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It's complicated: Parliament's relationship with anti-corruption agencies in Indonesia, Pakistan, and the Maldives

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Westminster Foundation for Democracy

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Abbreviations

ACA	Anti-Corruption Agency
ACB	Anti-Corruption Board (the Maldives)
ACC	Anti-Corruption Commission
ACCA	Anti-Corruption Commission Act
ACE	Anti-Corruption Establishment (Pakistan)
AG	Auditor General
BPK	Supreme Audit Board (Indonesia)
CPI	Corruption Perceptions Index
CSC	Civil Service Commission (the Maldives)
CSO	Civil society organisation
DPR	<i>Dewan Perwakilan Rakyat</i> (House of Representatives) Indonesia
EC	Ehtesab Cell (Pakistan)
FCDO	Foreign, Commonwealth and Development Office (UK)
FIA	Federal Investigation Agency (Pakistan)
ICAC	Independent Commission against Corruption (Hong Kong)
KPK	Commission for the Eradication of Corruption (Indonesia)
NAB	National Accountability Bureau (Pakistan)
NACS	National Anti-corruption Strategy
NAO	National Accountability Ordinance (Pakistan)
NRO	National Reconciliation Ordinance (Pakistan)
OECD	Organization for Economic Co-operation and Development
PER	Performance Evaluation Report
PGO	Prosecutor General's Office (the Maldives)
PPCA	Prevention and Prohibition of Corruption Act (the Maldives)
SOPs	Standard Operating Procedures
TGTPK	<i>Tim Gabungan Pemberantasan Tindak Pidana Korupsi</i> (Joint Team for Corruption Eradication) Indonesia
TI	Transparency International
UNCAC	United Nations Convention against Corruption
WFD	Westminster Foundation for Democracy

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Summary

Corruption has a negative effect on development, economic growth, and democracy. Independent Anti-Corruption Agencies (ACAs) are often recommended as the tool to curb corruption. However, the creation of such agencies is not a panacea to the scourge of corruption. In some instances, ACAs have been a disappointment and their effectiveness has been questioned. Their efficiency depends on political will to allocate authority, powers, and resources.

Given that ACAs should be independent, particularly of the government of the day, it is a country's parliament that holds responsibility to provide them with a strong mandate, guarantees of independence, security of tenure, and to hold them accountable for their activities.

In this publication, we concentrate on the aspects of the relationship that can illuminate whether a parliament performs these responsibilities in a proper manner:

- 1) parliament's role in establishing the legal framework and mandate of the ACA;
- 2) parliament's role in the selection and appointment of the leadership of the ACA;
- 3) parliament's role regarding resources allocated to the ACA;
- 4) parliament's consideration of and follow up to annual and other reports of the ACA.

The purpose of this publication is to highlight the constructive role of parliaments in overcoming the challenges ACAs often face. It provides an insight into parliaments' role in contributing to combatting corruption by exercising their legislative and oversight role in support of the effectiveness of ACAs while ensuring their independence.

Although there is a rich body of literature on parliaments and an increasing number of research publications on anti-corruption agencies, surprisingly little has been written on the relations between these two actors, particularly in the Asian context. For this study, three Asian countries - Indonesia, Pakistan, and the Maldives - have been selected, among others, because they have the same type of ACA: a comprehensive multi-purpose ACA. The main difference between them is whether they have been given a prosecution function or not. The National Accountability Bureau (NAB) of Pakistan and the Indonesian Commission for the Eradication of Corruption (KPK) do have a prosecution function, while the Anti-Corruption Commission of the Maldives does not.

In analysing parliament's relationship with the ACAs in Indonesia, Pakistan, and the Maldives, we took note, firstly, that all three ACAs have a strong legal foundation and a clear mandate, though the degree of their independence varies. In all three countries, the leadership of the ACA is ultimately appointed by the President, although following different parliamentary procedures. We noted considerable fluctuations in annual budget allocations. However, in all three cases, the parliamentary follow-up to the ACAs' reports is the weakest part of the overall relationship between parliaments and ACAs. Parliaments discuss ACAs' reports only sporadically, with little if any substantial parliamentary conclusions or follow-up.

Parliaments in the three countries have an opportunity for investing more time and efforts in establishing regular and structured relationships with the ACA. This means going beyond parliament's legislative function and demonstrating that parliaments are fully invested in anti-corruption campaigns, by discussing ACAs' reports, making sure the ACAs have an optimal budget, and by providing public backing to the ACA work.

Recognising the need for a high level of political maturity, parliamentary support for the work of the ACA can play a meaningful role in any national anti-corruption strategy. The analysis in the three cases of Indonesia, Pakistan, and the Maldives is based upon the comprehensive assessment framework on the relationship between parliaments and ACAs, as recently published by Westminster Foundation for Democracy.¹

1. De Vrieze, Franklin and Glusac, Luka (2020), [Combatting corruption capably. Assessment framework on parliament's interaction with anti-corruption agencies](#), Westminster Foundation for Democracy.

Foreword

The corrosive effect of corruption on development, growth, and democracy is today widely accepted. It harms political and economic development, threatens stability and is a hindrance to the effective provision of public services.

At Westminster Foundation for Democracy (WFD), we have not only observed this in an academic sense but, through our country programmes, we have seen it close-up and in practical terms. This experience has taught us that effective democratic governance helps to combat corruption by creating inclusive, responsive and accountable political processes to deliver services to everyone.

In recent years, there has been a growing appreciation of the role that independent and well-functioning anti-corruption bodies play in national anti-corruption strategies. We have seen a noticeable growth of such bodies in the past two decades. Today, there are more than 150 around the world, nearly a third of which are in Asia.

The creation of such an institution is not, however, a cure in itself. Their effectiveness depends on political will. Moreover, they do not exist in a vacuum, but rather operate with and alongside other actors working to curb corruption. Given that these bodies must be independent, it is often up to parliaments to support and enable them, but also to hold them accountable for their activities.

This publication looks at this little-studied key relationship between independent anti-corruption bodies and parliaments. It does so by examining the role of parliaments in overcoming the challenges anti-corruption bodies often face, and by looking at parliaments' legislative and oversight role in support of their effectiveness. The case studies that underpin it are of the National Accountability Bureau of Pakistan, the Indonesian Commission for the Eradication of Corruption, and the Anti-Corruption Commission of the Maldives.

Tackling corruption is not easy, but it is a goal that WFD is committed to. In partnership with the Foreign, Commonwealth and Development Office (FCDO), we will continue to work with parliaments, political parties and independent oversight institutions to strengthen systems of accountability which challenge the incentives and mechanisms of corruption.



Matthew Hedges,
Director Asia and Americas
Westminster Foundation for Democracy (WFD)

1. Introduction

Corruption negatively affects political and economic development and stability as well as the effective provision of public services in society. In a growing number of countries in transition as well as in established democracies, one of the institutional mechanisms to combat corruption is the Anti-Corruption Commission or Agency (ACA), often part of the country's strategy on anti-corruption.

An independent and well-functioning anti-corruption body is a fundamental pillar of the national integrity system of any country committed to preventing corruption. This is enshrined in the United Nations Convention against Corruption (UNCAC) of 2003, which provides that an independent body within national governance systems is required to promote and enforce anti-corruption policies and practices.

Although anti-corruption bodies existed in different jurisdictions prior to the adoption of the UNCAC, there has been a noticeable growth of ACAs in the past two decades, signifying the important role these bodies play in the prevention and control of corruption.

Today, there are more than 150 ACAs around the world. That trend did not bypass Asia. Quite the contrary; in Asia-Pacific alone, 42 ACAs have been established in 27 countries of the region.² Those 42 ACAs are of different mandates, types, traditions and local contexts, but were established to achieve the same goal: to help achieve the eradication of corruption, which has been a salient feature of the region.³

Many studies have documented the negative effect of corruption on development, economic growth, and democracy.⁴ Independent ACAs are often recommended as the tool to curb corruption. However, their efficiency depends on political will to allocate authority, powers, and resources. Moreover, setting up new institutions is always costly and accordingly sometimes challenging for low- and middle-income countries.

To that end, there are both pro and contra reasons to establish them. For instance, among pro reasons Johannsen and Pedersen enlist the fresh start and "clean hands" of a new institution; ability to act independently; openness to multi-faceted action combining traditional and new approaches; and the fact that it can serve as a solution to coordination problems.⁵ The same authors give contra reasons as well, such as costs relating to the establishment of a new institution, creation of a new layer of bureaucracy, possibility of jurisdictional conflicts among agencies, and potential rejection of traditional law enforcing and detection techniques.⁶

2. As of 2016. See more in: https://www.transparency.org/files/content/feature/2017_ACA_Background_Paper.pdf

3. See for instance *Transparency International's Corruption Perceptions Index*.

4. See for instance: Leslie Holmes, *Rotten States? Corruption, Post-communism and Neoliberalism*, Duke UP, 2006; Cheol Liu and John L. Mikesell, The Impact of Public Officials? Corruption on the Size and Allocation of U.S. State Spending, *Public Administration Review*, 3/74, 2014, 346-359.

5. Lars Johannsen and Karin Hilmer Pedersen, The Institutional Roots of Anti-Corruption Policies: Comparing the Three Baltic States, *Journal of Baltic Studies*, 3/42, 2011, 332.

6. Ibid.

While there are more than 150 ACAs, the creation of such an institution is not a panacea to the scourge of corruption. In some instances, ACAs have been a disappointment and their effectiveness has been questioned. This publication is a response to this disappointment. It provides one avenue (among others, undoubtedly) to remedy. Its purpose is to highlight the role of parliaments in overcoming the challenges ACAs often face. It provides an insight into parliaments' role in contributing to combatting corruption by exercising their legislative and oversight role in support of the effectiveness of ACA. To ensure that parliament's relationship with ACAs is constructive for the anti-corruption efforts, that relationship needs to be clearly defined in a measurable way.

The work of an ACA is by no means easy or straightforward, nor are there globally endorsed standards which ACAs must adhere to.⁷ In fact, measuring the effectiveness of independent oversight bodies is notoriously challenging, as their performance is very much dependent on the performance of other institutional actors. In the absence of recognised benchmarks, the performance and effectiveness of an ACA are often informally gauged by the courage, commitment and determination with which it discharges its functions, often in complex socio-political environments. However, while this paper touches upon some elements important for the assessment of the performance and effectiveness of an ACA, it is not focused on that, as this is dealt with elsewhere.⁸ This publication analyses parliament's relationship to an ACA, which can be seen as a precondition for an effective ACA.

While there is a growing body of literature on parliament's role in curbing corruption,⁹ and a growing research on ACAs,¹⁰ including in Asia,¹¹ surprisingly little has been written on the relations between these two actors. Recently we published a study focusing on parliament's relationship to anti-corruption agencies in Europe, with case studies of Lithuania, Ukraine and Serbia.¹²

With this publication, we aim to explore this institutional nexus in the Asian context and further test the assessment framework we developed, by concentrating on three Asian countries - Indonesia, Pakistan and the Maldives.

We chose Indonesia, Pakistan and the Maldives, because they all have the same type of ACA, that is, comprehensive multi-purpose ACAs which have been operating for a number of years. Namely, the National Accountability Bureau (NAB) of Pakistan was established in 1999, the Indonesian Commission for the Eradication of Corruption (KPK) in 2002, while the Anti-Corruption Commission of the Maldives was founded in 2008. Further, all three countries rank similarly on major international surveys, such as Transparency International's Corruption Perception Index, and all have experienced similar challenges in their efforts to curb corruption.

7. There are some guidelines, such as Jakarta Statement on Principles for Anti-Corruption Agencies.

8. For more on how to evaluate anti-corruption agencies, see: Jesper Johnsen, Hannes Hechler, Luís De Sousa and Harald Mathisen, *How to Monitor and Evaluate Anti-Corruption Agencies: Guidelines for Agencies, Donors, and Evaluators*, Chr. Michelsen Institute, 2011; Patrick Meagher, *Anti-corruption Agencies: Rhetoric Versus Reality*, *Journal of Policy Reform*, 1/8, 2005, 69-103.

9. See for instance: Rick Stapenhurst et al (eds.), *Anti-Corruption Evidence: The Role of Parliaments in Curbing Corruption*, Springer, 2020; Rick Stapenhurst, Niall Johnston and Riccardo Pelizzo, *The Role of Parliament in Curbing Corruption*, World Bank Institute, 2006.

10. See: Sergio Marco Gemperle, *Comparing anti-corruption agencies: a new cross-national index*, *International Review of Public Administration*, 3/23, 2018, 156-175.

11. Transparency International, *Strengthening Anti-Corruption Agencies in Asia Pacific: Regional Synthesis Report*, 2017; Jon S.T. Quah, *Combating Asian Corruption: Enhancing the Effectiveness of Anti-Corruption Agencies*, *Maryland Series in Contemporary Asian Studies*, 2, 2017.

12. Franklin de Vrieze and Luka Glušac, *Parliament's relationship to anti-corruption agencies: Evidence from Lithuania, Ukraine and Serbia*, WFD, 2020, <https://www.wfd.org/2020/07/10/report-parliaments-relationship-to-anti-corruption-agencies-evidence-from-lithuania-ukraine-and-serbia/>.

Given that ACAs must be independent, particularly of the government of the day, it is the parliament's responsibility to provide them with strong mandate, guarantees of independence, security of tenure, but also to hold them accountable for their activities.

We concentrate on the parliament's relationship to independent anti-corruption agencies as opposed to different government (executive) bodies with anti-corruption functions. To that end, our questions are: (1) In what way does a solid framework for independence and accountability enable ACAs to be an effective institution capable of tackling corruption within the scope of their mandate? (2) What current approaches of parliament's interaction with ACAs are reflected by the case studies, and what are the options for stronger parliamentary engagement in support of ACAs?

This publication may be useful to researchers and parliamentary assistance programmes to: (1) review parliament's relationship with the anti-corruption agencies; (2) identify the opportunities for policy advice and technical support to parliament; and (3) to support the establishment of effective and independent ACA frameworks. As with other similar assessment exercises, it also serves to assist in the establishment of baseline and key benchmarks, taking into account the specific national context.

2. The assessment framework

Our assessment framework¹³ is built around the central argument that it is parliament's responsibility to define and secure both normative and financial preconditions for an ACA's work, but also to make sure that ACAs' decisions and the key concerns they raise are properly followed up. Thus, we concentrate on the aspects of their relationship that can show whether the parliament performs those responsibilities in a proper manner. In other words, we aim to provide for the assessment framework that would assess the necessary level of independence granted to ACAs, as well as the accountability demanded from ACAs.

Our assessment framework is based on a recent WFD-published study on the dimensions and indicators of the independence and accountability of independent agencies,¹⁴ as well as on existing literature exploring the relationship of parliaments with other types of independent agencies, such as ombudsmen.¹⁵ It is a practice-oriented set, rooted in international and comparative standards, such as Jakarta Statement on Principles for Anti-Corruption Agencies.¹⁶

In this comparative study, we concentrate on the issues that can show whether the parliament performs its responsibilities with regard to the functioning of the ACA in a proper manner, by assessing parliament's relationship to ACAs through five criteria:

- 1) parliament's role in establishing the legal framework and mandate of the ACA;
- 2) parliament's role in the selection and appointment of the ACA leadership;
- 3) parliament's role regarding resources allocated to the ACA;
- 4) parliament's consideration of and follow-up to annual and other reports of the ACA;
- 5) parliament's cooperation with the ACA.

Under the first criterion, we consider that an ACA has to be established primarily by parliament-approved legislation that guarantees its independence, a clear and strong mandate, the strength of institutional objectives, and a clear regulation of its relations with other state and public authorities.

13. De Vrieze, Franklin and Glusac, Luka (2020), [Combating corruption capably. Assessment framework on parliament's interaction with anti-corruption agencies](#), Westminster Foundation for Democracy.

14. De Vrieze, Franklin (2019), *Independent Oversight Institutions and Regulatory Agencies and their Relationship to Parliament: Outline of Assessment Framework*, WFD, https://www.wfd.org/wp-content/uploads/2019/02/WEB_INDEPENDENT-OVERSIGHT-INS.pdf.

15. Luka Glušac, Assessing the Relationship between Parliament and Ombudsman: Evidence from Serbia (2007-2016), *The International Journal of Human Rights*, 4/23, 2019, 531-554, <https://doi.org/10.1080/13642987.2018.1513400>.

16. Jakarta Statement on Principles for Anti-Corruption Agencies, 26-27 November 2012, https://www.unodc.org/documents/corruption/WG-Prevention/Art_6_Preventive_anti-corruption_bodies/JAKARTA_STATEMENT_en.pdf.

As in any organisation, leadership plays a crucial role in the success of an ACA. Leaders must not only assume the traditional roles of managers and public spokespersons for their institutions and develop constructive and professional relationships with the institutions over which they exercise oversight, but also maintain the confidence of citizens that their rights and interests are being protected. Therefore, the head of the ACA needs to be selected according to procedures which are strengthening - to the highest possible extent - the authority, impartiality, independence and legitimacy of the ACA. Hence, in the second criterion, we include: the meritocratic and timely selection of the head of the institution and board members; parliament's role in the nomination, confirmation or appointment process of the head of agency or board members; fixed terms in office and clear provisions on the possibility for renewal; and clear and well-regulated grounds for removal from office.¹⁷

The third criterion analyses the role of parliament in allocating resources for an ACA's operations that are sufficient for it to exercise its functions, as well its role in making sure that resources are used properly.

Under the fourth criterion, we cover reporting related issues, which are an important part of the accountability of the ACA towards the parliament, but they also serve to inform the parliament and the general public about the ACA's work and key developments in anti-corruption efforts.

These four criteria are the most substantive and are well recognised in academic literature as key features of the relationship between parliaments and independent oversight institutions. The parliament must meet these four criteria to fulfil its role as the protector of the independence of the ACA and the holder of its accountability. In other words, if the parliament fails to develop predictable, consistent, and independence-supporting conduct towards the ACA, it hampers the ACA from exercising its mandate.¹⁸

In addition, we include the fifth criterion to assess the parliament's cooperation with the ACAs on policy and awareness-raising issues. It is an additional criterion, because it remains almost obsolete in a situation where the four essential criteria are not fulfilled.

These five criteria (instruments) together put in place a comprehensive framework to understand the relationship between parliaments and ACAs, both *de jure* and *de facto*.

17. For more on appointment and removal procedures, see: Sofie Arjon Schütte, *The Fish's Head: Appointment and Removal Procedures for Anti-Corruption Agency Leadership*, Chr. Michelsen Institute, 2015.

18. Compare: Luka Glušac, *Assessing the Relationship between Parliament and Ombudsman: Evidence from Serbia (2007-2016)*, *The International Journal of Human Rights*, 23;4, 2019, 538.

3. Types of anti-corruption agencies

While there are different types of categorisations of ACAs,¹⁹ for the purpose of this paper we adopt differentiation of ACAs into three groups based upon their mandate, as proposed by the Organization for Economic Co-operation and Development (OECD): 1) multi-purpose agencies (with law enforcement powers); 2) law enforcement-type institutions; and 3) prevention, policy, and coordination institutions.²⁰

Multi-purpose agencies are combining law enforcement powers, preventive functions and often also functions of policy advice to the government or the president. Multi-purpose agencies are considered the most effective model for countries affected by corruption that is spread and entrenched in the public administration as well as in the judiciary and law enforcement institutions. It requires establishing a new, independent multi-task agency instead of co-opting departments from existing institutions.²¹

ACAs as law enforcement-type institutions are specialised agencies with prosecutorial authority in specific cases. Sometimes they may be specialised units for investigation and/or prosecution of corruption cases. The interaction with parliament regarding this type of ACA is very limited.

The third type of ACA is the prevention, policy, and coordination institution. This category of agency is much diversified. One can distinguish between two sub-categories. Firstly, there are the agencies whose work focuses on defining strategic objectives, priorities and anti-corruption measures and on the coordination of the governmental action against corruption. Secondly, there are agencies that in addition to the general tasks of corruption prevention are also responsible for some operational activities related to monitoring the application of public service regulations.

This study is part of the WFD research project on parliament's interaction with anti-corruption agencies. See two earlier publications:

- De Vrieze Franklin and Glušac Luka, [Parliament's relationship to anti-corruption agencies. Evidence from Lithuania, Ukraine and Serbia](#), July 2020, WFD, 45pp.
- De Vrieze Franklin and Glušac Luka, [Combatting corruption capably. Assessment framework on parliament's interaction with anti-corruption agencies](#), November 2020, WFD, 40pp.

19. See for instance: John R. Heilbrunn, *Anti-Corruption Commissions: Panacea or Real Medicine to Fight Corruption*, World Bank Institute, 2004; Jon S.T. Quah, *Anti-Corruption Agencies in Four Asian Countries: A Comparative Analysis*, *International Public Management Review*, 2/8, 2007, 73-96.

20. Organisation for Economic Co-operation and Development, *Specialized Anti-Corruption Institutions: Review of Models*, *OECD Anti-Corruption Network for Eastern Europe and Central Asia*, 2008, 13.

21. Dan Dionisie, Francesco Checchi, *Corruption and Anti-Corruption Agencies in Eastern Europe and the CIS: a Practitioner's Experience*, <http://www.arabacinet.org/files/activities/Pres-Session6-Checchi-30072008-e.pdf>.

4. Case study: Indonesia

4.1 Background

While the fight against corruption in Indonesia gained momentum after the fall of the Suharto (Soeharto) regime, initiatives to respond to the increasingly apparent corruption started as early as the 1960s with the issuance of Presidential Decree (*Keppres*) 28/1967 on the Formation of Corruption Eradication Team. The Indonesian Parliament approved the anti-corruption initiative four years later, by passing Law Number 3/1971 on The Eradication of Criminal Actions of Corruption.

Regardless of the official initiatives, corruption was widespread under Suharto's regime in the 1970s, triggering university students to go to the streets and organise demonstrations to protest the unequal distribution of economic growth and corrupt government.²² Students had been the key anti-corruption activists, organising demonstrations and repeatedly voicing concerns about the flourishing of corruption in government agencies.²³

In the early 1980s, students were joined by a group of retired generals and politicians who signed a petition criticising President Suharto for protecting his authoritarian government by labelling his critics as anti-Pancasila (the state ideology), and drawing attention to the spread of corruption within the public sector and the role of Suharto's family in this.²⁴ The group, which became known as the 'Petition of Fifty' (*Petisi 50*), persistently criticised corruption in the government, thus becoming a pioneer of the Suharto era anti-corruption movement. As noted by Aspinall, this group was swiftly marginalised, because at that time the authoritarian regime was highly successful in either destroying or co-opting any group that threatened its grip on power, including those that wanted merely to maintain social control over the government and minimise public sector mismanagement and corruption, without necessarily having any desire to change the leadership.²⁵

The 1990s brought more organised social movements against the endemic corruption. Professor Amien Rais introduced the famous *reformasi* (reform) slogan: 'abolish KKN' (*korupsi, kolusi, nepotisme* / corruption, collusion, nepotism).²⁶ The impetus to institutionalise the fight against corruption was provided by the economic calamity that befell Indonesia during the 1997 Asian Financial Crisis, which subsequently led to the downfall of President Suharto.²⁷ University students, once again, were key actors of the reform movement, organising huge demonstrations which literally occupied the Parliament complex to demand Suharto's resignation. The demonstrations were later joined by the reform minded politicians, activists, and academia, including Amin Rais.

22. Sunyoto Usman, *Arah Gerakan Mahasiswa: Gerakan Politik atau Moral? (The Course of University Student Movement: Political or Moral Movements?)*, The Journal of Political and Social Science, Gadjah Mada University, 1999, 151-155.

23. Edward Aspinall, *Opposing Suharto: Compromise, Resistance, and Regime Change in Indonesia*, Stanford University Press, 2005, 118.

24. David Jenkins, *Suharto and His Generals: Indonesian Military Politics 1975-1983*, Cornell Modern Indonesia Project, Monograph Series, Publication No. 64, Cornell University, 1984, 134-173; Damien Kingsbury, *The Politics of Indonesia*, 3rd ed., Oxford University Press, 2005, 74-75.

25. Edward Aspinall, *Opposing Suharto: Compromise, Resistance, and Regime Change in Indonesia*, Stanford University Press, 2005, 24-25.

26. Budi Setiyono and Ross H. McLeod, Civil Society Organisations' Contribution to the Anti-Corruption Movement in Indonesia, *Bulletin of Indonesian Economic Studies*, 3/46, 2010, 350.

27. Emil P. Bolongaita, *An exception to the rule? - Why Indonesia's Anti-Corruption Commission succeeds where others don't - a comparison with the Philippines' Ombudsman*, U4 Issue, Chr. Michelsen Institute, 2010, 8.

After the Suharto regime collapsed in May 1998, anti-corruption activists demanded investigation of the sources of Suharto's wealth and that of his family and business associates. Student demonstrations continued taking place in various locations, focusing on specific cases of corruption by government officials.²⁸ Although many of the student actions ended without any legal steps being taken against those under suspicion, they had received increasing support from wider society.

Responding to the public pressure, in November 1998, the People Consultative Assembly (MPR), which back then was still the highest representative council, enacted a decree Number XI/1998 on the State Apparatus shall be Clean and Free from Corruption, Collusion and Nepotism. President Habibie replaced Suharto during the transition and the Indonesian House of Representatives (DPR) translated the decree into Law Number 28/1998 which also mandated the establishment of the Permanent Audit Commission within a maximum of one year after the passage of that Law. In July 1999, DPR also passed Law Number 30/1999 on the Eradication of Criminal Actions of Corruption. By the end of 1999, numerous professional associations, labour organisations, women's organisations, lawyers and academics began to participate in the movement, not only providing moral and logistical support for student activists, but also assisting them with more substantive ideas and analysis.²⁹

The government responded to these concerns by establishing the Joint Team for Corruption Eradication (*Tim Gabungan Pemberantasan Tindak Pidana Korupsi* - TGPTPK) in May 2000, under President Abdurrahman Wahid. The creation of the TGPTPK had been mandated by Law 31/1999 on the Eradication of Corruption, which was formulated during the Habibie administration.³⁰ Civil society organisations (CSOs) actively participated in the team, nominating eight out of 25 members. However, the TGPTPK was dissolved by a Supreme Court Ruling on 8 August 2001, following a judicial review filed by a former Supreme Court judge.³¹ The Supreme Court ruling to dissolve TGPTPK was a fightback by some Supreme Court judges who were allegedly implicated by TGPTPK's investigation of a corruption case at the state-owned electricity company³².

Despite the fast demise of the TGPTPK, anti-corruption activists continued to insist on the establishment of a permanent anti-corruption institution.³³ CSOs conducted awareness-raising campaigns and commissioned various comparative analyses and surveys searching for the best international model to be followed. Among those available at the time, the Hong Kong Independent Commission against Corruption (ICAC) seemed to be more compelling than others because of its comprehensive scope and powers. As reported by Bolongaita, among the chief consultants was the former Commissioner of the ICAC itself, Bertrand de Speville. With funding from the Asian Development Bank, de Speville worked with the Ministry of Justice to help draft the law on the future anti-corruption agency.³⁴ CSOs were pressuring the government to introduce the independent anti-corruption body, including through an alliance called Advocacy for an Anti-Corruption Commission (*Advokasi untuk Komisi Anti-Korupsi, AKAK*), formed in late 2001.

28. Budi Setiyono and Ross H. McLeod, Civil Society Organisations' Contribution to the Anti-Corruption Movement in Indonesia, *Bulletin of Indonesian Economic Studies*, 3/46, 2010, 350.

29. Ibid.

30. This law later amended by Law No. 20 of 2001 (Anti-Corruption Law).

31. Budi Setiyono and Ross H. McLeod, Civil Society Organisations' Contribution to the Anti-Corruption Movement in Indonesia, *Bulletin of Indonesian Economic Studies*, 3/46, 2010, 357.

32. Perang MA melawan TGPTPK (The Battle of the Supreme Court VS TGPTPK). Hukum Online. Accessed on 1 October 2020 via <https://www.hukumonline.com/berita/baca/hol2319/perang-ma-melawan-tgptpk>

33. Ibid.

34. Emil P. Bolongaita, *An exception to the rule? - Why Indonesia's Anti-Corruption Commission succeeds where others don't* - a comparison with the Philippines' Ombudsman, U4 Issue, Chr. Michelsen Institute, 2010, 8.

The AKAK carried out a national survey of public perceptions of corruption and forwarded the results to the Indonesian House of Representatives (*Dewan Perwakilan Rakyat* - DPR), indicating that 94 per cent of respondents believed the government should establish a new institution to combat corruption. Further, 69 per cent felt that the institution should be given full authority to investigate, examine and prosecute corruption cases.³⁵

The reform era was also marked by the entry of reformists, including activists and academics, into national politics with the establishing of political parties and their participation in the general elections of January 1999. The 1999 elections also brought the agenda of the reformists, including anti-corruption, to parliament.³⁶ These reform-minded parliamentarians, with the strong support of civil society and the international community, enabled DPR and the government to eventually agree and pass Law 20/2001 on Criminal Actions of Corruption and Law 30/2002 on the Corruption Eradication Commission, the legal basis for the establishment of the Corruption Eradication Commission (KPK).³⁷

For the KPK Law, a series of meetings was held with members of the DPR and officials of the Supreme Court, the Attorney General's Office, the police, the Ministry of Justice and the State Secretariat, to discuss the proposed new agency's scope of authority and funding.³⁸ The drafting of the law was entrusted to the Ministry of Justice steering committee led by Romli Atmasesmita, Director General of Law and Legislation in the Ministry, with technical support from the Asian Development Bank.

After a wide consultation process, the committee decided to adopt the Hong Kong three-pronged approach to combatting corruption, encompassing investigation, prevention and education.³⁹ However, it opted to adjust it, by changing the organisational structure, adding new accountability measures and replacing its leadership with a five-member commission. The key difference introduced is the power of the new agency not only to investigate, but also to prosecute cases. Australian political scientist Kevin Evans recalled that the combination of investigative and prosecutorial powers worried some foreign experts. 'This was not how it was done in their countries,' he said.⁴⁰

The law establishing KPK was adopted in December 2002.⁴¹ The need for such an institution was clearly stipulated in the preamble of the law, citing that in 'the course of realizing a fair, bountiful, and prosperous community.., the eradication of criminal acts of corruption has not been optimally implemented'. It further underlined that 'government agencies that have handled corruption cases have not been functioning effectively and efficiently in eradicating corruption'.⁴² Besides the KPK law, throughout the years, Indonesia adopted a number of additional laws with the aim to eradicate corruption, including the law ratifying the United Nations Convention Against Corruption (UNCAC) in 2006.⁴³

35. Budi Setiyono and Ross H. McLeod, Civil Society Organisations' Contribution to the Anti-Corruption Movement in Indonesia, *Bulletin of Indonesian Economic Studies*, 3/46, 2010, 357-8.

36. Nur Syam, H., *Jejak Reformasi dalam Lintasan Sosio-Historis (The Footprint of Reform in historical timeline)*, unpublished paper presented to the Regional Representatives Council (the Upper House, DPD-RI), 2010. Accessed on 1 October 2020 via <https://core.ac.uk/download/pdf/34212134.pdf>.

37. Muchsin. Reformasi Undang-Undang Tindak Pidana Korupsi, Sebuah Tinjauan Yuridis (Reforming the Laws on Criminal Actions of Corruption, a juridical review). *Jurnal Hukum dan Pembangunan*. The University of Indonesia, 1999.

38. *Ibid*, 357-8.

39. Sofie Arjon Schütte, Against the Odds: Anti-Corruption Reform in Indonesia, *Public Administration and Development*, 32, 2012, 42.

40. Gabriel Kuris, *Inviting a Tiger Into Your Home: Indonesia Creates an Anti-Corruption Commission with Teeth: 2002 - 2007*, Innovations for Successful Societies, Princeton University, 2012, 4-5.

41. Budi Setiyono and Ross H. McLeod, Civil Society Organisations' Contribution to the Anti-Corruption Movement in Indonesia, *Bulletin of Indonesian Economic Studies*, 3/46, 2010, 357-8.

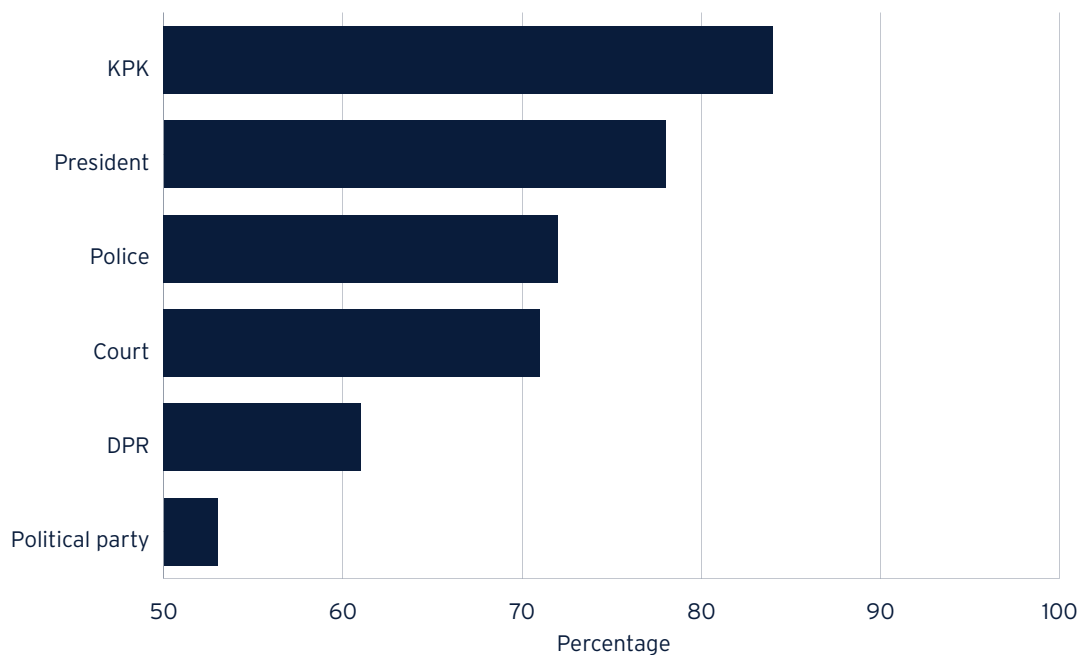
42. The Preamble, the Law 30/2002 on the Commission to Eradicate Criminal Acts of Corruption (further: KPK Law).

43. For instance, Law No.11 of 1980 concerning Anti Bribery; Capital Market Law No. 8 of 1995; Law No. 28 of 1999 on State Administrators Who Are Free from Corruption, Collusion, and Nepotism; Law No. 28 of 1999 concerning the Implementation of a Clean and Free State

These findings demonstrate that the Indonesian national legislature was committed to contribute to combatting corruption. This was significant since the parliament was often perceived as part of the problem. According to research, parliament itself was highly monetised, while chairs of parliamentary committees were prized positions, where ministers and senior bureaucrats were negotiating the passage of legislation or the handling of hearings, with allegations that payments were being distributed to all committee members in proportion to their power and influence.⁴⁴

When an institution is perceived as corrupt, it affects public trust and confidence in it.⁴⁵ Indeed, trust in parliament is very low compared to the other branches of power in Indonesia (Figure 1).

Figure 1 - The trust in public institutions in Indonesia (2019)⁴⁶



Parallel with parliamentary processes, the executive branch had also conducted various anti-corruption activities. For instance, the issuance of Presidential Instruction (*Inpres*) 5/2004 for Acceleration in Corruption Eradication encouraged the emergence of various initiatives within government circles, both at the central level and regional level. Various action plans to implement this *Inpres* followed,⁴⁷ before the adoption of the National Strategy of Corruption Prevention and Eradication, with long-term (2012-2025) and medium-term objectives (2012-2014) in 2012.⁴⁸

of Community Service; Law 13/2006 on the Protection of Witness and Victim; Law No. 7 of 2006 concerning Ratification of the Anti-Corruption United Nations Convention; Law No.1 of 2006 concerning Reciprocal Assistance in Criminal Issues; Law No. 8 of 2010 on the Prevention and Eradication of Money Laundering (AML Law).

44. Howard Dick and Jeremy Mulholland, *The State as Marketplace: Slush Funds and Intra-Elite Rivalry*, in Edward Aspinall and Gerry van Klinken (eds.) *The State and Illegality in Indonesia*, Brill, 2011, 65-85.

45. Ridwan Arifin, Rodiyah and Fitria Puspita, *A Comparative Analysis of Indonesia's KPK and Hong Kong ICAC in Eradicating Corruption*, *Jambe Law Journal*, 2/2, 2019, 168.

46. Retrieved from: <https://databoks.katadata.co.id/datapublish/2019/08/30/survei-lsi-kpk-dan-presiden-jadi-lembaga-yang-paling-dipercaya-publik>.

47. For instance, The National Action Plan for Corruption Eradication 2004-2009; *Inpres* 9/2011 (on the Action Plan for Corruption Prevention and Eradication, 2011) on 12 May 2011 and *Inpres* 17/2011 (on the National Action Plan for Corruption Prevention and Eradication, 2012) issued on 19 December 2011. More recently, in 2018, two new anti-corruption regulations were promulgated: President Regulation No. 54 of 2018 concerning National Strategy for Corruption Prevention ('President Regulation 54/2018') and Government Regulation No. 43 of 2018 concerning Procedures for Implementing and Awarding Community Participation in the Prevention and Eradication of Corruption Crimes ('Government Regulation 43/2018').

48. Unofficial translation of the Strategy available at: https://www.unodc.org/documents/indonesia/publication/2012/Attachment_to

Indonesia's efforts to eradicate corruption were not only resulting in preparation of legislative and strategic documents, but also in changing its institutional landscape. In fact, besides the KPK, by 2009 five other institutions - the mandates of which to some extent relate to anti-corruption objectives - had been established, including the Centre for Financial Transactions Reporting and Analysis (PPATK), the National Ombudsman (ORI), the Judicial Commission (KY), the Attorney-General's Commission, and the Police Commission. Although the KPK has remained the main anti-corruption body, the anti-corruption strategy recognised 'a lack of synergy, among the legislative, judicative, and executive institutions; at both the central as well as regional levels'.⁴⁹

Despite this lack of synergy, the combination of legislative and institutional changes has indeed brought steady but tangible results, with some periods of stagnation. For instance, after a few years of slow, yet repeated progress on Transparency International's Corruption Perceptions Index (CPI) (see table 1), in 2017, a stagnation was observed. In the same year, the Global Corruption Barometer reported that 65 per cent of Indonesian respondents thought that corruption had increased in the previous 12 months. Almost a third (32 per cent) of respondents admitted to having paid a bribe in the 12 months prior to the survey to get access to basic services.⁵⁰ Since 2017, according to the CPI, Indonesia has been scoring a little better, improving its position on the global list.

Table 1 - Indonesia's score in Transparency International's Corruption Perceptions Index (2012-2019)⁵¹

Year	CPI Score	Rank
2019	40/100	85/180
2018	38/100	89/180
2017	37/100	96/180
2016	37/100	90/176
2015	36/100	88/168
2014	34/100	107/175
2013	32/100	114/175
2012	32/100	118/174

The scoresheet indicates that the fight against corruption is producing some results. The corruption perception by citizens is still high, though that applies to most state institutions, including the parliament.

Further on, this report will present and analyse the interaction of the Indonesian parliament with the KPK, as main anti-corruption agency in the country.

[Perpres 55-2012 National Strategy Corruption Prevention and Eradication translation by UNODC.pdf](#).

49. Foreword, National Strategy of Corruption Prevention and Eradication, with Long-term (2012-2025) and Medium-term Objectives (2012-2014).

50. Transparency International, People and Corruption: Asia Pacific, 2017, https://www.transparency.org/whatwedo/publication/people_and_corruption_asia_pacific_global_corruption_barometer.

51. Data retrieved from: <https://tradingeconomics.com/indonesia/corruption-rank>.

4.2 Parliament's role



Aerial view of the Indonesian parliament building

Bimo Pradmadji / Shutterstock.com

Determining the legal framework and mandate

The KPK was established in 2002 as a critical step in the fight against corruption, with high hopes. The parliament provided the KPK with a solid legal base for its work, particularly for the enforcement function. As stated in the explanations to the law, 'we (the state) must enhance law enforcement methods by forming a special agency that will be allowed a wide authority that is independent as well as free from the influence of notorious powers in the effort to combat graft in a coordinated effort that is implemented optimally, intensively, effectively, professionally, and continuously'.⁵²

Article 3 of the KPK law indeed defined the KPK as 'a State agency that will perform its duties and authority independently, free from any and all influence'. The emphasis on independence was particularly significant, given that the very notion of independence of state bodies was a rather unexplored field in Indonesia at that time. This emphasis demonstrated a real determination to create the agency that would operate under no external influence, which is of paramount importance in the context of high levels of political corruption.

In September 2019, the parliament adopted amendments to the KPK law⁵³ in a surprisingly swift manner, as formal deliberation lasted only 12 days. The legislative process was unusually expedited so that it could be completed before the end of the DPR's term on 30 September 2019.⁵⁴ This expedited procedure prevented the public from participating in the legislative process, as foreseen by the Law on Law-making.⁵⁵

52. Further Explanations, the KPK law.

53. Law No. 19 of 2019.

54. Jefferson Ng, *Indonesia's KPK: Clipping Its Anti-Corruption Wings?*, RSIS Commentary No. 187, September 2019, <https://www.rsis.edu.sg/rsis-publication/rsis/jokowi-after-the-first-term-indonesias-kpk-clipping-its-anti-corruption-wings/>

55. Article 96(1) of Law No. 12/2011 on Law-making.

The adoption of the amendments to the KPK law ignited massive public protests led by student groups in Jakarta, Yogyakarta, Makassar, and other major cities. The unrest was exacerbated by the DPR's plan to also swiftly pass an amendment to the Criminal Code (KUHP).⁵⁶ Troops were deployed to help the police, and tear gas was fired to disperse students surrounding the parliament building.⁵⁷

Such students' reaction was caused not only by hasty legislative procedure, but much more because of the substance of the changes. With the amendments, the KPK was transformed into 'a public institution within the executive branch of the government, independent and free from any influence in carrying out its duties and authority'.⁵⁸ This change was based on a 2017 decision of the Constitutional Court,⁵⁹ which stipulated that the KPK was formed because the Police and the Prosecutor's Office experienced public distrust in eradicating corruption, so it can be said that the KPK is part of the executive because it carries out the authority of preliminary investigation, investigation and prosecution, which are also the roles of the police and prosecutors. The Court further argued the KPK is a supporting institution independent from the executive department, and thus is 'executive'.⁶⁰

The Court's decision was made by a slim majority of five votes against four. Three judges expressed a dissenting opinion, stating that the KPK is an independent institution that is not within the three branches of state power in *trias politica*. While the majority of judges opted for a view that the KPK is part of the executive branch, they reaffirmed its independence, by claiming that 'its position in being in the executive domain does not make the KPK not independent and free from any influence'.⁶¹

The KPK passed the five question test of independence used by the Court: (1) its independence status is expressly stated in the legal basis for its establishment, whether in the constitution or a law; (2) the appointment of its board of leaders is performed by more than one institution; (3) the termination of its leaders may only be made on the grounds set forth in the law that is the basis for its establishment; (4) the President is limited from freely using his discretionary decisions to terminate its leaders; and (5) leadership is collective in nature and the leaders' terms do not end simultaneously, but consecutively.

The 2019 amendments did not change the KPK's purpose, which remains to be defined as 'improving the effectiveness and efficiency of efforts to eradicate criminal acts of corruption'.⁶² To achieve that, the KPK was provided with a comprehensive set of functions, which were only slightly amended in 2019 to read: (1) take actions to prevent criminal acts of corruption; (2) coordinate with institutions responsible to eradicate criminal acts of corruption and public service delivery; (3) monitor the administration of the government; (4) supervise institutions responsible for eradicating criminal acts of corruption; (5) conduct initial investigation, investigation, and prosecution against criminal acts of corruption; and (6) implement legitimate, final judge ruling and court order.⁶³ Such a plethora of functions exceeds even the case of the ICAC in Hong Kong, making the KPK a prime example of multi-purpose anti-corruption agency.

56. <https://jakartaglobe.id/vision/students-riot-outside-national-legislature-during-protest-of-criminal-code-kpk-law-revisions>

57. Jefferson Ng, *Indonesia's KPK: Clipping Its Anti-Corruption Wings?*, RSIS Commentary No. 187, September 2019, <https://www.rsis.edu.sg/rsis-publication/rsis/jokowi-after-the-first-term-indonesias-kpk-clipping-its-anti-corruption-wings/>

58. Article 3 of the 2019 Amendments to the KPK law.

59. Constitutional Court Decision No. 36/PUU-XV/2017.

60. Constitutional Court Decision No. 36/PUU-XV/2017, p.109.

61. Constitutional Court Decision No. 36/PUU-XV/2017, p.109.

62. Article 4 of the KPK law.

63. Article 6 of the 2019 Amendments to the KPK law.

To fulfil all of these functions, the law lists activities that KPK is authorised to perform.⁶⁴ Most notably, the KPK may conduct investigations, indictments, and prosecutions against corruption cases if those cases involve law enforcement officers, government executives, or other parties connected to corrupt acts committed by law enforcement officers or government executives; and/or involve a loss to the state of at least Rp 1,000,000,000 (1 billion Rupiah; approximately £52,000).⁶⁵ The KPK may also take over an indictment or a prosecution process as part of cases handled by the Police or the Prosecutor's Office.⁶⁶

To successfully perform the tasks of investigation, indictment, and prosecution tasks, the KPK is authorised to use a wide range of investigative and quasi-judicial actions and measures, including: to tap into communication lines and record conversations; to order the relevant authority to impose an international travel ban on an individual; to request information from a bank or other financial institutions on the financial situation of a suspect or a convict under investigation; to order the bank or other financial institutions to block access to accounts suspected to contain corrupted funds owned by a suspect, convict, or other related parties; order the leadership of the suspect's institution to suspend the suspect from their job; request wealth disclosure report and taxation data of the suspect or convict from the relevant institutions; suspend all financial transactions, trade transactions, and other transactions; request assistance from Interpol Indonesia or other foreign law enforcement agencies to locate, arrest, and confiscate evidence abroad; and request assistance from the police or other agencies relating to arrest, detention, search, and confiscation.⁶⁷

Besides the general function of coordination and supervision in anti-corruption efforts, the KPK is authorised to coordinate and control investigations, indictments, and prosecutions against corruption committed by individuals who are under the jurisdiction of military and public justice.⁶⁸

The parliament devoted considerable attention to defining a list of activities necessary to perform the KPK prevention function: (1) collect and review public officials' wealth disclosure reports; (2) receive reports on, and set the status of, remuneration; (3) conduct anti-corruption educational programmes at every level of school; (4) plan and implement awareness-raising programmes on the eradication of criminal acts of corruption; (5) conduct public anti-corruption campaigns; and (6) participate in bilateral or multilateral cooperation on the eradication of criminal acts of corruption.

The KPK law does not only establish and regulate the work of the Commission, but also of the specialised prosecutor and anti-corruption court. The leading role of the KPK in investigation and prosecution of anti-corruption cases is visible from the fact that the KPK appoints and dismisses a general prosecutor of the KPK.⁶⁹ The specialised Court of Corruption (*Pengadilan Tindak Pidana Korupsi*, commonly known as *Pengadilan Tipikor*, or *Tipikor* court) is also formed by this law, with the mandate to decide on corruption cases proposed by the KPK.⁷⁰ *Tipikor* court was created only to hear cases prosecuted by the KPK, while the public prosecution service also brought corruption cases, but these went to trial in the general courts.

The law defined a very strict deadline for the Court to assess the cases brought to it by the KPK. A court is obliged to appraise and decide on the case within ninety working days since its receipt. The Court works in teams composed of five judges, including two District Court judges (of the relevant district) and three ad hoc judges.⁷¹

64. Articles 7-14 of the KPK law.

65. Article 11 of the Amendments to the KPK law.

66. Article 10A of the 2019 Amendments to the KPK law.

67. Article 11A of the Amendments to the KPK law.

68. Article 42 of the KPK law.

69. Article 51(1) of the KPK law.

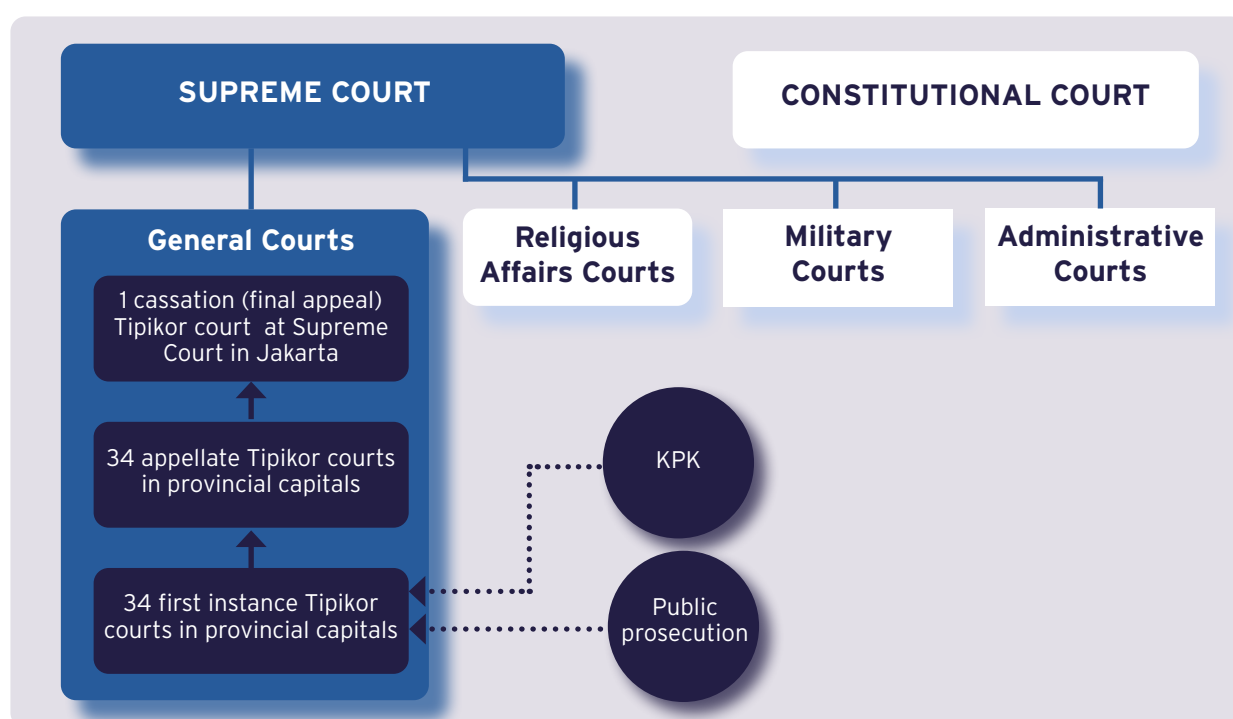
70. Article 53 of the KPK law.

71. Article 58 of the KPK law.

The law originally prescribed that the Court of Corruption is established at the District Court of Central Jakarta, with jurisdiction over the entire territory of Indonesia, while the formation of the Courts of Corruption in other parts of the country was supposed to be implemented in stages through Presidential Decrees.⁷² *Tipikor* Court started to operate in 2004. Until 2010, the *Tipikor* court of first instance was located at the Central Jakarta District Court, with appeals going to special *Tipikor* panels at the Jakarta High Court and ultimately the Supreme Court.

In 2006, this duality of court judication was found to be unconstitutional. The Constitutional Court allowed the *Tipikor* Court to continue operating, giving the Indonesian parliament three years to enact a new statute to remedy the constitutional defect.⁷³ In 2009, the parliament passed Law 46/2009 on the Anti-Corruption Court, expanding the mandate of the national anti-corruption court to hear all corruption cases, whether investigated by the KPK or the public prosecution service.⁷⁴ With that law, a new court organisation was created (Figure 2).

Figure 2 - Position of the *Tipikor* courts in the Indonesian judicial system⁷⁵



This law also stipulated that *Tipikor* courts shall be established in all district courts in Indonesia's 34 provincial capitals, not only in Jakarta, which was indeed done by 2011.⁷⁶ Subsequently, the time limits for corruption cases were amended to 120 days, and the workload of the *Tipikor* courts has increased with the expansion of their jurisdiction to all corruption cases, not only those prosecuted by the KPK.

Information about the conviction rate of KPK cases before *Tipikor* courts is not complete. The KPK's 2018 annual report uses the Law Enforcement Index, which increased from 62.27% in 2016 to 71.03% in 2017.⁷⁷

72. Article 54 of the KPK law.

73. Stewart Fenwick, Measuring up? Indonesia's Anti-Corruption Commission and the new corruption agenda, in Tim Lindsey (ed.), *Indonesia: Law and Society*, Federation Press, 2008.

74. Sofie Arjon Schütte. *Specialised Anti-Corruption Courts: Indonesia*, U4, 2016, <https://www.u4.no/publications/specialised-anti-corruption-courts-indonesia.pdf>

75. Retrieved from: Sofie Arjon Schütte, *Specialised anti-corruption courts: Indonesia*, U4 Brief, 2016, 2.

76. Simon Butt, Anti-corruption Reform in Indonesia: An Obituary?, *Bulletin of Indonesian Economic Studies*, 3/47, 2011, 389.

77. KPK, 2018 Annual Report, 20.

Selection and appointment of the leadership

The KPK is managed by five commissioners.⁷⁸ One of the commissioners is appointed as the chairperson of the KPK, while the others serve as vice chairpersons.

The law stipulates detailed requirements that a candidate has to fulfil to be eligible to be appointed as a KPK commissioner, namely: (1) has Indonesian citizenship; (2) devoted to the One God; (3) physically and mentally fit; (4) has an undergraduate degree in law, or other degrees of expertise as well as at least fifteen years of experience in areas of law, economics, finance, or banking; (5) is at least 50 years old and at most 65 years old during the year of selection;⁷⁹ (6) has never acted improperly; (7) is competent, honest, has high moral integrity, and is of good reputation; (8) is not a caretaker of a political party; (9) relinquishes all other offices while being a member of the KPK; (10) does not pursue his or her profession while being a member of the KPK; and (11) publicises his or her wealth according to the prevailing laws.⁸⁰

The explanatory introduction to the KPK law provides more insight on the composition of the Commission that the legislature had in mind when drafting the law. This part emphasises that the commissioners shall be composed of individuals from both government and societal backgrounds,⁸¹ to create a synergy enabling the Commission to perform its various functions.

The KPK commissioners are appointed by the parliament from a pool of candidates proposed by the President. The selection process is conducted by a special committee established by the law, consisting of government and private individuals, appointed by the government. When the competition is announced, interested individuals have 14 days to apply, after which the selection committee invites the public for feedback concerning the candidates. The feedback must be submitted to the committee within one month.

Based on the applications, a series of selection tests and open interviews, and considering the public's feedback, the selection committee proposes the list of candidates to the President. The law stipulates that the President has 14 days to convey twice the number of possible members to the Parliament; that is, 10 candidates. The parliament is then obliged to appoint five candidates as commissioners, within three months of receiving the President's list. The parliament also decides who among the appointed commissioners will serve as chairperson. According to the law, the list of appointed commissioners is then returned to the President for so-called legalisation, which has to be performed by the President within a deadline of 30 days.⁸² The law underlines that this entire selection and appointment procedure has to be carried out transparently.⁸³

Current KPK commissioners took the oath at an event in December 2019, and at the same time the inaugural members of the KPK Supervisory Board were presented to the public. Five current commissioners for the period 2019-2023⁸⁴ come from diverse backgrounds. The new chairperson is a high-ranking police officer and former KPK's deputy of enforcement (Firli Bahuri), while commissioners include a previous KPK commissioner (Alexander Marwata), a deputy chairman of the Witness and Victim Protection Agency - LPSK (Lili Pantauli Siregar), a former judge (Nawawi Pomolango), and a well-known legal scholar (Nurul Ghufron).⁸⁵

78. Article 21 of the KPK law.

79. The minimum age limit of 50 years was introduced by the 2019 amendments. Previously, the minimum age was 40.

80. Article 29 of the KPK law.

81. Further explanations, the KPK law.

82. Article 30 of the KPK law.

83. Article 31 of the KPK law.

84. Firli Bahuri (Chairperson), Alexander Marwata, Lili Pantauli Siregar, Nawawi Pomolango and Nurul Ghufron.

85. Damar Iradat and Christopher Harindra, *Chairman, Board of Supervisors of KPK Appointed Today*, 20 December 2019, <https://www.medcom.id/english/national/nN9wad5k-chairman-board-of-supervisors-of-kpk-appointed-today>.

These five candidates received the most votes at the DPR's Commission III Plenary Meeting, out of the list of 10 candidates the DPR received from the President. This list of 10 candidates were selected by a nine-member selection committee appointed by the President. Out of 367 enrolled candidates, 192 passed the administration stage before being shortened to 104, then 40, and finally 20 candidates who qualified for the profile assessment stage.⁸⁶ Out of those 20, the selection committee ultimately chose the list of 10 candidates presented to the President.⁸⁷

During this entire procedure, civil society organisations pressed strongly for proper vetting of all candidates. A coalition of CSOs, led by Indonesia Corruption Watch (ICW) and Gadjah Mada University's Anti-Corruption Research Center (PUKAT), drafted a petition to President Jokowi, signed by more than 70,000 people, requesting that candidates of poor quality and integrity should be rejected.⁸⁸ They insisted that each candidate's professional track record has to be well scrutinised to ensure that no-one with a problematic past reaches the next stage.

One of the key novelties of the 2019 amendments to the KPK law was the establishment of the Supervisory Board within the KPK, with following responsibilities: (1) to oversee the execution of KPK's duties and responsibilities; (2) to grant the permission to tap, search, and/or confiscate; (3) to draft and set forth the code of ethics for the KPK chairperson and employees; (4) to receive and follow up reports from the public on any alleged code of ethics violation by the KPK chairperson and employees; (6) to carry out a meeting to verify an alleged code of ethics violation by the KPK chairperson and employees; and (7) to conduct work evaluations for the KPK chairperson and employees regularly once a year.⁸⁹

The inauguration of the members of the KPK Supervisory Board was carried out simultaneously with the taking of the oath of the new KPK Commissioners in December 2019. Article 69A of the 2019 amendments provided that the inaugural chair and members of the Supervisory Board should be appointed directly by the President of the Republic of Indonesia.

President Joko 'Jokowi' Widodo appointed the Head and other four members of the Supervisory Board in December 2019. The screening of the potential candidates was carried out by the President's internal team led by Minister of State Secretary.⁹⁰ Ultimately, the President appointed members that seem to be reputable individuals with substantive experience and different professional backgrounds. The Chair of the Supervisory Board is former KPK deputy commissioner who served as interim chairperson between 2009 and 2010 (Tumpak Panggabean), while the other four members include the chairman of the Election Organization Ethics Council and former Constitutional Court judge (Harjono), two former Supreme Court justices (Albertina Ho and Artidjo Alkotsar), and a senior political researcher (Syamsudin Haris).

The 2019 Amendment of the KPK Law outlined that the Supervisory Board shall be appointed by the President from the list of candidates nominated by a selection committee and further detail of the selection procedure should be regulated through a government regulation. The 2019 amendment of KPK Law also authorises the President to directly appoint the KPK Supervisory Board for the first time without such a selection process. The President signed the government regulation on the selection procedure of the KPK Supervisory Board one month after the first supervisory board was inaugurated.⁹¹

86. Safrezi Fitra, *The New Face of the KPK Leaders in Jokowi's Hands*, *Katadot*, 1 September 2019, <https://en.katadata.co.id/in-depth/2019/09/01/the-new-face-of-the-kpk-leaders-in-jokowis-hands>.

87. *Ibid.*

88. *Ibid.*

89. Article 37B of the 2019 amendments to the KPK law.

90. 'Circulating Names of the KPK Supervisory Board', *Bizlaw*, 12 December 2019, <https://en.bizlaw.id/read/866/Circulating-names-of-the-KPK-Supervisory-Board-from-Former-Commissioners-to-Journalists>.

91. Government Regulation No. 4 of 2020 dated January 16, 2020 on the Procedures to Appoint the Head and Members of the Supervisory Board of KPK ('GR 4/2020').

The Regulation prescribed that the chairperson and members of the Supervisory Board should be appointed by the President, assisted by a selection panel. The selection panel consists of nine members appointed by the presidential decree, five of whom are from the central government and the remaining four are from the public. The selection panel opens a public competition and conducts vetting of the candidates. After testing the candidates, the panel delivers the list of best candidates to the President. The President then submits the list to the DPR for consultation. Upon consultation, the President has 14 working days to appoint the head and members of the Supervisory Board. This procedure enables an inclusive and transparent selection process, guaranteeing the best chances of appointing the best candidates available.

Both the members of the Supervisory Board and KPK commissioners are appointed for a term of four years and may be reappointed for one term.⁹² This provision is in line with international standards, given that countries usually opt to appoint heads of independent bodies either for one longer non-extendable mandate (6-7 years), or a shorter mandate (4-5 years) but with the possibility of one reappointment.

The KPK law also defines a definite list of reasons for leaving the office of commissioner: (1) death; (2) the end of term of office; (3) becomes convicted of a criminal act; (4) inability to perform for more than three consecutive months; (5) resignation; or (6) commits violation of the KPK law.⁹³ If a commissioner becomes a suspect of a criminal act, he or she shall be temporarily relinquished from office. The President decides on the dismissal of the KPK commissioner.

The 2019 amendments brought one addition to this article, stipulating that the commissioner who resigns from the position is prohibited from sitting in a public office for five years starting from the date of resignation.⁹⁴ This provision is unusual, as there is no clear rationale why someone who resigns from one office would be prohibited from holding another public office, especially for such considerable time. In addition, it does not consider the reasons a commissioner may have for resigning.

The commissioners are assisted by four deputies, each assigned with specific tasks, namely: prevention; legal actions; information and data; and internal monitoring and public complaints.⁹⁵ Each deputy oversees several thematic directorates.

Administratively, the KPK secretariat is headed by the Secretary General, who is appointed and dismissed by the President. However, the Secretary General is accountable to the KPK commissioners, who also further determine his or her tasks and functions.⁹⁶

According to the 2002 law, the KPK enjoyed a full organisational autonomy, meaning that it decided alone on its internal organisation and procedures. It also hired and dismissed employees without any external influence.⁹⁷ The employees of the KPK were not considered civil servants, which allowed KPK to make more competitive job offers and attract experienced staff including from the private sector. However, the 2019 amendments changed the legal status of KPK employees to civil servants and took away KPK's exclusive right to hire staff based on its own competitive procedures.

92. Article 34 of the KPK law.

93. Article 32 of the KPK law.

94. Article 32(3) of 2019 Amendments of the KPK law.

95. Article 26 of the KPK law.

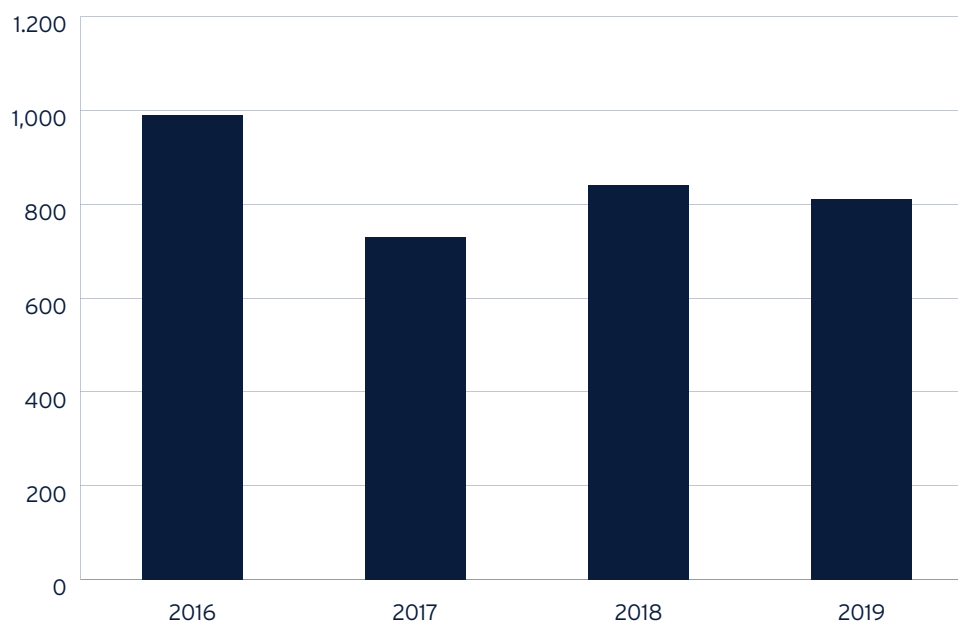
96. Article 27 of the KPK law.

97. Article 25 of the KPK law.

Budget allocation

The KPK law defines that funding for the operations of the KPK shall be provided by the State Budget for Income and Spending (APBN).⁹⁸ In the past few years, the KPK's annual budget has been changing from year to year (see Figure 3).

Figure 3 - The KPK annual budget 2016-2019⁹⁹ (in billion Indonesian Rupiahs)



The observed fluctuation of the budget between 2016 and 2019 is close to 20 per cent, which is likely affecting KPK's ability for strategic planning and capacity building.

Besides from the state budget, the KPK has been receiving funds from donations, particularly in the early years of its existence. The international donor and development community, including the World Bank, the Asian Development Bank, and the IMF, had a paramount role in helping to create conditions for a strongly mandated KPK. Furthermore, once established, the KPK received a number of grants to help it build its institutional capacities.¹⁰⁰ Those funds were delivered quickly and could be used more flexibly than state funds.¹⁰¹ However, the amount of funds received in this way should not be exaggerated. Amien Sunaryadi, who was one of the first KPK commissioners (2003-2007) in a period when substantive donor funds were received, reported that even then only about 8 per cent of KPK's overall budget was from international donors.

As is the case for any other state-funded institutions, the KPK is subject to the state audit. KPK prepares a financial report, in line with the law.¹⁰² The Supreme Audit Board (BPK) reviews compliance with financial accounting standards; compliance with laws and regulations; effectiveness of the (KPK) Internal Control System; and adequacy of disclosures in financial statements. According to available information, the KPK traditionally scores very high during the audits, regularly receiving a 'Fair Predicate without Exception' grade.

98. Article 64 of the KPK law.

99. Retrieved from: https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup4/2020-June-9-10/Contributions/Indonesia_EN.pdf.

100. More on the role of donor community in setting up the KPK in: Vishnu Juwono, The Partner in (Prosecuting) Crime: The Role of International Organization in Setting Up Corruption Eradication Commission in Indonesia, *Global*, 1/16, 2014, 1-17.

101. Gabriel Kuris, *Inviting a Tiger Into Your Home: Indonesia Creates an Anti-Corruption Commission with Teeth: 2002 - 2007*, Innovations for Successful Societies, Princeton University, 2012, 17.

102. Law No. 15 of 2004 on The State Financial Management and Accountability Audit, <https://www.kemenkeu.go.id/sites/default/files/pdf-peraturan/uu%20nomot%2015%20tahun%202004.pdf>.

Reporting

The law stipulates that the KPK is obliged to submit an annual report to the President, the parliament, and the State Auditor.¹⁰³

The latest available annual report for the KPK is for 2018. The report is very attractively designed, focusing on infographics and other visual and user-friendly illustrations. It provides rich statistical information on the KPK's activities and performance. However, it lacks assessments of the state of corruption and any general or specific recommendations on how to improve the situation. It reads like a clean-cut activity report.

According to the 2019 amendments, a newly established Supervisory Board submits an annual report on the implementation of its duties to the President and the parliament (DPR).¹⁰⁴

Furthermore, amendments have foreseen that in carrying out its preventive function, the KPK should also prepare an annual accountability report for the President, the House of Representatives, and the Supreme Audit Board.¹⁰⁵

The KPK has the option to report state agencies which ignore its suggestions on how to improve their administration management systems to the President, the parliament, and the State Auditor. According to the law, the KPK is authorised to perform reviews of the administration management systems of all state institutions and provide suggestions to them if the review reveals that the systems are prone to corruption.¹⁰⁶

In addition to these reports, a parliamentary hearing (RDP) can be held between the House Commission III and the KPK. The hearing can be conducted through a face-to-face meeting mechanism, where the KPK elaborates on its performance in a certain period of time. Members of Commission III of the DPR can ask questions, and provide evaluations and conclusions that contain inputs and recommendations to the KPK.

The use of the term hearing (RDP) when the DPR meets with KPK is an effort to maintain balance between accountability and protecting the independence of state institutions such as the KPK. Meanwhile, the term working meeting is used when the DPR meets with executive bodies directly under the President, such as the Ministry, Police, and Attorney General. Finally, the term consultation meeting is used for the meeting with the Supreme Court (MA) and the Constitutional Court (MK). The use of these different terms is aimed at showing respect for the institutional status of each of these state institutions.

4.3 Assessment

Inspired by Hong Kong's powerful Independent Commission against Corruption (ICAC), the KPK was designed as a multi-purpose anti-corruption agency, with a strong emphasis on investigation and prosecution functions. By providing the KPK with a comprehensive and strong mandate and solid guarantees for independence, the parliament demonstrated its readiness to contribute to the eradication of corruption.

103. Article 15 of the KPK law.

104. Article 37B(3) of the KPK law, after 2019 amendments.

105. Article 7 of the 2019 Amendments to the KPK law.

106. Article 14 of the KPK law.

For the first decade of its work, the KPK had an impeccable conviction rate for its cases, because, inter alia, the specialised prosecutor and anti-corruption court (*Tipikor*) exclusively dealt with KPK cases. That changed in 2009 when the court system was reorganised, following the 2006 Constitutional Court decision, expanding the mandate of the national anti-corruption court to hear all corruption cases, whether investigated by the KPK or the public prosecution service. Because of this, a backlog of cases and a diminishing conviction rate have emerged.

Ten years after these changes in the courts' jurisdiction, the parliament adopted new legislation affecting the KPK. With these amendments in 2019, the KPK was transformed from an independent state body to an independent public institution within the executive branch of government.

The political context in which the amendments were introduced was one of widespread high-level corruption, which the KPK has been successful in prosecuting. In recent years, the KPK has prosecuted a Speaker of the House (DPR), a police general, a chair of a political party, a government minister, a Central Bank governor and deputy governors, members of sub-national parliaments, mayors, and so on. Convicting such senior figures was, to a large extent, the result of the strong independence of the KPK.

The 2019 amendments provoked a fierce debate about the appropriate type of relationship between a national parliament and a country's anti-corruption agency. Defenders and critics of the 2019 amendments were outspoken and had opposing views on the issues shaping the interaction between the DPR and the KPK.

A first point of debate was whether parliamentary oversight of the KPK was possible and desirable. Parliamentary oversight procedures do exist under the Law on Parliament. The State Finance Law regulates that all state institutions funded by public money, including the KPK, need parliamentary approval of their budget proposal. The DPR Committee on Law and Human Rights (*Komisi III*) attempted to exercise its oversight role towards the KPK by forming a special committee to carry out the oversight in 2019.

However, the KPK leadership, with the support of CSOs and academia, rejected the parliamentary oversight and turned down all invitations to parliamentary hearings. Their rationale was that KPK is fully independent from both the President and parliament, and that according to law KPK is an independent state body which does not belong to any of the three branches of governments, but is part of the fourth branch of government instead. The KPK was reluctant to become subject to oversight activities by parliament, arguing that it would constitute a violation of its independence.

The parliament argued that the *sui generis* nature of the KPK prevents parliament from overseeing the KPK's work, as it was not considered a part of the executive. The Constitutional Court decision, which ruled that KPK is an executive body, removed this obstacle to parliamentary oversight.

As the ruling did not change the views of the KPK commissioners, they refused to attend parliament hearings and requested KPK secretariat staff to attend meetings in parliament instead. Although KPK commissioners' refusal to attend parliament could count on public support, considering the low level of public trust in the parliament, it contributed to views among politicians that the status quo was not sustainable.

In summary, while the mechanisms for parliamentary oversight of all state institutions exist, as regulated by the Parliament Law, there has been an unfinished debate as to whether or not the parliament can exercise its oversight power in relation to the KPK, as the public is suspicious of the parliament's motives when inquiring about KPK's performance. This public suspicion is strongly related to the fact that the parliament has been one of the least trusted institutions in Indonesia.

A second point of debate was the establishment of the Supervisory Board. When introducing the 2019 amendments, the Supervisory Board was motivated by the need to establish better oversight of KPK's work, since until then there was no oversight of KPK, except via its internal Board of Advisers which mainly looked at the ethical performance of the commissioners and staff. The newly formed Supervisory Board conducts an annual work evaluation of the KPK chairperson and employees.

The establishment and mandate of the Supervisory Board faced strong reservations from civil society and academia. They argued that, with the creation of the Supervisory Board, the KPK commissioners are likely to lose part of their operational autonomy, since the Supervisory Board was given the mandate to grant the permission to tap, search, and/or confiscate.

Supporters of the amendments argue that the Supervisory Board's oversight of tapping suspects will strengthen the principles of human rights within KPK's investigations, setting restrictions on intrusive surveillance and confiscating by public authorities, and adding an oversight mechanism to how it conducts investigations.

Critics argued that the Supervisory Board's mandate goes well beyond the internal oversight function and is likely to influence everyday operations of the KPK, thus diminishing its independence. Therefore, one could argue that the parliament has missed an opportunity to design its own mechanism for the oversight of KPK, and that instead parliament seems to have outsourced its oversight role in relation to KPK to a new Supervisory Board.

However, one can also make the argument that, because of the low public trust in the parliament as far as corruption is concerned, putting the KPK under direct oversight of the president and the parliament would probably have met ever fiercer resistance by the public and the KPK. In the absence of any oversight in practice so far, the establishment of the Supervisory Board could thus also be considered a constructive compromise, instead of making the KPK commissioners directly accountable to those institutions who appointed them.

The third point of debate related to the 2019 amendments were the changes to the legal status of KPK employees. According to the 2002 law, the KPK was able to hire and dismiss employees without any external influence. As its employees were not considered civil servants, KPK could make more competitive job offers and attract experienced staff including from the private sector. As a result of the 2019 amendments, the KPK no longer has full autonomy in hiring its own staff, as KPK procedures will be aligned to those applied to civil servants.

Every organisation's success depends on the quality of its staff. With changes in the legal status of KPK staff, it is uncertain whether the KPK will be able to attract sufficient qualified new employees, and whether it is going to be able to keep its current staff under less attractive employment packages. This concern particularly relates to those staff working on investigations who were attracted with better employment conditions than in other law-enforcement agencies. An ultimate assessment of KPK's enforcement function is essentially based on its conviction rate. Only with high quality and motivated staff can the KPK 'feed' the Tipikor with well-investigated and evidence-rich cases.

Indonesia has a Law on State Apparatus, which regulates that the state apparatus can consist of civil servants or non-civil servants (contract staff), which are all paid from the state budget. The Law established an Independent Oversight Commission for State Apparatus (KASN). One unfinished debate between the supporters and the opponents of the 2019 amendments was: should the staff of KPK be exempted from this Law? If not, is this going to affect their independence?

The Law on State Apparatus does not prohibit public institutions from providing merit-based and high rates of remuneration and incentives so long as they are backed up with a clear justification. For example, the Ministry of Finance, the Jakarta Province, the Supreme Court, and the Supreme Audit Board all apply different remuneration systems. People can argue that the staff of the Supreme Court, which is constitutionally independent from the Executive and parliament, continue the independence in their human resources management and remuneration regardless of their compliance to the Law.

The issue of debate here is the interpretation of international principles for anti-corruption agencies. 'The power to recruit and dismiss their own staff according to internal clear and transparent procedures' is among key principles for an effective anti-corruption agency adopted in Jakarta in 2012, at the end of the conference organised by the United Nations and the KPK. The 'Jakarta Statement on Principles for Anti-Corruption Agencies' is recognised worldwide as an international reference point.¹⁰⁷

Fourthly, the issue of follow-up to KPK reports requires further attention. While the KPK submits its annual report to the President, the parliament, and the State Auditor, no regular follow-up procedure by parliament has been established yet. The report is not systematically discussed in the parliament, nor does the parliament produce any concrete outcome documents that would serve to pressure the government to improve its practices.

As per the content of the KPK report, its current form should be commended for visual attractiveness and user-friendly presentation of statistical data. Nevertheless, the KPK may reconsider restructuring its annual report to include assessments on the state of corruption in the country and any general or specific recommendations on how to improve the situation. With that, the overall value of the report would be considerably upgraded.

The 2019 amendments have introduced the requirement for the Supervisory Board to submit an annual report on the implementation of its duties to the President and the Parliament. It remains unclear how the report of the KPK and the report of the KPK Supervisory Board are related to each other, and whether that may lead to duplication of reporting outcomes.

In conclusion, the KPK has been traditionally perceived as a strong and potent ACA, which has been successful in pursuing high-profile cases. It remains to be seen what actual consequences the most recent legal changes will have on the KPK's abilities and capacities. It is yet to be seen to what extent working as an executive agency will affect the capacity of the KPK to keep its investigations fully confidential, and how it would deal with subsequent potential conflicts of interest.

A lot will depend on the quality of relations between the KPK commissioners and the Supervisory Board. This internal dynamic will have a profound effect on the overall functioning and performance of the KPK.

The full independence the KPK until 2019 and the 'extra leeway' - for instance in terms of independently deciding on tapping and confiscations - made it relatively successful in prosecuting grand corruption cases thus far. Operating outside of the bounds of the *trias politica* separation of powers enabled and empowered the KPK to tackle high-level and grand corruption cases and confront powerful individuals, vested interests, collusion, political dynasties and cronyism. It remains to be seen whether departing from this model and making KPK an institution like other law enforcement agencies will lead to the same results in combatting corruption.

The debate on the 2019 amendments illustrates well how difficult it is to find the right balance between the independence of an anti-corruption agency and the need to create accountability mechanisms over its work.

107. See the Statement at: https://www.unodc.org/documents/corruption/WG-Prevention/Art_6_Preventive_anti-corruption_bodies/JAKARTA_STATEMENT_en.pdf.

5. Case study: Pakistan

5.1 Background

Quaid-E-Azam Muhammad Ali Jinnah, the founder of Pakistan, said in an address to the First Constituent Assembly after independence on 11 August 1947 that:

'One of the biggest curses from which India is suffering - I do not say that other countries are free from it, but I think, our condition is much worse - is bribery and corruption. That really is a poison. We must put that down with an iron hand and I hope that you will take adequate measures as soon as it is possible for this assembly to do so.'¹⁰⁸

The Constituent Assembly duly responded, and the 1947 Prevention of Corruption Act was one of the first items of legislation enacted by the assembly. This would be the first of many legislative initiatives in Pakistan, by both democratically elected and military governments, which sought to tackle corruption (see Table 2).

Table 2 - Anti-corruption legislation in Pakistan

Year	Name of Act	Status
1947	Prevention of Corruption Act	In force
1949	Public and Representative Office (Disqualification) Act	Repealed
1959	Elected Bodies (Disqualification) Ordinance	Repealed
1996/7	Ehtesab Act	Repealed
1999	National Accountability (Bureau) Ordinance	In force

Definition

In defining corruption, Pakistani legislation has adopted a functional approach, thus avoiding describing corruption in generic terms.¹⁰⁹ Zulfiqar Ali abstracted common features that are helpful in understanding what actions constitute corruption in Pakistan's legal context: (1) they are acts entailing transgression and especially violate the rules of professional conduct, public trust and oath; (2) the transgression causes damages to the state money and exchequer, while it grants illicit favour to private individuals; and (3) the laws presume that any act undermining the official functions of the public office in a way that privately benefits the public official while it inflicts damages upon the state exchequer may be called 'corruption'.¹¹⁰

108. Jinnah's Speech to the first Constituent Assembly of Pakistan on 11 August 1947.

109. Munir Hafiez, *National anti-corruption strategy*, Printing Corporation of Pakistan Press, 2002.

110. Zulfiqar Ali, Conflict between Social Structure and Legal Framework: Political Corruption in Pakistan, *Commonwealth and Comparative Politics*, 1/54, 2016, 122.

Developments in the 1990s

Despite a comprehensive legislative framework, there remained strong incidences of corruption. According to the National Accountability Bureau (NAB), the 'steepest rise' in corruption was in the period 1985-1999. This led to greater demands for new instruments to fight corruption and as the NAB states in its strategy:

'It was in the nineties that the demand for accountability became more vociferous than ever before. The result of such widespread corruption has been a loss of legitimacy of state institutions.'¹¹¹

Pakistan's first anti-corruption organisation, the Ehtesab Cell (EC), was established by the November 1996 Ehtesab Ordinance promulgated by the caretaker government of Prime Minister Malik Meraj Khalid (after the dismissal of the second Benazir Bhutto government). While there was a need to establish an accountability agency, its creation by the caretaker government was heavily criticised by political parties, to which Malik Meraj Khalid replied that accountability was far more important than elections.¹¹² However, the EC continued to operate under the elected government of Nawaz Sharif, who passed the Ehtesab Act 1997.

In November 1999, following the military coup led by General Pervez Musharraf, the National Accountability Ordinance (NAO) was passed. The EC was transformed into the National Accountability Bureau (NAB) with General Musharraf proclaiming that his government would subject politicians and administrators to 'ruthless' accountability.¹¹³

The NAO broadened the mandate and jurisdiction of NAB. Originally, the NAB was designed as a law-enforcement type of anti-corruption agency, concentrating its resources on detection, investigation, and prosecution of white-collar crime. Indeed, over many years policy makers have considered the function of NAB on enforcement, resulting in an overwhelming focus on penal action. The central role of enforcement in the Pakistani anti-corruption approach can be seen from the names of both NAB and Ehtesab which contain the word 'accountability'.¹¹⁴

However, during the first few years of NAB's operations, it was already evident that 'unless the causes of corruption are addressed, the society is empowered to stand up for its rights, and the political will to take unpalatable decisions is created, corruption will continue unabated'.¹¹⁵ In other words, there was a growing understanding that a more comprehensive approach to fighting corruption was needed. As noted by observers:

'Enforcement is the most effective and swift approach towards the elimination of corruption, but being a damage control exercise, it is inferior to prevention. Preventing an act of corruption from happening is far better than the long drawn out recovery or penalty processes, especially in the judicial system of Pakistan.'¹¹⁶

111. *National Anti-corruption Strategy*, 2002, foreword.

112. Robert LaPorte, Pakistan in 1996: Starting over Again, *Asian Survey*, 2/37, 1997, 122.

113. Pervez Musharraf, *In the Line of Fire: A Memoir*, Simon and Schuster, 2006, 150.

114. 'Ehtesab' means 'accountability' in Urdu.

115. *National Anti-corruption Strategy*, 2002, foreword.

116. Muhammad Musaddiq Abbasi, *National Accountability Bureau: An Independent Review of Structure and Performance*, PILDAT, 2015, 18.

The 2002 National Anti-Corruption Strategy

In February 2002, the NAB launched the National Anti-Corruption Strategy (NACS) with the goal to create a comprehensive approach to fighting corruption. The NACS team conducted broad based surveys, studied external models of international anti-corruption agencies, and involved national stakeholders. The stakeholder consultation confirmed that 'corruption is all pervasive and deeply entrenched, and demands a robust strategy to secure long term, sustainable behavioural change'.¹¹⁷ Stakeholders were firmly of the view that few aspects of life are untouched by some form of corruption, if not by financial corruption then by misuse of privileges.¹¹⁸

The long-term objective of the NACS was to eliminate corruption by engaging all stakeholders in the fight against corruption, through a programme which is holistic, inclusive and progressive.¹¹⁹ Put differently, the strategy was to enable the NAB to add to the enforcement focus two equally important dimensions in its approach towards corruption: awareness and prevention.¹²⁰ Based on the strategy, amendments have been made in the NAO, empowering the NAB to undertake prevention and awareness initiatives in addition to its enforcement functions.¹²¹ This coincided with Pakistan's signing of the United Nations Convention against Corruption (UNCAC) in 2003.¹²² The Convention also calls for a comprehensive approach to curbing corruption.

With the new and broader mandate, the NAB started to take shape according to the Hong Kong multi-purpose model of the ACA; that is, the NAB's functions include investigation, prosecution, prevention, and awareness. More concretely, the NAB has the mandate to:

- Eradicate corruption and corrupt practices and hold accountable all those persons accused of such practices and matters.
- Take effective measures for the detection, investigation and prosecution of cases involving corruption, corrupt practices, misuse or abuse of powers, misappropriation of property, kickbacks and commissions, ensuring speedy disposal.
- Ensure the recovery of the outstanding amount from those persons who have committed wilful default in repayments to banks, development finance institutions (DFIs), government and other agencies.
- Implement policies and procedures for awareness, prevention, monitoring and combatting corruption in the society.¹²³

The NAB's mandate extends to the whole of Pakistan¹²⁴ and applies to all citizens and all persons who are or have been in the service of Pakistan, wherever they may be, and all residents of the country.¹²⁵

117. National Anti-corruption Strategy, 2002, 5.

118. *Ibid*, 5.

119. *Ibid*, 69.

120. *Ibid*, 84.

121. See more at: <http://nab.gov.pk/home/introduction.asp>.

122. The UNCAC entered into force in December 2005, while Pakistan ratified it in 2007.

123. See more at: <http://nab.gov.pk/home/introduction.asp>.

124. Including all federal and provincially administered tribal areas including FATA prior to its incorporation into KP.

125. Section 4 of the NAO.

Other anti-corruption institutions

The Federal Investigation Agency (FIA) is a law enforcement body under the Ministry of Interior. Within the FIA, the Anti-Corruption Wing (ACW) deals with organised crime other than terrorism and human trafficking and is headed by a senior police officer. Between 2004 and 2008, certain clauses of the FIA Act¹²⁶ were transferred to the NAB. This led to the incorporation of the Anti-Corruption and Economic Crime Wings of the FIA into the NAB. However, the fall-out over the controversy of the National Reconciliation Ordinance passed by President Musharraf which was ruled unconstitutional by the Supreme Court, led to their reintegration into the parent organisation.¹²⁷ In 2013, the NAB called for a merger of two anti-corruption wings of the FIA with it to improve the watchdog's performance. Although this did not happen, the NAB can take over inquiries and cases from other anti-corruption organisations, including from the FIA and the provincial anti-corruption establishments.

Provincial anti-corruption establishments (ACEs) were put in place in the 1960s. While perceived as important institutional features in anti-corruption efforts, they have traditionally lacked sufficient independence from provincial governments (as they are essentially part of it) and necessary resources to perform their tasks.¹²⁸

NAB country structure

The NAB itself also has a regional presence. In addition to the NAB HQ located in Islamabad, the NAB established seven regional offices, in Karachi, Sukkur, Lahore, Multan, Peshawar, Quetta, and Rawalpindi. The NAB created 'investigation wings' at the regional offices.¹²⁹ The output of the investigation wings at the regional offices is continuously monitored by the Operations Division at the NAB HQ.

The Operations Division operates as the bridge between the regional offices and the NAB chairperson.¹³⁰ The Operations Division examines the recommendations by the regional NABs, approves their actions and provides necessary guidelines to the regional offices regarding all operational matters,¹³¹ including Standard Operating Procedures (SOPs).¹³²

NAB post-2008

The fight against corruption, led by NAB, FIA and ACEs, is supported by the public accountability bodies, including the Auditor General (AG) and the Federal Ombudsman. The AG should ensure public accountability and fiscal transparency in governmental operations, while the Ombudsman's role in curbing corruption is to refer corruption-related cases brought to it by citizens to the NAB, as well as to tackle the culture of poor public service delivery.

After Musharraf's downfall in 2008 and the restoration of democratic rule, expectations of the new government were high, especially in relation to democratisation and the consolidation of the rule of law. Indeed, the government made several landmark changes to the constitution, including the 18th Amendment in 2010, which reduced the power of the president in favour of a system of parliamentary democracy.

126. Section (6) clauses 161, 162, 163, 164, 165, 165-A, 168, 169 and 409 of the FIA Act 1974.

127. 'NAB asks govt to re-merge FIA's two wings with it', Dawn, 21 May 2013, <https://www.dawn.com/news/1012582/nab-asks-govt-to-re-merge-fias-two-wings-with-it>.

128. See more in: Strategy, 2002, 49.

129. NAB, 2018 Annual Report, 25.

130. *Ibid*, 25.

131. *Ibid*, 26.

132. *Ibid*, 26.

However, according to researcher Feisal Khan, following the restoration of democratic rule the NAB's budget was shrinking by almost half and its personnel by three quarters, while there was no significant increase in NAB's conviction rate or reduction in Pakistan's corruption level following the return of Nawaz Sharif as prime minister in late 2013.¹³³

For example, on the orders of the Supreme Court in 2015, the NAB compiled a list of 179 of its most serious corruption cases (some dating back to the early 2000s). Only one case had resulted in a conviction and three had been plea-bargained down to much lesser offences; the rest were in various stages of being investigated or under trial.¹³⁴

This poor case track record coincides with the public perception of high corruption, according to Transparency International Corruption Perception Index (Table 3).

Table 3 - Pakistan's score in Transparency International Corruption Perceptions Index (2012-2019)¹³⁵

Year	CPI Score	Rank
2019	32/100	120/180
2018	33/100	117/180
2017	32/100	117/180
2016	32/100	116/176
2015	30/100	117/168
2014	29/100	126/175
2013	28/100	127/175
2012	27/100	139/174

NAB jurisdiction

The NAB was established by an ordinance promulgated by President Musharraf, determining NAB's jurisdiction over civilian institutions. The judiciary and military have remained outside the remit of NAB despite frequent calls from civil society and academia¹³⁶ for the NAB to extend its reach over all institutions of public expenditure. However, the military has its own internal audit systems which monitor the use of its finances. In addition, opportunities for public scrutiny are limited due to national security concerns. Regarding the judiciary, it has its own accountability mechanisms and control systems. Arguments are made that these safeguard the judiciary's independence as foreseen by the Constitution.¹³⁷

133. Feisal Khan, *How not to control corruption, Pakistani style*, 2016, <https://blogs.lse.ac.uk/southasia/2016/05/31/how-not-to-control-corruption-pakistani-style/>.

134. *Ibid.*

135. PTI - Pakistan Tehreek-e-Insaf; PMLN - Pakistan Muslim League - N; PPP - Pakistan People's Party. CT means Caretaker Government. Data retrieved from: http://www.transparency.org.pk/survey/cpi19/cpi_ranking_since_1996.pdf.

136. Tasneem Kausar, *Judicialization of Politics and Governance in Pakistan: Constitutional and Political Challenges and the Role of the Chaudhry Court*, in Ashutosh Misra, and Michael E. Clarke (eds.) *Pakistan's Stability Paradox: Domestic, Regional and International Dimensions*, Taylor & Francis, 2013, 28-45.

137. Jan Mohammad Dawood, *The Role of Superior Judiciary in the Politics of Pakistan*, Royal Book Co, 1994.

However, the NAB needs to rely on an independent and efficient judiciary given that its enforcement component is directly dependent on the courts, primarily, the Accountability Courts. These were established to adjudicate cases of corrupt officials and to recover outstanding amounts from those persons who have committed default in the repayment of amounts of banks, financial institutions, government, and other agencies.¹³⁸

According to the NAO, the judges of the Accountability Courts are appointed by the President of Pakistan, in consultation with the Chief Justice of the High Court (of the Province), based on the terms determined by the President.¹³⁹ Currently, there are 21 Accountability Courts.¹⁴⁰

The Federal Parliament

Besides the judiciary, another branch of power central to the accountability of the government and public officials is the legislature. The federal parliament in Pakistan has two Houses: the National Assembly and the Senate. Both Houses are organised through the parliamentary committee system, primarily consisted of standing committees which mirror the ministries of the government. The National Assembly has two non-departmental Standing Committees, namely the Standing Committee on Public Accounts (PAC) and the Committee on Government Assurances. The Senate delegates six members to the Committee on Public Accounts, one from each province, Islamabad Capital Territory, and the Federally Administered Tribal Areas,¹⁴¹ out of which three shall be from the Treasury benches and three from the opposition benches.¹⁴²

According to the Rules of Procedure of the National Assembly, the PAC examines the accounts showing the appropriation of sums granted by the Assembly for the expenditure to the government, by checking: a) that the money shown in the accounts as having been disbursed were legally available for, and applicable to the service or purpose to which they have been applied or charged; b) that the expenditure conforms to the authority which governs it; and c) that every reappropriation has been made in accordance with the provisions made in this behalf under rules framed by the Ministry of Finance.¹⁴³

The PAC may also examine the statement of accounts showing the income and expenditure of autonomous and semi-autonomous bodies. It is an audit that may be conducted by the Auditor-General of Pakistan either under the directions of the President or under an act of the parliament.¹⁴⁴ According to some classifications, for the purposes of audit, NAB is considered an autonomous body,¹⁴⁵ so this provision should be applicable to the NAB as well.

In its 2002 Anti-Corruption Strategy, the NAB was highly critical of the role of parliamentarians in fighting corruption, citing their tendency to 'usurp executive functions and indulge in practices like nepotistic recruitment and transfers and postings of the "right" kind of officials to places of their choice'.¹⁴⁶ Further, the NACS noted that: 'as in many countries, Assembly members have tended to advance the cause of individual constituents, when they should represent the population as a whole

138. See more on accountability courts at: <http://www.molaw.gov.pk/frmDetails.aspx>.

139. Article 5. of the NAO.

140. According to the information from the Ministry of Law and Justice, <http://www.molaw.gov.pk/frmDetails.aspx>.

141. Prior to its incorporation into KP.

142. Article 172F of the Rules of Procedures of the Senate.

143. Article 203(2) of the Rules of Procedures of the National Assembly.

144. Article 203(3) of the Rules of Procedures of the National Assembly.

145. Government of Pakistan - National Commission for Government Reforms, *A Functional and Legal Classification of Corporations, Autonomous Bodies and Attached Departments under the Federal Government*, 2008, 10, http://sti.gov.pk/images/pdf_files/categorization_of_the_department.pdf.

146. National Anti-corruption Strategy, 2002, 17. https://baselgovernance.org/sites/default/files/2020-04/pakistan_national_ac_strategy_endorsing_ips_2002.pdf.

by demanding fair distribution of quality public services and accountability of the government. There is a system of “bending the rules” and patronage between politician and bureaucrat and between politician and constituent.¹⁴⁷

However, these comments need to be tempered by the origins of the NAB and the fact that the NACS was drafted before the return to multi-party democracy since 2008.

With this study, we aim to present more recent and balanced information on the role of the federal parliament in fighting corruption, by concentrating on one particular segment of its work: its interaction with the NAB as the main anti-corruption agency.

5.2 Parliament's role

Determining the legal framework and mandate

The Parliament did not have any role in promulgating the NAO of 1999, since both the National Assembly and the Senate were suspended at the time, in pursuance of the Proclamation of 14 October 1999, and the Provisional Constitution Order No.1 of 1999, following the coup d'état initiated by General Pervez Musharraf.

The Proclamation of 14 October 1999, and the Provisional Constitution Order No.1 of 1999, together with other legal documents, were later declared as having been made without lawful authority and of no legal effect.¹⁴⁸ However, all other laws, including ordinances, made between 12 October 1999 and 31 December 2003 have continued to be in force until altered, repealed or amended by the competent authority, as per Article 270AA(2) of the Constitution. That rule applied to the NAO, which was adopted in the aforementioned period, as well as to several amendments to the NAB Ordinance, promulgated between 1999 and 2002.¹⁴⁹

The use of ordinances in Pakistan has been a frequent practice. According to available information, from 1947-2019, a total 2,229 ordinances have been passed, including 459 ordinances from 1947-1965 and 1,770 during the period 1973-2019.¹⁵⁰ As expected, military governments, on average, promulgated the highest number of ordinances – more than 63 per year. Caretaker governments promulgated the next highest number – a little less than 59 ordinances per year during their period in office. Elected democratic governments issued less than 29 ordinances per year.¹⁵¹

The rate of ordinances dropped significantly after the adoption of the 18th Amendment of the Constitution in 2010, which barred the promulgation of an ordinance more than twice. In the past, some ordinances were promulgated multiple times to overcome the limitation of their validity to 120 days.

There is controversy on the use of ordinances which are seen to bypass parliamentary debate and scrutiny. As noted by some observers, ‘an overwhelming majority of the ordinances were promulgated out of convenience because the government of the day did not want to face parliament

147. *Ibid*, 17.

148. See Article 270AA. of the Constitution.

149. National Accountability Bureau (Amdt.) Ordinance, 1999 (19 of 1999); National Accountability Bureau (Amdt.) Ordinance, 2000 (4 of 2000); National Accountability Bureau (Second Amdt.) Ordinance, 2000 (24 of 2000); National Accountability Bureau (Amdt.) Ordinance, 2001 (35 of 2001); and National Accountability Bureau (Amdt.) Ordinance. 2002(133 of 2002).

150. ‘Over 2,000 ordinances passed in Pakistan's history’, Tribune, 13 January 2000, <https://tribune.com.pk/story/2135940/1-2000-ordinances-passed-pakistans-hi/>.

151. Ahmed Bilal Mehboob, Ordinances over the years, Dawn, 8 December 2019, <https://www.dawn.com/news/1521058>.

to debate and justify the proposed legislation'.¹⁵² Minority governments, or those that do not possess majorities in both chambers of parliament, have recourse to ordinances to be able to further their government agenda. However, ordinances also provide governments with the ability to amend existing rules and regulations within the domain of the executive. This has the benefit of both allowing decisive action to be taken whilst at the same time freeing up parliamentary time.

It is within this context that the amendments to the NAO in 2019 were promulgated. The First Amendment, promulgated in November 2019, concerning Section 10 dealing with punishment for corruption and corrupt practices, inserted section 'e' detailing fines, and was not controversial. However, the National Accountability (Second Amendment) Ordinance of 2019 attracted more attention from opposition parties and the media. This amendment stipulated that businesspeople and investors would no longer be subject to the NAB laws but instead would be investigated by the Federal Board of Revenue and FIA. Leaders from the opposition initially fiercely opposed the amendments,¹⁵³ but have later stated they are ready to discuss the ways to improve the amendments. The amendments were discussed in the National Assembly's Standing Committee on Law and Justice in February 2020.¹⁵⁴ According to sources, the government wanted to get the ordinance extended by the National Assembly to another 120 days before its expiry, and subsequently planned to prevail upon the opposition to clear it in the Senate. However, neither the National Assembly nor the Senate have been summoned in the meantime, due to the COVID-19 pandemic, and the 120-day deadline expired, effectively repealing the amendments.

In late April 2020, the government announced it would consult stakeholders, including the opposition parties, to amend the NAB law either through an ordinance or – if possible – by convening a session of the Parliament.¹⁵⁵ Prime Minister Khan formed a special committee, chaired by the Minister of Law and Justice, to prepare the new amendments.

This seems to indicate that the Parliament might discuss the NAO amendments through regular procedure. Given the reach and substance of the announced amendments to the NAO, it would be important that the changes have the backing of the Parliament. Considering the importance of the work of the NAB, all legislation related to it deserves approval by parliament:

Selection and appointment

According to the applicable legislation, the NAB is managed by its chairperson, appointed by the President in consultation with the Leader of the House and the Leader of the Opposition in the National Assembly. However, the appointment procedure was different in the past and has been changed multiple times.

The chairperson of NAB's predecessor – Ehtesab Cell (EC) – was appointed by the Federal Government after consultation with the Leader of the Opposition and the Chief Justice of Pakistan would appoint the head of the EC (EA 1997).¹⁵⁶ Under the original text of NAO from 1999, the chairperson of the NAB was appointed 'by the President for such period as the Chief Executive of Pakistan may determine and consider proper and necessary'.¹⁵⁷ In 2001, the Supreme Court challenged this provision of the NAO, calling it 'excessive delegation of power' and the breach of separation of

152. Ahmed Bilal Mehboob, Ordinances over the years, Dawn, 8 December 2019, <https://www.dawn.com/news/1521058>.

153. 'Opposition slams NAB Amendment Ordinance 2019', *The News*, 28 December 2019, <https://www.thenews.com.pk/latest/590083-opposition-fierce-over-nab-ordinance-slams>

154. Amir Wasim, 'NA committee takes up NAB ordinance bill today', Dawn, 24 February 2020, <https://www.dawn.com/news/1536340>.

155. Ansar Abbasi, 'PTI govt getting ready to amend NAB law', *The News*, 26 April 2020, <https://www.thenews.com.pk/print/649736-pti-govt-getting-ready-to-amend-nab-law>.

156. Article 13 of the Ehtesab Act, 1997, http://www.na.gov.pk/uploads/documents/1324604966_239.pdf.

157. Section 6(b)(i) of the NAO.

power.¹⁵⁸ In 2002, with the amendments to the NAO, promulgated by President Musharraf, the current appointment procedure based on the consultation process was established.

Consultation on selecting the chairperson of the NAB

A central issue in the chairperson appointment process is the nature of the consultation of the President with the Leader of the House and the Leader of the Opposition in the National Assembly. Should the word 'consultation' be understood just as a formal discussion among those involved, or as sort of *ex ante* approval?

In 2011, Chaudhry Nisar Ali Khan, the Leader of the Opposition in the National Assembly (2008-2013), insisted that the word 'consultation' should be understood as 'approval', and asked the court for an interpretation. The Supreme Court agreed that the purpose of consultation is to reach a consensus. The Court held that 'the spirit of such consultation appears to be that it should aim at developing a consensus and it should manifestly be shown that a serious, sincere and genuine effort is made towards evolving a consensus because otherwise the consultation would neither be meaningful nor purposive nor consensus-oriented'.¹⁵⁹

The chairperson is appointed for one non-extendable four-year mandate. There are no binding international standards on the length and the possibility of re-appointment of heads of independent state institutions, such as ACAs. Nonetheless, in recent years, there is an increasing understanding that the term of office of heads of independent state institutions shall be longer than the mandate of the appointing body in order to strengthen their independence. The term of office shall preferably be limited to a single term, with no option for reappointment or re-election; at any rate, the mandate shall be renewable only once. The single term shall preferably not be stipulated below seven years.¹⁶⁰ To that end, it would be advisable to reconsider the term of office of the NAB chairperson, to either allow for one reappointment or to extend its length to at least six or seven years.

Article 6 of the NAO defines that a person may be appointed as chairperson only if that person is: (1) a retired Chief Justice or a Judge of the Supreme Court or a Chief Justice of a High Court; (2) a retired Officer of the Armed Forces of Pakistan equivalent to the rank of a Lieutenant General; or (3) a retired Federal Government Officer in BPS 22 or equivalent.¹⁶¹

BPS 22 refers to the highest rank and pay scale in civil servant system in Pakistan, occupied by less than 1 per cent of the country's civil servants. Grade 22 is equal to a three-star rank of the Pakistan Armed Forces. Grade 22 is awarded by the special high-level commission chaired by the Prime Minister of Pakistan. Most key administrative positions in Pakistan are occupied by BPS 22 servants, including: Secretary to the Government of Pakistan, Chief Secretary of a Provincial Government, Directors General or chairpersons of large state-owned corporations, heads of Federal Investigation Agency, Intelligence Bureau, and so on.

158. Khan Asfandiyar Wali and others v. Federation of Pakistan through Cabinet Division, Islamabad and others 2001.

159. Supreme Court of Pakistan, Constitutional Petitions 60 and 61 of 2010 (Justice Deedar Husain Shah case), cited according to: <https://www.brecorder.com/2011/10/15/31852/appointment-of-nab-chief-nisar-suggests-selection-from-panel-of-candidates-through-consensus/>

160. See for instance the Council of Europe's Venice Principles on the Ombudsman, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)005-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)005-e), para 10.

161. Article 6 of the National Accountability Ordinance (XVIII of 1999).

Civil Servants Promotion Rules lay down a comprehensive merit-based system for promotion in the civil service, where promotions are based on four basic criteria: (1) minimum length of active service (25 years in grade 17 and above, and at least two years in grade 21 for promotion in grade 22); (2) an unblemished disciplinary record; (3) the required threshold in performance evaluation reports (PERs); and (4) successful completion of the applicable mandatory training course.¹⁶²



Pakistan Committee Chairperson Riaz Fatyana MNA

The law stipulates that the appointment of the chairperson is done on 'such terms and conditions as may be determined by the President',¹⁶³ with no additional information. As noted by some observers, 'there is no set procedural framework that lays down how the consultation is to be made, which can lead to uncertainty and an unjust outcome such as appointment on the basis of political whim and favouritism rather than merit or fairness'.¹⁶⁴

In review, there is space for improving the appointment procedure with a view to guaranteeing that the best candidate is selected and appointed in a transparent and merit-based manner. The court's interpretation that 'consultation' should be read as reaching consensus is certainly welcome, because it helps reduce the risks of partisan influence, and secures a role of the Parliament in the process.

However, it would be beneficial to have a more substantive discussion on the potential candidates in the House, conducted either in the committee or in plenary. The procedure of proposing candidates and the vetting procedure could be regulated in greater detail, to allow for a transparent and inclusive process.¹⁶⁵ The possibility of having a public competition could also be explored, because such procedure may attract more candidates, with different backgrounds.

162. Available at: [http://establishment.gov.pk/userfiles1/file/Civil%20Servants%20Promotion%20\(BPS-18%20to%20BPS-21\)%20Rules%202019.pdf](http://establishment.gov.pk/userfiles1/file/Civil%20Servants%20Promotion%20(BPS-18%20to%20BPS-21)%20Rules%202019.pdf).

163. Article 6 of the National Accountability Ordinance (XVIII of 1999).

164. Abdullah Mohammad, Flaws in the National Accountability Ordinance (XVIII of 1999), *Courting the Law*, 9 October 2018, <http://courtingthelaw.com/2018/10/09/commentary/flaws-in-national-accountability-ordinance-xviii-of-1999-scrutiny-and-analysis/>.

165. In 2016, a group of MPs proposed amendments to the NAO, to introduce a parliamentary deliberative process of the selection of the chairperson, but they were never approved. The amendments are available at: http://www.na.gov.pk/uploads/documents/1460536702_328.pdf.

Indeed, the eligibility criteria guarantees that the NAB Chairperson has a substantial record of public service. However, being a former judge, military personnel or civil servant does not in itself guarantee experience in fighting corruption. Experienced professionals of other backgrounds should also be considered, especially in view of the NAB's extensive mandate. For instance, people with a background in civil society or academia may be better equipped to conduct awareness-raising campaigns and lead prevention functions of the NAB.

The law regulates that the chairperson may resign by sending a letter to the President. The chairperson cannot be removed from the office except on the grounds defined for removal of a judge of the Supreme Court of Pakistan. The Constitution defines that a Supreme Court judge may be removed only upon the opinion of the Supreme Judicial Council.

The Supreme Judicial Council is a five-member body consisting of the Chief Justice of Pakistan, the two next most senior judges of the Supreme Court; and the two most senior Chief Justices of High Courts.¹⁶⁶ The Council reaches its decision by majority of votes.

The Constitution further defines a procedure for the removal as follows:

'If, on information from any source, the Council or the President is of the opinion that a Judge of the Supreme Court may be incapable of properly performing the duties of his office by reason of physical or mental incapacity; or may have been guilty of misconduct, the President shall direct the Council to, or the Council may, on its own motion, inquire into the matter. If, after inquiring into the matter, the Council reports to the President that it is of the opinion that the Judge is incapable of performing the duties of his office or has been guilty of misconduct, and that he should be removed from office, the President may remove the Judge from office.'¹⁶⁷

The law stipulates that the chairperson shall have a deputy, appointed by the President in consultation with the Chairperson. The Deputy Chairperson assists the Chairperson in the performance of their duties and carries out such functions as may be directed by the Chairperson.

According to the law, a person may be appointed as Deputy Chairperson if that person is or has been an officer of the Armed Forces of Pakistan equivalent to the rank of a Major General; or is or has been a Federal Government officer in BPS 21 or equivalent.¹⁶⁸

Above-raised issues on previous experience of the chairperson also apply to the deputy chairperson. The same interpretation of the word 'consultation' should also be applied in this case, in terms that no deputy should be appointed without the consent of the chairperson. Nevertheless, given the duties of the deputy, it might probably be a better solution for the chairperson to nominate the deputy to the President to forge a tight working team.

The deputy chairperson is appointed for a one non-extendable three-year mandate. However, it would be more appropriate for the deputy's mandate to coincide with that of the chairperson. In the current set up, it is possible that chairperson is left with no deputy, if the President does not appoint a replacement in a timely manner.

166. Article 209 of the Constitution of Pakistan.

167. Article 210 of the Constitution of Pakistan.

168. Article 7a of the National Accountability Ordinance (XVIII of 1999).

The deputy can only be removed on the ground of misconduct as defined in the Government Servants (Efficiency & Discipline) Rules.¹⁶⁹ Those Rules defines 'misconduct' as:

'conduct prejudicial to good order or service discipline or contrary to Government Servants (Conduct) Rules 1964 or unbecoming of an officer and, a gentleman and includes any act on the part of a Government servant to bring or attempt to bring political or other outside influence directly or indirectly to bear on the Government or any Government officer in respect of any matter relating to the appointment, promotion, transfer, punishment, retirement or other conditions of service of a Government servant.'¹⁷⁰

When the NAB chairperson is absent or unable to perform the functions of the office due to any reason whatsoever, the deputy chairperson acts as the chairperson, and in case the deputy chairperson is absent or unable to perform the functions of the office, any officer of the NAB duly authorised by the chairperson, acts as chairperson.¹⁷¹

Budget allocation

The NAB is financed from the federal budget of Pakistan. Since 2015, there has been a steady increase of the NAB's annual budget in absolute numbers (see Figure 4). The 2019/20 budget has witnessed the biggest increase of 33 per cent compared to a previous year (2018/19).¹⁷²

Figure 4 - The NAB annual budget 2015-2020¹⁷³ (in million Pakistani Rupees)



In the previous decade, the NAB's operational budget was cut by half, from Pakistani rupees (Rs) 797 million (\$5.7 million) to Rs 450 million (\$3.2 million).¹⁷⁴ NAB's budget was cut due to the suo moto action of the Supreme Court on the National Reconciliation Ordinance.

169. Article 7b of the National Accountability Ordinance (XVIII of 1999).

170. Pakistan Public Administration Research Centre, *A Compendium of Laws and Rules Containing Efficiency and Discipline Rules*, 2012, <https://cga.gov.pk/pdf/download/A%20Compendium%20of%20E%20and%20D%20Rules.pdf>.

171. Article 6c of the National Accountability Ordinance (XVIII of 1999).

172. Inflation not included.

173. Data from federal budgets as published on the webpage of the Pakistani Ministry of Finance, at: http://www.finance.gov.pk/fb_2019_20.html.

174. Zulfiqar Ali, Pakistan's National Accountability Ordinance and the Facilitation of Corrupt Practices, *Contemporary South Asia*, 1/28, 2020, 86-99.

The Court ordered the NAB to take action against the 8,000 individuals who benefited from the ordinance, including the then President and Prime Minister. As a result of the budget cut, the NAB did not have the necessary human and financial resources to prosecute many of the accused.¹⁷⁵

In 2018, the government refused to release Rs 1 billion (\$7 million) to the NAB. The NAB's Recovery and Reward Rules prescribe that an institution responsible for recovery shall receive a two per cent share of the total recovery.¹⁷⁶ On this occasion, the NAB Chairperson stated, 'when an action is taken against any government functionary, NAB allowance is stopped or its budget is cut'.¹⁷⁷

The procedure of drafting NAB's budget is the same as with other autonomous bodies under federal government. Every year the Ministry of Finance sends a budget circular note to state-funded bodies. They draft the budget and return it to the Ministry of Finance, which then analyses and compiles it, before presenting it to the Parliament.

As per oversight over the budgetary expenditures, so far, the Parliamentary Committee on Public Accounts has not established regular scrutiny of the accounts of NAB. In fact, according to available information, NAB was only once on the agenda of the Committee. In 2018, the Committee noticed that the NAB altered the spending within the grant; that is, they used some funds for different purposes other than those they were allocated for. That was an opportunity for financial scrutiny, which was essentially missed as the Committee decided to settle the case.¹⁷⁸

Reporting

The legislation stipulates that the NAB submits an annual report to the President by the end of March covering its activities in the previous year. The NAB Ordinance requires that 'a report of its affairs... shall be a public document and its publication copies shall be provided to the public at a reasonable cost'.¹⁷⁹

In the question and answer part of the NAB website, on the question 'Whom does the Chairperson NAB report to?' the following answer is provided:

'Chairperson NAB being head of an Autonomous Institution reports to none. The provisions of NAO, does not lay down any reporting system except the Annual Performance Report, which is mandatory to be presented to the President of Pakistan by 30th March, every year, regulates the investigation and prosecution process in the NAB.'¹⁸⁰

The last annual report available on the NAB's website is the 2018 Annual Report.¹⁸¹ The 2019 annual report is not available on the website yet, even though the NAB submitted it to the President.¹⁸²

The 2018 Annual Report is a comprehensive 200-page document, laying down the legislative framework for different NAB's functions (inquiry and investigations, prosecution, awareness and prevention, and support operations) and their practical implementation in the reporting year, including rich statistical data.

175. *Ibid.*

176. *Ibid.*

177. 'NAB Chief Unhappy Over PM's Claim About Low Conviction Rate', *Dawn*, 9 December 2018, <https://www.dawn.com/news/1449919>.

178. Interview with Zafarullah Khan, parliamentary expert, 4 June 2020.

179. Article 33d. of the National Accountability Ordinance (XVIII of 1999).

180. See: http://nab.gov.pk/Public_info_material.asp.

181. NAB, 2018 Annual Report, <http://nab.gov.pk/Downloads/NAB%20Annual%20Report%202018.pdf>.

182. Aizbah Khan, Recovered more than Rs 141 Bn in 2019, Chairman NAB Reports to the President, *Bol News*, 18 June 2020, <https://www.bolnews.com/latest/2020/06/recovered-more-than-rs-141-bn-in-2019-chairman-nab-reports-to-the-president/>.

Most of the report is dedicated to awareness and prevention campaigns by the NAB. This constitutes approximately 100 pages, listing and describing in detail events organised in 2018 by the NAB, including events attended by its staff. Equally detailed is the section on support operations, around 50 pages, covering human resources, finance and IT. Approximately 30 pages cover investigations and prosecutions. This also includes a description of internal procedures and statistical data on the cases although there is no further elaboration or assessment of problems encountered and identified through their investigations.

There is therefore an opportunity for the report to include recommendations, both general and specific. This would put the NAB on a par with the other independent institutions which use the reporting mechanism to provide recommendations to the competent authorities¹⁸³. However, possibly the NAB may be conveying its recommendations through other channels to the President and competent authorities.

Although there are press releases when the NAB Chairperson presents the Annual Report to the President,¹⁸⁴ there is no further public information on follow-up. Noting that the NAB report is submitted to the President, it is therefore not tabled in Parliament.¹⁸⁵ However, experts argue that even if there is no formal procedure for Parliament to discuss the report, there are no procedural impediments for the National Assembly or Senate to put it on the agenda and discuss it, either in the committee or in the plenary.¹⁸⁶

5.3 Assessment

While originally designed as primarily a law-enforcement type of ACA, due to the legislative changes introduced in the early 2000s, the National Accountability Bureau (NAB) was transformed into a Hong Kong style multi-purpose model of ACA.¹⁸⁷ Its mandate was broadened to include investigation, prosecution, prevention and awareness.

The success of this multi-purpose model of ACA depends upon a number of conditions including: support from and independence from government; a national anti-corruption strategy; levels of corruption that allow the agency to manage workload; other agencies that deal with types and levels of corruption not falling within the remit of the anti-corruption agency; wider governance activities that reduce the incentives and opportunities for corruption; and appropriate legal frameworks to effectively pursue cases through the courts.

Internally, the ACA should have: adequate financial resources and appropriate staffing; clear strategic and operational objectives; operational independence and freedom from political interference; high levels of integrity in its leaders and competency among staff; and public awareness of and confidence in the agency.¹⁸⁸

183. Interview with Ahmed Bilal Mehboob, President of the Pakistan Institute of Legislative Development and Transparency (PILDAT), 3 June 2020.

184. See: President's Secretariat, Press Release 77/2018, 10 April 2018, <http://president.gov.pk/imgs/11418/10418.pdf>; 'NAB chairman presents annual report to President', *Business Recorder*, 30 April 2019, <https://fp.brecorder.com/2019/04/20190430468537/>.

185. Interview with Zafarullah Khan, parliamentary expert, 4 June 2020.

186. Interview with Ahmed Bilal Mehboob, President of the Pakistan Institute of Legislative Development and Transparency (PILDAT), 3 June 2020.

187. Organisation for Economic Co-operation and Development, *Specialized Anti-Corruption Institutions: Review of Models, OECD Anti-Corruption Network for Eastern Europe and Central Asia*, 2008, 58, <https://www.oecd.org/corruption/acn/39971975.pdf>.

188. Alan Doig and Robert Williams, Hands-On or Hands-Off: Anti-Corruption Agencies in Action, Donor Expectations and a Good Enough Reality, *Public Administration and Development*, 2/26, 2006, 163-172.

While the steady increase in the number of ACAs globally over the past 30 years coincided with the democratisation of governments and the breakdown of autocratic regimes,¹⁸⁹ Pakistan's NAB was created under military rule. The military origins of NAB have marked its development. Its jurisdiction is focused on civil servants with the military and judiciary retaining their own internal accountability mechanisms. In addition, due to the selection criteria for its chairperson, over half of the NAB chairs have been former military officers.

The relationship between the NAB and the judiciary is of key importance for the effectiveness of NAB's work, given that its enforcement component is directly dependent on the courts. In its 2018 Annual Report, the NAB reported that 'the conviction rate of the cases concluded in the courts remained 66,8% which is the highest in comparison to national and international agencies dealing with the investigation and prosecution of the white-collar crimes'.¹⁹⁰ As per available information, the overall conviction rate in 2019 rose to 70 per cent.¹⁹¹

While the overall conviction rate speaks favourably of the NAB, some of its regional offices were less effective. For instance, in 2019, NAB's Regional Office in Khyber Pakhtunkhwa had a conviction rate of only 17.6 per cent while the rate of acquittals was 82.4 per cent.¹⁹² NAB's HQ responded to this poor performance by conducting evaluations of investigation and prosecution wings, organising an additional training of investigation officers and prosecutions divisions and allocating senior prosecutors to this Regional Office.¹⁹³ The conviction rate depends on the work of both the NAB and the courts. To that end, NAB should 'feed' the courts with well-investigated and evidence-rich cases. On the other hand, the courts should be able to process those cases timely and thoroughly.

As indicated, the legislative framework provides for a strong and broad mandate of the NAB. A single anti-corruption institution cannot function as an omnipotent and omniscient entity. In order to combat corruption, it is imperative to reform all the institutions and make them capable of effectively implementing their mandate and developing coordination and inter-linkages among institutions.¹⁹⁴ That particularly applies to the relationship between the NAB and the federal Parliament, where there is considerable room for closer collaboration.

The main legal act regulating the work of NAB - the National Accountability Ordinance - was promulgated by the President. Further amendments have been adopted through ordinances. Although these have the benefit of updating administrative rules and regulations that would facilitate NAB's work, substantial changes to its remit should benefit from parliamentary oversight and scrutiny. It is positive to see greater engagement between the government and Parliament in 2020 on prospective amendments.

The Parliament has a responsibility to ensure that legislation provides for clear delineation of the mandates of different anti-corruption bodies, including the NAB, FIA and ACEs. It is reasonable to expect the federal Parliament to request from both the government and the NAB to prepare a new National Anti-corruption Strategy (NACS), which has not been updated since its adoption in 2002.¹⁹⁵

189. Daniyal Aziz and Usama Bakhtiar, *Anticorruption and its Discontents Anti-corruption in Post Independence Colonial Bureaucracies*, IPMN conference: Innovations in Public Management for Controlling Corruption, 27-29 June 2012, Honolulu, Hawaii, 12.

190. NAB, *2018 Annual Report*, 25.

191. 'NAB's conviction ratio is 70pc: Report', *The Nation*, 12 April 2020, <https://nation.com.pk/12-Apr-2020/nab-s-conviction-ratio-is-70pc-report>.

192. Arshad Aziz Malik, NAB KP cases conviction rate is 17.6pc this year, *The News*, 27 December 2019, <https://www.thenews.com.pk/print/589457-nab-kp-cases-conviction-rate-is-17-6pc-this-year>.

193. *Ibid.*

194. Sumaira Samad, Combating corruption: The Case of the National Accountability Bureau Pakistan, *Journal of Administration and Governance*, 1/3, 2008, 97-98.

195. Nadeem Iqbal, Our Anti-corruption Strategy, *The News*, 21 February 2019, <https://www.thenews.com.pk/print/434594-our-anti-corruption-strategy>.



So far, the most prominent role of the federal Parliament in relations with the NAB has been the consultation process during the appointment of the NAB chairperson. Although the court's interpretation of 'consultation' should be read as reaching consensus, and is certainly welcome, it would be beneficial to have more substantive discussion on the candidates in the House, conducted either in the committee or in plenary. The procedure of proposing candidates and the vetting procedure could be regulated in further detail, to allow for a transparent and inclusive process. The possibility of having a public competition could also be explored, because such procedure may attract more candidates, with different backgrounds.

Furthermore, one might reconsider the length of the term of office of the NAB chairperson, to either allow for one reappointment or to extend its length to at least six or seven years, which in both cases is longer than the mandate of the appointing body. These are mechanisms which can contribute to strengthening the independence of the NAB chairperson because they can then be less influenced by the views of the appointing body. The term of office of deputy chairperson should be aligned with that of the chairperson.

Under the current legislative framework, the NAB chairperson completely controls the work of the Bureau. Some experts have suggested transforming NAB into a collective body with collective decision making.¹⁹⁶ The advantages or drawbacks of such proposal could be duly considered.

One of the ways of increasing the effectiveness of independent oversight institutions is ensuring that their reports and findings, presented in the annual report, are discussed in parliament.¹⁹⁷ Currently, legislation stipulates that the NAB presents its annual report to the President (only). It is recommended that this be changed, in both legislation and practice, and expanded to Parliament as well. The Parliament should be a place of timely, open, and evidence-based dialogue on key anti-corruption challenges. Furthermore, parliamentary committees may invest more efforts in establishing regular relations with the NAB. That particularly applies to the Law and Justice Committee and the Public Accounts Committee.

196. Interview with Ahmed Bilal Mehboob, President of the Pakistan Institute of Legislative Development and Transparency (PILDAT), 3 June 2020.

197. Luka Glušac, *Strengthening Ombudspersons in Central and Eastern Europe*, Policy Paper No. 7, German Marshall Fund of the United States, 2020, 14, <https://www.gmfus.org/publications/strengthening-ombudspersons-central-and-eastern-europe>.

While commentaries on NAB's performance have traditionally been mixed,¹⁹⁸ for the NAB to be effective in pursuing a number of high profile persons suspected of corruption, including politicians, bureaucrats and business leaders,¹⁹⁹ the courts have to play their part in an efficient manner, by concluding their proceedings promptly and authoritatively. Only when high profile persons are convicted for corruption does the public perception of impunity for corruption start to change.

Therefore, it is recommended that the NAB continues to invest efforts in the public presentation of its activities and results, and actively use social media to raise awareness. While up to 10 per cent of NAB's budget outlay is devoted to awareness raising and prevention, which is commendable, NAB is carrying out an extensive annual public outreach programme that includes formulation of prevention plans at federal as well as provincial level, initiation of corruption prevention initiatives, and constitution of character-building societies to enhance awareness and education.²⁰⁰

In its annual report and its public outreach programme, NAB could highlight both good and bad developments, in terms of high-profile cases that can influence public opinion and perception. The combination of strong legal actions and effective public presentation certainly increases public confidence in the state's anti-corruption determination and actions.

198. Masood Khan, Niaz Kakakhel and Mel Dubnick, *Prosecuting Corruption: The Case of Pakistan*, Working Paper for the Ethics Forum held by the American Society for Public Administration, Portland, 26-27 March 2004, <http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN019113.pdf>.

199. Sumaira Gauhar, NAB Overview, *The Blue Chip*, 2/14, 2005, 27-37.

200. Transparency International Pakistan, *Assessment of Pakistan National Accountability Bureau*, 2016, 41.

6. Case study: The Maldives

6.1 Background

Since its conversion to Islam in the 12th century and until 1968, the Maldives was governed as an independent Islamic sultanate. In the 16th century, the Portuguese ruled the island for 15 years between 1558 and 1573.²⁰¹ They were driven out by the Maldives' warrior patriot Muhammad Thakurufaanu Al-Azam, an event now commemorated as the National Day of the Maldives. In the mid-17th century, the Dutch, who had replaced the Portuguese as the dominant power in Ceylon (today Sri Lanka), established hegemony over Maldivian affairs without involving themselves directly in local matters. The country was a British protectorate from 1887 until 1965, when the Maldives gained independence under an agreement signed with the United Kingdom. The sultanate continued until 1968 when a republic was declared after a constitutional referendum. Prime Minister Ibrahim Nasir became President.

The 1968 Constitution enabled the President to exercise a level of authority similar to what was exercised by past autocratic monarchs. The Constitution remained silent on political parties or multiparty politics, which enabled the head of state to suppress freedom of expression.²⁰²

The 1968 Constitution remained the law of the land until 1997 when a new constitution was enacted. However, this new constitution also failed to provide democratic constraints on political leaders. As noted by some observers, this constitution was drafted by politicians whose primary objective was to maintain the status quo. The pre-existing Constitution of 1968 guaranteed unlimited political powers for the ruler; and this enabled the incumbent government to shape the 1997 Constitution to its political advantage.²⁰³

The 1997 Constitution fell short of making the government accountable for its actions, especially for its continued failures to address societal problems, due to its lack of checks and balances provisions. For example, the judiciary and the parliament were under the control of the executive. The constitution was silent on a 'separation of powers' provision, giving unlimited powers to the executive.²⁰⁴ Furthermore, no political parties were allowed to register or function; and any domestic opposition was unrecognised, unorganised and very weak. The situation provided little or no opportunity for advocacy or open dialogue with either the state or the outside world.²⁰⁵

By the end of 1990s, the societal problems caused by the persistent underdevelopment in the Maldives led to increasing public frustration. Despite efforts by the then President to suppress politically activist individuals and groups, people eventually became more active and concerned about the governance and human rights issues in the country.²⁰⁶ People had easier access to cross-border resources - including international human rights systems - that could be used to scrutinise the autocratic government system.²⁰⁷ The murder of an inmate and shootings in prison by armed forces in 2003 led to civil unrest.²⁰⁸ The government was faced with domestic and international pressure to adopt better governance structures,²⁰⁹ which ultimately resulted in a new constitution in 2008.

201. Mamta Chowdhury, The Maldives, In Anis Chowdhury and Wahiduddin Mahmud, *Handbook on the South Asian Economies*. Edward Elgar. 2008, 222.

202. Athaulla Rasheed, An Institutional Approach to Understand the Recent Political Change in the Maldives, *Lawasia Journal*, 2012, 169.

203. *Ibid.*

204. *Ibid.*

205. Ahmed Shahid and Hilary Yerbury, A Case Study of the Socialization of Human Rights Language and Norms in Maldives: Process, Impact and Challenges, *Journal of Human Rights Practice*, 2/6, 2014, 284.

206. <https://www.nonviolent-conflict.org/wp-content/uploads/2016/02/Maldives-1.pdf>.

207. More on development of human rights in the Maldives in: Ahmed Shahid and Hilary Yerbury, A Case Study of the Socialization of Human Rights Language and Norms in Maldives: Process, Impact and Challenges, *Journal of Human Rights Practice*, 2/6, 2014, 281-305.

208. <https://www.nonviolent-conflict.org/wp-content/uploads/2016/02/Maldives-1.pdf>.

209. Athaulla Rasheed, An Institutional Approach to Understand the Recent Political Change in the Maldives, *Lawasia Journal*, 2012, 169.

The 2008 Constitution defines the Maldives as a presidential democracy, with clear separation of powers between the executive, legislative and judicial branches of government. In the same year Maldives held its first multi-party elections, ushering in a new President, Mohamed Nasheed, ending almost 30 years of rule by President Maumoon Abdul Qayoom.²¹⁰ Although the first years under the new constitution had been very promising, the country faced deep political polarisation. The government struggled to keep the reforms going.

Besides introducing the separation between the three branches of government, the new constitution also established a plethora of independent institutions, promoting the concept of a fourth branch of government. There are two types of independent institutions in the Maldives: independent institutions established by the constitution, and independent institutions established by legislation enacted by parliament. There is also a third type of commission, established by a presidential decree and operating under the authority of the President. The presidential commissions are not considered independent institutions according to the two categories mentioned above.

Seven independent oversight institutions are mandated by the constitution: 1. Judicial Service Commission (JSC); 2. Elections Commission (EC); 3. Civil Service Commission (CSC); Human Rights Commission of the Maldives (HRCM); 5. Anti-Corruption Commission (ACC); 6. Auditor General's Office (AUGO); and 7. Prosecutor General's Office (PGO).

Further independent institutions were established through legislation adopted by the People's Majlis, including the Information Commissioner's Office (ICOM), National Integrity Commission (NIC) and the Maldives Broadcasting Commission (MBC).

In 2018, President Ibrahim Mohamed Solih was elected and he created new temporary presidential commissions, one of them being the Presidential Committee on Corruption and State Asset Recovery.²¹¹ The stated purpose of the Presidential Commission on Corruption and State Asset Recovery was 'to recuperate the lost assets of the state from 1st January 2012 till 17th November 2018 and to ensure that all responsible authorities carry out their legal duties in investigating the corruption and abuse of power within state institutions'.²¹² The establishment of the presidential commission was explained by the need to intensify efforts to combat corruption, especially after the scandal over the tropical island leases obtained by tourism companies without public tender.²¹³

The systemic problems in curbing corruption have been highlighted by the Maldives' score on Transparency International's Corruption Perceptions Index. The Maldives' score has been in decline since 2016 (Table 4).

210. Transparency Maldives, *Anti-Corruption Agency Strengthening Initiative - Assessment of the Maldives Anti-Corruption Commission*, 2016, 12.

211. The Commission was established in November 2018 by Presidential Decree 2018/14.

212. 'President Solih presents letter of appointment to members of the Presidential Commission on Corruption and Asset Recover', *The President's Office*, 4 December 2018, <https://presidency.gov.mv/Press/Article/19946>.

213. See more at: Will Jordan, Report exposes Maldives 'orgy of corruption' ahead of election, *Aljazeera*, 18 September 2018, <https://www.aljazeera.com/news/2018/09/report-exposes-maldives-orgy-corruption-election-180917121608752.html>.

Table 4 - Maldives's score in TI's Corruption Perceptions Index (2016-2019)²¹⁴

Year	CPI Score	Country Rank
2019	29/100	130/180
2018	31/100	124/180
2017	33/100	112/180
2016	36/100	95/176

The establishment of the Presidential Commission on Corruption and State Asset Recovery was primarily perceived as a signal of the President's determination to strengthen anti-corruption efforts. To that end, this Commission could help already existing anti-corruption bodies.

The main anti-corruption body in the Maldives is the Anti-Corruption Commission (ACC), established as an independent legal entity under the 2008 Constitution, also following the Maldives accession to the United Nations Convention against Corruption (UNCAC) in 2007. The ACC replaced the Anti-Corruption Board (ACB), which had been established under presidential decree in April 1991. The ACC is a legal successor of the ACB, which was mandated with investigating claims of misuse of state funds, collecting bribes, abuse of function to receive or provide an undue advantage and using any other illegal practice to gain an undue benefit.²¹⁵

Besides the Anti-Corruption Commission Act (ACCA)²¹⁶, which regulates the work of the ACC, the key anti-corruption law is the Prevention and Prohibition of Corruption Act (PPCA), adopted in 2000.²¹⁷ The PPCA encompasses bribery, government employees taking undue advantage, accepting gifts from a party who has requested government services, business dealings of certain position holders with foreigners who request something from the government and assigning work or procuring or using government property for personal gain.

However, illicit enrichment is also not criminalised and the People's Majlis (Parliament) rejected the amendment put forward by ACC for its inclusion.²¹⁸ Furthermore, embezzlement is only partially criminalised under the penal code.²¹⁹ At the time of this study, the government had submitted amendments to the penal code with the aim to criminalise illicit enrichment and other new corruption offences.²²⁰

With the new constitution, the legislative authority of the Maldives has been vested in the People's Majlis, along with the determination of matters relating to independent commissions, in accordance with law.²²¹ On 17 March 2010, the Parliament passed a motion to create a permanent Committee on Independent Institutions, to oversee the functioning of these institutions. The work of the committee is guided by the Standing Orders of the People's Majlis, enacted in 2019, and the regulations of the committee.²²²

214. Before 2016 the Maldives have only been sporadically included in Transparency International's Corruption Perceptions Index.

215. See more at: <https://acc.gov.mv/en/about/history/>.

216. Anti-Corruption Commission Act (ACCA), No. 13/2008.

217. Prevention and Prohibition of Corruption Act, No. 2/2000.

218. Country Review Report of Maldives for the Review Cycle 2010-2015 of Implementations of Articles 15-42 of Chapter 3 and Articles 44-50 of Chapter 4 of United National Convention Against Corruption, page 4-5. See also: *Transparency Maldives, Anti-Corruption Agency Strengthening Initiative - Assessment of the Maldives Anti-Corruption Commission*, 2016, 16.

219. Section 215a of the Maldives Penal Code (2014).

220. <http://agoffice.gov.mv/en/2020/08/12/government-submits-amendments-to-the-penal-code-to-establish-offence-of-illicit-enrichment-and-other-new-offences-of-corruption/>.

221. Article 70 of the Constitution.

222. Transparency Maldives, *Review of Appointment and Dismissal of Members of Selected Independent Institutions of Maldives 2008-*

According to the Standing Orders, the responsibility of the Committee for Independent Institutions is to monitor affairs pertaining to independent institutions, recommend and submit to Majlis any necessary changes required to be made to the policies of independent institutions and monitoring and take necessary measures pertaining to the duties carried out by independent institutions.²²³

The Standing Orders lists functions of the Committee:

- Hold to account individuals posted in independent commissions and institutions which do not fall under the jurisdiction of other Committees.
- Ensure independent commissions and institutions which do not fall under the jurisdiction of other Committees, submit yearly reports to the Majlis and review said reports.
- Investigate complaints filed by members of the public and other parties with regard to independent commissions and institutions which do not fall under the jurisdiction of other Committees and recommend appropriate measures, accordingly.
- Review and finalise bills submitted to parliament on independent commissions and institutions which do not fall under the jurisdiction of other Committees and submit the parliament for consideration.
- Gather information on, review and interview individuals who require parliamentary approval as appointed members of independent commissions and institutions which do not fall under the jurisdiction of other Committees and submit the parliament for consideration.
- Meet independent commissions and institutions which do not fall under the jurisdiction of other Committees, gather information on their work and make recommendations.²²⁴

Another parliamentary committee important for making ACC's accountable is the Public Accounts Committee, which is mandated to review financial records of independent institutions.

2016, 18.

223. Article 117 of the Standing Orders of the People's Majlis (new Standing Order, passed on 26 August 2019).

224. *Ibid.*

6.2 Parliament's role



Determining the legal framework and mandate

The 2008 Constitution established the Anti-Corruption Commission of the Maldives as an independent and impartial institution. As a constitutionally-established institution, the ACC can be abolished only with the amendments to the constitution, for which a three quarters majority of the total membership of the People's Majlis is needed. To that end, the ACC is provided with solid legal safeguards against attempts to abolish the institution.

According to the constitution, the Anti-Corruption Commission works to prevent and combat corruption.²²⁵ The constitution provides for a comprehensive mandate of the ACC, making it a multi-purpose agency. Its functions combine preventive and policy functions with investigation and law enforcement powers, except for prosecutorial powers, which stay with the Prosecutor General's Office. More concretely, the constitution provides for the following responsibilities and powers of the ACC:

- a) To inquire into and investigate all allegations of corruption; any complaints, information, or suspicion of corruption must be investigated.
- b) To recommend further inquiries and investigations by other investigatory bodies, and to recommend prosecution of alleged offences to the Prosecutor General, where warranted.
- c) To carry out research on the prevention of corruption and to submit recommendations for improvement to relevant authorities regarding actions to be taken.
- d) To promote the values of honesty and integrity in the operations of the State, and to promote public awareness of the dangers of corruption.
- e) To perform any additional duties or functions specifically provided by law for the prevention of corruption.²²⁶

225. Article 199 of the Constitution.

226. Article 202 of the Constitution.

The ACCA adds two more functions to those above:

- to conduct seminars, workshops and other programmes on prevention and prohibition of corruption to further public awareness, to carry out research and to publish them; and
- to carry out everything necessary to undertake the responsibilities of the Commission.²²⁷

The ACCA provides a detailed list of law enforcement powers to the Commission, including powers to: summon witnesses and other persons that may have information relevant for the ongoing investigation, procure and examine relevant documents, instruct a person being questioned by the Commission in an ongoing inquiry not to leave the Maldives except with the permission of the Commission, and so on.²²⁸ Upon completing the investigation, the ACC may either close the case if it finds there is no offence of corruption involved, or it refers the case to the Prosecutor General's Office, when it is found that there is an offence of corruption involved and where the Commission believes enough evidence and circumstantial evidence is gathered to prove it in a court.²²⁹ In addition, the ACC may issue recommendations to institutions under its jurisdiction in cases where the problem may be resolved by the actions of the management of the institution in question.

The jurisdiction of the ACC extends to all institutions and employees of the state, including the executive, legislative and judicial branches, government companies, public companies with government shares, associations and political parties funded by the state. Non-profit organisations and associations operating without the objective of a commercial benefit are also included; irrespective of whether or not they receive state funding. Foreigners who are involved in an ongoing investigation of the Commission are also included.²³⁰ It does not, however, investigate the private sector unless a state institution or official is involved.

Selection and appointment

The ACC's composition and the procedure for the appointment of its management is regulated by the constitution and the ACCA. The constitution defines that the ACC is comprised of at least five members including the chairperson of the Commission, all appointed by the President after being approved by a majority of the members of the People's Majlis present and voting, from the names submitted to the People's Majlis as provided for in the ACCA.

All candidates must fulfil certain requirements as provided for by the constitution and the ACCA. The constitution lays down that to be qualified for appointment to the ACC, a person shall possess the educational qualifications, experience and recognised competence necessary to discharge the functions of the Anti-Corruption Commission.²³¹ The constitution further stipulates that the statute governing the Anti-Corruption Commission should specify, inter alia, qualifications of members.²³² Constitutional provisions for all independent institutions contain the same formulation with regard to the requirements for membership.²³³

However, the law (ACCA) does not elaborate on what constitutes 'educational qualifications, experience and recognised competence necessary to discharge the functions'. The law further develops requirements by providing a comprehensive list of prerequisites of the ACC members, but without providing clarifications on the educational qualifications or competencies.

227. Article 21 of the ACCA.

228. Article 22 of the ACCA.

229. Article 25 of the ACCA.

230. Article 24 of the ACCA.

231. Article 201 of the Constitution.

232. Article 199c of the Constitution.

233. Article 157-208 of the Constitution.

According to the ACCA, the members of the Commission have to fulfil the following prerequisites: '(a) must be a Muslim; (b) must be a citizen of the Maldives; (c) must have attained 25 years of age; (d) must not have during the past five years been convicted of an offence for which a hadd is prescribed in Islam;²³⁴ (e) must not be a person holding an elected position under the Constitution or any Law of the Republic of Maldives; (f) must not be engaged in government or any other employment; (g) must not have convicted of an offence of personal gain or fraud or corruption; (h) must not have convicted of a criminal offence and sentenced to a term of more than 12 months, and where he has been convicted of a criminal offence and sentenced to a term of more than 12 months, a period of five years has been elapsed since his release, or pardon for the offence for which he was sentenced; and (i) must not be a member of a political party or an activist of a political party.'²³⁵

The ACCA regulates the selection and appointment procedure in more detail. It firstly stipulates that the Commission consists of five members, clarifying the constitutional provision. The selection and appointment go as follows. The President submits to the Peoples Majlis the list of at least five names for the ACA's members. The ACCA stipulates that the candidates are chosen among the names preferred by the President of the Republic and names of those who applied upon a public announcement. Whilst the names are being submitted to the People's Majlis by the President of the Republic, the names of those who applied upon the public announcement must be submitted to the People's Majlis for their information.²³⁶ The public announcement is advertised by the President's office. It should be noted that the ACC is the only independent institution for which the President can directly nominate candidates in addition to the applicants who respond to the public announcement.

Between 2006 and 2014, the President could nominate candidates from outside the pool of candidates who apply for the position of Commissioner of Human Rights Commission of the Maldives. This practice was discontinued following an amendment to the Human Rights Commission Act which restricted the President's nomination to only the candidates who apply for the position.²³⁷

The same thing happened in case of the Civil Service Commission (CSC). In 2010, the Civil Service Commission Act of 2007 was amended to transfer - from the President to the parliament - the responsibility of making a public announcement to seek candidates for the CSC. The parliament is now required to shortlist the interested candidates and forward their names to the Committee on Independent Institutions for evaluation. Currently, for other institutions (where the President forwards names to the parliament), the President can only select names from applicants who responded to the public announcement.²³⁸

In some cases such as the Maldives Broadcasting Commission (MBC), the President shall send names and CVs of all the applicants to the parliament.²³⁹ In case of the ACC, the President has absolute discretion to choose the applicants and nominees to be sent for parliamentary approval.²⁴⁰ Given the lack of transparency in this stage of selection, it is not known whether the names proposed by the President are direct nominees or applicants.²⁴¹

234. See more on hadd in Islam in: Fazlur Rahman, The Concept of Hadd in Islamic Law, *Islamic Studies*, 3/4, 1965, 237-251.

235. Article 5 of the ACCA.

236. Article 4c of the ACCA.

237. Transparency Maldives, *Review of Appointment and Dismissal of Members of Selected Independent Institutions of Maldives 2008-2016*, 21.

238. *Ibid*, 48.

239. Article 6(b) of MBC Act. http://broadcom.org.mv/v2/wp-content/uploads/2015/08/Broadcast-Act-Translation_1.pdf.

240. 'In case of Maldives Broadcasting Commission, the President shall send the names & CVs of all the applicants to the Majlis. When compiling the list, the President will arrange names of applicants based on the preference.' Article 6(b) of MBC Act: http://broadcom.org.mv/v2/wp-content/uploads/2015/08/Broadcast-Act-Translation_1.pdf

241. *Transparency Maldives*, 33.

The Standing Orders of the People's Majlis, adopted in August 2019, provide for further explanation of the appointment procedure once the list of candidates reaches the Parliament.²⁴² Firstly, eligibility of individuals applying or nominated for the position is assessed by professional parliamentary staff members. This stage was introduced in 2019 with the adoption of new Standing Orders. In the past, MPs and members of the Committee for Independent Institutions were assigning marks to candidates based on experience, qualifications and integrity - which was criticised as arbitrary and subject to manipulation.²⁴³

Table 5 - Changes of the Standing Orders in the Maldives

It was the process of appointing the members of the ACC in 2019 that initiated the changes to the Standing Orders, regarding the procedure of assessing the eligibility of candidates. During the evaluation stage, then performed by the members of the Committee for Independent Institutions, former auditor general Niyaz Ibrahim scored below the 75 per cent threshold for recommendation to the Majlis' floor. Niyaz was among 12 candidates shortlisted by the President's Office and was nominated for parliamentary approval after 68 people submitted applications. Both Niyaz and the second highest ranked candidate were passed over when the candidates were put to a vote in the order of the marks assigned by the Committee.²⁴⁴ Many observers noted that marks assigned by the members of the Committee to the candidates may be given without clear justification. Thus, the new Standing Orders introduced the administrative evaluation of eligibility performed by the parliamentary staff, to exclude political calculations.

Individuals identified as eligible for the position by the panel are then summoned to the Committee for Independent Institutions and interviewed. The new Standing Orders stipulate that all individuals interviewed by the Committee should be given 10 minutes to present the individual's capability, knowledge, experience and vision with respect to the position or field and a self-introduction.

To allow for public engagement, a public announcement is made to allow the public to submit any potential complaints against the applicants. If there is a complaint, five minutes is given to both a complainant and to a party who is able to verify the candidate's information or serve as the candidate's referee. Subsequently, the members of the Committee are given the opportunity to question the eligible candidates. Upon completion of the questions and answers, the Committee holds a vote on approving the appointment or recommending for parliamentary approval. Only the names of the candidates who pass a two-thirds vote of the Committee are forwarded to the Majlis floor. After completion of the vote, the Committee prepares a report on the appointment or appointments and presents this to the People's Majlis. All committee sessions are broadcast without censorship, via radio or television or other media. The People's Majlis approves the candidates with a simple majority vote, who are then appointed by the President of the Republic.

Members of the ACC may be removed from the office in the following circumstances: (a) end of tenure; (b) resignation; (c) being dismissed as a member of the Commission as per Art. 14 of the ACCA; (d) standing to be elected to a political position under the constitution or any other law; (e) death; (f) failure to fulfil member's prerequisites mentioned above.

242. Article 201 of the Standing Orders of the People's Majlis..

243. 'New Members Appointed to Anti-Corruption Watchdog', Maldives Independent, 10 September 2019, <https://maldivesindependent.com/politics/new-members-appointed-to-anti-corruption-watchdog-147863>

244. See more in: 'MPs approve new rules for asset disclosure and evaluation of nominees', Maldives Independent, 27 August 2019, <https://maldivesindependent.com/politics/mps-approve-new-rules-for-asset-disclosure-and-evaluation-of-nominees-147545>.

Article 14 of the ACCA regulates the dismissal of the ACC's members. It defines that the member may be dismissed if it is found that an action of a member contravenes ethical standards of the members²⁴⁵ or is unable to perform his or her duties. It is the competence of the Committee for Independent Institutions of the People's Majlis to determine whether the circumstances for the dismissal exist. According to the Standing Orders of the People's Majlis, upon receipt of a motion to dismiss a member of the ACC, the Speaker of the People's Majlis forwards the case to the Committee for Independent Institutions without holding a floor debate. The Committee prepares the report on the matter, which the Majlis then debates if the Committee established that the reasons for the dismissal exist. The debate lasts for not more than two hours.²⁴⁶ After the debate, the People's Majlis may approve the dismissal by majority of the members present in a vote.²⁴⁷ According to available information, no member of the ACC has been dismissed yet.²⁴⁸ However, in June 2019 a no confidence motion was submitted against the last president of ACC, which led to his resignation.²⁴⁹

The Constitution and the ACCA define that a member of the ACC is appointed for one term of five years, which may be renewed once by the People's Majlis.²⁵⁰ This provision is in line with international standards, given that countries usually opt to appoint heads of independent bodies either for one longer non-extendable mandate (6-7 years) or shorter (4-5 years) but with the possibility of one reappointment.

During their mandate, members of the ACC enjoy immunity, as guaranteed by the ACCA. The ACCA defines that no criminal or civil suit shall be filed against the President or Vice President or a member of the Commission in relation to committing or omitting an act in good faith whilst undertaking responsibilities of the Commission or exercising the powers of the Commission or powers conferred to the Commission by a law.²⁵¹

Members of the ACC elect the President and the Vice-President of the Commission among themselves. The President of the Republic and People's Majlis are to be notified of this election within 48 hours. The President of the Commission chairs the meetings of the Commission and assigns responsibilities to the other members.²⁵²

Budget allocation

The law stipulates that the ACC is funded by the state budget. According to the law, the state treasury provides the Commission with funds from the annual budget approved by the People's Majlis, essential to undertake the responsibilities of the Commission. Following consultation with the Ministry of Finance and Treasury, the Commission drafts its budget and submits it with state annual budget to the People's Majlis. It is commendable that the law foresees that the Commission drafts its own budget, as that protects its financial independence and allows it to plan its institutional development in a more predictable way. Nevertheless, it is important that consultation with the Ministry of Finance and Treasury during the drafting phase does not effectively mean the Ministry can limit the draft budget in this phase.

It should be noted that the ACCA allows the Commission to utilise the financial assistance from any external entity, that is, fund received by persons or an organisation or a foreign government, but only for the purpose of achieving the objectives of the Commission.²⁵³

245. Ethical standards are defined in Article 17 of the ACCA.

246. Article 210 of the Standing Orders of the People's Majlis.

247. Article 14 of the ACCA.

248. Transparency Maldives, *Review of Appointment and Dismissal of Members of Selected Independent Institutions of Maldives 2008-2016*, 34.

249. <https://edition.mv/news/11131>.

250. Article 203 of the Constitution and Article 6 of the ACCA.

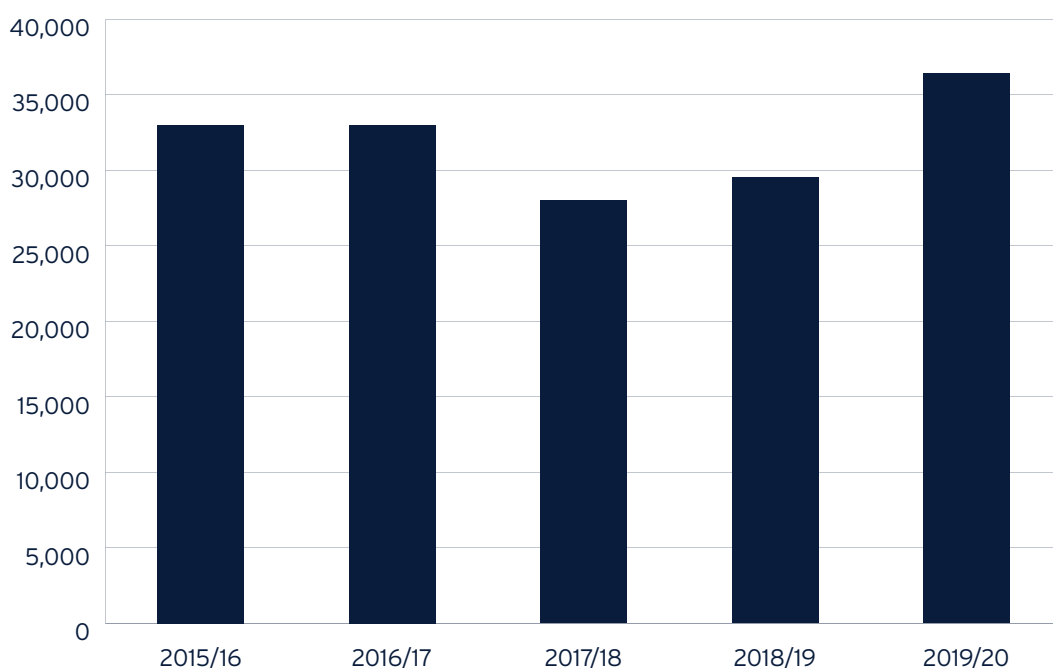
251. Article 18 of the ACCA.

252. Article 8 of the ACCA.

253. Article 30 of the ACCA.

Since 2015, the ACC has had a rather steady budget with some annual fluctuations in absolute numbers (see Figure 5).

Figure 5 - the Maldives ACC annual budget 2015-2020²⁵⁴ (in million Maldivian Rufiyaa)



Reporting

The legislation provides that the ACC prepares and submits its annual report before February 28th of every year to the President of the Republic and the People's Majlis.²⁵⁵

The ACCA regulates in detail what type of information the annual report must contain. Namely: (1) the work done by the Commission; (2) complaints filed with the Commission; (3) cases decided by the Commission and the decisions of the Commission; (4) cases in ongoing inquiries by the Commission; (5) cases pending in the Commission; (6) recommendations made to institutions under the Commission's jurisdiction; (7) recommendations adopted and refused by such institutions; and (8) details of administrative actions on management sector of the Commission and on the employees in that year.²⁵⁶ Along with the annual report, the Commission submits to the President of the Republic and the People's Majlis a financial statement comprising the Commission's income.²⁵⁷ The ACCA is obliged to publish the annual report within 14 days of submitting the report to the President of the Republic and the People's Majlis.

The last annual report available in English on the ACC's website is the 2015 Annual Report.²⁵⁸ The report covers the role and activities of the ACC in the past year, including chapters on administrative and budget issues, corruption in state owned enterprises, events conducted, public awareness of anti-corruption, suggested legislative changes, success and challenges encountered in the past year, and so on.

254. Data for 2015-2017 are retrieved from the ACC's website: <https://acc.gov.mv/en/category/budget/>; data for 2018-2020 are from: Ministry of Finance, Budget in Statistics 2020, 216, <https://www.finance.gov.mv/public/attachments/8abKxEmFz7tt9H7qcskARR2CUTsCUfeBvOjBxvEA.pdf>.

255. Article 31a of the ACCA.

256. Article 31b of the ACCA.

257. Article 30c of the ACCA.

258. ACC, 2015 Annual Report, <http://acc.gov.mv/en/wp-content/uploads/2016/06/Annualreport-Eng.pdf>.

As per available information, it appears the Parliamentary Committee on Independent Institutions has not interacted frequently with the ACC in relation to the annual report. The situation appears similar to other independent institutions which also submit annual reports to the parliament but follow up appears limited despite a constitutional and legal framework that facilitates engagement. Further research may help clarify these matters.

Finally, the ACCA provides that when a special circumstance arises, and should the Commission deem relevant, the Commission may submit a special report to the President of the Republic and the People's Majlis accordingly.²⁵⁹

6.3 Assessment

The 2008 Constitution provided for a solid legal framework for the operations of the Anti-corruption Commission, including procedural safeguards against attempts to abolish the institution. The ACC is given a comprehensive mandate, making it a multi-purpose agency. Its functions combine preventive and policy functions with investigation and law enforcement powers, except for prosecutorial powers, which stay with the Prosecutor General's Office (PGO). To that end, establishing good strategic cooperation with the PGO is vital for the ACC to be able to produce a tangible outcome of its investigations.

The ACC signed a Memorandum of Understanding (MoU) with the PGO. It is expected that if it is implemented in practice, this MoU should help improving coordination between them, to ameliorate both the low conviction rate for corruption-related cases and, similarly, the number of corruption cases rejected by PGO.²⁶⁰

Dynamic engagement between the ACC and the PGO seems constructive. Some aspects of the role of the President of the Republic in relation to the ACC could benefit from review. Namely, there is a case for reviewing if the President's prerogative in submitting their own nominees outside of applicants who respond to public announcements should be removed, because this provision has survived only in the case of ACC.

Beyond this, the selection and appointment procedure is regulated in a rather comprehensive manner, providing for an inclusive, mostly transparent and open process. One element of the procedure that could be improved by amending legislation is clearer definition of formal qualifications of ACC members, as neither the constitution nor the ACCA specify what constitutes 'educational qualifications, experience and recognized competence necessary to discharge the functions'.

Compared with the selection process of commissioners, where the parliament has indeed a substantive role, in other areas there is an important space for more active and consistent interaction between the ACC and the parliament. Strategic cooperation between the Parliamentary Committee for Independent Institutions could be established to allow for regular follow up to ACC's reports and organisation of joint activities, such as public hearings or consultations. While recently some good steps were made towards more active engagement of the Committee with the ACC, efforts could be invested to establish this as a consistent and predictable practice.

259. Article 31d of the ACCA.

260. Transparency Maldives, *Anti-Corruption Agency Strengthening Initiative - Assessment of the Maldives Anti-Corruption Commission*, 2016, 31.

In general, there is significant potential in the ACC. It is a multi-purpose anti-corruption agency, a model that seems to suit the Maldives. Opting for several anti-corruption bodies would not be justifiable given the size and population of the country. A robust legal framework for the work of the ACC has already been established. It is noted that the bill to amend the ACCA proposed by government, is in parliament, currently at the committee stage.²⁶¹ While it remains to be seen whether and in what shape these amendments would be adopted, any potential changes of legislation should be aimed at further strengthening the ACA's capacities and guarantees of its independence.

With the improvement of cooperation with the PGO, more success is expected in the ACC's law enforcement function, which is important for changing the public perception of corruption. For these actions to be indeed effective, the courts will have to play their part in an effective manner as well, by concluding their proceedings in a timely and authoritative way. Only when corrupt officials in high office are ultimately convicted for corruption does the public perception really start to change.

261. See more at: <https://majlis.gov.mv/en/19-parliament/committee-work/805>.

7. Conclusions

The three anti-corruption agencies analysed in this publication share several commonalities, but also differ in some important aspects of their establishment and functioning.

Our assessment framework proved to be useful for the analysis of the complex relationship between parliaments and ACAs. It captured key features of this nexus, covering both elements of independence and accountability.

ACAs must be independent to be able to perform their roles and responsibilities. In analysing parliament's relationship with the ACAs in Indonesia, Pakistan, and the Maldives, we took note, firstly, that these ACAs have operated for years and have a well-established track record. Namely, the National Accountability Bureau (NAB) of Pakistan was created in 1999, the Indonesian Commission for the Eradication of Corruption (KPK) in 2002, while the Anti-Corruption Commission of the Maldives was founded in 2008.

All three countries ratified the UNCAC and opted for a similar institutional set-up: a multi-purpose ACA. The main difference between them is whether they have been given a prosecution function or not. The ACAs in Indonesia and Pakistan do have a prosecution function, while the Maldivian one does not.

All three ACAs have strong legal foundations; the Anti-Corruption Commission of the Maldives was established by the constitution, while the National Accountability Bureau of Pakistan and the Indonesian Commission for the Eradication of Corruption were founded by the law. They have been provided with a strong and clear mandate.

Our research has shown that the type of political system, while not particularly relevant for the legislative framework and budget issues, does have some influence on the selection and appointment process (and reporting).

The Maldives and Indonesia are presidential democracies. After the 18th amendment to the Constitution, passed in 2010, Pakistan shifted from a semi-presidential system to a purely parliamentary government. Despite this, in all three countries, the leadership of the ACA is ultimately appointed by the President, although following different parliamentary procedures.

The KPK commissioners in Indonesia are appointed by the parliament, from a pool of candidates proposed by the President, who also must confirm the appointment after the parliament has done so. The President appoints the members of KPK Supervisory Board as well. Pakistan's NAB's Chairperson is appointed by the President in consultation with the Leader of the House and the Leader of the Opposition in the National Assembly. The ACC Commissioners in the Maldives are appointed by the President after being approved by a majority of MPs present and voting, from the names submitted to the Parliament. In the Maldives, the President has the additional power to directly nominate candidates for Commissioners, outside of applicants who respond to the public announcement.

The appointment process influences the reporting procedure, as ACAs usually report to those authorities who appointed them. Namely, the KPK reports to the President and the parliament of Indonesia, and it is the same for ACC in the Maldives, while the NAB submits its annual report only to the President of Pakistan. According to available information, NAB's annual report has never been formally submitted to Parliament and has not been discussed in the Parliament.

Consideration of ACAs' regular and special reports is one of the key mechanisms for making them accountable on the one hand and providing them with more public exposure on the other. At the same time, comprehensive and meaningful discussion of the reports, and particularly their follow-up, should serve as a parliament's mechanism for oversight. The parliament should pick up the main conclusions and recommendations from ACAs' reports and push the government to implement them. However, our analysis showed a poor picture in this regard.²⁶²

In all three cases, follow-up to ACA reports is the weakest part of the overall relationship between parliaments and ACAs. Only in the case of the Maldives does the law contain substantive provisions on the content of the ACA report. However, in all three cases there are very scarce legal provisions on the follow-up to the reports. Parliaments remain largely inactive, discussing ACAs' reports only sporadically, with little if any substantial parliamentary conclusions or follow-up. All three parliaments need to establish regular, transparent, consistent, and clear procedures for discussing ACAs' reports. This is likely most easily done by amending parliament's rules of procedures.

Multi-purpose ACAs are very much oriented towards the judiciary. In cases when the ACC has not been vested with prosecutorial function, as in the Maldives, the efficient cooperation with the Prosecutor General or equivalent body is a necessary precondition for reaching a decent conviction rate of ACA cases. The role of courts is of critical importance for the ultimate success of the entire anti-corruption system. For ACAs' actions to be effective, the courts must play their part in an efficient manner as well, by concluding their proceedings in a timely and authoritative way. ACAs for their part should 'feed' the courts with well-investigated and evidence-rich cases.

Only when high officials are ultimately convicted for corruption does the public perception really start to change. That is of particular relevance for the three countries we analysed, as the public perception of corruption is very high in all of them. All three countries have been continuously ranked rather poorly on major international surveys, such as Transparency International's Corruption Perception Index.

All three case studies suggest that selecting priorities and using their resources most efficiently are among strategic challenges of multi-purpose ACAs. Given that these agencies have a broad mandate, covering prevention, law enforcement and policy and coordination, it is of vital importance to try, on the one hand, to develop them in balance and at a similar pace, but on the other hand, to make smart prioritisations depending on the stage of institutional development and current corruption-related issues.²⁶³

This publication showed that parliaments in all three countries need to invest more efforts in establishing regular and structured relationship with ACAs; that is, to go beyond their legislative function and demonstrate they are fully invested in anti-corruption campaigns, by discussing ACAs' reports, making sure they have optimal budget, and active participation in other mechanisms, such as audits. These all serve not only to protect ACAs' independence, which should be parliaments' essential role, but also to make them accountable.

Parliament should provide active and consistent support to the work of ACAs. That requires a high level of political maturity because ACAs can also investigate MPs. With undivided support to an ACA, MPs are also proving to their constituency that they are indeed devoted to curbing corruption. Embracing the anti-corruption agency that can ultimately put them in prison is prime evidence of MPs' sincere determination to eradicate corruption, including in their own ranks.

262. This coincides greatly with our conclusion for the European study. See: Franklin De Vrieze and Luka Glušac, Parliament's relationship to anti-corruption agencies: Evidence from Lithuania, Ukraine and Serbia, WFD, 2020, <https://www.wfd.org/2020/07/10/report-parliaments-relationship-to-anti-corruption-agencies-evidence-from-lithuania-ukraine-and-serbia/>

263. *Ibid.*

However, there is no quick solution for building a functioning anti-corruption system, even with political will. The issue of corruption touches upon all aspects of the state and addressing it has similarly to draw on many aspects of the broader state reform issues, including civil service reforms, institutional capacity development, building integrity systems and upgrading the policy capacities.²⁶⁴ With a strong mandate and leadership, independent anti-corruption agencies are an invaluable institutional feature for both prevention and law enforcement.

264. Dan Dionisie, Francesco Checchi, Corruption and Anti-Corruption Agencies in Eastern Europe and the CIS: a Practitioners' Experience, <http://www.arabacinet.org/files/activities/Pres-Session6-Checchi-30072008-e.pdf>, 16.

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He has worked on governance issues for over 20 years, including for the United Nations Development Programme (UNDP), Inter-Parliamentary Union (IPU), Organization for Security and Cooperation in Europe (OSCE), European Union (EU), Swiss Development Cooperation (SDC), National Democratic Institute (NDI) and other organisations.

Luka Glušac



Luka Glušac is a researcher specialised in independent oversight bodies. He has joined DCAF - Geneva Centre for Security Sector Governance in 2020, where he coordinates the ombuds programme. He has been appointed as a Research Fellow at the University of Belgrade - Institute for Philosophy and Social Theory in 2019. Previously, he was a Senior Advisor in the NHRI of Serbia (The Ombudsman) from 2011 to 2019. In 2018, he served as an NHRI Fellow at the Office of the UN High Commissioner for Human Rights (OHCHR) in Geneva. In addition, he is a Member of the Executive Board of the Belgrade Centre for Security Policy, a leading think tank in the Western Balkans.

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