred as network members believed that they were "protected" by their network relationships.

S. Khoman (✉)
National Anti-Corruption Commission, Nonthaburi, Thailand
e-mail: siri.nacc@gmail.com

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The Nature of Network Relationships

A network may be regarded as a set of contracts, which can be loose or tight, formal or informal, that establishes internal rules of exchange and cooperation. In some cases, the set of contracts gives the group a collective identity vis a vis others and replaces individual identity in transactions. An organization, or clan, is thus a set of contracts and rules defining roles and establishing their relationships within the network. Individuals play defined roles, perhaps negotiate mobility within the network, or leave them. Investment in identity takes place in the selection for roles, and in the process by which individuals select the organization/clan that they join. This network may start out from being an innocuous social network where members assist each other with some kind of reciprocity established as the norm. However, it can be transformed into a patron–client relationship, paving the way to formation of more pernicious networks, whereby the patron provides resources and protection to the clients who, in return, provide services, rent collection, and other forms of support to the patron, including facilitating corrupt acts.

Since there are many competing networks of patrons and clients, each patron needs to accumulate resources to feed the needs of the clan. Corruption then becomes a method to accomplish this task and allows the network to accumulate funds and attract numbers to compete successfully against other clans. Members recruited into the corruption ring may actually not be aware of the ring in the beginning. But the cost of leaving the network becomes prohibitive and the option of moving to another network may not be available due to the mutual distrust and possible hostility between clans/networks. Trust may imply confidence, but not certainty (Rose-Ackermann 2001, p. 1), and therefore network members also need to constantly "prove themselves" to remain a member as well.

In the broadest sense, a transaction consists of activities or transfers of property rights by or between at least two individuals or groups. All individuals engage in two kinds of transactions: personal (where identity dominates) and impersonal (where identity is subsumed). In petty corruption, such as extortion of motorists by traffic police, or bribery for queue-skipping, identity is not important, and suppression of identity may even be desirable. But in certain forms of illegal transactions, especially corrupt transactions that take on the nature of conspiracies, the identity of the people engaged in a transaction is vital. Some transactions can take place only between mutually or unilaterally identified parties, and many corrupt practices of significance fall under this category. Parties in an identified relationship invest resources that are specific to that relationship in order to save transactions costs. And there are economies of scale related to these "set-up" costs. This facilitates activity between them and leads to a concentration of exchange between the same parties. Ben-Porath (1980) calls this "specialization by identity," and patron–client relationships are repeated relationships of exchange between specific patrons and their clients (Khan 1998).

Where do network members come from? In order to set up a successful corruption ring, several dimensions in terms of member characteristics are important.

There is a built-in bias in favor of homogeneity in terms of some dimensions but heterogeneity in terms of others. Family and close friends may be the first choice for recruitment due to existing ties. This first ring of relationships will then recruit others. Routine actions that do not require a great deal of expertise, such as hiding documents or engaging in protest rallies, favors homogeneity—working with the same people. However, when purchasing sophisticated equipment, trust in friends or relatives cannot compete with the technical know-how of a specialist. Thus, it becomes necessary to recruit technical expertise and business associates as well.

With differences in the importance of identity in various transactions and in the specificity of investment in identity to certain activities, people will be organized in small clusters for some purposes and large ones for others, and these groupings may intersect for different purposes (Ben-Porath 1980). Parties who have already invested specifically in each other are in a short-run position of bilateral monopoly. If the self-enforcement mechanism is imperfect, trust, or fear, or violence and intimidation, or the threat thereof, becomes more important. In Thailand, there is a common saying that defines six different groups of people that comprise a network (especially a corrupt network): family members, school friends or disciples, financial contributors, obsequious followers, marriage ties, and competent specialists. These clan or group members therefore cut across the usual socioeconomic dimensions such as income class or occupation. Understanding group membership allows us to see that not all conflict situations are "class struggles." References to "Arab Spring" and inequalities (that exist and persist in most societies) completely miss the mark in analyzing Thailand's current political situation.

In present-day Thailand, it can be seen that political networks are defined by their head. The head of the network serves as director for communication, trust, and redistribution, and reduces the transaction costs within the network by reducing the need for bilateral relationships. The pairwise investment of each member with the center links him to all the others. In his theory of social interaction, Becker (1974) shows why a central figure who cares, or appears to care, can generate optimal behavior for the group from the others, even if the head is an egoist. When the head is absent, miscommunication often occurs, or miscommunication can be blamed for unpopular deeds by the network. The difficulty is to distinguish between the truly benevolent head and the self-serving one (Khoman 2012). A corruption ring can be represented in Fig. 1, where layers of patrons and clients direct the flow of resources.

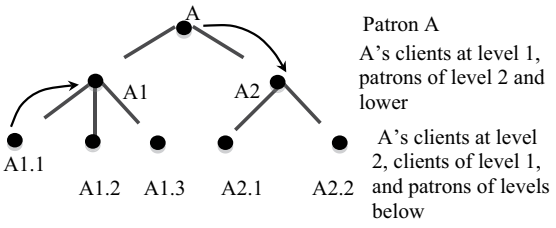

Fig. 1 Typical patron–client structure. (Source: Khoman et al. (2010))

From Fig. 1, Patron A is the ultimate power of the clan. Below Patron A are the clients shown by nodes connected to Patron A with dashed lines. For simplicity, this patron is shown to have two clients at level 1, labeled A1 and A2. Below each level-1 client, there may be many layers of clients that propagate downward. The patron in this clan could also serve as a client of yet another larger patron–client structure located higher up.

Members in the same clan relate to each other in two ways, vertically and horizontally, the former in cooperative exchange and the latter sometimes in the form of rivalry. The patron is expected to provide vital resources that the client needs. In Thailand, the patron may provide land to the client for cultivation, give loans for emergency use, settle conflicts with other clients within the clan, provide protection against threats from other clans, promote the client to a higher position in the clan, and/or ensure that clients receive government procurement contracts. The solid arrow in Fig. 1 represents the flow of resources or protection provided by the patron.

In return for the patron's support, the client has the duty to serve the immediate patron, and those located in higher positions, in whatever tasks the patron may assign. If procurement contracts are obtained, usually at inflated prices, then kickbacks are paid up the hierarchy. The dashed arrow in Fig. 1 shows the flow of returns from the client to the patron. The returns could take the form of simple labor (such as pouring drinks, carrying suitcases), or bodyguards. Or it could be a supporting role against other clans, beating up the patron's enemies, rallying people to support the patron's political ambitions, protesting against unfavorable court decisions, and extracting economic rent from awarded contracts for the patron. The resources could consist of monetary support or member count. Thai political parties always consist of many factions, or subclans, in which the leader of that faction acts as the patron. If the leader of the faction manages to bring in sufficiently large numbers of elected MPs under his wing, he is entitled to become a minister in a grade A ministry, such as the Ministry of Transportation, which commands a large government budget. He would also have the right to nominate members under his wing to be appointed as ministers in grade B or C ministries, or as deputy ministers in grade A ministries.

Due to this quid pro quo, members of the group evaluate actions or policies as being beneficial or detrimental to the group or subgroup's interests, and to a large extent, political loyalties are based on the identity of the leader. Therefore, for the most part, it is not ideological persuasion, but the identity of individual politicians that determine political structures.

Although members of a clan tend to work cooperatively in the vertical hierarchy, there is often rivalry when they deal with members at the same client level. Many examples can be found in Thai political parties where leaders of factions try to outperform each other in terms of getting more members of parliament under his or her wing. The leader of that faction is then entitled to a cabinet position. And there is of course rivalry between clans, which accounts for why some long-running projects do not get implemented. The plans for a new international airport, for example, were laid down 30 years before construction finally commenced. And a large number of procurement cases connected with the new international airport are currently being investigated.

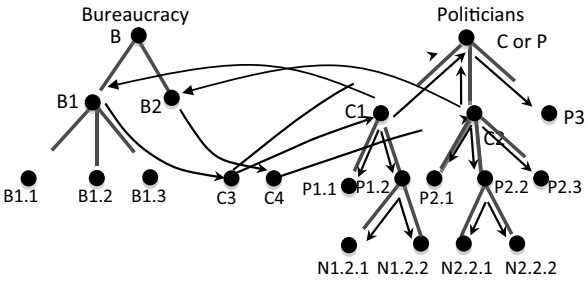

Fig. 2 Flows within patron–client networks in Thailand notes. *B* bureaucracy, *C* capitalists, *P* politicians, *N* nonpoliticians. (Source: Khoman et al. 2010)

The patron-client network in Thailand can be represented by Fig. 2. The bureaucracy (B) is represented on the left, while the network of politicians (P) is depicted on the right. The capitalists (C) refer to big businesses, while the nonpoliticians (N) include small businesses as well as nongovernmental organizations (NGOs), and other social or lobbying groups. Solid arrows show the flows of the benefits from C1 to B1 and C2 to B2. The capitalists who act as the patrons of the subclans, kick back some of their corrupt benefits to the bureaucracy who originally facilitated the special licenses, concessions, and procurement projects. The patrons of the subclan and the nonpolitician capitalists also need to provide the political and financial support to the highest patron who is either a politician or a capitalist turned politician. Thus, government procurement is a vehicle for corrupt enrichment.

A large number of businessmen made fortunes by receiving favored subsidies, licenses, and concessions from the patron–client network three-way interaction among politicians, the bureaucracy and business, shown by the solid arrows pointing from B1 and B2 to C3 and C4.

One somewhat unique point about the patron–client network in Thailand is that capitalists often place themselves high up or at the top of the network, rather than merely content themselves with influencing policy. In fact, the share of businessmen in Thailand's parliament is the highest in the region (Sidel 1996). A recent trend was the movement of many capitalists, formerly located at high client levels, to become the highest patron of the political party or the faction leader. Many leaders of Thai political parties are businessmen and tycoons.

The Case: The Klong Darn Wastewater Treatment Project

The Klong Darn wastewater treatment project illustrates how strategically placed parties can allow wrongdoing to occur with impunity. In November 1995, the Asian Development Bank (ADB) approved a US$ 150 million loan to support the Thai government's Pollution Control Department (PCD) in establishing systems to manage wastewater discharged by factories and residents in the Bangkok metropolitan area, including the adjacent Samut Prakarn Province. The initial plan was to build two separate treatment plants close to the main pollution sources, consisting of about 5000 factories. However, by the time the ADB approved an additional

loan of US$ 80 million, the project site had been relocated some 20 km away to Klong Darn, situated toward the eastern edge of Samut Prakarn province. A new plan was devised to build a single very centralized plant, one of the largest wastewater treatment plants in Southeast Asia at the time, to process 525,000 cm^3 a day of wastewater with heavy metals and hazardous waste. The rationale that was offered to the Cabinet was that a single plant would be more economical than two separate plants. It turned out, however, that even though the rationale for re-location was to save cost, the Cabinet approved an increase in the budget for the project. Japan's International Cooperation Agency (JICA) cofinanced the project with an additional US$ 50 million loan. After the site change, the total cost of the project more than doubled to US$ 687 million.

Klong Darn villagers came to know about the project after the construction had started. In late 1998, they saw a sign put up by a joint venture (JV) construction company, in front of the wastewater management facility. They were surprised to learn that a huge wastewater treatment plant was already under construction in their neighborhood. Apart from the total lack of information disclosure to and meaningful participation of the local community, stakeholders were able to point out the following major flaws with the project:

- The plant was not equipped to properly treat heavy metals and hazardous waste. They would be discharged into the sea and would destroy local fishing activities.
- The plant was built on soft soil along the coast and would be impacted by flooding and erosion.
- An environmental impact assessment (EIA) was not conducted in Klong Darn.
- The project site included public land, such as canals, which could not be for sale. The land for the plant, approximately 1900 "rai" (1 "rai" is equal to 1600 m^2), was sold at a price much higher than the official price.

The land for this new site belonged to a local politician, and suspicions were raised about whether this could account for the sudden change in the project site. In addition, the transport of waste from the source or pollution, through a long and winding pipeline for some 20 km, was not technically sound.

On January 13, 2004, PCD filed charges against 19 private firms and individuals in the Thai criminal court, including Vatana Asavahame, a former Deputy Minister of Interior for having illegally obtained title deeds to the project site land and sold it to PCD at an inflated price. In March 2004, the land department revoked the deeds to the land of 1358 "rais." This invalidated the government's contract with the JV. On 14 June 2007, the NACC concluded that nine government officials, including Vatana, had been involved in illegal land deed acquisition and forwarded the case to the Supreme Court's Criminal Division for holders of political positions. By that time Vatana had fled Thailand, but the court ruled that he was guilty of bribing and/or coercing officials in the land grab connected with the project and sentenced him in absentia to 10 years in prison.[1]This part of the case shows the connection between

[1] See http://www.mekongwatch.org/english/country/thailand/MW_SMBrief(2010.02.27).pdf. Another case involving land is that of Somchai Khunpleum, a Chon Buri godfather with powerful political connections, wanted in a local land-conflict case. He has since been arrested.

the minister and collaborators in the land department who were involved in issuing the illegal land deeds.

But the case is far from over. The laws in place at the time of project include:

- OPM Regulations B.E.2535 (1992) (for procurement)
- Environmental Protection Law B.E. 2537 (1994)
- Public land designations

Other laws that were enacted include the Act on Offences Relating to the Submission of Bids to State Agencies B.E. 2542 (1999). In addition, there are various cabinet resolutions that authorize certain actions. An interesting question is whether these laws, regulations, and resolutions were violated, or whether there are loopholes that need to be examined. The issues involved in this case are illustrated in Fig. 3.1. The case can be broken down into the following main issues:

- Project approval
- Cabinet decision
- Award of contract
- Land purchase and acquisition

Each of these issues involves connected individuals playing a key role in defrauding government agencies, with complicity from government agents. First, the project approval issue. Other similar projects were being launched, such as the wastewater treatment system proposed by the Department of Industrial Factories in 1991 and the wastewater and garbage treatment project by the Department of Public Works and City Planning (1992–1994). In addition, there is the question of why it was necessary to submit the project as a "turnkey" project. Turnkey projects are supposed to be those that are technologically sophisticated beyond the ability of the technicians in the proposing department to design, and thus the design phase is incorporated into the project, in the form of "design-build" projects. Questions have arisen regarding the relative simplicity and standardized technology that could have been handled by the government department, rather than left in the hands of the contractor, who was then responsible not only for construction but also design and land acquisition.

Then the cabinet resolution was distorted to allow the relocation of the project. Irregularities were also found in the bidding process. Once the project was changed to a single wastewater treatment plant, the second bidder withdrew because of inability to acquire the necessary land. According to regulations, the tender process should have been restarted, but this was not done. In addition, when the main partner in the winning consortium withdrew, this was not reported, leading to annulment of the contract.

In the case of the land purchase, land department officials who courageously refused to issue falsified land deeds were transferred to the southernmost volatile provinces. The minister who ordered the transfer, Vattana Asawahame, was convicted of administrative misconduct, and the officials transferred back to Bangkok. Thus integrity played a key role in convicting the minister.

Brief Chronology

1986 Asian Development Bank (ADB) provides funds to the Office of National Environment Board[2] to survey options to manage industrial waste water (treatment and control) in Samut Prakarn province.

1991 Department of Industrial Works started to implement the project to build waste water treatment plants, as authorized by the cabinet resolution on July 2, 1991 in Pra Pradaeng district and Pra Samut district on the west bank of the Chao Phraya River. The budget was approved for purchase of land in 1994.

1993 ADB approves another US$ 350,000 to develop a waste water treatment system in Samut Prakarn province and undertake a feasibility study under the Environment Rehabilitation Project (ERP).

1993 ADB approves another grant of US$ 600,000 to the Pollution Control Department (PCD), Ministry of Natural Resources and Environment, to conduct a feasibility study and preliminary design for waste water treatment under the project "Wastewater Management and Pollution Control in Samut Prakarn" to manage wastewater in the pollution control zone of Samut Prakarn. ADB also assisted the PCD in preparing bidding documents and selection of contractor in the design of wastewater treatment.

1993 The National Environment Board (NEB), at a meeting on December 15 (#6/2536), designated Samut Prakarn province as a "pollution control" province, directing the provincial authority of Samut Prakarn (under the Ministry of Internal Affairs) to coordinate with the PCD in drawing up an action plan to manage environmental quality at the provincial level (including an action plan to reduce and eliminate pollution in the pollution control area), designating the PCD as the agency to carry out the action plan. Later NEB announcement No. 9 B.E. 2537 (1994) officially declared Samut Prakarn as a pollution control province, with effect from December 15, 1993. This declaration is significant in that regulations regarding pollution control and pollution-control projects would now apply.

1994 ADB hired Montgomery-Watson Asia together with a local engineering consulting company, Southeast Asia Technology Company (SEATEC) to conduct the feasibility and design. A seminar was convened on December 16 involving the Ministry of Science and Technology and Environment, the PCD, the ADB, and representatives from provincial agencies in Samut Prakarn.

[2] The National Environment Board is a high-level body set up under the Enhancement and Conservation of National Environmental Quality Act B.E. 2535 (1992), consisting of the Prime Minister as the Chair, a designated Deputy Prime Minister as the First Vice Chair, the Minister of Natural Resources and Environment as the Second Vice Chair, and 8 committee members consisting of Ministers in related Ministries including qualified specialists, with the Permanent Secretary of the Ministry of Natural Resources and Environment as Secretary. The duties are to consider policies, plans, and measures regarding the management of the nation's natural resources and the environment.

February 28 Toward the final stages of the feasibility study, a seminar was convened to discuss the findings.

March Montgomery-Watson Asia et al. submitted their final report detailing 13 options for wastewater treatment, proposing two plants (aerated lagoon) as the best long-run option in terms of cost-saving and minimal risks: one on the east bank emitting treated water into the sea, and one on the west bank, emitting into a canal. The proposed plants were at Bangpu-mai on 1550 rai of land on the east bank, and at Klong Bangplakod on 35 rai on the west bank (1 rai = 0.40 acres or 0.16 ha or 1600 m^2).

The report also found that the soft soil conditions in Klong Darn would be an obstacle to engineering and construction. In addition, the lowland nature at Klong Darn was subject to flooding of seawater, and therefore the site was not appropriate.

It was also recommended that one of the causes of delay in construction projects in Thailand, was the problem related to land acquisition. Thus during the feasibility study, it was recommended that a committee should be set up to deal with land acquisition, and that the consulting company should assist this committee in acquiring the land, studying its suitability, negotiating its price, and purchasing the land for the project.

Eight contracts were to be executed, complying with the procurement guidelines of the ADB: four construction contracts and four materials and equipment contracts. The cost estimates for construction were 9.14 billion Baht and 2.185 billion Baht for the east and west banks respectively, totaling 11.325 billion Baht.

1995 June 14 the PCD submitted the report to the NEB meeting (#6/2538). The Board concluded that there was an urgent need to address the wastewater problem in Samut Prakarn, but there needs to be control on land use so that the wastewater problem does not spread beyond the project site. The Board also made the following observations: (1) the running cost of 580 million Baht should be checked; (2) the project needs to be discussed with the public through community leaders, to promote understanding regarding the benefits of the project, and to ensure willingness to pay, since this is the first project that involves fees for wastewater treatment; (3) before submitting to the cabinet, a projected cash flow should be undertaken, with input from the Budget Bureau and the Ministry of Finance, as loans from OECF (Overseas Economic Cooperation Fund, the implementing agency for loan aid furnished by the Japanese government) will have to be considered.

At this meeting, Suwat Liptapanlop (Minister of Science, Technology and Environment) as second Vice-Chair of the Board, Pakit Kiravanich (director-general of PCD) and Sirithan Pairojboribul (deputy director-general of PCD) were in attendance.

1992–1994	The Department of Public Works (DPW) under the Ministry of Interior studies the wastewater treatment system in Samut Prakarn. Cabinet resolution on June 28, 1994 authorizes the DPW to tackle the wastewater problem, and is allocated 3.8 million Baht for the study. In 1994 the DPW's study recommends construction of 3 wastewater treatment plants at Samrong, Poojaosamingprai, and Klong Plakod.
1994 November 8	a Cabinet resolution approves DPW's project to deal with wastewater and garbage in Samut Prakarn.
1995 June 19	Suwat Liptapanlop (Minister of Science, Technology and Environment: MOSTE) sends a letter (WW0302/9228) proposing the project to the cabinet with 5 contracts, namely: (1) A turnkey contract to design and build a wastewater treatment plant on the east bank, with a budget of 10.148 billion Baht through international competitive bidding. It was advanced that the turnkey nature would reduce the implementation time by 1.5–2 years as the need for re-bidding to construct would be avoided. This turnkey contract would include land acquisition as well (2) A turnkey contract to design and build a wastewater treatment plant on the east bank, with a budget of 2.724 billion Baht under the same conditions as the east bank; (3) A project monitoring contract for both systems with a budget of 269 million Baht, with selection of engineering firm through international competitive bidding; (4) Contract for procurement of equipment to monitor the quality of treated water, both permanent and mobile systems, with a budget of 148 million Baht; (5) Knowledge transfer contract regarding prevention of industrial waste and environmentally friendly technology, with a budget of 323 million Baht, to be awarded to skilled architectural or engineering consultants. Total budget: 13.612 billion Baht. The cabinet wanted greater coordination among the agencies, and asked the Public Works Department, Ministry of Industry, and the Department of Pollution Control to coordinate, and the Budget Bureau for an opinion.
1995	Change of government on July 13. Banharn Silpa-archa becomes Prime Minister. Yingphan Manasikarn becomes Minster of MOSTE, Pakit Kirawanit is director-general of DPC and resubmits the project for cabinet consideration on October 17, 1995. Opinions sought from five agencies (National Economic and Social Planning Board (NESDB), Ministry of Industry, Ministry of Interior, Ministry of Finance, and Budget Bureau) caused the cabinet to issue instructions to the PCD on October 17 to take into account of these considerations and approve the project in principle.

1995	PCD hires Sinthu-Montgomery-Watson to prepare an implementation plan, taking into account the Cabinet's instructions, and prepare prequalification documents and short listing criteria, bid documents, and terms of reference.
1996 January	Tender committee appointed, tender period announced, closing date being January 15. Submissions were received from 13 companies, including NVPSKG group consisting of Northwest Water International (NWWI), Vichiphan Construction (V), Prayoonwit Engineering (P), Sisang Construction (S), Krungthon Engineering (K), and Gateway Development (D). The tender document of NVPSKG submitted financial data of the UK company, North West Water Group (NWWG), together with qualifications and experience record of NWWG of over 100 years.
May 15	4 submissions selected out of 13.
June 7	sale of bidding documents
August 30	Pakit (director-general of PCD) informs bidders that the treatment plants can be collapsed into one plant.
October 7	only two bidders remain: NVPSKG and Marubeni.
December 6	AMS consulting company proposed one combined plant. Pakit informers bidders to collapse the plants into one and submits request to increase the budget.
December 9	Contract to hire AMS signed.
1997 January 20	NVPSKG alone submits bid.
February 17	NEB approves increase in budget and one site.
March 25	submitted to cabinet for acknowledgement. Cabinet acknowledged the proposal to change the location from the six areas on the east and west banks, and have wastewater pumped by tunnel to Kong Darn, and an increase in the budget. With only one bidder remaining, the DPC was to negotiate the cost down from 26.52 to 22.955 billion Baht.
July 28	NWWI informs NVPSKG of unwillingness to sign the contract, and cancels power of attorney to NVPSKG.
August 20	PCD signs contract with NVPSKG (including NWWI), and 1.9566 billion Baht paid to NVPSKG. NEB informs PCD that documents from the local administration allowing use of land for 50 years and public hearing are missing. False documents are then submitted to NEB.
September 1	NWWI cancels contract with NVPSKG.
1998 May 25	Sirithan approves replacement of NWWI with OPCO, a company set up by NVPSKG, without cabinet approval.
2002	Government inquiry into the project.
2003 February 24	Government orders cessation of construction due to invalidity of contract.

September 5	NPVSKG appeals to Arbitration Tribunal, claiming 6.2 million Baht plus interest, in damages.
2008 August 18	Court orders the invalidation of land deeds to five plots of land due to falsification, and sentences Wattana Asawahame to prison according to Article 148 of the criminal code. 2009 Case 254/2547 Department of Pollution Control against NPVSKG, Dusit Court rules against 18 defendants (including Wattana Asawahame) and sentences them to 3 years imprisonment according to Article 341 and fine of 6000 Baht for each company involved.
2011 December 6	National Anti-Corruption Commission finds 19 accused persons (including Wattana Asawahame and Yingphan Manasikan) culpable.

Chronology of the Klong Darn Land Purchase

1960	Contract for land SK.1 Number180/98 sale of 37.3 rai for 200 Baht per rai.
1974	Sale contract for 6578 Baht per rai.
1988	Lanthong Mining Company with Wattana Asawahame as the major shareholder buys land at Moo 11, Klong Darn at 20,000 Baht per rai, and sold it to Palm Beach development (owned by Wattana Asawahame, Somsak Thepsuthin, and Preecha Laohapongchana) at 100,000 Baht per rai. In addition SK.1 and NS.3 land was acquired, totaling 20,000 rai was acquired, including a public waterway.
1994	Palm Beach development sells the land to Klong Darn marine and fishery (connected company).
1998	PCD buys 1,900 rai of land from Klong Darn marine and fishery for 1.9566 billion Baht (or more than 1 million Baht per rai).

Lessons Learned

It can be seen from the above case that some corrupt acts were in direct violation of rules and regulations, but others take advantage of legal and administrative loopholes, and also the judicial process. What can be done to reduce connected dealings and improve procurement in Thailand?

To counter corruption networks, it is important to note that certain types of social action, even if effective, change the types of connections created, but do not necessarily reduce their number or importance. The threat of punitive social action on certain transactions induces connections of mutual dependence within the net-

work at different stages. High penalties on crimes in general increase the mutual dependence of the criminals, but not necessarily their number, if the network is strong.

The difficulty with network relationships and social capital is that it can benefit or harm society. Close-knit, trusting criminal groups may create networks based on a mixture of empathy, threats, and shared goals that negate law enforcement efforts. And trust among law enforcers facilitates processing of cases. But trust motivated by moral values, such as respect, even when extended altruistically, can mitigate against effective law enforcement. Both kinds of organizations can exhibit interpersonal solidarity, reinforced as in repeated a prisoners dilemma game, can create benefit or harm, and a critical mass of desirable networks needs to be created because people are affected by their perception of what others are doing (Fehr and Gächter 2000).

What is perhaps alarming in Thailand is that harmful networks are being created and perpetuated. Massive proceeds of corruption can be used to mobilize supporters to protest court verdicts, indictments, and anticorruption efforts. Network members show solidarity with the group or network leader, whatever the issue, by their readiness to protest, block roads, put up barricades, and even openly threaten the lives of judges and their families. The creation of networks is grafted on the "democratic" machinery, and right and wrong becomes a popularity context.

What complicates the situation further is that sometimes assistance given to particular persons or failing to act against certain persons does not have any corrupt intent or even expectation of reciprocity. A person's good reputation, or affiliation, or being sons or daughters of a respected person can cause people to act in their favor without any personal gain. Deference to an "institution" can assume priority. For example, Thais often advise children to respect "the monk's cloth" and ignore the individual monk's behavior.

Accusations of "double standards" float around everyday. The question on many people's minds though is whether "good" people should allow themselves to be punished, knowing that the "bad" people would get off scot-free because of their connections? There are a few examples of "good people" resigning when faced with corruption charges; the really corrupt however cling on to their positions tenaciously. Both good and bad people have connections. "Everybody knows everybody" and are related to everybody, and this is the key to Thailand's political turmoil. Even among uncorrupt academics, when suspicions arise concerning "someone known for a long time" they would refuse cooperation even when they know the facts. Both the Thai word "khon gun eng" and Chinese word "kaki nung" are often evoked. It can be seen that interpersonal relationships play an important role in every aspect of life, including securing procurement contracts.

The returns to corrupt acts depend on how diffused corruption is in society, that is, how much corruption is inherited from the past. The larger the share of corrupt agents, the higher the returns to corruption, because of several reasons. First, with widespread corruption in society, the task of auditing corrupt officials is not easy. Second the expected profitability of corruption from an individual point of view is a positive function of the degree to which a society as a whole is corrupt (Andvig and Moene 1990). Third, corrupt officials have an incentive to establish communication

or networking among themselves and will fuel the corruption ring (Sah 1988). In addition, in societies where rent-seeking and bribery abound, the return to rent-seeking relative to entrepreneurship is high (Murphy et al. 1991, 1993; Acemoglu 1995). Last, when corruption is widespread, individuals may be discouraged from trying to fight it, even if everybody would be better off if corruption were eliminated.

To tackle corruption in procurement, reform or measures are needed in the following areas: (i) legal infrastructure, (ii) corrupt-friendly economic policies, (iii) upgrading of the database, and (iv) social mobilization for enhanced transparency. This chapter also argues that membership in international conventions, such as the World Trade Organization's Government Procurement Agreement (WTO-GPA) could serve as a tool to help alleviate current problems.

Improving the Legal Infrastructure

The legal infrastructure needs to be reformed in many ways, and only a few key points are made here. First, even though Thai procurement regulations emphasize openness and transparency as the main principles, many improvements can be made. In terms of openness and transparency, announcements and dissemination of information through the Public Relations Department, Mass Communication Organization of Thailand, the G-Procurement website, etc., are required. Procurement committees have to be formed, often with citizen participation. Contracts worth more than 1 million baht have to be sent to the office of the Auditor-General and Revenue Department within 30 days of signing. Regulations for e-procurement also include additional criteria: value for money, transparency, efficiency and effectiveness, and accountability and responsibility for completion. At least three tenderers (in the case of standards license or meeting quality control systems) are required. However, cabinet decisions are only placed on the OPM website in very brief form. Many cases that have led to corruption cases were approved by cabinet decisions, and more detailed disclosure should be required.

Second, the technical specifications allow what is called "locking of specifications," in order to favor certain suppliers. The dilemma is how to specify enough detail so as to verify suitability and at the same time avoid such specificity that includes/excludes suppliers, particularly for complex, sophisticated procurement that needs customized designs. Often the suppliers themselves are consulted for the expert knowledge. Under the WTO-GPA Article X Technical Specifications and Tender Documentation, it is required that:

> A procuring entity shall not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific procurement from a person that may have a commercial interest in the procurement.

There are similar provisions in Thailand, but enforcement is a problem, especially with projects involving very advanced technology, where the suppliers themselves are often informally invited to write the specifications.

> GPA's Article X is particularly interesting in stating that:
> In prescribing the technical specifications for the goods or services being procured, a procuring entity shall, where appropriate:
>
> a. Specify the technical specification in terms of performance and functional requirements, rather than design or descriptive characteristics.

The *functional requirements* are not specified in Thai regulations, and technical specifications are invariably related to physical characteristics. This is an area that could be the focus of reform in Thailand, and would require nationwide training of procurement officers.

In terms of the legal infrastructure, it is also necessary to coordinate various law-proposing channels. The "Cleansing Act" of 2007, for example, allowed criminal proceedings against defendants indicted for procurement corruption to be dropped.

The NACC recently amended the Anti-Corruption Law that allows it to closely monitor large procurement projects, and requires procuring agencies to publish and explain how the reference prices are calculated. Whistle-blowing protection has also been introduced. In addition, a new integrity index has been constructed to evaluate all government agencies at the departmental level. The index features a procurement component that gives marks for proper procedure and transparency in procurement.

Targeting Corruption-Friendly Economic Policies

At the present time, the National Anti-Corruption Commission is playing an increasingly proactive role in scrutinizing economic policies and measures that open up opportunities for corruption. Several preemptive interventions have been made, such as in the case of the scheme to procure 4000 natural-gas operated city buses, and the auction of 3-G telecommunications licenses, that have had the effect of subjecting the projects to greater scrutiny. The Cabinet, for example, asked the proposers of the bus scheme to withdraw the project in order to conduct further studies in the areas indicated by the NACC technical committee, when the project was submitted for cabinet approval in 2009 and 2010.

Reform is also needed in areas such as the intervention schemes in the agricultural sector. At the behest of the NACC, reform in this area had been beginning. But the new government in 2011 seems to be bringing back some of the old risky policies.

Upgrading of the Database

Proactive approaches to countering corrupt networks require knowing the identity of the network members. Efforts are currently underway to improve the anticorruption database, with linkages to information from financial institutions, the land department, vehicle registry, business ownership, and tax returns.

Nongovernment groups are also collecting information and analyzing the behavior of elected officials. For the election in 2011, a civil society group collected information on members of parliament who were absent from parliamentary meetings, and distributed copies of each member's "report card." However, in spite of the dismal scores given to the MPs that failed to attend any parliamentary sessions or were absent for more than 50 % of the time, they were all reelected.

Increased Social Mobilization for Enhanced Transparency

Transparency of procurement information is vital to prevent wrongdoing. The Thai OPM regulations actually do require publication of information. For complaint and appeal procedures, the OPM regulations state that aggrieved suppliers or contractors may lodge complaints directly with the procuring agency, the PMO's Committee in Charge of Procurement, or the Petition Council. In the case of the Petition Council, the petitioner must lodge the complaint within 90 days of knowledge of wrongdoing. The council will then consider the petition "without delay," and remedial measure(s) (if any) will be recommended within 7 days to the prime minister. Remedy might include overturning the act that is inconsistent with the law, or that cannot be supported by "justifiable reason." It is also possible for an interim remedy to be issued by the council itself when appropriate.

However, transparency remains a problem, and efforts are needed to mobilize stakeholders in society. This sounds like a broken record, but the means of mobilization itself has to be overhauled, so that some benefits can be obtained from citizen involvement that would make it worth their while. The Klong Dan case of citizen involvement is a rare "success story." With network connections and the possibility of retaliation, Thailand is still grappling with the means to mobilize and incentivize citizens in the fight against procurement corruption.

Sirilaksana Khoman et al. (2009) and Somkiat Tangkitvanich et al. (2009) propose that the GPA could be a tool to increase transparency in Thailand's government procurement. Membership could possibly lead to greater transparency, more efficient use of government budget as it would stimulate fair competition, help honest and efficient suppliers, and may foster industrial growth and development. Greater foreign involvement and competition can thus help to uncover wrongdoing. However, there is some apprehension about becoming a member of the GPA. First opportunities for Thai suppliers to access GPA member procurement markets remain limited, while domestic suppliers will face stiffer competition. On the other hand, foreign competition may result in difficulties for domestic suppliers in certain sec-

tors. This is the familiar "infant industry" argument that has both pros and cons. If long-run efficiency is the goal, then gradual expansion of competition may help to attain that objective. Second, there is some concern that opening up may or may not lead to greater competition and efficiency, if it leads to international collusion. Finally, if foreign governments subsidize their service sectors, particularly construction, the GPA does not have any provision for countervailing action or remedy, unlike the case of subsidies under World Trade Organization's General Agreement on Tariffs and Trade (Khoman et al. 2009).

Conclusion

In a society dominated by interpersonal relationships, for social, business, as well as other activity, understanding these relationships is the key to understanding corrupt activity. Networks cut across the usual socioeconomic characteristics because members of different skills and characteristics are required for a corrupt network to be effective. There are also the various difficulties involved in designing a procurement system. First, government procurement usually involves multiple objectives, with efficiency being just one of them. Often procurement is used as a means to effect a geographical redistribution of income, or to favor underprivileged groups such as the disabled. It is also difficult to design a system that aligns with personal incentives with public benefit, as the same observed behavior could be motivated by opposite motives. Strict conformity to rules sometimes results in less efficiency; the "special method" could reflect a sinister motive or a desire to be efficient; the lowest price may involve sacrifice of quality, and detailed specifications could limit competition.

At the societal level, social enforcement of private contracts, ready access to adjudication, morality, and religious pressure for generalized honesty (in contrast to "contextual morality") cannot be overlooked. These elements all tend to reduce the importance of identity, to facilitate transactions between strangers, and to reduce the need for specific mutual investment by connected parties. But procurement also needs to be accompanied by effective monitoring systems (e.g., corruption report, witness protection, etc.) and sufficiently stringent penalties for the wrongdoers and conspirators. The larger the network of corruption rings, the larger the returns to corrupt acts. The creation of networks of clean officials up to a certain critical mass is absolutely vital to counter the corrupt networks. The fight against corruption is most effective when preventive, punitive, and educational measures are combined, and public involvement encouraged, as the case of Klong Darn shows. Most will agree that education is central to preventing corruption. And one way is to illustrate through cases and engagement of external stakeholders, so that value-driven reforms will be based on actual vulnerabilities.

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Sirilaksana Khoman PhD is the Chair in the Economic Sector Corruption Prevention, National Anti-Corruption Commission, Thailand. She was formerly Dean of the Faculty of Economics, Thammasat University. Her research interests include public policy and the economics of corruption.