

INTEGRITY AND INDEPENDENCE OF JUDGES, PROSECUTORS AND LAW ENFORCEMENT OFFICIALS

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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),¹ 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 2020.² 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) 2019–2023,³ 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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¹ Shared Prosperity Vision 2030 <<https://www.pmo.gov.my/shared-prosperity/>>.

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

³ 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.⁴ 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 2009.⁵

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 2007,⁶ 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.

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

⁵ Malaysia's Judge's Code of Ethics 2009, <http://www.jac.gov.my/spk/images/stories/10_akta/akta703/judges_code_ethics_2009.pdf>.

⁶ 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>.

- 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 2002⁷ 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.

⁷ UN Bangalore Principles of Judicial Conduct 2002,
<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) 2019–2023⁸
- 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

⁸ 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.