

# PROSECUTION OF CORRUPTION CASES IN THE PUBLIC SECTOR IN THAILAND

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## I. INTRODUCTION

Thailand is among the countries long affected by corruption in both the public and private sectors. Despite attempts to prevent and suppress corruption by successive governments, Thailand still cannot eradicate corruption. As a consequence, corruption was one of the key justifications for political reform, leading eventually to the drafting of a Constitution in 1997. This Constitution included key provisions on a number of vital processes designed to increase oversight of the exercise of state power and to keep the government authorities in check. Since then, a number of constitutionally mandated independent organizations or agencies, such as the National Counter Corruption Commission (NCCC) (currently the National Anti-Corruption Commission — NACC), etc., have been established to deal specifically with the issue of corruption. The 1997 Constitution and its successor, the 2007 Constitution, give these bodies and agencies more power, authority and autonomy than any of those Constitutions previously established. It is deemed that these organizations, agencies, or bodies would be capable of dealing with corruption, which is evolving both in form and in practice.

## II. ORGANIZATIONS DIRECTLY RESPONSIBLE FOR INVESTIGATION AND PROSECUTION IN CORRUPTION CASES

Even though there are a number of agencies and organizations in Thailand that have responsibility to prevent and suppress corruption, such as, the National Anti-Corruption Commission (NACC), the Public Sector Anti-Corruption Commission (PACC), the Anti-Money Laundering Office (AMLO), the Royal Thai Police, the Department of Special Investigation (DSI), the Office of the Attorney General, the Supreme Court's Criminal Division for Persons Holding Political Positions, the Office of the Auditor General, the Office of the Ombudsmen, etc., the organizations that have the specific role in investigating corruption cases in the public sector are the National Anti-Corruption Commission (NACC) and the Public Sector Anti-Corruption Commission (PACC); the organization that has authority to issue prosecution orders or institute legal proceedings in court is the Office of the Attorney General, provided that the NACC may also institute legal proceedings in court as stipulated by law.

### A. The National Anti-Corruption Commission (NACC)

The National Anti-Corruption Commission (NACC) is an independent authority established by the 2007 Constitution. The commission consists of the President and eight other members appointed by the King with the advice of the Senate from persons who possess apparent integrity and have the qualifications as stipulated by law.<sup>1</sup> One of the

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<sup>1</sup> Organic Act on Counter Corruption B.E. 2542 (1999), Section 8, as amended by the Organic Act on Counter Corruption (No. 2) B.E. 2554 (2011).

qualifications is that the member must have been a Minister, Judge of the Constitutional Court, member of the Election Commission, Ombudsman, member of the National Human Rights Commission, member of the State Audit Commission, or a government official holding a position not lower than Deputy Prosecutor-General, Director-General, or person holding an administrative position in a government agency having administrative power equivalent to a Director-General, or person holding an academic position of not lower than professor, or attorney, or representative of a development organization or a practitioner of a profession regulated by a professional organization established by law who has practiced such profession for not less than thirty years up to the date of nomination to be a member of the NACC and having been certified and nominated for selection by the Law Society, Private Development Organization or Professional Organization.<sup>2</sup> Moreover, the member shall hold the office for a term of nine years from the date of their appointment by the King and shall serve the position for only one term.<sup>3</sup> The NACC has the power to inspect assets and liabilities of persons holding political positions and other high-ranking state officials, to conduct a fact inquiry and issue an opinion in the case where a request is lodged for removing high-ranking state officials from office, and to inquire and give a decision as to whether a high-ranking state official has become unusually wealthy or committed an offence of corruption or malfeasance in office. The Office of the National Anti-Corruption Commission (ONAC), an independent government agency, serves as the NACC's executive body, which has relevant powers and duties as stipulated by law.<sup>4</sup> The ONAC reports to the Secretary-General of the ONAC as its superior, who is directly responsible to the President of the NACC.

## **B. Public Sector Anti-Corruption Commission (PACC)**

Whereas the Thai government had a policy on anti-corruption, it did not have any direct governmental organization having authority and responsibility for anti-corruption efforts; moreover, the NACC, which is an independent organization with the power over anti-corruption efforts against the corruption of state officials has a large number of missions. Therefore, the Public Sector Anti-Corruption Commission (PACC), a governmental organization in the executive branch, had been established to have the responsibility to implement the anti-corruption policy and to be a center to coordinate with all of the relevant state agencies, including to determine a variety of measures to enable the anti-corruption efforts of the executive branch to be operated in a more integrated and efficient manner.<sup>5</sup> The PACC consists of a President and no more than five members. One of the qualifications of its members is that the members must be or must have been Judges of the Constitutional Court, Judges of the Supreme Administrative Court, judges holding office not lower than Judges of the Supreme Court; or they must be or must have been in government service in a position not lower than Deputy Attorney-General, Director-General, or the person holding administrative office in the state agency with administrative power equivalent to Director-General or holding office not lower than professor.<sup>6</sup> Members of PACC can hold office for a term of four years. Concerning the investigation power in corruption cases, it has the powers and duties to inquire into facts and summarize the case file, inclusive of submitting opinions

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<sup>2</sup> Organic Act on Counter Corruption B.E. 2542 (1999), Section 9, as amended by the Organic Act on Counter Corruption (No. 2) B.E. 2554 (2011).

<sup>3</sup> Organic Act on Counter Corruption B.E. 2542 (1999), Section 12, as amended by the Organic Act on Counter Corruption (No. 2) B.E. 2554 (2011).

<sup>4</sup> Organic Act on Counter Corruption B.E. 2542 (1999), Section 104, 105 as amended by the Organic Act on Counter Corruption (No. 2) B.E. 2554 (2011).

<sup>5</sup> Executive Measures in Anti-Corruption Act B.E. 2551 (2008).

<sup>6</sup> Executive Measure in Anti-corruption Act B.E. 2551 (2008), Section 5 and Section 6.

to the public prosecutor to bring criminal charges against state officials ranking lower than those who fall within the jurisdiction of the NACC.<sup>7</sup> The Office of the Public Sector Anti-Corruption Commission is the department under the Ministry of Justice which is in charge and directly reports to the Minister of Justice. The Secretary-General is a civil servant having the duty to supervise and take responsibility for the affairs of the Office provided that in the part of the operations in relation to the authorities of the PACC, the Secretary-General shall directly report to the President of the PACC.<sup>8</sup>

### **C. Office of the Attorney General (OAG)**

The Office of the Attorney General (OAG) is an independent organization under the 2007 Constitution. The Constitution guarantees public prosecutors' independence in making prosecution decisions and the performance of other duties in the interests of justice. The appointment and removal of the Attorney General requires a resolution adopted by the Public Prosecutor Commission and requires approval by the Senate. The OAG has autonomy in personnel administration, budgeting and other activities, under the supervision of the Attorney General. Moreover, public prosecutors must not be directors in state enterprises or other state entities of the similar manner unless permission is given by the Public Prosecutor Commission, must not engage in any occupation or profession or other activities that may affect the performance of duty or tarnish the dignity of government officials as well as must not be a director, manager, or legal counselor or other similar post in business entities.<sup>9</sup>

## **III. ROLE OF PUBLIC PROSECUTOR IN CORRUPTION CASES**

In Thailand, public prosecutors do not have power to initiate or investigate criminal cases, including corruption cases, except in certain cases as stipulated by law. However, when NACC or PACC finishes their inquiries, they have to send their reports and inquiries to the Attorney General or public prosecutors in order to issue prosecution orders to institute legal proceedings in court or as the case may be. Since the NACC has the leading role in anti-corruption in Thailand, this paper shall, therefore, present only the role of the public prosecutor in corruption cases referred by the NACC.

Even though the NACC has broad powers to prevent and suppress corruption, there are three types of cases that the NACC has to send to the Attorney General to bring the case to court. These cases are as follows:

1. Cases where the NACC concludes that the person holding the position of Prime Minister, Minister, Member of the House of Representatives, Senator, or any other political official has become unusually wealthy, or has committed an offence of malfeasance in office under the Penal Code or malfeasance in office or corruption under other laws. If the Attorney General agrees with the opinion of the NACC, the Attorney General will institute a prosecution in the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions.<sup>10</sup>

2. Cases where the NACC concludes that the person holding a political position or any high-ranking state official has become unusually wealthy. In this case, the President of the

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<sup>7</sup> Executive Measure in Anti-corruption Act B.E. 2551 (2008), Section 3 and section 17.

<sup>8</sup> Executive Measure in Anti-corruption Act B.E. 2551 (2008), Section 51.

<sup>9</sup> Constitution of the Kingdom of Thailand B.E. 2550 (2007), Section 255.

<sup>10</sup> Organic Act on Counter Corruption B.E. 2542 (1999), Section 66 and Section 70, as amended by the Organic Act on Counter Corruption (No. 2) B.E. 2554 (2011).

NACC shall send the cases to the Attorney General for submission of a motion to the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions or the court having jurisdiction over that case, as the case may be, requesting the court to order that the property devolve upon the State.<sup>11</sup>

3. Cases where the NACC concluded that high-ranking state officials, excluding persons holding a political position, committed an offence of corruption, malfeasance in office or malfeasance in judicial office. If the Attorney General agrees with the opinion of the NACC, the Attorney General shall institute a prosecution in the court having jurisdiction over that case.<sup>12</sup>

Since the law requires the above cases to be sent to the Attorney General, and it is an important policy of the government to eradicate corruption in Thailand, therefore, the Attorney General deemed it was appropriate to set up a Department called the "Department of Special Litigation" to handle the cases from the NACC, including other special cases from the Department of Special Investigation (DSI) and the Anti-Money Laundering Office (AMLO). The public prosecutors who are assigned to this Department are senior or relatively senior because of the character of corruption cases, and other special cases are usually complicated and difficult to take to trial.

Even though the Organic Act on Counter Corruption B.E. 2542 (1999), Section 98/1, as amended by the Organic Act on Counter Corruption (No. 2) B.E. 2554 (2011) stipulated that in cases where the prosecution against an alleged offender is instituted in Court, the Court shall rely upon the report and inquiry file of the NACC in the adjudication of the Court, yet the Court may conduct an inquiry for additional facts and evidence. However, this does not mean that the public prosecutor just forwards the report and inquiry of the NACC to the Court for its adjudication. Since it is also the public prosecutor's job to seek justice, public prosecutors shall not issue prosecution orders or institute cases against any one in Court unless the public prosecutor is convinced that the alleged offender has committed a crime. Therefore, before public prosecutors submit their opinions to the Attorney General for orders, the public prosecutor must review the report and inquiry of the NACC to consider whether the alleged offender committed a crime and whether there is enough evidence to prove the offence in Court. That is, the public prosecutor has to consider the position of the offender, the authority of the offender, the act of the offender, the benefit of crime and the path of proceeds of the crime, the statute of limitations of the case, the witnesses and evidence of the case, etc.. Therefore, the public prosecutor must fully understand all of the laws and regulations concerned, all of the facts of the case, and all of the witnesses and evidence as provided by the assigned inquiry official of the NACC.

After the Attorney General has issued a prosecution order or order to submit a motion requesting the court to order that the property devolve upon the State, as the case may be, the public prosecutor has the duty to prepare for the trial. The public prosecutor has to provide a charge which has to contain, among other things, all the acts alleged to have been committed by the accused, all the facts and details regarding the time and place of such acts, and the persons or articles concerned which are reasonably sufficient to give the accused a clear

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<sup>11</sup> Organic Act on Counter Corruption B.E. 2542 (1999), Section 75 and Section 80, as amended by the Organic Act on Counter Corruption (No. 2) B.E. 2554 (2011).

<sup>12</sup> Organic Act on Counter Corruption B.E. 2542 (1999), Section 84 and Section 97, as amended by the Organic Act on Counter Corruption (No. 2) B.E. 2554 (2011).

understanding of the charge as stipulated by law.<sup>13</sup> Similarity can also apply to the motion. Then the public prosecutor has to prepare his/her presentation before the court which should be clear and concise in chronological order. Concerning the witnesses and evidence, the public prosecutors have to carefully organize and introduce them to the court because the more witnesses or evidence, the greater the likelihood of introducing unnecessary conflicts in the evidence, which may confuse the case. Moreover, the public prosecutor should anticipate and prepare for all possible defences and arguments; especially in certain corruption cases the public prosecutor can expect a tough challenge from experienced defence lawyers.

In cases where the Attorney General believes that the report and evidence together with the opinion of the NACC are not sufficient to justify the institution of legal proceedings, the Attorney General shall notify the NACC for further action. The incomplete matters must also be fully specified. Then the NACC and the Attorney General shall appoint a working committee consisting of representatives of each side in equal number to collect additional evidence and resend the case to the Attorney General for the institution of legal proceedings. If such working committee fails to reach an agreement as to the legal proceedings, the NACC shall have the power to institute legal proceedings in Court.<sup>14</sup>

#### **IV. CONCLUSION**

Even though there are organizations and laws established to combat corruption, it is the personnel of those organizations who are responsible for applying those laws. They must have determination and work hard to accomplish their duties. Especially at present, there is a strong tendency for corruption to result from a coordinated conspiracy employing sophisticated planning and linking up with transnational syndicates. Siphoning and transferring assets gained by corrupt practices to other parties both within and outside the country are some of the methods employed by organized crime syndicates. Such assets are carefully laundered in various ways to avoid detection. Therefore, enhancing the abilities of officials concerned is very important to make them accomplish their tasks and make laws function. They have to know the issue of the case well including what evidence is required to prove the offence. Knowledge other than law, such as knowledge about business and finance, may help in this modern investigation and prosecution in corruption cases. Last but not least, cooperation between agencies or organizations concerned with both internal and international investigations is also crucial to accomplish their duties. Even though there are a lot of measures to combat corruption, investigation and prosecution are still the core measures to prevent and suppress corruption.

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<sup>13</sup> The Criminal Procedure Code, Section 158.

<sup>14</sup> Organic Act on Counter Corruption B.E. 2542 (1999), Section 80 and Section 97, as amended by the Organic Act on Counter Corruption (No. 2) B.E. 2554 (2011).

# INVESTIGATION OF CORRUPTION CASES IN THAILAND

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## I. FACT INQUIRY

The N.C.C. Commission shall conduct a fact inquiry in the following circumstances:

1. the President of the Senate refers the matter to the N.C.C. Commission for carrying out a fact inquiry in consequence of the lodging of a petition requesting the Senate to pass a resolution removing the alleged culprit from office when the Ombudsman refers the matter to remove any person from office on the grounds that he or she has seriously violated ethical standards;

2. a case calls for a fact inquiry;

3. an allegation is lodged with the N.C.C. Commission for the purpose of devolving property to the State;

4. there is reasonable cause to suspect that a state official has become unusually wealthy or has committed an offence;

5. an allegation is made to the N.C.C. Commission against a state official.

The N.C.C. Commission shall not conduct a fact inquiry in the following circumstances:

1. the matter to be inquired into is the matter in respect of which the N.C.C. Commission has completed its fact inquiry and no fresh evidence which is material to the inquiry is found;

2. the alleged culprit is the same person as the alleged culprit in the matter under inquiry, of which the cause of the allegation is the same.

Before conducting a fact inquiry, the N.C.C. Commission may entrust the Secretary-General to conduct the fact finding and gather evidence in regard to such allegation so as to obtain adequate evidence to continue with the fact inquiry. In this event, the Secretary-General may entrust a competent official to act on his/her behalf, which shall be in accordance with the rules, procedures and conditions prescribed by the N.C.C. Commission. The Secretary-General and competent official entrusted by the Secretary-General shall be deemed as an administrative official or police officer under the Criminal Procedure Code. In a fact inquiry the N.C.C. Commission may appoint an inquiry sub-committee to carry out the

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proceedings on its behalf. The performance of duties of the sub-committee shall be in accordance with the rules, procedures, and conditions prescribed by the N.C.C. Commission. The sub-committee appointed shall consist of the chairman of the sub-committee and members of the sub-committee as determined by the N.C.C. Commission with a competent official as sub-committee member and secretary of the sub-committee, as well as a subcommittee member and assistant secretary of the sub-committee. In a fact inquiry, the N.C.C. Commission may entrust an inquiry official to conduct the fact inquiry, gather evidence, and summarize the case before reporting to the N.C.C. Commission for consideration and decision. The person under the following circumstances shall not be appointed as a member of an inquiry sub-committee:

1. having knowledge of the events or having previously conducted an inquiry or considered the alleged matter in a capacity other than a competent official or inquiry official;
2. being interested in the matter to which the allegation relates;
3. having current animosity towards the person making the allegation or the alleged culprit;
4. being the person making the allegation or such person's or the alleged culprit's spouse, ancestor, descendant, or brother or sister of full- or half-blood;
5. having a close relationship with the person making the allegation or the alleged culprit in the capacity as such person's relative or being such person's partner or having mutual commercial benefits or conflicting interests vis-à-vis the person making the allegation or the alleged culprit.

In a fact inquiry, the alleged culprit shall be given notice of the allegations, and there shall be fixed a reasonable time within which the alleged culprit may give explanations, present evidence or bring witnesses to testify in support of the explanations. In giving explanations and testimony, the alleged culprit shall have the right to have the presence of his or her attorney or the person upon whom he or she reposes confidence for hearing the explanations or testimonies.

In the case where an inquiry sub-committee is appointed, the presence of at least two members of the sub-committee, at least one of whom must be a member who is a competent official, is required for the hearing of the alleged culprit's explanations or the examination of the alleged culprit and witnesses. A member of the inquiry sub-committee shall not commit or cause to be committed any act which amounts to a deception, threat or promise to the alleged culprit or witness with a view to inducing them to give any statements with respect to the matters to which the allegation relates. For the benefit of the performance of duties of the inquiry sub-committee, the inquiry sub-committee shall have the power to carry out the acts.

Upon the completion of the collation of evidence, the inquiry file shall be prepared and submitted to the President. Such file shall contain the following particulars:

1. the names and positions of the person making the allegation and the alleged culprit;
2. the matter to which the allegation relates;

3. the allegation, reply to the allegation, and summary of facts and relevant evidence obtained from the fact inquiry;

4. reason given in the consideration and decision of both issues of fact and issues of law;

5. the provisions of law relied upon;

6. the summary of the opinion on the matter to which the allegation relates.

When the president has received the inquiry file, the president shall cause to be held a meeting for considering it within thirty days. In the interest of justice, in the case where an inquiry sub-committee has been appointed, the N.C.C. Commission may pass a resolution directing the same sub-committee to inquire into additional facts or appointing a new inquiry sub-committee to inquire into additional facts on its behalf. The N.C.C. Commission shall consider the inquiry file and pass a resolution as to whether the allegation establishes a prima facie case. In the case where the N.C.C. Commission passes a resolution that the allegation has failed to establish a prima facie case, such allegation shall lapse.

In the case where the N.C.C. Commission passes a resolution that the allegation has established a prima facie case, the President shall furnish a report, existing documents as well as the opinion to;

1. the Prosecutor-General, if the inquiry reveals a prima facie case for a criminal offence;

2. the superior or the person who has the power to appoint, if the inquiry reveals a prima facie case for a disciplinary offence.

During the fact inquiry, if the alleged culprit vacates office or vacates the government service by any reason other than death, the N.C.C. Commission shall have the power to proceed with the fact inquiry for the purpose of undertaking criminal proceedings, initiating disciplinary action, or making a request that the property devolve to the State.

## **II. INSPECTION OF STATE OFFICIALS NOT HOLDING POLITICAL POSITIONS**

An allegation that the following state officials committed an offence of corruption, malfeasance in office or malfeasance in judicial office shall be submitted to the N.C.C. Commission at the time the person against whom the allegation is made is a state official or has ceased to be a state official for no more than five years;

1. a person holding a political position or high-ranking executive;

2. judge;

3. public prosecutor;

4. state official in agency of the court and constitutional organs;



5. local administrator, deputy local administrator, assistant local administrator, and member of a local assembly;

6. state official in the office of the Secretariat of the House of Representatives and the Office of the Secretariat of the Senate;

7. state official in an anti-corruption agency under the law governing such matters;

8. state official who committed an offence having the characteristics which the N.C.C. Commission finds that proceedings should be taken as prescribed by the N.C.C. Commission;

9. state official who jointly commits an offence with a person under 1, 2, 3, 4, 5, 6, 7, or 8. The allegation under paragraph one may be made orally or in writing as prescribed in the regulation prescribed by the N.C.C. Commission.

The provisions shall apply to the case where a state official or other person is a principal, instigator or aider and abettor. Subject to the provisions of the applicable statute of limitations, in the case where the state official has ceased to be a state official for more than five years, the N.C.C. Commission's power to proceed with an inquiry of an allegation having been made or where there is reasonable cause to suspect that a person holding a political position or state official committed an offence shall not be prejudiced, provided that the proceedings are not taken after the expiration of ten years from the date a person holding a political position vacated office or the state official ceased to be a state official, as the case may be.

The allegation shall at least contain the following particulars:

1. the name and address of the person making the allegation;

2. the name or position of the alleged culprit;

3. the allegation and circumstances under which the alleged offence was committed, together with, or by reference to, evidence.

The N.C.C. Commission shall not accept or invoke for consideration an allegation which is of the following descriptions:

1. a matter involving the same allegation or issue in respect of which the N.C.C. Commission has given its final decision, for which no material fresh evidence is found;

2. a criminal case with the same issue that has been admitted by the court or has been adjudicated by a court's final decision or order, except for a case that has been withdrawn or abandoned or a case where the court has not yet determined the substance of the case, the N.C.C. Commission may accept or invoke such allegation for consideration.

The N.C.C. Commission may refuse to accept or invoke for consideration an allegation which is of the following descriptions:

1. a matter for which no clear evidence or no clear circumstances of the commission of the offence is so sufficiently specified as to enable a fact inquiry;

2. a matter that has lapsed for a period of more than five years from the date of its occurrence to the date of the allegation, for which evidence cannot be so sufficiently obtained as to enable a further inquiry;

3. an allegation against a state official whom the N.C.C. Commission finds that proceedings against such alleged culprit under other law has been completed and properly conducted, and there is no reasonable cause to suspect that such proceedings were unjustly carried out.

In the case where the injured person has lodged a complaint or an allegation is made to the inquiry official requesting action against a state official, the inquiry official shall refer the matter to the N.C.C. Commission within thirty days as from the date of the complaint or allegation. When the N.C.C. Commission has conducted a fact inquiry and passed a resolution that a particular allegation has failed to establish a prima facie case, such allegation shall lapse. Any allegation which, according to the N.C.C. Commission's resolution, has established a prima facie case shall be pursued as follows:

1. in the case where a prima facie case for a disciplinary offence is found, when the N.C.C. Commission, after having considered the circumstances of the commission of the offence, passes a resolution that a particular alleged culprit has committed a disciplinary offence, the president shall send the report and existing documents together with an opinion to the superior or the person who has the power to appoint or remove such alleged culprit for the purpose of considering the disciplinary penalty for the offence in respect of which the N.C.C. Commission has passed the resolution, without the appointment of a disciplinary inquiry committee. In considering the disciplinary penalty to be inflicted upon the alleged culprit, it shall be deemed that the report, documents and opinion of the N.C.C. Commission compose the disciplinary inquiry file of the disciplinary inquiry committee under the law, rules or regulations on personnel administration applicable to such alleged culprit, as the case may be. In the case where the alleged culprit is a judicial official under the law on judicial service, judge of the Administrative Court under the law on establishment of Administrative Courts and Administrative Court procedures or public prosecutor under the law on public prosecutor service, the President shall send the report and existing documents together with an opinion to the President of the Judicial Commission, the President of the Judicial Commission of the Administrative Courts or the President of the Public Prosecutors Commission, as the case may be, for considering and proceeding with the matter in accordance with the law on judicial service, the law on establishment of Administrative Courts and Administrative Court procedures or the law on public prosecutors service without delay. In this connection, the report and documents of the N.C.C. Commission shall also be regarded as part of the inquiry file. The outcome shall be furnished to the N.C.C. Commission for information within fifteen days from the date the order of the disciplinary penalty is issued or the date a decision is given that no disciplinary offence is found. Upon receipt of a report, the superior or the person having the power to order the appointment and removal shall consider the penalty within thirty days from the date of receipt thereof, and the superior or the person having the power to order the appointment and removal shall furnish a copy of the penalty order to the N.C.C. Commission for information within fifteen days from the date the order is issued. Any superior or person having the power to order the appointment and removal who fails to take action is deemed to commit a disciplinary offence or a legal offence under the law, rule or regulation on personnel administration applicable to the alleged culprit in question. An alleged culprit punished may exercise the right to appeal

against the exercise of the superior's discretion in giving the penalty order, in accordance with the law, rule or regulation on personnel administration applicable to such alleged culprit, provided that such right must be exercised within thirty days as from the date of receiving such order.

2. In the case where the N.C.C. Commission passes a resolution that any matter put in the allegation amounts to a criminal offence, the President shall furnish a report, documents and opinion to the Prosecutor-General or, in the case where the alleged culprit is the Prosecutor-General, proceed with the prosecution, for the purpose of criminal proceedings before the court having competence to try and adjudicate the case. In this instance, the report of the N.C.C. Commission shall be deemed as the inquiry file under the Criminal Procedure Code, and the court shall accept the case without conducting a preliminary examination.

When the Prosecutor-General has received the report and documents together with the opinion from the N.C.C. Commission and considers that the report, documents and opinion furnished by the N.C.C. Commission are not so complete as to justify the institution of a prosecution, the Prosecutor-General shall inform the N.C.C. Commission thereof for further proceeding. In this instance, the incomplete items shall, at the same time, fully be specified. In this case, the N.C.C. Commission and the Prosecutor-General shall appoint a working committee consisting of representatives of each side in an equal number, for the purpose of collecting full evidence and furnishing it to the Prosecutor-General for instituting the prosecution. In the case where such working committee fails to arrive at a conclusion as to the prosecution, the N.C.C. Commission shall have the power to initiate the prosecution of its own motion or appoint an attorney to institute the prosecution on its behalf.

### **III. PROMOTION OF COUNTER-CORRUPTION**

When the N.C.C. Commission finds it appropriate in a case to provide protection measures for the alleged culprit, injured person, petitioner, allegor, person giving testimony or person providing a clue pertaining to the corruption, unusual wealth or other information that is beneficial to proceedings, the N.C.C. Commission shall notify the relevant agencies to provide protection measures for such person. Such person shall be deemed as a witness entitled to protection under the law on witness protection. In this event, the N.C.C. Commission shall also submit an opinion on whether to apply general measures or special measures for such person under such law.

Where a person or alleged culprit involved in the commission of an offence by a state official that is an alleged culprit in another case gives testimony or provides a clue or information which constitutes essential evidence relied upon in establishing a prima facie case against such other state official, and the N.C.C. Commission finds it appropriate, such person may be protected as a witness and not be subject to legal proceedings.