

**FOURTEENTH REGIONAL SEMINAR ON GOOD  
GOVERNANCE FOR SOUTHEAST ASIAN COUNTRIES**

**INTEGRITY AND INDEPENDENCE  
OF JUDGES, PROSECUTORS  
AND LAW ENFORCEMENT OFFICIALS**

**Hosted by UNAFEI  
23-24 March 2021, Tokyo, Japan (Online)**

**UNAFEI**

**UNITED NATIONS ASIA AND FAR EAST INSTITUTE  
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The views expressed in this publication are those of the respective presenters and authors only, and do not necessarily reflect the views or policies of UNAFEI, the Government of Japan, or other organizations to which those persons belong.

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## FOREWORD

It is my great pleasure and privilege to present this report of the Fourteenth Regional Seminar on Good Governance for Southeast Asian Countries, which was held in Tokyo, Japan, from 23–24 March 2021. Due to the Covid-19 pandemic, the Good Governance Seminar was held online for the first time.

The main theme of the Seminar was *Integrity and Independence of Judges, Prosecutors and Law Enforcement Officials*. The Seminar was attended by a visiting expert from the Independent Commission Against Corruption (ICAC), Hong Kong, China, and 14 criminal justice practitioners from the countries of Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, the Philippines, Singapore, Thailand and Timor-Leste.

Corruption is a complex social, political and economic phenomenon that affects all countries. Corruption undermines democratic institutions, slows economic development and contributes to governmental instability. As with other regions in the world, the fight against corruption in Southeast Asian countries has taken on an international dimension. The main theme of the Fourteenth Seminar focused on providing updates on the latest anti-corruption measures and corruption-related trends across Southeast Asia.

The Seminar addressed the importance of integrity and independence of criminal justice officials in preserving the rule of law and considered the role of codes of conduct, financial disclosures, appointment procedures and so on in establishing and maintaining integrity and independence. The participants exchanged knowledge, experiences, effective strategies and best practices, and the Chair's Summary, published in this report, details the key conclusions and recommendations of the Seminar. In addition, the Seminar enabled the participants to develop personal and professional contacts between anti-corruption authorities and investigators in Southeast Asia.

It is a pleasure to publish this Report of the Seminar as part of UNAFEI's mission, entrusted to it by the United Nations, to widely disseminate meaningful information on criminal justice policy.

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SETO Takeshi  
Director, UNAFEI  
July 2021



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## **INTRODUCTION**

Opening Remarks by  
Mr. SETO Takeshi  
Director of UNAFEI





## OPENING REMARKS

*SETO Takeshi\**

Distinguished participants, ladies and gentlemen,

It is a great pleasure and privilege for me to announce the opening of the Fourteenth Regional Seminar on Good Governance for Southeast Asian Countries.

We sincerely welcome all of you to this significant forum which is taking place in an online format for the first time in the history of this seminar. Due to the disruptions caused by the current pandemic, we have, very unfortunately, made the difficult decision to postpone all international training courses in Fiscal Year 2020. However, thanks to the advancement of technology, it is our great pleasure to be able to continue to host this seminar despite the pandemic. Some of the target countries have not been able to join the seminar under current situation this year, yet we are delighted that 10 countries, including Japan, are participating in this seminar.

Since 2007, this seminar has been an exceptional opportunity for criminal justice practitioners in Southeast Asian countries to share our experiences in pursuit of the eradication of corruption in this region. The seminar has been co-hosted by UNAFEI and participating countries: it was first held in Thailand, and then the Philippines, Japan, Malaysia, Indonesia, Viet Nam, and last year Japan again.

Over these thirteen years, we have discussed many important issues in anti-corruption legislation and criminal justice practices in this region. This time, in our two-day discussion, we will focus on “Integrity and Independence of Judges, Prosecutors and Law Enforcement Officials”. One of the most important responsibilities of the criminal justice system is to detect corruption and impose appropriate punishment on corrupt politicians and public officials. However, if the criminal justice system, itself, is corrupt, there is no one left to stop the serious risks to democracy and the rule of law. Thus, the integrity of judges, prosecutors and law enforcement officials is essential. At the same time, if decisions are influenced by undue external pressures such as political interference, the rule of law will also be undermined. Thus, the independence of judges, prosecutors and law enforcement officials, which facilitates their impartiality, is also indispensable. For this reason, we find it extremely useful to visit this fundamental topic to share each participating country’s legal frameworks, current situation and best practices on this issue.

In order to deepen our discussion, as a visiting expert, we welcome in this seminar Mr. Lawrence Chung, the Principal International Liaison and Training Officer at the Independent Commission Against Corruption (ICAC) in Hong Kong. I would like to express my sincere appreciation to Mr. Chung for joining us to share his expertise and experiences.

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\* Director, United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI).

To all of the distinguished participants, I would also like to thank you for taking valuable time away from your work to make precious contributions to this seminar. I can assure you that all of us will learn from each other and that will put us further on the path toward eliminating corruption.

In this seminar, UNAFEI has continued its practice of inviting participants from one or two criminal justice organizations from each country. And as I said before, some of these organizations co-hosted previous seminars. I believe this system establishes not only a personal network among participants but also an organizational network.

I look forward to seeing this seminar provide a useful forum to exchange expertise and experience in our common endeavour against corruption, contributing further to the promotion of good governance in Southeast Asia.

Thank you very much for your attention.

## **CHAIR'S SUMMARY**

**FOURTEENTH REGIONAL SEMINAR ON GOOD GOVERNANCE  
FOR SOUTHEAST ASIAN COUNTRIES  
Tokyo, Japan (Online)  
23 – 24 March 2021**

### **OPENING CEREMONY**

1. Mr. SETO Takeshi, Director of the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI), served as the Chair of the Fourteenth Regional Seminar on Good Governance for Southeast Asian Countries, co-hosted by the Ministry of Justice of Japan (MOJ) and UNAFEI. Officials and experts from the following jurisdictions attended the seminar: Brunei Darussalam, Cambodia, Indonesia, Japan, Lao PDR, Malaysia, Philippines, Singapore, Thailand and Timor-Leste.

### **VISITING EXPERT'S LECTURE**

2. MR. LAWRENCE CHUNG, Principal International Liaison and Training Officer, Independent Commission Against Corruption (ICAC), Hong Kong, China, delivered his lecture on the theme of *Independence and Integrity of Judges, Prosecutors and Anti-Corruption Officials: Their Roles in Hong Kong's Fight against Corruption* from the ICAC's perspective. The United Nations Convention against Corruption (UNCAC) reflects the global consensus that independence and integrity are key elements for the eradication of corruption. These international standards have long been adopted in Hong Kong where investigation, prosecution and adjudication of corruption cases are handled by distinct institutions, namely the ICAC, the Department of Justice and the Judiciary. There are multiple levels of safeguards to protect independence and integrity of these institutions. The Basic Law of the Hong Kong Special Administrative Region, the territory's constitutional document, provides the most fundamental constitutional guarantee. Under the Basic Law, the three institutions shall exercise their power free from interference, and ensure people working in these institutions are of high quality. On the legal front, both the statutory laws and the case law support the institutions to act with independence and integrity. For example, the Independent Commission Against Corruption Ordinance provides robust powers to the ICAC in anti-corruption investigation, systemic prevention and public education. The Prevention of Bribery Ordinance and the common law offence of "Misconduct in Public Office" also set the minimum integrity standards for public officers including judges, prosecutors and ICAC officers. In addition, at the institutional level, the three institutions have their own rules and regulations on staff integrity, with internal mechanisms in recruitment, staff discipline and checks and balances to ensure their members' integrity. The institutions are also mindful of maintaining their independence and integrity under the high expectation of the society and the international obligations as shown in UNCAC. Apart from enforcing the anti-corruption laws, the ICAC assists the public sector, including the Judiciary and the Department of Justice, in promoting integrity through comprehensive prevention and education initiatives.

## COUNTRY PRESENTATIONS

3. BRUNEI DARUSSALAM: Established in 1982, the Anti-Corruption Bureau (ACB) is Brunei's lead agency for investigating corruption by civil servants, including judges, prosecutors and law enforcement officials. ACB officials are subject to numerous legal standards, including the Public Service Commission Act, and conflicts of interest are avoided through rules on case assignment and disclosure. ACB officials also give talks to promote awareness of corruption among the civil service. An egregious case of embezzlement and money-laundering by a married couple – a bankruptcy receiver and a judge – was introduced, detailing the investigation and tracing of assets. Due to the depth of the defendants' connections in the judiciary and prosecution, the case was tried before a visiting judge from the United Kingdom, while the Government of Brunei retained Queen's Counsel to prosecute the case impartially.
4. CAMBODIA: To ensure integrity within the Anti-Corruption Unit, the Disciplinary Council and Internal Control (DCIC) issues ethics rules, conducts investigations and imposes disciplinary sanctions. These sanctions include reprimand, suspension without pay, demotion, forced early retirement, dismissal and prosecution. Conduct subject to sanction includes abuse of power, use of public assets for personal interest and so on. ACU officials are mandated to declare their assets and liabilities every two years, and failure to do so may result in fine or imprisonment. Newly recruited officers undergo integrity training and other programmes on professionalism. To manage conflicts of interest, the ACU has detailed rules on the reporting and acceptance of gifts and hospitality (dining out etc.), and – upon the assignment of a case – any actual, perceived or potential conflict of interest must be reported to superiors. While challenges such as implementing UNCAC, interagency coordination and professional skills remain, the public has increasingly developed a mindset that rejects corruption since the creation of the ACU in 2010.
5. INDONESIA: As integrity is an important component of law enforcement, the Corruption Eradication Commission (KPK) promulgated a code of conduct that applies to all commission employees. The code of conduct defines terms such as "integrity", "synergy" (cooperation and cohesiveness), "justice", "professionalism" and "leadership" in order to align expectations and personal values among all commission employees. The code of conduct is enforced by the KPK's Supervisory Board. These hearings have resulted in severe sanctions such as dishonourable discharge for the receipt of gratification. Gratification paid to KPK officials in amounts as small as USD 20 have been actively enforced. Other enforcement actions have involved giving a telephone contact number to a detainee, receiving a food parcel, and an action against the Chairman of the KPK for the personal use of a helicopter.
6. JAPAN: The distinct roles of judges and public prosecutors in Japan were introduced, as well as the separation of judicial and executive powers under Japan's constitution and the structure of Japanese courts and prosecutors' offices. Judicial independence is guaranteed by the Constitution and by law, and the removal of judges from office is limited, as is their suspension from work and reduction of salary. Measures to secure the integrity of judges include sufficient salary, integrity screening by a nominations committee, random assignment of cases to judges, trial by three-judge panels and the practice of regular nationwide transfers to prevent the establishment of collusive relationships. As prosecutors exert influence on the criminal justice system, prosecutorial power must be exercised independently. Like judges, prosecutors are paid sufficient salary and are subject to

nationwide transfer. A 1954 case was introduced to demonstrate how the then Minister of Justice's interference in a bribery investigation resulted in public backlash, entrenching public opinion against political intervention in criminal investigations, which may play a part in the culture of integrity among Japanese public officials.

7. LAO PDR: The State Inspection and Anti-Corruption Authority (SIAA) is a ministerial level government agency mandated to, among others, conduct inspections, prevent and combat corruption, and investigate complaints. As a part of a broad anti-corruption legal framework, the Law on Civil Servants defines principles, regulations and measures for recruitment of civil servants throughout the country, and the Decree on the Ethics of Civil Servants sets standards for integrity. The LCS and the Decree on Ethics both establish administrative, disciplinary and criminal sanctions for violations of these rules. As a part of the framework to avoid conflicts of interest, the Criminal Procedure Law requires recusal from participation in cases in which an official may have an interest. In 2019, the SIAA received 1,038 complaints, of which 226 have been resolved, 407 transferred to other authorities, 104 are being monitored and 249 are subject to ongoing investigation.
8. UNAFEI: While anti-corruption enforcement and the punishment of corrupt officials is necessary, even the suspicion of corruption undermines public trust in government. Thus, public officials should never be suspected of being improperly influenced, and codes of conduct can be an effective approach to the prevention of corruption. The presentation detailed Japan's ethics rules for national government officials, addressing the receipt of gifts, food or drink, borrowing money, personal property or real estate, accepting services free of charge, and so on from interested parties. The code of conduct requires supervisors to take action, which may involve instructing the subordinate or reporting the misconduct, if they believe that a subordinate has violated ethics rules; other officers are prohibited from receiving benefits that result from ethics violations and must not make false reports. Certain public officials are required to report the receipt of gifts, the purchase or sale of stock, and annual income. When ethics rules are violated, common disciplinary actions include dismissal, suspension from duty, salary reduction and warning.
9. MALAYSIA: The Malaysian government was plagued by corruption, nepotism, kleptocracy and abuse of power, but political change in 2018 displaced the ruling party and ushered in an era of change and the adoption of the National Anti-Corruption Plan (NACP) 2019-2023. The NACP aims to enhance the accountability and credibility of the judiciary, prosecution and law enforcement officials. To promote integrity, Malaysia has adopted professional codes of conduct and assigned oversight and advisory roles to independent bodies. A "Check and Balance Mechanism" was established to provide oversight to the Malaysian Anti-Corruption Commission (MACC), through which five entities scrutinize MACC's activities, examine complaints against officers and perform other functions to ensure integrity, transparency and professionalism. Since 2009, the judiciary has been subject to the Judges' Code of Ethics, which was drafted in line with the Bangalore Principles. Under the code, judicial appointments are scrutinized by the commission, and violations of the code are heard by ad hoc Judges' Ethics Committees. Prosecutors are also subject to codes of conduct and ethics, as well as statutory prohibitions against gratification and abuse of their special position and powers.
10. PHILIPPINES: To address the problem of corruption in its country, the Philippines has enhanced its efforts to ensure independence and integrity in the criminal justice system. Established in 2020, the Judicial Integrity Board acts on all administrative complaints or

disciplinary actions against judges, and the Corruption Prevention and Investigation Office investigates corruption in the judiciary and conducts lifestyle checks of judges and other judicial officials. The Office of the Ombudsman acts on complaints filed against officers or employees of the government and prioritizes complaints against high-level officials; it also implements programmes to enhance integrity. The independence of the Office of the Ombudsman is established under the 1987 Constitution, and legislative provisions, such as appointment, remuneration and dismissal, further strengthen the independence of personnel. The Philippine National Police and the National Bureau of Investigation are executive agencies that have authority to investigate graft and corruption, but the PNP has been particularly vulnerable to corruption. The PNP “Ethical Doctrine” establishes ethical standards, such as commitment to democracy and public interest, non-partisanship, confidentiality, respect for human rights – violations of which can be punished criminally or administratively. Among other measures, the Integrity Monitoring and Enforcement Group supports the PNP’s internal cleansing mechanism by gathering intelligence on rogue PNP officers and assisting the public in filing criminal complaints against police officers.

11. SINGAPORE: Known as a clean country, factors that led to Singapore’s success in fighting corruption include strong political will, the independence of the Corrupt Practices Investigation Bureau, a strong code of conduct for public service, and outreach and prevention efforts directed to law enforcement agencies on a regular and continual basis. The code of conduct addresses general conduct and discipline, conflicts of interest, financial embarrassment, gambling and casino visits, gifts and entertainment, and mandatory job rotation and block leave. Strong outreach and prevention efforts include public education talks and training, working with the media to encourage reporting, convenient channels for reporting, and so on. Prosecutorial independence is established by vesting prosecutorial discretion wholly in the Attorney General, although charging decisions in each case require multiple layers of assessment. To avoid conflicts of interest in the judiciary, judges are prohibited from hearing cases in which they have a personal interest and should recuse themselves in any case in which they have an apparent bias.
12. THAILAND: Although the Office of the Attorney General (OAG) was established in 1893, its independent status had not been recognized until 1991 when the office underwent a major structural and organizational change and was separated from the Ministry of Interior and assumed independent status as an autonomous agency under the supervision of the Prime Minister. Later, the independent status was reaffirmed by the 2007 Constitution, giving the OAG autonomy with respect to budget, personnel and prosecutorial discretion, of which the superintendent is the Attorney General. To fight corruption, the OAG works alongside the National Anti-Corruption Commission (NACC) to combat corruption by politicians and other state officials. After finishing the investigation, if there are grounds for disciplinary or administrative action, the NACC submits a report and evidence to the superior or authorized person for disciplinary procedure; if there are grounds for criminal penalty, the NACC submits the case to the OAG for prosecution. If the OAG finds that the inquiry file is incomplete for justification of initiation of a prosecution, a joint OAG–NACC committee is created to complete the case file. If the OAG and NACC still fail to agree, the NACC is empowered to prosecute the case on its own; if the Attorney General is the suspected of corruption, the President of the NACC may prosecute the case.
13. TIMOR-LESTE: Law enforcement corruption is devastating to society as it denies people accessibility to legal protection and protects the illegal activities of criminals, and Timor-Leste has been significantly impacted by it. Asset declaration is an important tool to counter

corruption, and Timor-Leste has benefited from the experiences of countries that have already implemented such systems. UNCAC and national anti-corruption laws serve as the legal basis for the practice of asset declaration by officials including law enforcement officials in Timor-Leste, and the content of the declarations covers all types of income, financial securities, movable and immovable assets, debts and other financial obligations, among others. The key elements identified for an effective asset declaration system include broad and detailed coverage of income and assets; proper identification of officials required to report; verification mechanisms (formal and risk based); transparency and accessibility of disclosures to the public; sanctions; and reporting.

## CONCLUSIONS AND RECOMMENDATIONS

### 14. Conclusions

- A. The integrity of judges, prosecutors and law enforcement officials is essential to preserve democracy, the rule of law and a fair and effective criminal justice system, taking into account their critical roles in detecting corruption and imposing appropriate punishment on corrupt politicians and public officials;
- B. It is also indispensable to ensure the due level of independence of judges, prosecutors and law enforcement officials because it enables them to make their decisions free from undue external pressures and serves to enhance their impartiality;
- C. Some countries have established independent anti-corruption agencies to fight endemic corruption and restore or build public trust in the criminal justice system. This has been an effective means to strengthen the integrity and independence of judges, prosecutors and law enforcement officials, especially where integrity and independence have been compromised.

### 15. Recommendations

- A. To ensure integrity, relevant authorities should develop or revise codes or standards of conduct for judges, prosecutors and law enforcement officials, and should conduct monitoring and evaluation of the implementation of such codes or standards with the allocation of necessary financial and human resources;
- B. The processes of recruitment and promotion for judges, prosecutors and law enforcement officials should be accountable and transparent, and education and training programmes on integrity and the risks of corruption should be provided upon appointment and continuously throughout each career path;
- C. Periodic asset declaration or financial disclosure should be required for positions at substantial risk of corruption in order to identify potential or existing conflicts of interest and as a means to identify illicit enrichment;
- D. Judicial, prosecutorial and law enforcement authorities should provide the public with information for the sake of the transparency of, and accountability for, their actions, with due regard for the confidentiality of investigation, prosecution and judicial deliberation;



- E. With a view to promoting active participation of society in the prevention of and the fight against corruption, public awareness of, and education on, the procedures and principles of the criminal justice system should be encouraged to improve the understanding of the role of judges, prosecutors and law enforcement officials and the standards to which they are held.

24 MARCH 2021

TOKYO, JAPAN (ONLINE)

## **VISITING EXPERT'S CONTRIBUTION**

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# INDEPENDENCE AND INTEGRITY OF JUDGES, PROSECUTORS AND ANTI-CORRUPTION OFFICIALS: THEIR ROLES IN HONG KONG'S FIGHT AGAINST CORRUPTION

*Lawrence Chung\**

## I. INTRODUCTION

A robust criminal justice system is vital to the success of a territory's anti-corruption work, and such success in turn guarantees a strong, fair and sustainable criminal justice system. To keep the criminal justice system fair, clean and effective in fighting corruption, it is important to safeguard the independence and integrity of the key component institutions, including the judiciary, the prosecution authority and the anti-corruption agency, as well as the individuals working in these institutions. The reason is that the principles of independence and integrity are the major pillars supporting the effective, unbiased and transparent operation of these institutions, which is a prerequisite for sustaining a fair and clean environment in the public and private sectors of the society. In the fight against corruption, investigation, prosecution and adjudication play the crucial role in bringing the culprits to justice and ridding the society of this harmful scourge. These institutions and their members, including judges, prosecutors and anti-corruption officials, must have enough authority and independence to perform their duties. If undue pressure is put on these institutions and their members, they will be unable to maintain impartiality and objectivity when discharging their mandates.

As judges, prosecutors and anti-corruption officials are vested with wide power, their integrity becomes particularly important. If they have any misconduct such as conflict of interest and abuse of authority, or even engage in bribery, there will be no other means to combat corruption effectively. This is definitely detrimental not only to the anti-corruption work, but also to the criminal justice system, the rule of law and ultimately the entire society. Therefore, it is equally important for judges, prosecutors and anti-corruption officials to uphold the highest standard of integrity in their conduct, behaviours and performance of duties.

It is the global consensus that the judiciary, the prosecution authority, the anti-corruption agency and their members must be free from interference and observe high standards of integrity when performing their duties. This consensus is enshrined in the United Nations Convention against Corruption (UNCAC), the only legally binding universal anti-corruption instrument. The Convention stipulates that the States Parties shall ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement and prevention, and that they shall be granted with the necessary independence (Articles 6 and 36). The State Parties shall also criminalize the use of physical force, threats or intimidation to interfere with the exercise of official anti-corruption duties by justice or law enforcement officials (Article 25(b)). In addition, the UNCAC contains provisions aiming to enhance the integrity of public officials. The State

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Parties shall set up codes or standards of conduct and anti-corruption measures for public officials (Article 8). In particular, there shall be measures to strengthen integrity and prevent opportunities for corruption in the judiciary and prosecutorial authorities (Article 11).

Hong Kong, which is a Special Administrative Region (SAR) of the People's Republic of China, has long adopted these universally accepted standards of non-interference with the work of the judiciary, the prosecution authority and the anti-corruption agency. Hong Kong also places great emphasis on maintaining the integrity of these institutions and their members. The city maintains its own legal system under the "One Country, Two Systems" framework. In relation to the fight against corruption, the Independent Commission Against Corruption (ICAC) is the territory's dedicated law enforcement agency with the statutory mandate to fight and prevent corruption. Apart from investigation, the ICAC achieves its mission through systemic prevention and community education. In addition, the Department of Justice (DoJ), which is the prosecutorial authority in Hong Kong, and the Judiciary play an essential role in eradicating corruption to ensure that Hong Kong has a clean and efficient public sector, a private sector with a level playing field and a society which values integrity and rejects corruption. The probity environment in Hong Kong is, to a large extent, attributed to the independence and integrity of these institutions, the features which have long been renowned worldwide.

This paper aims to explain, from the ICAC's perspective, how Hong Kong upholds and safeguards the independence and integrity of judges, prosecutors and anti-corruption officials, who are the key players in the fight against corruption. It contains three parts, each addressing an issue under this broad theme but with different focuses. The first part introduces Hong Kong's anti-corruption system, in particular the relationships among the judiciary, the prosecution and the anti-corruption agency in dealing with corruption cases. The second part discusses the multiple safeguards of the independence and integrity of these three institutions in performing their functions. The third part explains the roles of the ICAC in promoting integrity in the public sector, covering all government departments and public authorities on the law enforcement, prevention and education fronts.

## **II. DIVISION OF WORK AMONG THE JUDICIARY, PROSECUTION AUTHORITY AND ANTI-CORRUPTION AGENCY**

Hong Kong's legal system is set out in the Basic Law of the Hong Kong SAR, the constitutional document of the territory that came into effect on 1 July 1997 with Hong Kong's return to the People's Republic of China.<sup>1</sup> The Basic Law, among other things, essentially preserves Hong Kong's legal system which has been in place before 1997, including the laws previously in force such as the common law and the statutory laws.<sup>2</sup> Under this legal system, investigation, prosecution and adjudication of corruption cases are taken care by distinct institutions, namely the ICAC, the DoJ and the Judiciary. Each of these institutions has its own mandate and functions independently to keep corruption under effective control.

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<sup>1</sup> The Government of the Hong Kong SAR, "Some Facts about the Basic Law", <<https://www.basiclaw.gov.hk/en/facts/index.html>>.

<sup>2</sup> Article 8 of Basic Law stipulates that "[the] laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law shall be maintained, except for any that contravene the Basic Law and subject to any amendment by the legislature of the HKSAR".

## **A. Independent Commission Against Corruption**

The ICAC is the dedicated agency in Hong Kong with statutory power to combat and prevent corruption through law enforcement, systemic prevention and community education. On the law enforcement front, the Commission's duties include receiving and considering allegations of corrupt practices, as well as investigating alleged or suspected offences. While most of the investigations start from corruption complaints made by members of the public, the ICAC has a proactive strategy to uncover cases of corruption which might otherwise have remained unreported.

The ICAC has full-fledged investigative powers under the law to conduct anti-corruption investigations. When it comes to prosecution of the offences under Part II of the Prevention of Bribery Ordinance, it requires the consent of the Secretary for Justice, who heads the DoJ. In practice, the ICAC seeks the advice of the DoJ before commencing any prosecution.<sup>3</sup> The ICAC uses its investigative powers responsibly and in strict accordance with the law. As a measure of checks and balances, the investigative work of the ICAC is overseen by the Operations Review Committee, an advisory committee of the ICAC which comprises mostly independent citizens appointed by the Chief Executive of the Hong Kong SAR.<sup>4</sup> All ICAC cases must be submitted to this Committee for scrutiny. In particular, the Committee scrutinizes reports on completed investigations before endorsing the recommendations of taking no further action by the ICAC. The ICAC also, on the Committee's recommendations, forwards reports on alleged misconduct of government officers to the government departments concerned for consideration of disciplinary and/or administrative action.

Law enforcement is only part of the legal mandate of the ICAC. To tackle corruption from a holistic angle, the problem should be addressed through deterrence, improvement in systems and procedures, as well as change in people's attitude and development of an anti-corruption culture in the society. Hence, apart from the Operations Department which investigates corruption, the ICAC has two functional departments specializing in systemic prevention and community education, respectively. They are the Corruption Prevention Department and the Community Relations Department. With these three departments, the ICAC tackle both the root causes and the symptoms of corruption.

## **B. Department of Justice**

The DoJ is headed by the Secretary for Justice who has the ultimate responsibility for the prosecution of all offences, including corruption, in Hong Kong. The Department's prosecutorial function is carried out by the Prosecutions Division. The Division makes prosecutorial decisions, including whether to prosecute and, if so, what charges to lay and before which courts. Counsels of DoJ do not investigate cases or collect evidence as law enforcement officials do. Instead, they provide legal advice to the ICAC, as well as other law enforcement agencies and government departments, on matters related to prosecution, criminal law and procedure. They also conduct trials and most appeals in courts.<sup>5</sup>

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<sup>3</sup> ICAC, Hong Kong SAR, *ICAC Annual Report 2019*, p. 38, <<https://www.icac.org.hk/icac/annual-report/2019/>>.

<sup>4</sup> ICAC, Hong Kong SAR, "Operations Review Committee", <<https://www.icac.org.hk/en/check/advisory/orc/index.html>>.

<sup>5</sup> Department of Justice, Hong Kong SAR, "Our Legal System: Department of Justice", <[https://www.doj.gov.hk/en/our\\_legal\\_system/doj.html](https://www.doj.gov.hk/en/our_legal_system/doj.html)>.

### **C. Judiciary**

The Judiciary is responsible for the administration of justice in Hong Kong, and it operates criminal courts in which cases are decided and sentenced. All criminal proceedings, including those about corruption, commence in the Magistrates' Courts. More serious offences are transferred from the Magistrates' Courts to either the District Court or the Court of First Instance.<sup>6</sup> A trial is to be heard by a magistrate, a district court judge or, in the case of the Court of First Instance, a judge and a jury. The prosecution and defendants may appeal to higher courts against court rulings. Depending on its nature, an appeal is to be heard in (i) the Court of First Instance by a judge, (ii) the Court of Appeal usually by a bench of three judges, or (iii) the Court of Final Appeal. The Court of Final Appeal is the highest appellate court in Hong Kong. It is sat by a bench of five judges, usually including the Chief Justice as the Chair, three permanent judges, and either one non-permanent Hong Kong judge or one judge from another common law jurisdiction.<sup>7</sup>

The fact that the ICAC, the DoJ and the Judiciary function independently in investigation, prosecution and adjudication gives sufficient checks and balances among these three key institutions. As a result, the fight against corruption is carried out in a fair and accountable manner. Such division of work also facilitates specialization and professionalism. As elaborated in the next part, the independence and integrity of these three institutions are protected by different levels of safeguards. These safeguards ensure the effective implementation of the anti-corruption work and the rule of law in Hong Kong.

## **III. MULTIPLE LEVELS OF SAFEGUARDS OF INDEPENDENCE AND INTEGRITY**

Hong Kong has a clean and efficient public sector. Under this corruption-free environment, the independence and integrity of the Judiciary, the DoJ and the ICAC are protected at constitutional, legal, institutional, societal and international levels. The different levels of safeguards serve to empower these institutions to perform their duties effectively without fear, favour or bias.

### **A. Constitutional Framework**

The Basic Law of the Hong Kong SAR, which sets out the constitutional framework for the territory's legal system, provides the most fundamental guarantee of the independence of the Judiciary, the DoJ and the ICAC. Under the Basic Law, Hong Kong is authorized by the National People's Congress, the top legislature of the People's Republic of China, to exercise a high degree of autonomy and enjoy executive, legislative and independent judicial power, including that of final adjudication (Article 2).<sup>8</sup> Under this fundamental principle, there are a number of articles in the Basic Law articulating unambiguously that Hong Kong's judicial, prosecutorial and anti-corruption authorities shall exercise their power free from interference.

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<sup>6</sup>Judiciary, Hong Kong SAR, "Court Services & Facilities: Magistrates' Courts", <[https://www.judiciary.hk/en/court\\_services\\_facilities/mag.html](https://www.judiciary.hk/en/court_services_facilities/mag.html)>.

<sup>7</sup>Judiciary, Hong Kong SAR, "Court Services & Facilities: Court of Final Appeal", <[https://www.judiciary.hk/en/court\\_services\\_facilities/cfa.html](https://www.judiciary.hk/en/court_services_facilities/cfa.html)>.

<sup>8</sup>Article 2 of the Basic Law stipulates "[the] National People's Congress authorizes the HKSAR to exercise a high degree of autonomy and enjoy executive, legislative and independent judicial power, including that of final adjudication, in accordance with the provisions of this Law."

By virtue of Article 19, the courts of Hong Kong are vested with independent jurisdiction over all cases in the territory, except with restrictions imposed by the legal system and for those involving acts of state such as defence and foreign affairs.<sup>9</sup> Article 85 stipulates that the courts shall exercise judicial power independently, free from any interference, and that members of the judiciary shall be immune from legal action in the performance of their judicial functions.<sup>10</sup>

The independence of the DoJ and the ICAC is enshrined in Articles 63 and 57. Under Article 63, the DoJ is empowered to “control criminal prosecutions, free from any interference”. Article 57 specifies that the ICAC “shall function independently and be accountable to the Chief Executive”.<sup>11</sup>

In addition to this constitutional guarantee of the independence of these institutions, the Basic Law establishes mechanisms to govern the qualities, including the ethical standards, of judges and other public officers. Judges and other members of the judiciary shall be chosen on the basis of their judicial and professional qualities (Article 92).<sup>12</sup> Judges shall be appointed by the Chief Executive on the recommendation of an independent commission composed of local judges, persons from the legal profession and eminent persons from other sectors (Article 88).<sup>13</sup> It is worth mentioning that the Basic Law allows a judge to be removed for misbehaviour, provided that the prescribed stringent procedures have been followed, such as the requirement of forming a tribunal consisting of local judges (Articles 89 and 90).<sup>14</sup> With this detailed arrangement, the Basic Law strikes a balance between the necessities to ensure judges’ integrity on one hand, and, on the other, the protection of judges from arbitrary removal, which is essential to maintaining the independence of the Judiciary.

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<sup>9</sup> Article 19 of the Basic Law stipulates that “[the] HKSAR shall be vested with independent judicial power, including that of final adjudication. The courts of the HKSAR shall have jurisdiction over all cases in the Region, except that the restrictions on their jurisdiction imposed by the legal system and principles previously in force in Hong Kong shall be maintained.”

<sup>10</sup> Article 85 of the Basic Law stipulates that “[the] courts of the HKSAR shall exercise judicial power independently, free from any interference. Members of the judiciary shall be immune from legal action in the performance of their judicial functions.”

<sup>11</sup> Article 63 of the Basic Law stipulates that “[the] Department of Justice of the HKSAR shall control criminal prosecutions, free from any interference. Article 57 stipulates that “[a] Commission Against Corruption shall be established in the HKSAR. It shall function independently and be accountable to the Chief Executive.”

<sup>12</sup> Article 92 of the Basic Law stipulates that “[judges] and other members of the judiciary of the HKSAR shall be chosen on the basis of their judicial and professional qualities and may be recruited from other common law jurisdictions.”

<sup>13</sup> Article 88 of the Basic Law stipulates that “[judges] of the courts of the HKSAR shall be appointed by the Chief Executive on the recommendation of an independent commission composed of local judges, persons from the legal profession and eminent persons from other sectors.”

<sup>14</sup> Article 89 of the Basic Law stipulates that “[a] judge of a court of the HKSAR may only be removed for inability to discharge his or her duties, or for misbehavior, by the Chief Executive on the recommendation of a tribunal appointed by the Chief Justice of the Court of Final Appeal and consisting of not fewer than three local judges. The Chief Justice of the Court of Final Appeal of the HKSAR may be investigated only for inability to discharge his or her duties, or for misbehavior, by a tribunal appointed by the Chief Executive and consisting of not fewer than five local judges and may be removed by the Chief Executive on the recommendation of the tribunal and in accordance with the procedures prescribed in this Law.” Article 90 of the Basic Law stipulates that “...[in] the case of the appointment or removal of judges of the Court of Final Appeal and the Chief Judge of the High Court of the HKSAR, the Chief Executive shall, in addition to following the procedures prescribed in Articles 88 and 89 of this Law, obtain the endorsement of the Legislative Council and report such appointment or removal to the Standing Committee of the National People’s Congress for the record.”



The Basic Law also specifies the appointment and promotion of public officers including prosecutors and ICAC officers. Article 103 of the Basic Law requires that their appointment and promotion shall be on the basis of their qualifications, experience and ability. Moreover, Hong Kong's system of recruitment, employment, assessment, discipline, training and management for the public service which has been in place before 1997 shall be maintained.<sup>15</sup> As further elaborated below, a robust system is in place within the DoJ and the ICAC to ensure a high level of integrity of their officers.

## **B. Legal Provisions**

While the Basic Law prescribes the constitutional framework to uphold the independence and integrity of the Judiciary, the DoJ and the ICAC, there are a number of statutory and case laws on which a more detailed structure is developed for sustaining these two essential principles. For example, the Court of Appeal of Hong Kong emphasizes the prosecutorial independence of the Secretary for Justice and the DoJ in one of its judgments:

The prosecutorial independence of the Secretary for Justice is a linchpin of the rule of law... 'the decision whether any citizen should be prosecuted or whether any prosecution should be discontinued, should be a matter for the prosecuting authorities to decide on the merits of the case without political or other pressure' [Sir Robert Finlay, 1903]... these statements... reflect accepted and applied fundamental principle in this jurisdiction [i.e. Hong Kong] the continuation of which is preserved by the entire theme of the Basic Law as well, specifically, as by article 63.<sup>16</sup>

The anti-corruption laws discussed below serve to illustrate the legal safeguards of the integrity of judges, prosecutors and anti-corruption officials by outlawing specific misbehaviour in the public sector.<sup>17</sup> The laws also reflect that the ICAC is empowered to discharge its duties independently.

### **1. Independent Commission Against Corruption Ordinance**

The Independent Commission Against Corruption Ordinance (ICACO) gives the ICAC a statutory anti-corruption mandate and prescribes the Commission's powers and duties. The independence of the ICAC is stipulated in the ICACO that "[the] Commissioner shall not be subject to the direction or control of any person other than the Chief Executive" (section 5). The Ordinance also ensures the ICAC's financial stability through a provision that the expenses of the Commission shall be charged to the government's general revenue (section 4).

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<sup>15</sup> Article 103 of the Basic Law stipulates that "[the] appointment and promotion of public servants shall be on the basis of their qualifications, experience and ability. Hong Kong's previous system of recruitment, employment, assessment, discipline, training and management for the public service, including special bodies for their appointment, pay and conditions of service, shall be maintained, except for any provisions for privileged treatment of foreign nationals."

<sup>16</sup> *Re C (A Bankrupt)* [2006] 4 HKC 582 at 590; Department of Justice, Hong Kong SAR, *Prosecution Code*, paragraph 1.4, <[https://www.doj.gov.hk/en/publications/prosecution\\_code.html](https://www.doj.gov.hk/en/publications/prosecution_code.html)>.

<sup>17</sup> The anti-corruption laws of Hong Kong outlaw corruption in both the public and private sectors. For a more focused discussion, only the legal provisions concerning public sector corruption are included in this paper. Further information about the anti-corruption legislation can be found in ICAC, Hong Kong SAR, "Legal Empowerment", <<https://www.icac.org.hk/en/about/power/index.html>>; ICAC, Hong Kong SAR, "Anti-corruption Laws", <<https://www.icac.org.hk/en/law/law/index.html>>.

The Ordinance empowers the ICAC to investigate, among other things, bribery-related offences. Apart from that, the Commission has the purview to receive, consider and investigate complaints alleging corrupt practices, as well as to investigate government officers' conduct which is connected with or conducive to corrupt practices (section 12). More importantly, the ICAC performs these duties on its own. The Commission is not required to seek prior permission from any person or body before starting an investigation.

The ICACO also sets out the parameters of the ICAC investigations, procedures for handling suspects and the disposal of property connected with offences. The ICAC, for example, possesses powers to arrest and search suspects of corruption-related offences and, with court warrants, to search and seize their premises and detain their properties. The ICAC's powers of investigation are further strengthened by the POBO, under which the ICAC has the authority to access bank accounts and records, and with court orders, search and examine business and private documents. With judicial controls, the ICAC may require a suspect to furnish information of his property, expenditure, liabilities, and money or property sent out of Hong Kong. The ICAC may also require a suspect to surrender his travel documents and restrain him from disposing of his property. This legal empowerment allows the ICAC to perform its duties independently with adequate resources and powers.

Apart from the mandate in law enforcement, the ICACO stipulates that the ICAC has the duty to examine the practices and procedures of government departments and public bodies to identify corrupt practices, and to secure the changes of these practices or procedures to reduce corruption. The ICAC is also tasked under the Ordinance to educate the public of the evils of corruption, and to foster public support in combating corruption.

## 2. Prevention of Bribery Ordinance

The Prevention of Bribery Ordinance (POBO) is the main anti-corruption law in Hong Kong. Administered by the ICAC, it outlaws corruption in both the public and private sectors. By imposing specific legal sanctions on public officers' corrupt behaviours, including outright bribery, acceptance of restricted advantages in their private lives and possession of unexplained wealth and property, the Ordinance serves as a useful instrument governing the integrity of public officers.

Judges, prosecutors and ICAC officers are categorized as "public servants" and "prescribed officers" under the POBO. The Ordinance outlaws public servants' solicitation and acceptance of any advantage as an inducement to or reward for performing any act in their official capacity (section 4). Prescribed officers are further prohibited from soliciting or accepting any advantage without the general or special permission of the Chief Executive (section 3), even if such advantage is unconnected with the prescribed officers' official duties. The objective of this strict provision, which is an anti-corruption measure, is to prevent prescribed officers from falling into the trap of being sweetened up and compromising their integrity, even though the advantage concerned may be of very small value and may not be directly related to his/her official capacity.

To curb illicit enrichment by corrupt officials who receive bribes over a long period of time but whose assets cannot be linked to a specific corrupt dealing, the POBO provides that a prescribed officer shall be guilty of an offence if he/she maintains a standard of living or has assets not commensurate with his/her official emoluments and he/she fails to give a satisfactory explanation to the court (section 10).

### 3. Common Law Offence – Misconduct in Public Office

In addition to statutory laws, case law, or precedents, play an important role in the legal system of Hong Kong. Public officers' integrity deficit may take place in different forms, such as outright bribery, acceptance of advantages from work-related contacts, conflict of interest, as well as abuse of power, discretion and duties. As illustrated above, the POBO is capable of tackling outright bribery, acceptance of restricted advantages in prescribed officers' private lives and possession of unexplained wealth and property. However, some corrupt practices may be less definite but exhibit a tendency to undermine integrity seriously enough to attract criminal liability on part of public officers, and the POBO may not be wide enough in scope to redress these situations. In these cases, the common law offence of misconduct in public office comes into play.

This common law offence is necessarily cast in general terms because it needs to cover different forms of misconduct, no matter whether it takes place by act or omission. The offence is committed where:

- (i) a public official;
- (ii) in the course of or in relation to his public office;
- (iii) wilfully misconducts himself; by act or omission, for example, by wilfully neglecting or failing to perform his duty;
- (iv) without reasonable excuse or justification; and
- (v) where such misconduct is serious, not trivial, having regard to the responsibilities of the office and the officeholder, the importance of the public objects which they serve and the nature and extent of the departure from those responsibilities.<sup>18</sup>

While the aforementioned statutory and case laws target specific offences, they can also be seen as the minimum integrity standard which government officers, judges, prosecutors, and ICAC officers must observe.

### **C. Institutional Arrangements**

Legal provisions seek to protect the independence and integrity of the Judiciary, the DoJ, the ICAC and their members by outlawing specific illegal behaviours. However, there are some other misbehaviours or ethical issues which are not illegal per se, but may seriously affect the independence and integrity of the key players working in the anti-corruption system if not dealt with properly. To address these problems, government-wide rules and regulations and the institutions' internal guidelines and procedures are often as important as the legal provisions in ensuring the members' independence and integrity.

Over the years, the concepts of independence and integrity have already been embedded in these rules and guidelines. This can be illustrated in four areas, namely (i) recruitment and appointment, (ii) codes and regulations, (iii) discipline and sanction, as well as (iv) checks and balances mechanism.

#### 1. Recruitment and Appointment

The Basic Law's requirements for establishing an independent system to appoint judges and judicial officers, as mentioned in the earlier part of this paper, is effected through the Judicial Officers Recommendation Commission (JORC) and the Judiciary's recruitment exercises. The JORC is a nine-member statutory body responsible for making

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<sup>18</sup> *Sin Kam Wah Lam Chuen Yip and Another v HKSAR* [2005] HKCU 672.

recommendations to the Chief Executive on appointment of most of the judicial offices in the Judiciary, from magistrates up to the Chief Justice.<sup>19</sup> It is assisted by the Judiciary, which regularly conducts open recruitment exercises of judges and judicial officers except those in the appellate courts. Advertisements are placed on the Judiciary's website and newspapers. The Chief Justice appoints judges and/or judicial officers to a selection board, which considers the applications and submits its views to the JORC for consideration. The selection is based on the applicants' professional qualifications and experience, having regard to the relevant constitutional and legal requirements.

The JORC and the related mechanism ensure that judges and judicial officers are selected and appointed without the executive authorities' interference. In fact, one of the Permanent Judges of the Court of Final Appeal, who was long involved in the work of the JORC, remarked on the occasion of his retirement in 2013 that "I can bear witness to the fact that there has never been any interference from any quarter or any person in the appointment of judges. All my colleagues were appointed on their own merits."<sup>20</sup>

The recruitment of prosecutors and ICAC officers is subject to stringent administrative procedures which ensure the appointees' high quality and the prevention of cronyism. The DoJ and the ICAC conduct their own recruitment exercises openly. The entry requirements, qualities expected and job duties are set out in the job advertisements posted in newspapers and on the institutions' websites. There is a clear, predetermined set of criteria for selecting the candidates. Before the formal appointment, the potential appointees have to undergo integrity checking, the complexity of which depends on the nature and rank of the post.<sup>21</sup> Such processes may include checking the background of the candidate and his/her family, interviewing past employers and/or paying visits to the candidate's residence. These measures ensure that the appointees are of good character and high integrity.

## 2. Codes and Regulations

There are regulations, codes and guidelines in the Judiciary, the DoJ and the ICAC to prescribe the conduct of their members and provide guidance for the members to discharge duties. Independence and integrity are emphasized in these regulations. Some of the examples are quoted below:

- (i) The Judiciary has developed a *Guide to Judicial Conduct* for judges and judicial officers. "Independence", "Impartiality" as well as "Integrity and Propriety" are set as the three guiding principles for considering whether a judicial conduct is appropriate.<sup>22</sup>
- (ii) Prosecutors and ICAC officers are bound by the government's Civil Service Code, in which six principles, namely "commitment to the rule of law", "honesty and integrity", "objectivity and impartiality", "political neutrality", "accountability for decisions and actions" and "dedication, professionalism and diligence" are set

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<sup>19</sup> The list of judicial offices under the purview of the JORC can be found in Schedule 1 of the Judicial Officers Recommendation Commission Ordinance.

<sup>20</sup> *Farewell Sitting for the Honourable Mr Justice Chan PJ (18 October 2013)* (2013) 16 HKCFAR 1012 at 1019.

<sup>21</sup> Civil Service Bureau, Hong Kong SAR, "Integrity checking", <<https://www.csb.gov.hk/english/admin/conduct/136.html>>.

<sup>22</sup> Judiciary, Hong Kong SAR, *Guide to Judicial Conduct* (2004), <[https://www.judiciary.hk/doc/en/publications/gjc\\_e.pdf](https://www.judiciary.hk/doc/en/publications/gjc_e.pdf)>.

as the core values of the civil service. In addition, the government has a comprehensive set of Civil Service Regulations, supplemented by circulars issued by the Civil Service Bureau, to govern and guide behaviours and conduct of civil servants and ICAC officers. Topics include conflict of interest, acceptance of advantages and entertainment, declaration of private investments, as well as the reporting of crime and corruption.

- (iii) The DoJ's *Prosecution Code* is a set of statements and instructions to guide prosecutors in conducting prosecutions. "Independence of the Prosecutor" constitutes the first chapter of the Code, which stresses that a prosecutor must not be influenced by, among a number of factors, the political and individual interest of the prosecutor.<sup>23</sup>
- (iv) The ICAC has its own Commission Standing Orders (CSOs) regulating the conduct and discipline of its officers. The Code of Ethics in the CSOs specifies that ICAC officers are "to adhere to the principles of integrity and fair play" and "to carry out their duties without fear or favour, prejudice or ill will".

The requirements for handling properly conflict of interest can be used to demonstrate how these regulations and codes operate. Conflict of interest generally refers to the situation where an individual's private interest competes or conflicts with the interest of the institution which he/she serves or with the individual's official duties. Conflict of interest, no matter whether it is an actual, perceived or potential one, poses a threat to both independence and integrity of the public officer and the institution, and therefore must be handled properly. This issue is covered in the internal regulations for judges, prosecutors and ICAC officers in various ways.

For instance, prosecutors and ICAC officers must follow the government's guidelines on conflict of interest. The general principle is to avoid conflict of interest from happening in their performance of duties. In case such conflict is unavoidable, the officer in question must declare the conflict to his/her supervisors as soon as possible, and the officer should refrain from taking part in that task. Depending on the office and seniority which a person holds, there are additional requirements for preventing conflict of interest. Examples include declaration of private investments and restriction on outside employment after his/her service in the institution.

While there are common ethical issues which exist across the public sector, individual institutions may have their own concerns of members' integrity in particular areas. These concerns are often reflected in their internal regulations and daily work practices.

For example, the ICAC, as a law enforcement agency, places much emphasis on confidentiality of its investigative work. Confidentiality is a fundamental principle of the ICAC because any premature disclosure of information related to corruption cases will jeopardize the investigation and affects the reputation of a person who is the subject of complaint. The strict adherence to confidentiality also gives confidence to members of the public that they can make reports to the ICAC without any fear that their identities will be known by third parties. In fact, confidentiality is a legal requirement for the ICAC's

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<sup>23</sup> Department of Justice, Hong Kong SAR, *Prosecution Code*, <[https://www.doj.gov.hk/en/publications/prosecution\\_code.html](https://www.doj.gov.hk/en/publications/prosecution_code.html)>.

investigation. Section 30 of the POBO prohibits unauthorized disclosure of details about an investigation of POBO offences and the identity of the person being investigated. The confidentiality requirement is therefore built into the ICAC's internal regulations and daily practices. The ICAC Code of Ethics requires officers to "maintain necessary confidentiality". ICAC officers carry out duties, especially those related to investigation, according to the "need-to-know" principle. When handling corruption complaints, the identity of the complainant is treated in strict confidence. Only case officers or the designated officers are allowed to gain access to the information.<sup>24</sup>

### 3. Discipline and Sanction

The integrity of judges, prosecutors and ICAC officers is also upheld through effective mechanisms to handle allegations of malpractices. The Judiciary has set up a system to receive and handle complaints against a judge's conduct (as opposed to a judge's judicial decision, which should be solved only through an appeal to the higher court). A member of the public may lodge his/her complaint in writing. The court leader whom the judge being complained works under will investigate the matter and take further action as appropriate, including bringing the matter to the attention of the Chief Justice and/or the JORC.<sup>25</sup> As mentioned above, the Basic Law allows a judge to be removed for misbehaviour, provided that the prescribed stringent procedures have been followed.

Prosecutors are subject to the same mechanism for handling disciplinary matters as that for other civil servants. If a civil servant, such as a prosecutor, contravenes the government regulations, the department concerned will follow up in accordance with the established procedures, such as departmental investigation, summary disciplinary action, and/or formal disciplinary hearings. If there is evidence that the civil servant has misconducted himself/herself or has been convicted of criminal offence, the department will take appropriate action, such as imposing suitable disciplinary punishments from verbal/written warning to dismissal.<sup>26</sup>

The ICAC also has a comprehensive mechanism to monitor its officers' conduct and handle complaints against their malpractices. In particular, there is an internal investigation and monitoring group within the ICAC to investigate breaches of staff discipline and allegations against ICAC officers. Investigations into alleged corruption and related offences are referred to the Secretary for Justice for advice. When an investigation is completed, it will be reported to the Operations Review Committee for consideration. Other criminal complaints not relating to corruption are referred to the appropriate law enforcement authority for investigation. For non-criminal complaints against the ICAC or its staff, the progress of the investigation by the internal investigation and monitoring group is monitored by an independent ICAC Complaints Committee, which is formed by external members appointed by the Chief Executive.<sup>27</sup> The ICAC has procedures to administer

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<sup>24</sup> ICAC, Hong Kong SAR, "Reporting Corruption – Frequently Asked Questions", <<https://www.icac.org.hk/en/rc/faq/index.html>>.

<sup>25</sup> Judiciary, Hong Kong SAR, *Complaints against a Judge's conduct*, <<https://www.judiciary.hk/doc/en/publications/complaintsjjoleaflet.pdf>>.

<sup>26</sup> Possible disciplinary actions include verbal warning, written warning, reprimand, severe reprimand, reduction in rank, compulsory retirement and dismissal. Department of Justice, Hong Kong SAR, "Press Release: LCQ9: Ensuring the Impartiality of Prosecutors", 4 December 2019, <<https://www.info.gov.hk/gia/general/201912/04/P2019120400439.htm>>.

<sup>27</sup> ICAC, Hong Kong SAR, *ICAC Annual Report 2019*, p. 54, <<https://www.icac.org.hk/icac/annual-report/2019/>>; ICAC, Hong Kong SAR, "ICAC Complaints Committee", <<https://www.icac.org.hk/en/check/complaint/index.html>>.

summary and formal disciplinary actions, depending on the gravity of the misconduct. In extreme cases, the Commissioner may terminate the appointment of an officer under section 8(2) of the ICACO if the Commissioner considers that the breach is of such a serious nature that it is in the interests of the Commission to do so.

#### 4. Checks and Balances Mechanism

It is of utmost importance that judges, prosecutors and ICAC officers should be independent from interference when carrying out their duties. On the other hand, it is also legitimate for the society to have high expectation for them to act with integrity and proper conduct. The reason is that insufficient transparency and lack of checks and balances may lead to allegations of abuse of authority and trigger public mistrust. Moreover, the anti-corruption system will earn more public confidence if it is suitably monitored by the community and is capable of responding to legitimate expectations, including those on the integrity standard of its members. Such healthy interaction between the institutions and external parties may, in turn, further consolidate the independence and integrity of the anti-corruption system.

For example, while the ICAC is directly accountable to the Chief Executive, its Commissioner is required to answer to the legislature on policy and funding matters. In addition, there are four advisory committees to oversee different aspects of work of the ICAC. The Advisory Committee on Corruption oversees the general work direction of the ICAC and advises the Commission on policy matters in relation to the fight against corruption. The Operations Review Committee, the one mentioned above, oversees the investigation work of the Operations Department. The Corruption Prevention Advisory Committee advises the ICAC on the priority of corruption prevention studies and examines all the study reports prepared by the Corruption Prevention Department. The Citizens Advisory Committee on Community Relations advises the Commission on community education and engagement strategies and the work of the Community Relations Department. Most members of these committees are prominent citizens appointed by the Chief Executive, so that citizens' voice is channelled to the ICAC. In addition to the four advisory committees, the independent ICAC Complaints Committee, which monitors the handling of non-criminal complaints against the ICAC and its officers, is another part of the checks and balances mechanism to ensure the good conduct of ICAC officers.

#### **D. Societal Expectation**

The performance of the ICAC, as well as the entire criminal justice system, is subject to close public scrutiny. The vibrant mass media in Hong Kong constantly keeps a close eye on the work of public authorities, including the ICAC. The public also has a high expectation for the ICAC in properly discharging duties without bias and fear. In the Annual Survey 2020 conducted locally by an independent polling agency commissioned by the ICAC, 93.2% of the respondents consider that the ICAC deserves their support. 81.7% of the respondents are willing to report corruption to the ICAC, and 72.4% are of the view that the ICAC's anti-corruption work is effective.<sup>28</sup> While the favourable findings indicate the local community's great confidence in the ICAC, the survey itself serves as an important tool to measure the level of public support for the ICAC. It spurs the Commission to improve its performance and uphold its members' conduct, so as to meet the increasing expectation of the society.

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<sup>28</sup> ICAC, Hong Kong SAR, "Findings of Survey 2020", <<https://www.icac.org.hk/en/survey/finding/index.html>>.

## E. International Obligations

Hong Kong has to fulfil its international obligations to ensure the independence and integrity of its anti-corruption work. The UNCAC, as mentioned at the beginning of this paper, includes provisions for the independence and integrity of public officials, the judiciary, prosecution services and anti-corruption agencies. The Convention entered into force for China in 2006, and has since then been applied to Hong Kong. Hong Kong, being a special administrative region of China, is subject to the Convention’s implementation review mechanism. The first review on the implementation of Chapter III “Criminalization and Law Enforcement” and Chapter IV “International Co-operation” has been completed. The second implementation review cycle, focusing on Chapter II “Preventive Measures” and Chapter V “Asset Recovery”, is now underway.

International surveys also confirm the strong confidence of the global community in Hong Kong’s criminal justice and anti-corruption systems. Hong Kong is ranked the second highest in Asia in respect of the rule of law and control of corruption in the 2020 update of the Worldwide Governance Indicators of the World Bank Group.<sup>29</sup> It has the second highest score among Asian countries/territories under the indicator “judicial independence” of the World Economic Forum’s Global Competitiveness Report 2019.<sup>30</sup> In the World Justice Project’s Rule of Law Index 2020, Hong Kong is ranked the third in Asia for its overall rule of law performance.<sup>31</sup> Its ranking in the relevant sub-factors of the Rule of Law Index is listed below:

Sub-factors	Hong Kong’s score (from 0 to 1)	Hong Kong’s ranking in	
		Asia	World
2.2 Government officials in the judicial branch do not use public office for private gain	0.94	2 <sup>nd</sup>	13 <sup>th</sup>
8.1 Criminal investigation system is effective	0.70	3 <sup>rd</sup>	3 <sup>rd</sup>
8.2 Criminal adjudication system is timely and effective	0.70	3 <sup>rd</sup>	12 <sup>th</sup>

<sup>29</sup> The Worldwide Governance Indicators report aggregate and individual governance indicators for over 200 economies for six dimensions of governance, namely (i) Voice and Accountability, (ii) Political Stability and Absence of Violence, (iii) Government Effectiveness, (iv) Regulatory Quality, (v) Rule of Law, and (vi) Control of Corruption. In the 2020 update, Hong Kong is ranked 18th and 17th globally (out of 209 countries/territories) in the dimensions of “Rule of Law” and “Control of Corruption”, respectively. Details can be found on the Worldwide Governance Indicators project website <<https://info.worldbank.org/governance/wgi/>>.

<sup>30</sup> The Global Competitiveness Report reflects the economic competitiveness of an economy by assessing the strength of institutions, policies and factors that determine the level of productivity of that economy. Hong Kong is ranked the 3rd most competitive place among 141 economies in the 2019 Report. Among the 103 indicators, Hong Kong is ranked the 8th globally in “Judicial Independence”. Details can be found in the Global Competitiveness Report 2019 website <<https://www.weforum.org/reports/how-to-end-a-decade-of-lost-productivity-growth>>.

<sup>31</sup> The Rule of Law Index assesses the extent which countries / territories adhere to the rule of law in practice by examining eight factors, namely (i) constraints on government powers, (ii) absence of corruption, (iii) open government, (iv) fundamental rights, (v) order and security, (vi) regulatory enforcement, (vii) civil justice and (viii) criminal justice. In 2020, Hong Kong’s overall ranking out the 128 countries and jurisdictions surveyed is 16th. Details can be found in the Rule of Law Index 2020 website <<https://worldjusticeproject.org/our-work/research-and-data/wjp-rule-law-index-2020>>.



Sub-factors	Hong Kong's score (from 0 to 1)	Hong Kong's ranking in	
		Asia	World
8.4 Criminal system is impartial	0.68	4 <sup>th</sup>	15 <sup>th</sup>
8.5 Criminal system is free of corruption	0.87	3 <sup>rd</sup>	11 <sup>th</sup>
8.6 Criminal system is free of improper government influence	0.58	3 <sup>rd</sup>	41 <sup>st</sup>

Source: World Justice Project's Rule of Law Index 2020

These positive findings not only reflect the capability of Hong Kong's criminal justice and anti-corruption systems of upholding integrity and effectiveness, but also serve as a constant reminder for Hong Kong to ensure that the Judiciary, the DoJ and the ICAC continue to remain impartial at the highest global standard when discharging their mandates.

#### **IV. ICAC'S ROLES IN PROMOTING INTEGRITY IN THE PUBLIC SECTOR**

The ICAC adopts a holistic approach to bring culprits to justice by law enforcement, to minimize possibilities of corruption by systemic prevention, and to entrench a probity culture in the society by community education. This three-pronged strategy is deployed to support all institutions in the public sector, including those in the criminal justice system, to uphold their members' integrity.

In addition to enforcing the anti-corruption law stringently to create a deterrence effect, the ICAC has implemented comprehensive prevention and education initiatives to assist the public sector, including the Judiciary and the DoJ, in preventing corruption and promoting an integrity culture. The ICAC conducts in-depth corruption prevention studies into various work areas of government departments and public organizations, covering different policy initiatives, legislative proposals, operational and administrative procedures and practices, licensing, regulatory and enforcement regimes. Since its establishment in 1974, the ICAC has completed more than 4,000 studies to help these institutions, including the Judiciary and the DoJ, minimize corruption risks, enhance governance and strengthen staff integrity mechanisms.

The ICAC also promotes the culture of integrity in government departments through trainings, educational materials and awareness raising projects. For example, the ICAC organized the "Ethical Leadership Programme" in collaboration with the Civil Service Bureau. Under this Programme, each government department, including the Judiciary and the DoJ, has designated a senior official as "Ethics Officer". These Ethics Officers map out ethics management strategies based on the departments' needs and priorities, and take charge of implementing integrity-related activities within the department. As a co-initiator of the Programme, the ICAC supports the government departments and their Ethics Officers to raise anti-corruption awareness within the departments. For example, thematic seminars are organized to update the Ethics Officers on topical issues related to staff integrity and corruption risks. The Ethics Officers may adopt materials developed by the ICAC, such as corruption prevention guides, educational cartoons and feature articles, in the staff integrity training of their departments. An intranet portal has also been set up for the ICAC and the Ethics Officers to share the information, reference materials, experience and best practices on promoting integrity.

In addition to working through Ethics Officers, the ICAC arranges anti-corruption training talks and workshops for around 30,000 civil servants every year. These training activities feature topics like anti-corruption laws and common corruption risks. Ethical challenges such as conflict of interest, misuse of authority, undesirable association with people of dubious background, and supervisors' accountability in managing the integrity of their staff, are also discussed. Government departments are encouraged to arrange anti-corruption training for their staff members regularly, so that the entire workforce can be kept reminded of the importance of upholding high ethical standards. The ICAC also developed an "Integrity Management e-learning Platform for Civil Servants", encompassing learning modules on the anti-corruption laws and ethical scenarios. Civil servants can access it any time through the government-wide online learning portal.

All the above initiatives aim to help build up a robust anti-corruption system in the public sector, in which possibilities of corruption are minimized, and members' awareness against corruption is maximized.

## **V. CONCLUDING REMARKS**

This paper tries to illustrate, from the ICAC's perspective, how Hong Kong safeguards, at multiple levels, the independence and integrity of judges, prosecutors and anti-corruption officials, which are crucial to the territory's fight against corruption. In addition to the constitutional framework and legal provisions which set out the high-level guarantees of independence and integrity, each institution within the anti-corruption system has its significant role to ensure that it functions in a fair, just and unbiased way. The interplay of other safeguards, including the checks and balances mechanism, ICAC's anti-corruption measures, and most importantly the consensus and aspirations of the society, also helps sustain the independence and integrity of the judicial, prosecutorial and anti-corruption authorities in Hong Kong.



## COUNTRY PRESENTATION PAPERS

Ms. Norfarisah Mohd Harris  
& Ms. Rashidah binti Haji Rashid, Brunei Darussalam

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Mr. Tong Heng, Cambodia

\*\*\*

Mr. Lie Putra Setiawan, Indonesia

\*\*\*

Mr. Thongkham Soumaloun, Lao PDR

\*\*\*

Mr. OTANI Junichiro, Japan

\*\*\*

Mr. Asrul Ridzuan Bin Ahmad Rustami  
& Mr. Mohamad Faizal Bin Sadri, Malaysia

\*\*\*

Ms. Hazel Canet Decena-Valdez, Ms. Lyn Gaa Dimayuga  
& Mr. Renato Aviles Peralta Jr., Philippines

\*\*\*

Mr. Khoo Wei Quan, Wilson  
& Mr. Hon Yi, Singapore

\*\*\*

Mr. Sutthi Sookying, Thailand

\*\*\*

Mr. Augusto Da Costa Castro, Timor-Leste



# INTEGRITY AND INDEPENDENCE OF JUDGES, PROSECUTORS AND LAW ENFORCEMENT OFFICIALS

*Norfarisah Mohd Harris\**

## I. CASE STUDY

*PP vs Ramzidah binti Pehin Datu Kesuma Diraja Kol (R) Hj Abd Rahman (1st Defendant)  
and Haji Nabil Daraina bin Pehin Udana Khatib Dato Paduka Seri Setia Ustaz Hj  
Awang Badaruddin (2nd Defendant)*

- The Anti-Corruption Bureau (ACB) of Brunei Darussalam received information that the Honourable Senior Registrar, High Court Ramzidah binti PDKD Hj Abdul Rahman, who is also the Official Receiver, committed an act contrary to Section 12 (maintains a standard of living or in control of assets which are not commensurate with official emoluments), Section 12 A (misconduct of public office) and Chapter 6(c) of the Prevention of Corruption Act (Chapter 131) and was also suspected of committing other offences under the Penal Code (Chapter 22) and other related laws.
- Ramzidah, a former magistrate, was one of the few Court-appointed Official Receivers for bankruptcy, and in such capacity she oversaw payments into the Court's trust accounts for creditors (also referred to as "Official Receiver accounts"). During the course of her employment in this role, she removed funds from 255 Judgment Debtors' accounts for personal use in the amount of BND15,750,292.24.
- Haji Nabil, Ramzidah's husband and a former prosecutor before becoming a judge, was not involved in the predicate offending; however, he was involved in laundering of the proceeds of Ramzidah's offending. They were both charged with possession of unexplained wealth under the Prevention of Corruption Act (Chapter 131), but those charges were stayed until the completion of the trial. The stay has since been lifted and the prosecutors are currently still deliberating on whether to proceed with these charges.

### A. Initial Detection

- The ACB received information on 28 December 2017 which indicated that Ramzidah and Nabil were living lavishly in a manner that exceeded their expected income. The Complaints Evaluation Committee (CEC) assessed this information on 30 December 2017 and investigation commenced on the same day.
- Information from the intelligence-gathering phase that included an analysis of the financial statements was sufficient for ACB to determine that there was reason to commence a full-blown investigation, starting with the issuance of freeze orders on the two suspects' bank accounts in January 2018, which amounted to BND681,496.45 and GBP5,050.13.

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\* Senior Special Investigator, Anti-Corruption Bureau, Brunei Darussalam.

- A separate money-laundering investigation into this case was opened on 5 March 2018.
- The ACB utilized a multi-disciplinary investigation team to investigate this complex case. The team consisted of investigation officers from different fields or specialization such as intelligence, financial investigation, forensic investigation and a designated investigator who would carry out investigation under the Prevention of Corruption Act (Chapter 131) or other prescribed offences. This team worked together to identify proceeds of crime to plan for seizure, asset management and confiscation.

## **B. Funds Tracing: International**

- From the initial analysis of their financial details, it was determined that not all funds that were embezzled made their way into the two magistrates' accounts. Any cash withdrawn from the Official Receiver accounts was mostly deposited to Ramzidah's and Nabil's account. The remainder that was not deposited was later found to have been used to purchase luxury items within the country or overseas. Moreover, those funds that were deposited to the Ramzidah's and Nabil's personal accounts eventually also made their way overseas through bank telegraphic transfers.
- Open-source information indicated that Ramzidah, Nabil and their children had a significant presence in the United Kingdom. Their social media platforms, including Instagram, indicated that they were living at a residence in the UK, and drove their own vehicles. The authorities obtained further information to assess any flow of funds to the UK as well.
  - a. Wire transfers were identified amounting to GBP875,581.02 and BND1.3 million from their accounts in Brunei to their accounts in the UK that could support their purported lavish expenses in the UK, and this information was shared with the ACB.
  - b. Obtained confirmation from the UK that all the purported residences and vehicles were rentals and not owned outright by either Ramzidah or Nabil.
  - c. Further to this, the ACB also sought informal assistance from the Bribery and Corruption Intelligence Unit (BCIU) of the National Crime Agency (NCA) of the UK. The NCA conducted intelligence gathering on bank accounts and assets owned by Ramzidah and Nabil in the UK and the findings were then used to substantiate the request subsequently made through formal Mutual Legal Assistance channels.

## **C. Operation**

The ACB conducted operations in three phases:

- a. Phase I (*to locate and identify their properties*)
  - Conducted search at the Judiciary office

Search was conducted to collect evidence relating to the judgment debtors such as bank passbook, files on the dividend pay-out, cash and other supporting evidence to support the criminal breach of trust offences.

- Conducted search at their residence

Search at their residence was conducted to collect evidence relating to the judgment debtors and also to collect evidence on the lavish lifestyle and any other supporting evidence on the proceeds of crimes. The assets found during the search were secured and sealed. This will ensure that the assets are not removed or destroyed.

- Conducted search at their registered address

Further search was conducted at their registered address. Preliminary investigation revealed that Ramzidah and her children had a registered address at her parents' house. In order for thorough investigation the parents' house was searched for any evidence pertaining to proceeds of crimes or assets. Assets found were seized and some were sealed to prevent removal or being destroyed.

- Secured all assets

All assets found during the preliminary investigation and search were seized or sealed to ensure that the assets are not disposed. For example, regarding the cars. ACB notified the relevant authority to prevent any sales or transfer of ownership.

- Froze all local banks accounts

All bank accounts established during the preliminary investigation and search were frozen. Relevant banks issued Notice Orders signed by the Public Prosecutor.

b. Phase II (*to seize their properties*)

- Re-searched their residence and registered address

Searches were conducted at their residence for the purpose of seizing all the cars, luxury items such as handbags and watches as the investigation revealed that items were acquired using proceeds of crime. Thorough search was conducted to ensure no secret area to hide the cash withdrawn from the official receiver bank accounts.

- Seized all assets e.g., cars, luxury items



All assets were seized from both their residence. The assets were then kept at a secure location for safekeeping. Assets are maintained for confiscation.

c. Phase III (*to locate and seize the remaining properties*)

- Seized cars from parents' house, car agents and parking lot

All assets were seized from their parents' house, car agents and also hotel parking lot. The assets were then kept at a secure location for safekeeping. Assets are maintained for confiscation.

Investigation continues, calling for witness and gathering evidence to be tendered in court. ACB has called witnesses for statement to support the evidence of Criminal Breach of Trust, Prevention of Corruption Act and Money Laundering offences. During the investigation ACB has called the following:

- Judiciary officers and personnel- to support the roles and responsibility of Ramzidah and the procedures in handling official receiver bank accounts.
- 256 judgment debtors – to support that there was no instruction to Ramzidah for withdrawing money from their official receiver accounts.
- Creditors – to support that they have not received payments to settle the debts.
- Bank personnel – to support the withdrawal made from Official Receiver accounts by Ramzidah and the cash denomination she received.
- Bank personnel – to support the cash deposits and telegraphic transfers to United Kingdom.
- Expert Witness – ACB has documentation to support evidence that Ramzidah withdrew the cash withdrawal from the banks.
- CCTV – to support the CCTV footage at the banks – during withdrawal and Cash deposits using the cash deposit machine.
- Car sales agents – to support the cash payments for the cars purchased.

#### **D. Prosecution and Trial**

- In order to avoid any conflict of interest or lack of impartiality as both defendants are judiciary officers and also previously a Deputy Public Prosecutor from the Attorney General Chambers, the Government of Brunei engaged Queen's Counsel (QC) from the United Kingdom to lead the prosecution team.
- Meanwhile the Judiciary Department assigned the case to the visiting High Court Judge from the United Kingdom to Brunei to hear the case.
- In July 2018, both defendants faced 157 charges which were reduced to 40 charges for offences of criminal breach of trust (CBT) by a public servant under Section 409 of the Penal Code, Cap 22; money laundering (ML) under Section 3, CARO; and possession of unexplained property under Section 12, Prevention of Corruption Act, Cap 131.

- In January 2020, the case was concluded with a conviction of the charges for both defendants. Haji Nabil was sentenced to 5 years for the offence under money laundering while Ramzidah was sentenced 10 years concurrently for CBT and money laundering.

## II. CONCLUSION

The High Court sentenced Ramzidah, who was the deputy official receiver at the Bankruptcy Office to the maximum penalty of ten (10) years for each of the charges of criminal breach of trust by a public servant and five (5) years for each of the charges of money laundering. This maximum custodial sentence is allowed under the relevant legislation. The judge highlighted during sentencing that *“it would be impossible to find a more egregious example of criminal breach of trust and it was wrong you assume that your position in judiciary and society could protect you from your crime”*.

For Hj Nabil who was a senior magistrate, the court sentenced him to five years concurrently for each of his offences of money laundering. The judge highlighted that there is no doubt that he was fully aware of his wife’s activity. If he had integrity, he could have reported it to the authorities, but he was more than happy to share in the lavish lifestyle his wife has provided. He had abused his position in the judiciary.

Though both defendants have been sentenced to jail, the prosecution still applied for a benefit recovery order to assess the value of the benefit derived from the defendant's crimes. The prosecution has also filed notice for a restraining order on all the property seized by the Anti-Corruption Bureau to prohibit the property from being taken or dealt with in any manner, as they are subject to the confiscation order.

This case proves that judges, prosecutors and law enforcement officials are not above the law, and they are independent in combating corruption and other wrongdoing.

## References

- i. Prevention of Corruption Act (Chapter 131)
- ii. Criminal Asset Recovery Order (CARO), 2012
- iii. PP vs Ramzidah binti Pehin Datu Kesuma Diraja Kol (R) Hj Abdul Rahman (1<sup>st</sup> Defendant) Haji Nabil Daraina bin Pehin Udana Khatib Dato Paduka Seri Setia Ustaz Hj Awang Badaruddin (2<sup>nd</sup> Defendant) Criminal Trial No.11 of 2018)



# INTEGRITY AND INDEPENDENCE OF JUDGES, PROSECUTORS AND LAW ENFORCEMENT OFFICIALS

*Rashidah binti Haji Rashid\**

## I. INTRODUCTION

The United Nations and other international organizations have made efforts to promote the integrity and independence of the judiciary, prosecutorial authorities and law enforcement authorities and have adopted several relevant legal instruments. Most importantly, the United Nations Convention against Corruption (UNCAC) Article 5 states that a State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of rule of law, proper management of public affairs and public property, integrity, transparency and accountability. In addition to Article 5, Article 11 states the importance of securing the independence of the judiciary and integrity in order to prevent and suppress corruption. In addition to UNCAC, there are other essential laws and regulations to ensure integrity and independence of judges, prosecutors and law enforcement agencies.

In Brunei Darussalam, the Prime Minister's Office is the central coordinating body for all Government ministries and agencies, including the Judiciary Department, the Attorney General Office and the Law Enforcement Agency. All public servants are governed by several laws and regulations and government circulars namely the Public Service Commission Act (Chapter 83) – Public Officers (Conduct and Discipline) Regulations.

The Anti-Corruption Bureau (ACB) Brunei Darussalam was established on 1<sup>st</sup> February 1982. Following the formation of the Bureau, the Emergency (Prevention of Corruption) Order, 1981 was replaced with the Prevention of Corruption Act (Chapter 131) (PCA). The ACB is the lead agency with designated powers of investigation into corruption offences. The PCA was reviewed and amended to include preventive powers and duties of the officers of the Bureau and additional powers of investigation including misconduct in Public Office. As for the Brunei Anti-Corruption Bureau (ACB), each investigator is governed under several laws and regulations. The laws and regulations are as follows:

- The Public Service Commission Act (Chapter 83 of the Brunei Laws)  
This Act makes provision for the punishment of offences in connection with the Public Service Commission, for the protection and remuneration of the members of the Commission and for other matters connected therewith. ACB officers are considered as members of the Commission. Under this Act, no member of the Commission shall publish or disclose any contents/documents/communications or information without consent. Any person contravening the provision shall be guilty of an offence, with a penalty \$5,000.00 and imprisonment of one year.

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\* Assistant Special Investigator, Anti-Corruption Bureau, Brunei Darussalam.

- Regulations made in General Orders:  
All government officers have to follow the regulations stated in General Orders. If any officers is against this order, they could be removed from the government office if convicted, or they will not be promoted as disciplinary action.
- Instruction from the Prime Minister's Office known as *Surat Keliling*:  
This is a memorandum by the Prime Minister's office which stated that if any officers suspected/found to commit any offence under the Penal Code, the Ministry has power to withhold their salary and to suspend them from working while the case is under investigation.
- Treasury Circulars issued on financial matters; and Financial Regulation 1983 governing procurement and related issues.  
It is the duty of all officers to be conversant with Financial Regulation and with such Treasury Circulars and special accounting instruction as are applicable to them or to their department. This is to establish a proper system of accounting and to supervise the expenditure and disbursement of the Government account so as to ensure the integrity of the officers.

Several other government agencies also act as a check and balance on the conduct of civil servants. This includes the Anti-Corruption Bureau. Besides the general laws and regulations, the ACB also has several standard operating procedures (SOP) in place to ensure that investigations are conducted with integrity and independence. For example:

- Any information received will be reviewed by the Complaint Evaluation Committee;
- The committee consists of ACB senior officers and is chaired by the director;
- Once investigation is completed the investigation papers will be forwarded to the Deputy Public Prosecutor (DPP) for advice;
- The DPP will decide to proceed with prosecution to ensure checks and balances between investigation and prosecution.

As for prosecutors, the Criminal Justice Division under the Attorney General Chambers (AGC) is responsible for prosecuting the ACB's and other law enforcement agencies' cases. The DPP will then evaluate the investigation papers forwarded by the ACB to ensure that the investigation is conducted in accordance with law and that there is sufficient evidence to proceed with prosecution.

Magistrates and judges are governed under laws and regulations similar to other civil services. Hence, magistrates and judges can be investigated and prosecuted.

## **II. CORRUPTION CONTROL**

In 2015, Brunei enacted a new corruption law to address abuse of power and misconduct in public office. The latest laws will give powers to the ACB to investigate civil servants who fail to carry out their duties, for example, criminalizing the use of public funds for private purposes; giving undue preferential treatment; misuse of information acquired during the course of duty; and allowing private interests to come into conflict with public duties. Hence, with these latest laws it will allow legal action to be taken against

judges, prosecutors and law enforcement officers who fail to carry out their duties to a high ethical standard.

### **III. EDUCATION AND TRAINING**

Since the new corruption laws were enacted, the ACB and the AGC have been giving awareness talks to the civil service. The AGC also conducts training for ACB investigators on what is required to conduct the investigation, such as handling exhibits and digital evidence.

### **IV. PROCEDURAL SAFEGUARDS**

In order to avoid any conflict of interest in case assignments (e.g., disqualification and recusal of judges and prosecutors) some procedural safeguards have been put in place. For example, in the Anti-Corruption Bureau, an investigator must declare to the director if there is any conflict of interest in connection with a person of interest. For example, if the subject is family or friend to the investigator, the case will then be reassigned to another investigating officer and as far as possible, the conflicted investigation will not be involved in the case at all. As for prosecutors and judges, they must recuse themselves from any case if they are disqualified from performing their legal duties because of a conflict of interest or lack of impartiality. The conflict of interest should be avoided to ensure integrity of the case officer and also to avoid bias.

### **V. CONCLUSION**

With high integrity of the Judges, Prosecutors, and Law Enforcement of Officials, most of the cases in Brunei have been investigated and prosecuted well. Independence shows equality and fairness of the duties of judges and prosecutor, and it is considered right for all citizens.

### **References**

- i. Constitutional Matters I, Constitution of Brunei Darussalam
- ii. United Nations Convention Against Corruption (UNCAC)
- iii. Prevention of Corruption Act (Chapter 131)
- iv. Criminal Asset Recovery Order (CARO)



# INTEGRITY AND INDEPENDENCE OF ANTI-CORRUPTION OFFICIALS IN CAMBODIA

*Tong Heng\**

## I. THE INTEGRITY OF ANTI-CORRUPTION OFFICIALS

Integrity can be considered as a strong moral principle that individuals and institutions need to comply with. Integrity is obtaining a sense of trust, professionalism and confidence from the public. In the early stages of the establishment of the Anti-corruption Unit (ACU), integrity of officials was on the top of the agenda to make sure that all officials maintain the highest standard of integrity and dignity. It was a good start for good officials.

### A. Inspection and Supervision of Anti-Corruption Officials

In December 2014, the Disciplinary Council and Internal Control (DCIC) was established. The legal mandate of the DCIC is to issue internal rules and inspect and supervise anti-corruption officials.<sup>1</sup> Where there is any violation of work discipline and/or conflict of interest, or any complaint against anti-corruption officials, the DCIC will open an investigation.

The DCIC pronounces the following disciplinary sanctions<sup>2</sup>:

First degree:

- Oral censure;
- A written record of censure entered into the official's personnel file;
- Involuntary transfer of the official from the existing post/position following the disciplinary action and measures;
- Removal of the official's name from the list requesting promotion of rank and position.

Second degree:

- Severe reprimand which results in the permanent removal of the official's name from the existing list of rank/position promotion once that individual's name is already on the list or suspended or delayed promotion of rank or position of that official for a limited period of time, but this promotion sanction shall not be applied for longer than the period of two years in the promotion turn;
- Impose unpaid suspension on that officer for the period not longer than one year;
- Downgrade the official's rank/position one scale lower or more than one scale;
- Force the officer into early retirement or dismissal from office;
- Dismissal of the officer from the civil service;
- File the case in court.

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\* Assistant to the President, Anti-corruption Unit, Cambodia.

<sup>1</sup> Decision on the establishment of the Disciplinary Council and Internal Control (DCIC), art. 2,5.

<sup>2</sup> Internal Rules and Regulations for Anti-Corruption Officials, art. 12.



## **B. Asset Declaration and Liability Disclosure**

The declaration of assets and liabilities is a historic work of Cambodia that was developed as a tool to prevent corruption. All ACU officials including contracted officials declare their assets and liabilities every two years. Failure to declare or wrongly declare the assets and liabilities is subject to a sentence from one month to one year in prison and a fine from one hundred thousand Riel (1,00,000) to two million Riel (2,000,000), and the official is forced to declare the assets and liabilities to the ACU. In case of refusal, double punishment shall be applied.

Where there is an increase in the official's assets and the official cannot provide reasonable explanation in comparison to his or her lawful income, such unexplained wealth is subject to confiscation. All of the confiscated assets will become state property. In addition, if the unexplained wealth is connected to any corruption offence, the property's owner shall be punished in accordance with the anti-corruption law.

## **C. Education and Training**

Capacity-building and integrity are among the most important agenda items, and they are included in the national anti-corruption strategy phase 3 (2020-2025). There are 12 courses on integrity per year. The course aims to raise awareness about the importance of integrity and the risks of corruption. Each course has 40 to 60 participants randomly selected from all departments in the ACU. All anti-corruption officials have attended this course. Furthermore, there are nine specialized training courses, such as case management, firearms training and gun safety, mobile phone forensics etc., conducted each year to enhance capacity-building and professionalism.

## **D. Conflicts of Interest**

### **1. Hospitality Management**

Apart from official hospitality, which includes participation in workshops, conferences, and so forth representing the ACU or as a guest of honour nominated by the President of the ACU, "Hospitality" refers to an invitation for entertaining activity, the offering of accommodation, travel arrangements and other services provided related to health, education, dining out and so forth.

ACU officials cannot accept the payment of any health service fees on their behalf or any health insurance offered by any party, except offers from the government, family members and relatives. For close friends who wish to provide such support, the officer must seek permission and get approval from the President of the ACU and the Head of the DCIC.

"Dining Out" refers to having meals at any places such as at homes, restaurants etc. when offered by other parties. Dining out may be arranged among ACU officials without the presence of other parties or being arranged or paid for by other parties. Payment of the bill must be in one of two ways: shared bill (Russian style), or the higher-ranking official must pay the bill for the subordinate officials (ACU Style).

### **2. The Management of Gifts**

According to the ACU, "Gift" refers to any assets or services given to ACU officials by a natural person or a legal entity which are not considered as an agreement, and it is not a traditional or customary gift such as gifts given at weddings or religious ceremonies.

All gifts which are worth 100,000 Khmer Riel or more should be rejected, except in the following cases:

1. Formal gift;
2. Gift from lottery programme or any form of competition;
3. In situations that the recipient finds it hard to reject or cannot reject the gift;
4. Permission was obtained from the President of the ACU.

When receiving or declining gift, ACU officials are required to immediately report to the President of the ACU and the Head of the DCIC. The Head of the DCIC shall make a decision as follows:

1. The recipient can keep the gift for the recipient's personal use;
2. Order the sale of the accepted gift to the recipient according to the market price in case there is a request made to buy the gift;
3. To keep the gift as the property of the ACU.

Where there is an offering of hospitality or gift, an anti-corruption official must seek permission from the President of the ACU and the Head of the DCIC via a means of telegram<sup>3</sup> where the name of participants, the inviting party, the venue, time, the content and the purpose of the meeting shall be informed. The President of the ACU and the Head of the DCIC have to reply within 60 minutes upon receiving the request. After receiving such request, the Head of the DCIC shall copy that request into the telegram of the DCIC, and summarize the request and post it in the ACU's official telegram. In case of there is no reply, the request is considered to be approved.

### 3. On Case Assignment

Complaint officers and case officers must declare actual conflicts of interest, perceived conflicts of interest, and potential conflicts of interest once having been assigned to fulfil any missions or any working objectives.<sup>4</sup>

## **II. INDEPENDENCE OF THE ANTI-CORRUPTION UNIT**

With a strong political will to combat corruption, the anti-corruption institution is independent in budgeting,<sup>5</sup> structure<sup>6</sup> and operations.<sup>7</sup> On budgeting, an amendment of the anti-corruption law provided the anti-corruption institution with a special budget from the national budget. The operational budget is from 0.2 to 0.3 per cent of the national budget

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<sup>3</sup> A mobile application used for communication.

<sup>4</sup> Internal Rules and Regulations, 14<sup>th</sup> point and 2012 ACU Standard Operating Procedures (SOP) of Investigation.

<sup>5</sup> Law on the Amendment of the Anti-corruption Law, art.16 new.

<sup>6</sup> Law on the Amendment of the Anti-corruption Law, art.10 new.

<sup>7</sup> Anti-corruption Law, art. 11.

per annum.<sup>8</sup> The budget is subject to review every three years. Where there is a need, the ACU can request supplementary allocations as necessary.

On operations, the ACU is mandated to investigate all kinds of corruption offences and to refer these cases to the court without any consultation with any ministry. The ACU is accountable to the National Council Against Corruption and the National Assembly. To fulfil its mandate effectively, the Law on the Amendment of the Anti-corruption Law (2011) also provided the president of the National Council Against Corruption the right to structure and nominate officials from the deputy director level to bottom line.

*Anti-corruption Unit:*

The mission statement of the ACU is to promote integrity and the fight against corruption by all means, in all sectors, and at all levels in Cambodia through education, prevention and deterrence, and law enforcement with participation from the public and international cooperation. Since the establishment of ACU, there has been a great change in the public mindset – that is, participation in the fight against corruption has increased year by year from every corner of society. As a result, there has been a significant increase in state revenue every year, which improved the efficiency of the delivery of public services. Furthermore, at the time of this report, 100 Memorandums of Understanding (MOUs) have been signed between the ACU and the private sector to demonstrate the commitment of those private companies to remain corruption free.

There are many challenges along the way. These challenges include:

1. Changing the mindset, concept and habits of a society takes time and participation.
2. Legal framework, procedure and mechanism: the implementation of the recommendations obtained from the UNCAC review process have not yet met the requirements for both witness and whistle-blower protection, asset recovery and mutual legal assistance.
3. Anti-corruption efforts require participation from all stakeholders to work together: that is, the participation from all stakeholders both from the public and private sectors.
4. Inter-agency coordination: despite positive and smooth progress, there is a need for greater participation and understanding in both the public and judicial institutions, especially on new priorities such as anti-money-laundering efforts, asset recovery and so on. The mobilization of the participation of other stakeholders will increase the speed and effectiveness of anti-corruption efforts.
5. Professional resources: skills such as financial document analysis, computer forensics and accounting are still limited, especially when dealing with complex and cross-border cases.
6. International Cooperation: although the ACU has had good experiences in collaborating with foreign counterparts, this work is still a challenge that

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<sup>8</sup> Sub-decree on the management and division of budget of the ACU.

requires building more knowledge, skills and expanding bilateral and multilateral relations as much as possible.



# **CODE OF CONDUCT OF THE CORRUPTION ERADICATION COMMISSION**

*Lie Putra Setiawan\**

Integrity is an important component for any institution in any country that is engaged in public service, including judicial bodies. The integrity of judicial bodies is one of the crucial issues, because the judiciary controls social values and norms. In this case, integrity has become a necessity, because integrity is a tool that harmonizes values and norms that are considered ideal and guided by the community.

As we know, laws and other regulations are only inanimate objects, where the strength and usefulness of a law will become reality if it is enforced by law enforcement officials who have good integrity.

The community can follow laws and regulations to regulate the relationship between them; however, people sometimes disagree about the meaning of the formulation of the law or how to apply it. This is why integrity is needed in the role of law enforcement officials, including judges, who are obliged to try cases properly, produce fair decisions and have positive impacts on society and the State.

Efforts to improve and maintain integrity have also been carried out by the Corruption Eradication Commission, Indonesia's anti-corruption agency, by adopting a code of conduct that applies to every commission employee, including commissioners, investigators and prosecutors. Like codes of conduct in general, this code of conduct must be obeyed, and there are sanctions for violators.

## **I. BASIS FOR THE APPLICATION OF THE CODE OF CONDUCT AT THE CORRUPTION ERADICATION COMMISSION**

A code of conduct is needed to direct the spirituality, motivation, attitudes and behaviour of all Commission employees, so that it becomes a shared commitment and responsibility in making it happen.

The Corruption Eradication Commission has formulated its basic values and code of conduct twice. The first time, it was enacted in 2006 with the Corruption Eradication Commission Regulation Number 05.P.KPK of 2006, concerning the Code of Conduct for Corruption Eradication Commission Employees, which includes seven personal basic values, namely: (1) integrity; (2) professionalism; (3) innovation; (4) transparency; (5) productivity; (6) religiosity; and (7) leadership.

Furthermore, with the background of changes in vision, mission, strategy and environmental dynamics, in 2013 the Corruption Eradication Commission changed the

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personal core values to five, namely: (1) religiosity; (2) integrity; (3) justice; (4) professionalism; and (5) leadership.

Articles 37 A and B of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission, the Supervisory Board was formed to improve the performance of the Corruption Eradication Commission so that it is more effective and accountable in carrying out its duties and authorities.

Article 37 B paragraph (1) letter c Law Number 19 of 2019 stipulates that the Supervisory Board is tasked with compiling and establishing a code of conduct for Commissioners and Employees of the Corruption Eradication Commission, and that the code would take effect on 4 May 2020.

The Supervisory Board has issued three supervisory board regulations, namely:

- KPK Supervisory Board Regulation Number 01 of 2020 concerning the Code of Conduct of the Corruption Eradication Commission.
- KPK Supervisory Board Regulation Number 02 of 2020 concerning Enforcement of the Code of Conduct of the Corruption Eradication Commission.
- KPK Supervisory Board Regulation Number 03 of 2020 concerning Procedures for Examination and Trial of Code of Conduct for the Corruption Eradication Commission.

Furthermore, the Supervisory Board held a session to examine any suspected violations of the code of conduct by the commissioners and employees of the Corruption Eradication Commission as stipulated in Article 37 B paragraph (1) letter e of Law Number 19 of 2019.

## **II. ENFORCEMENT OF THE CODE OF CONDUCT OF THE CORRUPTION ERADICATION COMMISSION**

The Supervisory Board of the Corruption Eradication Commission has held several hearings involving Commission employees, in which one of the hearings has handed down a verdict with severe sanctions in the form of dishonourable discharge of one of the employees. The employee was proven to have received gratification which is considered as bribery that violates the code of conduct stipulated in Article 4, paragraph (1), letters g and h, as well as Article 4, paragraph (2), letter a, Regulation of the Supervisory Board Number 02 of 2020 concerning Enforcement of the Code of Conduct of the Corruption Eradication Commission. The employee's actions include giving a telephone contact number to a detainee, receiving a food parcel, borrowing IDR800.000 and receiving an amount of money from one of the Corruption Eradication Commission detainees in the amount of IDR300.000.

In addition, there was also a hearing conducted by the Corruption Eradication Commission's Supervisory Board against the Chairman, Firli Bahuri, regarding the personal use of a helicopter, which is considered as living a luxurious lifestyle and contrary to ethics.

The allegation against the Chairman for using the helicopter provoked negative responses from society, which lowered public confidence in his leadership and the leadership of the Corruption Eradication Commission as a whole. In the decision imposing punishment, the Chairman is said to have not shown exemplary values. Because of his actions, the Chairman was declared to have violated the code of conduct stipulated in Article 4, paragraph 1, letter n, and Article 8, paragraph 1, letter f, Regulation of the Supervisory Board Number 02 of 2020.

### **III. CODE OF CONDUCT OF THE CORRUPTION ERADICATION COMMISSION**

The five basic personal values of the Corruption Eradication Commission have been detailed in various forms of actions, namely:

#### **A. Integrity**

The elements of integrity include obedience to laws and regulations, consistency with the values of truth, anti-corruption, honesty, virtue, kindness, trustworthiness and good reputation, which is detailed in the form of actions:

- Behave and act honestly in carrying out duties in accordance with the facts and truth;
- Obey and carry out commission regulations and/or take an oath or promise as a Commission Person;
- Maintaining the image and dignity of the Commission in various forums, both formal and informal, at home and abroad;
- Having commitment and loyalty to the Commission and putting aside personal, group or group interests in carrying out their duties;
- Report if they know of an alleged violation of the code of conduct by the Commission's personnel;
- To report assets in accordance with statutory regulations and Commission regulations;
- Reject any gratuities deemed bribery, namely those related to position and contrary to duties and obligations, which have been given directly;
- Must report any gratuities deemed as bribery, namely those related to position and contrary to duties and obligations, received directly or indirectly in accordance with applicable regulations;
- Obligated to notify fellow Supervisory Board, fellow Commissioners, or superiors if there is a close relationship or family relationship or if intensively communicating with a party designated as a suspect or defendant by the Commission in accordance with the Commission's regulations;
- Must resign from assignment if the performance of the task is reasonably suspected of causing a conflict of interest in accordance with the Commission's regulations;
- It is prohibited to have direct or indirect contact with a suspect, defendant, convicted person, or other party connected with a corruption case where the Commission is known to have handled the case except in the context of carrying out their duties and with the knowledge of the leadership or direct superiors;
- Notifying fellow Supervisory Board members, fellow Commissioners, or superiors about meetings or communications that have been carried out or will be held with



other parties that are suspected of causing a conflict of interest with the implementation of the Commission's duties and functions;

- Must provide access to the Supervisory Board to all facilities and personal property used in the work and positions of Commission personnel (such as communication devices, computers and transportation) for the purpose of examining and enforcing serious violations of the code of conduct;
- Not abusing their position and/or authority, including abusing their influence as Commission personnel both in carrying out their duties and in their personal interests;
- Do not misuse Commission personnel identification, letter of assignment, or other proof of employment;
- Not receiving other income that creates a conflict of interest with the duties and functions of the Commission and is detrimental to the interests of the Commission;
- Not doing work or owning a business that provides services or trading businesses related to the duties and functions of the Commission and creates a conflict of interest;
- Do not receive payments, compensation in any form from other parties related to the performance of tasks except for transportation, daily allowances (pocket money, local transport, meal allowances), accommodation, food and drinks served in the context of meetings, training, seminars/workshops, partnerships and socialization that apply in general and in accordance with Commission regulations and as long as it is not funded by the Commission;
- It is prohibited to notify, lend, send or transfer, sell or trade, make use of all or part of the Commission's documents, data or information in electronic or non-electronic form for personal gain, to unauthorized parties, or allow this to happen unless with the approval of the direct superior or the Chairman of the Commission;
- Maintain the secrets entrusted to him or her, including the results of meetings which are declared confidential, up to a predetermined time limit or until the matter has been declared open to the public as long as it does not conflict with statutory regulations;
- It is prohibited to hide, modify, transfer, destroy records or documents belonging to the Commission except for the purpose of carrying out duties;
- It is prohibited to use documents, items, and facilities belonging to the Commission for matters outside the performance of their duties unless with the approval of their superiors;
- It is prohibited to use points or benefits from frequent flyer programmes, point rewards, or the like obtained from official travel in exchange for airplane tickets, goods and/or vouchers for personal gain;
- Do not include family or other parties who are not related to the implementation of duties when traveling on business unless there are humanitarian reasons and based on the permission of the direct superior and do not obstruct or override the implementation of duties and do not harm the Commission's finances;
- It is prohibited to enter places that are considered ethically and morally inappropriate in society, such as places of prostitution, gambling, and nightclubs, except for assignments.
- Be fully aware that all of his or her attitudes and actions are always inherent in his or her capacity as Commission personnel;
- Not showing a hedonistic lifestyle as a form of empathy for the community, especially for fellow Commission personnel;

- Use social media wisely and responsibly.

## **B. Synergy**

The elements of synergy include common thinking, cooperation, harmonization, partnership, collaboration, mutual productivity and synchronization, which is detailed in the form of actions:

- Willing to work together and build harmonious partnerships with all stakeholders to find and implement the best, useful and quality solutions;
- Sharing information, knowledge, and data to increase the effectiveness of corruption eradication, except for those that are confidential or must be kept confidential;
- It is prohibited to do actions that create a work atmosphere that is not conducive and harmonious;
- Do not spread false news and/or information that cannot be justified, which can cause hatred and/or enmity;
- Do not take any action that shows sectoral ego without reducing independence in carrying out tasks, both in the external and internal environment of the Commission;
- Willing to share solutions, information, and/or data according to the authority to solve problems in the implementation of tasks, except for those that are confidential or must be kept secret;
- Be cooperative with parties from other work units involved in carrying out tasks;
- Not denying commitment to joint decisions and their implementation.

## **C. Justice**

The elements of justice include respect for the principles of legal certainty, the presumption of innocence and equality before the law, as well as human rights, which is detailed in the form of actions:

- Recognizing equality and respecting the rights and obligations of every Commissioner;
- Fulfilling obligations and claiming rights in a balanced manner;
- Applying the principle of equality before the law;
- Not being discriminatory or showing partiality or harassment against differences in race, sex, religion, national origin, physical or mental ability, age, marital status, or socioeconomic status in carrying out duties;
- Do not act arbitrarily or bully and/or harass Commission personnel or other parties both inside and outside the work environment;
- Providing equal opportunities without discriminating against religion, ethnicity, physical ability or gender for career development and competence of Commission personnel;
- Superiors are assertive, rational and transparent in making decisions with objective, fair and impartial considerations;
- Provide access to information that is open to the public in accordance with statutory regulations.

## **D. Professionalism**

The elements of professionalism include skills/competencies in certain fields related to work, encouragement to improve competence, obedience to work according to rules and

standards, objectivity, independence, sincerity and measurement in work, responsibility, hard work, productivity and innovation, which is detailed in the form of actions:

- Work according to standard operating procedures;
- Refusing orders from superiors that are contrary to standard operating procedures and applicable legal norms;
- Respect differences of opinion and be open to constructive criticism and suggestions;
- Not influenced by personal or group interests as well as public and media pressure in carrying out the Commission's duties and functions;
- Prohibited from serving as supervisors, managers, directors, commissioners of a corporation, business entity, company, foundation, or cooperative, committee or member of a political party, or any other professional position while serving in the Commission;
- Prioritizing the implementation of tasks over personal or group interests;
- Completing tasks or jobs accountably and thoroughly;
- Dare to admit and take responsibility for mistakes;
- Responsible for the security of goods, documents, data and information belonging to the Commission under its control;
- Optimizing the competencies they have to complete a task or job;
- Does not prevent Commission personnel from carrying out innovations that support increased effectiveness and efficiency in the implementation of the Commission's duties;
- Able to adapt to changes for the better;
- Not responding to criticism and suggestions negatively and excessively;
- It is prohibited to issue statements to the public that can influence, impede or interfere with the Commission's case handling process;
- Not playing golf or other sports with parties that directly or indirectly have the potential to create a conflict of interest with the Commission;
- Carry out activities related to duties or positions with the permission or knowledge of superiors.

#### **E. Leadership**

The elements of leadership include service orientation, equality, exemplary conduct, pioneering, driving change, persuasion, initiative and the ability to guide the behaviour of a person or group of people, which is detailed in the form of actions:

- Show appreciation and cooperation with all state institutions and apparatus for the benefit of the nation and the State of the Republic of Indonesia;
- Superiors must provide opportunities for subordinates to perform worship when work meetings or official duties are in progress;
- Providing the best possible service in carrying out the duties and functions of the Commission;
- Mutual respect and respect for fellow Commission personnel in carrying out their duties and daily interactions;
- Objectively assessing the performance of Commission personnel based on clear and measurable criteria in accordance with Commission regulations;
- Show exemplary conduct in daily actions and behaviour;
- Guiding Commission personnel in carrying out their duties;

- Giving appreciation for the work and achievement of each individual and encouraging the Commission's personnel to improve their work performance;
- Do not act arbitrarily or unfairly or discriminatively against subordinates or fellow Commission personnel;
- Superiors must reprimand subordinates who are proven to have committed violations;
- Superiors must have the courage to make decisions in difficult situations and have the courage to face and accept the consequences;
- Be assertive in applying the principles, values and decisions that have been agreed upon;
- Be open to proposed improvements;
- Avoiding attitudes, behaviour or words made to seek popularity, praise or appreciation from anyone in the performance of the Commission's duties.

#### **IV. CONCLUSION**

Integrity is an important component for every institution that is engaged in public service, including for the Corruption Eradication Commission. To maintain its integrity, the Corruption Eradication Commission has adopted a code of conduct that applies to every commission employee, including its commissioners, investigators and prosecutors. The Board of Supervisors of the Corruption Eradication Commission has properly enforced the code of conduct as a realization of efforts to maintain the integrity of the Corruption Eradication Commission.



# INTEGRITY AND INDEPENDENCE OF JUDGES, PROSECUTORS AND LAW ENFORCEMENT OFFICIALS

*Thongkham Soumaloun\**

## I. INTRODUCTION AND OVERVIEW

Since the anti-corruption agency was established in 1982, Laos has constantly endeavoured to control corruption by improving itself in all aspects such as in terms of enhancing organizational structures, management mechanisms, legislation, mandates and power, and human and financial resources. The State Inspection and Anti-Corruption Authority of the Lao PDR (SIAA) is a ministerial level government agency primarily mandated to conduct inspections, prevent and combat corruption, investigate corruption cases and complaints within its scope of rights, duties and supervise such work throughout the country.

Institutionally, there are three levels of state inspection and anti-corruption authorities, that is, the SIAA at the central, provincial and district levels. Sectorally, there are state inspection and anti-corruption authorities at line ministries, organizations and in sectoral bodies of provincial departments, all of which are equipped with appropriate manpower and necessary resources. In order to prevent and curb corruption, the Government of the Lao PDR has endeavoured to improve institutional structures at all levels and sectors, including state enterprises, to make them stronger and more transparent, reduce bureaucracy in public service, eliminate conditions conducive to the abuse of power and corruption. Moreover, the Government has applied modern technology in revenue collection and in public administration and intensified the oversight duties of the National Assembly, the Provincial People's Council on the performance of executive branch, people's prosecutors, the people's court and government authorities.

At the same time, the Government of the Lao PDR has gradually developed legal instruments in all areas of work to ensure effective and efficient state administration. Among others, the government adopted its first National Anti-Corruption Strategy, dated 4 December 2012, which provides for measures to reduce corruption and ensure that property of the state, collectives and individuals are not embezzled directly or indirectly. It stresses the need to provide anti-corruption education, to revise and enforce all related legislation, and promote the development of other measures as necessary. It encourages state organizations to enhance transparency in public administration; strengthen and streamline work procedures and remove outdated bureaucratic red tape; encourage and support full public participation. Further, the Government enacted: (1) the amended Law on Anti-Corruption (AC Law) which lays out principles, regulations and measures, prohibitions for preventing and combating corruption in order that the properties of the state, collectives, society or the legitimate rights and interests of the citizens are not damaged, misappropriated or embezzled; to subject offenders to legal proceedings and protect those who are innocent aiming to make state organizations transparent, strong and capable of

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conducting inspections at all times; (2) the Law on State Inspection (LSI, 2017) (The SIAA also exercises its powers and functions based on the LSI, which was enacted to detect the strengths and weaknesses, investigate violations of the laws and any other wrongdoing in the performance of duties by public officials, persons, legal persons or organizations; and to come up with preventive, countering and corrective measures, aiming to strengthen the effectiveness in public administration); (3) the Law on the Handling of Petitions (LHP) and so forth. In particular, the AC Law and Anti-Corruption Strategy have been elaborated further into many other measures which have contributed tremendously and effectively to curbing corrupt practices in the country in recent years. Such regulations include the Decree on the Early Monitoring and Inspecting of Government Investment Projects, the Decree on Thriftiness and Anti-Extravagance and the Decree on the Declaration of Assets and Income. The most recent measures are related to monitoring of job performance of public officials by the people, media and parliamentarians to strengthen full public participation in the fight against corruption.

## **II. CODES OF CONDUCT AND OTHER MEASURES FOR CORRUPTION CONTROL**

One of the most relevant laws formulated to control corruption and applied alongside the aforementioned measures, more precisely to ensure integrity, transparency and accountability of the government officials in the provision of fair and impartial public service, is the Law on Civil Servants (LCS). Promulgated in 2015, the LCS defines principles, regulations, and measures relating to civil service. The LCS, articles 5 (4, 5, 6) and Chapter III, articles 16-20, spells out in detail the principles and requirements for recruitment, assignment, development and performance assessment of civil servants based on the principle of competency, equality, transparency, accountability and qualifications. The law also defines the rights (art 54) and obligations (art 57) of civil servants.

The Government has issued the Decree on the Ethics of Civil Servants, dated 26 June 2019, to implement the LCS. The Decree, which is binding on all civil servants, defines principles, regulations and measures relating to the ethics of civil servants to be used as a basis for the organizations of the Party, the Government, the Lao Front for National Development, the National Veterans Federation, mass organizations at the central and local levels to govern and educate civil servants for them to have political commitment, firm morality, integrity, a high sense of responsibility, proactiveness, respect and strictly follow the laws and regulations to contribute to the national protection and development.

Both measures stipulate administrative, disciplinary and criminal sanctions for non-compliance based on the gravity of an offence. Another important aspect of the LCS and the Decree on Ethics of Civil Servants is that they all provide remuneration for good performance, such as raises, promotions, health care and additional leave for all civil servants.

### **A. Monitoring and Inspection**

The monitoring and inspection of law enforcement officials in their performance of official duties are carried out based mainly on the Law on State Inspection. The LSI, Article 12, stipulates that inspections are carried out based on regular plans, projects, decisions, orders, notices, citizens' requests, audit findings, National Assembly Resolutions and violations. There are three forms of inspection: regular inspection; inspection based on

orders, decisions and notices; and immediate inspections. The inspection or supervision is to monitor the implementation of policies, laws, regulations, powers, duties and responsibilities in public administration. The subjects of inspection include natural persons, legal persons and organizations.

Inspection was carried out on 153 targets; 70 targets were related to corruption with 196 people found guilty. Similarly, investigations were conducted on 18 targets with 464 offenders involved; among those 380 have faced administrative sanction and 84 were prosecuted criminally. Cases involving 62 alleged offenders have been submitted to prosecutors' offices, and cases involving 37 accused persons have been presented to the court, 34 of which have been adjudicated. The offenders were both public and private employees, while a considerable amount of losses have been recovered. Some of the most prominent forms of corruption include abuse of power; giving and taking bribes; embezzlement, cheating, forging and using forged documents in order to cheat or embezzle and so on. In 2019, the State Inspection Authority received 1,038 complaints, of which 226 have been resolved, 407 transferred to other competent authorities, 52 complaints have been responded to, 104 have been kept for further monitoring, while 249 of them are undergoing fact-checking and collection of information. Most of the complaints are related to dissatisfaction over decisions made by state administration authorities, the job performance of government officials and civil servants and others.

#### **B. Asset Declaration**

In line with the AC Law, ever since the first Decree on the Asset and Income Declaration was enacted in 2013, Laos has completed two rounds of asset declarations. All public officials are required to submit asset declarations, whereas the property to be declared includes, among others, land, houses, inheritance, vehicles, industrial machines, precious metals, bonds, gold, shares, payable debts and receivable debts whose value is worth 20 million LAK or more. Salary and other income must also be disclosed.

### **III. EDUCATION AND TRAINING**

Education and training are conducted for law enforcement officials regarding professional responsibility and integrity. Based on the above-mentioned legislation, the National Assembly, the Government, ministries and local administration authorities have actively and regularly conducted awareness-raising programmes for public officials, soldiers, police officers and all citizens to deepen respect for the law and proactively participate in preventing and combating corruption in different ways. For instance, from 2019-2020, Party committees, administration authorities, inspection committees at each level rolled out up to 153 public education campaigns for Party members, civil servants, soldiers, police officers, students and people of all strata to enhance awareness and understanding of the consequences and dangers of corruption. More than 349,869 people participated in the campaigns.

The SIAA, in partnership with Ministry of Education and Sports (MOES), has completed developing integrity education for all levels of schools. Similarly, the SIAA has completed its anti-corruption curriculum to be used to train students and public officials in higher education institutions. The curriculum, which has been taught since 2018, can be adjusted based on the actual needs of each institution and target group. Apart from that, more than 330 dissemination programmes have been broadcast via television and radio,



252 newspaper articles have been published and 5 issues of Inspection Magazine with 26,025 copies have been distributed.

#### **IV. PROCEDURAL SAFEGUARDS**

Procedures and internal regulations to avoid conflicts of interest in case assignment (disqualification and recusal of law enforcement officials) have been adopted. Although Lao PDR has no specific regulation that particularly aims at addressing conflicts of interest in case assignment, there are clear provisions prescribed in many different laws in practice. For example, the Law on State Inspection and Anti-corruption defines 8 prohibitions for law enforcement authorities, especially inspectors. For example, inspectors are strictly prohibited from: (1) the abuse of power, duties and rights in all forms for personal gain, for family or relatives; (2) soliciting, demanding or taking bribes; (3) offering a promise or associating with the subjects of inspections/investigations for personal gain; (4) working as an adviser or middleman to businesses, recruiting or assigning one's close associates to positions vulnerable to corruption and so on. All of these prohibitions and practices are intended to deter and avoid any possible conflicts of interest in the performance of official duties by all public officials. Another effective prohibition is clearly described by law. Under Article 15 of the Criminal Procedure Law, which addresses recusal and challenges, "If a judge, public prosecutor, court clerk, interrogator, investigator, expert, or translator is a relative of, or has any interest in or conflict with, any of the parties of the case, [such person] shall recuse himself from the proceedings. If such person does not voluntarily recuse himself, either party has the right to challenge such person [and require that he be] recused from the proceedings."

#### **V. INDEPENDENCE**

Article 5, paragraph 4, indicates that the officials of the anti-corruption agency shall perform their duties under five principles. One such principle stipulates that said officials shall ensure that there is no undue interference, obstruction or threat from any person or legal entity. It is further stipulated in article 6 that the officials of the anti-corruption authorities at each level shall perform their duties objectively, transparently and rightfully, based on its the scope of rights and duties, accountable to the law and under the oversight of the people and National Assembly, while article 45 further indicates that officials must exercise their mandate independently.

#### **VI. INVESTIGATION, PROSECUTION AND ADJUDICATION OF CORRUPT LAW ENFORCEMENT OFFICIALS**

Corruption poses negative effects on the national development, as it corrodes the scarcely limited government funds badly needed for development. Corruption is found in the public and private sectors. In Laos, corruption usually occurs in development projects (infrastructure), revenue collection, etc. The most common forms of corruption include the abuse of power, bribery, embezzlement, cheating and falsification of standards in construction, design and calculations. Corruption poses enormous negative effects on, and impedes the socio-economic development of, each country, big or small, poor or rich, and it threatens the stability of public and private institutions like never before, especially as

the world is struggling to cope with the Covid-19 pandemic that has already lasted over a year – eventually giving rise to social unrest and injustice. Corruption is eroding national income, draining funds for state development projects, resulting in low quality projects; it is also plundering revenues of the collectives and people in a most sophisticated way, causing huge losses to the state and citizens every year. Corruption reflects the reality of the lack of integrity, ethical values of civil servants, soldiers, police in public institutions and employees in private entities.

#### **A. Investigation and Prosecution**

As an investigative body, the SIAA is empowered to investigate corruption cases. Upon inspection and/or investigation, if sufficient evidence of a corruption offence is found, with the value of damages amounting to 5 million LAK, the SIAA shall finalize the investigation findings and submit the case to the Prosecutors' Office for prosecution.

The SIAA investigators perform their functions based on Article 41 of the Law on Anti-Corruption (ACL 2012) and the Criminal Procedure Law (CPL), which include, among others, the right to receive and record complaints and reports of acts of corruption; propose decision-making authority to issue summonses, arrest and detention warrants, order seizure or freezing of assets, etc. Other rights include the right to seize and maintain seized items relating to corruption, including together with other authorities the right to conduct household and vehicle searches, make arrests based on the order issued by the Head of the Prosecutors' Office or the Head of the People's Court.

The procedures for investigation consist of (1) issuing an order to open an investigation, (2) carrying out investigation and (3) developing case files to submit to the Prosecutors' Office who shall then prosecute the accused in open court. The president of the SIAA is mandated to issue an order to open or not to open an investigation.



# ETHICS RULES FOR NATIONAL GOVERNMENT OFFICIALS IN JAPAN

*OTANI Junichiro\**

## I. INTRODUCTION

If the politicians and public officials who bear the responsibility of sustaining the foundation of their country lack integrity, and bribery is pervasive, the basis of democracy will be endangered. Thus, one of the most important duties of a criminal justice system is to detect corruption and impose appropriate punishment on corrupt politicians and public officials.

The prevention of corruption is no less important than detection and punishment. Confidence in politicians and public officials can be damaged quite easily, but rebuilding it takes considerable time and effort. The punishment of corrupt politicians and public officials does not necessarily help prompt restoration of public confidence.

Taking into account the importance of confidence, public officials should never be suspected of allowing themselves to be influenced in their work by inappropriate requests or considerations. Public officials should refrain from doing anything that may incur suspicion. In this regard, there is an old saying: “Do not touch your hat under a plum tree.” (By doing so, you will be suspected of stealing a plum.)

What harm is caused when the public loses confidence in its public officials? One of the harms is a negative effect on the administration of government, and the other is a negative effect on the morale of government officers. It should be noted that not only the corrupted officer, but also the whole ministry, or even the whole government, will be affected.

## II. ETHICS RULES FOR GOVERNMENT OFFICIALS IN JAPAN

### A. Background

According to Transparency International’s Corruption Perceptions Index 2019, Japan ranks 20th out of 198 countries. It is fair to say that Japan is a relatively clean country. Nonetheless, Japan is not free from corruption, and some corruption cases have been detected over the years.

In 1996, the Vice-Minister of Health was arrested for receiving money from a social welfare service corporation in exchange for providing subsidies. In 1998, high-ranking officials of the Ministry of Finance in charge of inspection of banks were entertained by banks and securities companies.

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These cases provoked criticism from the public and led to the enactment of the National Public Service Ethics Act of 1999 and the National Public Service Ethics Code of 2000. The ethics rules in Japan consist of two major components: the code of conduct and the reporting system.

## **B. Applicable Public Officials**

The National Public Service Ethics Act is applicable to national government officials. Although it is not applicable to local government officials, local governments have similar rules.

## **C. Prohibited Conduct**

The following conduct is prohibited by the Act and the Code:

### (1) Receiving gifts (money, goods or real estate) from interested parties

However, as an exception, it is allowed to accept promotional goods or commemorative items that are widely distributed to the public, or to accept congratulatory money for a wedding or condolence money for a funeral (based on the general social courtesy and special relationship between the interested parties).

### (2) Accepting food and drinks from interested parties

However, as an exception, it is allowed to attend a buffet-style party that has many participants (around 20 persons or more), or to accept modest food and drinks (e.g. lunchbox or tea) at a business meeting. Government officials are allowed to eat and drink with interested parties if they pay their own expenses. However, advance notification to the Ethics Supervisory Officer is required if the expense for food and drinks exceeds 10,000 yen.

### (3) Borrowing money from interested parties

However, as an exception, it is allowed to borrow money from a financial institution as a customer.

### (4) Borrowing or renting goods or real estate for free from interested parties

However, as an exception, it is allowed to borrow goods (e.g. stationery) when an officer visits an interested party in the regular course of the officer's business.

### (5) Accepting a service free of charge from interested parties

However, as an exception, it is allowed to ride in a company's vehicle when an officer visits an interested party in the regular course of the officer's business and there is no public transportation available.

### (6) Receiving unlisted stocks from interested parties

It is prohibited even if a government officer pays for unlisted stocks.

### (7) Traveling or playing golf with interested parties.

However, as an exception, it is allowed to travel for official duty or to travel together when an officer participates in a tour arranged by a travel agent and an interested party happens to be on the same tour. With regard to playing golf, it is allowed to play golf with an interested party when an officer joins a golf competition (the number of participants is more than 30 and the participation of an interested party is unpredictable) and the officer happens to have a chance to play golf with an interested party.

(8) Requesting interested parties to engage in “prohibited conduct” for a third party.

(9) General exception

In addition to the exceptions stated above in items (1) through (8), if there is a private relationship between a government officer and an interested party, the “prohibited conduct” may be exceptionally permissible on the condition that the conduct does not invite any suspicion or distrust of the general public. In deciding whether there is a private relationship, factors such as (i) degree of “conflict of interest,” (ii) relationship between the two parties, and (iii) type of conduct are considered.

(10) Receiving remuneration for editing services of the following books:

Books that are produced through subsidies or government expenses; books when the majority of them will be purchased by the government.

#### **D. Interested Party**

An interested party with respect to a government official means an entity or an individual who is the counterpart of the government official with respect to permission, subsidy, inspection or audit, disposition, administrative guidance, contract or inter-governmental regulation.

#### **E. Conduct Prohibited with Non-interested Parties**

The following conduct with non-interested parties is prohibited:

- (1) Accepting gifts beyond the level of general social norms, e.g. repeatedly accepting gifts from the same company.
- (2) Having someone (who is not present) pay for food, drinks or other charges. (Accepting payment for food, drinks or other charges from someone who is not present.)

#### **F. Responsibility of Supervisors**

Supervisors should take action if they suspect one of their subordinates has violated the code of conduct. The examples of such actions are:

- Giving instructions to the subordinate.
- Reporting misconduct to the Ethics Supervisory Officer (e.g. the Vice-Minister of each ministry).

#### **G. Responsibility of Other Officers**

It is also a responsibility of a government official not to receive benefits that are the result of violations of Ethics Rules, and not to hide or to make false reports with regard to violations of the Code of Ethics.

### **III. REPORTING RULES**

#### **A. Types of Reports**

There are three types of reports that a government official should submit: (i) reports on the receipt of gifts, (ii) reports on the exchange of stocks, and (iii) reports on income.

#### **B. Reports on the Receipt of Gifts**

A government official who is at the rank of assistant director or above at the

headquarters should submit a quarterly report on the receipt of gifts if they receive gifts, food and drink, remuneration for lectures, or any other benefits from business operators that exceeds 5,000 yen.

### **C. Reports on the Exchange of Stocks**

A government official who is at the rank of deputy director general or above at the headquarters should submit a report on the exchange of stocks once a year in March.

### **D. Reports on Income**

A government official at the rank of deputy director general or above at the headquarters throughout the previous year should submit a report on income once a year in March.

### **E. Reporting Procedure**

Government officials should submit the above reports to the heads of the ministry or agency to which they belong. Copies of those reports are sent to the National Public Service Ethics Board. The general public may request the disclosure of reports on gifts exceeding 20,000 yen.

## **IV. NATIONAL PUBLIC SERVICE ETHICS BOARD**

The National Public Service Ethics Board is composed of five members. As of January 2021, the President of the Ethics Board is a former judge, and other members are a journalist, a professor, etc. Although the Ethics Board is established under the National Personnel Authority, the Ethics Board works independently. One of the major functions of the Ethics Board is to examine copies of the reports sent from each ministry or agency. When reviewing these reports, the key considerations are whether an inappropriate acceptance of gifts or an inappropriate exchange of stocks which could distort the fair execution of the national public service has taken place, and whether the reports have been properly submitted. The Ethics Board has also established the Public Service Ethics Hotline, through which it accepts information from the public on suspicious acts that might be a violation of the Ethics Act or the Ethics Code. In handling such information, due consideration is given to the protection of whistle-blowers (e.g. maintaining confidentiality of the whistle-blowers' identity etc.).

## **V. DISCIPLINARY ACTIONS**

In case of violation of the ethics rules, a disciplinary action, such as dismissal, suspension from duty, salary reduction or warning, will be imposed. The National Personnel Authority has established criteria for disciplinary actions. When an officer receives money or gifts from an interested party, dismissal, suspension from duty, salary reduction, or warning may be imposed. As a past example, in case of receiving “beer vouchers” of 66,000 yen, a 10 per cent salary reduction was imposed for one month. When an officer is entertained, salary reduction may be imposed or a warning may be issued. As a past example, in case of being entertained at a restaurant costing 10,672 yen, a warning was imposed. The effects of disciplinary actions are both direct and indirect. For example, in case of the sanction of salary reduction, not only the salary is reduced, but also there are negative impacts on future promotion, wage increase or the amount of bonus.

## VI. CONCLUSION

Learning the ethics rules is not limited to obtaining knowledge on prohibited acts, but it is an opportunity to reflect on ethics in one's role as a government official. In this regard, it is not enough to simply learn the ethics rules once, but it is necessary to review them periodically. In Japan, government officials are requested to take a self-learning training course on the ethics rules every year.

Reflection on ethics leads not only to the prevention of violations of ethics regulations and corruption. It is an opportunity to think about how we, as government officials, should act and how we can improve our motivation to carry out our duties and serve the public.

### References

Rules for Maintaining National Public Employees' Ethical Conduct (National Public Service Ethics Board) (October 2020), available in Japanese at <<https://www.jinji.go.jp/rinri/siryou/rule2020.pdf>>.

Rules for Maintaining National Public Employees' Ethical Conduct (National Public Service Ethics Board) (April 2015), available in English at <<https://www.jinji.go.jp/rinri/eng/engrule1504.pdf>>.

Activities of the National Public Service Ethics Board (National Public Service Ethics Board), available at <<https://www.jinji.go.jp/rinri/eng/engactivities1504.pdf>>.

Ethics for National Public Employees (National Public Service Ethics Board), available in Japanese at <[https://www.jinji.go.jp/rinri/kensyu/03\\_H29ippansyoku.pdf](https://www.jinji.go.jp/rinri/kensyu/03_H29ippansyoku.pdf)>.

Ethics for National Public Employees Case Studies (National Public Service Ethics Board), available in Japanese at <<https://www.jinji.go.jp/rinri/kensyu/jireikenkyu22.pdf>>.

National Public Employees' Ethics Manual (National Public Service Ethics Board), available in Japanese at <[https://www.jinji.go.jp/rinri/siryou/2020\\_kyohonmanga.pdf](https://www.jinji.go.jp/rinri/siryou/2020_kyohonmanga.pdf)>.





# **INTEGRITY AND INDEPENDENCE OF JUDGES, PROSECUTORS, AND LAW ENFORCEMENT OFFICIALS**

*Asrul Ridzuan Bin Ahmad Rustami\**

## **I. BACKGROUND**

In Malaysia, integrity and independence of law enforcement officials are upheld through various established organizations with the sole aim of contributing towards creating a positive perception towards law enforcement agencies and the Government, in addition to facilitating the efforts in gaining public support and cooperation in combating corruption, abuse of power and malpractice.

The Malaysian Anti-Corruption Commission (MACC), an independent anti-corruption commission, is monitored by its own “Check and Balance Mechanism” with an aim towards convincing the public of the MACC’s independence, transparency and professionalism.

The Enforcement Agency Integrity Commission (EAIC) was formed in 2011 where the other 21 Federal Enforcement Agencies come under the supervision of the Commission. The establishment of the Commission is in line with the Government's aim to inculcate and enhance integrity among enforcement officers and law enforcement agencies, thus strengthening public confidence in them.

## **II. THE MALAYSIAN ANTI-CORRUPTION COMMISSION (MACC)**

In early 1959, Malaysia's (then Malaya) efforts to combat corruption were carried out by two entities, focusing on investigations and prevention. Investigations on corruption cases were tasked to the Special Crimes Unit of the Criminal Investigation Department of the Royal Malaysian Police, while an Anti-Corruption Agency was set-up in the Prime Minister’s Department to manage the aspect of prevention. Matters related to prosecution were under the purview of the Attorney General's Chambers.

In view of the fact that anti-corruption activities were then carried out by three different agencies, the Government decided to consolidate the task of investigation, prevention and prosecution under one umbrella by setting-up the Anti-Corruption Agency (ACA) in 1967 in accordance with the Anti-Corruption Act 1967.

In 2008, the Parliament and the Government unanimously approved the formation of an independent anti-corruption commission to be known as the Malaysian Anti-Corruption Commission (MACC) and replaced the Anti-Corruption Act with the Malaysian Anti-Corruption Commission Act 2009. The MACC Act 2009 came into effect on 1 January 2009, which led to the official establishment of the MACC as an independent, transparent

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and professional body to manage the nation's anti-corruption efforts effectively and efficiently.

The MACC aims to be a professional anti-corruption commission in enforcing the law and educating the public against corruption in moving towards greater prevention and ultimately to eradicate corruption in Malaysia through the following principles which are *Independent, Transparent and Professional*.

The Code of Ethics and Conduct of the MACC combines moral values with the uniformed deeds and actions to guide MACC officers to perform their duties and responsibilities with the objectives of strengthening the level of integrity of MACC officers in the execution of their duties and responsibilities and clarifying permissible and non-permissible actions by MACC officers in accordance with the enforced policies, guidelines and the law.

*Integrity* is a core element in the Code of Ethics and Conduct of the MACC. The core values of integrity that are held by the MACC in shaping the "MACC Values" are: Trustworthy, Firm, Fair, Independent, Transparent and Professional. In addition, positive values such as Discipline, Cooperation, Loyalty and Commitment also form the "MACC Values" which are to be consistently upheld by all MACC officers in executing their duties and responsibilities.

### **III. CHECK & BALANCE MECHANISM**

In moving towards convincing the public of the MACC's independence, transparency and professionalism, a Check and Balance Mechanism was created through the formation of five external and independent oversight bodies to monitor the functions of the Commission closely and constantly.

The Check and Balance Mechanism comprises the Anti-Corruption Advisory Board (ACAB), the Special Committee on Corruption (SCC) and the Complaints Committee (CC), which are made through the provision of the law, while the Operations Review Panel (ORP) and the Consultation and Corruption Prevention Panel (CCPP) are established through administrative order.

These five entities are responsible for ensuring that MACC performs its duties in an independent, transparent and professional manner. The mechanism assists in fulfilling the public's expectations towards the Commission's independence, efficiency, effectiveness, transparency and accountability in executing its designated legal obligations. The check and balance mechanism will contribute towards creating a positive perception of the MACC and the Government, in addition to facilitating the efforts in gaining public support and cooperation in combating corruption, abuse of power and malpractice.

Members of these bodies represent the general public and are composed of senior ex-government officials, politicians (government and opposition), professionals from the business and corporate sector, academicians, lawyers and well-respected individuals.

### **A. Anti-Corruption Advisory Board (ACAB)**

The Anti-Corruption Advisory Board (ACAB) is set up by the provision of law under section 13 of the Malaysian Anti-Corruption Commission Act 2009 (Act 694). The members of the ACAB are appointed by the King of Malaysia among individuals who have rendered distinguished public service or have achieved distinction in their professions. The Chief Commissioner of MACC shall be appointed as an *ex officio* member of the ACAB as provisioned under section 13(2) (b) of the said Act.

The functions of the ACAB are provided as follows:

- i. To advise the Commission on any aspect of the corruption problem in Malaysia;
- ii. To advise the Commission on policies and strategies of the Commission in its efforts to eradicate corruption;
- iii. To receive, scrutinize and endorse proposals from the Commission towards the efficient and effective running of the Commission;
- iv. To scrutinize and endorse resource needs of the Commission to ensure its effectiveness;
- v. To scrutinize the annual report of the Commission before its submission to the Special Committee on Corruption; and
- vi. To submit its comments to the Special Committee on Corruption as to the exercise by the Commission of its functions under this Act.

### **B. Special Committee on Corruption (SCC)**

The Committee is set up by the provision of law under section 14 of the Malaysian Anti-Corruption Act 2009 (Act 694). The members of the SCC are appointed by the King of Malaysia, who shall be drawn from both the members of the Senate and the House of Representatives. The said section had also stated that none of them shall be a member of the administration.

The functions of the SCC are provided as follows:

- i. To advise the Prime Minister on any aspect of the problem of corruption in Malaysia;
- ii. To examine the annual report of the Commission;
- iii. To examine the comments of the Anti-Corruption Advisory Board as to the exercise by the Commission of its functions under this Act; and
- iv. To seek clarifications and explanations on the annual report of the Commission and the comments of the Anti-Corruption Advisory Board.

### **C. Complaints Committee (CC)**

This committee was formed by law through section 15 of the Malaysian Anti-Corruption Commission Act 2009 (Act 694) and appointments are made by a Minister.

The functions of the CC are provided as follows:

- i. To examine complaints and action or outcome of investigation on complaints as well as give opinions on the results of investigation;
- ii. To examine the types of offences committed by MACC Officers and to suggest measures to enhance the efficiency and capability of officers in carrying out their duties (through trainings and other methods);

- iii. To receive and acknowledge disciplinary results and suggest preventive measures; and
- iv. To review work procedures and recommend improvements on work procedures and logistic needs.

#### **D. Operations Review Panel (ORP)**

The ORP is appointed administratively by the Prime Minister among experts who represent relevant professions and who can represent the quality of integrity and independence of the Commission. The ORP shall act as the check and balance mechanism for ongoing cases and on reasons regarding actions upon cases to be prosecuted or no charges are preferred. The ORP may also present its views to the MACC on cases if further clarifications are needed.

The functions of the ORP are provided as follows:

- i. To receive and seek clarification regarding statistics of Investigation Papers opened by the Commission;
- ii. To receive and scrutinize reports from the Commission regarding Investigation Papers exceeding 12 months of investigation;
- iii. To receive reports from the Commission regarding all cases where suspects arrested are released on bail bond by the Commission exceeding six months;
- iv. To receive reports on closure of Investigation Papers and to advise on improving investigations due to weaknesses plus reviewing whether further investigation is required; and
- v. To scrutinize, examine and endorse proposals to enhance the Commission's investigation operations to the Anti-Corruption Advisory Board.

#### **E. Consultation and Corruption Prevention Panel (CCPP)**

The CCPP is appointed administratively by the Prime Minister among individuals who represent various civil society organizations and other organizations such as academician, the business community, religious figures, media experts and social activists that can assist the MACC towards its objective of inculcating hatred against corruption among the society at large.

The functions of CCPP are provided as follows:

- i. To advise the Commission on enhancing the effectiveness of inspection and consulting activities upon the practices, systems and work procedures of both the public and private sectors which may be conducive to the occurrence of corruption;
- ii. To advise the Commission on enhancing the effectiveness of public education activities towards increasing the awareness on corruption and support on anti-corruption efforts;
- iii. To advise the Commission on enhancing the effectiveness of anti-corruption activities through the mechanism of strengthening integrity in both the public and private sector;
- iv. To advise the Commission on some of the best practices in the fields related to the implementation of consultation and anti-corruption activities;
- v. To assist the Commission as the key communicator in garnering support from the public, the media and the sectors identified towards the prevention efforts by the Commission; and

- vi. To submit its comments on the Commission's undertaking of its function on consultation and anti-corruption under the MACC Act 2009 to the Anti-Corruption Advisory Board.

#### **IV. INTERNAL CONTROL**

Internally, the Excellence and Professionalism Division is responsible for the regular monitoring of the officers of the Commission by ensuring appropriate actions are taken against those being involved in activities which could bring about a negative perception towards the Commission. This Division also serves in guiding the officers of the Commission to perform their duties and responsibilities with the highest level of integrity.

The functions of the Excellence and Professionalism Division are provided as follows:

- i) Integrity Enhancement**
  - a. Ensure the acculturation, institutionalization, and implementation of integrity in MACC officers through the development of human capital with integrity and strengthening a culture of integrity and moral values.
  - b. Provide counselling services to identified MACC officers and for referred cases.
  
- ii) Complaint Management**
  - a. Receive and act on all complaints or information on misconduct or disciplinary violations not of a criminal nature.
  - b. Serve as secretariat to the MACC Complaints Committee (CC) and prepare the CC Annual Report.
  
- iii) Detection and Verification**
  - a. Detecting and verifying complaints or information on misconduct and disciplinary violations not criminal in nature involving MACC staff. In cases where there is a basis behind the disciplinary violation or misconduct, the matter shall be referred to the Disciplinary Secretariat for appropriate action under the Regulations Public Officers (Conduct and Discipline) 1993 or other administrative actions.
  - b. In cases where there is a basis for a criminal offence, information will be referred to the Information Evaluation Committee (IEC), Records Management and Information Division for further action.
  
- iv) Disciplinary Secretariat**
  - a. Manage disciplinary proceeding papers for the consideration of the relevant Disciplinary Authority.
  - b. Act as Secretariat to the relevant Disciplinary Board Meeting and prepare minutes of meetings as well as inform and act on meeting decisions.
  
- v) Compliance**
  - a. Conduct compliance inspectorate through inspection and enforcement on compliance with the law, policies, regulations, chief commissioner's

standing orders (PTKP), code of ethics and standard operating procedures in force on all MACC staff.

- b. Report and provide feedback on any weaknesses, violations of the code of conduct and non-compliance with policies, regulations and SOP to the relevant MACC Divisions or State for corrective action, improvement or appropriate action.
- c. Provide reports to the Disciplinary Secretariat in cases of disciplinary violation or misconduct by officers for appropriate action.
- d. Conduct studies, assessments and update the effectiveness of and compliance with existing policies, regulations, PTKP and SOP.
- e. Conduct assessment on the understanding and compliance with policies, regulations and SOP stipulated.

**vi) Governance**

- a. Ensure the effective implementation of organizational governance involving integrity issues to curb corruption and disciplinary violations.
- b. Receive reports and act as secretariat for the Anti-Corruption Committee meeting and the reporting for MACC Organizational Anti-Corruption Plan (OACP).
- c. Examine weaknesses and improvements to regulations, systems and procedures to shut any opportunities for corruption and disciplinary violations for MACC staff.

## **V. ENFORCEMENT AGENCY INTEGRITY COMMISSION (EAIC)**

The EAIC is a Federal Statutory Body established by an Act of Parliament under Section 3 of the Enforcement Agency Integrity Commission Act 2009, which was enforced on 1 April 2011. Under subsection 1 (4) of the Act, there are 21 Federal Enforcement Agencies listed under the supervision of the Commission. Some notable agencies among those listed are the Royal Malaysia Police, Royal Customs Department of Malaysia, Immigration Department of Malaysia and the Road Transport Department.

This Act replaces the Independent Police Complaints and Misconduct Commission Bill 2005. The establishment of the Commission is in line with the Government's aim to inculcate and enhance integrity among enforcement officers and law enforcement agencies, thus strengthening public confidence in them.

Since the Act came into force, the Commission has begun to carry out functions as provided in section 4 of the Act. The main function of this Commission is to receive complaints of misconduct from the public against enforcement officers or law enforcement agencies in general and investigate and hold a hearing on the complaints received. This way the enforcement activities are constantly monitored and in the event of misconduct, appropriate actions will be recommended.

Generally, there are nine statutory functions carried out by the Operations Division of the Commission, which are:

1. To receive, investigate and hold hearings on complaints of misconduct of law enforcement agencies;

2. Establish mechanisms for detecting, investigating and preventing misconduct in enforcement agencies;
3. Protecting the public from the misconduct of enforcement agencies;
4. Monitoring the operation and procedures of enforcement agencies;
5. Promoting awareness and education integrity;
6. Formulating legislative and administrative measures recommended to the Government;
7. Reviewing the procedures and propose recommendations for improvements of enforcement agency;
8. Holding tours of enforcement agencies' premises to ensure law and SOP are complied with and making recommendations for improvements; and
9. Doing all things expedient or necessary for the implementation of the Commission's functions.

## **VI. CONCLUSION**

The MACC is committed to achieving its vision of creating a corrupt-free Malaysian society based on high spiritual and moral values, as well as shaping the Commission into a world class anti-corruption agency. The efforts of the Commission are further supported by the Government of Malaysia, which is also committed to addressing issues of governance, integrity and anti-corruption.

The government's fight against corruption is evident through the formation of the Special Cabinet Committee on Anti-Corruption and the National Centre for Governance, Integrity and Anti-Corruption (GIACC). GIACC had developed the National Anti-Corruption Plan (NACP) 2019-2023 with the aim of making Malaysia a corrupt-free nation by 2023.





# INTEGRITY AND INDEPENDENCE OF JUDGES, PROSECUTORS AND LAW ENFORCEMENT OFFICIALS

*Mohamad Faizal Bin Sadri\**

## I. INTRODUCTION

The topic of integrity and independence of the judiciary, prosecutors and law enforcement officials has always been a matter heavily discussed by the ruling government, with every change of administration promising greater improvement and development of key policies to strengthen the governance and integrity of these institutions.

More recently, the administration announced the Shared Prosperity Vision 2030 (SPV2030),<sup>1</sup> whereby focus is placed on the integrity and governance relating to the “legal, judicial and law enforcement” sectors under Guiding Principle 13: Integrity and Good Governance and Enabler 4: Governance and Integrity.

It is no surprise that irrespective of the political leanings of the administration, the integrity and independence of the judiciary, prosecutors and law enforcement officials are always viewed as core elements of good governance. Malaysia has always strived to combat corruption and bad governance by introducing various measures in the past and more so in recent years.

It was recently announced in January 2021 that Malaysia had dropped six spots to the 57th position among 180 countries in the Transparency International (TI) Corruption Perceptions Index (CPI) for 2020.<sup>2</sup> Nonetheless, the current government's commitment to continue with the agenda to improve governance and fight corruption with the National Anti-Corruption Plan (NACP) is seen in a positive note globally.

The commitment reinforces Malaysia's seriousness in pursuing legitimate, accountable and effective ways of obtaining and using public power and resources in the pursuit of widely accepted social goals. Good governance is also associated with impartiality. In 1996, the International Monetary Fund (IMF) declared that promoting good governance in all aspects, including by ensuring the rule of law, improving the efficiency and accountability of the public sector and tackling corruption, are essential elements of a framework within which economies can prosper.

Under the National Anti-Corruption Plan (NACP) 2019–2023,<sup>3</sup> the Government of Malaysia is focusing on the creation of a corruption-free nation where one of the main goals is in respect of the accountability and credibility of the judiciary and prosecution and law

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\* Deputy Director, Malaysian Anti-Corruption Commission.

<sup>1</sup> Shared Prosperity Vision 2030 <<https://www.pmo.gov.my/shared-prosperity/>>.

<sup>2</sup> Transparency International – Malaysia – Corruption Perception Index (CPI). <<https://www.transparency.org/en/cpi/2020/index/mys>>.

<sup>3</sup> National Anti-Corruption Plan (NACP) 2019–2023, <<http://giacc.jpm.gov.my/wp-content/uploads/2019/01/National-Anti-Corruption-Plan-2019-2023.pdf>>.

enforcement agencies. Based on the risk assessment done in formulating the NACP, these three bodies are susceptible to significant risk when it comes to matters such as abuse of power and corruption. Efforts like the NACP have been widely seen as a positive step in the right direction, especially in laying down the foundation for improvement in the area of governance and integrity for the years to come.

When viewed in the international context, it is also good to highlight that the NACP also makes reference to Malaysia's commitment toward achieving the Sustainable Development Goals (SDGs) introduced in the United Nations (UN): 2030 Agenda for Sustainable Development.<sup>4</sup> One of the goals, Goal 16: Peace, Justice and Strong Institutions, emphasises the importance of addressing corruption in order to achieve the SDGs. There exists a clear consensus among the UN member countries on the fact that should there be no action to reduce corruption, there will be serious impediment to achieving the other SDGs.

Any failure of Malaysia to address issues of governance and integrity will not be looked upon favourably; and may have a lasting impact in terms of Malaysia's standing politically and economically.

This paper seeks to highlight some of the most recent measures taken and plans by the Government of Malaysia to improve the governance and integrity of the judiciary, prosecutors and law enforcement officials.

## II. THE JUDICIARY

The Malaysian judiciary is an important facet of the administration which needs to be able to exercise its power with fairness and effectiveness, without fear or favour. One of the most notable efforts by the Government of Malaysia is the introduction of the Judge's Code of Ethics 2009.<sup>5</sup>

As previously remarked by a former colleague at the First Regional Seminar on Good Governance for Southeast Asian Countries hosted by the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) in 2007,<sup>6</sup> members of the public must be informed about the existence of such code, its contents and complaint-mechanism, in the event there is a violation of the code. Civil society participation is integral when devising this code, and judges should, on taking their oath of office, agree to the Code of Conduct and agree, in the case of a breach of the Code, that they will resign or be removed from judicial office.

### a. Judges' Code of Ethics 2009

- The Code took effect on 24 June 2009.

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<sup>4</sup> 2030 Agenda for Sustainable Development <<https://sdgs.un.org/2030agenda>>.

<sup>5</sup> Malaysia's Judge's Code of Ethics 2009, <[http://www.jac.gov.my/spk/images/stories/10\\_akta/akta703/judges\\_code\\_ethics\\_2009.pdf](http://www.jac.gov.my/spk/images/stories/10_akta/akta703/judges_code_ethics_2009.pdf)>.

<sup>6</sup> First Regional Seminar on Good Governance for South East Asian Countries Judges, United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) (2008), <[https://www.unafei.or.jp/publications/pdf/1st\\_Regional\\_Seminar.pdf](https://www.unafei.or.jp/publications/pdf/1st_Regional_Seminar.pdf)>.

- Part III of the Code specially provides for a code of conduct to be complied with and practised by all judges up to the highest court of the land, namely, the Federal Court. In performing their duties, judges are expected to uphold the integrity and independence of the judiciary, while avoiding any impropriety or any appearance of judicial impropriety during the performance of judicial functions and activities.
- Part IV of the Code provides that a complaint may be made against a judge for any breach of the Code. If the complaint has merit, a Judges' Ethics Committee may be set up to hear the complaint. The judge complained against may explain his or her conduct. If the complaint is proved, the judge may be admonished or even suspended for not more than one year.
- In a more serious case of breach of ethics, a judge may be removed from office. However, this process is not provided under this Code, but under Article 125 of the Federal Constitution, the supreme law of the land, where a special tribunal may be constituted for this purpose.
- In addition, the UN Bangalore Principles of Judicial Conduct 2002<sup>7</sup> have always been a cornerstone in the implementation of code of ethics.
- Appointments of judges are also made via a specially constituted Judges Appointment Commission (JAC) to ensure transparency and that only persons of the highest calibre are selected.
- A Sessions Judge was charged in 2019 for receiving bribes, while a Court of Appeal Judge has been summoned before a Judges' Ethics Committee to answer allegations of misconduct against him.

### **III. THE PROSECUTORS**

The position of prosecutor is important for any community or government, as prosecutors are essential to the community's safety. They are also a crucial institution which helps keep private individuals, companies and government officials accountable. Prosecutorial decisions must be independent and must be based on the facts of the case and not on the status and/or importance of the individuals involved or the interest of any other party.

But the lack of prosecutorial integrity and corruption are still serious problems in many parts of the world. Thus, in any country it is important to understand the level of, or potential for, corruption within a particular agency. It is also crucial to recognize where corruption is most likely to occur within an agency in the course of a prosecutorial process; the potential motivating factors for those within the prosecution service to submit to the lure of corruption; and the cultural and political pressures that are likely to compromise a prosecutor's decision.

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<sup>7</sup> UN Bangalore Principles of Judicial Conduct 2002,  
<[https://www.unodc.org/pdf/crime/corruption/judicial\\_group/Bangalore\\_principles.pdf](https://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf)>.

In Malaysia, considering the essential role of prosecutors in upholding the rule of law and pursuing government accountability, the integrity of the prosecutorial operations is of special importance. Various measures have been taken to train and equip the prosecutors with the necessary knowledge and awareness to reduce the likelihood of being compromised, with formal rules in place as an additional barrier to keep the prosecutors in check. We wish to recap a few of the formal rules as follows:

- a. Public Officers (Conduct and Discipline) Regulations 1993 [P.U. (A)395/1993]
  - Commonly nicknamed the “General Orders” (GO), all prosecutors in Malaysia are public officers, and as such they are bound by the GO, which is binding on every public officer in Malaysia. Misconduct or breach of the relevant provisions may result in a disciplinary proceeding taken against an officer. If found guilty, punishments range from admonition, fines and reduction in rank to dismissal from service.
  - An officer is also required to declare his assets and properties at least once every five years.
- b. Code of Ethics for the Attorney General’s Chambers (2010)
  - This Code was specially made as the guidelines for conduct on all Attorney General’s Chambers (AGC) officers. Six Core Values have been outlined, namely, “truthfulness”, “trustworthiness”, “transparency”, “gratefulness” and “fairness”. All prosecutors in Malaysia are AGC officers and, therefore, subject to this Code.
- c. Malaysian Anti-Corruption Commission Act 2009 [Act 694]
  - Under this law, prosecutors, being public officers, are also prohibited from soliciting or receiving gratification or bribes of any kind, or making false claims in respect of their official duties.
  - As they are endowed with special position and powers, it is also an offence to abuse their position or powers to gain an advantage or favour of any kind, for themselves, as well as for their family members or associates.
- d. Code of Conduct for Prosecutors (2012)
  - The Code was drafted and prepared collectively by the AGC. It is meant to provide guidelines on the minimum ethical standards for prosecutors. The contents of the Code are more detailed than the 2010 Code of Ethics abovementioned.
  - The minimum ethical standards expected from all AGC prosecutors are, among others, “independence”, “honesty, fairness and impartiality”, “loyalty”, “integrity” and “professional growth and competence”.

- e. Proposed separation of functions between the Attorney General and the Public Prosecutor (2018 – present)
  - The proposal was one of the initiatives contained in the NACP (see Strategic Objective 4.1, paragraph 4.1.5). The rationale behind this initiative is due to the Attorney General and Public Prosecutor being one and the same person.
  - It is, therefore, believed that such amalgamation of roles may lead to conflicts of interest, as the Attorney General is the principal advisor for the Government, which may potentially affect his judgment when dealing with criminal cases involving senior officials of the Government or members of the Cabinet. The work on this proposal has been entrusted to AGC and is still ongoing.
  - There are several countries where the office of the Attorney General is distinct from that of the Public Prosecutor. This will also avoid an unhealthy concentration of power in the hands of one individual.

#### **IV. THE LAW ENFORCEMENT OFFICIALS**

Law enforcement is the task of ensuring the provision of security for citizens going about their daily lives, in accordance with a nation's legal framework, mainly through deterrence and prevention, but also by appropriate interventions to stop violations of the law.

In the context of combating corruption, effective law enforcement by the various enforcement agencies has the effect and capacity in providing Malaysia with a sound human security framework of civilian control, respect for the rule of law and also human rights.

Some overarching measures that have been taken by the Government of Malaysia to combat corruption and improve the governance and integrity of enforcement agencies are as follows:

- a. Governance, Integrity and Anti-Corruption Centre (GIACC)  
(<http://giacc.jpm.gov.my/>).
  - GIACC was established on 1 June 2018. Its aim is primarily to curb corruption. Its functions include advising the Government of Malaysia and coordinating all governance, integrity and anti-corruption initiatives among implementing and enforcement agencies in Malaysia. It also monitors the above-mentioned agencies on their governance, integrity and anti-corruption performance and, where necessary, reports its findings to the public via relevant mediums.

- b. National Anti-Corruption Plan (NACP) 2019–2023<sup>8</sup>
- On 8 June 2018, Dr. Mahathir Mohamad, the then Prime Minister, was of the view that a comprehensive anti-corruption plan needed to be framed quickly to address corruption issues in Malaysia. As a result, under the leadership of the GIACC, the NACP was created, and it is the primary document that outlines the necessary actions to combat corruption.
  - The NACP has three main visions:
    - i. accountability and credibility of the judiciary and prosecution and law enforcement agencies;
    - ii. efficient and responsive delivery by the public service; and
    - iii. integrity in business.
  - The NACP is a five-year plan (2019 – 2023) contained in a 65-page document which is divided into 5 Chapters
- c. Special Cabinet Committee on Anti-Corruption
- The Committee was established under the auspices of the Prime Minister’s Department, pursuant to the establishment of the NACP. The Prime Minister chairs the Committee, of which its members include the Ministers of relevant ministries, the Chief Secretary to the Government, the Attorney General, the Auditor General and the Malaysian Anti-Corruption Commission.
  - Its main aim is to determine policies relating to the strengthening of governance, integrity and anti-corruption initiatives.
- d. Enforcement Agency Integrity Commission (EAIC)  
(<http://www.eaic.gov.my/en>)
- The Commission was set up in 2009. Its main aim is to receive complaints of misconduct from the public against an officer of an enforcement agency or the enforcement agency itself.
  - The commission is empowered to investigate such a complaint and refer its findings to an appropriate disciplinary authority, or where the complaint relates to a criminal matter, it may refer the matter to a Public Prosecutor for a decision.
- e. Proposed Independent Police Complaints and Misconduct Commission (IPCMC)
- In spite of the formation of the EAIC, many civil society organizations, non-governmental organizations and human rights

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<sup>8</sup> National Anti-Corruption Plan (NACP) 2019–2023,  
<<http://giacc.jpm.gov.my/wp-content/uploads/2019/01/National-Anti-Corruption-Plan-2019-2023.pdf>>.

activists in Malaysia are of the view that the EAIC has not been effective in addressing misconduct in the police force. The EAIC also does not have the power to initiate disciplinary proceedings against the police, despite findings of misconduct.

- At the time this paper is written, a draft IPCMC Bill has been prepared and is currently being fine-tuned before it is tabled before the Parliament.
- Among the features of the proposed IPCMC law is that it would be able to investigate wide arrays of misconduct. Further, reports of any deaths in custody are to be reported directly to the IPCMC, which reduces the likelihood of the police themselves interfering in such cases.
- The IPCMC may also compel any person, including police officers, to provide information or surrender documents to facilitate an investigation, the failure of which could result in a fine or imprisonment, or both, for an offender.

## V. PROSECUTION OF HIGH-PROFILE CASES

In recent years, the AGC and MACC, together with the judiciary, have exemplified the ideals of independence and integrity through the prosecution of several high-profile cases. This was done without fear or favour; in line with the continuous improvements made to the integrity and independence of the said bodies.

We have compiled a number of these cases in this paper to illustrate the progress made by the relevant bodies, taking into account the various issues in prosecuting the case, including political pressure and allegations of the offenders having “deep state” operators working behind the scenes to frustrate the efforts.

- a. Prosecution and Conviction of the Top Govt. Officer (Mr. X)
  - On 4 July 2018, the Top Govt. Officer (Mr. X) was charged with seven charges (relating to criminal breach of trust, abuse of position and money laundering) at the High Court for his role in the multibillion-dollar Company X scandal. In July 2020, after a full trial, Mr. X was found guilty of all charges and sentenced to 12 years’ imprisonment plus an additional fine of RM210 million. Mr. X has appealed against his convictions and sentences to the Court of Appeal.
  - Meanwhile, Mr. X is also facing several other corruption charges at another High Court, namely, four counts of abuse of power for using his positions as the Top Govt. Officer and Company X board of advisers Chairman to receive gratification worth RM2.28 billion in another episode of Company X-Tanore trial. He is also facing 21 counts of money laundering involving over RM4.3 billion.



- His wife (Madam YZ) was also charged in 2018 with three counts of dishonestly soliciting RM194 million in bribes connected to government project contracts and faces up to 20 years in jail if found guilty.
- b. Prosecution of several former Ministers
- Apart from Mr. X, the other former Top Govt. Official (Mr. A) was charged in 2018 with a total of 47 charges, 12 of which are for criminal breach of trust, eight for bribery and 27 for money laundering involving tens of millions of ringgit belonging to a charitable foundation established by him.
  - On 26 June 2019, Mr. A was further charged in another case at the Sessions Court with seven counts of having accepted bribes totalling SGD\$4.24mil (RM12.94 million) from a company, and on 27 June 2019, he was charged at the Sessions Court with 33 counts of having accepted RM42.76 million from a company relating to the overseas visa system. These 40 additional charges, plus the earlier 47 charges in the first case, now totals 87 charges.
  - Other notable politicians that have been charged include former Top Govt. Servant (Mr. T) and (Mr. B). Mr. T, the former Top Govt. Servant, was recently found guilty in December 2020 for receiving a bribe of RM2 million from a company during his ministerial tenure, and was sentenced to 12 months' imprisonment and a fine of RM2 million.
  - Mr. B, the Top Govt. Servant, a State in Malaysia, was charged in May 2019 with two counts of receiving bribes of RM2.6 million and RM262,500, respectively, to facilitate approval for an investment scheme in a government statutory body, of which he was the non-executive chairman.

## **VI. THE RULE OF LAW MUST BE STRICTLY FOLLOWED**

The “rule of law” literally is an exercise of governmental powers using and guided by published standards, widely supported by social values. In the context of Malaysia, it means that a legal framework in the country exists, there is law and order, the judiciary system is independent and effective, property rights and contracts are enforced and human rights norms are implemented.

Not only must the three major institutions highlighted in this paper be effective in combating corruption, but laws also need to be responsive to the needs of society, fair and impartially enforced. However, the genuine rule of law requires the cooperation of the Government and society, and is an outcome of a complex and deeply rooted social process. It is a process that takes time, and it is heart-warming to see Malaysia making good progress towards achieving a society guided by the rule of law.

## **VII. CONCLUSION**

The United Nations Office of the High Commissioner for Human Rights (OHCHR) suggests that the core elements of good governance include transparency, integrity,

lawfulness, sound policy, participation, accountability, responsiveness, and the absence of corruption and wrongdoing.

The examples above demonstrate the recent multi-faceted efforts that have been taken by Malaysia to combat corruption and uplift governance. Ultimately, the journey to a better Malaysia will require all hands on deck and is not just incumbent on the authorities. It is our goal to foster a good partnership between the society and law enforcement agencies, to promote substantive outcomes and improve on public legitimacy.

While we see a lot of positive notes in recent years in terms of the improvements carried out in Malaysia, these are still considered baby-steps towards a greater goal of achieving a society which thrives on good governance and integrity. It remains to be seen, especially in the next 10 years, whether there is sufficient political and social will in implementing the great ideas embodied in various great policies such as the SPV2030 and NACP.



# **FIGHTING CORRUPTION FROM THE BACKYARD: ENSURING THE INTEGRITY AND INDEPENDENCE OF LAW ENFORCEMENT, PROSECUTORS AND JUDGES IN THE PHILIPPINES**

*Hazel Canet Decena-Valdez\**

## **I. INTRODUCTION**

Every country has its own approach to control graft and corruption in government. The Philippines has its own. In fact, it would even seem that all sorts of anti-corruption strategies and measures have been done over the years, from one administration to another. Studies about this phenomenon in Philippine governance also abound – conducted not only by scholars, journalists, think-tanks, advocates, but by the government itself – all with the end in view of finding the most effective way to “cure” this so-called “social cancer”.

One area of focus in the fight against graft and corruption is the government’s machinery that enforces the country’s anti-corruption laws and ensures that violators are brought to justice and eventually punished – the criminal justice system, more specifically law enforcement, the prosecution and the judiciary. These government institutions per se (and the people that run and compose them of course) need to practice what they preach because the effectiveness of this machinery that they are part of depends largely on their individual and collective integrity and independence. Thus, at the core of every anti-corruption worker, whether a public officer or employee or an entire government office or agency, is their adherence to sound moral and ethical values and principles.

This paper seeks to examine the structures of the law enforcement, prosecution and judicial institutions in the Philippines, as well as the mechanisms, processes and measures peculiar to these institutions that impact and reflect on their integrity and independence in the context of their role in the investigation, prosecution and adjudication of graft and corruption cases, both within their respective institutions as well as in the entirety of the government. A presentation of existing anti-corruption mechanisms among these agencies of the government will also be made, along with some past efforts that may be considered as best practices in addressing the corruption menace in the Philippines.

## **II. GOVERNMENT STRUCTURE AND LEGAL FRAMEWORK**

### **A. National and Local Governments; Government Corporate Sector**

The Philippines is a democratic and republican State. The three principal powers of the government, namely the legislative, executive and judicial powers, are clearly delineated and exercised among its three co-equal branches. The legislative or law-making power is

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vested in a bicameral Congress that consists of a Senate and a House of Representatives.<sup>1</sup> The executive branch is headed by the President who has control over all the departments, bureaus, and offices, and ensures that the laws are faithfully executed.<sup>2</sup> Finally, the judicial power is vested in the Supreme Court and other lower courts established by law.<sup>3</sup> The independence of the three branches of government through a system of strict separation of powers is one of the most significant corruption prevention mechanisms in place in the Philippines.

The exercise of government powers is decentralized through a local government structure composed of (from the biggest to the smallest unit) provinces, cities, municipalities or towns, and *barangays*. Each of these local government units has its own local chief executive and a local legislative body. For purposes of administrative governance of the various departments under the executive branch, and to some extent, of the judiciary, contiguous groups of local government units are clustered into administrative regions. The seventeen administrative regions of the country, however, do not have local chief executives or local legislative bodies similar to those of the local government units.

The government corporate sector, considered as the third level of the executive branch of the government, is composed of government owned or controlled corporations (GOCC), including government instrumentalities with corporate powers or government corporate entities and government financial institutions, that are vested with functions relating to public needs, whether governmental or proprietary in nature, and owned by the Philippine government either wholly or to the extent of at least a majority of its outstanding capital stock in the case of stock corporations.<sup>4</sup> A government office, the Governance Commission for GOCCs (GCG), acts as the central advisory, monitoring, and oversight body over this sector. It also plays an important role in protecting valuable government resources in these GOCCs against graft and corruption.

## **B. Independent Constitutional Bodies**

The Philippine Constitution established independent bodies which are called “Constitutional Commissions” that exercise specific powers and functions. They are as follows: the Civil Service Commission (CSC), which administers the civil service covering all branches, subdivisions, instrumentalities and agencies of the Government, including government-owned or controlled corporations with original charters, and thus acts as the central personnel agency of the government<sup>5</sup>; the Commission on Elections, which as its name connotes, takes exclusive charge of the enforcement and administration of all laws relative to the conduct of elections for the purpose of insuring free, orderly, honest, peaceful and credible elections<sup>6</sup>; and the Commission on Audit (COA), which holds the power, authority and duty to examine, audit and settle all accounts pertaining to the revenue and receipts and expenditures or uses of the funds and properties of the Philippine government.<sup>7</sup>

Aside from the three Constitutional Commissions, there are two other Constitutional bodies whose mandates, powers and functions, as well as composition, are specifically

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<sup>1</sup> Section 1, Article VI, 1987 Constitution of the Republic of the Philippines.

<sup>2</sup> *Ibid.*, Sects. 1 and 17, Art. VII.

<sup>3</sup> *Ibid.*, Sect. 1, Art. VIII.

<sup>4</sup> Sect. 3(o), Republic Act No. 10149.

<sup>5</sup> *Ibid.*, Sects. 2.1 and 3, Art. IX-B.

<sup>6</sup> *Ibid.*, Sect. 2, Art. IX-C.

<sup>7</sup> *Ibid.*, Sect. 2.1, Art. IX-D.

provided for in the Constitution itself: the Office of the Ombudsman (OMB) as the principal agency of the government responsible for ensuring propriety and accountability of public officers, and is thus primarily responsible for investigating and prosecuting graft and corruption cases; and the Commission on Human Rights, which is mandated to promote and protect human rights. The three Constitutional Commissions, the OMB and the Commission on Human Rights do not fall under any branch of the government and enjoy fiscal autonomy. Their approved annual appropriations are automatically and regularly released. Furthermore, the tenure of the members of the Constitutional Commissions, the Ombudsman and Deputy Ombudsmen is fixed by the Constitution. The establishment and presence of these Constitutional bodies, more particularly those involved in monitoring the accountability of public officers and employees – the CSC, COA and OMB – are significant corruption prevention mechanisms that are manifest in the structure of the Philippine government.

### III. CLEANING THEIR OWN BACKYARDS

Like most democratic countries, the Philippines adheres to the age-old principle that “public office is a public trust”. Thus, no less than the Constitution exhorts that “public officers and employees must, at all times, be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.”<sup>8</sup> Moreover, there is an abundance of legislation that seeks to advance the policy of the State to promote a high standard of ethics in public service. As a matter of fact, there are at least seventy-seven corruption-specific laws and executive issuances<sup>9</sup> that have been enacted to date in order to combat corruption, starting with the Revised Penal Code of the Philippines that was enacted in 1932, which criminalized certain acts and omissions of public officers. Excluded from this number are other special penal laws which provide for sanctions on public officers who participate one way or the other in the commission of crimes. Among the most significant of these laws are Republic Act (RA) No. 6713 or the “Code of Conduct and Ethical Standards for Public Officials and Employees”, and RA 3019 or the “Anti-Graft and Corrupt Practices Act”.

On top of these laws that apply to all public officers and employees across all branches and levels of the government, each law enforcement, prosecution and judicial institution involved in the investigation, prosecution and adjudication of graft and corruption in the government has its own internal mechanism and processes, as well as programmes and campaigns, that seek to ensure and promote the integrity of the institution per se and of its own anti-corruption-related work. Cleaning their own backyards, so to speak, is a norm among these institutions.

#### A. Law Enforcement

The Philippines has two major law enforcement agencies, both of which are under the executive branch of the government. These are the Philippine National Police, which is under the Department of the Interior and Local Government, and the National Bureau of Investigation, which is an agency under the Department of Justice.

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<sup>8</sup> Ibid., Sect. 1, Art. XI.

<sup>9</sup> Sixty-one were identified and listed by Prof. Danilo R. Reyes in “*Chronicling Corruption in the Philippines: A Brief Historical Background Up to 2004*”.

## 1. Philippine National Police and National Police Commission

The Philippine National Police (PNP) was first established in 1990 through Republic Act (RA) No. 6975, the law which organized the Department of the Interior and Local Government (DILG) and its component offices, including the National Police Commission (NAPOLCOM), a constitutionally mandated body tasked to administer and control a national police force. The PNP was initially composed of members of the old police organization and of the military who sought absorption into the newly organized civilian police force.

The PNP's principal power and function is to "investigate and prevent crimes, effect the arrest of criminal offenders, bring offenders to justice and assist in their prosecution".<sup>10</sup> It has a national presence through its police stations in every city and municipality/town of the country, as well as provincial and regional offices in all provinces and regions of the country. Bigger cities even have additional satellite stations or police community precincts in *barangays*. While its jurisdiction in the investigation of crimes is more general compared to that of the National Bureau of Investigation, the PNP's role in the investigation of graft and corruption incidents nonetheless becomes more relevant in places where no other law enforcement agency of the government is present.

The NAPOLCOM is a six-member collegial body composed of the Secretary of the DILG as the ex officio chairperson, four civilian (non-military or law enforcement agency-connected) commissioners, and the PNP Chief as an ex officio member. It is attached to the DILG only for policy and programme coordination purposes. Its power to have administrative control and operational supervision over the PNP include the development and promulgation of policies and standards involving police procedures, performance, facilities and activities including recruitment, selection, promotion, and training. It also exercises disciplinary authority over PNP officers and personnel through its appellate jurisdiction over personnel disciplinary actions.

### *(a) PNP Ethical Doctrine (PNP Code of Professional Conduct and Ethical Standards)*

The "PNP Code of Professional Conduct and Ethical Standards" serves as the national police force's basic moral and ethical guidance to its members. In 2014, the PNP "rebranded" this Code into what is now called "The PNP Ethical Doctrine" in order to remind the police force of its provisions and to continue its propagation to, and internalization by, all its members. The PNP Ethical Doctrine is anchored on the divine and moral precepts, the Constitution of the Republic of the Philippines and relevant provisions of the Revised Penal Code, RA 6713, RA 3019, RA 6975 and other related special laws.

All new entrants to the PNP are provided with copies of the PNP Ethical Doctrine and the doctrines and principles embodied in the code are part of academic courses given to PNP personnel. All PNP members are enjoined to fully adhere to its provisions in the performance of their duties and to commit to uphold its intent and spirit at all times. Violations of such provisions are made punishable under the applicable penal laws and administrative regulations issued by NAPOLCOM, the PNP, Civil Service Commission or the DILG.

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<sup>10</sup> Sect. 24(c), RA 6975.

*(b) People's Law Enforcement Board*

The People's Law Enforcement Board (PLEB) is an innovation under RA 6975; a check and balance mechanism where ordinary citizens can have redress of their grievances against law enforcers who abuse their authority and lodge their complaints against them. It is also a strategy to empower the community in general to instil discipline in the PNP ranks.

The PLEB is a five-member collegial body that is created in every city and municipality through their local legislative bodies. It is composed of the following: a member of the local legislative body, a *barangay* captain of the city or municipality, and three respected members of the community known for their probity and integrity chosen by the local peace and order council, one of whom must be a woman and another a member of the Bar, or, in the absence of the latter, a college graduate, or the school principal of the central elementary school in the locality.

As the central receiving entity for complaints from the public against PNP members, it takes cognizance of complaints involving offences punishable by withholding of privileges, restriction to specified limits, suspension or forfeiture of salary, or any combination thereof, for a period exceeding thirty days, or by dismissal,<sup>11</sup> and refers the rest to the appropriate disciplinary or adjudicatory authority depending on the imposable penalty for the offence complained of.

*(c) Internal Affairs Service (IAS)*

Pursuant to its objective to reform the PNP, RA 8551 introduced the Internal Affairs Service (IAS) and gave it the following mandates:

- (i) pro-actively conduct inspections and audits on PNP personnel and units;
- (ii) investigate complaints and gather evidence in support of open investigations;
- (iii) conduct summary hearings on administrative charges against PNP members;
- (iv) submit periodic reports on the assessment, analysis, and evaluation of the character and behaviour of PNP personnel and units to the PNP chief and the NAPOLCOM;
- (v) file appropriate criminal cases against PNP members before the courts and assist in the prosecution of the case;
- (vi) provide assistance to the OMB in cases involving PNP personnel;
- (vii) conduct, *motu proprio*, automatic investigation of the following cases:
  - incidents where a PNP personnel discharges a firearm;
  - incidents where death, serious physical injury, or any violation of human rights occurred in the conduct of police operations;
  - incidents where evidence was compromised, tampered with, obliterated, or lost while in the custody of PNP personnel;
  - incidents where a suspect in the custody of the police was seriously injured; and
  - incidents where the established rules of engagement have been violated; and
- (viii) provide documents or recommendations concerning promotions or designations of PNP members to any key position.

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<sup>11</sup> Sect. 41(a)(3), RA 6975.



The IAS is present in every regional and provincial PNP office throughout the country, as well as in the head office or PNP headquarters. It is headed by an Inspector General who is a civilian appointed by the President.

*(d) Administrative Disciplinary Machinery*

Aside from the PLEB, local police chiefs, the local chief executives of provinces, cities and municipalities/towns also exercise administrative disciplinary authority over PNP officers and members.

Minor offences of police officers are dealt with through an internal mechanism where local police chiefs may summarily impose administrative punishment depending on the infraction involved. Offences considered as minor are acts or omissions that affect the internal discipline of the organization and do not involve moral turpitude, like simple misconduct or negligence, insubordination, frequent absences or tardiness, habitual drunkenness, and engaging in unlawful gambling. Depending on the disciplinary authority, summary penalties that may be imposed range from admonition or reprimand, withholding of privileges, forfeiture of salary or suspension, or a combination of any of these penalties, up to demotion or even dismissal from the service. The PNP Chief and regional police chiefs both have summary dismissal powers when the charge is serious and the evidence of guilt is strong, or when the erring police officer is a recidivist, or has been repeatedly charged and there are reasonable grounds to believe that the officer is guilty of the charges, or is guilty of a serious offence involving conduct unbecoming of a police officer.

*(e) Integrity Monitoring and Enforcement Group*

In 2019, the PNP created the Integrity Monitoring and Enforcement Group (IMEG) as a strategy to strengthen its campaign against corrupt policemen, especially those involved in illegal drugs. IMEG “upgraded” the Counter-Intelligence Task Force, a comparatively smaller office that was originally formed as part of the internal cleansing mechanism in the organization. As a bigger office than its predecessor, IMEG has been given more resources, including personnel, and a wider latitude of authority and more functions. Among others, it assists the public in filing criminal complaints before the prosecution offices against erring police officers, more particularly those that arise from drug operations of the PNP. To further reinforce its internal cleansing programme and to curb graft and corruption in the organization, the PNP leadership recently gave IMEG an additional task – to conduct lifestyle checks among its personnel.<sup>12</sup>

2. National Bureau of Investigation

The National Bureau of Investigation (NBI) is the second major law enforcement agency of the government. It is the Philippine’s version of the Federal Bureau of Investigation of the United States of America. From its original creation in 1936 as a mere “Division of Investigation” under the DOJ, the NBI has undergone a number of reorganizations and expansions over the years.

Among its original principal mandates was to undertake investigation of crimes and other offences upon its own initiative and as public interest may require, and to render assistance, whenever properly requested in the investigation or detection of crimes and other offences.<sup>13</sup> It was reorganized in 1960 in order to promote maximum efficiency in the

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<sup>12</sup> <<https://newsinfo.inquirer.net/1354327/npn-to-undertake-lifestyle-checks-to-fight-corruption>>.

<sup>13</sup> RA 157.

discharge of its duties and to secure full implementation of its functions, especially those pertaining to investigation of graft and corruption cases.<sup>14</sup>

The NBI was recently reorganized and modernized under a recent law<sup>15</sup> wherein the positions and compensation of its officers and personnel were upgraded, while the scope of its investigatory authority was limited to specialized crimes like human trafficking, cybercrimes, extrajudicial or extralegal killings and transnational crimes. As regards graft and corruption cases, the NBI shall only take cognizance of those that are referred to it by the Inter-Agency Anti-Graft Coordinating Council.<sup>16</sup> Similar to the PNP, the NBI also has nationwide presence through its regional as well as district offices. Unlike the PNP though, the NBI has no local offices in cities and municipalities or towns.

*(a) Internal Affairs Division*

The NBI also has an Internal Affairs Division under the Office of the Director. Unlike the PNP, however, its regional offices do not have an administrative disciplinary mechanism or machinery. Hence, complaints against its officers and personnel are filed with, and investigated and adjudicated by, the Office of Director at the head office.

**B. Prosecution**

There are also two government offices that conduct preliminary investigation<sup>17</sup> and prosecution of graft and corruption cases – the National Prosecution Service under the Department of Justice and the OMB.

1. National Prosecution Service

The National Prosecution Service (NPS) is the office primarily responsible for the conduct of preliminary investigation and prosecution of all cases involving violations of penal laws in the Philippines. Established by virtue of RA 10071, the NPS is composed of a Prosecution Staff in the Office of the Secretary of Justice headed by a Prosecutor General, regional prosecution offices, as well as field prosecution offices in every province and city of the country. It is under the supervision and control of the Secretary of Justice.

The investigative authority of the NPS over complaints involving alleged commission of crimes is akin to the PNP's "general jurisdiction" to investigate crimes. This is so because the OMB holds the primary jurisdiction over graft and corruption cases, especially those falling under the jurisdiction of the Sandiganbayan.<sup>18</sup> The NPS exercises concurrent jurisdiction over complaints falling outside Sandiganbayan's jurisdiction which it can resolve without the need for OMB's approval. Pursuant to a Memorandum of Agreement between the DOJ and the OMB,<sup>19</sup> the latter may likewise refer cases to the NPS for preliminary investigation and prosecution before the first and second level courts.

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<sup>14</sup> RA 2678.

<sup>15</sup> RA 10867.

<sup>16</sup> Discussed further under IV.B.1.

<sup>17</sup> Defined under the Revised Rules of Criminal Procedure as "an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial."

<sup>18</sup> Also discussed in part III.C.2 of this paper.

<sup>19</sup> Signed 29 March 2012.

*(a) Selection and Promotion Board*

RA 10071 expressly requires that prosecutors of the NPS shall be selected from among the qualified and professionally trained members of the legal profession who are of proven integrity and competence.<sup>20</sup> To this end, the NPS Selection and Promotion Board, composed of the highest-ranking officials of the NPS and chaired by no less than the Prosecutor General, require applicants for position in the NPS to submit clearances from the NBI, OMB, Sandiganbayan, and Civil Service Commission in order to apprise them whether candidate prosecutors have been charged or are facing any criminal or administrative cases, and the nature and details of those cases if any. Results of neuropsychiatric examination are likewise required from applicants. As an added measure to ensure compliance with the statutory qualification standards for prosecutors, the Board invites as resource persons during the deliberation of applications, the chiefs of prosecution offices of the place where an applicant is seeking appointment. A shortlist of applicants is submitted to the Secretary of Justice, who in turn endorses it to the President, who appoints prosecutors of the NPS.

*(b) Code of Conduct of Prosecutors*

The Code of Conduct of Prosecutors of the NPS sets down the core values as well as the mandatory standards for professional and individual conduct that prosecutors should observe in the performance of their duties as public servants and pillars of the criminal justice system. More specifically, the Code emphasizes the following:

- (i) Commitment to the Rule of Law and Public Interest;
- (ii) Prompt, Effective and Efficient Service;
- (iii) Dedication, Diligence and Competence;
- (iv) Impartiality, Independence, and Fidelity to Duty; and
- (v) Honesty, Integrity and Professionalism.

*(c) Internal Affairs Unit*

The Secretary of Justice exercises disciplinary authority over prosecutors of the NPS through an Internal Affairs Unit (IAU), which assists the Secretary in acting on administrative complaints, or *motu proprio*, initiating proceedings, against prosecutors and personnel of the NPS. The offences that may be subject of administrative charges include violations of the provisions of the following:

- (i) Revised Penal Code as amended, on crimes committed by public officers;
- (ii) RA 3019 as amended;
- (iii) RA 6713;
- (iv) Administrative Code of 1987;
- (v) Civil Service Law and its Omnibus Rules and Regulations;
- (vi) Code of Conduct for Prosecutors; and
- (vii) Pertinent DOJ policies, other special laws, rules and regulations.<sup>21</sup>

2. Office of the Ombudsman

As previously mentioned, the OMB is a constitutional body designed to be the principal agency of the government responsible for ensuring propriety and accountability of public officers and has the primary responsibility to investigate and prosecute graft and corruption

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<sup>20</sup> Section 16, RA 10071.

<sup>21</sup> Department Circular No. 010 dated 25 March 2015.

cases. It is composed of the Ombudsman, an Overall Deputy Ombudsman, four deputies [one deputy each for Luzon, Visayas and Mindanao (the Philippines' major island groups), a deputy for the military and other law enforcement offices (MOLEO)], and several assistant ombudsmen. Also under the OMB is an Office of the Special Prosecutor which serves as its prosecution arm. The Ombudsman, his deputies and the Special Prosecutor are all presidential appointees and serve specific fixed terms.<sup>22</sup>

As “protectors of the people”,<sup>23</sup> the OMB has the following powers, functions and duties:

- (i) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.
- (ii) Direct, upon complaint or at its own instance, any public official or employee of the Government, or any subdivision, agency or instrumentality thereof, as well as of any government-owned or controlled corporation with original charter, to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties.
- (iii) Direct the officer concerned to take appropriate action against a public official or employee at fault, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith.
- (iv) Direct the officer concerned, in any appropriate case, and subject to such limitations as may be provided by law, to furnish it with copies of documents relating to contracts or transactions entered into by his office involving the disbursement or use of public funds or properties, and report any irregularity to the Commission on Audit for appropriate action.
- (v) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents.
- (vi) Publicize matters covered by its investigation when circumstances so warrant and with due prudence.
- (vii) Determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in the Government and make recommendations for their elimination and the observance of high standards of ethics and efficiency.
- (viii) Promulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law.<sup>24</sup>

*(a) Internal Affairs Board*

The Internal Affairs Board (IAB) of the OMB does not only act on all complaints against its incumbent officials and employees. It also plays a big role in recommending to the Ombudsman policies, programmes and procedures that ensure compliance by OMB officials and employees with RA 6713 and all laws, rules and regulations concerning civil service and public accountability. The IAB also has the authority to offer recommendations regarding the promulgation of a code of conduct and ethical standards for all officials and employees of the OMB, as well as of a manual of operations for its various offices to ensure faithful performance of its mandated functions in accordance

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<sup>22</sup> Please see related discussion about the Judicial and Bar Council in part III.C.3.

<sup>23</sup> *Ibid.*, Sect. 12, Art. XI.

<sup>24</sup> *Ibid.*, Sect. 11, Art. XI.

with the norms of conduct of public officials and employees under RA 6713. Finally, the IAB may request any intelligence or investigating agency to direct any official, employee or unit of the OMB to conduct an intelligence operation or fact-finding investigation on any of its officials or employees.

The IAB is mandated to act on all complaints cognizable by it, whether filed by the public or by any official or employee of the OMB, and in whatever form it may be filed – orally or in writing, signed or unsigned, or verified or not. Depending on the merits, or lack thereof, complaints go through a series of processes – evaluation, preliminary investigation and/or administrative adjudication, fact-finding investigation, even intelligence operation – are finally decided by the Ombudsman.<sup>25</sup>

## **C. Courts**

### **1. Regular Courts**

The hierarchy of the judicial branch of the Philippine government starts with first level courts stationed in cities and municipalities/towns, namely the Municipal Trial Court, Municipal Circuit Trial Courts, Municipal Trial Court in Cities, and Metropolitan Trial Courts. In criminal cases, these courts take cognizance of minor infractions of the law. Second level courts, on the other hand, are composed of Regional Trial Courts that are scattered throughout the country's administrative regions, provinces and cities. They have jurisdiction to try offences that carry more severe penalties. All proceedings in both first and second level courts are presided by only one judge.

Decisions of first and second level courts as well as of other quasi-judicial bodies can be elevated to the Court of Appeals, a collegiate court which exercises appellate jurisdiction on all cases not falling within the original and exclusive jurisdiction of the Supreme Court. Considered as the second highest tribunal of the land, it sits by divisions of three justice-members. Currently, it is composed of twenty-three divisions.

At the top of the judicial hierarchy is the Supreme Court, the final arbiter of legal issues and controversies of the land. It is composed of a Chief Justice and fifteen Associate Justices. Besides adjudicating cases that fall within its jurisdiction, the Supreme Court likewise exercises administrative supervision over all courts and their personnel.

### **2. Sandiganbayan**

The Sandiganbayan is a special court under the judicial branch which has original and appellate jurisdiction over criminal and civil cases involving graft and corrupt practices and other offences committed by public officers and employees (including those in government-owned or controlled corporations) in relation to their office. It was originally created under Presidential Decree (PD) No. 1486 issued in 1978 with the same rank as a second level court but was shortly later elevated to the same level as the Court of Appeals via PD 1606.

Over the years, the Sandiganbayan underwent several reorganizations and expansions. From an original eight-member court, it now has twenty-one justices who sit in seven divisions of three members. Its jurisdiction has likewise undergone revisions.

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<sup>25</sup> Administrative Order No. 23, Series of 2016, of the OMB.

The jurisdiction to try corruption cases is shared among the first and second level courts and the Sandiganbayan depending on the offence committed or the salary grade of the public officer at the time of commission of the offence. Generally, public officers occupying positions classified as Salary Grade (SG) 27 and above pursuant to the government's system of compensation and position classification, are tried before the Sandiganbayan, while those below SG 27 are tried before the first and second level courts, unless they are charged together with officers whose positions are classified as SG 27 and above. Cases decided by first and second level courts are appealable to the Sandiganbayan. Its decisions may be elevated on appeal before the Supreme Court.

### 3. Judicial and Bar Council

The Judicial and Bar Council (JBC) is another independent Constitutional office whose primary task is to recommend appointees to the judiciary and the OMB to the President. It is composed of representatives of the three branches of government as *ex officio* members (the Chief Justice, the Secretary of Justice, and a member from the legislature), a representative of the Integrated Bar of the Philippines,<sup>26</sup> a professor of law, a retired member of the Supreme Court, and a representative from the private sector.<sup>27</sup>

The JBC is a mechanism that ensures the independence of the judicial branch of government, for while the President ultimately appoints the members of the judiciary and the OMB, appointments could not be done arbitrarily since the choice is limited to the list of nominees submitted by the JBC. It, therefore, ensures as well that the selection process for the judiciary and the OMB is not politicized. Furthermore, the highly stringent application, screening, selection and nomination process of the JBC ensures that only persons of proven competence, integrity, probity and independence as required by no less than the Constitution, are appointed to the judiciary.

In screening applications for the judiciary and the OMB, the JBC ensures the existence of the minimum qualifications pertaining to length of practice of law, age and experience as required by the Constitution. In addition, competency requirements are determined by looking at the individual applicant's educational preparation as reflected in scholastic records, performance on the bar examination and prejudicature programme, academic awards, scholarships. Work performance ratings as well as the results of psychological and psychiatric evaluations are likewise scrutinized. Finally, exemplary accomplishments of applicants are likewise considered, such as awards for judicial excellence, authorship of books, treatises, articles and other legal writings, as well as leadership in professional or civic organizations.

As a measure to ensure that members of the judiciary and the OMB are of proven honesty, integrity, probity, incorruptibility, irreproachable conduct and fidelity to sound moral and ethical standards, the JBC requires the submission of testimonials from reputable government officials and non-governmental organizations, as well as certifications or clearances from relevant government offices – courts, law enforcement agencies, the IBP, Office of the Bar Confidant, including the OMB. Moreover, the JBC may likewise order the conduct of discreet background checks on the integrity, reputation and character of applicants and validate the results of such efforts. Feedback from the public in the form of

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<sup>26</sup> The national organization of lawyers in the Philippines.

<sup>27</sup> *Ibid.*, Sect. 8, Art. VIII.

complaint or opposition is encouraged through the publication of the list of applicants for positions in the judiciary and the OMB in two newspapers of general circulation.

In determining the independence of applicants for positions in the judiciary and the OMB, the JBC scrutinizes their decisions (for incumbent judges) if they are reflective of the wisdom and soundness of their judgment, courage, rectitude, impartiality, cold neutrality, fortitude and strength of character. Validated testimonials from reputable officials and impartial organizations or outstanding citizens are likewise considered.

Finally, to determine potential conflicts of interest that may impede these applicants' impartiality or ability to remain independent once appointed, the JBC looks into their personal, social and professional relationships, business interests and financial connections.<sup>28</sup>

#### 4. New Code of Judicial Conduct for the Philippine Judiciary

As a reaction to the adoption in 2002 of the Code of Judicial Conduct ("Bangalore Draft") by the Judicial Group on Strengthening Judicial Integrity,<sup>29</sup> the Philippine Supreme Court updated the then existing Code of Judicial Conduct and Canons of Judicial Ethics, and eventually adopted, in 2004, a New Code of Judicial Conduct for the Philippine Judiciary. The New Code's first two canons emphasize independence and integrity, thus:

### **Canon 1 Independence**

Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

#### Section 1

Judges shall exercise the judicial function independently on the basis of their assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influence, inducement, pressure, threat or interference, direct or indirect, from any quarter or for any reason.

#### Section 2

In performing judicial duties, judges shall be independent from judicial colleagues in respect of decisions which the judge is obliged to make independently.

#### Section 3

Judges shall refrain from influencing in any manner the outcome of litigation or dispute pending before another court or administrative agency.

#### Section 4

Judges shall not allow family, social, or other relationships to influence judicial conduct or judgment. The prestige of judicial office shall not be used or lent to

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<sup>28</sup> The 2020 Revised Rules of the Judicial and Bar Council (JBC No. 2020-01).

<sup>29</sup> A group of Chief Justices and Superior Court Judges from around the world.

advance the private interests of others, nor convey or permit others to convey the impression that they are in a special position to influence the judge.

#### Section 5

Judges shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to be free therefrom to a reasonable observer.

#### Section 6

Judges shall be independent in relation to society in general and in relation to the particular parties to a dispute which he or she has to adjudicate.

#### Section 7

Judges shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary.

#### Section 8

Judges shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary which is fundamental to the maintenance of judicial independence.

### **Canon 2 Integrity**

Integrity is essential not only to the proper discharge of the judicial office but also to the personal demeanor of judges.

#### Section 1

Judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer.

#### Section 2

The behavior and conduct of judges must reaffirm the people's faith in the integrity of the judiciary. Justice musty not merely be done but must also be seen to be done.

#### Section 3

Judges should take or initiate appropriate disciplinary measures against lawyers or court personnel for unprofessional conduct of which the judge may have become aware.

#### **5. Judicial Integrity Board and Corruption Prevention Investigation Office**

To prevent corruption in the judiciary and further strengthen its integrity, the Supreme Court created in 2018 the Judicial Integrity Board (JIB) and the Corruption Prevention Investigation Office (CPIO).<sup>30</sup> The JIB is composed of retired justices of the Supreme Court, Court of Appeals, Sandiganbayan or Court of Tax Appeals. It has the mandate to act on complaints (whether verified or anonymous) for disciplinary action against justices of

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<sup>30</sup> A.M. No. 18-01-05-SC.



the Court of Appeals, the Sandiganbayan, Court of Tax Appeals, judges and personnel of first and second level courts, including the Shari'a courts, and officials and employees of the Offices of the Jurisconsult and the Court Administrator. The Supreme Court may also *motu proprio* initiate proceedings before the JIB against the justices, judges, officers and personnel of the foregoing courts and offices. The JIB is also tasked to *motu proprio* initiate disciplinary actions in the Supreme Court against the foregoing officials and personnel of the judiciary on account of either a conviction or even a mere charge for any crime. As for complaints that involve graft and corruption and violations of ethical standards against members of the Supreme Court, they are referred to its Committee on Ethics and Ethical Standards which is tasked to conduct a preliminary investigation before the submission of its findings and recommendations to the Supreme Court *en banc*.

The CPIO on the other hand, has the authority to conduct intelligence, surveillance or entrapment (undercover) operations, as well as lifestyle checks and discreet investigations on the foregoing justices, judges, officers and personnel of the judiciary, for purposes of detection or identification of those who commit, appear to be involved in, or are liable for violations of the New Code of Judicial Conduct for the Philippine Judiciary or of any of the charges enumerated under Rule 140 of the Rules of Court.<sup>31</sup> The disciplinary powers of the judiciary among its ranks, however, does not deprive the law enforcement agencies of the government to take cognizance of complaints for alleged commission of crimes (including graft and corruption) filed against justices, judges and court personnel. Otherwise said, investigation on criminal complaints against them may be conducted independent of, and may proceed separately from, any disciplinary or administrative proceedings before the Supreme Court or the JIB.

#### 6. Compensation Package and Other Benefits

Positions in the judiciary are among those highly paid in the government. In the 33-level salary grade (SG) hierarchy, salaries of the members of the Supreme Court are at SG 31-32 (SG 33 is assigned solely to the President), while salaries of justices of the other collegiate courts are at SG 30-31, and those of judges of first and second level courts, at SG 28-29. On top of their basic salary, members of the judiciary regularly receive various allowances as well as hazard pay.

## IV. BEST PRACTICES IN ANTI-CORRUPTION EFFORTS

### A. Utilizing the Cabinet System, the “Cory Way”

The administration of former President Corazon “Cory” Aquino (1986-1992) succeeded what has been known to be the most corrupt regime in Philippine history – the more than two decades of the Marcos regime. Among the efforts done by the Aquino administration to get the country back on its feet was to recover ill-gotten wealth of the Marcoses and their cronies, to restore democratic institutions and to “cleanse” the government of graft and corruption.

President Aquino’s anti-corruption strategy consisted of integrating the initiatives into the regular structure of the executive branch, or the cabinet. Each department head/cabinet member was directed to study their organization and to formulate and implement an anti-

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<sup>31</sup> “Discipline of Judges of Regular and Special Courts, Justices of the Court of Appeals, the Sandiganbayan, Court of Tax Appeals, Court Administrator, Deputy Court Administrator, and Assistant Court Administrator”.

corruption plan based on such study. Cabinet members reported to the President on the status of their department's anti-corruption campaign or programme during cabinet meetings. As each department dealt with its own problems, various offices within the cabinet likewise came up with joint or multilateral solutions for interrelated or interconnected concerns.

According to an assessment of President Aquino's anti-corruption strategy, the approach which allowed cabinet members to tackle their own office's problem of graft and corruption proved successful. The strategy which they called "The Cory Way" amplified the government's cleansing process as each and every office in the executive department simultaneously undertook varied strategies that were appropriate and unique to their office's situation at the time. The accomplishments of the campaign also differed from one department to another – from improvement of existing policies and procedures to formulation of new ones, creation of new programmes, monitoring of personnel, to discharge or dismissal of officials. Other departments implemented organizational changes and improvements in efficiency which limited opportunities for corruption. On the whole, it is believed that it is possible to make substantial progress against corruption within the existing framework of government institutions without creating a new anti-corruption agency.<sup>32</sup>

## **B. Inter-Agency Cooperation Mechanisms**

While the "Cory Way" of dealing with corruption in the government (at least in the executive) was an effective strategy, the need for inter-agency cooperation was also recognized. Hence, inter-office resources were pooled together to address problems that necessitated multi-agency response.

### **1. The Inter-Agency Anti-Graft and Corruption Council**

The Inter-Agency Anti-Graft and Corruption Council (IAAGCC) is a voluntary alliance of government agencies aimed at preventing or eliminating graft and corruption in government services through strategic cooperation in the prevention, detection, investigation and prosecution of these cases. It was originally established in 1997 through a memorandum of agreement among the heads of the agencies that have been mandated to uphold integrity and accountability in the public service, namely the OMB, COA, CSC, NBI and the then Presidential Commission Against Graft and Corruption (PCAGC). The alliance mutually agreed to share information and closely coordinate with one another, to undertake inter-agency-skills-training programmes and to promote inter-agency conferences.

In 1998, the DOJ joined the IAAGCC, and in 1999, the President of the Republic officially recognized its establishment through Administrative Order No. 79. The Order likewise enjoined all government agencies to extend full support and assistance to IAAGCC in the implementation of its programmes and projects for which the President made available the amount of Five Million Pesos from the Social Fund of the Office of the President.

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<sup>32</sup> Prof. Leonor Magtolis Briones, "*Framework for a National Anti-Corruption Program*".

*(a) Guidelines of Cooperation*

Since several of the mandates and functions of IAAGCC member agencies overlap with one another, and may therefore result to potential areas of conflict and confusion, IAAGCC operations are governed by a Guidelines of Cooperation.

The IAAGCC's governance body is well-structured, *viz.* the IAAGCC itself, composed of the head of the member agencies; the Consultative Committee (CONSULCOM) which is composed of representatives of the member agencies and acts as an advisory body to the Council; the Secretariat which provides administrative support to both the IAAGCC and the CONSULCOM; an auditor from COA; a coordinator; an Operations Group, which is composed of a research team, task forces and the investigation and prosecution teams; and an Administrative Group. The "hosting" of IAAGCC rotates among the member agencies every two years, during which time period the host agency serves as chairman of both the IAAGCC and the CONSULCOM.

The Guidelines of Cooperation establishes a mechanism of cooperation through the establishment of an Inter-Agency Coordinating Center (IACC), coordinating and monitoring centres in each member agency (at the head office and in regional or local offices nationwide), and inter-agency task forces. Besides creating a clear organizational structure and prescribing a cooperation mechanism, the Guidelines categorically prescribe the scope of authority of each member agency in criminal cases, civil as well as administrative cases.

The IACC has the following functions:

- (i) serve as the central repository of all records/information of concerning inter-agency activities;
- (ii) coordinate with monitoring units of member-agencies;
- (iii) maintain files on the *modus operandi* in the commission of fraud related cases;
- (iv) maintain a computer database of case profiles and statistics;
- (v) disseminate information/instructions among member agencies;
- (vi) monitor the activities of the inter-agency task forces;
- (vii) maintain and compile all reference materials for use of member agencies;
- (viii) serve as a hotline centre;
- (ix) promote public awareness and involvement in inter-agency programmes against the incidence of graft and corruption by:
  - establishing hotlines in member agencies;
  - immediately responding to complaints;
  - assuring confidentiality of information;
  - disseminating information on causes and effects of graft and *modus operandi* in the commission of graft;
  - emphasizing the primary responsibility of agency head in the prevention and detection of graft and corruption; and
  - coordinating with the Philippine Information Agency and other public offices in disseminating information on the evils of graft and corruption.

The IACC, being equipped with the latest communication facilities in order to expedite actions on complaints and requests for information/statistics on graft cases, also facilitates the information exchange among the member agencies by keeping track of requests for

information and inquiries from one another, and monitoring response/reaction time of member agencies and reminding them to promptly address requests/inquiries.

This network between the IACC on one hand, and the coordinating and monitoring centres within each IAAGCC member agency on the other, facilitates the communication and information exchange among the member agencies and ensures that graft and corruption-related matters are acted upon efficiently.

IAAGCC, however, does not take on all graft and corruption cases. The CONSULCOM only certifies and refers to the task forces for investigation cases that meet the following criteria:

- (i) complex fraud-related government transactions with national impact;
- (ii) involving the amount of P50 million pesos or higher; and
- (iii) involving high-ranking public officials with the position of bureau director or higher.

*(b) IAAGCC's Gains*

Since its establishment in 1997, investigators, prosecutors, and other personnel from member-agencies have been jointly trained on fraud investigation, prevention, detection and prosecution of graft and corruption cases, and asset forfeiture. Furthermore, when the Philippine government was shaken by the Priority Development Assistance Fund<sup>33</sup> (PDAF) scam in 2013, the IAAGCC's cooperation mechanism was quickly activated with the creation of an inter-agency task force composed of investigators, technical experts and prosecutors from the OMB, DOJ and COA that was tasked to conduct a joint investigation into the misuse of the PDAF. The task force's collaborative work resulted in the filing of cases against several senators and members of the House of Representatives before the Sandiganbayan.

## V. CONCLUSION

The Philippine institutions involved in the investigation, prosecution and adjudication of graft and corruption cases may be lauded for their separate and individual drives not only to promote and strengthen integrity and independence within their ranks, but also to cleanse their organizations of misfits. For instance, it was seen above that most of these agencies have their respective codes of ethical standards. Most of them, too, have their own internal affairs unit/division/board and mechanism that serve as the first avenue for taking action against errant members of their organization. It will be noted as well that most of these disciplinary or internal affairs structures are collegial, which is an added measure to ensure the integrity of their decisions. Moreover, these institutions periodically intensify their anti-corruption programmes which trumpet earnest desires for a corrupt-free office.

With these measures in place, however, along with other corruption-prevention standards not mentioned but which are certainly present in these institutions, like the increased level of remuneration and additional benefits for government workers (law enforcement officials, investigators and prosecutors included), reward and promotion

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<sup>33</sup> These are discretionary funds available to members of Congress which aim to support small local infrastructure and other priority community projects which are not included in the national infrastructure programme involving massive and costly projects.

procedures, and continuing education and training, it cannot be denied that graft and corruption still disturb the country's criminal justice system. Perhaps a more focused, intense, sincere and sustained cleaning of the backyard is needed.

# ENHANCING THE INTEGRITY AND INDEPENDENCE OF PHILIPPINE JUDGES, PROSECUTORS AND LAW ENFORCEMENT OFFICIALS AS A COUNTERMEASURE AGAINST CORRUPTION

*Lyn Gaa Dimayuga\**

## I. INTRODUCTION

Robert F. Kennedy once said, “Every time we turn our heads the other way when we see the law flouted, when we tolerate what we know to be wrong, when we close our eyes and ears to the corrupt because we are too busy or frightened, when we fail to speak up and speak out, we strike a blow against freedom, decency and justice.” Corruption is an issue that has plagued the Philippines since time immemorial. While not exclusive to our country, it cannot be denied that corruption in the Philippines is at an all-time high. In the study conducted by Transparency International, the Philippines dropped to the 113th rank out of 180 countries in their 2019 Corruption Perceptions Index, a 14-notch fall from its standing of 99th place in 2018. In the said study, the Philippines scored 34 points on a scale where zero is “highly corrupt” and the perfect score of 100 is “very clean.”<sup>1</sup> Also, in the National Household Survey on Experience with Corruption in the Philippines, a study released by the Office of the Ombudsman in 2018, it was discovered that 1 out of every 20 households had bribed a government official or employee.<sup>2</sup>

The negative effects of corruption cannot be overemphasized. As billions of public funds are siphoned off by corrupt officials, delivery of basic services, such as food, housing and medical benefits, and even water supply, are hampered. Investors are discouraged from opening their businesses in this country, bearing in mind the millions of pesos they have to shell out to obtain the necessary permits and licenses for their business operations. People dread law enforcement officers because of these officials’ rampant involvement in kidnapping, sale of illegal drugs and other heinous crimes. The concept of justice becomes distorted as cases are won based on who has the money to bribe the judge or the prosecutor, and not on the evidence on record.

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<sup>1</sup> Philippines Drops to 113<sup>th</sup> Rank in 2019 Corruption Index, by Julia Mari Ornedo, 23 January 2020, GMA News Online.

<sup>2</sup> Ombudsman insists on prioritizing corruption prevention | Inquirer News By: Gabriel Pabico Lalu; INQUIRER.net, 9 December 2019.

## II. ILLUSTRATIVE CASES OF CORRUPTION IN THE PHILIPPINE JUDICIARY, PROSECUTION AND LAW ENFORCEMENT AGENCIES

### A. “Allegations Made Under Oath at the Senate Blue Ribbon Committee Hearing Held on September 26, 2013 Against Associate Justice Gregory S. Ong, Sandiganbayan”<sup>3</sup>

Sometime in 2001, two criminal cases were filed with the Sandiganbayan. The first was for Falsification of Public Documents and the second was for Violation of Section 3(e) of the Anti-Graft Law. Charged were several members of the Philippine Marine Corps and civilian employees, including Ms. Janet L. Napoles (Napoles), her relatives and three of her employees. The cases were raffled to the Fourth Division where Associate Justice Gregory S. Ong sat as Chairperson.

These cases were referred to as the Kevlar case because it involved the questionable purchase of 500 Kevlar helmets by the Philippine Marine Corps in the amount of ₱3,865,310.00 from five suppliers or companies owned by Napoles. The purchase of the Kevlar helmets was deemed anomalous because payment was made even prior to the delivery of the goods; the suppliers appeared to be mere dummies of Napoles and the helmets were made in Taiwan and not in the USA, as represented by the suppliers. After trial, Napoles' mother, brother, and sister-in-law were convicted for Falsification of Public Documents but Napoles and six members of the Philippine Marine Corps were acquitted in both cases.

Sometime in the middle of 2013, another controversy involving Napoles was unveiled by the Philippine media. The scandal, referred to as the Priority Development Assistance Fund (PDAF) scam, or pork barrel scam, involved the fraudulent use by certain members of the Senate and House of Representatives of their PDAF, which have been allocated to them to support their priority development projects either at the local or national level.

During the investigation conducted by the Senate Committee on Accountability of Public Officers and Investigations (Blue Ribbon Committee), whistle-blowers Benhur Luy, Marina Sula and Merlina Suñas, who were former employees of Napoles, named certain government officials and personalities who allegedly transacted with or attended Mrs. Napoles' parties and events. Among those identified by the whistle-blowers was then incumbent Sandiganbayan Associate Justice Gregory S. Ong, who, as earlier mentioned, presided over the Kevlar case and eventually acquitted Napoles.

Following the whistle-blowers' disclosure, an investigation into Justice Ong's conduct was ordered by the Supreme Court. After investigation, the Investigating Justice confirmed, based on records, that Justice Ong performed the following acts: 1) he acted as the contact of Napoles in connection with the Kevlar case while it was pending in the Sandiganbayan Fourth Division where he was the Chairperson; 2) being Napoles' contact in the Sandiganbayan, he fixed the Kevlar case resulting in her acquittal; 3) he received an undetermined amount of money from Napoles prior to the promulgation of the decision in the Kevlar case; thus, Napoles was assured of her acquittal; 4) he visited Napoles in her office where she handed to him eleven (11) checks, each amounting to ₱282,000.00 or a total of ₱3,102,000.00, purportedly as advanced interest for his ₱25.5 million Banco de

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<sup>3</sup> A.M. No. SB-14-21-J (Formerly A.M. No. 13-10-06-SB), 23 September 2014.

Oro check which she deposited in her personal account; and 5) he attended Napoles' parties and was even photographed with Senator. Estrada and Napoles.

Based on the findings, conclusions and recommendations of the Investigating Justice, Justice Ong was dismissed from service, with a corresponding forfeiture of all retirement benefits, except accrued leave credits. In arriving at said decision, the Supreme Court explained:

Regrettably, the conduct of respondent gave cause for the public in general to doubt the honesty and fairness of his participation in the Kevlar case and the integrity of our courts of justice. Before this Court, even prior to the commencement of administrative investigation, respondent was less than candid. In his letter to the Chief Justice where he vehemently denied having attended parties or social events hosted by Napoles, he failed to mention that he had in fact visited Napoles at her office. Far from being a plain omission, we find that respondent deliberately did not disclose his social calls to Napoles. It was only when Luy and Sula testified before the Senate and named him as the “contact” of Napoles in the Sandiganbayan, that respondent mentioned of only one instance he visited Napoles (“This is the single occasion that Sula was talking about in her supplemental affidavit x x x.”).

The Court finds that respondent, in not being truthful on crucial matters even before the administrative complaint was filed against him *motu proprio*, is guilty of Dishonesty, a violation of Canon 3 (Integrity) of the New Code of Judicial Conduct.

Dishonesty is a “disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray.” Dishonesty, being a grave offense, carries the extreme penalty of dismissal from the service with forfeiture of retirement benefits except accrued leave credits, and with perpetual disqualification from reemployment in government service. Indeed, dishonesty is a malevolent act that has no place in the Judiciary.<sup>4</sup>

#### ***B. People of the Philippines vs. Joselito C. Barrozo***<sup>5</sup>

Jennie Valeriano (Valeriano) was the respondent in several cases for Estafa and Violation of Batas Pambasa Bilang 22, or the Bouncing Checks Law. Her cases were assigned for the conduct of preliminary investigation to Atty. Joselito C. Barroza, Assistant Public Prosecutor of Dagupan City, Pangasinan. On one occasion, Atty. Barroza told her that he would resolve the cases in her favour in exchange for ₱20,000.00. Valeriano then went to the Office of Regional State Prosecutor to report the incident. Thereafter, the Regional State Prosecutor and Valeriano went to the National Bureau of Investigation (NBI), which immediately planned an entrapment operation. During the operation conducted on February 15, 2005, Atty. Barroza was caught red-handed by the NBI agents receiving the amount of ₱20,000.00 from Valeriano.

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<sup>4</sup> Ibid.

<sup>5</sup> Administrative Case No. 10207, 21 July 2015.



Following his arrest, Atty. Barrozo was charged with Direct Bribery under paragraph 2, Article 210 of the Revised Penal Code before the Regional Trial Court of Dagupan City. The case, however, was later indorsed to the Sandiganbayan since the accused was considered a high-ranking public officer, occupying a position with a salary grade 27 or higher.

In a Decision, dated 17 March 2011, the Sandiganbayan found Atty. Barrozo guilty beyond reasonable doubt of Direct Bribery and sentenced him to suffer the indeterminate penalty of four (4) years, two (2) months and one (1) day of *prison correctional* maximum, as minimum, to nine (9) years, four (4) months and one (1) day of *prison mayor medium*, as maximum, and to pay a fine of ₱60,000.00. He was likewise imposed the penalty of special temporary disqualification. On 16 August 2012, Atty. Barrozo's conviction became final and executory.

In 2013, the Office of the Bar Confidant (OBC) received a report that Atty. Barrozo was still engaged in the practice of law. Considering that his conviction is a ground for disbarment from the practice of law under Section 27, Rule 138 of the Rules of Court, the Supreme Court issued a Resolution dated 11 December 2013, requiring him to comment on why he should not be suspended/disbarred from the practice of law.

In his Comment, Atty. Barrozo denied that he was engaged in the practice of law as he never received any remuneration for his services. Subsequently, upon Order of the Court, the OBC evaluated the case and came up with its 20 February 2015 Report and Recommendation recommending the disbarment of the respondent.

The Supreme Court adopted the above recommendation. Atty. Joselito C. Barrozo was disbarred and his name ordered stricken from the Roll of Attorneys. As held by the Court in its Resolution:

It must be recalled that at the time of the commission of the crime respondent was an assistant public prosecutor of the City of Dagupan. His act therefore of extorting money from a party to a case handled by him does not only violate the requirement that cases must be decided based on the merits of the parties' respective evidence but also lessens the people's confidence in the rule of law.

Indeed, Respondent's conduct in office fell short of the integrity and good moral character required of all lawyers, specially one occupying a public office. Lawyers in public office are expected not only to refrain from any act or omission which tend to lessen the trust and confidence of the citizenry in government but also uphold the dignity of the legal profession at all times and observe a high standard of honesty and fair dealing. A government lawyer is keeper of public faith and is burdened with a high degree of social responsibility, higher than his brethren in private practice.

Hence, for committing a crime which does not only show his disregard of his oath as a government official but is likewise of such a nature as

to negatively affect his qualification as a lawyer, respondent must be disbarred from his office as an attorney.

As a final note, it is well to state that:

The purpose of a proceeding for disbarment is to protect the administration of justice by requiring that those who exercise this important function be competent, honorable and reliable – lawyers in whom courts and [the public at large] may repose confidence. Thus, whenever a clear case of degenerate and vile behavior disturbs that vital yet fragile confidence, [the Court] shall not hesitate to rid [the] profession of odious members.<sup>6</sup>

### **C. The Kian de los Santos Story<sup>7</sup>**

The Integrated Bar of the Philippines (IBP) and the Field Investigation Bureau (FIB) of the Office of the Ombudsman filed separate complaints before the Office of the Ombudsman charging several police officers with criminal and administrative offences for the death of 17-year-old Kian delos Santos during a purported drug buy-bust operation in Caloocan City. Charged were Police Chief Superintendent Roberto Fajardo, Police Senior Superintendent Chito G. Bersaluna, Police Chief Inspector Amor Cerillo, Police Officer 3 Arnel Oares, Police Officer 1 Jeremias Pereda, Police Officer 1 Jerwin Cruz and private citizen Nono Lubiran.

The complaints are based on the affidavits executed by three witnesses Ma. Luisa Walican, Princess Ann Alano and Sheen B. Concepcion, who all narrated that on the evening of 16 August 2017, Oares, Pereda, Cruz and Lubiran were standing outside a store. When Kian passed by said store, Lubiran pointed to him as his drug runner. Oares, Pereda and Cruz then accosted Kian and dragged him to a dimly lit *cul-de-sac* where Oares shot him in the head. Two plastic sachets of shabu and a .45 calibre handgun were recovered from the body of Kian. The cases are still pending review and evaluation.

## **III. RELEVANT LAWS ON CORRUPTION**

To address the proliferation of corruption in our country, various laws have been enacted. They include the following:

### **A. Article XI of the 1987 Philippine Constitution**

This specific Article of the 1987 Philippine Constitution provides for the Accountability of Public Officers. Section 1 of the same declares, “Public office is a public trust. Public officers and employees must, at all times, be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency; act with patriotism and justice, and lead modest lives.” Sections 2 and 3 thereof further describe the process by which the President, Vice-President, Members of the Supreme Court, the Members of the Constitutional Commissions and the Ombudsman may be removed from office on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. The other sections

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<sup>6</sup> Ibid.

<sup>7</sup> Records. *Fajardo vs. Fajardo, et al.*, OMB-P-C-17-0344; OMB-P-A-17-0410.

provide for the creation of the Ombudsman and the anti-graft court known as the Sandiganbayan.

**B. Republic Act No. 6770, Otherwise Known as “An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman, and For Other Purposes”**

Under this law, the Ombudsman is vested with the authority and responsibility for the exercise of the mandate of the Office of the Ombudsman and for the discharge of its powers and functions. It is the Ombudsman who has supervision and control of the office. It has the authority to organize directorates for administration and allied services as may be necessary for the effective discharge of its functions.

**C. Republic Act No. 3019, Otherwise Known as the “Anti-Graft and Corrupt Practices Act”**

This law was created pursuant to the constitutional principle that a public office is public trust. It defines and penalizes the specific acts of public officers, and private individuals acting in conspiracy with such public officers, which the law considers as graft or corrupt practices. In addition, this Act also discusses prohibitions on private individuals, government officials’ relatives and members of Congress as well as the procedure for filing of the Statement of Assets, Liabilities and Net Worth (SALN).

**D. Republic Act No. 6713, Otherwise Known as “An Act Establishing a Code of Conduct and Ethical Standards for Public Officials and Employees, To Uphold the Time-Honoured Principle of Public Office Being a Public Trust, Granting Incentives and Rewards For Exemplary Service, Enumerating Prohibited Acts and Transactions and Providing Penalties For Violations Thereof and for Other Purposes”**

This law enumerates the standards of personal conduct in the execution of public duties, the duties of public officials and employees, prohibited acts and transactions and penalties for transgression thereof.

**E. Republic Act No. 7080, Otherwise Known as “An Act Defining and Penalizing the Crime of Plunder”**

This law defines the crime of plunder and how it is committed. Under the law, plunder is the criminal act of amassing, accumulating or acquiring ill-gotten wealth in the aggregate amount or total value of at least P50 million, through a combination or series of overt or criminal acts.

**F. Act 3815, or the Revised Penal Code**

Title Seven of this Code specifically enumerates, defines and penalizes crimes committed by public officers. Some of the more common crimes included in this Title are Direct Bribery, Indirect Bribery, Malversation of Public Funds or Property, Illegal Use of Public Funds or Property and Failure of Public Officer to Render Accounts.

**G. Republic Act No. 1379, Otherwise Known as “An Act Declaring Forfeiture in Favor of the State Any Property Found to Have Been Unlawfully Acquired by Any Public Officer or Employee and Providing for the Proceedings Therefor”**

This law governs the process by which the State may institute forfeiture proceedings against a public officer who, during his incumbency, amasses property that is manifestly out of proportion to his legitimate income.

**H. Republic Act No. 9160, Otherwise Known as “An Act Defining the Crime of Money Laundering, Providing Penalties Therefor and For Other Purposes”**

The law aims to protect our banks and other financial institutions from being used as money laundering sites for the proceeds of any unlawful activity.

**I. Republic Act No. 10660, Otherwise Known as “An Act Strengthening Further the Functional and Structural Organization of the Sandiganbayan, Further Amending Presidential Decree No. 1606, as amended, and Appropriating Funds Therefor.”**

This is the law creating the Sandiganbayan, or the Anti-Graft Court of the Philippines. It has the sole jurisdiction to hear criminal cases filed against high-ranking officials of the government, specifically, those occupying positions with Salary Grade 27 or higher.

**J. Republic Act No. 9485 or the Anti-Red Tape Act of 2007**

This is the policy applicable to government agencies and offices which provide frontline services to the public. A notable feature of this act is the creation of the Citizen’s Charter or the set of service standards of the particular office which should be posted in the main entrances of government buildings or other conspicuous places.

#### **IV. MEASURES TO FIGHT CORRUPTION**

Aside from the passage of the above-mentioned laws, our government also continually adopts measures to develop and enhance integrity of those serving its people.

**A. In the Judiciary**

On 7 July 2020, the Supreme Court *en banc*, passed and approved Resolution A. M. No. 18—01-05-SC, entitled “Establishment of the Judicial Integrity Board (JIB) and the Corruption Prevention and Investigation Office (CPIO).” Under said Resolution, the JIB was vested with the power and authority to receive and act on all administrative complaints or disciplinary actions against either the Presiding Justices and Associate Justices of the appellate courts and Judges of the lower courts, as well as act on complaints or referrals as provided for in Rule 140 of the Rules of Court, the “Internal Rules” of the JIB as approved by the Supreme Court *en banc*, as well as the Supreme Court Circulars, Administrative Orders or other issuances.<sup>8</sup>

Likewise, JIB was given exclusive jurisdiction over administrative complaints against (1) Court officials with Salary Grades 30 and 31, excluding those that are not within the jurisdiction of the JIB, regardless of the gravity of the offence; (2) First and Second Level Court Judges, including Shari’a District and Circuit Court Judges, charged with serious charges under Rule 140 of the Rules of Court; and (3) Court officials and or employees, with Salary Grades 27 to 29, regardless of the gravity of the violation of the “Code of Conduct for Court Personnel” and of the Civil Service Law and Rules.<sup>9</sup>

The CPIO, on the other hand, has the primary duty to conduct investigation and/or intelligence, surveillance or entrapment operations, as well as lifestyle checks to detect and

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<sup>8</sup> Section 4, A. M. No. 18—01-05-SC.

<sup>9</sup> *Ibid.*

identify justices, judges and officials of the judiciary who commit, appear to be involved in or are liable for any of the offences enumerated under Section 9 of said Resolution.<sup>10</sup>

## **B. Internal Cleansing of the Philippine National Police (PNP)**

In the PNP, an Enhanced Revitalized Internal Cleansing Strategy (ERICS) was implemented to instil values formation, spiritual development and strengthening of families of its personnel. The programme aims to build a God-centred, service-oriented and family-based organization. Under the punitive aspect of the PNP ERICS, a total of 3,537 personnel were penalized, of which 1,121 were meted the penalty of dismissal from the service, while 9,513 personnel were neither exonerated nor their cases dismissed.<sup>11</sup>

The PNP has likewise created the Integrity Monitoring and Enforcement Group (IMEG) tasked to conduct intelligence build-up and law enforcement operations against PNP personnel involved in illegal activities, institutionalizes efforts against rogue cops and cleansing police ranks to ensure that the PNP will be able to fulfil its duty with honesty, honour and integrity.<sup>12</sup>

## **C. Integrity Measures in the Office of the Ombudsman**

Not to be outdone, the Office of the Ombudsman, in partnership with international agencies such as the United States Agency for International Development (USAID) and the International Development Law Organization (IDLO), regularly organize and conduct trainings for its prosecutors. These trainings are geared towards developing and enhancing the capacity of its prosecutors to ensure the successful prosecution of graft cases filed in court against erring public officials. It has likewise introduced measures focused on developing and improving integrity in public service. Some of these measures are:

### **1. The Campus Integrity Crusaders Program**

This programme is the platform through which the Office of Ombudsman realizes the pro-active and preventive approach of its anti-corruption drive. In 2019, a total of 3,842 elementary, secondary and tertiary student-leaders were capacitated on anti-corruption and integrity development by the Office of the Ombudsman resulting in the involvement of 1,287 high school and college organizations in 1,250 activities cascading the values of integrity, honesty, transparency and accountability in schools and communities.<sup>13</sup>

### **2. Integrity Management Program (IMP)**

This programme aims to establish a systematic approach in building, improving, reinforcing and sustaining a culture of integrity in public sector institutions that is rooted in acceptable values, principles and standards of good governance. In 2018, the IMP was rolled out to five (5) agencies in the Executive Branch, namely, the Department of Health (DOH), the Department of Social Welfare and Development (DSWD), the Department of Public Works and Highways (DPWH), the Department of Justice (DOJ) and the Bureau of Internal Revenue (BIR).<sup>14</sup> The IMP proved to be effective in identifying vulnerable areas in agency processes and helping them draw up corrective measures that will build and develop a culture of integrity in the agency.<sup>15</sup>

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<sup>10</sup> Section 9, A. M. No. 18—01-05-SC.

<sup>11</sup> PNP 2019 Annual Accomplishment Report, p. 23.

<sup>12</sup> Ibid., p. 28.

<sup>13</sup> 2018 Ombudsman Annual Report, p. 17.

<sup>14</sup> Ibid., p. 19.

<sup>15</sup> Ibid.

### 3. Integrity, Transparency, Accountability in Public Service (ITAPS) Program

One of the notable initiatives of the Office is the Integrity, Transparency, Accountability in Public Service Program or the ITAPS Program. It is a programme offered by the National Integrity Center, the training arm of the Office of the Ombudsman. Designed using interactive adult learning methods, it is offered to government officials and employees, whereby modules have been designed to provide a good understanding of corruption (Module 1), accountability of public officers (Module 2), penalizing corruption (Module 3) and integrity in public service (Module 4). Explanations on specific violations such as Bribery, Malversation, Failure to Render Accounts, Illegal Use of Fund or Property and specific laws such as Code of Conduct and Ethical Standards for Public Officers and Employees, Plunder, Anti-Graft Law and the Anti-Sexual Harassment Act are also being offered by the programme.<sup>16</sup>

### 4. Red Tape Assessment

Another anti-corruption initiative is the conduct of the Red Tape Assessments (RTA) in government institutions, including law enforcement agencies. Patterned after the Organization for Economic Co-operation and Development (OECD) Red Tape Assessment tool, the Ombudsman initiated RTA aims to simplify administrative procedures with the end in view of reducing administrative burdens on businesses. As a methodology, the RTA evaluates the adequacy and functionality of the internal controls in place and determines whether they are proportionate to the risk of fraud, corruption, abuse, and mismanagement through listing down in two separate matrices all the documentary and other requirements for availing a service, the various steps required for such, and the rationale behind them in order to assess whether there is a relative impact in an agency's mandate in case a requirement or procedure is dispensed with.<sup>17</sup>

## V. RECOMMENDATIONS

Despite the progress our government has achieved in pursuing its anti-corruption drive, the following are suggested as further steps for improvement:

- A. Intensifying the internal cleansing within the PNP ranks;
- B. Implementing a more rigorous selection process for applicants or appointees to public positions to ensure that these positions are given or offered only to persons of unquestionable integrity and competence;
- C. Improving the fact-finding/intelligence-gathering capacity of the Department of Justice, Ombudsman and the PNP by conducting continuous trainings;
- D. Procuring technologically advanced equipment that will facilitate fact-finding and scientific investigation for case build up;

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<sup>16</sup> Integrity, Transparency, Accountability in Public Service (ITAPS) Program Primer.

<sup>17</sup> Red Tape Assessment Report for Supervisory Office for Security and Investigation Agencies of the Philippine National Police. Public Assistance and Corruption Prevention Bureau, Military and Other Law Enforcement Offices, Office of the Ombudsman.

- E. Review and amend the Bank Secrecy Law<sup>18</sup> to enable the Anti-Money Laundering Council to conduct speedier bank inquiry and investigation on the accounts of public officers involved in corruption and other illegal activities.

## VI. CONCLUSION

The issue of corruption is an issue that is felt by all Filipinos in their daily lives. To this end, adopting measures to develop and enhance the integrity of our public officials is imperative to ensure that public funds are spent not for their own benefit but for the needs of the people they have sworn to serve. When public funds are used and devoted to meet the people's needs, we take a step closer towards achieving economic stability, security and development for our country.

The war against corruption is far from over but our government's resolve to win this war remains steadfast and unbending. However, this responsibility does not rest on our government alone. All citizens must likewise do their part by remaining vigilant and adopting the attitude of non-tolerance against corruption. For it is only through the joint effort of the government and its citizens that we can make any headway in staving off the further spread of this malaise.

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<sup>18</sup> Republic Act No. 1405.

# INTEGRITY AND INDEPENDENCE OF JUDGES, PROSECUTORS AND LAW ENFORCEMENT OFFICIALS

*Renato Aviles Peralta Jr.\**

The prosecution of offences committed by public officers is vested in the Office of the Ombudsman. Integrity connotes being consistent in doing the right thing in accordance with the law and ethical standards every time.<sup>1</sup> To insulate the Office from outside pressure and improper influence, the Constitution, as well as Republic Act No. 6770,<sup>2</sup> has endowed it with a wide latitude of investigatory and prosecutory powers virtually free from legislative, executive or judicial intervention.<sup>3</sup> The independence which the Office of the Ombudsman is vested with was intended to free it from political considerations in pursuing its constitutional mandate to be a protector of the people.<sup>4</sup>

## I. COUNTRY EXPERIENCE

In the case of the Office of the Ombudsman of the Republic of the Philippines, safeguards to its independence have either been built-in or added during its four decades of operation in order to address the institutional vulnerabilities and sometimes, human frailties, in the performance of functions. The Office of the Ombudsman Philippines relies on two approaches – legislative measures and programmatic interventions.<sup>5</sup>

### A. Legislative Measures<sup>6</sup>

The basic legal framework of the Philippines, the 1987 Constitution, is by far the most potent weapon and shield of the Ombudsman Philippines in ensuring its independence. The creation of the Office of the Ombudsman is enshrined in the 1987 Philippine Constitution, in response to the people's clamour to restore familiar structures of democracy<sup>7</sup> that would

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<sup>1</sup> *Republic of the Philippines v. Maria Lourdes P.A. Sereno*, G.R. No. 237428, 11 May 2018.

<sup>2</sup> *The Ombudsman Act of 1989*.

<sup>3</sup> *Espinosa v. Office of the Ombudsman*, 397 Phil. 829, 831 (2000), cited in *Angeles v. Desierto*, 532 Phil. 647, 656 (2006).

<sup>4</sup> *Emilio A. Gonzales III v. Office of the President of the Philippines*, G.R. No. 196231, 4 September 2012 and *Wendell Barreras-Sulit v. Paquito N. Ochoa, Jr. et al.*, G.R. No. 196232, 4 September 2012.

<sup>5</sup> *Panel Discussion on Maintaining Independence and Surviving Threats* by Samuel R. Martires, Associate Justice of the Supreme Court (Ret.) and Ombudsman of the Republic of the Philippines during the International Seminar Commemorating the 20th Anniversary of the Establishment of the Thai Ombudsman and Signing Ceremony for the Memorandum of Intent of the South East Asian Ombudsman Forum (SEAOFF), 12 February 2020.

<sup>6</sup> *Panel Discussion on Maintaining Independence and Surviving Threats* by Samuel R. Martires, Associate Justice of the Supreme Court (Ret.) and Ombudsman of the Republic of the Philippines during the International Seminar Commemorating the 20th Anniversary of the Establishment of the Thai Ombudsman and Signing Ceremony for the Memorandum of Intent of the South East Asian Ombudsman Forum (SEAOFF), 12 February 2020.

<sup>7</sup> Based on the speech of former Commissioner Christian S. Monsod, one of the framers of the 1987 Constitution, delivered during the 25th Anniversary Forum of the Constitutional Fiscal Autonomy Group (CFAG).



guarantee the preservation of rights and dignity. As such, the Office of the Ombudsman acquires its legitimacy from the blessing of the people and that of the Constitution.

It was the vision of the framers of the Constitution for the Office of the Ombudsman to go beyond politics; thus, it was removed from the bureaucratic structure and was made into a constitutional office.<sup>8</sup> Being an independent constitutional office, its abolition cannot be simply subjected to the power of the legislative branch and would require a much more taxing amendment of the Constitution.

Pursuant to the Constitution, Executive Order No. 243 was issued decreeing the formal organization of the Office of the Ombudsman, followed by the passage of “The Ombudsman Act of 1989”, or Republic Act No. 6770, which further strengthened its independence in the discharge of its mandate.

To outline the elements of independence as contained in the Ombudsman Act, we will be following some of the defining elements of independence that have been summarized in the International Framework of the Ombudsman Institution, a research effort by the Catalan Ombudsman (Síndic de Greuges de Catalunya) describing some of the international frameworks on the ombudsman’s core characteristics.<sup>9</sup>

The first element is on personal and professional qualities and eligibilities. Similar to the international models which commonly define an Ombudsman to be of exemplary record of independence and impartiality and not engaged in political activities, the Ombudsman Act requires top Ombudsman officials to be of recognized probity and independence, and must not have been candidates for any elective office in the immediately preceding election.<sup>10</sup>

The second is on the term of office. The top officials serve for a fixed term of seven (7) years without reappointment, and are not qualified to run for any public office in the elections immediately succeeding their cessation from office. A fixed term avoids the probability of the ombudsmen compromising themselves by the interest of gaining future appointment,<sup>11</sup> as what is also being advocated by the Venice Commission.<sup>12</sup>

The third is on appointment and remuneration. The Ombudsman and the Deputies are appointed by the President from a shortlist of at least three nominees for every vacancy to be submitted by the Judicial and Bar Council (JBC), the same body that screens nominees to the judiciary. Per the Constitution, such appointments require no congressional confirmation from the Commission on Appointment<sup>13</sup> as is usual in the case of Cabinet members. Even the salaries of the top Ombudsman officials have been insulated from

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<sup>8</sup> Based on the sponsorship speech of Commissioner Jose C. Colayco during the 1986 Constitutional Commission explaining the independence of the Office of the Ombudsman.

<sup>9</sup> *International Framework of the Ombudsman Institution*. Rafael Ribó (Catalan Ombudsman and member of the Board of the International Ombudsman Institute), et al. Síndic de Greuges de Catalunya. April 2016.

<sup>10</sup> Section 5, *The Ombudsman Act of 1989*, Republic Act No. 6770.

<sup>11</sup> *International Framework of the Ombudsman Institution*. Rafael Ribó (Catalan Ombudsman and member of the Board of the International Ombudsman Institute), et al. Síndic de Greuges de Catalunya. April 2016.

<sup>12</sup> Venice Commission is the Council of Europe’s Commission for Democracy through Law providing legal advice to its Member States.

<sup>13</sup> Section 8, Article 10 – Accountability of Public Officers. *1987 Philippine Constitution*.

pressure and undue threats by stipulating in the Constitution that their salaries shall not be decreased during their term of office.<sup>14</sup>

The fourth is on dismissal. The mode of removing an Ombudsman is only by impeachment, and the Ombudsman cannot be forcibly dismissed unless for culpable violation of the Constitution.<sup>15</sup> Since the Ombudsman is not subject to the disciplinary authority of the President, the Ombudsman is not beholden to anyone, even the appointing authority.

The fifth is on guarantees of activity, pertaining to cooperation with the Ombudsman. As part of its official functions and duties, the Office of the Ombudsman may “request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents.”<sup>16</sup>

The sixth is on organizational autonomy. The Office’s position structure and staffing pattern is to be approved and prescribed by the Ombudsman, who is also the appointing authority of Ombudsman employees.<sup>17</sup> Direct recruitment of staff by the Ombudsman is the preferred solution to preserve independence.<sup>18</sup>

The seventh is on budgetary autonomy. The Constitution and the Ombudsman Act grants fiscal autonomy to the Office of the Ombudsman. Its approved annual appropriations shall be automatically and regularly released,<sup>19</sup> and Congress cannot slash its budget. This is an additional constitutional guarantee to further strengthen and insulate the Office of the Ombudsman from politics and other pressures.

Based on the research made on the International Frameworks of Ombudsman Institution, some earlier international texts have “minimal reference” or “lesser intensity” as to the need for an ombudsman to be endowed with adequate resources.<sup>20</sup> When ombudsman institutions, however, are not given the rightful resources to discharge their functions, it will not only pose a threat to its independence, but budgetary reasons may potentially be used to justify its disappearance,<sup>21</sup> if pursued by certain parties.

As can be seen, in the case of the Philippines, the legal background is adequate to afford independence to the Office of the Ombudsman. Perhaps, the real challenge is its honest-to-goodness application, including the willpower and conviction to assert independence at all times, and to stand by it even in the midst of tremendous pressure.<sup>22</sup>

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<sup>14</sup> Ibid., Section 10, Article 10.

<sup>15</sup> Ibid., Section 8.

<sup>16</sup> Ibid., Section 5.

<sup>17</sup> Ibid., Section 11.

<sup>18</sup> *Organizational Autonomy*, pages 17-18. *International Framework of the Ombudsman Institution*. Rafael Ribó (Catalan Ombudsman and member of the Board of the International Ombudsman Institute), et al. Síndic de Greuges de Catalunya. April 2016.

<sup>19</sup> Section 14, Article 10 – Accountability of Public Officers. *1987 Philippine Constitution*; and Section 38. *The Ombudsman Act of 1989*, Republic Act No. 6770.

<sup>20</sup> Budgetary Autonomy. Page 18. *International Framework of the Ombudsman Institution*. Rafael Ribó (Catalan Ombudsman and member of the Board of the International Ombudsman Institute), et al. Síndic de Greuges de Catalunya. April 2016.

<sup>21</sup> Ibid.

<sup>22</sup> *Panel Discussion on Maintaining Independence and Surviving Threats* by Samuel R. Martires, Associate Justice of the Supreme Court (Ret.) and Ombudsman of the Republic of the Philippines during the

This brings us to another level of addressing threats to the independence of our Office. Although our laws guarantee independence, these laws, however, need to be complemented with measures that treat the sources of threat. Thus, our Office has developed programmatic interventions aimed to eradicate corruption – the evil that ombudsmans’ offices fight and also the source of threats to their independence.<sup>23</sup>

## **B. Programmatic Intervention<sup>24</sup>**

Among the programmes implemented by our Office, the following are the most relevant ones in addressing threats sprouting from corruption:

### 1. Integrity, Transparency, Accountability in Public Service (ITAPS) Program

On corruption education, one of the notable initiatives of the Office is the Integrity, Transparency, Accountability in Public Service Program, or the ITAPS. Offered to government officials and employees, ITAPS uses interactive adult learning methods with modules which have been designed to provide a good understanding of corruption, accountability of public officers, penalizing corruption, and integrity in the public service.

It is the belief of the Office that certain maladministration and misconduct resulting to corruption offences are by-products of an under- or misinformed workforce, especially the rank-and-file employees who are usually underexposed to capacity-building opportunities. With the conduct of ITAPS, it is envisioned that government employees would be better informed, and that this would lessen, if not eliminate, corruption in government.

### 2. Integrity Management Program

In partnership with the Office of the President, our Office is implementing the Integrity Management Program, or the IMP, the flagship anti-corruption programme of the Philippine Government. It reviews and assesses the systems and processes of key government agencies in terms of their risks and vulnerabilities to corruption, and assists them in drawing up corrective and preventive measures with the aim of establishing a systematic approach in building, improving, reinforcing and sustaining a culture of integrity in the agency. In 2018, the implementation of the IMP covered fourteen (14) volunteer agencies and was initially introduced to thirteen (13) other public sector institutions.

At present, the IMP is at the pilot stage of implementation. After its assessment and evaluation, a closer look at its efficacy will be undertaken in order to advocate for its roll out to the rest of the bureaucracy. Once integrity measures are established in the whole of government, we believe that a significant decrease in corruption incidence can be expected.

### 3. National Household Survey on Experience with Corruption in the Philippines

In collaboration with the Philippine Statistics Authority (formerly the National Statistics Office), rider questions to measure the extent or pervasiveness of petty or bureaucratic corruption in the Philippines have been included in our country’s national household survey. It was successfully done in 2010, followed by surveys in 2013, 2016 and

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International Seminar Commemorating the 20th Anniversary of the Establishment of the Thai Ombudsman and Signing Ceremony for the Memorandum of Intent of the South East Asian Ombudsman Forum (SEAOFF), 12 February 2020.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

2017, and the latest of which is the survey in July 2019. Unlike most domestic and international surveys on corruption, the extent or pervasiveness of corruption is measured not on perception but on actual experience with corruption. The results of these surveys aid the Office of the Ombudsman in making targeted decisions when it comes to focusing its limited resources on various anti-corruption work.

#### 4. Values-Formation Program

To institute lasting change, there is a need to focus on the root of the problem of corruption – our decaying values system. There is a need to go back to the basics, there is a need to once again promote good morals and right conduct, and there is a need to remind our countrymen to integrate values in our daily lives. As such, our Office runs certain values-formation programmes echoing this call.

The general belief is that another way to institute lasting change is to focus on the root of the problem, which is the Filipino values system. The identified solution is to strike a balance between fear and inspiration such that integrity-building and institutional values formation become prime and the vision is for inspiration to stem from the example set by an institution. The challenge then is for the Office to be an acceptable and indomitable example of moral ascendancy directly drawn from observable practice in order to serve as inspiration to the people of the Philippines.<sup>25</sup>

As such, a return to values already started within the halls of the Office of the Ombudsman by capacitating its personnel through the Values Enrichment Seminars being conducted by its training arm and through an active enrolment of its relevant personnel to Ethical Leadership Training. Apart from this, systems are also being improved to make it conducive to the workings of an institution of integrity, i.e. the centralization of a records repository system and of administrative services.<sup>26</sup>

In an effort to ensure a capacitated workforce, continuous capacity-building initiatives are being held, particularly for our lawyers and investigators on trial advocacy skills, legal draftsmanship, case analysis and specialized investigative areas such as fraud audit, forensic accounting, forensic engineering, environmental assessment tools and anti-money-laundering laws.<sup>27</sup>

Monitoring and tracking of cases is essential to anti-corruption efforts. Another opportunity for the institution is to strengthen a database system and other tracking systems, which can effectively detect and flag cases that may be deliberately delayed. This could prevent internal corruption, such as alleged internal corrupt practices conducted to deliberately delay cases.<sup>28</sup>

The Campus Integrity Crusaders programme of our Office aims to empower students in their involvement in corruption prevention initiatives by developing their leadership skills and instilling the values of integrity and social responsibility. For those in the private sector, on the other hand, our Office conducts Integrity Caravans and multi-sectoral

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<sup>25</sup> *Country Report on Anti-Corruption Best Practices, Success Stories, Challenges, Strategies and Others* by Rodolfo M. Elman, Deputy Ombudsman for Mindanao, Office of the Ombudsman during 15th Southeast Asia Parties Against Corruption (SEA-PAC), 8-10 October 2019.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

meetings wherein stakeholders air their views on how to better fight corruption and, more importantly, commit to implementing these measures.

At this point, it is also worth mentioning that a key anti-corruption strategy that has worked for the Office for so many years is interagency collaboration. Just recently, the President has ordered the creation of a Mega Task Force to pin down corruption among all government agencies. There may have been camps looking at this as duplication of work, overstepping boundaries or creating unclear grounds but for institutions that have worked closely for several years now, rapport and respect of jurisdiction is both a written and unwritten rule. In interagency cooperation, the focus should not only be on good work but on institutional relationships that mature over time such that the work never becomes a competition but a complementation.<sup>29</sup>

## II. CONCLUDING NOTE

The understanding of the pervasiveness of threats among ombudsman institutions should steer continuous studies and exchanges on (1) the dimensions of threat, (2) the different means to address and manage them, and (3) the available aid or assistance to ward them off.<sup>30</sup>

In addition to legal measures, the independence of Prosecutors – and even Judges and Law Enforcement Officials – depends on the individual’s integrity and core values to insulate them from outside pressure and improper influence. Hence the need for promotion of good morals and right conduct, integration of values in our daily lives, continuous education, training and study of the best practices and strategies of other agencies and countries, regular monitoring of the cases, and transparency in the conduct of investigations, prosecutions and trial of cases.

Vital to this endeavour is also cooperation from all the concerned parties in order to ensure the detection and prevention of corruption. Each and every one of us must always do the right thing in accordance with the law and ethical standards and contribute in our own way in order to win the fight against corruption.

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<sup>29</sup> *Presentation of Anti-Corruption Progress* by Cornelio L. Somido, Deputy Ombudsman for Luzon, Office of the Ombudsman during the 16th Principals Meeting of the ASEAN Parties Against Corruption (ASEAN-PAC), 9 December 2020.

<sup>30</sup> *Panel Discussion on Maintaining Independence and Surviving Threats* by Samuel R. Martires, Associate Justice of the Supreme Court (Ret.) and Ombudsman of the Republic of the Philippines during the International Seminar Commemorating the 20th Anniversary of the Establishment of the Thai Ombudsman and Signing Ceremony for the Memorandum of Intent of the South East Asian Ombudsman Forum (SEAOFF), 12 February 2020.

# INTEGRITY AND INDEPENDENCE OF PUBLIC AND LAW ENFORCEMENT OFFICIALS IN SINGAPORE

*Khoo Wei Quan, Wilson* \*

## I. INTRODUCTION

Safeguarding the integrity of criminal justice institutions, including the judiciary, prosecution service and law enforcement institutions, is essential to the preservation of the rule of law. In most countries, integrity and the rule of law are fundamental to governance and economic success, which in turn translates to better lives for the people. The term “integrity” in Article 11 of the United Nations Convention Against Corruption (UNCAC), in its application to members of the judiciary and prosecution, refers to the ability of the system or an individual member of the system to resist corruption, while fully respecting the core values of independence, impartiality, personal integrity, propriety, equality, competence and diligence.<sup>1</sup> According to the United Nations Office on Drugs and Crime (UNODC), police integrity refers to normative and other safeguards that keep police from misusing their powers and abusing their rights and privileges.<sup>2</sup> Indeed, integrity and the ability to resist corruption and abuse of power among the various institutions of the criminal justice system are key components for a successful country. Integrity is closely linked to Singapore’s key public governance principle of incorruptibility, which in turn safeguards the sovereignty, independence, security and prosperity of Singapore, and upholds justice and equality.

## II. THE IMPORTANCE OF INTEGRITY AND INDEPENDENCE FOR PUBLIC OFFICERS<sup>3</sup>

The relatively clean and efficient country which Singaporeans live in today has not always been like this. Corruption thrived in Singapore during the early period of Singapore’s history as it was perceived that corrupt offenders were unlikely to be detected and punished. In this regard, understanding Singapore’s historical development vis-à-vis its struggle against corruption and abuse of power is essential to appreciate Singapore’s anti-corruption instruments and policies.

### A. Deep-seated and Widespread Corruption in the Early Colonial Years

According to Jon S.T. Quah,<sup>4</sup> corruption was criminalized as early as in 1871 with the enactment of the Penal Code of the Straits Settlements of Malacca, Penang and Singapore

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<sup>1</sup> See <<https://www.unodc.org/unodc/en/corruption/judicial-integrity.html>>.

<sup>2</sup> See UNODC’s Handbook on Police Accountability, Oversight and Integrity, pp iv, in <[https://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/PoliceAccountability\\_Oversight\\_and\\_Integrity\\_10-57991\\_Ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/PoliceAccountability_Oversight_and_Integrity_10-57991_Ebook.pdf)>.

<sup>3</sup> Law Enforcement Officers are considered public officers in Singapore.

<sup>4</sup> See Quah J.S.T. (2007). *Combating Corruption Singapore-Style: Lessons for Other Asian Countries. Maryland Series in Contemporary Asian Studies*, Vol. No. 2 - 2007(189).

by the British colonial rulers. However, enforcement was almost non-existent, and the enactment of the Prevention of Corruption Ordinance (POCO) in December 1937 did little to address the situation. The POCO was enforced by the Singapore Police Force (SPF)'s Anti-Corruption Branch (ACB) and was also ineffective as it was limited in scope, and corruption remained a non-arrestable offence. Although corruption was made an arrestable offence in 1946, Singapore was still unable to deal with corruption and abuse of power effectively as the ACB of the SPF was unable to investigate corruption cases within the Police Force without fear or favour. In 1951, a gang of robbers in Singapore hijacked a consignment of 1,800 pounds of opium worth about S\$400,000, and it was found that police detectives and some senior police officers were among the thieves. However, the officers involved were only dismissed or forced into retirement. The British colonial government, dissatisfied with the investigation results, formed a special team to inquire into the matter. Upon the conclusion of its inquiry in September 1952, the team was retained to replace the ACB as an independent organization to look into corruption offences in Singapore. Thus, the Corrupt Practices Investigation Bureau (CPIB) was born.

### **B. The Birth of an Independent Agency Backed by Strong Political Will**

Despite the changes, corruption, especially in its syndicated form among law enforcement officers, continued to thrive. CPIB's small number of staff and limited powers were perhaps manifestations of the colonial government's lack of political will in eradicating corruption. The turning point came in 1959 when Singapore attained self-government. When founding Prime Minister Lee Kuan Yew led his People's Action Party (PAP) to take the oath of office in June 1959, they wore the party uniforms of white-on-white to symbolize their determination to keep the Government clean and incorruptible, and this is still the same position today. Upon assuming office, Mr. Lee Kuan Yew promised to "establish a clean and effective government". Correspondingly, the PAP government retained CPIB as the only Anti-Corruption Agency in Singapore and enacted the *Prevention of Corruption Act* (PCA) in June 1960 to enhance its legal powers, budget and personnel which eliminated the deficiencies of the POCO. Under the new Act, the definition of corruption was revised to explicitly include various forms of gratification and the penalty for corrupt behaviours became more severe. In addition, CPIB officers were vested with extensive powers to carry out their investigations. These included the authority to arrest a person suspected of corruption as well as the ability to access the suspect's financial accounts or premises to search for evidence. By enacting the PCA and strengthening the CPIB, the PAP government was determined to change the public's perception that corruption is a low-risk and high-reward crime. The PAP government's deep sense of mission back in the day to establish a clean and ethical government led to the gradual diminution of the threat posed by corruption in Singapore's society.

Today, Singapore is ranked as one of the least corrupt countries in the world. The low levels of corruption in the public sector, reflected accordingly in indicators such as the Political and Economic Risk Consultancy Limited's *Report on Corruption in Asia*, Transparency International's *Corruption Perception Index*, the World Justice Project's *Rule of Law Index* and the World Economic Forum's *Global Competitiveness Index*, are also generally seen as a hallmark of Singapore's good governance by the international community. Statistically, corruption in the public sector has remained constantly low in the past few years, accounting for no more than 14 per cent of cases registered for investigation by CPIB between 2015 and 2019. This had led to an environment that is conducive to attracting businesses and investments into Singapore, as observed from former U.K. Prime Minister David Cameron's remarks when he noted that "Singapore's climb to the top end

of the global indices for anti-corruption and for ease of doing business”, which have “gone hand-in-hand with its great global economic success”.<sup>5</sup>

### III. KEY FACTORS THAT SAFEGUARD THE INTEGRITY AND INDEPENDENCE OF PUBLIC OFFICERS

There are several factors enabling Singapore to become one of the least corrupt countries in the world and these measures build on the strong political will by the incumbent government to eradicate corruption. Strong and effective legislative provisions are embedded within the PCA with a view of maintaining the integrity and independence of public officers, including officers from Law Enforcement Agencies (LEAs). CPIB, as the sole anti-corruption agency in Singapore, is responsible for eradicating corruption and safeguarding integrity. The Singapore Public Service is guided by a Code of Conduct, which sets out the high standards of behaviour expected of public officers, including law enforcement officers, based on the principles of integrity, incorruptibility and transparency. Beyond rules and regulations, CPIB also engages in outreach and prevention efforts targeted at LEAs and frontline officers on a regular and continual basis to stress the importance of integrity.

#### A. Legislative Provisions to Safeguard Integrity and Independence of Public Officers

Singapore relies on two key legislations to fight corruption: the PCA, and the *Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act* (CDSA). The PCA has a wide scope which applies to persons who give or receive bribes in both the public and private sectors. The CDSA, when invoked, confiscates ill-gotten gains from corrupt offenders. Together, the two laws ensure that corruption remains a high-risk and low-reward activity.

Public officers are heavily scrutinized and are expected to abide by higher standards of integrity. When a person is convicted of a corruption offence relating to a contract or a proposal for a contract with the Government or any related public agency, he or she is liable on conviction to a fine not exceeding S\$100,000 or to imprisonment for a term not exceeding 7 years or to both. The punishment is significantly higher than the maximum of 5 years’ imprisonment for other corruption offences. Further, the Court shall also order him or her to pay as a penalty a sum which is equal to the amount of that gratification.<sup>6</sup> In addition, when proven that gratification has been received by a person holding public office, or when proven that gratification is given by a person seeking to have dealings with the government under the PCA, the gratification is assumed to have been given corruptly until the contrary is proven, thus placing the burden of proof on those holding public office or those who seek to bribe a public officer. Further, disproportionate wealth which cannot be reasonably explained in the Courts may be taken to stem from criminal acts.<sup>7</sup> These sections relating to presumption and disproportionate wealth are believed to have contributed to a clean and ethical government and appears to have served as an effective deterrent measure against public sector corruption. A public officer is also duty-bound to arrest a person who has offered a bribe or report the bribe offer, and failure to do so carries a punishment which may include a fine not exceeding S\$5,000 or to imprisonment for a term not exceeding 6 months or to both.

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<sup>5</sup> David Cameron’s speech at the Lee Kuan Yew School of Public Policy (2015).

<sup>6</sup> Section 13 of the PCA.

<sup>7</sup> *Ibid.*, Section 24.



Significantly, these laws apply equally to everyone including Singaporeans who commit corruption offences overseas. Senior public officials and appointment holders are similarly expected to uphold even higher standards of integrity and will be dealt with if they are found to have fallen short. In 2012, the CPIB was alerted to a possible offence under the PCA involving a technical officer of the Public Utilities Board (“PUB”), one Mohamed Sa’ad Bin Mohamed Ali (“Sa’ad”), colluding with vendors involved in PUB projects. Investigation revealed that Sa’ad had cheated his colleagues from the PUB into approving purchase orders worth approximately S\$1.9 million to business entities controlled by him. The case involved some 718 transactions that took place between 2005 to 2012. Investigation further revealed that Sa’ad had spent some S\$470,000 of these illegally obtained proceeds on a sports car, an insurance policy, a Gold Certificate, a factory unit and his mortgage loans. Through the CDSA, CPIB then proceeded to seize and disgorge the proceeds of crime from Sa’ad, and the assets seized were liquidated and returned to the PUB. In November 2018, Sa’ad was sentenced to 45 months’ imprisonment for his offences.

In 2013, the former Commissioner of the Singapore Civil Defence Force (SCDF), Peter Lim Sin Pang, was sentenced to six months’ imprisonment for corruptly obtaining sexual gratification from two female vendors and one potential female vendor to the SCDF on a total of ten occasions as an inducement for showing favour by advancing the business interest of their respective companies with the SCDF.

In July 2020, a former Deputy Group Director of the Land Transport Authority (“LTA”),<sup>8</sup> Henry Foo Yung Thye, was charged in Court for obtaining and attempting to obtain some S\$1.24 million in bribes in the form of loans in return for advancing the business interest of contractors and sub-contractors of LTA. He was also charged for cheating his colleagues at LTA.

In 1986, the then Minister for National Development, Tey Cheang Wan, was alleged to have received bribes totalling S\$1 million and was thoroughly investigated by CPIB. He committed suicide before he could be charged in Court. The investigation into Tey and his eventual demise sent an important message that no individual, regardless of their power or status, can be above the law.

## **B. A Functionally Independent Anti-Corruption Agency with Extensive Responsibilities and Powers**

The functionally independent CPIB, with its mandate to combat corruption in both the public and private sectors and armed with extensive responsibilities and powers, is a key factor in keeping corruption at bay. Notwithstanding the fact that the SPF is considered one of the cleanest police institutions in the world today, Singapore’s experience with the ACB in earlier days suggested that an independent agency should be given the anti-corruption mandate. CPIB is under the Prime Minister’s Office and reports directly to the Prime Minister, enabling CPIB to operate independently. As a safeguard to ensure that the political leadership remains clean and above-board, Article 22G of the Singapore Constitution provides for CPIB to seek the concurrence of the elected President of Singapore to proceed with investigations should the government of the day interfere or

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<sup>8</sup> Agency responsible for the planning, designing, building and maintenance of Singapore’s land transport infrastructure and systems.

block CPIB's investigation. Over the decades, CPIB's function has expanded to include investigation of corruption cases beyond the public sector, with approximately ninety per cent of its cases involving private sector corruption. Nonetheless, CPIB remains committed to keeping the public sector and LEAs in check despite the low incidence of public sector corruption in Singapore. Although the primary function of CPIB is to investigate corruption under the PCA, it is also empowered to investigate any other arrestable offence under any written law disclosed in the course of a corruption investigation.

In a recent case involving former Staff Sergeant Mahendran Selvarajoo, a former Investigation Officer with the Clementi Police Division, Mahendran had, in 2019, corruptly obtained sexual gratifications from women he was investigating in return for helping these women to avoid criminal prosecution for the offences they had committed. Apart from being investigated for two counts of corruption, Mahendran was also investigated by CPIB for performing unauthorized modification to the contents of a computer, as well as being in possession of obscene material in his mobile phone and USB flash drive. Additionally, Mahendran had also accessed without authority the photo gallery in a woman's mobile phone to snap three of her personal photographs. CPIB's powers to investigate other offences in the course of a corruption investigation empowered it to uncover these other heinous crimes which are not under the purview of the PCA. Mahendran was eventually sentenced to two years' imprisonment in 2020 for his offences.

The Bureau is also charged with the responsibility of checking on malpractice by public officers and reporting such cases to the appropriate government departments and public bodies for disciplinary action. In October 2018, CPIB was notified by the National Environment Agency (NEA) of a complaint it received which alleged that Environmental Health Attendants working in the Mandai Crematorium and Columbarium have been receiving red packets from employees of Funeral Services Companies in return for giving the latter preferential treatment. Upon completion of its investigation, and in consultation with the AGC, CPIB administered stern warnings to these NEA officers, and also directed NEA to take disciplinary actions against them for violating public sector rules. Two senior NEA officers, who were not part of the scheme but had failed to report these practices even though they were fully aware of it, were referred to the relevant Ministry for disciplinary action.

CPIB may, in the course of its investigations, come across cases revealing corruption-prone areas or loopholes in government departments' procedures. CPIB can conduct procedural reviews for these government agencies and make recommendations to the agencies concerned to address the procedures vulnerable to corruption. The modern-day CPIB is operationally independent and well-equipped with the necessary tools to deal with corrupt and unethical acts in all forms.

### **C. Government Guidelines Targeted at Maintaining Integrity in the Public Sector**

The Singapore Public Service is guided by a Code of Conduct, which sets out the high standards of behaviour expected of public officers based on principles of integrity, incorruptibility and transparency. The practice of meritocracy in the public service, together with regular reviews of administrative rules and processes to improve efficiency, also reduces the opportunities for corruption.

#### **1. Regulation on General Conduct & Discipline**

In relation to prevention of fraud and corruption, the Government Instruction Manual

(IM) on Conduct & Discipline states that a Permanent Secretary has to make officers aware of the serious efforts by the Government to get rid of corrupt practices. A Permanent Secretary also has to make sure that reasonable and adequate measures to prevent fraudulent and corrupt acts are implemented. This may include improving work procedures or instituting more effective supervision.

## 2. Regulation on Conflict of Interest

On public duties and private interests, officers must declare any conflicts of interest. In the course of an investigation when no corruption offences are uncovered, CPIB could still refer the case to the relevant Ministries for disciplinary action if the acts by the public officer constitute an infringement of the IM, such as conflict of interest. The relevant Ministries shall keep CPIB informed on the outcome of the disciplinary actions meted out. An officer's private interests should be kept separate from his public duties. In the course of an officer's work, when decisions are taken on issues which an officer has, or may be deemed to have, a personal interest in, he must declare his interest to the Chairman at the meeting or his Permanent Secretary.

## 3. Regulation on Financial Embarrassment

On the issue of financial embarrassment, the IM states that public officers must not fall into financial embarrassment, which is defined as having total unsecured debts and liabilities of more than three months of the officer's pay at any time. Any officer who is financially embarrassed is liable to face disciplinary proceedings which may lead to dismissal. A Permanent Secretary must ensure that every officer in his Ministry makes a declaration of indebtedness, whether or not he is financially embarrassed when (i) he is first appointed or re-employed to the public service; (ii) before he is put on the pensionable establishment; and (iii) annually on 1 January for the preceding one year. An officer who makes a false declaration of non-indebtedness demonstrates a lack of integrity and is liable to be dismissed.

## 4. Regulation on Gambling and Casino Visits

The establishment and opening of the Integrated Resorts<sup>9</sup> (IRs) in 2010 marked a new chapter in Singapore's tourism growth and strategy. The IRs housed, among other attractions and amenities, gambling facilities. To curb possible social ills associated with gambling, the Singapore Government rolled out a slew of initiatives such as daily and annual entry levies for Singaporeans prior to entering casino premises to deter Singaporeans from gambling. In line with expectations that public officers must adhere to higher standards of integrity, the public service responded swiftly and introduced further safeguards for public officers. Since 1 October 2013, all public officers are required to declare within seven days whenever they visit the local casinos more than four times a month or if they purchase an annual pass. For certain groups of officers, tighter rules apply. Officers who enforce operations in the local casinos, or regulate the activities of, or negotiate business arrangements with the local casino operators will be prohibited from visiting the local casinos, unless they are doing so as part of their official duties. The aim of having such regulations is to (i) prevent officers who regulate casino operators from being placed in situations of conflict of interest; (ii) reduce the incidence of officers being exploited if they are indebted; and (iii) reduce the incidence of officers being indebted and falling into financial embarrassment.

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<sup>9</sup> Positioned as a development with a comprehensive range of amenities, such as hotels, convention facilities, entertainment shows and facilities, theme parks, luxury retail and fine dining.

## 5. Regulation on Gifts and Entertainment

The IM stipulates strict regulations regarding the receipt of gifts and entertainment. A public officer may not receive any gift offered to him on account of his or her official position or his or her official work. Where there is any doubt whether or not any gift is motivated by, or is related to, an officer's official position or his or her official work, he or she must decline to accept. Where it is impractical or inappropriate to refuse the gift, the officer may accept but must immediately report it to his Permanent Secretary. When an officer receives an invitation from the public to attend a function as a representative of his Ministry because of his or her official position, he or she must also consult his Permanent Secretary. The regulations not only govern the actions between public officers and the private sector but also relations among public officers. No officer may, except when he or she retires, receive from his subordinates any gifts or token of value, whether in the form of money, goods, free passage or other personal benefits; or accept invitations to be entertained, because of his or her official status, by subordinate officers or any association comprising them.

## 6. Regulation on Mandatory Job Rotation and Block Leave

The Public Service Division, which sets the policy direction for shaping the Singapore Public Service, has implemented mandatory job rotations and block leaves for public officers in positions with higher risks of corruption as a fraud prevention and deterrence measure. Since 1 January 2014, job rotation and block leave have been enforced for officers holding positions which are more susceptible to being suborned and exploited if the incumbent were to remain in the same job for too long. Depending on the nature of their work, these officers are subjected to either or both measures. Under the new rules, these officers should not serve in the posts for more than five years. Some of these officers whose work is more transactional in nature<sup>10</sup> will also be subject to block leave of at least five consecutive working days per calendar year.

### **D. Outreach and Prevention Efforts Stressing the Importance of Integrity**

#### 1. Public Education Talks and Training to Reinforce Anti-Corruption Messages

In order to allow public officers as well as members of the public to better understand the impact of corruption on lives and how they should do their part in flagging out corrupt practices, CPIB has been actively engaging Singaporeans and non-Singaporeans alike through informative public education talks, roadshows and other publicity materials. With regard to public education talks, CPIB has conducted some 147 of such talks to public sector agencies between 2015 and 2019, with a reach of more than 9,000 public officers. Beginning in 2017, CPIB also rolled out a series of videos targeting four groups of people, namely public officers, the general public, the private sector and students to educate them on different facets of corruption which may be applicable to the respective groups of individuals. The video for public officers, entitled "Integrity, a Key Public Service Value", was designed with the aim of reminding public officers of the importance of having integrity when executing their duties.

#### 2. Working with the Media: Increased Publicity to Encourage Reporting

CPIB has increased its engagement with the local media through press releases and feature stories to reinforce messages such as the values of integrity and incorruptibility, as

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<sup>10</sup> They include officers whose core responsibilities relate to finance or procurement, or officers authorized to perform cash transactions or disbursement of grants on a recurring and regular basis, or officers in regulatory roles with high risk of being suborned and exploited.

well as pertinent information to include when making a corruption report. In this regard, CPIB is appreciative of the media's support in raising public awareness on corruption cases and related issues. Aside from emphasizing CPIB's tough stance against LEAs and public officers who abuse their position of authority to cause undue harm to the public and tarnish the image of the public service, it also serves to reiterate the various channels through which corruption complaints and reports can be made to the Bureau, with the hope that the increased public awareness will lead to the reporting of similar cases, which will in turn keep public officers on their toes. Media coverage of CPIB's press release relating to Mahendran's prosecution helped raise public awareness, and in turn led to CPIB receiving information relating to offences of a similar nature involving another police officer.

### 3. Multiple and Convenient Avenues for Everyone to Report Corruption

Additionally, public officers and members of the public are strongly encouraged to report corruption. This is especially so for public officers since failure to report corrupt acts as a public officer constitutes an offence under the PCA. Indeed, CPIB recognizes the importance of creating touch points with the public and, in this regard, has put in place an array of different avenues to report corruption. Members of the public may choose to call the toll-free 24-hour duty hotline which will be attended by a duty Investigation Officer, lodge an e-complaint via CPIB website, e-mail CPIB via the generic reporting e-mail, or fax to CPIB. Importantly, CPIB emphasises that the identity of informers will be protected under the PCA. Regardless of whether the complainant is named or anonymous, CPIB treats all reports received seriously. This is to maintain public trust and confidence in CPIB's objectivity in assessing reports based on the merits of the information received. Of the 350 corruption-related reports received in 2019, 139 (approximately 40%) were anonymous. More recently in 2017, the Corruption Reporting & Heritage Centre (CRHC) was launched in the heart of Singapore to serve as an additional touch point for members of the public to lodge complaints against corrupt individuals. The CRHC is also an ideal location for members of the public to learn more about corruption and Singapore's journey in the fight against corruption by pacing through the exhibition at the heritage area.

Given that the detection of corruption is often challenging since bribes are usually given and taken surreptitiously between willing parties with no direct victims and few witnesses, it is of paramount importance that CPIB continues to create awareness about the ills of corruption and trigger conversations about related issues. For LEAs and frontline public officers, the expectation is that they will have internalized CPIB's messages and continue to say no to corruption. Fortunately, many have stood tall when offered bribes to do acts against their duties and conscience. CPIB has been holding annual commendation ceremonies since 2015 to recognize these public officers, as well as private sector individuals, who had rejected bribes during the course of duty.

In a recent case which occurred in the midst of the Covid-19 pandemic, a patrol team from the Public Transport Security Command (PTSC) had spotted one Chen Long at the Boon Lay MRT train station with his mask pulled down. Under the Covid-19 (Temporary Measures) Act 2020, anyone caught not wearing a mask outside their ordinary place of residence faces a penalty. The patrol team approached Chen Long and subsequently interviewed him. In the midst of the interview, Chen Long opened his wallet, showed the money in his wallet to one of the PTSC officers and offered him S\$50 to let him go. The PTSC officer refused this offer and subsequently reported this matter to CPIB. Had the PTSC officer taken the bribe and had Chen Long been a Covid-19 patient, the incident could have negative knock-on effects on public health and safety in Singapore.

#### **IV. CONCLUSION**

Singapore has come a long way since its humble beginnings as a colonial outpost mired in crime and corruption to a modern nation-state with a government and criminal justice system admired for its integrity, trustworthiness and low levels of corruption. Today, the corruption situation in Singapore remains firmly under control. While the incidence of corruption among law enforcement officers and in the public service remains consistently low and the Singapore Public Service continues to be well-regarded as being clean and efficient, Singapore must not lull into a sense of complacency. The low level of corruption in Singapore today means that a new generation of Singaporeans are now less aware of the harm corruption can cause. CPIB and the public service must therefore continue to work even harder to engage Singaporeans and ensure that the attitude of zero-tolerance towards corruption remains part of the DNA of every Singaporean. That said, the efforts of the Singapore Public Service and CPIB will be futile in the absence of political will as the driving force. Notwithstanding that the CPIB is determined and committed to keep Singapore clean and corruption free, it is imperative that the government of the day continues to be that engine that drives home the message of integrity and incorruptibility.



# **DISSUADING AND DETERRING ACTS OF CORRUPTION BY PARTIES IN THE CRIMINAL JUSTICE PROCESS (JUDGES, PROSECUTORS AND LAW ENFORCEMENT OFFICERS) – THE SINGAPORE APPROACH**

*Hon Yi\**

## **I. INTRODUCTION**

This paper focuses on the steps which Singapore has taken to minimize the occurrence of incidents of corruption among its judges, prosecutors and law enforcement officials, and the safeguards are in place to ensure that, even if incidents of corruption occur, the effects on the criminal justice process are nullified.

However, even the best systems formulated by man are not fool-proof – incidents of corruption among law enforcement officers will, and have, occurred in Singapore. Strong action, in the form of court prosecution and deterrent sentences, has served to deal with such incidents as and when they happen.

This paper is divided into the following three aspects:

- a. A brief survey of the remuneration packages for judges and prosecutors in Singapore;
- b. Discussion on the independence of judges and prosecutors in the criminal justice system, and the procedural safeguards in place; and
- c. Examination of the principles and procedural rules applicable to the prosecution of corruption cases in Singapore, with particular focus on cases of corruption involving law enforcement officers, and the doctrine of general deterrence, which guides the court in sentencing such offences.

## **II. A FAIR PAY PACKAGE TO TACKLE CORRUPTION**

Before going into the remuneration schemes of judges and prosecutors, it is necessary to give a broad overview on the organizational structure of judges and prosecutors in Singapore. This will give context to the differences and similarities in the respective remuneration schemes.

All judges in the Supreme Court (made up of the Court of Appeal and the High Court) are appointed under the Constitution of the Republic of Singapore.<sup>1</sup>

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<sup>1</sup> Article 95(1) of the Constitution.



The Legal Service Commission<sup>2</sup> (“LSC”) is a specialized commission under the umbrella of the Singapore Civil Service, and is the body which controls the appointment and posting of lawyers who join the public service and are deployed, *inter alia*, as<sup>3</sup>:

- a. Judges in the State Courts (made up of the District and Magistrate Courts) (also known as “judicial officers”); or
- b. Deputy Public Prosecutors (“DPP”) in the Attorney-General’s Chambers (“AGC”).

All judicial officers and DPPs are civil servants under the charge of the LSC, and are collectively also known as Legal Service Officers (“LSO”), regardless of the department to which they are deployed.

### **A. Fair Remuneration Is One of the Principles Guiding the Pay Scales of Civil Servants**

One of the principles which guides the setting of salary scales for the Singapore Civil Service is that civil servants should be remunerated fairly, with reference to the pay packages for similar work in the private sector. As recently as 2020, Prime Minister Lee Hsien Loong commented, in response of a question by American billionaire and philanthropist David Rubenstein at an online dialogue held on 28 July 2020 by United States think tank Atlantic Council, that “*it is best to pay the person according to what he is worth, and according to what he is contributing*”. Elaborating further, PM Lee alluded to the risk that underpaid civil servants may engage in corrupt behaviour to make up for the difference<sup>4</sup>:

If you don’t do that, either you compromise on the quality of your civil service, or people will find ways to make up and compensate, camouflage forms of compensation, or you have a revolving door and you have something when you go out, after you retire, and that will lead to other kinds of big problems.

The principle above is applicable to the salaries for uniformed police officers, even though they are not part of the civil service. This is because they are nevertheless part of the public service, and their salaries are based off the civil service salary scales, with adjustments and allowances specific to the work they undertake (for example, additional allowances for investigation officers with the Police).

Non-uniformed enforcement officers, for instance, with the specialized branches in the Singapore Police Force, and enforcement officers with the Ministries, are salaried based on the civil service scales. Their salaries are thus also guided by the above principle, which has held true since Singapore’s independence.

As the LSC is part of the civil service, the salary scales of LSOs are guided by the civil service principles, but with regular review and adjustments to ensure that the scales are

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<sup>2</sup> Constituted under Article 111 of the Constitution.

<sup>3</sup> Structure of the LSC can be found at <<https://www.lsc.gov.sg/structure/structure-of-legal-service>>.

<sup>4</sup> Kayla Wong (29 July 2020), “PM Lee: Pay public officials what they’re worth, or people will find ways to camouflage compensation”, *Mothership*. <<https://mothership.sg/2020/07/high-government-pay-corruption-lee-hsien-loong/>>.

competitive with lawyers in the private sector. For example, in 2000, following a review of the salary scales of LSOs, the following components were introduced<sup>5</sup>:

- a. An additional Market Adjustment Component (MAC) which will enable the Legal Service to follow changes in market conditions more quickly;
- b. Additional functional allowances for advocacy and night court duties. These are allowances for prosecutors handling litigation in court, and for judges who sit in court matters after office hours;
- c. Additional “loyalty bonuses” over and above regular performance bonuses. This meant that LSOs who stay with the LSC for extended periods of time receive additional bonuses which are accumulated over the years.

Over the last decade, additional allowances and incentives have been added to the remuneration package for LSOs.<sup>6</sup> In contrast to the above, Judges in the Supreme Court are not under the civil service pay scales, but have their salaries and benefits set out clearly in statute and subsidiary legislation, namely, the Judges’ Remuneration Act (Chapter 147) and the Judges’ Remuneration (Annual Pensionable Salary) Order.

### III. PROSECUTORIAL INDEPENDENCE AND PROCEDURAL SAFEGUARDS

Article 35(8) of the Singapore Constitution vests prosecutorial discretion wholly in the Attorney-General (“AG”),<sup>7</sup> who may exercise his discretion as he sees fit. This means that all prosecutions in court are overseen and controlled by the AG and his deputies, i.e. DPPs, who have been delegated with the power to exercise prosecutorial discretion.

Once the AG has exercised prosecutorial discretion:

- a. The court will not interfere unless the discretion has been exercised unlawfully<sup>8</sup>; and
- b. Though the prosecutorial power may be part of the powers under the Executive branch of Government, but, under existing constitutional practice, it is independently exercised by the AG and not the Minister (of Law).<sup>9</sup> As such, the Minister cannot interfere with the AG’s exercise of discretion.<sup>10</sup>

The power to independently exercise prosecutorial discretion means that no other persons, whether or not in positions of power, may seek to overbear or override the AG’s

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<sup>5</sup> The Honourable the Chief Justice’s speech at “Investing in people in the new Legal Service”, 30 June 2000, <<https://www.supremecourt.gov.sg/news/speeches/investing-in-people-in-the-new-legal-service---speech-by-the-chief-justice>>.

<sup>6</sup> Singapore Legal Service Commission, Organisational Excellence. <<https://www.lsc.gov.sg/data/AR/2010/LSC/organisational-excellence-promotions.html>>.

<sup>7</sup> Article 35(8) of the Constitution of the Republic of Singapore states: The Attorney-General shall have power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for any offence.

<sup>8</sup> *Ramalingam Ravinthran v Attorney-General* [2012] 2 SLR 49, at [44].

<sup>9</sup> *Ibid.*

<sup>10</sup> *Gobi a/l Avedian and another v Attorney-General and another appeal* [2020] SGCA 77, at [50].

decision. This is an especially important safeguard when prosecution is mounted against a law enforcement officer, prosecutor or judge.

#### **A. Safeguards Are Organic to the Processes Involved in the Exercise of Prosecutorial Discretion**

When a file is referred to the AGC, there are multiple layers of checks to ensure that all cases which are prosecuted in court are properly and fairly assessed. Every matter in which a DPP gives the direction to charge the suspect in court, that direction will be scrutinized and countersigned by his or her supervisor.

For corruption cases, there are even more procedural safeguards to ensure fairness and consistency in decisions. There are multiple levels of assessment for corruption cases, which serve a vital purpose of avoiding and eliminating bias or partiality at any stage in the process.

To illustrate the various procedural safeguards in place, we follow the life of a hypothetical case, involving a police officer who had accepted a bribe, when it is sent to the AGC. All cases involving corruption are investigated by the Corrupt Practices Investigation Bureau (“CPIB”), and cases submitted by the CPIB will be assessed by a DPP at the AGC.

- a. The CPIB makes the recommendation on whether prosecution is warranted for the case. This recommendation is supported by at least one superior officer of the CPIB.
- b. The file is assigned to a DPP who is trained and experienced in handling corruption offences. If the DPP knows the police officer personally, whether as a personal acquaintance or in the course of jointly handling other cases in the past, the DPP will inform his or her supervisor of the conflict of interest. The DPP will be recused from handling the file, which will be re-assigned to another DPP. The need for this self-check for any potential conflict is briefed to all DPPs when they are appointed, and all DPPs will do this as a matter of course. This internal procedure acts as a safeguard for fairness – the case against the offender will be assessed fairly, without being skewed by friendship with the assessing DPP, or conversely, by bias against the offender possibly due to previous poor performance by the offender in a prior case.
- c. The DPP assesses the case, in an impartial manner, for sufficiency of evidence, and also considers the public interest in deciding on the appropriate action to be taken against the offender.
- d. The DPP’s supervisor will critically examine the DPP’s assessment of the case. If the supervisor agrees with the assessment, he or she will sign off on the file.
- e. As all corruption cases which are prosecuted in court require the written consent<sup>11</sup> of a Chief Prosecutor,<sup>12</sup> the file will be circulated to the Chief Prosecutor.

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<sup>11</sup> Section 33 of the PCA states: “*A prosecution under this Act shall not be instituted except by or with the consent of the Public Prosecutor.*” In practice, this power has been delegated to the Chief Prosecutor by the AG.

<sup>12</sup> The Chief Prosecutor is the highest ranking DPP in the Crime Division of the Attorney-General’s Chambers and is the head of the Division.

- f. Cases involving high-profile public service officers, or particularly sensitive issues, are also circulated to the Attorney-General or one of the Deputy Attorneys-General for his attention and input.
- g. Similarly, if at any of the above steps, the officer examining the case knows or is connected to the offender in any way, he or she will be recused from looking at the file, and it will be shunted to an officer of similar rank or seniority.
- h. After the above stages are completed, the file is then sent back to the CPIB with directions on the action to be taken. If the direction is to tender charges against the offender in court, the DPP will also give instructions on the number and nature of the charges.

It bears noting that, where an investigation needs to be conducted against an officer of the CPIB, they do not “investigate their own”. Instead, to “ensure an impartial and thorough investigation”, the investigations will be handled by a specialist investigation department from the Police.<sup>13</sup>

## **B. Procedural Safeguards Are Present in the Judicial System**

When an offender is charged, the case would have entered the court system. Even then, there are multiple safeguards in place to ensure that cases are adjudicated independently at all levels. The basic premise is that the judiciary in Singapore is independent from the Executive and Legislature. This separation of powers is enshrined in Article 93 of Singapore’s Constitution.<sup>14</sup> As mentioned above, the judiciary in Singapore comprises the Supreme Court (made up of the Court of Appeal and the High Court) and the State Courts (made up of the District and Magistrate Courts). Parties to criminal cases tried by the State Courts have the right of appeal to the High Court.

Judges are not supposed to hear cases in which they are, or may be perceived to be, biased to or for any party.

- a. For judges in the State Courts, this rule is statutorily encapsulated – a judge in the State Courts is not allowed to hear any proceedings in which he is personally interested, unless the parties agree *and* the Chief Justice gives his approval.<sup>15</sup>
- b. For judges in the Supreme Court, the above principle, though not enacted in statute, is nevertheless stated and explained in the Judicial Code of Conduct – judges should recuse themselves from a case if they believe that “they will be unable, or be

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<sup>13</sup> Bryna Singh (24 July 2013), CPIB assistant director facing 21 charges of fraud involving at least \$1.7m, *Assistant director at CPIB alleged to have started siphoning CPIB funds from 2008, starting with an initial amount of \$1,200*, AsiaOne, The Straits Times.:

<<https://www.asiaone.com/print/News/Latest%2BNews/Singapore/Story/A1Story20130724-439467.html>>

The matter was reported to the Commercial Affairs Department (CAD) of the Singapore Police Force, as the accused was a CPIB officer and the alleged financial impropriety could have amounted to a criminal offence. This was to ensure an impartial and thorough investigation. The Prime Minister appointed an independent review panel to investigate how this case happened, and to strengthen the financial procedures and audit system in CPIB to prevent a recurrence.

<sup>14</sup> Article 93 states: “*The judicial power of Singapore shall be vested in a Supreme Court and in such subordinate courts as may be provided by any written law for the time being in force.*”

<sup>15</sup> Section 65 of the State Courts Act (Chapter 321).

perceived to be unable, to judge impartially, unless the failure to hear any such case would necessarily result in irreparable injustice being occasioned to any of the parties in the case or any such other persons to whose interests the Judges in question may properly have regard”.<sup>16</sup> Either of the formulations of the principle above would logically include recusal from hearing a case where the accused person is personally known to the judge.

Parties to a case may also apply for the judge hearing a case to recuse himself, on the basis that there is apparent bias, i.e. there are circumstances that gave rise to a reasonable suspicion or apprehension in a fair-minded person with knowledge of the relevant facts that the judge, was biased.<sup>17</sup> As such, the applicant does not need to show that the judge was in fact biased, but only needs to show that there was basis for reasonable suspicion or apprehension that the judge *could* be biased. The latter is a significantly lower standard than proving actual bias.

Furthermore, even within the judiciary itself, in so far as the State Courts have their own organizational structure and hierarchy (as opposed to court level hierarchy, which is that of superior courts having appellate jurisdiction over decisions of lower courts), there is independence of judges within the State Courts. In *Goh Kah Heng (alias Shi Ming Yi) v Public Prosecutor and another criminal motion* [2009] 3 SLR(R) 409, the accused person sought to have the trial heard in the High Court instead of the State Courts, as the Senior District Judge (heading the State Courts) was previously the Director of the Commercial Affairs Department (“CAD”). The accused person claimed that, as his case had been investigated by the CAD, there existed two fears: (a) that the trial judge would defer to the Senior District Judge because he was formerly the head of the CAD; and (b) as the Senior District Judge has the power to assess the trial judge’s performance, the judge may not dare disagree with the views of the Senior District Judge. The High Court rejected the application, and commented that the individual judges were independent, make their decisions freely, and must not be afraid to express a view just because another judge may hold a different view.<sup>18</sup>

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<sup>16</sup> Judicial Code of Conduct for the Judges and Judicial Commissioners of the Supreme Court of Singapore <[https://www.supremecourt.gov.sg/docs/default-source/default-document-library/\(domestic-code-of-conduct\)-version-for-uploading-\(22-february-2019\).pdf](https://www.supremecourt.gov.sg/docs/default-source/default-document-library/(domestic-code-of-conduct)-version-for-uploading-(22-february-2019).pdf)>, at page 7.

<sup>17</sup> *Manjit Singh s/o Kirpal Singh v Attorney-General* [2013] 2 SLR 1108, at [34]. The court also enunciated several principles on recusal –

- (a) An application to a judge to recuse himself must be based on credible grounds.
- (b) A claim that there is apparent bias on the part of a judge must be based on facts that are substantially true and accurate. The fact that an allegation of bias has been made against a judge is not enough; otherwise, a party could secure a judge of his choice by merely alleging bias on the part of other judges.
- (c) In determining the application, the judge must have regard to the quality of the allegation. A judge would be as wrong as to yield to a tenuous or frivolous objection as he would to ignore an objection of substance.

<sup>18</sup> *Goh Kah Heng (alias Shi Ming Yi) v Public Prosecutor and another criminal motion* [2009] 3 SLR(R) 409, at [6]: The formation and expression of the court’s opinion is a critical aspect of a judge’s work. He is required by the oath that he takes to administer the law without fear or favour. It is a requirement to conduct his case impartially. It is also a requirement that he makes his decisions concerning the case freely and boldly. When “the interests of justice” are being considered, one must also take into account the ideal of independence of the judiciary. It is an ideal that means little if individual judges cannot be independent. A judge must not be afraid to express a view just because another judge holds a different view. Every judge is mindful by virtue of the oath of office that he has taken, that in reaching his verdict he does not take instruction from a superior judge except in the form of the binding authority of precedent cases; for he knows that when the trial starts, he is the boss.

#### IV. PRINCIPLES GUIDING THE PROSECUTION, ADJUDICATION AND SENTENCING OF CORRUPT LAW ENFORCEMENT OFFICIALS

This part of the paper examines the various principles which guide the prosecution and sentencing of corrupt law enforcement officials in Singapore. Thankfully, there have been no cases involving corrupt judges or prosecutors to date. It is anticipated that the same principles applicable to corrupt law enforcement officers will be equally applicable to corrupt judges or prosecutors.

As mentioned above, all prosecution for corruption offences will be under the Prevention of Corruption Act (Chapter 241) (“PCA”), and investigations are conducted by the CPIB. The legislative intent behind the enactment of the PCA was the “public service rationale” – the act was aimed to eradicate corruption, especially in the public service. This principle also guides prosecutorial decisions concerning corrupt law enforcement officers.

The “public service rationale” was developed with the protection of *Singapore’s* public service in mind. Under the “public service rationale”, the public interest at stake was that a public servant bears the duty to ensure the administration of Singapore, and if he was corrupt, this will affect the efficacy of public administration.<sup>19</sup> The threat that a corrupt public servant, whose duty was to ensure the administration of “this country”, poses to the administration that the public of Singapore are dependent on, had been repeatedly emphasized by the courts. A succinct example of this pronouncement can be seen in *Chua Tiong Tiong v Public Prosecutor* [2001] 2 SLR(R) 515, at [17]: “... Dependent as we are upon the confidence in those running the administration, any loss of such confidence through corruption becomes dangerous to its existence and inevitably leads to the corrosion of those forces, in the present case the police force, which sustain democratic institutions.” The “public service rationale” can also be simply stated as “the public interest in preventing a loss of confidence in Singapore’s public administration”.<sup>20</sup>

Consistent with the strong emphasis placed on the need to protect Singapore’s public administration from the scourge of corruption, there are provisions in the PCA which make it simpler for the Prosecution to prove corruption in cases involving public officers. The courts have also interpreted the provisions in a manner consistent with the objectives of the PCA. These developments are:

- a. The presumption of corrupt intent for Governmental dealings, which shifts the burden to the accused person to prove lack of corrupt intent;
- b. Expressly legislating that mere payors of bribes are not to be treated as “accomplices” whose evidence may be presumed to be less worthy of credit;
- c. No requirement to prove an actual act was done by the public servant to benefit the giver of the bribe. It is sufficient to show that the bribe was to purchase the recipient’s service generally;
- d. Enhanced punishment for Governmental corruption; and

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<sup>19</sup> *Public Prosecutor v Tan Kok Ming Michael and other appeals* [2019] 5 SLR 926, at [70] and [72].

<sup>20</sup> *Public Prosecutor v Ang Seng Thor* [2011] 4 SLR 217, at [33(a)].

- e. The principle of general deterrence guides the courts in sentencing, coupled with comparatively severe sentences, for corruption involving law enforcement officers.

#### **A. Presumption of Corrupt Intent for Governmental Dealings**

Section 8 of the PCA presumes that gratification, given to or received by a public servant or in relation to any government department, was done so with corrupt intent. This section states:

Where in any proceedings against a person for an offence under section 5 or 6, it is proved that any gratification has been paid or given to or received by a person in the employment of the Government or any department thereof or of a public body by or from a person or agent of a person who has or seeks to have any dealing with the Government or any department thereof or any public body, that gratification shall be deemed to have been paid or given and received corruptly as an inducement or reward as hereinbefore mentioned unless the contrary is proved.

The ambit of the presumption in section 8 is wide, as sections 5 and 6 of the PCA are the general provisions which all prosecutions for corruption come under. This presumption has been widely used in the prosecution of corrupt law enforcement officers and would likely be applicable in any corruption cases involving judicial officers or prosecutors.

The courts have interpreted the presumption in the following manner – when the Prosecution seeks to rely on the presumption in section 8, it bears the burden of proving three elements<sup>21</sup>:

- a. a gratification was paid or given to or received by the accused person;
- b. at the time of the payment, gift or receipt, he was in the employment of the Government or any department thereof or of a public body; and
- c. the payment, gift or receipt was from a person or agent of a person who has or seeks to have any dealing with the Government or any department thereof or any public body.

Upon proof of these three elements the existence of the fourth element, namely, *that the gratification was paid or given or received corruptly as an inducement or reward for doing or forbearing to do an act in relation to the affairs of the Government or a department thereof or of a public body as the case may be*, is to be presumed until the contrary is proved.

In practice, the above means that accused persons who are:

- a. public servants who received gratification from anyone who had or sought to have dealing with the Singapore government; or
- b. persons who had or sought to have dealings with the Singapore government and gave gratification to a public servant,

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<sup>21</sup> *Wee Toon Boon v Public Prosecutor* [1974-1976] SLR(R) 761, at [38].

had to prove, on the balance of probabilities, that the gratification was not received or given with corrupt intent on their part.

### **B. Mere Payors of Bribes Are Not “Accomplices” Whose Evidence May Be Presumed to Be Less Credible**

In common law jurisdictions, it is a common principle of evidence that the testimony of a witness, who is an accomplice to the offence, is generally treated with caution, and/or requires corroboration from other sources before the court accepts the testimony as being credible. This usually means that the court would be hesitant to convict an accused person if the only evidence implicating him is the uncorroborated testimony of his accomplice. Section 25 of the PCA expressly removes the applicability of this presumption or principle, so long as the witness is merely a “payor” of the bribe.

Section 25 of the PCA states:

Notwithstanding any rule of law or written law to the contrary, no witness shall, in any such trial or inquiry as is referred to in section 24, be presumed to be unworthy of credit by reason only of any payment or delivery by him or on his behalf of any gratification to an agent or member of a public body.

As to what is a mere payor, the courts have clarified that such a person is one who made the payment(s) to the accused person but did nothing more. Someone who goes beyond mere payment, perhaps by procuring the corrupt act, would not fall under this categorization.<sup>22</sup> This would mean, for example, that persons who gave bribes to public servants who asked for the bribe would not be considered as “accomplices”. However, persons who offered and then gave bribes to public servants would be considered “accomplices”, and their evidence would not come under the exclusion of the presumption.

In legislatively removing the application of the presumption, the Singapore Parliament recognized that the main evidence against the receiver of a bribe would most likely be from the giver of the bribe. Any reduction to the credibility of the giver’s testimony would mean greater difficulties in proving the offence against the receiver. The court in *Tan Khee Koon v Public Prosecutor* [1995] 3 SLR(R) 404, at [57], explained the rationale for removing the presumption of unworthiness of credit, in the context of proving corruption offences:

If, on the other hand, mere payors were treated as full accomplices, and required cautious treatment, it would be difficult to establish the guilt of the accused. *The evidence of the person who paid the money to the accused is often the best evidence of an offence being committed. To impose any greater burden than normal on the Prosecution in regard to such evidence would be to place an unjustified hindrance on the Prosecution.* [emphasis added]

### **C. No Necessity to Prove an Actual Act Was Done by the Public Servant to Benefit the Giver of the Bribe, and It Is Sufficient to Show That the Recipient Was “Bought Over”**

The Singapore courts have accepted that corruption may take many forms. Acts of corruption may be as simple as a bribe to a police officer in return for avoiding arrest for an offence, for which the bribe is directly relatable to the act which the public servant is

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<sup>22</sup> *Tan Khee Koon v Public Prosecutor* [1995] 3 SLR(R) 404, at [55].



forbearing to do. At the other end of the spectrum, it may be a long-term cultivation of a relationship with a law enforcement official with a constant flow of benefits and payments, in return for information at an opportune time in the future. The full gamut of such corrupt acts is recognized as offences under the PCA. By not imposing a requirement that any corrupt gratification be relatable to a specific benefit or act in return, it is thus easier to show that gratification to a public servant was corrupt in nature. We explore this aspect in greater depth in two cases involving corrupt police officers.

The court explained the concept of a public servant being “bought over” in the case of *Hassan bin Ahmad v Public Prosecutor* [2000] 2 SLR(R) 567, which involved an offender who started receiving money from a well-known illegal moneylender, known as Chua Tiong Tiong (“Chua”), from 1993, before he commenced training as a police officer. Over the course of more than five years, the offender continued to receive money from Chua, even as he rose up the ranks, becoming a senior police officer. The evidence showed that while the offender was a police officer, he had, on two occasions, acted upon Chua’s request and made use of his official position in the police force to obtain information for Chua. The judge concluded that the offender had received the monies from Chua corruptly with the intention of being “bought over” by the latter.

On appeal, the court accepted that the public servant could be “bought over”, effectively being on a retainer for services to be rendered to the giver as and when required. There was no need to link the corrupt payments to specific acts of the offender benefitting Chua. The court explained as follows<sup>23</sup>:

the appellant would periodically receive sums of money from Chua, in exchange for which the appellant would perform favours as and when required. The method of payment was not transactional in the sense that the appellant would be paid a certain sum to do a certain favour. Rather, the arrangement was more akin to a monthly retainer for services from time to time. It was therefore *not necessary for the Prosecution to prove a nexus between each receipt and a particular act; it only sufficed to demonstrate that the payments were not made innocently, but to purchase the recipient’s servitude*. This is the essence of being “bought over” – *that the recipient of the gratification be at the beck and call of the payor, prodded into action by his recollection of the payor’s generosity even when no specific act was demanded at the time of payment*. [emphasis added]

There is also no requirement to prove that an actual act was done by the public servant to benefit the giver of the bribe. This is encapsulated in section 9(1) of the PCA, which states:

Where in any proceedings against any agent for any offence under section 6(a), it is proved that he corruptly accepted, obtained or agreed to accept or attempted to obtain any gratification, having reason to believe or suspect that the gratification was offered as an inducement or reward for his doing or forbearing to do any act or for showing or forbearing to show any favour or disfavour to any person in relation to his principal’s affairs or business, he shall be guilty of an offence under that section notwithstanding that he did not have the power, right or opportunity to do so, show or forbear or that he accepted the gratification without intending to do so,

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<sup>23</sup> *Hassan bin Ahmad v Public Prosecutor* [2000] 2 SLR(R) 567, at [20].

show or forbear or that he did not in fact do so, show or forbear or that the act, favour or disfavour was not in relation to his principal's affairs or business.

The above principle was demonstrated in yet another case involving the infamous illegal moneylender Chua. The case of *Fong Ser Joo William v Public Prosecutor* [2000] 3 SLR(R) 12 involved an offender, a police officer, who received payments on two occasions from Chua, as an inducement to help enquire into police investigations which Chua was interested in. The court reiterated that "it was not necessary for the Prosecution to prove that the appellant's receipt of money from Chua was an inducement for a specific corrupt act or favour. It was sufficient for the Prosecution to show that the gratification was given in anticipation of some future corrupt act being performed".<sup>24</sup>

The court in *Fong Ser Joo William* further explained that it is the receipt of the gratification, together with the intention of the giver and the recipient, that is material. It is not even necessary to prove the actual act of showing favour.<sup>25</sup>

#### **D. Enhanced Punishment for Governmental Corruption**

In line with the "public service rationale" underpinning the PCA, in addition to making it easier to prove corruption in cases involving public servants or governmental bodies, the Act also provides for enhanced punishment where the corruption is in relation to contracts with, or work involving, the Government.

Section 7 of the PCA states:

A person convicted of an offence under section 5 or 6 shall, where the matter or transaction in relation to which the offence was committed was a contract or a proposal for a contract with the Government or any department thereof or with any public body or a subcontract to execute any work comprised in such a contract, be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 7 years or to both.

#### **E. General Deterrence Applies for Sentences in Corruption Cases Involving Law Enforcement Officers**

Even where the corruption is not in relation to contracts with the Government, but nevertheless involves public officers, the courts have held that general deterrence is the dominant sentencing consideration. This is especially so where law enforcement officers are involved. Correspondingly severe sentences have thus been imposed for such cases. This sentencing approach is completely consistent with the strong emphasis placed on the need to protect Singapore's public administration from the scourge of corruption.

Sentencing based on the principle of general deterrence aims to educate and deter other like-minded members of the general public by making an example of a particular offender.<sup>26</sup> Among the categories of situations which the courts have held that general deterrence assumes significance and relevance is in respect of *offences against or relating to public institutions, such as the courts, the police and the civil service*.<sup>27</sup> This form of

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<sup>24</sup> *Fong Ser Joo William v Public Prosecutor* [2000] 3 SLR(R) 12, at [24].

<sup>25</sup> *Ibid.*, at [26].

<sup>26</sup> *Meeran bin Mydin v Public Prosecutor* [1998] 1 SLR(R) 522, at [9].

<sup>27</sup> *Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814, at [24(a)].

deterrence applies both to members of the public (who need to be deterred from offering bribes to public servants), and the public servants themselves.

#### 1. Deterring Persons from Corrupting Law Enforcement Officers

Members of the public in Singapore are deterred from offering bribes to law enforcement officers. Such offences generally attract imprisonment sentences, even if the amount of the bribe offered is small. The following cases illustrate this point.

In *Public Prosecutor v Lim Teck Choon* [2009] 2 SLR(R) 577, the offender was placed under arrest by Sergeant Pah for dangerous driving. While waiting for the escort vehicle, Sergeant Pah and the offender conversed with each other, during which the offender exclaimed abruptly, “Why want to do this? Be enemy? You should let me go. We can be friends. Next time you come to Malaysia I would take care of you. Still got good things”. The offender also made a gesture with his hands, which signified money. The court held that for corruption offences which involve government servants, the norm is a custodial sentence. Where there is a voluntary attempt to bribe a police officer without solicitation, there is “no doubt that a custodial sentence is warranted”.

There are two reasons for this strong sentencing stance<sup>28</sup>:

- a. First, the significance of deterrence as a sentencing consideration is particularly high for this genre of offences. It is crucial that the present ethical fabric and the integrity of the police force be scrupulously maintained. The public (Singaporeans and foreigners alike) must understand that offences of this nature, if allowed to take root, will quickly become endemic and be extremely difficult to, once again, bring under control, if not eradicate. It is not unimportant that such offences also undermine the proper administration of justice.
- b. Second, the fact that such offences usually involve the giving of some consideration in exchange for the receipt of an advantage or benefit usually militates against the meting out of just a fine. Simply imposing a fine, particularly on the well-heeled, may not adequately deter those contemplating such a course of conduct in future.

The above principles were also present in the case of *Public Prosecutor v Chew Suang Heng* [2001] 1 SLR(R) 127, where the offender was arrested on suspicion for the offence of loitering for illegal gambling. While the offender was being brought to the police station in the police car, he told the police officers that he would give them \$1,000 if they let him go. The offender repeated his offer and was warned that it was an offence to bribe police officers. Regardless, at the police station, the offender took out a \$1,000 note and again attempted to bribe one of the police officers. The police officer refused the bribe and arrested the offender for trying to bribe him. The court held that attempting to bribe a law enforcement officer and interfering in the proper course of police investigations is a serious offence, and that “corruption offences involving law enforcement officers or other public servants attract harsher penalties and custodial sentences as compared to similar offences committed in commercial dealings and in the private sector”.<sup>29</sup> The court also emphasized that a deterrent sentence for such offences is justified, due to the public interest in stamping out bribery and corruption in the country, especially in the public service.

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<sup>28</sup> *Public Prosecutor v Lim Teck Choon* [2009] 2 SLR(R) 577, at [19].

<sup>29</sup> *Public Prosecutor v Chew Suang Heng* [2001] 1 SLR(R) 127, at [9].

## 2. Law Enforcement Officers Who Solicit or Receive Gratification also Receive Deterrent Sentences

When law enforcement officers solicit or receive gratification from suspects or persons under investigation, this is an extremely serious offence, as it undermines the integrity of the badge of authority which is held by the officer and betrays the public's trust and confidence in the officer and his agency. The courts have consistently taken the view that such cases require a healthy dose of general deterrence in calibrating the appropriate sentence.

In the case of *Pandiyam Thanaraju Rogers v Public Prosecutor* [2001] 2 SLR(R) 217, the offender was a senior officer in the Singapore Police Force who corruptly accepted gratification of \$2,000 from one "Manjit" as an inducement to render assistance to Manjit in his police case involving assault (in which Manjit was a victim). The offender gave his name card to Manjit and told the latter to contact him if he encountered any problems with police matters. On a subsequent occasion, the offender asked Manjit for a loan of \$2,000, to which Manjit acceded. This was despite the fact that the offender knew that Manjit was suspected to be an illegal moneylender and that, as a police officer, he was not permitted to take a loan from such persons.

The court also commented that the sentences for corruption offences involving police officers were consistently higher than those for non-police officers.<sup>30</sup> This was because "crimes involving corruption on the part of police officers are extremely grave in nature and are viewed severely by the courts". The aggravating feature in this case was the fact that the offender undermined the integrity of his office for his personal benefit and, in the process, betrayed the public's trust and confidence in the police force.

It does not matter whether the gratification is monetary in nature, or in other forms (for example, sexual favours). The courts have nevertheless imposed deterrent sentences on police officers who obtain such gratification from persons in return for tampering with investigations.<sup>31</sup>

## 3. Deterrence Is Also Relevant Even When the Corruption Does Not Affect Members of the Public

Even when the corrupt gratification did not involve police-public relationships, but other aspects of police work, the courts have also dealt with such incidents severely. This is because it is also important to protect the integrity of the police force from being undermined, both from without and from within.

In the case of *Public Prosecutor v Tay Sheo Tang Elvilin* [2011] 4 SLR 206, the offender (a police officer) corruptly gave gratification to four of his fellow police officers as inducement for forbearing to report him to his supervisor for misappropriating a wallet containing a stack of \$50 notes and a carton of cigarettes which were found during an unscheduled raid. The court held, at [20], that:

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<sup>30</sup> *Pandiyam Thanaraju Rogers v Public Prosecutor* [2001] 2 SLR(R) 217, at [49].

<sup>31</sup> For example, see "Investigating officer jailed for obtaining sexual gratification from women involved in his cases", Channel News Asia, 23 September 2020, where a police officer obtained sexual gratification from women he was investigating for various offences. Deterrence was a factor in his sentence of two years' imprisonment <<https://www.channelnewsasia.com/news/singapore/spf-investigating-police-officer-jailed-sex-women-suspects-13137766>>.

Although the respondent's corrupt conduct did not involve solicitation of gratification from members of public, this did not mean the integrity of the police force was not being seriously undermined. Corruption within the police force is no less serious than corruption involving the solicitation of gratification by a police officer from members of the public, and both have the effect of publicly undermining the integrity of the police force. Indeed, if anything, it is even more disturbing. If police officers such as the respondent who engage in corrupt activities within the police force itself to cover up their wrongdoings are left unchecked, the abuse of trust and confidence placed in the police force could ... result in enforcement agencies, in general, having diminished legitimacy and public acceptance.

Furthermore, the court also noted the aggravating factor of the offender being senior in rank to the recipients of the bribes, and he was setting a bad example to his junior officers by "drawing them into the web of corruption".

## V. CONCLUSION

Singapore has taken a holistic approach in ensuring that corruption among judges, prosecutors and law enforcement officers is minimized. We are gratified that the efforts over the decades appear to have paid off, to a certain extent – there have been no cases of corruption involving prosecutors or judges in Singapore. This approach starts with a fair pay package for judges, prosecutors, and law enforcement officers, in which the need to prevent corruption is already one of its guiding principles.

On the ground, as cases are handled by the various departments and agencies, there are multiple levels of procedural safeguards to ensure that cases are not mishandled, or worse, manipulated by officers who have a personal interest in the case. Finally, even the best systems are not fool proof. Where cases of corruption arise among law enforcement officers, they are dealt with severely, to deter other officers from engaging in corrupt activities. Deterrent sentences are the norm, guided by the need to protect public administration from being undermined.

# INTEGRITY AND INDEPENDENCE OF THAI PUBLIC PROSECUTORS AND THEIR ROLES IN PROSECUTING CORRUPTION CASES

*Sutthi Sookying*\*

## I. INTRODUCTION

Thai public prosecutors have gone through a long history of struggle to improve their role in protecting society and the people by performing their duties professionally, with dignity and with pride under the safeguard of the laws. In the old days, they faced difficulties due to the lack of laws and organs to protect them. At the beginning, the role of Thai public prosecutors was unclear; it depended on the directives issued by those who were in power (the rulers). Later, during the time of reform, when the country adopted the Western model about one hundred years ago,<sup>1</sup> the “Public Prosecution Department” was established. Yet, the office was transferred under the supervision of the Minister of Justice, then the Minister of Interior and the Prime Minister. Until recent years, starting in 2007, the Office of the Attorney General of Thailand has been an independent agency with autonomy in personnel administration, budget and other activities, of which the superintendent is the Attorney General. However, on certain matters, it must report to the Cabinet, the Senate or the parliament, depending on the issue.

This paper will explain the background of Thai public prosecutors, their organizational structure, authorities and functions, including the related laws that promote integrity by providing Thai public prosecutors with independent status. Also, this paper will touch upon the roles of Thai public prosecutors in prosecuting corruption cases by describing the process of prosecuting corrupt politicians and state officials.

## II. BACKGROUND OF THAI PUBLIC PROSECUTORS

### A. History

#### 1. Ancient Times

The history of the Office of the Attorney General of Thailand (the Thai OAG) can be traced back to the 14th century when Ayutthaya was the capital of Siam (the former name of Thailand). This is evident from the Royal Family Law enacted in A.D. 1358 during the reign of King Boromtriloknat, the eighth king of Ayutthaya. At that time, the official who had a similar function and authority as present-day public prosecutors was called “Yok-Kra-Bat”. The most important role of “Yok-Kra-Bat” was to protect or guard the laws. According to the writing of M. De Laluber, the French Ambassador to Siam under the mission of King Louis XIV who came to Ayutthaya in the reign of King Narai (A.D. 1656

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<sup>1</sup> The legal reform in Thailand was initiated in the reign of King Rama V (1853 – 1910), which was the same period of Emperor Meiji of Japan. The Office of the Attorney General of Thailand (at that time called “Public Prosecution Department”) was established in 1893 as part of the results of the reform.

– 1688), the title of “Yok-Kra-Bat” was more or less equal to that of “Procureur General” in France.<sup>2</sup>

## 2. Modern History

The modern history of the Thai OAG began on 1 April 1893, during the reign of King Chulalongkorn (Rama V), an office under the name “Public Prosecution Department” was established. Later, on 1 April 1916, the title of “Yok-Kra-Bat” was changed to “Ai-Ya-Karn” by the Royal Decree of King Wachirawut (Rama VI). One of the meanings of “Ai-Ya-Karn” is the “Guardian of the Law.”

In the early days, the office was an agency within the Ministry of Justice. Later on, in 1922, it was transferred to be part of the Ministry of Interior and remained there until 1991. Then, the office underwent a major structural and organizational change when the office was separated from the Ministry of Interior and assumed independent status as an autonomous agency under the direct supervision of the Prime Minister. In addition, its name was changed from the “Public Prosecution Department” to the “Office of the Attorney General”.

In October 2002, the government reformed its organization by passing a law on bureaucratic reform. The Office was then again transferred to be under the supervision of the Minister of Justice.

Later, the 2007 Constitution of Thailand<sup>3</sup> came into effect. The Constitution defines the new status of the Office of the Attorney General as an “Other Organization” under the Constitution. Public prosecutors have powers and duties as provided in the Constitution and the law on powers and duties of public prosecutors and other laws. Public prosecutors exercise independence in their consideration and disposition of cases, as well as in performing their duties fairly. The Office of the Attorney General has a secretariat with autonomy in personnel administration, budget and other activities, of which the superintendent is the Attorney General.

Even though, the Constitution of Thailand was amended in 2010 and 2017, the Office of the Attorney General and the public prosecution officials have retained their independent status.

## **B. Authorities and Functions<sup>4</sup>**

The Thai OAG has several main authorities and functions, namely: to administer criminal justice, to safeguard the national interest, to protect civil rights and provide legal aid, and to enhance international cooperation.

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<sup>2</sup> <<http://www.ago.go.th/agoen/history.php>>.

<sup>3</sup> <[http://web.krisdika.go.th/data/outsidedata/outside21/file/Constitution\\_of\\_the\\_Kingdom\\_of\\_Thailand.pdf](http://web.krisdika.go.th/data/outsidedata/outside21/file/Constitution_of_the_Kingdom_of_Thailand.pdf)>.

<sup>4</sup> According to the Public Prosecution Organization and Public Prosecutors Act B.E. 2553 (A.D. 2010) and the Public Prosecution Official Regulation Act, B.E. 2553 (A.D. 2010) also the Criminal Procedural Code and other specific laws.

## 1. Criminal Justice Administration

### *(a) Investigation*

Inquiry officials of the Royal Thai Police play the principal role in investigation in general. However, public prosecutors have the authority to conduct investigations in certain situations, including, special case investigation, extraterritorial investigation, certain juvenile cases and post-mortem inquiry.

In the investigation of serious transnational crime or organized crime, the Special Case Investigation Act B.E. 2547 requires that public prosecutors shall jointly investigate the case with inquiry officials of the Department of Special Investigation (DSI) of the Ministry of Justice.

In cases where an offence punishable under the Thai law is committed outside the Kingdom of Thailand, the Attorney General shall be the responsible inquiry official and may delegate duties to any public prosecutor or inquiry official to conduct the inquiry on his behalf. The public prosecutor assigned to conduct a joint investigation may provide guidance on the process of collection of evidence to the inquiry official.

In certain juvenile cases where the witness, the injured person or the offender is not over 18 years of age, the Criminal Procedure Code stipulates that a public prosecutor, together with a psychologist or a social welfare worker and any person requested by the child or adolescent, shall participate in the investigation.

In a post-mortem inquest of an extrajudicial killing, a public prosecutor shall participate in conducting the inquiry with the inquiry official.

### *(b) Prosecution and trial*

The Thai OAG is the principal prosecuting authority in Thailand. Upon receipt of an inquiry file from responsible inquiry officials, a public prosecutor will examine the file, which contains all the evidence of the case, and will consider if the case should be prosecuted or not. However, if the inquiry file is considered incomplete, the public prosecutor may request further investigations to be conducted by the inquiry official or to bring forth any witnesses to be examined before the public prosecutor prior to issuing a prosecution or non-prosecution order. When the prosecution order is made, the public prosecutor will file an indictment against the alleged offender with the court. Thereafter, the case will be presented before the court where public prosecutor adduces all relevant evidence to support the prosecution. Once the court renders its judgment, if the public prosecutor does not agree with the court's judgment, the public prosecutor can appeal the judgment to a higher court.

## 2. National Interest Safeguard<sup>5</sup>

In order to safeguard the national interest, the Thai OAG assigns the Department of Legal Counsel to act as a legal counsellor to government agencies and state enterprises upon negotiating government-related contracts with their counterparts. In doing so, the public prosecutor will offer legal advice and review the draft contracts purported to be signed by all the parties concerned. In addition, when a government agency is one of the

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<sup>5</sup> The Public Prosecution Organization and Public Prosecutors Act B.E. 2553 (A.D. 2010), section 23 (2), (3), (4).



parties in a lawsuit, the public prosecutor in related offices will represent such an agency on its behalf.

### 3. Civil Rights Protection and Provision of Legal Aid<sup>6</sup>

The public prosecutor at the Department of Civil Rights Protection and Legal Aid provides legal aid and advice to people and also represents any person seeking a court order to endorse his/her rights, such as the right of an heir to manage their late relative's property, seeking the court permission for child adoption or seeking the court appointment of a legal guardian for an orphaned child. In a case where a person is barred by the law from bringing an action against his or her parents, a public prosecutor may pursue the case on behalf of such person.

The Thai OAG focuses its attention on the civil rights and legal aid provision for underprivileged Thais living both in the country and abroad. The Office of International People's Rights Protection has been designated to provide legal services and assistance to them, as well as to foreigners residing in Thailand.

### 4. International Cooperation<sup>7</sup>

The Thai OAG plays a significant role in international cooperation concerning the prevention and suppression of transnational organized crime that pervades many areas of criminality, including drug trafficking, money laundering, human trafficking and cybercrime. In fulfilling this role, the Thai OAG acts as the Central Authority for cooperation with foreign counterparts in the matters of mutual assistance in criminal matters and extradition. Moreover, the Thai OAG is designated as the Central Authority under the Hague Convention on the Civil Aspects of International Child Abduction.

In the area of mutual legal assistance in criminal matters, Thailand concluded bilateral and multi-lateral treaties with following countries, namely: ASEAN countries, Australia, Belgium, Canada, China, France, India, the Republic of Korea, Norway, Peru, Poland, Sri Lanka, Ukraine, the United Kingdom and the United States of America. As for extradition, Thailand concluded extradition treaties with the following countries: Bangladesh, Belgium, Cambodia, China, Indonesia, the Republic of Korea, the Lao PDR, the Philippines, the United Kingdom and the United States of America.

## **C. The Organizational Structure**

The organizational structure of the Thai OAG can be divided into two main areas: central offices in Bangkok and regional offices in provinces.<sup>8</sup>

### 1. Central Offices

The central offices are the Head Office of the Attorney General of Thailand and other offices which are located in Bangkok and have jurisdiction over cases that occurred in Bangkok. These include the specific departments such as the Department of Legal Counsel, International Affairs Department, Department of Technical Affairs, the Training Centre, etc.

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<sup>6</sup> Ibid., section 23 (1).

<sup>7</sup> The Extradition Act B.E. 2551 (A.D. 2008) and Mutual Assistance in Criminal Matters Act, B.E. 2535 (A.D. 1992).

<sup>8</sup> <<http://www.ago.go.th/agoen/office.php>>.

## 2. Regional Offices

The regional offices outside Bangkok are grouped into 9 regions. The Departments of the Regional Public Prosecutor, (Regions 1-9) cover and oversee the work of all provincial offices in their jurisdictions. There are 111 Provincial Public Prosecutor Offices established in 76 provinces, excluding Bangkok. The large provinces, such as Chiangmai, Nakorn Ratchasima, Ubon Ratchatani, and Nakorn Si Thammarat, have more than one office. There are also the Offices of Provincial Juvenile and Family Litigation to take care of juvenile offenders and family matters and Offices of Provincial Civil Rights Protection and legal aid to ensure that rights of Thai people are protected.

### **D. Qualifications of Applicants for the Public Prosecutor Test<sup>9</sup>**

The applicants for the public prosecutor test must have qualifications and have no forbidden characteristics as described by the Public Prosecution Official Regulation Act, B.E. 2553 (A.D. 2010). After passing the test, the applicants will be trained for one year and appointed to be assistant public prosecutors. After finishing the one-year training, the Public Prosecutor Commission will evaluate and appoint them to be public prosecutors at the offices throughout the country.

### **E. The Titles or Positions and Ranks of Thai Public Prosecutors**

The officials of the Thai OAG are divided into two types:

- the Public Prosecutor under the Public Prosecution Organization and Public Prosecutors law;
- and the General Administrative Officer under the Public Prosecution Official Regulation law.<sup>10</sup>

The Thai Public Prosecutors have 17 titles or positions and are divided into 8 ranks or levels as follows:

- (1) Public Prosecutor level 8: Attorney General
- (2) Public Prosecutor level 7: Deputy Attorney General and Inspector General
- (3) Public Prosecutor Level 6: Director General, Deputy Director General, Executive Director and Senior Expert Public Prosecutor
- (4) Public Prosecutor level 5: Expert Public Prosecutor
- (5) Public Prosecutor level 4: Provincial Chief Public Prosecutor and Provincial Public Prosecutor attached to the Office of the Attorney General
- (6) Public Prosecutor level 3: Public Prosecutor attached to the Office of the Attorney General and Deputy Provincial Chief Public Prosecutor
- (7) Public Prosecutor level 2: Divisional Public Prosecutor and Assistant Provincial Public Prosecutor
- (8) Public Prosecutor level 1: Assistant Public Prosecutor.

There is also a position of Senior Public Prosecutor who is 65 – 70 years old with no executive power but handling cases or work as assigned by the head of the office.

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<sup>9</sup> The Public Prosecution Official Regulation Act, B.E. 2553 (A.D. 2010).

<sup>10</sup> The Public Prosecution Organization and Public Prosecutors Act B.E. 2553 (A.D. 2010) and the Public Prosecution Official Regulation Act, B.E. 2553 (A.D. 2010).

### **III. RELATED LAWS TO ENSURE INTEGRITY AND INDEPENDENCE OF THAI PROSECUTORS**

#### **A. The Constitution: Guaranteeing the Independence of the Prosecutors**

The 2017 Constitution,<sup>11</sup> Section 248 provides that:

“The State Attorney Organ has the duties and powers as provided in the Constitution and laws.

State attorneys are independent in considering and making orders in cases and in performing duties expeditiously and justly and without any prejudice, and such act shall not be deemed an administrative order.

The personnel management, budgetary affairs and other acts of the State Attorney Organ shall be independent, with a specific system of salary and remuneration as may be appropriate. The personnel management in relation with State attorneys shall be carried out by the State Attorney Committee, which shall at least consist of the Chairperson who is not a State attorney and qualified members selected by State attorneys; at least two of such qualified members shall not be or have been State attorneys, as provided by law.

The law under paragraph three shall contain measures to prevent State attorneys from carrying out any act or holding any position which may cause the making of orders in cases or the performance of duties to be not in accordance with paragraph two, or may cause conflict of interest. In this regard, such measures shall be prescribed explicitly and be of general application without any delegation of power to consider the matters on case by-case basis.”

#### **B. The Public Prosecution Organization and Public Prosecutors Act B.E. 2553 (A.D. 2010): The Mechanisms to Establish Integrity, Independence and the Quasi-judicial Nature of Prosecutors**

The Public Prosecution Organization and Public Prosecutors Act B.E. 2553 (A.D. 2010) provides the mechanisms to establish integrity, independence and quasi-judicial nature of the prosecutors in many sections such as:

**Section 7** The Public Prosecution Organization consists of the Public Prosecutor Commission (the PPC), the Attorney General, and other public prosecutors whereby the Office of the Attorney General serves as its secretariat.

The Office of the Attorney General is a government agency having autonomy in its personnel administration, budget and other activities, and is a juristic person with the Attorney General as its superintendent and representative, etc.

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<sup>11</sup> <[http://web.krisdika.go.th/data/outsitedata/outside21/file/Constitution\\_of\\_the\\_Kingdom\\_of\\_Thailand.pdf](http://web.krisdika.go.th/data/outsitedata/outside21/file/Constitution_of_the_Kingdom_of_Thailand.pdf)>.

**Section 10** The appointment and removal of the Attorney General shall be in accordance with the resolution of the PPC together with approval of the Senate. The President of the Senate shall countersign the Royal Command appointing the Attorney General. The appointment and removal of other public prosecutors shall be in accordance with the Law on Public Prosecution Official Regulation.

**Section 21** Public prosecutors are independent in considering and directing cases and the performance of their duties with good faith and fairness in accordance with the Constitution and laws.

**Section 22** The justified discretion of public prosecutors for the case decisions and performance of duties in accordance with Section 21 shall be immune

**C. The Public Prosecution Official Regulation Act, B.E. 2553 (A.D. 2010): The Mechanism to Maintain Integrity, Discipline, Codes of Conduct, and Abilities of Thai Public Prosecutors**

The Public Prosecution Official Regulation Act, B.E. 2553 (A.D. 2010) provides the mechanisms to maintain integrity, disciplines, codes of conduct, and abilities of Thai public prosecutors in many sections such as:

**Section 7** Payroll and Position Allowance System of Judicial Service Officer shall be applied to Public Prosecutor *mutatis mutandis*. Rate of salary and position allowance of Public Prosecutor shall be complied with the payroll attached to this Act.

**Section 14** Code of Ethics of Public Prosecutor shall be complied with the determination of Office of Attorney General which is approved by PPC.

Office of Attorney General by the approval of PPC, shall prepare Morals Code of Public Prosecutor.

Code of Ethics as specified in paragraph one and Code of Morals specified in paragraph two, shall come into force upon their publication in Government Gazette.

**Section 83:** Public Prosecutor shall abide and comply with Code of Ethics and Morality.

Any defiance or non-compliance with Codes of Ethics shall be deemed as violation of discipline.

If there is any defiance or non-compliance with Code of Morality, Superior shall report to PPC which shall be used accompanying the consideration in appointment by PPC.

## **IV. THE ROLES OF THAI PUBLIC PROSECTORS IN PROSECTING CORUPTION CASES**

### **A. Investigation Stage: The Powers of the NACC<sup>12</sup>**

According to the Organic Act on Anti-Corruption B.E. 2561 (2018), the National Anti-Corruption Commission (NACC) has the powers to conduct an inquiry and prepare opinion in a case there is an allegation that a person holding a political position, a person holding a position in an independent agency or a state official is involved in circumstances of unusual wealth, corruption, or deliberate performance of duties or exercise of powers in contrary to the laws, or such person has committed an offence of malfeasance in public office or in judicial office, or seriously violated or failed to comply with the ethical standards.

After finishing the investigation and having the resolution of the case, the NACC will send a report, inquiry file, document, evidence and opinion, including their electronic copies, to the Attorney-General (AG) to review and file a case against such person to the competent Court.<sup>13</sup>

### **B. The Joint Committee between the NACC and the AG**

In case the Attorney General (AG) finds that the inquiry file is incomplete for justification of initiation of a prosecution, the AG shall inform the NACC of the matter along with specification of all the incomplete issues. In this case, the AG and the NACC shall appoint a joint committee consisting of representatives of each side of an equal number, with no more than five representatives on either side.<sup>14</sup>

The joint committee shall collect evidence to completion as well as perform any undertaking in order to complete the inquiry file for further prosecution. In case the joint committee fails to reach a mutual agreement on the matter, the NACC shall further proceed by initiating the prosecution by itself.

### **C. Prosecution and Trial**

In case the AG (or the public prosecutor designated by the AG) finds that the inquiry file is complete for justification of initiation of a prosecution, the AG (or the public prosecutor designated by the AG) will initiate the case in the competent court.<sup>15</sup>

If the alleged culprit is a person holding a political position, the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions will have jurisdiction over the case. If the alleged culprit is a state official, the Criminal Court for Corruption and Misconduct Case will have jurisdiction over the case.

### **D. When the AG is the Alleged Culprit**

If the alleged culprit is in the position of Attorney General during the commission of an offence or during the allegation, the President of the NACC has the power to initiate the case or submit the complaint to the Criminal Court for Corruption and Misconduct Cases.

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<sup>12</sup> The Organic Act on Anti-Corruption B.E. 2561 (2018) sections 46 - 75.

<sup>13</sup> Ibid., sections 76, 77, 91, 93.

<sup>14</sup> Ibid., sections 77, 93.

<sup>15</sup> Ibid., sections 77, 93.

## **E. Confiscation of Property<sup>16</sup>**

In filing a case in the competent court, if the alleged culprit or the person participating in the commission of the offence has used or acquired property in an unlawful manner as a result of the commission of corruption, or deliberately performed duties or exercised powers contrary to the provisions of the Constitution or laws, the AG or the NACC, as the case may be, may file a motion with the court for the confiscation of the following properties, unless it is the property of another person who has no connivance with the commission of the offence:

- (1) Property which any person used or had in his or her possession for use in the commission of the offence;
- (2) Property or interest that can be calculated into monetary value, which has been given, requested to give or pledged to give to the alleged culprit by any person in an unlawful manner
- (3) Property or interest that can be calculated into monetary value which a person has obtained from the commission of or from his involvement as an instigator, an aider and abettor or a publisher or announcer in order for another person to commit the offence;
- (4) Property or interest that can be calculated into monetary value which a person has obtained from a disposal, distribution or transfer in any manner of the property or interest under (1) or (3).
- (5) Fruits or any other interests occurring from the property or interest under (1), (3) or (5).

## **V. CONCLUSION**

In 2007, the Thai Constitution established the new status of the Thai OAG with autonomy in personnel administration, budget and other activities. This status remains the same even though the Constitution of Thailand has been amended in 2010 and 2017. The Public Prosecution Organization and Public Prosecutors Act B.E. 2553 (A.D. 2010) and the Public Prosecution Official Regulation Act, B.E. 2553 (A.D. 2010) are the mechanisms to maintain integrity, discipline, codes of conduct, and the abilities of Thai public prosecutors. By those laws, as well as the welfare and the status received from the government and the public, the Thai public prosecutors remain independent in their consideration and disposition of cases as well as in performing their duties fairly.

However, a public prosecutor is a human being not a robot or a machine; therefore, he or she as an individual, might have engaged in wrongdoing. In fact, in these recent two or three years, there are 2 - 3 cases in which the Criminal Court for Corruption and Misconduct Cases has convicted public prosecutors who were involved in corruption or exercised powers contrary to the laws.<sup>17</sup> There are also 2 - 3 cases involving corruption that are under the investigation of the NACC.<sup>18</sup> The number of public prosecutors who engaged in wrongdoing may be considered as only a few cases when compared to the total number of 4,167 public prosecutors who work throughout the country.<sup>19</sup>

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<sup>16</sup> Ibid., sections 83, 93.

<sup>17</sup> <[www.isaranews.org](http://www.isaranews.org)>.

<sup>18</sup> <[www.thaipublica.org](http://www.thaipublica.org)>.

<sup>19</sup> The statistics at the end of the year 2020.

Therefore, other measures to prevent corruption are still needed, such as asset declaration or financial disclosure. Public awareness and public participation are also very important tools to prevent corruption in the justice system.

# THE IMPORTANCE OF ASSET DECLARATION FOR THE LAW ENFORCEMENT OFFICER IN TIMOR-LESTE

*Augusto da Costa Castro \**

## I. INTRODUCTION

As we know that in the life of the nation and State, there is no single institution that is free from potential risks of corruption. Currently, corruption has undermined all aspects of life of every individual and institution, including law enforcement institutions and their officers. As the Transparency International 2019 Global Corruption Barometer – Africa survey showed, 47 per cent of Africans believe that most or all police are corrupt, with 28 per cent also saying they had paid a bribe to a police officer in the previous year; the police also earned the highest bribery rates in Latin America and the Caribbean and the Middle East and North Africa, where 24 and 22 per cent, respectively, said they had paid a bribe to a law enforcement officer in the past year.<sup>1</sup> Police corruption broadly refers to “acts of misconduct by police officers aimed at obtaining financial benefits or other personal gains in exchange for selectively enforcing or manipulating rules, as well as the conduct of investigations and arrests” (Chêne 2010).

The impact of law enforcement corruption on the public interest is devastating, because it denies people accessibility to legal protection, and corruption can protect other criminal activity such as drug dealing, human trafficking, prostitution, illegal gambling and illegal logging, which consequently diminish public faith and confidence in the law enforcement authorities, themselves. This is because the public relies on the law enforcement officers to uphold the law, protect the community and assist it in times of need. In Timor-Leste, corruption was widespread among government officials. Transparency International ranked Timor-Leste at 93 out of 180 countries on its Corruption Perceptions Index in 2019, and the Government of Timor-Leste is continuing to take steps to combat corruption. There were accusations of police, including border police and immigration officials, involvement in corruption—most commonly bribery and abuse of power. Allegations of nepotism in government hiring were common. The customs service was under scrutiny for alleged corruption related to incoming goods.<sup>2</sup> The Anti-Corruption Commission in its 2019 annual report reported that, in 2019, there were four corruption cases that occurred in two law enforcement authorities, where two cases involved members of the Timor-Leste National Police (PNTL) and two other cases occurred in the customs service.<sup>3</sup> As a law enforcement officer, they should keep away from corrupt behaviour because when officers act illegally, they dishonour both themselves and the law and the entire justice system that they represent.

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<sup>1</sup> Transparency International 2019 Global Corruption Barometer Survey, retrieved from <<https://www.transparency.org/en/blog/fix-the-police>>.

<sup>2</sup> Retrieved from <<https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/timor-leste/>>.

<sup>3</sup> Comissão Anti-Corrupção, Relatório Anual CAC 2019, Dili, 2019, p. 25.



In order to effectively fight corruption crime within the law enforcement authorities, there must be a serious effort to identify the root of the corruption itself. Thus, urgent and concrete action with a progressive approach needs to be introduced by the State.

Law No. 8/2009 (15 July) on the establishment of the Anti-Corruption Commission (CAC) does not provide any direct or concrete preventive measures to be in place for the prevention of corruption in Timor-Leste. Although criminal offences against corruption are contained in the Penal Code, the purpose of which is to deter public officials from engaging in corrupt acts, no system for effective corruption prevention efforts has been designed yet. Whereas in article 4 of law number 8/2009 it states that, “The mission of the Commission is to undertake the preventive action and criminal investigation action against corruption in any of its forms”. However, the preventive actions that were taken so far by the CAC are still very general in nature, such as directing an anti-corruption campaign to the public, public awareness raising, and inspection and monitoring of the implementation of government projects.

There are several causes for the occurrence of corruption within the law enforcement authorities, one of which is the absence of a transparency and accountability mechanism for the public officials regarding their income, assets and interests during their tenure. Without asset declaration procedures, it is difficult to exert control over state losses, which can accumulate through corruption involving public officials. In Timor-Leste, corruption prevention efforts are generally only internal, namely from and by the superiors of an institution, so this is considered less effective and efficient because there is still room for manipulation and collaboration between corrupt officials and their superiors.

Corruption, which is known as a multidimensional crime, should not only be dealt with by prosecution but also through preventive mechanisms, one of which is through asset declaration, monitoring and control of the assets of public officials. Asset declaration will limit the ability of public officials to accept illegal assets, accept bribes and practice extortion and corruption. According to the World Bank, asset declaration is regarded as “a powerful tool to prevent corruption, detect illicit enrichment and conflicts of interests”<sup>4</sup> and subsequently to identify ill-gotten gains among public officials. Around the world there are “more than 150 countries have introduced asset disclosure requirements for their public officials.”<sup>5</sup>

In this paper, I will discuss the mechanisms for preventing criminal acts of corruption through the asset declaration regime in Timor-Leste, which will increase the transparency and integrity of public officials to the public, especially law enforcement officers. This is expected to be an external monitoring mechanism for all forms of conflict of interest, lifestyles and assets of every public official who carries out public duties for the welfare of the whole Timorese society.

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<sup>4</sup> <<https://www.worldbank.org/en/news/opinion/2016/09/26/asset-declarations-a-threat-to-privacy-or-a-powerful-anti-corruption-tool>>.

<sup>5</sup> Ibid.

## II. THE RATIONALE OF ASSET DECLARATION

The declaration of assets by public officials can be a powerful mechanism for both the prevention and investigation of public-sector corruption. Based on the experience of several countries that have implemented this mechanism, they are able to control corruption that occurs in the public sector. Thus, this mechanism is recommended to be implemented in countries with very high levels of corruption. This mechanism was first started in United States and was initiated by President Truman in 1951 amidst rampant corruption in the public sector. It was then followed by several countries in Western Europe in the 1980s, and it was put into practice by all European members in 2000 (OECD 2011, pp. 22-23).

The principles behind this mechanism are transparency, accountability and integrity. As the bedrock of clean and corruption-free government, these principles are recognized as the important elements in regulating the relationship between the State and its people. By relying on these principles, an atmosphere of mutual trust can be created so that, in carrying out its duties, the public does not suspect that public officials are engaged in corrupt practices. Article 8, Chapter II of the UNCAC provides that in order to fight corruption, each State Party shall promote, *inter alia*, integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system. More particularly, the Convention encourages each State Party:

. . . where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, *inter alia*, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.<sup>6</sup>

Furthermore, in article 52(5) it is stated that:

Each State Party shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non-compliance. Each State Party shall also consider taking such measures as may be necessary to permit its competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover proceeds of offences established in accordance with this Convention.<sup>7</sup>

## III. THE ASSET DECLARATION REGIME IN TIMOR-LESTE

In Timor-Leste for years, there have been calls for transparency and asset declaration of elected and public officials, as these will improve the confidence of the people and foreign investors in the government's integrity and good governance. Therefore, through its National Parliament, Timor-Leste enacted Law No. 7/2020 (26 August) on Prevention Measures and Combating of Corruption, which established a regime of asset declaration for public officials.

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<sup>6</sup> Article 8. Codes of Conduct for Public Officials, Section 5, Chapter II, UNCAC.

<sup>7</sup> Ibid.

The asset declaration regime in Timor-Leste is a mechanism that can be said to be a modern and progressive approach towards fighting against corruption because it includes and adopts all universal principles and good practices which have been applied in various countries. As applied in many countries, an effective and legally binding asset declaration mechanism must have such fundamental elements as described as follows.

## **A. Legal Basis**

The legal basis for asset declaration in Timor-Leste is divided into two categories, namely international conventions and national laws.

### **1. International Conventions**

For the Timor-Leste context, the main source of law which forms the basis for the creation of the asset declaration regime is the United Nations Convention against Corruption (UNCAC) which is stipulated in article 8 (5) and article 52 (5). Timor-Leste fully ratified UNCAC in 2008 through Parliamentary resolution number 25/2008. Pursuant to article 9 (2) of the Timor-Leste Constitution, which states that: “The norms contained in international conventions, treaties and agreements are in force in the domestic legal order upon approval of ratification or adherence by the respective competent bodies and after being published in the official gazette.” Therefore, with the resolution of the National Parliament, UNCAC has become legally binding on Timor-Leste and will be implemented gradually by the competent state institutions.

### **2. National Laws**

The national laws which serve as the basis of asset declaration are, *first*, Law No. 5/2009 concerning the civil service statute as stipulated in article 10 (4) about conflicts of interest, where it is clearly stated that,

... in case of suspicion of corruption, fraud, embezzlement or, in general, diversion of assets or public money, the public official, within the scope of the competent process, is obliged to provide access to his assets before the administrative and judicial authorities, acting in accordance with the law and in accordance with the powers of inspection and supervision.

*Second*, chapter II of Law No. 7/2020 (26 August) on Prevention Measures and Combating of Corruption establishes the asset declaration regime for public officials. According to article 27 of this law, the ultimate goal of the asset declaration regime is to, one, detect and prevent conflicts of interest; and two, monitor the fluctuation of wealth to detect significant and unjustified increases of the assets of people subject to declaration. In addition to the two goals above, it also tacitly aims to prevent other related crimes such as tax evasion and money laundering.

## **B. The Content of Declarations**

Good asset declaration regimes spell out clearly and specifically the income, assets, interests, obligations and expenditures that should be declared by public officials. According to article 34 (2) of Law No. 7/2020, the declaration must be detailed and cover all types of income; movable and immovable assets; precious objects with a value above US\$1,500; all types of investments; commercial company ownership; current account balances and deposits, as well as other financial products; securities including stocks and other financial instruments; debts and other financial obligations; gifts including travel and other leisure or entertainment activities over US\$250; foreign travel and other luxury

expenses above US\$2,500; participation in executive management bodies, administrative councils, supervisory or consultation bodies or any collegial body of a commercial company; and participation in private organizations, including political parties, political associations, associations and other non-profit organizations.

### **C. Covered Officials**

In practice, the coverage of public officials who must report their assets is applied differently from country to country. Some require declarations from all civil servants; some only require declarations from civil servants in certain positions; some only require declarations from elected officials. This depends on the level of responsibility in dealing with the powers and functions of a public official and the potential corruption risks involved.

According to article 29, a wide group of public officials is covered. This includes all heads and members of the four branches of the estate sovereign bodies such as the President of the Republic; Members of Parliament; members of the Government; members of the judiciary magistrate and all of their high-ranking officials. The obligation to declare assets also includes heads of management and leadership positions in local and national public administration as well as armed and police officers, elective bodies of local government, holders of management positions and leadership of public companies, officials and officers of the customs, taxation, state asset management, state inspection and audit service, ambassadors, consuls and holders of direction and leadership positions in Timor-Leste's embassies in foreign countries and also members of the criminal investigation police and migration services.

Apart from the people mentioned above, other people who also have to declare their assets are their family members. Family members of the declarant covered by this law are the spouse or person with whom he/she lives in marital union, minor or economically dependent children, and other economically dependent persons.

### **D. Period of Declaration**

As a mechanism to monitor changes in assets, the period of the submission of the declaration must be tightly regulated. According to article 32 of the Law No. 7/2020, the period of declaration is defined in four categories, such as the initial declaration done within 30 days after taking office, the annual declaration due by 31 January of the following year, the final declaration up to 30 days after termination of office and the post-exercise declaration annually during the three years following the termination of the term of office. However, the declaration can be presented at any time, at the initiative of the declarant, whenever there is a substantial change in the declarant's assets and interests. For lower level declarants, instead of the annual declaration, they are required to submit a declaration every three years as referred to in article 29, lines u), v), w), x), y), z), and aa).

### **E. Verification**

A good asset declaration regime should have a mechanism for verification. A thorough and careful verification process will have the power to test and explore the truth, accuracy, authenticity, clarity and validity of the documents, source and existence of a declaration against the standard and specifications that are required by law. There are two types of verification: formal verification as stipulated in article 41, and risk-based audits as mentioned in article 44 with the aim to determine whether there have been significant and unjustified increases in the assets of the declarant or members of the declarant's family, as well as the existence of conflicts of interest. These two verification procedures are

mandatory and applied to all declarations undertaken by oversight bodies every two years as set forth in article 43.

For the purpose of verification, the oversight bodies may request additional information, data and explanation from the declarant and the declarant's family members and government institutions that have the authority over asset registration and other private natural or juridical institutions with whom the declarant or member of the declarant's family has carried out transactions or who is in possession of information on a transaction subject to the declaration as clearly stipulated in article 46. The additional information will be used as a comparison to the information and documents submitted by the declarant and the declarant's family members in the declaration form.

#### **F. Oversight Bodies**

According to article 28, there are two oversight bodies to oversee the receiving and verification of asset declarations, namely the CAC and the Supreme Court of Justice, whereas the Supreme Court of Justice will receive and verify the declarations that are coming from the President of the Republic, the Members of the National Parliament and members of the Government Cabinet including public officials of the CAC. The declarations of all other public officials will be receive and verified by the CAC. In this asset declaration process, these two oversight bodies also have the authority to impose fines on declarants and their family members who do not comply with the rules and regulations as regarded in the asset declaration regime.

#### **G. Cooperation**

Cooperation is one of the fundamental factors for the success of an asset declaration system. Due to limitations in the availability and accessibility of information, each oversight body must have a wide range of networks of cooperation either with individual people or institutions in order to be able to access accurate and credible information about the subject and object of the declaration and to facilitate the verification process to detect ill-gotten assets and the application of sanctions.

Pursuant to articles 46 (2) and (3), cooperation of the oversight bodies with other institutions is necessary with regard to the following institutions: civil registration office, land, sea and aero transportation registration office, commercial entity registration office, non-governmental registration office, land and property registration office, tax administration office, banks and other financial institutions, casinos and the Financial Intelligence Unit.

The oversight bodies may also obtain information abroad through access to free databases or through cooperation with foreign authorities. As stated in article 46 (4) and (5), the oversight bodies may resort to international cooperation in order to obtain information from banks, legal persons and foreign governments if the declared assets are outside of the country.

#### **H. Accessibility**

One of the mechanisms to ensure effectiveness in controlling assets and conflicts of interest of public officials is by involving the public through disclosing asset declaration data to the public. Experience shows that most successful investigations are triggered by complaints of citizens, NGOs and journalists with knowledge about the true situation of an

unfaithful public official. Therefore, asset declarations should be publicly available online.<sup>8</sup> Contrary to the principle of transparency, the asset declaration regime in Timor-Leste does not permit public access to data and information on the content of the asset declaration itself. Article 56 of Law No. 7/2020 criminalizes the negligent or intentional disclosure of information contained in a declaration. Officials from oversight authorities who are convicted of such conduct may be sentenced to imprisonment between 2 to 5 years or a fine.

### **I. Sanctions**

In order to be able to demonstrate the effectiveness, strength and binding power of an asset declaration regime, it must have an element of sanctions. The asset declaration regime in Timor-Leste follows a two-pronged system of sanctions, namely administrative sanctions and criminal sanctions. Administrative sanctions in the form of fines are imposed for several violations such as late declaration of assets (article 48), failure to declare assets after notification (article 49), incomplete declaration (article 51), omission of information (article 52), and the declaration of false information (article 53). Criminal sanctions can be imposed for several acts of violation such as a refusal to declare by a family member (article 50), incomplete declaration (article 51 (2)), the declaration of false information (article 53 (2)), obstruction of verification (article 54) and breach of obligation by an agent of the oversight body (article 55).

### **J. Reporting**

Although there is a question in terms of transparency, reports on the asset declaration regime in Timor-Leste are open to the public. As stipulated in article 28 (3), the oversight body is required to produce a biennial statistical report containing the number of people required to declare, the number of people who did not submit the declaration within the deadline, the number of people who were sanctioned administratively, disciplinarily or criminally by indicating the violations and sanctions applied as well as the number of people whose verification of the declaration led to the adoption of measures to prevent or resolve a conflict of interest. This report can be accessed by the public as required by article 9 (1) of the law. Regarding public complaints on the illegal gain or any other violation of a public official, the law precisely follows the norms contained in article 13 (2) of UNCAC. Thus, Article 109 (1) of Law No. 7/2020 expressly permits anonymous complaints.

## **IV. CONCLUSION**

Public sector corruption that involves law enforcement officers has become a reality in many countries, including Timor-Leste. There are various factors behind it, both from the individual and from the legal environment, that limit the ability of the State to control the corrupt behaviour of that individual. This must be addressed immediately. As law enforcement officers are the guardians, protectors and enforcers of the law, they should be clean and free from all forms of corruption. If law enforcement officers are infected with the corruption virus, it will facilitate the occurrence of other serious crimes because they are the gatekeepers who take action against any perpetrator of crime that occurs in society.

One of the mechanisms that is believed to have the power to prevent corruption in the public sector is the enactment of an asset declaration regime for public officials, including

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<sup>8</sup> Transparency International Principles on Asset Declaration.

law enforcement officials, because the asset declaration regime is regarded as an effective and efficient mechanism to prevent corruption, conflicts of interest, illicit enrichment and ensuring public accountability, transparency and increasing institutional integrity.

Thus, Timor-Leste has learned from and reflected on the good experiences of countries which were successful in combating corruption in the public sector through the establishment of an asset declaration regime. Accordingly, Timor-Leste enacted its own asset declaration regime for public officials, which is regarded as a modern and progressive approach in the fight against corruption.

As a standard that has been adopted by various countries, the asset declaration regime in Timor-Leste also adheres to fundamental principles such as, *first*, establishment of the regime based on a sound legal basis and for the purpose of detecting both illicit enrichment and conflicts of interest; *second*, the content of the declaration must cover all essential information regarding a public official's income, assets, interests and expenditures; *third*, the asset declaration should cover all public officials at risk for corruption including their family members; *fourth*, the period of declaration should cover the time that the official first assumes public office and during and after the term of office; *fifth*, the declaration submitted should be verified rigorously and audited; *sixth*, the oversight body should be equipped with sufficient human and financial resources to verify and audit the declarations; *seventh*, the oversight body should cooperate with other State and private institutions for obtaining comparative information; *eighth*, the declarations must be accessible to the public; *ninth*, there must be administrative and criminal sanctions against misreporting of assets, including declarations that are incomplete, inaccurate, intentionally erroneous, or that omit or conceal any substantial amount of wealth; and, *tenth*, the oversight body must produce regular reports containing, *inter alia*, case statistics and an analysis of trends.

With the enactment of this asset declaration regime, it is hoped that it will be able to effectively prevent and eradicate corruption in the public sector, especially within the law enforcement apparatus in Timor-Leste.

**FOURTEENTH REGIONAL SEMINAR ON GOOD GOVERNANCE  
LIST OF PARTICIPANTS, VISITING EXPERTS & ORGANIZERS**

**A. International Participants**

Name	Title and Organization
Ms. Norfarisah Mohd Harris	Senior Special Investigator Anti-Corruption Bureau Brunei Darussalam
Ms. Rashidah binti Haji Rashid	Assistant Special Investigator Anti-Corruption Bureau Brunei Darussalam
Mr. Tong Heng	Assistant to the President Anti-Corruption Unit Cambodia
Mr. Lie Putra Setiawan	Prosecutor Corruption Eradication Commission (KPK) Indonesia
Mr. Sounthala Khemphilath *	Deputy Director General of International Relations Department State Inspection and Anti-Corruption Authority (SIAA) Lao PDR
Mr. Asrul Ridzuan Bin Ahmad Rustami	Senior Assistant Commissioner, Head of AMLA Unit Anti-Money Laundering Division Malaysian Anti-Corruption Commission (MACC) Malaysia
Mr. Mohamad Faizal Bin Sadri	Head of Planning, Coordination & Strategic Branch Anti-Money Laundering Division Malaysian Anti-Corruption Commission (MACC) Malaysia
Ms. Hazel Canet Decena-Valdez	Senior Assistant State Prosecutor Department of Justice - National Prosecution Service, Manila Philippines
Ms. Lyn Gaa Dimayuga	Assistant Special Prosecutor, II Office of the Ombudsman Philippines
Mr. Renato Aviles Peralta Jr.	Graft Investigation & Prosecution Officer, III Office of the Ombudsman Philippines
Mr. Khoo Wei Quan, Wilson	Senior Assistant Director, Investigations Operations Division Corrupt Practices Investigation Bureau Singapore
Mr. Hon Yi	Deputy Public Prosecutor / Director, Technology Crimes Attorney General's Chambers Singapore
Mr. Sutthi Sookying	Senior Expert Public Prosecutor International Affairs Department The Office of the Attorney General Thailand



Mr. Augusto Da Costa Castro	Deputy Commissioner Anti-Corruption Commission Timor-Leste
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\* Mr. Sounthala Khemphilath participated in the seminar in lieu of Mr. Thongkham Soumaloun, Senior International Relations Officer.

#### B. Visiting Experts

Name	Title and Organization
Mr. Lawrence Chung	Principal International Liaison and Training Officer Independent Commission Against Corruption (ICAC) Hong Kong, Special Administrative Region, China

#### C. Organizers: UNAFEI

Name	Title and Organization
Mr. SETO Takeshi	Director UNAFEI
Ms. ISHIHARA Kayo	Deputy Director UNAFEI
Mr. OTANI Junichiro	Professor UNAFEI
Mr. FUTAGOISHI Ryo	Professor UNAFEI
Ms. WATANABE Machiko	Professor UNAFEI
Mr. HOSOKAWA Hidehito	Professor UNAFEI
Mr. Thomas L. Schmid	Linguistic Adviser UNAFEI
Ms. MUKAI Saori	Officer UNAFEI
Mr. FUJISAKI Takuma	Officer UNAFEI

Fourteenth Regional Seminar on Good Governance for Southeast Asian Countries  
*Integrity and Independence of Judges, Prosecutors and Law Enforcement Officials*

**SEMINAR SCHEDULE**

23-24 March 2021

Online

Host

United Nations Asia and Far East Institute  
for the Prevention of Crime and the Treatment of Offenders (UNAFEI)

Tuesday, 23 March

- 10:50-11:00 Opening Address by Mr. SETO Takeshi, Director, UNAFEI
- 11:00-12:30 Presentation by Visiting Expert
- 12:30-12:40 Break
- 12:40-13:10 Individual Presentation by Brunei Darussalam
- 13:10-14:30 Lunch Break
- 14:30-15:00 Individual Presentation by Cambodia
- 15:00-15:30 Individual Presentation by Indonesia
- 15:30-15:45 Break
- 15:45-16:15 Individual Presentation by Japan
- 16:15-16:45 Individual Presentation by Lao PDR

Wednesday, 24 March

- 10:50-11:30 Presentation by UNAFEI
- 11:30-12:00 Individual Presentation by Malaysia
- 12:00-12:10 Break
- 12:10-12:40 Individual Presentation by Philippines
- 12:40-13:10 Individual Presentation by Singapore
- 13:10-14:30 Lunch Break
- 14:30-15:00 Individual Presentation by Thailand
- 15:00-15:30 Individual Presentation by Timor-Leste
- 15:30-15:45 Break
- 15:45-16:15 Discussion
- 16:20-16:30 Closing Address by Mr. SETO Takeshi, Director, UNAFEI

End of the Seminar



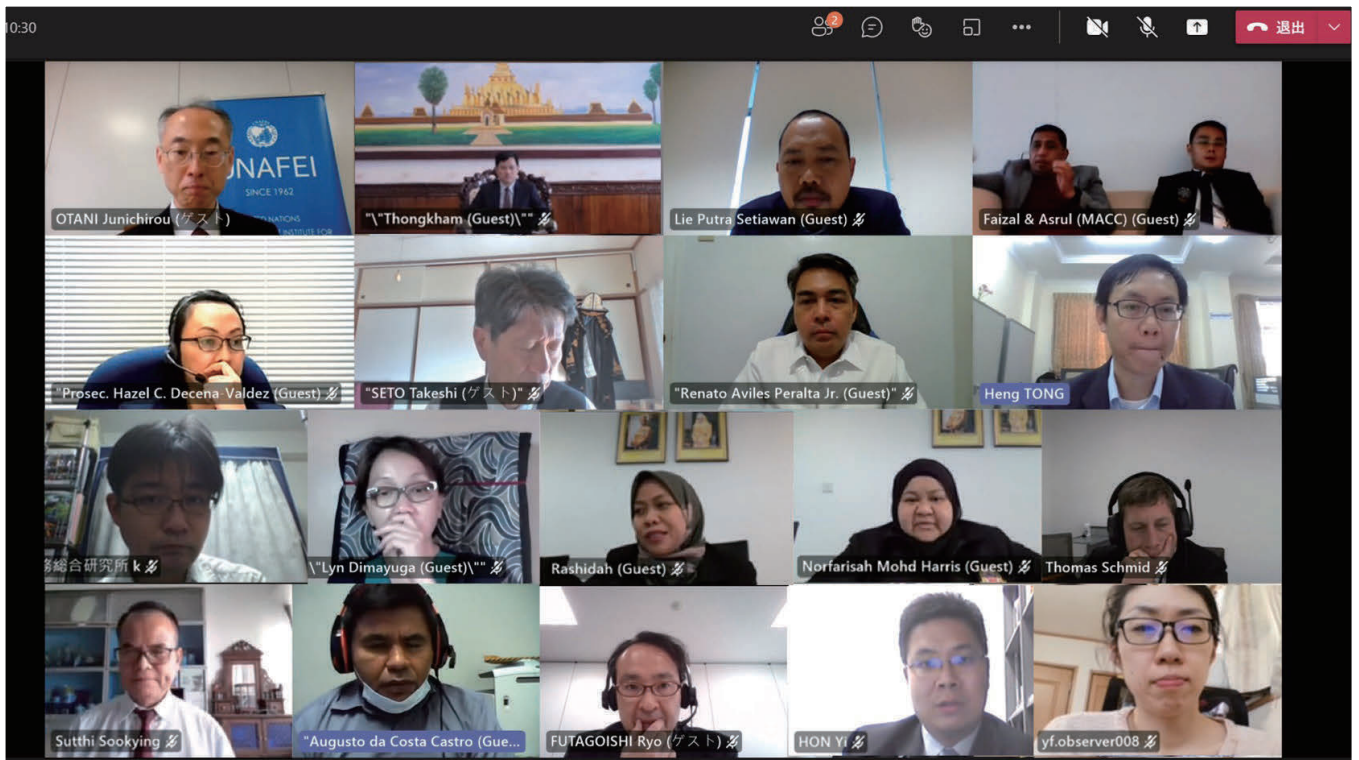
## **APPENDIX**



## PHOTOGRAPHS

- *The Seminar*
- *Director of UNAFEI, Mr. SETO Takeshi*
- *Special Lecture by Mr. Lawrence Chung*
- *Closing of the Seminar*





*The Seminar*



*Director of UNAFEI, Mr. SETO Takeshi*





*Special Lecture by Mr. Lawrence Chung*



*Closing of the Seminar*