

Background paper on the topic of “enhancing the effectiveness of anti-corruption bodies” pursuant to resolution 8/7 of the Conference, entitled “Enhancing the effectiveness of anti-corruption bodies in fighting corruption”

## **Article 6 UNCAC**

1. Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as: a) implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies; b) Increasing and disseminating knowledge about the prevention of corruption.

In relation to article 6, para 1 and measures/steps that have been taken, States parties and signatories may wish to consider including the following:

- Description of the main body or bodies that prevent corruption and, if applicable, oversee and coordinate the implementation of the policies referred to in article 5 of the Convention;
- Description of the measures taken that such body or bodies: effectively disseminate knowledge about the prevention of corruption and deal effectively with grievances and complaints from citizens concerning corruption;
- Description of measures taken to ensure that such body or bodies can assess their own effectiveness.

According to Law No. 30 of 2002 as amended by Law No. 19 of 2019, the Corruption Eradication Commission (KPK) is a state institution under the auspices of the executive that is responsible for preventing and eradicating corruption. It is led by 5 Commissioners (in a collective and collegial manner), and supervised by 5 members of a supervisory board. Its main duty is to prevent corruption; coordinate with other agencies that are authorized to eradicate corruption; provide public services; monitor the implementation of state governance; supervise other agencies authorized to engage in corruption eradication; conduct preliminary examinations, investigations and prosecutions of corruption; and execute judge and court decisions that are final, conclusive and binding. Hence, KPK is the agency in charge of conducting corruption prevention measures as well as coordination and supervision of authorized institutions in their anti-corruption activities.

In carrying out its preventive duties, KPK has the authority to organize the submission and examination of asset declarations by public officials; receive reports on, and determine the status of gratification; and organize anti-corruption education and campaign. KPK is also authorized to review the administrative management system in all State and government agencies, and advise on changes to be made when potential corruption is found. Through its Directorate of Public Complaint, KPK also receives public complaints related to corruption. KPK also has a whistle-blower system to enable complaints on corruption to be submitted anonymously.

### **Asset Declaration**

In 2016, KPK introduced an e-system for managing asset declarations and reorganised its verification procedure. Asset declarations are submitted annually in addition to when entering and leaving office. An electronic declaration system facilitates the process of reporting, and it is used by around 90% of the declarants. A summary of the declaration is publicly available online. KPK also verifies the truthfulness of declared data. To this end, it has access to a number of state databases, including automated links. KPK may also directly access banking data of public officials for verification purposes.

### **Community Engagement & Public Participation for Anti-corruption**

KPK has adopted a new concept in corruption prevention, which includes collaboration with communities that are self-reliant and active in social activities, to disseminate the value of integrity to all segments of

society through ongoing activities and to foster a sense of ownership of anti-corruption movements within the community. Community engagement can further strengthen anti-corruption movements and can foster initiatives and public participation to actively engage in anti-corruption movements in various forms. KPK supports the 'I, Women Against Corruption' movement, the Anti-Corruption Movement by Persons with Disability in Bandung, film makers participating in the Anti-Corruption Film Festival, etc.

### **Dissemination of anti-corruption knowledge**

KPK established the Anti-Corruption Clearing House (<http://acch.kpk.go.id>) as a platform to share information on corruption prevention and enforcement. Anti-Corruption Campaign materials and guidance are available for free. KPK established contact centre '198' to receive complaints or questions from the public. In 2018, KPK also established the Anti-Corruption Learning Centre (ACLC) as the centre of excellence for anti-corruption learning and capacity building for domestic stakeholders and international partners.

### **Corruption Risk Assessment**

Some studies and reviews have been conducted on bureaucratic reform, code of ethics of political parties, potentiality of corruption in public procurement of goods and services, potentiality of corruption in state revenue (tax, customs, non-tax revenues), and the potentiality of corruption in strategic sectors such as food security, natural resources, basic services in education and health, as well as infrastructure. Recommendations from the studies/reviews are submitted to the relevant agencies and the implementation of the recommendations would be monitored by KPK. If the recommendations are not being followed up, KPK could submit the report to the President, the Parliament, and the Supreme Audit Board.

### **Performance**

KPK uses the Transparency International Corruption Perception Index (CPI) to evaluate its performance and effectiveness. In the last 10 years, Indonesia has improved in the Corruption Perception Index (CPI) ranking. In 2008, the country ranked 126 (with a score of 2.6) from the 180 countries studied and improved significantly with a rank of 85 (with a score of 40) in 2019. KPK's Annual Reports can be accessed via KPK's website (<http://kpk.go.id/id/publikasi/laporan-tahunan>). The Annual Reports are available in bilingual format of both English and Indonesian.

2. Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided.

In relation to article 6, para 2 and measures/steps that have been taken, States parties and signatories may wish to consider including the following:

- Description of laws, policies and procedures ensuring the independence of the body or bodies that prevent corruption, notably those aligned with the "Jakarta Statement on Principles for Anti-Corruption Agencies", aimed at enabling them to carry out their functions effectively and protect them from any undue influence;
- Description of the material resources, specialized staff, and training facilities for staff;
- Annual reports prepared by the body or bodies that prevent corruption, including budgets and expenditure reports;
- Analytical evaluations of the necessary independence and/or the human and material resources of body or bodies that prevent corruption, including number of employees working on prevention activities; Monitoring and evaluation reports on the effectiveness and performance of the body or bodies that prevent corruption, including, for example, parliamentary reports.

In 2012, KPK, UNDP, and UNODC hosted a meeting to discuss how to ensure the independence and effectiveness of anti-corruption bodies. This meeting adopted a set of Principles for Anti-Corruption Agencies, also known as the “Jakarta Principles”, to promote and strengthen the independence and effectiveness of ACAs.

Based on our experience, there are four crucial aspects to ensure the effectiveness of anti-corruption agencies to enforce its mandate:

- a. ACAs shall be independent in carrying out its mission;
- b. ACAs shall be permanent to continuously enforce and prevent corruption;
- c. ACAs shall be accountable and transparent to balance its power and authorities. This is important to maintain public trust on the work of ACAs; and
- d. ACAs shall develop its institutional capacity to enforce its anti-corruption mandate.

These four aspects are satisfactorily defined in the Jakarta Principles. The Jakarta Principles is a good reference to develop an effective ACA, but it may not be sufficient as a legal basis to bind a State to develop ACAs as recommended.

The effort to address grand corruption would be more challenging, because it will most probably involve high-level officials or people with power and authority. Most of the time, investigation or prosecution of high-level officials will increase political tensions between the Commission and other agencies, ministries, or legislative members. Commissioners and officials have faced civil as well as criminal proceedings, been physically attacked and received terror threats for performing their duties to investigate and prosecute grand corruption.

### **Evaluating the independence of KPK through the lens of the Jakarta Principles**

#### **1. Clear Mandate**

KPK has clear mandate and authorities provided by the law:

- a. KPK is a prosecution and investigation agency for corruption and money laundering crimes;
- b. KPK has the authority to supervise and coordinate efforts by the Attorney General's Office and the National Police in corruption cases as well as other agencies in corruption prevention;
- c. KPK has been mandated to prevent corruption, through activities which include anti-corruption education programs, maintenance and review of asset disclosure reports, as well as management and enforcement of gratification disclosure reports; and
- d. KPK also has monitoring authority which covers the authority to review governance systems for the purpose of identifying procedures which are prone to corruption and provide recommendation for improvement.

#### **2. Collaboration with other stakeholders, including international communities;**

The effort to fight corruption should involve as many stakeholders as possible in the country, including the civil society. The effectiveness of our efforts largely depends on support, cooperation and institutional coordination. This is applicable in both the implementation of preventive measures as well as the investigation and prosecution of corruption offences. For example, a key factor in the success of asset disclosure compliance is cooperation between the Ministry of State Apparatus and Bureaucratic Reform and the Election Commission. The ministry set requirements for public officials to submit asset disclosure reports to the Commission before being promoted or rotated to

certain positions. The Election Commission also requires all election candidates, which include candidates for President and Vice President, Governor and Vice Governor, as well as Regents and Vice Regents to submit their asset disclosure report to the Commission. This approach has effectively improved the compliance of asset disclosure in Indonesia.

3. **Permanence:** established by proper and stable legal framework to ensure continuity; KPK was established by Law No. 30 of 2002 and amended by Law No. 19 of 2019.
4. **Leaderships of ACAs**
  - a. the **appointment** shall go through a process that ensures his/her political neutrality, impartiality, integrity, and competence;

The law describes in detail the procedure of appointment and removal of the Commissioners. The appointment of KPK's Commissioners starts with the establishment of a selection committee by the government. The selection committee will then open a recruitment process and hold a selection process which involves the civil society in giving inputs on the candidates' profiles. The selection committee will choose the 10 best candidates to be submitted to the President. The Members of Parliament will then select 5 Commissioners from the 10 candidates. The Law also describes the criteria needed to remove Commissioners.

Indonesia has recently enacted Law No. 19 of 2019 on the Anti-Corruption Commission (KPK) to revise Law No. 30 of 2002, and has established a Supervisory Board as part of a new leadership structure of KPK, which consists of 5 people. The Board has the following duties:

- a. overseeing the implementation of duties and authority of the Corruption Eradication Commission;
- b. giving or withholding permission for wiretaps, searches and / or seizures;
- c. compiling and establishing a code of conduct for the leadership and officials of the Corruption Eradication Commission;
- d. receiving and following up on reports from the public regarding alleged violations of code of ethics by the leadership and officials of the Corruption Eradication Commission or violations of the provisions of this Law;
- e. conducting hearings to examine suspected violations of code of ethics by the leadership and officials of the Corruption Eradication Commission; and
- f. annually evaluating the performance of the leadership and officials of the Corruption Eradication Commission.

The Supervisory Board is appointed by the President of the Republic of Indonesia. It shall submit an annual report on the performance of its duties to the President and the House of Representatives of the Republic of Indonesia.

- b. the **continuity** of ACAs leadership  
The Commissioners of KPK and the Supervisory Board shall hold office for 4 (four) years and may be re-selected to serve for 1 (one) further term.
- c. the tenure is protected by law: the **removal** of ACAs leadership shall go through the following procedures:

- i. The Commissioners of KPK are dismissed from office in the following circumstances:
      - 1) death;
      - 2) expiry of term of office;
      - 3) misconduct;
      - 4) conviction for a felony, where such conviction is of final and conclusive effect;
      - 5) is unable to continue their role;
      - 6) resigns of their own volition in writing;
      - 7) is continuously unable to perform their duties for a period of more than 3 (three) months; and/or
      - 8) is subject to sanctions based on this Law.
    - ii. The members of the Supervisory Board shall be discharged or removed from office in the following circumstances:
      - 1) death;
      - 2) expiry of term of office;
      - 3) misconduct;
      - 4) conviction for a felony, where such conviction is of final and conclusive effect;
      - 5) resigns of their own volition in writing; and/or
      - 6) is continuously unable to perform their duties for a period of more than 3 (three) months;
5. Adopt **Ethical Conducts** at the highest standard  
 To balance its power, KPK has also developed a strict code of ethics for its commissioners and employees, which gives additional sentences for KPK's commissioners and employees if they are found guilty in court for corruption.
6. **Immunity** from civil and criminal proceedings for acts committed within the performance of their mandate  
 Commissioners and officials faced civil and criminal proceedings for acts committed within the performance of their mandate to consistently enforce the law on high-level officials.
7. Autonomy and adequate resources:
  - a. **Remuneration:** sufficient payment for qualified staff;  
 KPK had its own salary structure and level, different from the structure and level of general civil servants. Under Law No. 19 of 2019 (the new amendment of KPK Law), KPK will follow the human resources management, including management on remuneration, of general civil servants.
  - b. **Human Resources:** shall have the power to recruit and dismiss their own staff in transparent procedures;  
 KPK used to have its own authority to recruit and manage employees, including investigators and prosecutors. As mentioned before, the new law aligns the human resources management of KPK with that of the general civil servants. Hence, KPK will follow the human resources management policy set by the Ministry of State Apparatus and Bureaucracy Reform.

- c. **Adequate and reliable resources:** shall have sufficient financial resources taking into account the population size and land area;

Year	State Budget	KPK's Budget	Percentage
2019	IDR 2,461.1 T	IDR 813 B	0.033 %
2018	IDR 2,220.7 T	IDR 854.2 B	0.038 %
2017	IDR 2,080.5 T	IDR 734.2 B	0.035%
2016	IDR 2,095.7 T	IDR 991.8 B	0.047%

Year	KPK's Budget	Population	Cost/person	Per
2019	IDR 813 B	267 M	IDR 3,044	IDR 427/km <sup>2</sup>
2018	IDR 854.2 B	265 M	IDR 3,223	IDR 448/km <sup>2</sup>
2017	IDR 734.2 B	262 M	IDR 2,802	IDR 385/km <sup>2</sup>
2016	IDR 991.8 B	258,7 M	IDR 3,833	IDR 520/km <sup>2</sup>

\* US\$1: IDR 15,000

**Indonesia has a total land area of 1,904,569 km<sup>2</sup>**

- d. ACAs shall have **Financial Autonomy** on management and control of its budget with consideration to the appropriate accounting and auditing standards;  
KPK has the autonomy to manage its budget allocation and is subject to audit by Indonesia's Supreme Audit Board.

8. Transparency and Accountability:

- a. ACAs shall have **Internal Accountability** mechanism, including clear rules and SOPs as well as monitoring and disciplinary mechanisms, to minimize misconduct and abuse of power;  
KPK is funded by the national budget, and is thus subject to audit by the Supreme Audit Board. To balance its power, KPK has also developed a strict code of ethics for its commissioners and employees, which gives additional sentences for KPK's commissioners and employees if they are found guilty in court for corruption.

- b. ACAs shall have **External accountability** mechanism and strictly adhere to rule of law to prevent abuse of power  
The law mandates KPK to be responsible to the public to ensure its transparency and accountability, which requires KPK to establish a mechanism to allow public access of the work of KPK. Therefore, KPK provides many ways to distribute information on its performance and activities, for example through publication of its annual reports through its website and the establishment of an Anti-Corruption Clearing House (<http://acch.kpk.go.id>) as a platform to share information on corruption prevention and law enforcement.

On the enforcement side, the coercive measures of KPK, including the naming of suspects, are subject to court evaluation through a pre-trial which is open to the public.

c. **Public reporting**

KPK's Annual Reports can be accessed via KPK's website (<http://kpk.go.id/id/publikasi/laporan-tahunan>). The Annual Reports are available in bilingual format of both English and Indonesian.

d. **Public communication and engagement** to ensure public confidence

The law explicitly mentions that KPK must engage in bilateral or multilateral cooperation for the purposes of corruption eradication, and create a specific department to foster cooperation between commissions and institutions.