

2011

Reformasi and Public Corruption: Why Indonesia's Anti-corruption Agency Strategy Should Be Reformed to Effectively Combat Public Corruption

Joanna MacMillan

Follow this and additional works at: <https://scholarlycommons.law.emory.edu/eilr>

Recommended Citation

Joanna MacMillan, *Reformasi and Public Corruption: Why Indonesia's Anti-corruption Agency Strategy Should Be Reformed to Effectively Combat Public Corruption*, 25 Emory Int'l L. Rev. 587 (2011).
Available at: <https://scholarlycommons.law.emory.edu/eilr/vol25/iss1/13>

This Comment is brought to you for free and open access by the Journals at Emory Law Scholarly Commons. It has been accepted for inclusion in Emory International Law Review by an authorized editor of Emory Law Scholarly Commons. For more information, please contact law-scholarly-commons@emory.edu.

REFORMASI AND PUBLIC CORRUPTION: WHY INDONESIA'S ANTI-CORRUPTION AGENCY STRATEGY SHOULD BE REFORMED TO EFFECTIVELY COMBAT PUBLIC CORRUPTION

INTRODUCTION: INDONESIA'S SOLUTION TO PUBLIC CORRUPTION BY THE ESTABLISHMENT OF A CENTRALIZED ANTI-CORRUPTION AGENCY

Indonesia was once at the “forefront of Asia’s economic miracle.”¹ Under President Suharto, Indonesia experienced “impressive gains in overall economic growth.”² However, poverty remained pervasive, and corruption had “grown along with the economy.”³ In 1998, Transparency International’s Corruption Perceptions Index (“CPI”)⁴ ranked Indonesia as number eighty out of eighty-five countries,⁵ placing the nation as one of the most corrupt countries in the world.⁶ Economic distortions caused by public corruption in Indonesia were a major factor contributing to the Asian Financial Crisis of 1998, leading to massive riots⁷ and a “total meltdown of governance.”⁸

¹ *Asia’s Economic Flu*, PBS (Jan. 9, 1998), http://www.pbs.org/newshour/bb/asia/jan-june98/indonesia_1-9.html.

² Donald K. Emmerson, *No Miracle, No Mirage*, WILSON Q., Spring 1981, at 125, 126.

³ *Id.*

⁴ The CPI “measures the perceived level of public-sector corruption in 180 countries and territories around the world. The CPI is a ‘survey of surveys,’ based on 13 different expert and business surveys.” *Corruption Perceptions Index 2009*, TRANSPARENCY INT’L, http://www.transparency.org/policy_research/surveys_indices/cpi/2009 (last visited Jan. 29, 2011).

⁵ *The Corruption Perceptions Index (1998)*, TRANSPARENCY INT’L, http://www.transparency.org/policy_research/surveys_indices/cpi/previous_cpi/1998 (last visited Jan. 29, 2011). The CPI rankings show how one country compares to the others. *See id.* The lower the numerical rank, the less perceived corruption takes place in that particular state. *See id.*

⁶ Fiona Robertson-Snape, *Corruption, Collusion and Nepotism in Indonesia*, 20 *THIRD WORLD Q.* 589 (1999).

⁷ Philip Shenon, *THE SUHARTO BILLIONS: A Special Report; For Asian Nation’s First Family, Financial Empire Is in Peril*, N.Y. TIMES (Jan. 16, 1998), <http://www.nytimes.com/1998/01/16/business/suharto-billions-special-report-for-asian-nation-s-first-family-financial-empire.html>; Richard Robison, *Corruption, Collusion and Nepotism After Suharto: Indonesia’s Past or Future?*, IIAS NEWSL. (Int’l Inst. for Asian Stud., Leiden, Neth.), Spring 2006, at 13, 13.

⁸ *Indonesia’s Riots*, PBS: PUB. BROADCASTING SERVICE (May 14, 1998), http://www.pbs.org/newshour/bb/asia/jan-june98/indonesia_5-14.html.

After 1998, Indonesia launched into a period of reform, commonly referred to as *Reformasi*.⁹ Integral to the concept of Indonesia's reform agenda is the eradication of corruption. In hopes of duplicating Hong Kong's successful corruption-fighting strategy,¹⁰ Indonesia established the *Komisi Pemberantasan Korupsi* (Corruption Eradication Commission—"KPK"), a centralized anti-corruption agency.¹¹ Over a seven-year time span, this centralized anti-corruption agency has investigated, prosecuted, and achieved a 100% conviction rate in eighty-six cases of bribery and graft related to government procurements and budgets.¹² The KPK has become internationally acclaimed—high-ranking businessmen, bureaucrats, bankers, governors, diplomats, lawmakers, prosecutors, police officials, and other previously "untouchable" members of Indonesian society have "been made to discover a phenomenon new to [Indonesia]: the perp walk."¹³

As of 2011, Indonesia stands at a critical juncture. Although the KPK has attained some high profile convictions,¹⁴ Indonesia's problems with public corruption are still pervasive. For instance, the CPI ranked Indonesia 111 out of 180 countries, evidencing that Indonesia still has room for improvement.¹⁵ Curbing public corruption is imperative because it taxes the poor, increases macroeconomic risks, jeopardizes financial stability, compromises law and order,¹⁶ and deters foreign investment,¹⁷ which is critical for a poor developing country such as Indonesia. Although anti-corruption agencies like the KPK are

⁹ *Reformasi* means "reform" in Indonesia. MARY P. CALLAHAN, CTR. FOR CIVIL-MILITARY RELATIONS NAVAL POSTGRADUATE SCH., CIVIL MILITARY RELATIONS IN INDONESIA: *REFORMASI* AND BEYOND 5 (1999). The era of *Reformasi* refers to the time after Suharto's reign, and it is still ongoing. See Stephen Coates, *12 Years On, How Sick Is Indonesia's Reformasi?*, JAKARTA GLOBE (May 22, 2010), <http://www.thejakartaglobe.com/home/12-years-on-how-sick-is-indonesias-Reformasi/376453>. See generally WORLD BANK, COMBATING CORRUPTION IN INDONESIA: ENHANCING ACCOUNTABILITY FOR DEVELOPMENT (2003), available at <http://siteresources.worldbank.org/INTINDONESIA/Resources/Publication/03-Publication/Combating+Corruption+in+Indonesia-Oct15.pdf> (discussing accountability as a means of challenging corruption in Indonesia).

¹⁰ See JOHN R. HEILBRUNN, ANTI-CORRUPTION COMMISSIONS, PANACEA OR REAL MEDICINE TO FIGHT CORRUPTION 3–5 (2004), available at <http://siteresources.worldbank.org/WBI/Resources/wbi37234Heilbrunn.pdf>.

¹¹ See *infra* text accompanying note 123; *KPK: The Corruption Eradication Commission of Indonesia*, HONG KONG ICAC, <http://www.icac.org.hk/news/issue22eng/button3.htm> (last visited Jan. 29, 2011).

¹² Norimitsu Onishi, *Corruption Fighters Rouse Resistance in Indonesia*, N.Y. TIMES (July 25, 2009), <http://www.nytimes.com/2009/07/26/world/asia/26indo.html>.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Corruption Perceptions Index 2009*, *supra* note 4.

¹⁶ WORLD BANK, *supra* note 9, at ii.

¹⁷ See Christopher J. Robertson & Andrew Watson, *Corruption and Change: The Impact of Foreign Direct Investment*, 25 STRATEGIC MGMT. J. 385, 385 (2004) (analyzing the relationship between corruption and foreign investment).

theoretically an “efficient tool”¹⁸ for combating corruption, research has shown that they fail to “reduce public sector venality in all but a few special circumstances.”¹⁹ They are also expensive to implement.²⁰ Because an anti-corruption agency inherently carries a high probability of failure, financially strained countries like Indonesia should proceed with much caution when implementing this strategy.

Because of Indonesia’s ratification of the United Nations Convention Against Corruption (“UNCAC”), Indonesia is required to have some sort of anti-corruption agency strategy.²¹ Although anti-corruption agencies carry a high risk of failure, countries can increase the anti-corruption agency’s possibility of success by solidifying corruption laws, strengthening its political will, and improving cross-agency cooperation.²² Additionally, there are different types of anti-corruption agency strategies, and these strategies are not created equal.²³ Some anti-corruption agencies focus solely on preventive activities, whereas others encompass some combination of preventive, prosecutorial, and investigative activities.²⁴ This Comment evaluates the KPK’s current strategy and determines that the agency’s framework needs to be revised to improve Indonesia’s possibility of successful corruption reform.

Part I examines Indonesia’s historical problems with corruption and establishes why eradicating corruption is imperative to Indonesia’s continued economic growth and political stability. It also establishes that Indonesia’s traditional framework failed to curb public corruption, evidencing a need for a coordinating body entrusted with the sole function of curbing public corruption. Part II discusses anti-corruption agencies, with particular focus on two different anti-corruption agency strategies—the centralized and multi-agency approach—in the context of two countries: the United States and Hong Kong. Afterwards, the KPK’s approach is discussed in further detail. Part III identifies areas Indonesia needs to improve upon, regardless of whether a multi-agency or centralized strategy is adopted, to increase the probability of its anti-corruption agency’s success. Part IV establishes that the KPK should

¹⁸ U.N. Office for Drug Control and Crime Prevention, Global Programme Against Corruption: An Outline for Action 9 (Feb. 1999), http://www.uncjin.org/CICP/Corrupti_e.pdf.

¹⁹ HEILBRUNN, *supra* note 10, at 2.

²⁰ *Id.* at 10.

²¹ United Nations Convention Against Corruption, G.A. Res. 58/4, A/RES/58/4 (Oct. 31, 2003) [hereinafter UNCAC].

²² HEILBRUNN, *supra* note 10, at 14–15.

²³ *Id.*

²⁴ *Id.*

move away from its current centralized approach and adopt the multi-agency approach with an emphasis on preventive activities to achieve meaningful, long-term corruption reform.

I. A HISTORY OF PUBLIC CORRUPTION IN INDONESIA

Indonesia has a deep-rooted history with public corruption, and its detrimental effects necessitate an effective solution to curb this endemic problem. Public corruption is defined as the “abuse of public power for private gain.”²⁵ Indonesia’s problem with public corruption is significant because it is “a tragic form of regressive taxation. The poor pay higher prices because of all the monopolies, and they have to pay off government officials for everything they need.”²⁶ Apart from the economic costs, public corruption has a damaging social cost. As the United Nations (“UN”) states, public corruption “undermin[es] the institutions and values of democracy, ethical values and justice, and jeopardize[s] sustainable development and the rule of law.”²⁷

This Part examines the detrimental effects of public corruption in Indonesia and establishes why Indonesia’s traditional institutional framework failed to curb the endemic problem. First, this Part explores how an Indonesian leader’s acts of public corruption caused Indonesia to experience severe political and economic instability. Second, this Part considers that, although Indonesia is now relatively stable, corruption reform is needed for continued economic and political stability and increased foreign investment. Third, this Part covers Indonesia’s traditional institutional framework for combating corruption, obviating a need for a coordinating agency that is solely entrusted with curbing public corruption.

A. *Indonesia’s Meltdown in Governance Because of Public Corruption*

Indonesia’s problem with public corruption is exemplified by Indonesia’s “total meltdown in governance” caused by its kleptocratic leader, President Suharto, in 1998.²⁸ At the time, Indonesia had been governed by Suharto for over three decades.²⁹ Under Suharto, Indonesia experienced “impressive gains

²⁵ Alvaro Cuervo-Cazurra, *Who Cares About Corruption?*, 37 J. INT’L BUS. STUD. 803, 807 (2006).

²⁶ Adam Schwarz, *Indonesia After Suharto*, FOREIGN AFF., July–Aug. 1997, at 119, 127.

²⁷ U.N. Office on Drugs and Crime, UNODC South Eastern Europe on Corruption, <http://www.unodc.org/southeasterneurope/en/Corruption.html> (last visited Jan. 29, 2011).

²⁸ *Indonesia’s Riots*, *supra* note 8.

²⁹ *Suharto*, BRITANNICA ONLINE ENCYCLOPEDIA, <http://www.britannica.com/EBchecked/topic/572060/Suharto> (last visited Jan. 29, 2011) (noting that Suharto was president of Indonesia from 1967 to 1998).

in overall economic growth.”³⁰ However, poverty remained pervasive, and corruption had “grown along with the economy.”³¹ Suharto and his family were indelibly associated with *korrupsi*, *kollusi*, *nepotisme*—or corruption, collusion, and nepotism³²—an Indonesian “fact of life” during Suharto’s reign.³³

The Suharto family’s policy of corruption, collusion, and nepotism was successful because of the amount of power they held in Indonesia.³⁴ The Suharto family owned hundreds of companies, including television and radio networks, banks, hotels, railroads, and taxi companies.³⁵ Just “[l]ike a mafia boss,” Suharto followed a policy of protecting himself by ensuring that his political advisors and associates were corrupt as well.³⁶ For instance, when Indonesia’s privatization campaign began in the late 1980s, this “privatization” was, in essence, the transfer of assets to Suharto’s inner circle—the “political elite.”³⁷ Because the bulk of Indonesian corporations were owned by the political elite, any foreign investor who wanted to undertake any major infrastructure or mining project in Indonesia was “forced to seek a partner among” Suharto’s political leaders.³⁸

The political elite’s unchecked corrupt practices neutralized competition, drove out foreign investment, and kept the price of food and other basic commodities artificially high.³⁹ Because of Indonesia’s problems with public corruption, Suharto was ranked as the most corrupt leader “of all time” by Transparency International.⁴⁰ Suharto’s alleged misappropriation has been estimated to be about \$73 billion during his reign, although his annual salary was approximately only \$200,000 a year.⁴¹

³⁰ Emmerson, *supra* note 2, at 126.

³¹ *Id.*

³² Robertson-Snape, *supra* note 6, at 589.

³³ Benjamin B. Wagner & Leslie Gielow Jacobs, *Retooling Law Enforcement to Investigate and Prosecute Entrenched Corruption: Key Criminal Procedure Reforms for Indonesia and Other Nations*, 30 U. PA. J. INT’L L. 183, 199 (2008).

³⁴ John Colmey et al., *Indonesia: It’s All in the Family*, TIME, May 31, 1999, <http://www.time.com/time/magazine/article/0,9171,991081-4,00.html>.

³⁵ Shenon, *supra* note 7.

³⁶ Schwarz, *supra* note 26, at 126–27.

³⁷ *Id.* at 127.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Haider Rizvi, *Corruption Summit Opens as ‘World’s Most Corrupt Leader’ Dies*, ONEWORLD.NET (Jan. 30, 2008), <http://us.oneworld.org/node/157321>.

⁴¹ *Id.*; see also Andre Vitcek, *Suharto: As He Lays Dying*, WORLDPRESS.ORG (Jan. 25, 2008), <http://www.worldpress.org/Asia/3052.cfm>.

Suharto's misappropriation of financial wealth was a major factor in Indonesia's "meltdown" in governance in 1998.⁴² Economic distortions created by Suharto's business empire have been named as the "integral" reason for the Asian Financial Crisis of 1998,⁴³ where Indonesia's currency decreased to less than 70% of its value in 1997.⁴⁴ When the International Monetary Fund offered Suharto a \$43 billion bailout package, Indonesia's leaders agreed to cut budgets and subsidies.⁴⁵ However, this caused food, fuel, and transportation costs to soar.⁴⁶ Food shortages and mass unemployment led to student-run demonstrations against Suharto in May 2008.⁴⁷ These demonstrations exposed Suharto's acts of malfeasance to the Indonesian public, sparking widespread riots throughout Jakarta, Indonesia's capital.⁴⁸

The massive riots quickly evolved into pogroms targeting Chinese-Indonesians, who were stereotypically known as an economically affluent group of society.⁴⁹ As a result, over 5000 people lost their lives, over 1000 women were raped, and numerous commercial centers were burned down.⁵⁰ Due to the riots, Suharto was forced to resign from power on May 21, 1998,⁵¹ ending the era commonly referred to as the "New Order"⁵² and starting the period known as *Reformasi*, which is still ongoing.⁵³

When Suharto resigned, Indonesia was on the "brink of catastrophe."⁵⁴ Indonesia faced complete "economic collapse, political chaos, and fissile separatist insurgencies" from other Indonesian islands such as Aceh and East

⁴² Robertson-Snape, *supra* note 6, at 600.

⁴³ Shenon, *supra* note 7.

⁴⁴ *Id.*

⁴⁵ *Bailout*, PBS (May 4, 1998), http://www.pbs.org/newshour/bb/asia/jan-june98/indonesia_5-4.html.

⁴⁶ *Id.*

⁴⁷ J. Tim Thompson, *Why Indonesia Matters*, PHILA. TRUMPET, July 1998, <http://www.thetrumpet.com/?q=110.49.4.0>.

⁴⁸ *Indonesia Hikes Fuel Prices—May 25*, ENERGY BULL. (May 25, 2008), <http://www.energybulletin.net/node/44819>.

⁴⁹ *Ethnic Chinese Hit by Fresh Indonesian Riots*, BBC NEWS (Aug. 13, 1998, 9:15 AM), http://news.bbc.co.uk/2/hi/events/indonesia/special_report/150264.stm.

⁵⁰ *Indonesia*, COALITION AGAINST TRAFFICKING OF WOMEN, <http://www.catwinternational.org/factbook/Indonesia.php> (last visited Jan. 29, 2011).

⁵¹ *See id.*

⁵² *See* Franz Magnis-Suseno, *Langsir Keprabon: New Order Leadership, Javanese Culture, and the Prospects for Democracy in Indonesia*, in *POST-SOEHARTO INDONESIA: RENEWAL OR CHAOS?* 214, 214–18 (Geoff Forrester ed., 1999).

⁵³ *See* Coates, *supra* note 9.

⁵⁴ *A Special Report on Indonesia: A Golden Chance*, ECONOMIST (Sept. 10, 2009), http://www.economist.com/node/14391414?story_id=14391414.

Timor.⁵⁵ “Indonesia’s neighbours feared the worst: anarchy within Indonesia; a surge in Islamic extremism; an exodus of desperate boat-people; [and] rampant piracy in some of the world’s busiest shipping lanes.”⁵⁶

B. The Failed Anti-Corruption Framework in Indonesia During the New Order

During the New Order, Indonesia had an institutional framework in place to combat public corruption; however, it failed to work.⁵⁷ This institutional framework theoretically covered deterrence, detection, and punishment of corrupt practices.⁵⁸

For instance, both the Indonesian National Police and the Attorney General’s Office had separate departments in place to detect and investigate cases of corruption.⁵⁹ There were financial agencies, whose duties were to audit state-owned companies and oversee the implementation of the state budget.⁶⁰ These financial agencies were entrusted with detecting possible instances of corruption occurring within the public sector concerning the misappropriation of government money.⁶¹ Additionally, government complaint agencies had been in place where the public could issue complaints involving the conduct of government institutions and officials.⁶² Lastly, almost every single Indonesian governmental agency had a branch the responsibility of which was to monitor possible instances of corruption within the respective agencies and to discipline any corrupt officials.⁶³ However, these branches were not able to issue criminal sanctions against these corrupt officials.⁶⁴

Although Indonesia theoretically had an institutional framework to combat corruption during the New Order, about every single agency within Indonesia

⁵⁵ *Indonesia’s Future: A Golden Opportunity*, ECONOMIST (Sept. 10, 2009), http://www.economist.com/node/14416780?story_id=14416780.

⁵⁶ *Id.*

⁵⁷ Ibrahim Assegaf, *Legends of the Fall: An Institutional Analysis of Indonesian Law Enforcement Agencies Combating Corruption*, in CORRUPTION IN ASIA: RETHINKING THE GOVERNANCE PARADIGM 127, 128 (Tim Lindsey & Howard Dick eds., 2002).

⁵⁸ *Id.* at 130.

⁵⁹ *Id.*

⁶⁰ *Id.* at 128–29.

⁶¹ *Id.*

⁶² *Id.* at 129–30.

⁶³ *Id.* at 129.

⁶⁴ *Id.*

had become its own micro-center for corruption.⁶⁵ Because the majority of the judiciary, executive agencies, and legislative branches of government were corrupt, “centres of corruption” developed, which had become almost impossible to defeat.⁶⁶ Ibrahim Assegaf describes this cycle as a “three-level food chain.”⁶⁷ As he notes:

At the first level, the alleged corruptors feed the police and the prosecutor . . . in the investigation process during which the police or the prosecutor are required to decide whether corruption has actually occurred and commence further investigation If the case advances to prosecution and trial in the court, the second stage, prosecutor will play a significant role in deciding the charge . . . which will be filed against the alleged corruptors. Eventually, the process reaches the courts, at the top of the food chain. The judges decide whether the alleged corruptors are guilty or innocent and, if guilty, what the proper sentence should be. Lawyers representing the alleged corruptor act as corruption brokers throughout the process.⁶⁸

In addition to this three-level food chain, there was distrust amongst the different agencies in combating corruption.⁶⁹ Indonesia’s asset recovery for corruption was dismal: less than 0.05% was recovered out of an estimated three trillion rupiah lost by corrupt practices between 1999 and 2000.⁷⁰ As evidenced by Indonesia’s “meltdown” at the end of the New Order, Indonesia’s framework to combat public corruption had failed to work.⁷¹ Had there been a governmental agency entrusted with “isolat[ing] corruption reform implementation from government bureaucracies that are themselves riddled with corruption,” and put “dedicated professional commitment” to the object of curbing public corruption, then perhaps Suharto and his inner circle’s powers would have not remained unchecked, and the Asian Financial Crisis of 1998 as well as the ensuing riots would have failed to occur.⁷²

⁶⁵ *Id.* at 130.

⁶⁶ *Id.*

⁶⁷ *Id.* at 131.

⁶⁸ *Id.*

⁶⁹ *Id.* at 132.

⁷⁰ *Id.* at 131–32.

⁷¹ *See supra* Part I.A.

⁷² Leslie Gielow Jacobs & Benjamin B. Wagner, *Limits to the Independent Anti-Corruption Commission Model of Corruption Reform: Lessons from Indonesia*, 20 PAC. MCGEORGE GLOBAL BUS. & DEV. L.J. 327, 329 (2007).

C. Room for Improvement: Public Corruption in Indonesia in the Era of Reformasi

In contrast to the end of the New Order, the era of *Reformasi* has spurred economic change characterized as a “miracle”;⁷³ however, Indonesia’s problems with public corruption continue to be widespread. As of September 2009, Indonesia is, for the most part, a peaceful democracy,⁷⁴ with its economy growing at a respectable rate—yielding a gross domestic product of 6.1% in 2008.⁷⁵ Current President Susilo Bambang Yudhoyono is the man accredited for “Indonesia’s rise,”⁷⁶ and has achieved international popularity for being a “man of principle.”⁷⁷ Yudhoyono’s popularity is based on five years of steady economic growth, reform of bureaucracy within Indonesia,⁷⁸ and a tough anti-corruption drive that has become the cornerstone of his campaign.⁷⁹

Despite Yudhoyono’s tough anti-corruption drive, Indonesia’s infrastructure is still in need of an overhaul—millions currently live in poverty, and public corruption remains pervasive.⁸⁰ For instance, the 2009 CPI ranked Indonesia 111 out of a total of a 180 countries, a ranking below infamously corrupt countries like Liberia, Egypt, and mainland China.⁸¹

Although curbing public corruption is at the heart of the *Reformasi* agenda, many corrupt Indonesian officials have yet to be held accountable for their acts of misappropriation, demonstrating a lack of effective reform in the public corruption arena.⁸² For instance, when the Indonesian government began investigating Suharto’s acts of public corruption in 2006, these investigations

⁷³ *Indonesia’s Future: A Golden Opportunity*, *supra* note 55.

⁷⁴ *Id.*

⁷⁵ Vladimir Gonzales, *Indonesia Economy: GDP Drop Expected Due to Decline in Exports*, ECONOMYWATCH (Mar. 23, 2009), http://www.economywatch.com/world_economy/indonesia/Indonesia_Economy_GDP_Drop_Expected_due_to_Decline_in_Exports.html.

⁷⁶ See Ishaan Tharoor, *Susilo Bambang Yudhoyono: The Man Behind Indonesia’s Rise*, TIME, July 10, 2009, <http://www.time.com/time/world/article/0,8599,1909590,00.html>.

⁷⁷ *Profile: Susilo Bambang Yudhoyono*, BBC NEWS (July 9, 2009, 6:50 AM), <http://news.bbc.co.uk/2/hi/asia-pacific/8127421.stm>.

⁷⁸ *Indonesia’s Yudhoyono Wins Second Term*, ALARABIYA.NET (July 8, 2009), <http://www.alarabiya.net/articles/2009/07/08/78152.html>.

⁷⁹ *A Special Report on Indonesia: A Golden Chance*, *supra* note 54.

⁸⁰ *Id.*

⁸¹ *Corruption Perceptions Index 2009*, *supra* note 4.

⁸² See *Indonesia Country Profile: Judicial System*, BUS. ANTI-CORRUPTION PORTAL, <http://www.business-anti-corruption.com/country-profiles/east-asia-the-pacific/indonesia/corruption-levels/judicial-system> (last visited Jan. 29, 2011); Kayleigh Shebs, *Indonesia Court Dismisses Corruption Suit Against Suharto Son*, JURIST (Feb. 11, 2009, 12:06 PM), <http://jurist.law.pitt.edu/paperchase/2009/02/indonesia-court-dismisses-corruption.php>.

ceased as soon as a court-appointed doctor announced Suharto could not stand trial because of health concerns.⁸³ Suharto was never held accountable for his misappropriation of Indonesian funds, even after his death.⁸⁴ In another example, Tommy Suharto, the former president's son, went into hiding in 2000 after receiving an eighteen-month sentence on a corruption charge.⁸⁵ While a fugitive, he paid two hit men to execute the Indonesian Supreme Court Judge who sentenced him.⁸⁶ He was then sentenced to fifteen years in prison for murder; however, he was released in 2006 for "good behaviour."⁸⁷ Furthermore, in 2009, Tommy Suharto was indicted for misappropriating over \$300 million of the government's money when he illegally sold a state-owned car company.⁸⁸ However, the corruption lawsuit he faced was dismissed for reasons unknown.⁸⁹

Public corruption reform plays a major role in Indonesia's overall economic reform efforts.⁹⁰ If Indonesia has a reliable government and legal system, potential new investors will be better able to assess investment risks in Indonesia.⁹¹ Reliable governments and legal systems have a higher probability of attracting foreign investors into a given country.⁹² Foreign investment turns into increased purchasing power that, in turn, leads to greater economic growth—which is essential to a country's political and economic stability.⁹³ Governments and legal systems cannot be reliable when faced with rampant public corruption.⁹⁴ Therefore, curbing public corruption is imperative for Indonesia's overall growth and stability. Many times, anti-corruption agencies are utilized to address this endemic problem.

⁸³ See *Indonesian Minister Says Suharto's Health Not Improving*, CHANNELNEWSASIA.COM (Jan. 9, 2008), http://www.channelnewsasia.com/stories/afp_asiapacific/view/321504/1/.html.

⁸⁴ Kathy Marks, *Suharto, Tyrant of Indonesia, Dies Without Facing Justice*, INDEPENDENT (London), Jan. 28, 2008, <http://www.independent.co.uk/news/world/asia/suharto-tyrant-of-indonesia-dies-without-facing-justice-774868.html>.

⁸⁵ *Indonesia Country Profile: Judicial System*, *supra* note 82.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ Shebs, *supra* note 82.

⁸⁹ *See id.*

⁹⁰ Ira Eddymurthy & Darrell R. Johnson, *Indonesia: Doing Business in Indonesia—The Road to Reform: Achievements to Date, Challenges Ahead (An Overview of Challenges in the Legal Sector)*, MONDAQ (Dec. 7, 2004), <http://www.mondaq.com/article.asp?articleid=29859>.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *See id.*

II. INDONESIA ADOPTS THE CENTRALIZED ANTI-CORRUPTION AGENCY APPROACH TO COMBATING PUBLIC CORRUPTION AS PART OF ITS *REFORMASI* AGENDA

Due to Indonesia's problems in combating public corruption, the Indonesian government decided it was necessary to adopt a stronger anti-corruption strategy in the midst of the *Reformasi* era.⁹⁵ In 2003, Indonesia created the KPK, an anti-corruption agency, to assist in its efforts for reform.⁹⁶ Upon Indonesia's ratification of the UNCAC in 2006, Indonesia solidified its commitment to maintain this anti-corruption agency.⁹⁷ As Article 36 of the UNCAC states, each country "shall . . . ensure the existence of a body or bodies or persons specialized in combating corruption Such body . . . shall be granted the necessary independence."⁹⁸

Generally speaking, there are two ways Indonesia can continue to fulfill this UNCAC provision: either through the adoption of a multi-agency strategy, where power is spread across multiple agencies; or a centralized anti-corruption agency strategy, where a multitude of anti-corruption functions are housed under one single agency.⁹⁹ The KPK is currently organized under the centralized agency approach.¹⁰⁰

Before determining how the KPK should be reformed, it is important to first analyze both approaches to combating corruption via the use of an agency. First, this Part analyzes the centralized anti-corruption agency and multi-agency approaches towards public corruption using two case studies that illustrate these strategies in action. Second, this Part discusses the KPK's current framework in further detail.

A. *The Multi-Agency Approach Towards Public Corruption*

Many countries, including the United States and India, have chosen to adopt the multi-agency strategy to curb public corruption.¹⁰¹ Multi-agency approaches to combat corruption are characterized by "cross-cutting agencies"

⁹⁵ See Sofie Arjon Schütte, *Government Policies and Civil Society Initiatives Against Corruption*, in *DEMOCRATIZATION IN POST-SUHARTO INDONESIA* 81, 85–87 (Marco Bünte & Andreas Ufen eds., 2009).

⁹⁶ *Id.* at 90.

⁹⁷ UNCAC, *supra* note 21, art. 36.

⁹⁸ *Id.*

⁹⁹ See Patrick Meagher, *Anti-corruption Agencies: Rhetoric Versus Reality*, 8 J. ECON. POL'Y REFORM 69, 70–73 (2005).

¹⁰⁰ Jacobs & Wagner, *supra* note 72, at 328–31.

¹⁰¹ See Meagher, *supra* note 99, at 70–72.

that investigate, prevent, and educate the public sector on corruption.¹⁰² Under a multi-agency model, there is no centralized, powerful agency—instead, traditional judicial and administrative functions retain their core capabilities and autonomy, while other structures are put into place to “address gaps, weaknesses, and newly emerged opportunities for corruption.”¹⁰³ One successful example of a multi-agency strategy in action is the Office of Government Ethics (“OGE”) in the United States.¹⁰⁴

The United States has adopted a multi-agency approach to curb corruption.¹⁰⁵ There is no single, powerful agency to combat corruption; however, the Office of Government Ethics, a government agency, is an example of the multi-agency approach adopted within the executive branch of the United States.¹⁰⁶ The OGE addresses weaknesses and opportunities for corruption while acknowledging other agencies’ independence and autonomy.¹⁰⁷ Agencies that mirror the OGE also exist within the United States’s judicial and legislative branches.¹⁰⁸ The OGE’s mandate

includes establishing executive branch standards of conduct, issuing rules and regulations interpreting the criminal conflict of interest restrictions, establishing the framework for the public and confidential financial disclosure systems for executive branch employees, developing training and education programs for use by executive branch ethics officials and employees, and supporting and then reviewing individual agency ethics programs to ensure they are functioning properly.¹⁰⁹

The OGE has three main branches: the Program Services Division, the Program Review Division, and the Education Division.¹¹⁰ Under the Program Services Division, each agency within the Executive Branch “is assigned an OGE Desk Officer who is responsible for providing assistance in maintaining effective ethics programs.”¹¹¹ The Program Services Division also manages an

¹⁰² HEILBRUNN, *supra* note 10, at 9.

¹⁰³ Meagher, *supra* note 99, at 70–71.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 71.

¹⁰⁷ *Office of International Assistance and Government Initiatives*, U.S. OFFICE OF GOV’T ETHICS, <http://www.usoge.gov/international/international.aspx> (last visited Jan. 29, 2011).

¹⁰⁸ *Agency Program Services*, U.S. OFF. GOV’T ETHICS, http://www.usoge.gov/about/agency_program_services.aspx (last visited Jan. 29, 2011).

¹⁰⁹ *Office of International Assistance and Government Initiatives*, *supra* note 107.

¹¹⁰ *Agency Program Services*, *supra* note 108.

¹¹¹ *Id.*

annual public financial disclosure reporting system for senior officials within the Executive Branch, including about 1000 Presidential Appointees and 125 Designated Agency Ethics Officials.¹¹² Under the public financial disclosure system, these senior officials must report information regarding their income and assets, financial transactions, gifts, liabilities, and any other sources of compensation greater than \$5000.¹¹³ These reports are made available to the general public and media, which ultimately ensures transparency.¹¹⁴

The Program Review Division conducts on-site ethics program reviews of executive governmental agencies and evaluates whether an agency has an effective ethics program.¹¹⁵ If any deficiencies are found, that agency must confirm within a sixty-day period that corrective action is being taken pursuant to the Program Review Division's recommendations.¹¹⁶ Lastly, the Education Division develops and provides ethics training courses, workshops, and seminars for Executive Branch agencies.¹¹⁷

The OGE is relatively small for a U.S. agency, with just over seventy employees.¹¹⁸ Unlike centralized anti-corruption agencies, the OGE does not have investigative or prosecutorial functions,¹¹⁹ but mainly serves to inform the public and Executive Branch on actions that might represent conflicts of interest.¹²⁰

B. The Centralized Anti-Corruption Agency Paradigm

Over the past twenty years, more than thirty countries have established some form of a centralized anti-corruption agency to assist in efforts to combat corruption,¹²¹ including Indonesia, Singapore, Malaysia, and the Australian

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Background and Mission*, U.S. OFF. GOV'T ETHICS, http://www.usoge.gov/about/background_mission.aspx (last visited Jan. 29, 2011).

¹¹⁹ HEILBRUNN, *supra* note 10, at 10.

¹²⁰ *Id.*

¹²¹ PATRICK MEAGHER & CARYN VOLAND, U.S. AGENCY FOR INT'L DEV., ANTICORRUPTION AGENCIES (ACAS): OFFICE OF DEMOCRACY AND GOVERNANCE ANTICORRUPTION PROGRAM BRIEF 4 (2006) [hereinafter USAID], available at http://www.usaid.gov/our_work/democracy_and_governance/publications/pdfs/ACA_508c.pdf.

State of New South Wales.¹²² A centralized anti-corruption agency is defined as “a separate, permanent government agency whose primary function is to provide centralized leadership in core areas of anti-corruption activity.”¹²³

What makes centralized anti-corruption agencies unique is the multitude of functions housed under one agency. Centralized anti-corruption agencies usually perform some, if not all, of the following duties: “1. Receiving and responding to complaints; 2. Intelligence gathering, monitoring, and investigation; 3. Prosecutions and administrative orders; 4. Research, analysis, and technical assistance; 5. Ethics policy guidance, compliance review, and scrutiny of asset declarations; and 6. Public information, education and outreach.”¹²⁴

It must be stressed that a centralized anti-corruption agency approach does not require that *all* anti-corruption functions be placed under a single agency, but instead that a number of key responsibilities and roles are placed under a single entity, thereby creating a powerful agency to lead the fight against corruption.¹²⁵ In contrast, the multi-agency approach “avoids setting up a strong ‘lead’ agency in the anti-corruption field, thus posing a lower risk than the single-agency approach of upsetting the balance and separation of governmental powers.”¹²⁶ However, both the multi-agency and single-agency strategies required interaction with other entities that combat corruption, including police investigators, courts, and members of the judiciary.¹²⁷

Centralized anti-corruption agencies tend to be created when “corruption has spread so widely and the police are so corrupt that offences of bribery are no longer investigated or prosecuted.”¹²⁸ They are also adopted when a “crisis of legitimacy” has occurred, leading to political instability, and thus, decreased foreign investment in a particular country.¹²⁹ Thus, the country turns to

¹²² Max J. Skidmore, *Promise and Peril in Combating Corruption: Hong Kong's ICAC*, 547 ANNALS AM. ACAD. POL. & SOC. SCI. 118, 122 (1996).

¹²³ USAID, *supra* note 121, at 5.

¹²⁴ *Id.*

¹²⁵ Meagher, *supra* note 99, at 70.

¹²⁶ *Id.* at 72.

¹²⁷ See HEILBRUNN, *supra* note 10, at 10.

¹²⁸ Nicholas Charron, Mapping and Measuring the Impact of Anti-Corruption Agencies: A New Dataset for 18 Countries 2 (Nov. 20, 2008) (unpublished manuscript) (quoting Bertrand de Speville, *Failing Anti-Corruption Agencies—Causes and Cures* (May 14, 2008) (unpublished manuscript)), available at http://www.qog.pol.gu.se/working_papers/SOG%20papers/Charron%20-%20SOG%20Conference%20Nov08.pdf.

¹²⁹ See, e.g., Meagher, *supra* note 99, at 72.

establishing a single anti-corruption agency—perceived as a “new and different” response to the problem of corruption.¹³⁰ Hong Kong’s anti-corruption agency serves as an illustration of the centralized agency strategy.

In 1974, Hong Kong established the Independent Commission Against Corruption (“ICAC”), a centralized anti-corruption agency, which eliminated much of Hong Kong’s corruption and changed public attitudes regarding corruption.¹³¹ The KPK is roughly modeled after the ICAC.¹³²

The ICAC was created after Hong Kong’s riots in 1966, which stemmed from economic inequalities and widespread poverty.¹³³ Like Indonesia, Hong Kong’s political instability was attributable to public corruption.¹³⁴ When Hong Kong established the ICAC, its main concern was curbing the systemic police corruption that facilitated illicit activities such as drug trafficking and prostitution.¹³⁵

The ICAC “quickly proved embarrassingly successful.”¹³⁶ The ICAC began arresting numerous corrupt police officers; however, this resulted in mounting tensions between the two agencies.¹³⁷ In 1977, these tensions culminated in police retaliation when the police raided the ICAC’s main office and assaulted members of the staff.¹³⁸ After this incident, the ICAC agreed to grant partial amnesty for minor corrupt acts committed within the police force before 1977.¹³⁹ Although some high profile police officers were still tried and convicted, the ICAC decided to force the majority into early retirement.¹⁴⁰ As an effect, tensions between the ICAC and the police force have dissipated.¹⁴¹

Today, the ICAC has about 1200 staff members, which is a substantial number when considering that Hong Kong’s population is just over seven

¹³⁰ *Id.*

¹³¹ Skidmore, *supra* note 122, at 122.

¹³² DEUTSCHE GESELLSCHAFT FÜR TECHNISCHE ZUSAMMENARBEIT (GTZ) UNCAC PROJECT, IMPLEMENTING THE UN CONVENTION AGAINST CORRUPTION: ANTI-CORRUPTION CLEARING HOUSE IN THE CORRUPTION ERADICATION COMMISSION (KPK) 1 (2006) [hereinafter GTZ UNCAC PROJECT], available at <http://www.gtz.de/de/dokumente/gtz-en-factsheet-clearing-house-indonesia-2007.pdf>.

¹³³ Skidmore, *supra* note 122, at 121.

¹³⁴ See Jacobs & Wagner, *supra* note 72, at 330.

¹³⁵ Meagher, *supra* note 99, at 72.

¹³⁶ Skidmore, *supra* note 122, at 123 (quoting FRANK WELSH, A HISTORY OF HONG KONG 492 (1993)).

¹³⁷ *Id.* at 123.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ See *id.*

¹⁴¹ See *id.*

million people.¹⁴² The Independent Commission Against Corruption Ordinance established the ICAC,¹⁴³ enabling the agency to fight corruption through a three-pronged approach involving law enforcement, prevention, and education.¹⁴⁴ As the largest body of the ICAC,¹⁴⁵ the Operations Department covers law enforcement; accordingly, its primary duty is to investigate corruption offenses.¹⁴⁶ The Corruption Prevention Department examines practices and procedures of governmental agencies and provides them with ethical guidelines,¹⁴⁷ much like the Program Review Division of the OGE. The Corruption Prevention Department also offers free corruption prevention advice to private organizations upon request.¹⁴⁸ Lastly, the Community Relations Department is responsible for educating Hong Kong's public on the "evils of corruption" by launching commercials to enlist and foster public support.¹⁴⁹

The Operations Department has wide investigatory powers, broader than the traditional police powers of search, seizure, arrest, and detention.¹⁵⁰ A reason why the ICAC has attained its level of success is due to its investigatory powers being in excess of what is customary in liberal democracies, like in the United States.¹⁵¹ For instance, Operations Department officers may arrest a person without a warrant if "they reasonably suspect" that a person is guilty of a corruption offense.¹⁵² Officers may confiscate suspects' travel documents to ensure they do not leave Hong Kong.¹⁵³ Officers may also conduct a search via a warrant signed by their Commissioner instead of a neutral and detached magistrate.¹⁵⁴ Officers may check any suspect's financial records—a critical

¹⁴² *Organisation Structure*, HONG KONG ICAC, http://www.icac.org.hk/en/about_icac/os/index.html (last visited Jan. 29, 2011).

¹⁴³ HEILBRUNN, *supra* note 10, at 3.

¹⁴⁴ *Organisation Structure*, *supra* note 142.

¹⁴⁵ HEILBRUNN, *supra* note 10, at 4.

¹⁴⁶ *Organisation Structure*, *supra* note 142.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ Tony KWOK Man-wai, *Formulating an Effective Anti-Corruption Strategy—The Experience of Hong Kong ICAC*, in ANNUAL REPORT FOR 2005 AND RESOURCE MATERIAL 196, 200 (United Nations Asia & Far E. Inst., Annual Report Ser. No. 69, 2006), available at http://www.unafei.or.jp/english/pdf/PDF_rms/no69/16_P196-201.pdf.

¹⁵¹ See Skidmore, *supra* note 122, at 125–26.

¹⁵² *Id.* at 125 (quoting Anoop Gulab Gidwani, *The Impact and Accountability Implications of the Bill of Rights in Relation to the Independent Commission Against Corruption 60 (1994)* (unpublished M.P.A. thesis, University of Hong Kong)).

¹⁵³ Man-wai, *supra* note 150, at 200.

¹⁵⁴ Skidmore, *supra* note 122, at 126.

function needed to prosecute corrupt offenders.¹⁵⁵ Furthermore, the ICAC has the power to require witnesses to answer questions under oath.¹⁵⁶

To prevent potential abuses in power, the ICAC has an Operations Review Committee whose members mostly come from the private sector and are appointed by the executive.¹⁵⁷ The Committee is responsible for reviewing every single report the ICAC issues to ensure there is no “whitewashing.”¹⁵⁸ Additionally, the Operations Review Committee must “pursu[e] all corruption allegations without a priori selection criteria—although it is within the sole discretion of the Attorney General to decide which cases to prosecute.”¹⁵⁹ Lastly, the ICAC has an “internal monitoring system” that is “so secretive that few in the Commission know how it works.”¹⁶⁰

C. Indonesia’s Centralized Anti-corruption Strategy: The KPK

Because of its crisis of legitimacy,¹⁶¹ Indonesia adopted the centralized anti-corruption agency strategy in an effort to curb public corruption and attract foreign investment.¹⁶² Law Number 30 of 2002¹⁶³ officially created Indonesia’s centralized anti-corruption agency, the KPK, which is roughly modeled after the ICAC.¹⁶⁴

Law Number 30’s preamble states that corruption is an “extraordinary problem, that needs to be tackled by extraordinary means.”¹⁶⁵ The explanatory memorandum to Law Number 30 makes clear that the KPK was designed as a corruption superbody with a far-reaching mandate.¹⁶⁶ Article 6 of Law Number 30 established the KPK’s primary roles, which include: (1) coordination with other agencies responsible for eradicating corruption; (2) supervision of these

¹⁵⁵ *Id.* at 125.

¹⁵⁶ Man-wai, *supra* note 150, at 200.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ Meagher, *supra* note 99, at 90.

¹⁶⁰ Skidmore, *supra* note 122, at 126.

¹⁶¹ *See supra* Part I.A.

¹⁶² Law on the Commission for the Eradication of Criminal Acts of Corruption (UU RI No. 30/2002) (Indon.) [hereinafter Law No. 30 of 2002], available at <http://www.oecd.org/dataoecd/53/11/39840517.pdf?contentId=39840518>.

¹⁶³ *Id.*

¹⁶⁴ GTZ UNCAC PROJECT, *supra* note 132, at 1.

¹⁶⁵ Schütte, *supra* note 95, at 90.

¹⁶⁶ *See* Stewart Fenwick, *Measuring Up? Indonesia’s Anti-corruption Commission and the New Corruption Agenda*, in *INDONESIA LAW AND SOCIETY* 406, 407 (Tim Lindsey ed., 2d ed. 2008); *see also* Law No. 30 of 2002, *supra* note 162, at 1.

other agencies; (3) conducting corruption prevention activities; (4) investigating and prosecuting corrupt acts; and (5) monitoring state administration.¹⁶⁷ Thus, Article 6 gave the KPK broad powers of investigation, prevention, and prosecution.¹⁶⁸ Additionally, it is important to note that although part of the KPK's mandate is prevention, it focuses on investigations and prosecutions.¹⁶⁹

Law Number 30 gave the KPK significant law enforcement coordination powers.¹⁷⁰ This legislation empowered the KPK to take cases away from the National Police and Attorney General's Office in a variety of circumstances: when there are delays in handling a complaint; when case management is directed towards protecting the accused or itself contains elements of corruption; when interference from legislative, executive, or judicial authorities hampers the investigation; or when police or prosecutors throw out a case without good cause.¹⁷¹

To fulfill these broad responsibilities, the legislation gave the KPK legal powers to investigate and prosecute; the authority to tap and record a suspect's communications; the power to investigate a suspect's bank accounts; the authority to prevent Indonesian suspects from traveling abroad; and the ability to inquire into the wealth and taxation affairs of suspects.¹⁷² Additionally, the KPK has surveillance equipment and other state-of-the-art technology to assist in investigations.¹⁷³

Mechanisms are in place to ensure that the KPK's staff retain personal integrity and do not become corrupt. Under Law Number 30, the KPK is responsible for managing its own personnel, including appointing and terminating contracts.¹⁷⁴ Thus, the KPK appoints, as well as dismisses,

¹⁶⁷ Law No. 30 of 2002, *supra* note 162, art. 6.

¹⁶⁸ Also, the KPK and ICAC differ in that the ICAC addresses public corruption in the private sector, whereas the KPK combats only public sector corruption. Law No. 30 of 2002, *supra* note 162, art. 11. Additionally, the ICAC has powers of investigation and prevention, whereas the KPK has a broader mandate of prevention, investigations, and prosecutions. *See* Man-wai, *supra* note 150, at 198; *see also* Wagner & Jacobs, *supra* note 33, at 213 n.105.

¹⁶⁹ Jacobs & Wagner, *supra* note 72, at 329.

¹⁷⁰ *See* Fenwick, *supra* note 166, at 408.

¹⁷¹ *KPK: The Corruption Eradication Commission of Indonesia*, *supra* note 11.

¹⁷² *See* Schütte, *supra* note 95, at 90; *see also* Wagner & Jacobs, *supra* note 33, at 213 n.105.

¹⁷³ Jeremy Kingsley, *D-Day for Anti-Corruption Reform*, INSIDE INDON., Apr.–June 2009, <http://www.insideindonesia.org/edition-96/d-day-for-anti-corruption-reform>.

¹⁷⁴ *Indonesia: Integrity Scorecard Report*, GLOBAL INTEGRITY, <http://www.globalintegrity.org/reports/2006/INDONESIA/scorecard.cfm?subcategoryID=91&countryID=15> (last visited Jan. 29, 2011).

investigators, prosecutors, and other staff members.¹⁷⁵ Law Number 30 temporarily suspends a commissioner suspected of committing any criminal act until absolved of guilt.¹⁷⁶

Law Number 30 specifies that the KPK must comply with a series of mandatory deadlines when a corruption case emerges under the agency's jurisdiction.¹⁷⁷ The legislation institutes deadlines for the preparation of an indictment and for reporting the identification of sufficient evidence for a case.¹⁷⁸ These deadlines reduce the potential delay of a corruption lawsuit, often due to lack of diligence or commitment, outside influences, or fear of retribution.¹⁷⁹

Interestingly, Law Number 30 institutes an absolute requirement that all investigations initiated by the KPK proceed to prosecution.¹⁸⁰ This legislation reverses the traditional prosecutorial discretion, which allows plea bargains and the dismissal of charges.¹⁸¹ Due to a wide perception that the Chief Prosecutor misused prosecutorial discretion in previous corruption cases,¹⁸² “[t]hese constraints limit the temptation to succumb to corrupt advances from defendants seeking a reduction or withdrawal of charges, and ensure that KPK prosecutors only initiate cases backed by solid evidence.”¹⁸³

The KPK functions independently even though it is a state agency reporting to the President, the Indonesian Parliament (“Parliament”), and the Auditor General.¹⁸⁴ According to Law Number 30, the KPK is the chief entity responsible for coordinating with the Attorney General's Office, the National Police, and other entities active in fighting corruption.¹⁸⁵ Additionally, the KPK staff is encouraged to undergo further training and education to refine members' personal skills, and the staff receives better pay than other branches

¹⁷⁵ Law No. 30 of 2002, *supra* note 162, arts. 21–26.

¹⁷⁶ *Id.* art. 32.

¹⁷⁷ See Fenwick, *supra* note 166, at 411.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ Kingsley, *supra* note 173.

¹⁸² See Fenwick, *supra* note 166, at 410.

¹⁸³ Kingsley, *supra* note 173.

¹⁸⁴ GTZ UNCAC PROJECT, *supra* note 132, at 1.

¹⁸⁵ See CORRUPTION ERADICATION COMM'N OF THE REPUBLIC OF INDON., GAP ANALYSIS STUDY REPORT: IDENTIFICATION OF GAP BETWEEN LAWS/REGULATIONS OF THE REPUBLIC OF INDONESIA AND THE UNITED NATIONS CONVENTION AGAINST CORRUPTION 75 (2006) [hereinafter GAP ANALYSIS], available at <http://www.u4.no/pdf/?file=/document/literature/UNCAC-Gap-Analysis-Indonesia.pdf>.

of the Indonesian government.¹⁸⁶ Theoretically, the KPK seems to be the “ultimate institutional response” to corruption; however, the KPK may not achieve this goal in practice.¹⁸⁷

III. INDONESIA’S INADEQUACIES IN LAW, CROSS-AGENCY COOPERATION, AND POLITICAL WILL MUST BE ADDRESSED TO IMPROVE ITS ANTI-CORRUPTION AGENCY’S POSSIBILITY OF SUCCESS

Although intended as the “ultimate institutional response” to corruption, many centralized anti-corruption agencies carry a high probability for failure.¹⁸⁸ The KPK is no exception. Accordingly, the KPK should strengthen its laws, cross-agency cooperation, and political will to improve its anti-corruption agency’s possibility of success.

Theoretically, anti-corruption agencies are provided with “a team of experts . . . an ample mandate, investigative powers, statutory autonomy and adequate funding to ensure that effective preventive steps are identified and put in place. In practice, however, the label ‘ACA’ [Anti-Corruption Agency] does not fit many of the realities found.”¹⁸⁹ From 2003 to 2009, the KPK has investigated, prosecuted, and achieved a 100% conviction rate in eighty-six cases of bribery and graft related to government procurements and budgets.¹⁹⁰ The KPK won global praise for its prosecutorial accomplishments, which bolstered the KPK’s image and Indonesia’s overall image.¹⁹¹ Despite the KPK’s impressive conviction record, these convictions are not necessarily determinative of its prospects of long-term success.

¹⁸⁶ Kingsley, *supra* note 173.

¹⁸⁷ Luís de Sousa, *Anti-corruption Agencies: Between Empowerment and Irrelevance*, 53 CRIME, L. & SOC. CHANGE 5, 6 (2010).

¹⁸⁸ *Id.* at 5–22.

¹⁸⁹ *Id.* at 7.

¹⁹⁰ Onishi, *supra* note 12.

¹⁹¹ *Mr. Clean’s Battered Broom*, ECONOMIST (Oct. 8, 2009), http://www.economist.com/world/asia/displaystory.cfm?story_id=14587280. In one noteworthy case, the KPK convicted the former president of the Bank of Indonesia, Indonesia’s central bank, of embezzling \$10 million, leading to the arrest of the bank’s former deputy governor who, coincidentally, was Yudhoyono’s in-law. See *Indonesia Country Profile: Public Anti-corruption Initiatives*, BUS. ANTI-CORRUPTION PORTAL, <http://www.business-anti-corruption.com/country-profiles/east-asia-the-pacific/indonesia/initiatives/public-anti-corruption-initiatives/> (last visited Jan. 29, 2011). This demonstrates that the political elite are no longer shielded like they were in the New Order under the Suharto regime. See Onishi, *supra* note 12.

Regardless of whether the multi-agency or centralized-agency approach is adopted, a lack of political will,¹⁹² inadequate corruption laws,¹⁹³ and poor cross-agency cooperation¹⁹⁴ are factors that determine an anti-corruption agency's prospects of long-term success. First, this Part discusses Indonesia's corruption laws and the gaps within those laws that need to be addressed. This is significant because an anti-corruption agency cannot hope to reduce public sector venality without the appropriate legal tools in place.¹⁹⁵ Second, this Part discusses the poor cross-agency cooperation of key Indonesian corruption-fighting agencies such as the KPK, the Attorney General's Office, and the National Police. This is important because the success of an anti-corruption agency depends "to a large degree on cooperation from sister agencies."¹⁹⁶ Third, this Part discusses Indonesia's recent drop in political will in fighting corruption. Without a government "seriously committed" to fighting this endemic problem, an anti-corruption agency may not survive.¹⁹⁷ Strengthening Indonesia's political will, cross-agency cooperation, and corruption laws increases the probability that an anti-corruption agency will achieve long-term success and true *Reformasi* will occur.

A. Inadequate Corruption Laws Will Prevent an Anti-corruption Agency from Achieving Desired Reform.

Regardless of whether Indonesia adopts a multi-agency or centralized-agency strategy, Indonesia's inadequate anti-corruption laws will definitively hinder the KPK's efforts to curb public corruption; therefore, Indonesia must institute better corruption laws for a better probability of corruption reform.¹⁹⁸ This Subpart analyzes current Indonesian corruption laws in detail and then utilizes the UNCAC articles to conduct a gap analysis in Indonesian law.

1. Corruption Laws After the New Order

Although corruption laws existed in Indonesia during the New Order, after Suharto resigned as President, the Indonesian legislature eventually adopted

¹⁹² Fumiko Nagano, *A Gecko Challenging a Crocodile: Anti-corruption Agency vs. Vested Interests*, COMM-GAP (July 30, 2009, 10:24 AM), <http://blogs.worldbank.org/publicsphere/gecko-challenging-crocodile-anti-corruption-agency-vs-vested-interests>.

¹⁹³ HEILBRUNN, *supra* note 10, at 1–3.

¹⁹⁴ USAID, *supra* note 121, at 7.

¹⁹⁵ HEILBRUNN, *supra* note 10, at 1–3.

¹⁹⁶ USAID, *supra* note 121, at 8 tbl.1.

¹⁹⁷ *Id.* at 5.

¹⁹⁸ *See id.* at 8–9.

stronger corruption laws.¹⁹⁹ It passed anti-corruption legislation in 1999 and 2001.²⁰⁰ These laws supplanted Law Number 3 of 1971, which had been in force for approximately twenty-eight years.²⁰¹ As the preamble of Law Number 31 of 1999 states:

Law No. 3 of 1971 . . . is not in line any longer with the legal needs of society. For that reason, it is deemed necessary to replace it with the Law on Eradication of Criminal Act of Corruption, which is expected to be more effective in preventing and eradicating the criminal act of corruption.²⁰²

Law Number 31 of 1999 defines corruption as involving “[a]nyone who illegally commits an act to enrich oneself or another person or a corporation, thereby creating losses to the state finance or state economy.”²⁰³ Because of Law Number 31, thirty types of offenses are punishable as corruption, including bribery, embezzlement, extortion, fraud in procurement, conflict of interest in procurement, acceptance of an undue gift, and loss to the state.²⁰⁴ Law Number 31 imposes criminal penalties for corruption, including prison with terms ranging from four years to life.²⁰⁵ Law Number 31 institutes severe financial penalties for corrupt acts, proscribing a maximum penalty of one billion rupiah.²⁰⁶ Law Number 31 also mandates that cases involving corruption have priority over other cases to ensure “prompt settlement.”²⁰⁷ However, Law Number 31 does not forbid bribing foreign officials, nor does it include provisions for corruption in the private sector.²⁰⁸

Law Number 31 can be seen as an effort to address concerns regarding the Attorney General’s and Chief Prosecutor’s track record in combating corruption. Studies show the offices of the Attorney General and Chief

¹⁹⁹ Wagner & Jacobs, *supra* note 33, at 199.

²⁰⁰ *Id.* at 203.

²⁰¹ Mieke Komar, Challenging Corruption in Indonesia 2 (May 4, 2006) (unpublished manuscript), available at <http://www.iawj.org/what/Session2Komar.doc>.

²⁰² Law on the Eradication of the Criminal Act of Corruption pmbL (UU RI No. 31/1999) (Indon.), [hereinafter Law No. 31 of 1999], available at <http://assetrecovery.org/kc/resources/org.apache.wicket.Application/repo?mid=b97a20d1-a342-11dc-bf1b-335d0754ba85>.

²⁰³ *Id.* art. 2.

²⁰⁴ *See id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.* As of February 2011, one billion Indonesian rupiah is equal to \$110,864.74 USD. *See Indonesia Rupiahs to United States Dollars Rate*, XE, <http://www.xe.com/ucc/convert.cgi?Amount=1%2C000%2C000%2C000&From=IDR&To=USD> (last visited Jan. 29, 2011).

²⁰⁷ Law No. 31 of 1999, *supra* note 202, art. 25.

²⁰⁸ *Indonesia Country Profile: Public Anti-corruption Initiatives*, *supra* note 191.

Prosecutor performed poorly at investigating and prosecuting corruption and retrieving assets.²⁰⁹

In 2001, the Indonesian government amended Law Number 31 by way of Law Number 20.²¹⁰ This law broadened and clarified the definition of corruption, as well as increased relevant penalties.²¹¹ Law Number 20 criminalized passive corruption in the public sector, extortion, and money laundering.²¹² Although Indonesia has basic corruption laws in place, better corruption laws may be necessary for an anti-corruption agency to function effectively.

2. *The Identification of Deficiencies in Indonesian Corruption Law*

The UNCAC's mandatory and non-mandatory provisions may be used as a tool to determine areas where Indonesian domestic corruption law needs improvement.²¹³ Because Indonesia has ratified the UNCAC, and intends to use the treaty as a standard for eradicating corruption both domestically and internationally,²¹⁴ it is an appropriate benchmarking tool that can identify deficiencies in Indonesian corruption law. By the utilization of the UNCAC, it is clear that the Indonesian legislature needs to improve witness protection, whistleblower laws, laws that allow access to financial records, and general conspiracy laws so that an anti-corruption commission may be able to function effectively in Indonesia.

a. *The Need for Improved Witness Protection and Whistleblower Immunities*

One of the most significant gaps between the UNCAC and Indonesian domestic law is the protection of witnesses and whistleblowers.²¹⁵ The UNCAC mandates protection of witnesses, experts, and victims in Article 32, stating, "Each State Party shall take appropriate measures . . . to provide

²⁰⁹ See Fenwick, *supra* note 166, at 407.

²¹⁰ Prijono Tjiptoherjanto, Corruption Prevention in Indonesia 10 (May 5, 2009) (unpublished manuscript) (on file with the *Emory International Law Review*).

²¹¹ *Id.*

²¹² *Indonesia Country Profile: Public Anti-corruption Initiatives*, *supra* note 191.

²¹³ See GAP ANALYSIS, *supra* note 185, at iii.

²¹⁴ Amien Sunaryadi, Vice Chairman/Comm'r, Corruption Eradication Comm'n (KPK) of the Rep. of Indon., Keynote Address at Regional Seminar for Asia-Pacific: Making International Anti-Corruption Standards Operational: Asset Recovery and Mutual Legal Assistance (Sept. 5, 2007), available at http://www.baselgovernance.org/fileadmin/docs/pdfs/Bali/Amien_Sunaryadi.pdf.

²¹⁵ GAP ANALYSIS, *supra* note 185, at 121–23.

effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning [corrupt activities].”²¹⁶ Indonesia, in an effort to conform to the UNCAC mandate, passed Law Number 13 in 2006, providing physical security to witnesses and victims during a trial proceeding.²¹⁷ To enforce such protection, the Indonesian government instituted a Witness and Protection Body, which is responsible for determining compensation and restitution for victims.²¹⁸

Regardless, the UN has expressed concern regarding the implementation of Law Number 13 due to the lack of training and insufficient funding in law enforcement.²¹⁹ Witness protection laws are only successful if sufficient resources are allocated to enforce the law when necessary.²²⁰ Additionally, Law Number 13 of 2006 uses the same definition of “witness” from its Criminal Procedure Code, which only grants protection to individuals providing information on criminal cases.²²¹ Thus, Law Number 13 may exclude individuals who provide information in civil corruption cases.²²²

Moreover, Law Number 13 states that a suspect who testifies may not be acquitted due to his testimony, but the judge may take his cooperation into account when determining his sentence.²²³ Thus, this provision is unlikely to result in a defendant turning on his fellow conspirators. Without appropriate immunity and sentence-reduction mechanisms, it is unlikely that prosecutors and the KPK will be able to dismantle networks of corruption.²²⁴

Furthermore, Law Number 13 may provide physical witness protection, but it does not effectively shield whistleblowers from workplace retaliation.²²⁵ A

²¹⁶ UNCAC, *supra* note 21, art. 32.

²¹⁷ *Compliance with the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment: Issues for Discussion with the Committee Against Torture*, NAT’L COMM’N ON VIOLENCE AGAINST WOMEN (KOMNAS PEREMPUAN), 2–3 (Apr. 2008), http://www2.ohchr.org/english/bodies/cat/docs/ngos/Komnasperempuan_Indonesia40th.doc.

²¹⁸ *Id.* at 3.

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ INDON. PROGRAMME NEWSL. 3/2006 (Indon. Programme at the Norwegian Ctr. for Human Rights, Oslo, Nor.), Mar. 2006, para. 6.

²²² *Id.*

²²³ Wagner & Jacobs, *supra* note 33, at 246.

²²⁴ *Id.*

²²⁵ *Id.* at 238–39. Benjamin Wagner describes one instance where an auditor became a witness for a case under the KPK’s jurisdiction. *Id.* Although the KPK was able to physically protect the witness, the KPK was unable to protect him from severe workplace retaliation. *Id.* This demonstrates that the laws are weak in the witness protection arena in Indonesia. *Id.*

whistleblower is one who reports corruption or fraud within an organization.²²⁶ Article 33 of the UNCAC addresses whistleblower protection, stating, “Each State Party shall consider incorporating . . . measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning [acts of corruption].”²²⁷

Although UNCAC Article 33 is not a mandatory provision,²²⁸ whistleblower protection laws are integral to curbing public corruption. Effective whistleblower legislation must not only protect whistleblowers from physical threats, but exempt them from administrative, civil, or criminal charges when information is disclosed in good faith.²²⁹ Moreover, if a country’s domestic whistleblower laws offer adequate protection against workplace retaliation, public servants will be more inclined to report cases of illegal activity; thus, the government will obtain more information regarding corrupt acts.²³⁰ Therefore, Indonesia must implement legislation and procedures that protect whistleblowers from retaliation to effectively curb endemic corruption.

b. Improved Laws Regarding Access to Financial Records

Indonesia must instill better laws regarding access to financial records for an anti-corruption agency to attain long-term success. As Article 40 of the UNCAC states, “Each State Party shall ensure that . . . there are appropriate mechanisms available . . . to overcome obstacles that may arise out of the application of bank secrecy laws.”²³¹ Inadequate access to bank accounts and other financial records is a significant barrier when investigating and prosecuting cases dealing with public corruption.²³² As one expert notes:

In the United States, federal investigators and prosecutors have ready access to financial records through the use of subpoenas issued through an investigating grand jury. The heart of almost any public

²²⁶ *Id.* at 220.

²²⁷ UNCAC, *supra* note 21, art. 33.

²²⁸ *Id.* It is important to note that the language is “[e]ach State Party shall consider.” *Id.* (emphasis added). Therefore, the article is not a mandatory provision.

²²⁹ GAP ANALYSIS, *supra* note 185, at 123.

²³⁰ See ADB-OECD ANTI-CORRUPTION INITIATIVE FOR ASIA-PAC., EFFECTIVE PROSECUTION OF CORRUPTION: REPORT ON THE MASTER TRAINING x (2003), http://www.adb.org/Documents/Reports/Effective_Prosecution_of_Corruption/Effective_%20Prosecution.pdf.

²³¹ UNCAC, *supra* note 21, art. 40.

²³² Wagner & Jacobs, *supra* note 33, at 225.

corruption case is the pecuniary benefit flowing to the corrupt official. If the benefit can be documented in the hands of the official, the case is half won. Conversely, if the flow of the money to the defendant or his family or associates cannot be tracked and then proven at trial, a public corruption prosecution has little prospect of success.²³³

At the time of this Comment's publication, there is no provision under Indonesian law stating that production of financial records is mandatory.²³⁴ The mere act of requesting financial records is an impediment to effective enforcement of corruption laws. To request financial records, the Attorney General, the Chief Justice of the Supreme Court, or the Chief of the National Police must send a letter of request to Indonesia's central bank, Bank of Indonesia.²³⁵ This bank then sends a request for production of records from the appropriate bank.²³⁶ This procedure is prone to delays, and there are no enforcement mechanisms for any governmental agency to resort to if the bank turns down the request.²³⁷ Although Law Number 20 authorizes the KPK²³⁸ to order access to financial records, the KPK is not authorized to sanction banks for refusing to comply with requests.²³⁹ Because access to financial records is integral to corruption reform, Indonesia must implement legislation that would enable governmental agencies to obtain financial records when prosecuting or investigating cases regarding public corruption.

c. Re-implementation of Laws to Ensure a Clean Judiciary in Corruption Cases

Indonesia must pass legislation that ensures a clean judiciary to improve an anti-corruption agency's possibility of success. Article 11 of the UNCAC requires states parties to "strengthen integrity and to prevent opportunities for corruption among members of the judiciary."²⁴⁰ This is important because in many developing countries, the judiciary tends to be the weakest link of all the

²³³ *Id.*

²³⁴ *Id.* at 242.

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ *Id.* As the KPK notes, "[T]he level of compliance by banks with requests for the lifting of bank secrecy is said to still be rather low." See GAP ANALYSIS, *supra* note 185, at 39.

²³⁸ *Id.* The KPK is not the only Indonesian institution that is authorized to order bank and other financial records—the Attorney General's Office is authorized as well. See *id.*

²³⁹ See *id.*

²⁴⁰ UNCAC, *supra* note 21, art. 11.

institutions combating corruption, which, in turn, undermines the credibility of the entire system.²⁴¹ Indonesia is no exception.

Law Number 30 of 2002 provided for the creation of the *Pengadilan Tindak Pidana Korupsi*, or the Special Corruption Court.²⁴² This court was essentially a new jurisdiction created to handle corruption cases investigated by the KPK.²⁴³ Presidential Decree Number 59/2004 was issued to facilitate the establishment of the Special Corruption Court,²⁴⁴ and the court was formally running in 2003.²⁴⁵ The majority of the Special Corruption Court was staffed by non-career judges, recruited from a pool of practicing lawyers, university professors, and retired prosecutors.²⁴⁶ These judges were directly selected by the KPK,²⁴⁷ and therefore more independent than the traditionally corrupt Indonesian judiciary.²⁴⁸

In 2009, the Indonesian Parliament passed legislation overturning part of Law Number 20, effectively dismantling the Special Corruption Court.²⁴⁹ At the time of this Comment's publication, Indonesia will have thirty-three corruption courts at the provincial level, instead of the one Special Corruption Court at the Jakarta District Court level.²⁵⁰ Consequently, there will be more than 400 courts at the regencies and municipalities.²⁵¹ The 2009 legislation also allows the panel of judges presiding on a corruption case to be staffed from the traditional corruption case, which is a step backwards from Law Number 20, which was enacted to ensure a clean judiciary.²⁵² The number and composition of judges will be determined by the respective head of courts or

²⁴¹ MARIE CHÈNE & ROBIN HODESS, TRANSPARENCY INT'L, COORDINATION MECHANISMS OF ANTI-CORRUPTION INSTITUTIONS 3 (2009), <http://www.u4.no/helpdesk/helpdesk/query.cfm?id=216>.

²⁴² See Fenwick, *supra* note 166, at 412.

²⁴³ *Id.*

²⁴⁴ Aji Sekarmaji, *Corruption Law in Adjustment*, JAKARTA POST (June 2, 2009, 2:06 PM), <http://www.thejakartapost.com/news/2009/06/02/corruption-law-adjustment.html>.

²⁴⁵ Olivia Rondonuwu, *Indonesia's Corruption Court in Fight for Existence*, REUTERS, June 17, 2009, available at <http://www.reuters.com/article/idUSTRE55G0YI20090617>.

²⁴⁶ Fenwick, *supra* note 166, at 412.

²⁴⁷ *House May Return Exclusive Authority to Prosecute to AGO*, JAKARTA POST (Sept. 16, 2009, 1:22 PM), <http://www.thejakartapost.com/news/2009/09/16/house-may-return-exclusive-authority-prosecute-ago.html>.

²⁴⁸ *Indonesia Country Profile: Public Anti-corruption Initiatives*, *supra* note 191.

²⁴⁹ Erwida Maulia, *KPK Retains Bugging, Prosecuting Powers*, JAKARTA POST (Sept. 30, 2009, 1:18 PM), <http://www.thejakartapost.com/news/2009/09/30/kpk-retains-bugging-prosecuting-powers.html>.

²⁵⁰ *Id.*

²⁵¹ *Id.*

²⁵² *Id.*

the Supreme Court, depending on the level of each case.²⁵³ The 2009 legislation also mandates that all provinces have corrupt crimes courts within two years.²⁵⁴ Many experts maintain that this two-year deadline will be impossible to achieve without lowering standards.²⁵⁵

Indonesia needs to either reinstitute the Special Corruption Court or adopt other measures to ensure a clean judiciary. At the time of this Comment's publication, there is no evidence that Indonesia has taken appropriate steps directed at reducing corruption in the judiciary. Because judges have the ability to dismiss cases and decide on the admissibility of evidence, a clean judiciary is essential for an anti-corruption agency to function effectively in Indonesia. Accordingly, laws ensuring a clean judiciary must be enacted in Indonesia.

d. Adopting a General Conspiracy Law to Dismantle Networks of Corrupt Offenders

Although not specifically mentioned in the UNCAC, Indonesia should adopt a general conspiracy law to enable its agencies to effectively combat public corruption. Conspiracy, or an agreement between two or more parties to commit an unlawful act,²⁵⁶ is damaging because, by combining their efforts to engage in a criminal activity, conspirators increase their chances of bringing about their unlawful goal, make it easier to pursue complex objectives, and make it more likely that they will expand their horizons to include criminal activities well beyond the original purpose of the group.²⁵⁷

Public corruption is often characterized by multiple perpetrators who create large, complex networks to carry out illicit activity.²⁵⁸ Because general conspiracy laws allow members of a conspiracy to be held vicariously liable for crimes committed by their co-conspirators in furtherance of a conspiracy,²⁵⁹ prosecutors frequently rely on these laws in corruption cases. At the time of this Comment's writing, Indonesia does not have a general conspiracy provision.²⁶⁰ Furthermore, the KPK has been criticized for only prosecuting

²⁵³ *Id.*

²⁵⁴ Tom Wright, *Indonesia Dilutes Antigraft Court*, WALL ST. J., Sept. 30, 2009, <http://online.wsj.com/article/SB125423653353249493.html>.

²⁵⁵ *Id.*

²⁵⁶ See 18 U.S.C.A. § 371 (West 2011).

²⁵⁷ Callanan v. United States, 364 U.S. 587, 593–94 (1961).

²⁵⁸ Wagner & Jacobs, *supra* note 33, at 185.

²⁵⁹ Pinkerton v. United States, 328 U.S. 640, 647–48 (1946).

²⁶⁰ Wagner & Jacobs, *supra* note 33, at 248.

weakened or minor political figures²⁶¹ instead of disabling complex networks of public corruption. A general conspiracy provision would allow an anti-corruption agency to effectively combat public corruption.

By examining Indonesian domestic corruption law, it is evident that Indonesia needs better legal tools to combat corruption, including better witness and whistleblower protection laws, bank secrecy laws, and a general conspiracy law. An anti-corruption agency cannot prevail when there are inadequate anti-corruption laws necessary for its success. Changing legislation can be done with relative ease. However, Indonesia's other hurdles may be more difficult to overcome.

B. The Lack of Cross-agency Cooperation: The War of the Geckos Versus the Crocodiles

Due to a lack of cross-agency cooperation, Indonesia's anti-corruption agency may not be able to achieve long-term success.²⁶² Cooperation is needed from other agencies for an anti-corruption agency to function effectively. Without it, there is a duplication of efforts from different agencies, which translates into a drain on a country's financial resources. Because of the tensions between Indonesia's National Police, the Attorney General's Office, and the KPK, it is evident that serious problems in cross-agency cooperation exist; thus, the KPK is hindered from achieving long-term success.

1. Problems with Coordination Between Agencies

The problem with cross-agency coordination is exemplified by the KPK coming under attack from the Indonesian National Police and the Attorney General's Office in 2009.²⁶³ In July 2009, the National Chief of Detectives declared war on the KPK during a nationally broadcast interview.²⁶⁴ The police chief likened the KPK to a "stupid gecko" for attempting to challenge the "crocodile" of the police force,²⁶⁵ creating what can be referred to as the war of the geckos versus the crocodiles.²⁶⁶

²⁶¹ Kingsley, *supra* note 173.

²⁶² USAID, *supra* note 121, at 7.

²⁶³ Katie Hamann, *SBY Vows to Defends Indonesia's Anti-Graft Agency*, ABC RADIO AUSTRALIAN NEWS (Oct. 30, 2009, 9:42 PM), <http://www.radioaustralianews.net.au/stories/200910/2728708.htm?desktop>.

²⁶⁴ *Id.*

²⁶⁵ *Id.*

²⁶⁶ *The Gecko Bites Back*, ECONOMIST (Nov. 5, 2009), http://www.economist.com/world/asia/displaystory.cfm?story_id=14816720.

This war is exemplified by two cases. In one case, two KPK deputy chairmen were accused of, then later arrested by the National Police Chief and Attorney General for, allegedly soliciting bribes from a corruption suspect so that the suspect could flee abroad.²⁶⁷ Soon after Yudhoyono announced an official investigation, wiretapped conversations compiled by the KPK were broadcast on a nationally televised court hearing.²⁶⁸ The wiretapped conversations featured a high-ranking state prosecutor and a police witness stating that there was a conspiracy to frame the two KPK officials in this case.²⁶⁹ Within hours of the broadcast, the two deputy chairmen were released from jail but nonetheless remained under investigation.²⁷⁰

In another case, the Head Commissioner of the KPK, Antasari Azhar, went on trial in 2009 for “allegedly masterminding the drive-by shooting of a businessman,” motivated by their mutual love interest—a golf caddy.²⁷¹ However, in November 2009, it was found that a senior police officer from the National Police conspired to frame Azhar for the murder.²⁷² According to the senior police officer, the National Police Chief directly issued the order to kill the businessman and ordered deputies to compile a dossier to frame Azhar.²⁷³

In December 2009, the KPK attempted to arrange a meeting with both the Attorney General and the National Police Chief to coordinate activities concerning investigations so as to avoid any possible overlap.²⁷⁴ The Attorney General and National Police Chief cancelled the meeting due to “other activities.”²⁷⁵ As of March 2010, the head officials of the Attorney General’s Office and the National Police have failed to meet with the KPK.²⁷⁶

On one hand, the tensions and lack of coordination between the Attorney General’s Office, the National Police, and the KPK are understandable. These

²⁶⁷ *Id.*

²⁶⁸ *Id.*

²⁶⁹ *Id.*

²⁷⁰ *Id.*

²⁷¹ See *Mr. Clean’s Battered Broom*, *supra* note 191; *The Crimebuster and the Caddy*, ASIA SENTINEL (May 5, 2009), http://www.asiasentinel.com/index.php?option=com_content&task=view&id=1858&Itemid=403.

²⁷² Hasyim Widhiarto, *Antasari ‘Framed,’* JAKARTA POST (Nov. 11, 2009, 10:55 AM), <http://www.thejakartapost.com/news/2009/11/11/antasari-%E2%80%98framed%E2%80%99.html>.

²⁷³ *Id.*

²⁷⁴ Irawaty Wardany, *AGO, Police Fail to Show for Meeting with KPK*, JAKARTA POST (Dec. 19, 2009, 1:04 PM), <http://www.thejakartapost.com/news/2009/12/19/ago-police-fail-show-meeting-with-kpk.html>.

²⁷⁵ *Id.*

²⁷⁶ *Id.*

departments have overlapping mandates, competing agendas, and generally, an institutional lack of clarity.²⁷⁷ Additionally, the fact that the KPK diverts personnel resources from the National Police and Attorney General's Office is problematic.²⁷⁸ Attorney General prosecutors and National Police investigators of the highest "competence and integrity" are routinely pulled from their respective agencies to work for the KPK.²⁷⁹ This practice not only results in a decrease in morale in these agencies, but weakens the institutions as well—leaving them more corrupt than ever before.²⁸⁰

Some believe that a rivalry between the Attorney General, the National Police, and the KPK can be construed in a positive light, because each agency is "forced to perform their best . . . otherwise they will be quickly spotted by the public as incompetent."²⁸¹ However, in reality, close coordination between the agencies is needed for meaningful corruption reform to occur. Thus, for Indonesia's anti-corruption agency to function effectively, problems with coordination must be addressed.

2. *Solutions to the Problem of Coordination Between Agencies.*

Although the KPK has problems with coordination with other Indonesian agencies, there are certain measures the Indonesian government can take to address these issues. Regardless of whether the multi-agency model or centralized model towards corruption reform is implemented, the KPK can adopt a stronger preventive approach to improve cross-agency coordination.

First, it is important to note that other countries' anti-corruption agencies have overcome problems with coordination with other governmental agencies.²⁸² For instance, to reduce animosity from the Hong Kong police in the 1970s, the ICAC dropped petty corruption charges for some police officers.²⁸³ Other officers who had high-profile cases were forced into early retirement instead of being punished to the full extent of the law.²⁸⁴ Although

²⁷⁷ See Jacobs & Wagner, *supra* note 72, at 330–32.

²⁷⁸ *Id.* at 332.

²⁷⁹ *Id.*

²⁸⁰ *Id.*

²⁸¹ Dicky Christanto, *New Law May See KPK Lose Its Authority to Prosecute*, JAKARTA POST (Oct. 9, 2009, 1:54 PM), <http://www.thejakartapost.com/news/2009/10/09/new-law-may-see-kpk-lose-its-authority-prosecute.html>.

²⁸² USAID, *supra* note 121, at 20.

²⁸³ Anna Wu, *Hong Kong's Fight Against Corruption Has Lessons for Others*, H.K. J., Apr. 2006, at 1, 2.

²⁸⁴ Skidmore, *supra* note 122, at 4.

this is not the most ideal of circumstances,²⁸⁵ the KPK may want to consider extending a similar olive branch to the Attorney General's Office and the National Police—but only as a one-time occurrence. This may enable the agencies to start with a blank slate and may cause animosities to dissipate.

However, this is only to be a short-term solution towards problems of coordination—for long-term success, a more comprehensive approach needs to be established. One solution is for the KPK to establish a stronger preventive program. As of February 2011, the KPK does not take on a major role in ensuring that other governmental agencies have good ethical programs in place—instead, there has been a pronounced emphasis on conducting investigations and prosecutions.²⁸⁶ Perhaps if the KPK adopts a stronger preventive approach, much like the United States's OGE or Hong Kong's ICAC, better coordination may be achieved.

For instance, the KPK can create a new division, similar to the United States's OGE Program Review Division, which is entrusted with conducting on-site ethics program reviews of governmental agencies.²⁸⁷ Therefore, when the KPK identifies a deficiency within a governmental agency, the governmental agency would be required to take action pursuant to the KPK's recommendations. Additionally, the KPK should create ethics training programs for each agency. Eventually, the government agency's perception of corruption would change by officers realizing the importance of cross-agency cooperation. However, the Indonesian government must also create a legal duty for each governmental agency to cooperate with the KPK. Therefore, if recommendations are not followed, sanctions or remedial action may be taken against the non-compliant governmental agency. Legal obligations forcing governmental agencies to cooperate with anti-corruption agencies have been imposed in Hong Kong and Singapore and have been successful.²⁸⁸

Other tools may prove to be useful in the KPK's efforts for improved cross-agency cooperation. The Indonesian government needs to provide clear

²⁸⁵ The tensions are a product of the KPK arresting prosecutors and police officers. *The Crimebuster and the Caddy*, *supra* note 271. "The more corrupt officials that are sent to jail, the more enemies the KPK creates, because corrupt officials in Indonesia are countless." Titus Jonathan, *Letter: Who is Trying to Kill the KPK?*, JAKARTA POST (Nov. 14, 2009, 3:53 PM), <http://www.thejakartapost.com/news/2009/11/14/letter-who-trying-kill-kpk.html>.

²⁸⁶ See Jacobs & Wagner, *supra* note 72, at 329.

²⁸⁷ *Agency Program Services*, *supra* note 108.

²⁸⁸ Sahr J. Kpundeh, *Political Will in Fighting Corruption*, in CORRUPTION AND INTEGRITY IMPROVEMENT INITIATIVES IN DEVELOPING COUNTRIES 91, 98 (Sahr J. Kpundeh & Irene Hors eds., 1998), available at <http://mirror.undp.org/magnet/Docs/efa/corruption/Chapter06.pdf>.

mandates for each governmental agency, which would avoid the inevitable problem of duplication of work, and ease barriers inherent to cross-agency cooperation.²⁸⁹ An improved information-sharing and communications strategy may also improve cross-agency cooperation. For instance, computerized case-management tracking systems and cross-agency data bases will ensure that each agency is informed of efforts occurring in other agencies and would also decrease the possibility of the duplication of work.

By following a stronger preventive approach, the KPK can reduce venality in the Attorney General's Office and the National Police Department. As these agencies learn the importance of reducing public sector corruption, their attitudes towards cross-agency cooperation may change and, therefore, would allow an anti-corruption agency to fulfill long-term goals.

C. A Need for Stronger Political Will

Although the KPK has been internationally acclaimed for reducing public corruption, Indonesia needs a stronger political will—without it, corruption reform is “mere rhetoric.”²⁹⁰ Strong political will is needed in any level of corruption reform—including both the multi-agency and centralized agency strategies.²⁹¹ Political will is the “demonstrated credible intent of political actors . . . to attack perceived causes or effects of corruption at a systemic level.”²⁹² “Political actors” in this context refers to officials from the legislative and executive branches.²⁹³ At the time of this Comment's writing, Indonesia does not have the requisite political will for an effective anti-corruption strategy; however, this political will may be strengthened by Indonesian citizens demanding public corruption reform.

1. Evidence of Lack of Political Will in the Indonesian Legislative and Executive Branches

After the KPK arrested several Indonesian legislators,²⁹⁴ Parliament “planned to rein in the KPK with a series of changes” to Law Number 30 in

²⁸⁹ *Id.*

²⁹⁰ *Id.* at 92.

²⁹¹ *Id.*

²⁹² *Id.*

²⁹³ *Id.*

²⁹⁴ Rizal Sukma, *Anticorruption Drive to Take a Back Seat?*, JAKARTA POST (Sept. 17, 2009, 2:32 PM), <http://www.thejakartapost.com/news/2009/09/17/anticorruption-drive-take-a-back-seat.html>.

September 2009.²⁹⁵ These changes were directed to weaken the KPK considerably, rendering the KPK as virtually powerless.²⁹⁶ Under this legislation, the KPK would have lost its ability to wiretap phones, thereby impeding its power to investigate cases regarding corruption.²⁹⁷ Moreover, the proposed legislation would have mandated that all corruption cases be litigated using the Indonesian Criminal Code.²⁹⁸ However, this legislation would have resulted in ambiguity, because the Indonesian Criminal Code requires that the National Police investigate all criminal matters—therefore, the KPK would have potentially lost its ability to investigate any allegation of public corruption.²⁹⁹

The proposed bill also sought to sever the KPK's powers of prosecution,³⁰⁰ which would have resulted in the Attorney General's Office being the sole entity to prosecute corruption cases. However, the Attorney General's Office is routinely criticized because of its reputation for allowing the most corrupt offenders to "evade justice by stopping investigations."³⁰¹ Additionally, the office is known for interfering with prosecutions and is also "lazy in preparing evidence for trials."³⁰²

The most tremendous impact of the 2009 legislation was the eradication of the Special Corruption Court. As discussed above, the 2009 legislation allows judges presiding on a corruption case to be chosen by the corrupt, regular justice system instead of unbiased professionals from the community.³⁰³ Abolishing the Special Corruption Court will have a profound impact on both the KPK and the Attorney General's Office—for instance, the corrupt Indonesian judiciary will ultimately decide the admissibility of any evidence introduced by prosecutors.³⁰⁴ This law can be seen as Parliament's attempt to keep a corrupt judiciary and demonstrates the legislative branch's lack of political will.

²⁹⁵ See *Mr. Clean's Battered Broom*, *supra* note 191.

²⁹⁶ *Id.*

²⁹⁷ *Id.*

²⁹⁸ Kingsley, *supra* note 173.

²⁹⁹ *Id.*

³⁰⁰ See *Mr. Clean's Battered Broom*, *supra* note 191.

³⁰¹ See Christanto, *supra* note 281.

³⁰² *Id.*

³⁰³ Maulia, *supra* note 249.

³⁰⁴ Markus Junianto Sihaloho & Febriamy Hutapea, *Indonesia Passes 'Ambiguous' Anti-corruption Court Bill*, JAKARTA GLOBE (Sept. 30, 2009), <http://thejakartaglobe.com/home/indonesia-passes-ambiguous-anti-corruption-court-bill/332601>.

It must be noted that the Parliament's 2009 legislation contained ambiguous provisions that would have allowed Indonesia to combat public corruption, despite the changes.³⁰⁵ The Parliament never explained how its changes to the KPK and Special Corruption Court would satisfy corruption reform, nor did the Parliament enact supplemental legislation directed at reducing corruption within the government.³⁰⁶

Additionally, a lack of political will exists in the executive branch. Although Yudhoyono has made corruption reform the cornerstone of his campaign, the President still refuses to fire Attorney General Hendarman Supandji and the head of the National Police, Bambang Hendarso Danuri, even after their demonstrated participation in a conspiracy to frame the KPK.³⁰⁷

2. *Solutions to Indonesia's Lack of Political Will*

Indonesia needs to strengthen its political will so that an anti-corruption agency can achieve long-term success. A lack of political will may be overcome by citizens demanding action from public officials, forcing the officials to effectuate reforms directed at curbing public corruption.³⁰⁸ However, the public must first be informed of the problems of public corruption before they can demand change.³⁰⁹ Thus, an informed public is integral to the concept of strengthening political will.³¹⁰

Political will may be strengthened by giving corruption a "human face."³¹¹ This is achieved by anti-corruption campaigns, such as television and radio commercials.³¹² These campaigns personalize corruption by explaining exactly how individuals are affected by corrupt activity.³¹³ The Indonesian public becomes empowered if it understands its stake in the abuse of public funds—abuse that results in higher taxes, lower salaries, and fewer jobs.³¹⁴ Once the

³⁰⁵ *Id.*

³⁰⁶ *Id.*

³⁰⁷ Pandaya, *Who Is the Boss Around Here, SBY or the Mafiosos?*, JAKARTA POST (Nov. 14, 2009, 12:49 PM), <http://www.thejakartapost.com/news/2009/11/14/who-boss-around-here-sby-or-mafiosos.html>.

³⁰⁸ Kpundeh, *supra* note 288, at 103.

³⁰⁹ *See id.*

³¹⁰ Also, it must be noted that public pressure has been shown to effectuate change in Indonesia—for instance, in 1998, when citizens demanded that Suharto resign as president, Suharto eventually acquiesced and stepped down. *See supra* Part I.A.

³¹¹ Kpundeh, *supra* note 288, at 103.

³¹² *Id.*

³¹³ *Id.*

³¹⁴ *Id.*

public feels personally invested in curbing public corruption, they can demand action from leadership.³¹⁵ The ICAC's Community Relations Department, as a part of its preventive function, has instituted this approach by launching commercials to enlist the public's support for fighting corruption.³¹⁶

There is evidence that political will in Indonesia may improve. During the New Order, corruption, collusion, and nepotism were an everyday "fact of life."³¹⁷ However, in 2009, the Indonesian public gained increased awareness of the problems of public corruption and demanded change from political leaders.³¹⁸ For instance, when Parliament announced its intention to enact the legislation in 2009 that would have effectively stripped the KPK of its powers, the people of Indonesia responded with unprecedented force.³¹⁹ Crowds of people gathered in Jakarta declaring their continuous support for the KPK by shouting, "'Cinta Indonesia, Cinta KPK,'" which translates as "Love Indonesia, Love KPK."³²⁰ Members of the public, dressed up as gorillas, tigers, rabbits, and bears, stormed into the office of Indonesia Corruption Watch declaring: "'Even animals want the Corruption Court to remain, and wish for a stronger KPK.'"³²¹ In the wake of the war of the geckos versus the crocodiles, nearly one million Facebook users joined a web-group page supporting the KPK.³²²

Although the KPK has fostered some public support regarding anti-corruption efforts, the KPK needs to apply stronger preventive measures to ensure the Indonesian public continues to be informed of the dangers of corruption. By ensuring that the Indonesian public views public corruption with a "human face,"³²³ the public may be more likely to build a united front and demand change from their leaders, which, in turn, would gradually strengthen Indonesia's political will.

³¹⁵ *Id.*

³¹⁶ *Id.*

³¹⁷ Wagner & Jacobs, *supra* note 33, at 199.

³¹⁸ See Key KPK Officers Face Second Round of Police Questioning, JAKARTA GLOBE (Sept. 15, 2009), <http://thejakartaglobe.com/home/key-kpk-officers-face-second-round-of-police-questioning/329976>.

³¹⁹ See Nurfika Osman, *Thousands Rally Against Corruption in Jakarta*, JAKARTA GLOBE (Nov. 9, 2009), <http://thejakartaglobe.com/home/thousands-rally-against-corruption-in-jakarta/340302>.

³²⁰ *Id.*

³²¹ Irawaty Wardany, *Even Animals Want an End to Corruption*, JAKARTA POST (Sept. 14, 2009, 11:38 AM), <http://www.thejakartapost.com/news/2009/09/14/even-animals-want-end-corruption.html>.

³²² Ulma Haryanto, *KPK-Police Battle Spawns Fight Among Indonesia Facebook Users*, JAKARTA GLOBE (Nov. 5, 2009), <http://thejakartaglobe.com/home/kpk-police-battle-spawns-fight-among-indonesia-facebook-users/339910>.

³²³ Kpundeh, *supra* note 288, at 103.

IV. *REFORMASI* WITHIN THE KPK: THE BEST ANTI-CORRUPTION AGENCY FRAMEWORK FOR THE KPK

Although Indonesia has insufficient corruption laws, a lack of cross-agency cooperation, and a lack of political will, Indonesia must still determine its ideal anti-corruption agency strategy that has the highest possibility of yielding long-term success. Indonesia is required to have a body that specializes in combating corruption, as detailed in UNCAC Article 36.³²⁴ Additionally, anti-corruption agencies often can “empower themselves without having to wait for statutory revisions of their competences or the adoption of more favourable legal frameworks to carry out their mandate.”³²⁵

The KPK will be unable to achieve any long-term success under its current organizational framework. This Part argues that the KPK should move away from the centralized approach and adopt a multi-agency approach with an emphasis on prevention. First, this Part discusses that the KPK’s current framework, under the centralized agency approach, is too costly to maintain for a geographically dispersed, developing country like Indonesia. Second, this Part argues that the KPK should move away from the centralized approach and instead adopt a multi-agency approach. Third, this Part argues that the KPK should adopt a stronger preventive approach to enact true *Reformasi* throughout Indonesia and curb public corruption in the long term. Fourth, this Part argues that the KPK’s prosecutorial and investigative functions should be eliminated because of the inefficiencies these functions create within Indonesia’s overall system.

A. *Narrowing the Scope of the KPK*

The most significant problem with a centralized agency strategy is the sheer cost of implementation. Generally speaking, the more functions that an anti-corruption agency seeks to fulfill, the more expensive the agency is to operate.³²⁶ Thus, the multi-agency approach is the cheapest form of an anti-corruption agency. For instance, in the United States, the OGE solely focuses on preventive functions within the executive branch, and employs seventy people.³²⁷ In contrast, a highly centralized approach tends to be the most

³²⁴ UNCAC, *supra* note 21, art. 36.

³²⁵ De Sousa, *supra* note 187, at 18.

³²⁶ HEILBRUNN, *supra* note 10, at 10.

³²⁷ *See supra* Part II.A; Meagher, *supra* note 99, at 70.

expensive form of an anti-corruption strategy.³²⁸ For instance, in Hong Kong, the ICAC's focus is on prevention and investigation; it employs 1200 people and operates in an area with a population of seven million people.³²⁹ However, the KPK is expected to reduce public sector venality by way of prevention, investigations, and prosecutions—all in an area encompassing 240 million people and 14,000 islands—with a mere 450 employees.³³⁰ At the very least, the KPK is severely under-funded and, consequently, under-staffed.

An easy solution would be to increase funding. However, in a developing country like Indonesia, it is safe to assume that financial resources are extremely scarce. But even if Indonesia's anti-corruption agency were well-staffed and well-funded, it would not be able to “reach beyond a relatively few instances of high profile corruption which are likely centered in the capital.”³³¹ Research indicates that centralized corruption agencies are only effective in places where there are substantial populations living in a small geographic area.³³² Therefore, a centralized approach may be well-suited for a confined area like Hong Kong, but in a country as expansive as Indonesia, a centralized agency would fail to “reach into every province to attack corruption at the roots.”³³³

One may argue that the KPK should narrow its focus to Jakarta, Indonesia's capital, with a population of over nine million people.³³⁴ Unfortunately, this approach would not accomplish the meaningful corruption reform Indonesia hopes to fulfill. For instance, Transparency International's³³⁵ annual CPI measures a country as a whole—not just one region in a given country.³³⁶ This is significant because foreign investment in a country is affected by a country's ranking on this index.³³⁷ Additionally, the anti-

³²⁸ See *supra* Part II.B.

³²⁹ *Id.*

³³⁰ *Id.*

³³¹ See Jacobs & Wagner, *supra* note 72, at 330.

³³² HEILBRUNN, *supra* note 10, at 15.

³³³ Jacobs & Wagner, *supra* note 72, at 331.

³³⁴ See HEILBRUNN, *supra* note 10, at 15; Evi Nurvidya, *Is Jakarta's Population Growing Too Fast?*, JAKARTA POST (Aug. 28, 2010, 12:27 PM), <http://www.thejakartapost.com/news/2010/08/28/is-jakarta%E2%80%99s-population-growing-too-fast.html>.

³³⁵ See *Methodology*, TRANSPARENCY INT'L, http://www.transparency.org/policy_research/surveys_indices/cpi/2009/methodology (last visited Jan. 30, 2011) (stating that national and sub-national governments should be appropriately weighed).

³³⁶ *Id.*

³³⁷ Scott Baldauf, *Most Corrupt Country in the World? Somalia, Says Transparency International*, CHRISTIAN SCI. MONITOR (Oct. 26, 2010), <http://www.csmonitor.com/World/Africa/Africa-Monitor/2010/1026/Most-corrupt-country-in-the-world-Somalia-says-Transparency-International>.

corruption agency would be unable to reach entrenched corruption in various administrative bureaucracies as well as corruption by local agency and customs officials.³³⁸ Thus, KPK should not confine its scope to only Jakarta.

Instead, the KPK can narrow its scope by eliminating at least one of its key functions. That way, the agency would be subject to fewer financial constraints and it could specialize in those functions it decided to retain. For effective future reform, the KPK should expand its preventive functions and eliminate its powers of prosecution and investigation.

B. A Stronger Preventive Approach for the KPK

Although the KPK should narrow its scope, its preventive functions are indispensable and may not be eradicated. Preventive activities include monitoring of the implementation of anti-corruption policies within individual agencies and enhancing of civil society participation in the fight against corruption.³³⁹ These preventive activities are the foundation of both the multi-agency and centralized approach.³⁴⁰ Additionally, Chapter II of the UNCAC mandates that each state party “shall” establish a body that prevents corruption through the tasks of developing, maintaining, revising, and monitoring the implementation of corruption policies.³⁴¹ Because Indonesia is required to have a body specialized in preventing corruption,³⁴² and the KPK’s mandate already includes these preventive functions, the KPK should continue to include preventive functions within the scope of its mandate.

Although Indonesia is merely required to have an agency entrusted with preventive functions, there is an argument that the KPK’s preventive functions should be strengthened and become its primary focus. At the time of this Comment’s writing, the “primary thrust of [the KPK’s] activities thus far has been law enforcement—investigating and prosecuting major corruption cases.”³⁴³ However, an anti-corruption agency’s preventive activities are integral to effective corruption reform. A strong prevention strategy plays *the*

³³⁸ See Jacobs & Wagner, *supra* note 72, at 331.

³³⁹ UNITED NATIONS DEV. PROGRAMME, METHODOLOGY FOR ASSESSING THE CAPACITIES OF ANTI-CORRUPTION AGENCIES TO PERFORM PREVENTIVE FUNCTIONS 13 (2009) [hereinafter UNDP], http://europeandcis.undp.org/uploads/public1/files/Methodology_for_Assessing_the_Capacities_of_Anti_Corruption_Agencies_to_Perform_Preventive_Functions.pdf.

³⁴⁰ See *supra* Part II.

³⁴¹ UNDP, *supra* note 339, at 7.

³⁴² Indonesia ratified the UNCAC in 2006. GTZ UNCAC PROJECT, *supra* note 132, at 1.

³⁴³ See Jacobs & Wagner, *supra* note 72, at 329.

“key role for the development of a transparent, accountable and efficient administrative system,” which leads to improved governance and true corruption reform.³⁴⁴

To improve its preventive capabilities, the KPK must guide and support other governmental agencies in implementing anti-corruption policies.³⁴⁵ Guidance and support from an anti-corruption agency have been proven to improve ethics within other governmental institutions, which lessens public corruption within these branches of government.³⁴⁶ However, if the KPK were to offer this guidance by creating individual policy agendas for each institution within the executive, legislative, and judicial branch, the KPK would require an inordinate amount of expertise and financial resources. The United States’s OGE Program Review Division addresses this problem by reviewing and monitoring an agency’s ethical programs that are already in place, in lieu of creating an individual policy agenda for that agency.³⁴⁷ If the Program Review Division identifies a deficiency within a governmental agency, the agency has sixty days to remedy the problem.³⁴⁸ The KPK should adopt the same framework as the OGE’s Program Review Division, but in light of the entrenched corruption in Indonesia, a more aggressive approach might be needed. For instance, the KPK could work with each agency to set goals for anti-corruption efforts and review the agency’s progress against set benchmarks on an ongoing basis.³⁴⁹

Additionally, the KPK should strengthen its preventive activities by “developing systems and policies that promote transparency and accountability of the public sector,” for effective public corruption reform.³⁵⁰ Again, the OGE may provide some guidance. The OGE’s Program Services Division promotes transparency by managing an annual public financial disclosure reporting system where senior officials must report information regarding their income and assets.³⁵¹ The KPK should adopt this approach, but again, in a more aggressive capacity. Considering that the production of financial records for

³⁴⁴ UNDP, *supra* note 339, at 2.

³⁴⁵ *Id.* at 10.

³⁴⁶ *Id.*

³⁴⁷ U.S. OFFICE OF GOV’T ETHICS, ETHICS PROGRAM REVIEW GUIDELINES 2 (2004), http://www.usoge.gov/ethics_docs/office_agency_prog/prdrevguide.pdf.

³⁴⁸ *Id.* at 27.

³⁴⁹ UNDP, *supra* note 339, at 9, 11.

³⁵⁰ *Id.* at 13.

³⁵¹ *See supra* Part II.A.

governmental agencies is not mandatory under Indonesian law,³⁵² the law governing the KPK should at least have an “illicit enrichment” provision, which shifts the burden onto public officials to demonstrate that any unusual wealth they have accrued has a legitimate source.³⁵³ This type of provision would enhance the KPK’s powers to monitor wealth and improve transparency within the public sector.

Lastly, the KPK should strengthen its preventive functions by promoting education and awareness of the evils of public corruption, much like Hong Kong’s ICAC’s Community Relations Department. Increased awareness of the dangers of corruption enables a public to demand reform and, therefore, strengthens a country’s political will, as discussed in Part III.

*C. The Choice of Adopting a Multi-agency or Centralized Approach:
Eliminating the KPK’s Powers of Investigation and Prosecution*

The KPK should eliminate its prosecutorial and investigative functions and move towards a multi-agency approach for a variety of reasons. First, as Part III establishes, the KPK’s practice of recruiting the most competent prosecutors and investigators from the Attorney General’s Office and the National Police may have the “paradoxical effect” of demoralizing these institutions, leaving it more corrupt than ever before.³⁵⁴ This practice would be acceptable if the KPK’s cases demanded investigative and prosecutorial sophistication. However, the KPK has been accused in the past of “cherry-picking” its cases, or only investigating those cases that are the most likely to result in criminal convictions and improve the KPK’s performance level.³⁵⁵ Thus, the KPK tends to pick easier cases that do not require the most competent prosecutors and investigators from Indonesia.

Another issue arises from the fact that the KPK only investigates cases regarding corruption.³⁵⁶ The problem is that corruption is often an offense encompassing other non-related crimes.³⁵⁷ As one expert notes:

³⁵² *Id.*

³⁵³ Meagher, *supra* note 99, at 86.

³⁵⁴ Jacobs & Wagner, *supra* note 72, at 332.

³⁵⁵ CORRUPTION ERADICATION COMM’N OF THE REP. OF INDON., KPK ANNUAL REPORT 2007: EMPOWERING LAW ENFORCEMENT 9 (2007), <http://www.scribd.com/doc/6458630/KPK-Annual-Report-2007-Empowering-Law-Enforcement?autodown=pdf>.

³⁵⁶ Jacobs & Wagner, *supra* note 72, at 331–32.

³⁵⁷ *Id.* at 331.

While corruption may be the focus of investigatory efforts, it is very often a symptom or cause of other criminal activity, such as tax evasion, customs violations, bank fraud, [and] prostitution Even if not apparent at the outset of an investigation, these links between criminal activity often lead investigators in corruption cases to evidence of other crimes, and vice versa. Leads in corruption investigations, new witnesses and testimony can arise out of the investigation of these and other substantive crimes. On a strategic level, stamping out corruption requires that law enforcement also take steps to eradicate the criminal activity that spawns corruption. Tactically, such crimes should be prosecuted together, so that cases . . . are more effectively prosecuted when criminal charges relating to the full panoply of conduct can be brought . . . by a single prosecution team.³⁵⁸

Therefore, because many cases regarding corruption also deal with other offenses, prosecutorial and investigative inefficiency occurs when the KPK and other agencies address a case simultaneously. These inefficiencies necessarily lead to financial constraints and exemplify why centralized agencies are so expensive to operate.

Alternatively, other mechanisms can be implemented to ensure that corruption cases are efficiently investigated and prosecuted. For instance, a law can be enacted where any corruption investigation the KPK deems as high priority must proceed to trial, regardless of the Attorney General's opinion on the matter. This would remove the traditional prosecutorial discretion that was widely misused by the Attorney General in previous corruption cases. Incentives can be offered to investigators, where some sort of monetary award can be given to those investigators who successfully identify and bring enough evidence to prosecute a case concerning corruption. Although this system may be costly, oftentimes corruption within the police force occurs when officers are underpaid and feel as if they have no resort but to accept bribes in exchange for the failure to investigate a case. However, the most important battle is changing these two institutions' outlooks on corruption. This may be accomplished by the KPK's preventive capacities. For instance, the KPK can provide training for officers, detailing how officers can be ethical while taking professional pride in what they do. One study found that "officers who took

³⁵⁸ *Id.*

pride in their department were resistant to corruption,” and were more unlikely to take bribes.³⁵⁹

The KPK needs to change from a centralized strategy to a multi-agency approach. It is clear that the KPK’s investigative and prosecutorial functions necessarily lead to inefficiencies within the departments. A better solution is to improve the ethics of the agencies offering investigative and prosecutorial service for corruption reform within.

CONCLUSION

Integral to the concept of *Reformasi* is curbing public corruption. Curbing public corruption is imperative for overall reform in Indonesia due to the detrimental effects it has on society. Public corruption taxes the poor and is a threat to economic and political stability. Furthermore, it reduces the possibility of foreign investment, which is much needed in developing countries. The long-term problems with public corruption are exemplified by Suharto’s participation in the Asian Economic Crisis of 1997, which sparked widespread riots and the deaths of over 5000 people.³⁶⁰ Although an anti-corruption institutional framework was in place at the time of Suharto’s reign, it failed to work, evidenced by Suharto’s and his inner circle’s acts of blatant misappropriations of governmental financial resources.³⁶¹

As Indonesia moved forward in the era of *Reformasi*, it decided to institute an anti-corruption agency to promote its efforts in public corruption reform.³⁶² However, anti-corruption agencies are not created equal. Some are based more on preventive activities, whereas others encompass other areas, such as prosecutorial and investigational activities.³⁶³ Indonesia decided to adopt a centralized approach and consequently created the KPK.³⁶⁴ Indonesia is required to have an anti-corruption agency in light of its ratification of the UNCAC Article 36.³⁶⁵

³⁵⁹ *How to Manage Police Corruption*, GURUSOFLAW.COM, <http://www.gurusoflaw.com/Criminal-Law/bribery/How-To-Manage-Police-Corruption.html> (last visited Jan. 30, 2011).

³⁶⁰ Robison, *supra* note 7, at 13.

³⁶¹ *General Suharto: Dictator Ruled Indonesia with an Iron Fist*, CBC NEWS (Jan. 11, 2008), <http://www.cbc.ca/news/background/indonesia/suharto.html>.

³⁶² WORLD BANK, *supra* note 9, at 50, 57, 71.

³⁶³ See UNCAC, *supra* note 21, art. 3.

³⁶⁴ *KPK: The Corruption Eradication Commission of Indonesia*, *supra* note 11.

³⁶⁵ UNCAC, *supra* note 21, art. 36.

However, there are certain factors that will impede an anti-corruption agency's ability to achieve long-term success in a country. These factors include lack of political will, lack of cross agency cooperation, and inadequate legal tools. Indonesia has demonstrated problems in each of these areas.³⁶⁶ Indonesia must cure these problems, regardless of what kind of anti-corruption strategy it decides to adopt. In addition, Indonesia must tailor its anti-corruption strategy to fit the needs of the country. Because of Indonesia's geography and its financial constraints, the centralized agency approach should not be used. Instead, the multi-agency approach should be used. This would enable Indonesia to focus more on prevention and therefore enact true *Reformasi* throughout the country.

JOANNA MACMILLAN*

³⁶⁶ See *supra* Part I.B.

* Managing Editor, *Emory International Law Review*; J.D. Candidate, Emory University School of Law (2011); B.S., *cum laude*, Arizona State University (2004). The Author would like to thank Professor Morgan Cloud and the staff of the *Emory International Law Review* for their guidance and assistance throughout the comment-writing process. The Author additionally thanks her parents for the experience of growing up as an expatriate in places such as Jakarta, Indonesia.