

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.

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