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# The Role of Parliaments in the Fight Against Corruption

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# Table of contents

List of acronyms and list of tables .....	4
Executive summary .....	5
Introduction .....	6
<b>I. Developing legislation .....</b>	<b>7</b>
<b>II. Oversight of the executive branch of the government .....</b>	<b>13</b>
Committees .....	15
Motions and debates .....	17
Written questions and interpellations .....	17
<b>III. Budget oversight .....</b>	<b>19</b>
<b>IV. Representative mandate of MPs: mission, function and opportunities .....</b>	<b>22</b>
<b>V. Integrity of MPs .....</b>	<b>24</b>
<b>VI. Participation in anti-corruption architecture .....</b>	<b>28</b>
<b>VII. The Bangsamoro Parliament .....</b>	<b>29</b>
Lawmaking .....	29
Oversight of the executive and budget oversight .....	30
Mandate and integrity of MPs .....	32
<b>VIII. Recommendations .....</b>	<b>34</b>
About the author .....	37
Bibliography .....	38

## List of acronyms

ACA	Anti-corruption Agency
BARMM	Bangsamoro Autonomous Region in Muslim Mindanao
BTA	Bangsamoro Transition Authority
CoI	Conflict of Interest
EBP	Evidence-based policymaking
EU	European Union
GDP	Gross Domestic Product
GOPAC	Global Organization of Parliamentarians Against Corruption
IPU	Inter-Parliamentary Union
MP	Member of Parliament
NDCs	Nationally determined contributions
OECD	Organization for Economic Co-operation and Development
OSCE	Organisation of Security and Co-operation in Europe
PAC	Public Accounts Committee
PETI	EU Parliament's Committee on Petitions
SAI	Supreme Audit Institution
SALN	Statement of Assets, Liabilities, and Net Worth
UK	United Kingdom
UN	United Nations
UNCAC	United Nations Convention Against Corruption
UNDP	United Nations Development Programme
WBI	World Bank Institute

## List of tables

Table 1	Corruption risks within electoral processes
Table 2	Factors of effectiveness of PACs

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## Executive summary

In the fight against corruption, the role of parliament is enormously important. Ideally, a body which represents the people is elected from the people and acts for the people; it should have both primary interests and strong capacities in effectively fighting corruption. Nevertheless, in many countries parliaments cease to perform this role, and quite often become 'rubber-stamps' due to internal political games. Moreover, some parliaments are composed of MPs who are actively participating in corruption directly or indirectly through their nominees and proxies. Certainly, this is not the right way to proceed.

In this publication, the focus was twofold: firstly, the theory and practice of parliaments in regard to some of the essential components for the fight against corruption through the parliament (such as lawmaking, oversight of the executive, budget oversight, integrity mechanisms of MPs); and secondly, the legislation and practice of Bangsamoro.

The purpose of this publication is to highlight certain opportunities which the Bangsamoro Parliament can effectively leverage against corruption. Those opportunities start with the initial phase of legislation and extend to having rigid procedures for the removal of cabinet members. The advantage that Bangsamoro Parliament has over other parliaments is that it is just starting and has great potential to establish a strong parliament and oversight culture. Certainly, a lot depends on political dynamics in the region, but still, the chances of empowering the Parliament to aggressively tackle corruption, through all the tools legally possessed or to be acquired by the Parliament, are good. For a post-conflict region which gained autonomy, the Parliament can become a lighthouse enabling people to get united around a shared objective of fighting corruption, to raise standards of living and build a vibrant democracy.

Political will is the key to any successful reform in any country. Nevertheless, in the age of extensive penetration by the internet it becomes very uncomfortable for officials not to properly employ tools and opportunities which are provided by laws. Thus, establishing a proper legislative framework is a necessary foundation stone, based on which further actions can be capitalised on and reasons for not moving forward virtually disappear. In a nutshell, it becomes difficult to justify failure to use the tools available.

# Introduction

The Inter-Parliamentary Union (IPU), a global organisation of 179 national parliaments,<sup>1</sup> in the first line of its *Recommendation on the Role of Parliament and Supreme Audit Institutions in Combatting Corruption* (2001) states: 'Parliaments are elected to represent the people and have constitutional responsibilities to legislate and oversee the Government. They therefore, have a pre-eminent role to play in the global drive to curb corruption.'<sup>2</sup>

Marie Chene from Transparency International suggests a similar notion in relation to parliament's role in the fight against corruption: 'Parliaments are an essential pillar of a country's democratic system of checks and balances and have a key role to play against corruption, deriving from their legislative, oversight and representation functions, as the institution holding government accountable to the electorate'.<sup>3</sup> A renowned expert on the issue of legislative oversight, Rick Stapenhurst from McGill University (Canada) notes while discussing various indexes of parliamentary oversight: 'The findings are unambiguous: greater parliamentary oversight translates to less corruption. The research on how and why this is so is interesting.'<sup>4</sup>

Parliament's three main functions can be viewed within the larger picture of political accountability. In this regard, the *Global Encyclopedia of Public Administration, Public Policy, and Governance* states: 'In fact, legislatures play a key role that makes them pivotal to good governance, since they are involved both in vertical and horizontal accountability mechanisms. In other words, legislatures are the point in a governance system where voter-executive relations (vertical accountability) come into contact with legislature-executive relations (horizontal accountability).'<sup>5</sup> Yet, as Rick Stapenhurst puts it: 'For accountability to be effective, there needs to be both answerability and enforcement'.<sup>6</sup>

This paper is intended to present international best practice, country examples and academic findings in regard to the three main functions of a parliament: legislation, oversight and representation. In addition, it is a well-known fact that the integrity of Members of Parliament (MPs) is crucial for the legitimacy of the latter. Thus, the issue of integrity of MPs is taken together with the role of parliament in the design and establishment of anti-corruption architecture in a country.

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1. For more see at: <https://www.ipu.org/about-us>

2. The full text of the Recommendation is available at: <http://archive.ipu.org/splz-e/hague01-rcm.htm>

3. Marie Chene (2017) What Works in Working with Parliaments against corruption, U4 and Transparency, International, page 2

4. Rick Stapenhurst (2020) 'Towards the Development of a Parliamentary Oversight Index' in Stapenhurst, Daman, Larson and Staddon (ed.) *Anti-corruption Evidence: The Role of Parliaments in Curbing Corruption*, Springer, page 47

5. Manes-Rossi, Brusca and Jorge (2018). In: *Global Encyclopedia of Public Administration, Public Policy, and Governance*, Springer, page 31

6. Stapenhurst, Daman, Larson and Staddon (eds.) (2020) *Anti-corruption Evidence: The Role of Parliaments in Curbing Corruption*, Springer, page 211

# I. Developing legislation

Legislating or law-making is considered an essential attribute of 'Parliament's Sovereignty'.<sup>7</sup> Parliament's sovereignty is also known as 'Legislative Supremacy'.<sup>8</sup> In constitutional democracies, it is a prerogative of the parliament. In this regard, IPU in its *Recommendation on the Role of Parliament and Supreme Audit Institutions in Combatting Corruption* (2001) states: 'Parliaments can and should adopt appropriate legislation, take an active role in the ratification of relevant international instruments and incorporate their provisions in national legislation.'<sup>9</sup>

The manner of adoption of legislation is no less important: it affects the legitimacy of legislation.<sup>10</sup> In parliamentary democracies the majority of laws originate from the executive, but the most important point here is whether the parliament conducts thorough scrutiny of the bills and utilises available tools such as public hearings. With regard to this, Rick Stapenhurst notes: 'Legislative scrutiny of bills and deliberation by committees – especially where committees engage in public consultation – provide a counter balance to executive dominance. This not only reinforces greater accountability and transparency, but also enables legislation to be more reflective of collective interests. While policy-making is generally left to the executive, parliament, as a representative institution, can help ensure that government policies and reforms take into account national, as opposed to partisan, needs and priorities.'<sup>11</sup>

## Tips for Committee Members

Avoid the appearance of "rubber-stamping". Voters want to see their MPs scrutinising every bill in front of them. If you are sitting on a relevant committee, then during the second reading (committee stage) advocate for exercising your collective right 'to consult, invite and solicit opinions from experts, relevant ministries and offices, the public and other interested parties.

*Parliamentary Rules. Rule XXI, section 2, point 'c'*

In 1975 Nelson Polsby suggested a categorisation of parliaments as either: 'Rubber-stamp'; 'Emerging'; 'Informed' and 'Transformative'.<sup>12</sup> According to Rick Stapenhurst this model distinguishes between parliaments which simply endorse executive action (rubber-stamp), parliaments that are in the stage of becoming informed (emerging), parliaments which can influence the executive (informed), and parliaments with which the executive has to engage and negotiate policy actions (transformative).<sup>13</sup>

7. Virgilio Zapatero Gomez (2019). *The Art of Legislating*, Springer, page 200

8. Nicolas Besly and Tom Goldsmith (2019). *How Parliament Works*, 8th ed., Routledge, page 177

9. The full text of the Recommendation is available at: <http://archive.ipu.org/splz-e/hague01-rcm.htm>

10. 'Depending on how laws are enacted and the credibility of the electoral process, the law might be seen as more or less legitimate.' Tilla McAnthony, Rick Stapenhurst and Martin Ulrich in: *Parliamentarians Fighting Corruption A Conceptual Overview*, GOPAC, pages 2-3

11. Stapenhurst, Draman, Larson and Staddon (eds.) (2020) *Anti-corruption Evidence: The Role of Parliaments in Curbing Corruption*, Springer, page 209

12. Nelson W. Polsby (1975) 'Legislatures' in Fred I. Greenstein and Nelson W. Polsby (eds.) (2020) *A Handbook of Political Science*. Reading, Mass: Addison Wesley, quoted in Stapenhurst, Draman, Larson and Staddon (ed.) *Anti-corruption Evidence: The Role of Parliaments in Curbing Corruption*, Springer, page 209

13. Stapenhurst, Draman, Larson and Staddon (eds.) (2020) *Anti-corruption Evidence: The Role of Parliaments in Curbing Corruption*, Springer, page 210

### Tips for MPs

- ✓ Even if your committee has not agreed on making public consultations, you can still have a positive impact on the scrutiny.
- ✓ You can try to find relevant international best practice in connection with the bill in front of you.
- ✓ Look for surveys and studies pertinent to the issues covered by the bill, produced by local, national or international organisations.
- ✓ Approach civil society representatives who have necessary expertise on relevant issues.
- ✓ You can hold a press conference, share with the public your findings and objections, and inform the people about the dynamics in connection with the relevant bill.
- ✓ You can sign the committee report with reservations and hold a press conference to share with the public your objections more precisely.

In addition, the quality of formulation of laws in terms of language clarity, adaptation to local circumstances and compliance with human rights standards are also important aspects for the effectiveness of adopted laws in the fight against corruption.<sup>14</sup> This is part of a newly emerged discipline of 'corruption proofing of legislation'<sup>15</sup> which is not about corruption in the process of legislating, but rather: 'Anti-corruption assessment of legislation is a review of the form and substance of drafted or enacted legal rules in order to detect and minimise the risk of future corruption that the rules could facilitate.'<sup>16</sup>

The manner of adoption of legislation is important from the viewpoint of legitimacy of both the legislation and legislature (it is a given that actors with strong legitimacy have a better position from which to both fight corruption and enjoy public trust). But what kind of legislation should parliaments adopt to have a positive impact on the fight against corruption?

Certainly, each case is specific and the adopted legislation should be tailored to the needs of the society at stake. As to the question of the kind of laws that are generally considered to be important ones to adopt, Marie Chene from Transparency International recommends (quoting Inter-Parliamentarian Union and leading experts Pelizzo and Rick Stapenhurst):<sup>17</sup>

1. access to information and freedom of information;
2. protection of whistleblowers;
3. party financing and electoral campaigns;
4. integrity of Members of Parliament and other public officials;
5. oversight legislation to ensure transparency and accountability in government and public affairs; and
6. a law on public procurement.

14. Marie Chene (2017) What Works in Working with Parliaments against corruption, U4 and Transparency, International, page 3

15. Tilman Hoppe (2014) Anti-corruption Assessment of Laws ('Corruption Proofing'): Comparative Study and Methodology, RCC, Bosnia and Hercegovina, Sarajevo, page 12

16. See *ibid*, page 12

17. See *ibid*, page 2

Article VII, section 5 (Powers of Bangsamoro Parliament) of Bangsamoro Organic Law 11054 (hereinafter Organic Law)<sup>18</sup> stipulates five instances when Bangsamoro Parliament can adopt a law.

Those instances are:

- a) enacting laws to promote, protect, and ensure the general welfare of the Bangsamoro people and other inhabitants in the Bangsamoro Autonomous Region;
- b) enacting a law on initiatives;
- c) enacting a law that allows the Chief Minister, Speaker of the Parliament, and the Presiding Justice of the Shari'ah High Court to augment any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations;
- d) enacting a law within the competencies of the government of Bangsamoro to regulate the grant of regional franchises and concessions, and empower the Chief Minister to grant leases, permits, and licenses over agricultural lands and for forest management; and
- e) enacting laws declaring Bangsamoro holidays.

### Tips for MPs

When scrutinising a bill, some aspects to pay attention to are:

- ✓ who is going to benefit the most from the bill;
- ✓ whether there are groups within the society (for example, marginalised groups) upon whom the bill will have a lasting negative impact;
- ✓ whether the bill contains provisions which create discretionary powers for officials;
- ✓ whether the bill contains vague or abstract provisions and terms not defined;
- ✓ whether, overall, the bill provides less transparency and accountability.

Out of the five instances mentioned above, only one (enacting laws on initiatives) makes adoption of the following types of laws possible (access to information and freedom of information, protection of whistleblowers, party financing and electoral campaigns for example). It must be mentioned that in the case of party financing and electoral campaigns, the Organic Law clearly stipulates that Bangsamoro Transition Authority during the transition period shall enact the Electoral Code.<sup>19</sup>

Thus, in this case the Bangsamoro Parliament has clear power to adopt the Electoral Code through which it can also regulate relevant issues pertaining to party financing and electoral campaigns. For the remaining five laws (for example, protection of whistleblowers) the Bangsamoro Parliament can adopt them only by using the option of 'Enacting laws to promote, protect, and ensure the general welfare of the Bangsamoro people and other inhabitants in

the Bangsamoro Autonomous Region' and by claiming that the specific legislation is connected with the welfare of the people. This is a specious argument. Article V, section 2 of the Organic Law lists matters over which the government of Bangsamoro has authority. The total number of listed matters is 55. Among these 55 matters is also 'Human Rights' and this makes possible the adoption of a law for the protection of whistleblowers and a law on freedom of information.

18. This law is available at: [https://www.lawphil.net/statutes/repacts/ra2018/ra\\_11054\\_2018.html](https://www.lawphil.net/statutes/repacts/ra2018/ra_11054_2018.html)

19. Article XVI, section 4 of Organic Law

## Reminder

A single whistleblower, Mark Felt, was able to make the President of the United States (Richard Nixon) resign from his office.

Thus, it is possible for the Bangsamoro Parliament to regulate protection of whistleblowers, freedom of information and party financing and electoral campaigns by adopting separate laws and codes. Protection of whistleblowers is an essential component for an effective fight against corruption. Its importance is quite succinctly described in the following paragraph from a study conducted by the Organization for Economic

Co-operation and Development (OECD): 'Whistleblower protection is essential to encourage the reporting of misconduct, fraud and corruption. The risk of corruption is significantly heightened in environments where the reporting of wrongdoing is not supported or protected. This applies to both public and private sector environments, especially in cases of bribery: Protecting public sector whistleblowers facilitates the reporting of passive bribery, as well as the misuse of public funds, waste, fraud and other forms of corruption. Protecting private sector whistleblowers facilitates the reporting of active bribery and other corrupt acts committed by companies.'<sup>20</sup>

In relation to the protection of whistleblowers, there are some good international standards and best practices available, including the *International Principles for Whistleblower Legislation* developed by Transparency International in 2013<sup>21</sup> and *Compendium of Best Practices and Guiding Principles For Legislation* produced by OECD.<sup>22</sup> A separate law for the protection of whistleblowers should: provide a broad definition of whistleblowing (acts related not only to corruption but to wrongdoings in general); provide protection of whistleblowers and their families and diverse mechanisms for protection (such as change of residence, change of workplace and so on); cover both private and public sector whistleblowing; provide protection from retaliation and penalties for retaliation against the whistleblower and their family members; identify diverse channels of whistleblowing: internal (such as within a body or organisation where the whistleblower works), external (relating to a dedicated unit within public administration, whistleblowing to the media), and confidential and anonymous whistleblowing avenues. In terms of external whistleblowing, the Human Rights Commission of Bangsamoro may become a body responsible for channelling external whistleblowing reports. A problematic aspect lies with penalties against retaliators who are then responsible for their criminal actions. It seems that the Bangsamoro Parliament does not have the right to adopt a criminal code.

In terms of freedom of information, it seems that the Bangsamoro Parliament has power because freedom of expression includes freedom 'to seek, receive and impart information', as per article 19, point 2 of the *International Covenant on Civil and Political Rights*.<sup>23</sup> There are some parameters that are essential to prescribe in the law to make it solid: clear request procedures and clear time limits for completion of information requests; proactive disclosure of information; oversight bodies; an effective appeal mechanism; and sanctions.<sup>24</sup> As in the case with law on protection of whistleblowers, here too, there is a problematic aspect with sanctions (penalties) as it seems that the Bangsamoro Parliament does not have the right to legislate on such issues. As with the protection of whistleblowers, the Human Rights Commission of Bangsamoro can act as an oversight body for freedom of information issues too.

20. Protection of Whistleblowers. Study on Whistleblower Protection Frameworks, Compendium of Best Practices And Guiding Principles For Legislation (OECD). Page 4

21. Available at: [https://images.transparencycdn.org/images/2013\\_WhistleblowerPrinciples\\_EN.pdf](https://images.transparencycdn.org/images/2013_WhistleblowerPrinciples_EN.pdf)

22. Available at: <https://www.oecd.org/corruption/48972967.pdf>

23. The Covenant is available at: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

24. Maira Martini (2014) 'Right to information laws: Impact and implementation', TI-U4, pages 4-5

Different aspects of party financing and electoral campaigns can be easily legislated under the Electoral Code, which is one of the priorities for the Transition Authority to adopt.<sup>25</sup> There are some crucial risks that the Electoral Code should address, in terms of anti-corruption, as shown below.

**Table 1. Corruption risks within electoral processes<sup>26</sup>**

<b>Corruption risks within electoral processes</b>	
<b>Risks</b>	<b>Examples</b>
Manipulation of electoral law	Shortening the campaign period shortly before the official start of the campaign period
Abuse of state resources	<p>Forcing civil servants to vote for a ruling party or a party which has dominance in a particular region.</p> <p>Intimidating private sector representatives to force their own employees to vote for a ruling party or a party which has dominance in a particular region.</p> <p>Occupation of state buildings by a ruling political party or candidate to use as campaign offices.</p> <p>Forcing civil servants to make monetary or in-kind contributions to the ruling party or candidate of a party which has dominance in a particular region.</p> <p>Intimidation of private sector to make monetary contributions to ruling party or candidate.</p> <p>Campaigning among civil servants during working hours.</p> <p>Forcing civil servants to attend rallies and meetings of ruling party or candidate.</p>
Vote buying	<p>Bribing voters to vote for a political party or candidate. Bribes can take monetary and material forms (e.g. products of consumption).</p> <p>Withholding or making available different public services to specific constituencies in return for vote support.</p>
Abuse of state media	<p>Extensive positive coverage for incumbent party or candidate.</p> <p>Negative coverage of opposition parties and candidates.</p>
Political funding	Manipulation with regards to donations, if there are caps on maximum possible donations for natural and/or legal persons during the campaign period.
Lack of transparency	Prohibiting journalists and observers from freely monitoring the vote process in polling stations.

25. Article XVI, section 4 of the Organic Law

26. Hereinafter see Ben Wheatland (2015) 'Best Practice for Electoral Campaigns', TI

With regard to political funding, it is also crucial to have a universal declaration of taxation that makes it possible to effectively detect any instances of manipulation of donations (such as using nominees for donations by a wealthy supporter of a political party or candidate). Nevertheless, this does not fall within the ambits of powers of the government of Bangsamoro, as per article V, section 2 of the Organic Law.

Yet, it must be mentioned again that each case is specific and legislation should be tailored to the needs of a society at stake. In other words, there is no one-size-fits-all solution. To tailor legislation to the needs of society means to have evidence-based policymaking (EBP) in place. As Sophie Sutcliffe and Julius Court from the UK Overseas Development Institute write: 'The pursuit of EBP is based on the premise that policy decisions should be better informed by available evidence and should include rational analysis. This is because policy which is based on systematic evidence is seen to produce better outcomes. The approach has also come to incorporate evidence-based practices.'<sup>27</sup> It is no different in the case of anti-corruption policymaking. To draw parallels and to make an analogy it is worth mentioning the *UN Guide for Anti-corruption Policies*, where it is specifically mentioned that anti-corruption strategies should be evidence-based and based on concrete evidence, both in assessing the needs of each country and setting goals, and in assessing whether those goals have in fact been achieved.<sup>28</sup>

#### Summary:

1. The Parliament should utilise available tools to scrutinise bills proposed by the Executive.
2. The adopted legislation should be clear in terms of language, adapted to the local needs and circumstances and compliant with human rights standards.
3. There are some areas in regard to which adopted laws may have a positive impact on the fight against corruption (freedom of information, protection of whistleblowers, integrity of MPs and public officials, public procurement and so on).
4. The adopted legislation should be evidence-based.

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27. Sophie Sutcliffe and Julius Court (2005), *'Evidence-Based Policymaking: What is it? How does it work? What relevance for developing countries?'*, ODI, page iii

28. UN Guide for Anti-corruption Policies (2003), UN, page 18

## II. Oversight of the executive branch of the government

Parliament has a unique mandate, to monitor the executive branch of the government. As IPU mentions: 'Oversight of the government - holding the executive to account - is one of the three core functions of parliament, along with the passing of laws (notably the annual budget) and the representation of constituents.'<sup>29</sup>

In order to exercise oversight, parliament should have the legal mandate, capacity and independence.<sup>30</sup> Capacity can be considered as possession of financial, material, and human resources.

Although there is no complete list of oversight tools, the main tools that can be mentioned are:<sup>31</sup>

1. parliamentary committees;
2. parliamentary questions and interpellations;
3. motions and debates;
4. consideration of citizens' petitions; and
5. assessment of the impact of passed laws - post-legislative scrutiny.

### **Petitions forced EU Parliament's Committee on Petitions (PETI) to conduct a workshop**

Several petitions received in 2019 raised citizens' concerns over the transparency and accountability of EU institutions. In order to deal with these issues, on 2 April 2019 PETI requested and hosted a workshop on 'Conflicts of Interest - Integrity, Accountability and Transparency in the EU institutions and agencies'.

The workshop examined the achievements reached in relation to the conflicts of interests in the EU institutions and agencies, as well as integrity, accountability, transparency, codes of conduct and revolving doors, while also discussing challenges for the future.

Source:[https://www.europarl.europa.eu/doceo/document/PETI-PR-646916\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/PETI-PR-646916_EN.pdf)

Parliamentary questions and interpellations are very basic tools in terms of anti-corruption. MPs collect facts, data and evidence by putting forward questions (written or oral) which must be answered by executive officials. Through this the ensuing avenues are multiple: starting from drafting new bills or amendments, ending with initiation of inquiries up to impeachment or removal of certain officials. Debates are another useful tool in terms of anti-corruption. Well-prepared MPs and especially leaders of opposition parties can corner allegedly corrupt officials during aired debates. Nevertheless, it must be recognised that committees possess the most potential in anti-corruption work, as they can conduct cross-examination inquiries, and investigations, and uphold ethics and integrity.

Citizen petitions are a very powerful tool for combatting corruption. When there are clear guidelines and procedures in place which are available online, combined with proper outreach, citizen petitions can significantly influence the fight against corruption.

29. IPU and UNDP (2017). *Global Parliamentary Report 2017. Parliamentary Oversight: Parliament's power to hold the government to account*. Page 13

30. See *ibid*, page 14

31. See *ibid*, page 14, 46-67

According to leading experts Pelizzo and Stapenhurst, summarised by Marie Chene from TI, key determinants of effective parliamentary oversight include the institutional design, the number and types of oversight tools, the presence of independent oversight bodies, and the availability of free and reliable information.<sup>32</sup> IPU stresses the importance of close cooperation with audit institutions, national human rights bodies and ombudsmen, and civil society organisations.<sup>33</sup>

It is important to note that in reality, the oversight tools are most likely to be actively exercised by the opposition. It is not an accident that IPU, based on the contributions from over 150 parliaments, mentions that MPs, especially those from the governing party, have a deep obligation to balance their loyalties to their parties on the one hand with the common goal of oversight on the other hand.<sup>34</sup> When loyalty to one's political party is put above the mission of the parliament, the political trust in parliament gets lowered. It should not be assumed that MPs representing the ruling party or majority will avoid acting in an inquisitorial manner, or will turn a "blind eye" to omissions and mistakes of the cabinet. Quite the contrary, the *representative mandate* (see p22) assumes that all MPs, regardless of being from a majority or a minority, will make the interests of the nation their first priority. In such situations, parliament is at its most effective. In committees especially, harmonious and intensive work by all sides (majority and minority) is essential for increasing parliament's effectiveness. In this regard, in an assessment of the UK committee system it is noted: 'Select committees only work effectively when they operate in a bipartisan manner, with MPs from different sides of the committee endorsing the same report.'<sup>35</sup>

### Trust

'[Trust] is the expectation that arises within a community of regular, honest, and cooperative behaviour, based on commonly shared norms, on the part of other members of that community.'

Francis Fukuyama, renowned political scientist

Quite the contrary, the *representative mandate* (see p22) assumes that all MPs, regardless of being from a majority or a minority, will make the interests of the nation their first priority. In such situations, parliament is at its most effective. In committees especially, harmonious and intensive work by all sides (majority and minority) is essential for increasing parliament's effectiveness. In this regard, in an assessment of the UK committee system it is noted: 'Select committees only work effectively when they operate in a bipartisan manner, with MPs from different sides of the committee endorsing the same report.'<sup>35</sup>

As a minimum, the opposition should have access to the same oversight tools as the governing party (or parties). There are also other ways to enhance the role of the opposition in oversight, such as:<sup>36</sup>

1. chairing a committee conducting an oversight inquiry;
2. attaching a minority or dissenting report to a committee report;
3. scheduling special "opposition debates" in the plenary agenda; or
4. using "right of reply" to a budget debate or other ministerial statement.

In terms of the Bangsamoro Parliament, it would be advisable to amend Parliamentary Rules, Procedures and Practices (Parliamentary Rules) adopted by Resolution no. 6<sup>37</sup> which do not grant the opposition (minority in terms of Parliamentary Rules) any leadership roles in Statutory Committees. It just provides that '[Minority] shall be represented in all committees'. It would be advisable to provide leadership roles on some of the Statutory Committees to the minority. This

32. Marie Chene (2017) *What Works in Working with Parliaments against corruption*, U4 and Transparency, International, page 3

33. IPU and UNDP (2017). *Global Parliamentary Report 2017. Parliamentary Oversight: Parliament's power to hold the government to account*. Page 14

34. See *ibid*, page 24

35. Democratic Audit UK (2018), 'How effective are the Commons' two committee systems at scrutinising government policy-making?' <https://www.democraticaudit.com/2018/09/24/audit2018-how-effective-are-the-commons-two-committee-systems-at-scrutinising-government-policy-making/>

36. IPU and UNDP (2017). *Global Parliamentary Report 2017. Parliamentary Oversight: Parliament's power to hold the government to account*, page 46

37. Available at: <https://parliament.bangsamoro.gov.ph/mis-content/uploads/2021/01/House-Ruleslatest-July-06-2020.pdf>

gets even more necessary when one takes into consideration that only ministers currently chair committees which in any parliamentary system would have a negative impact on parliamentary oversight, and essentially prohibits parliament from conducting oversight.

In terms of the articulation of dissenting opinions in committee reports, the Parliamentary Rules contain quite positive features.<sup>38</sup> In particular Rule VII, section 16 provides that a committee is required to prepare and submit a committee report which contains the discussions and the views expressed by the individual members and all the invited resource persons and experts on the bill or resolution under its consideration, as well as the amendments introduced and their justifications. The members who participated in the final voting must sign the report, either in favour, with reservation, or dissenting. Any member who has signed the committee report cannot ask a question or make a statement contrary to the report, except about the points in the committee report he or she has objected to, abstained from, and signed with reservation. However, it would be advisable to amend the Parliamentary Rules in order for a minority report to be prepared and attached to the committee report. In relation to 'Opposition debates' and 'Right of reply' to a budget debate, it must be noted that budget procedures are not foreseen in the Parliamentary Rules, and neither is a debate between the Leader of Opposition (Minority Leader) and Chief Minister.

The most common oversight tools are presented below: committees; motions and debates; and questions and interpellations.

## Committees

Committees are the most universal oversight tool of parliaments, found across the world, and not all of them conduct oversight.<sup>39</sup>

As IPU mentions, the central aspect of a committee's oversight function is its power to seek evidence from a wide range of individuals and organisations on the subject under investigation.<sup>40</sup> Public hearings are one of the most powerful tools available to gather relevant opinions and information: they allow for broad engagement and expert input, which lead in turn to sound, evidence-based evaluation and pertinent recommendations. It is good practice to facilitate evidence gathering. For example, the United Kingdom Parliament's Home Affairs Committee conducted online consultations

### **The Role of Parliaments in the Fight against Corruption (IPU, 2001)**

'Parliaments need to make maximum use of constitutional and other legal mechanisms for ensuring oversight of government and thereby promoting transparency and accountability in government. In so doing, they should adopt and/or strengthen processes in the following ways:

...Ensure that the opposition is adequately represented in the parliamentary structures and processes and that it has sufficient resources and is afforded equitable opportunities to voice their views on the management of public affairs, including denouncing corruption and probing or initiating investigations into alleged cases of corruption.'

38. Parliamentary Rules, Rule VII, section 16

39. Hironori Yamamoto (2007) *Tools for Parliamentary Oversight: A Comparative Study of 88 National Parliaments*, IPU, Switzerland, page 15

40. Hereinafter see IPU and UNDP (2017). *Global Parliamentary Report 2017. Parliamentary Oversight: Parliament's power to hold the government to account*. Page 52-53

## Guide for committees in the fight against corruption

- ✓ Seek evidence from state and non-state institutions, actors, public at large (including by providing anonymous channels).
- ✓ Create guides to easily understand the proceedings in the committees.
- ✓ Reduce the membership of committees in order to increase the efficiency of the parliament.
- ✓ Effective checks and balances assume that while conducting oversight from the side of legislature the executive shall not be party to oversight-makers.
- ✓ Dissent shows that parliament is working and all-party support for the committee report is not always necessary in a democratic and vibrant parliament.

with victims of gender-based violence and forced marriages and they were able to share their experiences in anonymous way. According to IPU, the number of committees which have a social media presence on Twitter, Facebook and in other platforms is generally rising.

In addition to exercising online tools, it is also important to produce guides to make the procedures and proceedings easy to understand for stakeholders. For example, in New Zealand, the House of Representatives produces a number of online guides (such as *Making a Submission to a Parliamentary Select Committee*). The Parliament of Fiji has quite succinct handbooks covering the roles and responsibilities of MPs, such as passing a law, monitoring government activity, and engaging citizens in the work of parliament.<sup>41</sup> Similar publications were produced in Japan.<sup>42</sup> Similar guides are also produced in other Westminster model countries like Australia and Scotland. These countries, along with New Zealand, have extensive guidelines covering almost all aspects of interactions between citizens and

their respective parliaments and MPs. In the case of UK's House of Commons there is a guide called: *'For Witnesses Giving Written or Oral Evidence to a House of Common Select Committee'*.

In terms of composition of committees, it must be mentioned that the practice of appointment of ministers contains some risks. As IPU mentions, this practice 'risks undermining parliament's autonomy from the government and muddies the roles that parliamentarians take when conducting oversight'.<sup>43</sup>

However, there are also emerging good practices. For example, in Serbia, the Committee on Environment has a 'special seat' for a representative of civil society on a rotating basis. In another Balkan country, in Croatia, the parliament's Committee on Human and National Minority Rights includes members from human rights associations and interest groups dealing with women's and youth issues.

Another important aspect, which must be noted here, is the autonomy of oversight committees. According to IPU, committees need authorisation from parliament to initiate studies, reports or inquiries in almost 60% of the parliaments surveyed, which in practice means that committees need the support of the parliamentary majority (or the government) to undertake these inquiries. The result of committees' oversight work is a report, which should be communicated to the plenary.

41. The handbook is available at: <http://www.parliament.gov.fj/wp-content/uploads/2017/03/PARLIAMENT-OF-FIJI-HANDBOOK.pdf>

42. See for example The National Diet of Japan, House of Representatives (2020), available at: [http://www.shugiin.go.jp/internet/itdb\\_english.nsf/html/statics/english/kokkaiannai\\_e0202.pdf/\\$File/kokkaiannai\\_e0202.pdf](http://www.shugiin.go.jp/internet/itdb_english.nsf/html/statics/english/kokkaiannai_e0202.pdf/$File/kokkaiannai_e0202.pdf)

43. Hereinafter see IPU and UNDP (2017). *Global Parliamentary Report 2017. Parliamentary Oversight: Parliament's power to hold the government to account*, page 50

In this regard, it must be mentioned that some countries allow committees to present a minority report, by which dissenting committee members express their views.<sup>44</sup> As a rule, the reports are accompanied by recommendations for the government and it depends on each state as to whether it is obligatory for a government to implement recommendations or not. However, as IPU mentions, 'it is a vital part of the oversight process that government should be required to consider and respond to them formally and in a timely manner'. In the United Arab Emirates, if the government has not replied to parliamentary recommendations within three months, then the Federal National Council sends an official letter to the government to follow up on the government response. There is a good practice in Sweden, where the Parliamentary Evaluation and Research Unit follows up and evaluates the implementation of decisions of the parliament (Riksdag).

Special Committees of Inquiry bear special importance, and are usually formed for scrutinising special issues or matters and typically have investigation powers.<sup>45</sup> The most important aspect here is whether the opposition can individually form such committees, or whether it needs to have part of the majority on its side. This greatly influences the effectiveness of oversight.

## Motions and debates

Motions are distinguished from oversight inquiries in committees by their more "urgent" tone.<sup>46</sup> Debates on the motion that the parliament has 'no confidence' in the cabinet, or wishes to censure the government or a minister, are premeditated manoeuvres that seek a political sanction in response to a situation of particular importance. Urgency motions or motions to debate a matter of public importance are more likely to be passed.

Motions and debates are important oversight tools, especially for the opposition, because they essentially test and examine the government in front of the public. "Realpolitik" suggests that governments, regardless of the political regime within which they operate, usually are keen to create at least an appearance of legitimacy.

## Written questions and interpellations

Written questions are in practice direct exchanges between a member and a minister on the public record. Written questions enable MPs to gather information from government that is usually not readily available elsewhere. In contrast, regular oral questioning of ministers in the chamber provides the opportunity for parliament to demonstrate relevance, elicit answers from ministers, and keep up with the news cycle in ways that demonstrate its relevance to the population.

### Tips for MPs

- ✓ Officials who have something to hide tend to avoid giving comprehensive answers if there is something "suspicious" in the question itself. Therefore, try to "hide" the real question within other questions. For example, you receive information from a constituent that Minister "X" uses his power to promote more funding for social services in a region from where she or he originates. In your written query ask for information about how the ministry decides to plan allocations for social services and ask the same information for the previous years.
- ✓ Even when a ministry or minister tends to avoid transparency, as an MP you can publish the received official answers (if they do not contain secrets protected by law) through media and during press conferences.

44. Hereinafter see *ibid*, page 54

45. See *ibid* page 55

46. Hereinafter see *ibid*, page 57-61

The possibility for MPs to address questions to the government, and the formal requirement in many countries for government to reply within a certain deadline, is one of the features that set parliamentary oversight apart from scrutiny by other bodies. In certain parliaments, rules of procedure also allow MPs to follow their oral question with another, more detailed question, normally termed the 'supplementary'. This can be followed by a debate (or a period of interpellation).

In Jordan, if an MP is not satisfied with the answer to a written question, he or she can raise it again with the minister in plenary. If the MP is still not satisfied, he or she can turn the question into an interpellation. If the minister does not respond satisfactorily within a month, the interpellation may be followed by a vote of no confidence in the minister.

In Kuwait, the National Assembly can use interpellations to call for a vote of no confidence in the government or an individual minister, which can in turn lead to their resignation. This strengthens MPs' authority to access information from ministers and hold the government accountable. Ministers facing an interpellation often come to an agreement with the Assembly to avert a vote of no confidence.

### III. Budget oversight

The budget is a fundamental statement of policy which outlines the executive's view on the socio-economic state of the nation.<sup>47</sup> There are four stages of budget cycle: drafting, legislation, implementation and audit.<sup>48</sup> Rick Stapenhurst, a leading expert in the oversight of legislatures, suggests division of the legislature's role in the budget cycle into *ex ante* and *ex post*. Budget planning and expenditure allocation is *ex ante* with financial reporting, external audit and evaluation being *ex post*.<sup>49</sup>

Mandates of budget-related committees in Bangsamoro could be clarified further in order to have solid budget oversight procedures in the Parliament. The Parliamentary Rules of Bangsamoro do not foresee budget procedures in the Parliament. This is an important shortcoming because budget oversight perhaps is the most important oversight function for a parliament and one of the most powerful weapons in the hands of MPs in the fight against corruption. An illustrative example of the importance of budget oversight by the parliament is the case of Germany which is the fourth largest economy by nominal Gross Domestic Product (GDP).<sup>50</sup> According to OECD the German parliament has 'an unusually strong and influential engagement in the annual budget process'<sup>51</sup> and it receives the budget proposal about five months prior to the start of the financial year, and has unlimited authority to amend it. Another similar example is Japan, where both houses have power to alter the budget presented by the cabinet and the cabinet has no formal power of veto.<sup>52</sup>

#### Tips for MPs

The most important aspect of budget proposals is that it is evidence-based and operational. Potential red flags are plans for sectors which are overfunded or where there are suspicions that authorities or their allies and proxies have financial interests.

Use available professional services present in the Parliament.

Connect with journalists and investigative journalists to get more information about suspicious points without disclosing the rationale behind your actions.

These two countries, which were rebuilt from the ashes of World War II, are now the third and fourth largest economies in the world by nominal GDP.<sup>53</sup> In terms of anti-corruption, the practice of New Zealand is quite interesting. It is a rare example of managing public money based on a strict link between performance and the allocation of funding, where an increment in resources is directly linked to an increment in outputs.<sup>54</sup>

The drafting of budget, or budget formulation, is a cycle where it is common to acknowledge that parliaments usually do not have an active role. As the Global Organization of

47. Niall Johnston, *Financial Oversight: A Handbook for Parliamentarians*, Niall Johnston, GOPAC and WBI, page 6

48. Marie Chene (2017), *What Works in Working with Parliaments against corruption*, U4 and Transparency, International, page 3

49. Rick Stapenhurst (2008), *Legislative Oversight and Budgeting: A World Perspective*, WBI, page 52

50. World Bank national accounts data: [https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?year\\_high\\_desc=true](https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?year_high_desc=true)

51. Joachim Wehner (2017), *Good Practice in Parliamentary Budget Scrutiny: International Comparisons*, Scotland, page 16

52. Enrico D'Ambrogio and Matthew Parry (2016), *Japan's national budget Procedure and the public debt burden*, Briefing for EU Parliament, page 5 Japan's national budget procedure and the public debt burden (2016), Briefing, page 5

53. [https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?year\\_high\\_desc=true](https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?year_high_desc=true)

54. Joachim Wehner (2017), *Good Practice in Parliamentary Budget Scrutiny: International Comparisons*, Scotland, page 20

Parliamentarians Against Corruption (GOPAC) notes, in some places officials even treat budget documents as confidential documents.<sup>55</sup> Even so, Rick Stapenhurst notes that legislatures can still influence the budget and notes the example of Ghana, where the Finance Committee had success by requiring pre-budget consultations with the Minister of Finance.<sup>56</sup> Nevertheless, according to IPU, 47% of surveyed parliaments (in total 150 countries were surveyed) mentioned that they hold a debate on priorities and fiscal policy before the budget is drafted.<sup>57</sup> Some of these countries mentioned that they conduct pre-budget consultations through their finance committees (as in the example of Ghana, mentioned above), while in some parliaments, committees can scrutinise the budgets and plans of the department with which they are aligned and review its main estimates.

According to IPU, 77% of surveyed parliaments mentioned that when the bill on the budget is presented they send it to one or more committees for review. Some parliaments require all standing committees to review the relevant aspects of the budget and report back to a central budget committee, while others have established dedicated committees for the review. The timeframe also differs from country to country: from two months to six months before the approval deadline. According to international standards, the executive should submit the annual budget proposal to parliament at least two months before the start of the fiscal year.<sup>58</sup> A small number of parliaments (42%) have the ability to amend the budget. It must be borne in mind that even if the parliament is not provided with this opportunity, it still can amend the budget indirectly through the government itself through rigorous advocacy.

An important aspect of the budget cycle is oversight: for this, IPU suggests liaison between the parliament's Public Accounts Committee (PAC) or equivalent and the Supreme Audit Institution (SAI) of the country in question.<sup>59</sup> Some factors for improving effectiveness of PACs are suggested by the Commonwealth Parliamentary Association and the World Bank Institute (quoted by IPU).

## Table 2. Factors of effectiveness of PACs

Those factors are:

**Size:** The PAC should be relatively small.

**Politics:** The committee should be chaired by a member of the opposition.

**Experience:** The chair should be a senior parliamentarian.

**Tenure:** The committee should be appointed for a full term and adequately resourced.

**Rules:** Committee roles and remits should be clear.

**Frequency:** The committee should meet frequently.

**Openness:** PAC hearings should be open to the public.

**Relationship to SAI:** The Auditor General's report should be automatically referred to the PAC and the Auditor General should meet with the committee to go over report highlights.

55. Niall Johnston, *Financial Oversight: A Handbook for Parliamentarians* Niall Johnston, GOPAC and WBI, page 7

56. Rick Stapenhurst (2008), *Legislative Oversight and Budgeting: A World Perspective*, WBI, page 54

57. Hereinafter see IPU and UNDP (2017). *Global Parliamentary Report 2017. Parliamentary Oversight: Parliament's power to hold the government to account*. Page 64

58. Geoff Dubrow (2020), *Influencing the Budget during the Formulation Stage*, Westminster Foundation for Democracy (WFD), page 3

59. IPU and UNDP (2017). *Global Parliamentary Report 2017. Parliamentary Oversight: Parliament's power to hold the government to account*

With regard to technical capacities to implement effective budget oversight there are two ways to solve the problem:

- enhancing capacities of PACs by providing adequate resources and independence;
- establishing Parliamentary Budget Offices, which are independent, non-partisan entities that provide analytical support.<sup>60</sup>

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60. Marie Chene (2017), *What Works in Working with Parliaments against corruption*, U4 and Transparency, International, pages 3-4

## IV. Representative mandate of MPs: mission, functions and opportunities

The opposite to the *representative mandate* is the *imperative mandate*. The latter has three characteristics:

1. MPs are accountable to the electorate;
2. MPs shall report regularly to the electorate; and
3. MPs can be recalled by the same electorate if they betray the voters' trust or commit an act 'unworthy' of their office.<sup>61</sup>

The main characteristics of the representative mandate are that MPs represent the nation as a whole, they enjoy absolute independence vis-à-vis their electorate, and it is irrevocable.

This distinction comes from two historical notions: *national sovereignty* and *popular sovereignty*. The idea of popular sovereignty, now almost universally abandoned, was that it was a sum of the sovereignty shares possessed by each citizen.<sup>62</sup> In contrast, national sovereignty assumes that the nation acting as a sovereign empowers the parliament to express its will in the framework of the competencies allocated by the constitution of the country.

MPs are representatives of the nation - not of supporters, party members, party, family, friends, relatives, persons with the same beliefs, opinions and religion - but the nation, as a whole.

In the case of Bangsamoro, it seems that the Organic Law limits the notion of the representative mandate. According to Organic Law, article VII, section 19, there are six grounds for the forfeiture of a seat. One of these cases is substitution of an MP by the party and this directly derives and is logically interconnected with Article VII, section 7, point 'a' of the Organic Law. According to this

provision: 'Any elected party representative who changes political party affiliation during the representative's term of office shall forfeit the seat in the Parliament...' For the sake of clarity, it must be noted that this ground is not repeated in Parliamentary Rules. This is certainly against the notion of the representative mandate.

The representative mandate does not only bring freedom for MPs but also creates challenges. In particular, the most important challenge is loyalty to the political party of which they are a member. The European Commission for Democracy through Law (Venice Commission) notes that there is a new type of mandate ('Party administered mandate'),<sup>63</sup> which, in countries where it is practised has the objective of preventing a massive turn round of the voters' decision by means of party switching. Nevertheless, the Venice Commission is of the opinion that losing the condition of being representative (that is, as an MP) because of crossing the floor or switching party, is contrary to the principle of a free and independent mandate.

61. Hereinafter see Marc Van der Hulst (2000), *The Parliamentary Mandate: A Global Comparative Study*, IPU, pages 9-10

62. Hereinafter see Zdzisław K. Dzida and Agata Hauser (2011), *The Impact of Political Party Control over the Exercise of the Parliamentary Mandate*, IPU, page 4

63. Report on the Imperative Mandate and Similiar Practices (2009), Venice Commission, page 14 [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2009\)027-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2009)027-e) , page 14

In Serbia, there was an attempt to balance the irrevocability of mandate with keeping the results of the parliamentary vote, by proposing an increase to the number of seats of a party in proportion with the number of MPs who changed their affiliations. In New Zealand, there was no such 'anti-defection' provision until 2001, when it was adopted for two elections and in fact, it did lapse after the second election in 2005.<sup>64</sup> In this regard, New Zealand considered it to be infringing the notion of MPs' legitimate dissent, disproportionately violating freedom of expression and association.

Nevertheless, the representative mandate is primarily an opportunity to articulate the needs of a nation based on the MP's own knowledge, experience and conscience. As Marie Chene from TI mentions: 'Parliamentarians represent citizens, are accountable to the electorate and need to ensure that their influence over government processes reflect citizens' concerns. These representation concerns are especially important to create the political will to fight corruption by channelling the interests of the people and mobilising broad-based support for anti-corruption reform.'<sup>65</sup>

One of the possible opportunities, which bears the representative mandate, is to engage effectively with civil society even in an individual capacity. For example, MPs can become the voice for marginalised groups, or MPs together with others can create cooperation with specific civil society groups and even form parliamentary groups. One interesting idea offered by Marie Chene is the organisation of parliamentary workshops with civil society groups prior to the introduction of major pieces of legislation, or developing tools to strengthen accountability, such as report card methods and service delivery surveys.<sup>66</sup> In addition, the representative mandate is a good tool to gather information from anonymous whistleblowers.

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64. Kenneth Janda (2009) *Laws Against Party Switching, Defecting, or Floor-Crossing in National Parliaments*, pages 19-20

65. Marie Chene (2017), *What Works in Working with Parliaments against corruption*, U4 and Transparency, International, page 5

66. See *ibid*

## V. Integrity of MPs

'If parliaments as the last bastions against corruption are themselves affected by it, the battle may well be lost.'<sup>67</sup>

Integrity of MPs is an essential component for parliament's overall success of the in the fight against corruption and for raising public trust in the parliament. Incompatibility and Conflict of Interest (CoI) provisions, declarations of assets and income, and codes of conduct all have one objective: to ensure public officials put public interests above private interests.

Incompatibility provisions differ from country to country. The main idea is that there are certain offices that are incompatible with the office of MP (for example, holding judicial office). With regard to holding positions in the private sector or being engaged in entrepreneurial activities, the practice again differs.<sup>68</sup> In some western European countries, MPs are permitted to earn income from employment or business, but must declare it. In others, there are total bans on earning any income from private office except for educational, scientific, sporting, or cultural activities.

In terms of Bangsamoro, integrity issues are regulated in Article VI, sections 14-18 of the Organic Law which is repeated in Rule II, sections 13-16 of the Parliamentary Rules. The only provision which was not repeated in the Parliamentary Rules is one which relates to sworn statements by officials and employees of the Bangsamoro Government in relation to statements of assets, liabilities, and net worth, lists of relatives within the fourth civil degree of consanguinity or affinity in government service, financial and business interests.

### **Japan, Prime Minister Kiichi Miyazawa (1991-1993)**

Resigned in 1993 after losing a vote of no confidence due to a bribery scandal connected with a member of his faction.

These articles have many shortcomings starting with geographical limitations (a ban on conducting business applies only in the territory of Bangsamoro Autonomous Region in Muslim Mindanao (BARMM), while doing so in the larger Philippines and other countries remains possible), lacking the very definition of conflict of interest, and procedures on how to administer them, ending with lack of transparency in terms of declarations.

For a Conflict of Interest, integrity and ethics regime to be effective, it is important to have operational oversight mechanism by an independent actor.

The Venice Commission offers detailed examples of some European countries in regard to incompatibility provisions bearing economic implications.<sup>69</sup> In Austria, an MP holding a leading position in a joint-stock corporation or insurance company, or in the banking, industrial or commercial sector, has to disclose this position

as well as salary to the president of the respective chamber and then the incompatibility committee must then decide whether an incompatibility exists. In France, MPs are not allowed to take advantage of their mandates in private organisations or companies, and links between private interests and MPs are formally prohibited. In Greece, holding the office of MP is incompatible with activities as members of governing councils, or as general directors or employees of commercial societies or enterprises that enjoy special state privileges or subventions.

67. Report, *Role of Parliaments in Fighting Corruption* (2000), Committee on Economic Affairs and Development, Council of Europe

68. Hereinafter see OSCE (2012), *Background Study: Professional and Ethical Standards for Parliamentarians*, Warsaw, page 44

69. *Report on Democracy, Limitation of Mandates and Incompatibility of Political Functions* (2013) Venice Commission, page 21

In Italy, private businesspeople or legal representatives of private corporations or enterprises linked to the state by contracts, concessions or authorisations are ineligible as MPs. MPs are not allowed to occupy offices of, or exercise the functions of, administrator, president, general director or permanent legal adviser to associations or entities with public functions, to which the state contributes ordinarily, be it directly or indirectly. In addition, MPs are not allowed to advise financial or economical enterprises in their transactions with the state. In Portugal, if more than 10% of the capital of an enterprise is held by the holder of a political office (including MPs), that enterprise is not permitted in public tenders (public procurement).

Conflict of Interest (Col) is also addressed in the UN Convention against corruption (UNCAC).<sup>70</sup> Article 7, point 4 of UNCAC requires that states 'endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest'. In article 8, point 5, it is stipulated: 'Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.'

The 2003 OECD guidelines on Col are to a large extent the standard adhered to by other international organisations and national governments.<sup>71</sup> OECD defines Col as: 'a conflict between the public duty and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities'.

Generally, it is accepted to categorise Col into 3 types: *actual*, *apparent* and *potential*.<sup>72</sup>

#### **South Korea, President Park (2013-2017)**

Ms. Park was impeached due to the scandal connected with her adviser to whom she leaked state secrets. Her adviser, long-standing friend Ms. Choi used her position to force conglomerates such as Samsung to make millions of USD donations to two non-profit foundations which she controlled.

**Actual Col:** when a private interest actually influences or may at present influence the performance of official duties in serving the public interest, an actual conflict of interest has occurred. The example where the daughter has applied for the job represents an actual conflict of interest.

#### **Spain, Prime Minister Mariano Rajoy (2011-2018)**

Resigned in 2018 after a vote of no-confidence. This was due to the corruption scandals of 'Barcena's affair' and the 'Gurtel case' which were about political corruption.

**Apparent Col:** an apparent conflict of interest occurs when the private interest does not or may not improperly influence the performance of official duties. However, a person from outside would have the impression that it does. The appearance of the conflict of interest must be based on specific facts, which represent a grounded reason why a conflict of interest could take place. An apparent conflict of interest does not exist when the grounds are vague and the suspicions rooted in general mistrust or scepticism about public institutions.

70. The Convention is available at [https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026\\_E.pdf](https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf)

71. Jackson Oldfield (2017), *Overview of Conflict of Interest and Related offences*, U4 and Transparency, International, page 3

72. Hereinafter see Valts Kalnins (2019), *Toolkit for Managing Conflict of Interest in the Public Service*, CoE, page 8

Potential Col: This is a situation in which the private interests of the official could result in the occurrence of an actual conflict of interest in the future. To express it differently, the private interests do not influence the performance of duties per se, but there is likelihood that in the foreseeable future it will.

Jackson Oldfield conducted an extensive survey in regard to Col sanctions and oversight mechanisms in European countries.<sup>73</sup> In several countries, a dedicated body or bodies cover

**Turks and Caicos, Prime Minister  
Michael Misick (2006-2009)**

Resigned from office due to investigation which found clear signs of corruption.

cases of conflict of interest for ministers and Members of Parliament. In Ireland, the Standards in Public Office Commission monitors Col for parliamentarians and ministers. In Bulgaria, it is the Anti-Corruption, Col and Parliamentary Ethics Committee. In Norway, there is no corresponding body for MPs. In Finland and UK, there is an enforcement body for MPs, but none for other public officials.

Sanctions for violations of Col can include criminal penalties, administrative sanctions, no penalties at all or a combination. In Romania, penalties include a maximum 15-year prison sentence, while in France the maximum sentence is three years' incarceration or a €200,000 fine. In the Czech Republic, Germany and Portugal, sanctions range from fines to loss of mandate, but do not include prison sentences. In Bulgaria, ministers and parliamentarians can face fines.

As the Organisation of Security and Co-operation in Europe (OSCE) notes, two main types of tool are used to ensure that potential conflicts are revealed: a *Register of Interests* and *Declarations of Assets, Income and Liabilities*.<sup>74</sup> In a register of interests, MPs declare all sources of income and responsibilities that they hold concurrently with office and this information is collected centrally and should be updated frequently. The types of interest that need to be registered (or declared) vary, but typically include income (from employment, share dividends, consultancies, directorships and sponsorships), gifts and hospitality, and non-pecuniary interests. The example of The Netherlands is interesting; three separate registers exist and all three are publicly available: a register on parliamentary income and employment, a register on other foreign trips not paid for by the parliament, and a register on gifts.

Declaration of assets, income and responsibilities have their own difficulties and challenges. First, in some countries it is required to submit declarations from not only MPs but also family members. Especially in countries with systemic corruption, MPs tend to use nominal persons who are not family members to register their wealth (such as friends, old school friends, distant relatives). Such practices make declarations useless, unless strong legislation and enforcement and oversight regimes are being put in place for *beneficial ownership* and *illicit enrichment*. Beneficial ownership requires a company to mention the ultimate beneficial owner of the company. In the case of illicit enrichment, a concept which

It is important to make declarations public for people by posting them on a website in a machine-readable format. In this way, civil society and investigative journalists and individual MPs will have better chances at exposing corruption.

73. Hereinafter see Jackson Oldfield (2017), *Overview of Conflict of Interest and Related offences*, U4 and Transparency, International, pages 7-8

74. Hereinafter see OSCE (2012), *Background Study: Professional and Ethical Standards for Parliamentarians*, Warsaw, pages 46-48

originated in Argentina, a person shall provide evidence that she or he owns property by a reasonable and legal channels. For example, if a pensioner whose only income is pension owns a mansion on an island then she or he must provide evidence that in reality it belongs to him or her. Failing to provide evidence may result in confiscation and other sanctions. An additional avenue to mitigate the risk of manipulations is declarations on expenses.

Maira Martini from Transparency International extensively researched the issue of codes of conduct for MPs.<sup>75</sup> According to her, codes of conduct are an important part of the anti-corruption framework. One of the main benefits of these codes is that they organise the institution's ethical framework in one single and comprehensive document: they provide specific guidance for members of parliament on how to deal with specific situations and ethical dilemmas. Codes of conduct as a rule cover three dimensions:

1. Principles: stating the general ethical principles and values to be followed by MPs (for example, honesty, integrity, openness, transparency, and so on).
2. Rules: stating the detailed provisions which identify acceptable and unacceptable conduct and behaviour. They usually cover, among other things, conflicts of interest, transparency and disclosure of interests, nepotism, outside activities, gifts and favours, travel expenses, post-employment, and use of state property.
3. Regulatory framework: containing the mechanisms for enforcing rules and applying sanctions as well as giving advice to MPs.

There are some criteria that are relevant for the success of codes of conduct. The conditions suggested by Maira Martini are summarised in the box below:

- strong implementation mechanisms
- the existence of a functioning civil society
- free media
- the existence of an effective integrity system
- an effective protection mechanism for whistleblowers
- MPs' commitment, attitudes and culture
- an extensive process of consultation and discussion
- the simplicity and accessibility of the code
- existence of oversight mechanism
- clarity in terms of sanctions and appropriateness of sanctions
- compatibility with other relevant laws.

In regard to Bangsamoro, it would be advisable to adopt a code of conduct as soon as possible, and regulate issues of Col and other integrity measures in detail, by establishing an office for an independent official within the Parliament who will consult and conduct oversight of integrity issues. The same office can also publish sworn statements (declarations) of MPs.

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75. Hereinafter see Maira Martini (2013), *The Effectiveness of Codes of Conduct for Parliamentarians*, Transparency International

## VI. Participation in anti-corruption architecture

The *Jakarta Statement on Principles for Anti-corruption Agencies* (2012),<sup>76</sup> while being a “soft law” instrument, is considered as an important comprehensive instrument for guiding establishment of anti-corruption agencies. It indirectly involves parliaments in the establishment of anti-corruption architecture by the principle of ‘permanence’. In particular, it notes: ‘Permanence: ACAs (Anti-corruption Agencies) shall, in accordance with the basic legal principles of their countries, be established by a proper and stable legal framework, such as the Constitution or a special law to ensure continuity of the ACA.’

This assumes strong involvement of parliaments by adopting relevant laws for establishing anti-corruption agencies. Another soft law instrument, the *Kuala-Lumpur Statement on Anti-corruption Strategies* (2012),<sup>77</sup> particularly notes the involvement of parliaments in the design of anti-corruption strategies: ‘Stakeholder Involvement (Inclusive Process) and Ownership: Broad engagement of stakeholders builds ownership and helps to ensure acceptability and effectiveness of strategies adopted. State institutions (executive, legislative and judiciary) at national and sub-national levels, civil society organizations, private sector, media, professional societies, trade and industry associations and labor unions, academic institutions, youth and cultural organizations, can serve as important allies and partners in the development of anti-corruption strategies and can reduce the vulnerability of the reform efforts to changes in political leadership.’

Considering these two soft law instruments together, it becomes evident that parliaments have a crucial role to play in the design of anti-corruption architecture in a country.

Another important aspect is cooperation, or the establishment of a Supreme Audit Institution (SAI). In the case of Bangsamoro, the parliament does not have a mandate either to establish an anti-corruption body or to establish a Supreme Audit Institution. However, an alternative avenue may be created by establishing strong cooperation channels and mechanisms with relevant counterparts in the National Government of Philippines, and by utilising a high level of transparency and publicity to overcome this legislative barrier.

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76. The Principles are available at: [https://www.unodc.org/documents/corruption/WG-Prevention/Art\\_6\\_Preventive\\_anti-corruption\\_bodies/JAKARTA\\_STATEMENT\\_en.pdf](https://www.unodc.org/documents/corruption/WG-Prevention/Art_6_Preventive_anti-corruption_bodies/JAKARTA_STATEMENT_en.pdf)

77. The statement is available at: [https://www.unodc.org/documents/southeastasiaandpacific/2013/10/corruption/Kuala\\_Lumpur\\_Statement\\_on\\_Anti-Corruption\\_Strategies\\_Final\\_21-22\\_October\\_2013.pdf](https://www.unodc.org/documents/southeastasiaandpacific/2013/10/corruption/Kuala_Lumpur_Statement_on_Anti-Corruption_Strategies_Final_21-22_October_2013.pdf)

## VII. The Bangsamoro Parliament

### Lawmaking

The current Bangsamoro Parliament was established on 29 March 2019.<sup>78</sup> Its powers ensue from the Organic Law and the peculiarities are provided in its Parliamentary Rules.

The powers of the Bangsamoro Parliament are listed in Article VII, section 5 of the Organic Law. Ones which are relevant for legislating in general and in adopting laws on anti-corruption in particular, are:

1. The enactment of laws promoting, protecting and ensuring the general welfare of the Bangsamoro people and other inhabitants in BARMM.
2. The enactment of laws on initiatives.
3. The enactment of laws allowing some key officials to augment items based on savings in other items of their respective appropriations.
4. The enactment of laws to regulate the grant of regional franchises and concessions and empowering the Chief Minister to grant leases, permits and licenses over agricultural lands and forest management.
5. The enactment of laws declaring Bangsamoro holidays.

These five powers compose the mandate for the legislating power of the Bangsamoro Parliament. In addition, during the transition period it shall adopt five mandatory codes (Bangsamoro Administrative Code, Revenue Code, Electoral Code, Local Government Code, Educational Code) and one non-mandatory code (Civil Service Code).<sup>79</sup> Thus, the Bangsamoro Parliament does not have a lot of discretion in terms of adopting anti-corruption legislation which is conditioned with its mandate as prescribed by the Organic Law.

In terms of the quality of laws and the process of their adoption, the peculiarities are provided in Parliamentary Rules. In general, the adoption of bills is well-regulated in Rules XII and XXI of the Parliamentary Rules. These clearly stipulate subjects who can draft the bills, the number of readings, and mandatory requirements for a bill. They also provide opportunities for committees to organise public hearings and consultations. However, they do not specifically provide channels and avenues for general public and civil society to directly submit their opinion to committees, even in cases where a public hearing or consultation has not been organised. Moreover, there are no clear procedures in terms of petitions and their outcomes. In addition, only in Rule XXI, section 2, point 'b' of the Parliamentary Rules is it required from the proponent of the bill to provide justification in the sponsorship speech. Here, it would be advisable to require all evidence which the author (sponsor) based his or her bill on to be attached to the proposed bill, during the first stage. It would also be advisable to mandatorily require all the authors to attach evidence for the need of the bill (surveys, complaints received, media publications and so on).

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78. Bangsamoro Organic Law, page iv at : <https://rasmitmug.com/ebooks/BOL-RA11054.pdf>

79. Parliamentary Rules, Rule II, section 5

## Oversight of the executive and budget oversight

It must be noted that neither the Parliamentary Rules nor the Organic Law prescribe detailed procedures in terms of votes of no confidence or impeachment of the Chief Minister, Deputies or Ministers. This is a real shortcoming which may heavily hinder the accountability infrastructure and general framework of checks and balances. Nevertheless, if the issue of no confidence is provided for in Organic Law then the issue of impeachment or the removal from the office is not regulated at all. In this situation, the Parliamentary Rules shall as a minimum regulate the issue of no confidence and within the ambits of this, also regulate impeachment and removal as prerogative powers of the Parliament.

In terms of oversight of the executive, it would be advisable to implement the practice of South Korea,<sup>80</sup> the parliament of which has power to carry out an inspection of state affairs before the convocation of each year's regular session for no more than 30 days. Also, with a resolution of the plenary session, this can be done during the regular session. Another interesting example is the case of New Zealand, where a Regulation Review Committee acts on the Parliament's behalf to ensure that the delegated law-making powers are being used appropriately.<sup>81</sup> It examines all regulations, investigates complaints about regulations, and examines proposed regulation-making powers in bills for consistency with good legislative practice. The Committee reports to the House and other committees on any issues it identifies. The House can 'disallow' a regulation, meaning it no longer has force.

In terms of inquiries and investigations there are also some shortcomings. First, in terms of investigation, this is reserved for just two parliamentary committees which are not established yet: the Blue Ribbon Committee and Committee on Ethics and Privileges.<sup>82</sup> Furthermore, the manner and the process of investigation are not set out either.

In terms of inquiries, again there is a lack of clarity. On the one hand, Rule X, section 1 stipulates that parliamentary committees shall have the powers to conduct inquiries in aid of legislation; on the other hand Rule XII, section 2, point 'a', 2<sup>nd</sup> paragraph assumes that all the committees have a right to investigation and inquiry.<sup>83</sup> Even so, in terms of inquiries there are again no clear procedures.

The Parliamentary Rules should clearly stipulate, without leaving any room for guesswork, the following:

1. names of the committees that have power to make investigations;
2. names of the committees that have power to make inquiries;
3. the procedure of inquiries; and
4. the procedure of investigations.

In this regard, the practice of Fiji is noteworthy, which sets out in its Handbook all the powers and roles of each unit in the Parliament, in simple terms and in quite a clear manner.

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80. [https://korea.assembly.go.kr:447/int/act\\_03.jsp](https://korea.assembly.go.kr:447/int/act_03.jsp).

81. What does the Regulations Review Committee do?, Official website of the Parliament of New Zealand, <https://www.parliament.nz/en/get-involved/features/what-does-the-regulations-review-committee-do/>.

82. Rule VII, section 4, sub-points 4 and 5 of the Parliamentary Rules.

83. If the Members of the parliamentary committee, sub-committee, special committee, ad hoc and ad hoc joint committee, as a result of meetings, hearings, public consultations, investigation and inquiry discover the need to pass a new law or amend or revise an existing law, they may, in the first instance, persuade the concerned Cabinet Minister to draft the bill.

In terms of committees, the number of members should be clearly stipulated. However, a large number of members can hinder committees' swift and effective operation. For example, in neighbouring Singapore, the parliament which is composed of 104 MPs,<sup>84</sup> the Public Accounts Committee, which can be truly considered as a "Queen" among all committees for any parliament, has just eight members.<sup>85</sup> In contrast, the Statutory Committee on Finance, Budget and Management of Bangsamoro Parliament has 31 members, and the Parliamentary Committee on Accounts and Audit 17 members. It would be advisable to reduce the number of members in committees to the range of 5-11 at the maximum.

In relation to committees, it is noteworthy that some of them seem to duplicate each other's powers; for example, the Statutory Committee on Finance, Budget and Management on the one hand, and Parliamentary Committee on Accounts and Audit and Parliamentary Committee on Ways and Means on the other. The lack of clarity in terms of powers creates room for interpretations and debates which ultimately have a negative impact on efficiency.

In addition, the procedure for testimonies by witnesses needs further improvement. In this regard, it would be advisable to use the experience of Scotland's Parliament, which provides a detailed guide for witnesses.<sup>86</sup> It would be advisable also to create opportunities for the providing or sending of evidence to committees in an anonymous and/or confidential manner, by using the example of New Zealand. One of the provisions of the Parliamentary Rules which obviously may have a negative impact on the legitimacy of its work is Rule XI, section 4: 'A witness may be ordered by the Committee to be detained in such place as it may designate under the custody of the Sergeant-at-Arms until such witness agrees to produce the required documents, or to be sworn or to testify, or otherwise clear himself of that contempt.' It may have some major implications in terms of human rights violations.

In terms of the operation of committees, there are three other points which are noteworthy. Firstly, there are no committee leadership seats reserved for the opposition. Secondly, Rule IX, section 7 stipulates that any Cabinet Minister may ask for an executive meeting in a committee and it assumes that it is automatically granted. This affects the level of transparency and creates corruption risks. For example, a cabinet minister, in order to avoid articulation of some issues in front of the public, may immediately ask for an executive meeting. Also concerning is section 8, which provides that: 'Under no circumstances may minutes or transcripts of executive sessions, or evidence or witnesses be disclosed to the public.'

Last but not least, in terms of general oversight of the executive, there are no rules prescribed for debates of the Chief Minister and the Leader of Opposition (Minority). The latter is considered just as a regular MP for the matter of debates.

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84. Section on Singapore on the website of IPU, <https://www.ipu.org/parliament/SG>

85. Official website of Singapore Parliament's Public Account Committee, <https://www.parliament.gov.sg/about-us/structure/select-committees/public-accounts-committee>.

86. Guide for Witnesses, Official website of Scottish Parliament, <https://beta.parliament.scot/chamber-and-committees/committees/guide-for-witnesses>

In terms of budget oversight, the following aspects shall be stressed:

1. There is a duplication of powers across the Statutory Committee on Finance, Budget and Management on the one hand, and the Parliamentary Committee on Accounts and Audit and Parliamentary Committee on Ways and Means on the other hand.
2. There is no clear procedure foreseen in terms of Budget Oversight in Parliamentary Rules.
3. There is no *citizen budget* which is a simplified budget for regular citizens.
4. There is no separate law on the budgetary system, which the Bangsamoro Parliament can adopt, because according to Article VII, section 5 of the Organic Law it has power to enact laws promoting, protecting and ensuring the general welfare of the Bangsamoro people and other inhabitants in BARMM.
5. There is no cooperation mechanism in place with the Supreme Audit Office of Philippines (Commission on Audit).

## **Mandate and integrity of MPs**

In terms of the mandate of MPs in the Bangsamoro Parliament, forfeiture of an MP's seat is something which needs elaboration. According to Organic Law, article VII, section 19, there are six grounds for forfeiture of seat. There are two grounds which may have an overall negative impact on the legitimacy of the Parliament and on the fight against corruption. First, voluntary resignation in writing or orally in the Parliament and second, substitution by the party to which the member belongs with another member of the same party, provided that the member has been elected under a proportional representation system. In the case of the former, the wording contained in the Organic Law is repeated in Rule II, section 8 of Parliamentary Rules. This provision may have a direct impact on the anti-corruption fight in cases when those MPs are investigating or articulating matters of corruption. MPs can simply be intimidated or their family member can be intimidated and MPs may be asked to resign. When there is no requirement to repeat the same resignation statement then it opens up a wide range of opportunities for criminals to intimidate MPs into resigning with immediate effect. Therefore, a requirement of repetition of the resignation should be in place to mitigate this risk.

In the case of the second ground (substitution by the party), it directly derives from Article VII, section 7, point 'a' of the Organic Law. According to this provision: 'Any elected party representative who changes political party affiliation during the representative's term of office shall forfeit the seat in the Parliament...'. It must be noted that this ground is not repeated in Parliamentary Rules. Nevertheless, this is certainly not international best practice and it contradicts the mission of modern day MPs who should act as representatives of the nation as a whole and act based on their own conscience even if it contradicts their party's policies and decisions.

In terms of integrity measures, these are regulated in Article VI, sections 14-18 of the Organic Law which are repeated in Rule II, sections 13-16 of the Parliamentary Rules. The only provision which was not repeated in the Parliamentary Rules is one which relates to sworn statements by officials and employees of Bangsamoro Government in relation to statements of assets, liabilities, and net worth, lists of relatives within the fourth civil degree of consanguinity or affinity in government service, financial and business interest.

These articles have many shortcomings starting with geographical limitations (a ban on conducting business applies only in the territory of BARMM, while doing so in the larger Philippines and other countries remains possible), lacking the very definition of conflict of interest and procedures on how to administer them, ending with a lack of transparency in terms of declarations.

First, it would be advisable to use the experience of Canada. In Canada there is an independent officer of Parliament titled The Conflict of Interest and Ethics Commissioner who is responsible for administering the Conflict of Interest Act for public office holders and the Conflict of Interest Code for Members of the House of Commons.<sup>87</sup> The Commissioner is completely independent of the government of the day and reports directly to Parliament, through the Speaker of the House of Commons and she or he enjoys the privileges and immunities of the House of Commons and its Members when carrying out official duties and functions.<sup>88</sup>

The Office of the Conflict of Interest and Ethics Commissioner:

- Provides confidential advice to MPs on their obligations under the Act and the Members' Code.
- Reviews confidential reports. MPs must make a number of confidential disclosures relating to their assets, liabilities and outside activities. These disclosures help the Office determine relevant compliance measures and provide appropriate advice and guidance.
- Making information available. While disclosures remain confidential, the Office prepares summaries containing general information that are placed in public registries.
- Investigates possible contraventions of the Act and the Members' Code.
- Reports to Parliament. The Commissioner reports annually to Parliament through the Speaker of the House of Commons on the administration of the Act and the Members' Code, and prepares an annual list of sponsored travel by Members of the House of Commons. The Commissioner reports on examinations under the Act to the Prime Minister and on inquiries under the Members' Code to the House of Commons. All of these reports are made public.

Secondly, it would be advisable to adopt a separate Code of Conduct as soon as possible.

Thirdly, it would also be advisable to stipulate the definition of Conflict of Interest and manners of its administration and penalties in the Code of Conduct, and through the Code to establish an office similar to the Office of Conflict of Interest and Ethics Commissioner in Canada.

Fourthly, to make the Statement of Assets, Liabilities, and Net Worth (SALN) available to the public by creating an additional registry (in addition to sending them to Ombudsman's office of Philippines) and to make it public and publish it in machine-readable manner.

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87. Official website of Canada's Office of the Conflict of Interest and Ethics Commissioner, <https://ciec-ccie.parl.gc.ca/en/About-APropos/Pages/WhoWeAre-QuiNousSommes.aspx>

88. Hereinafter see Hereinafter see Office of the Conflict of Interest and Ethics Commissioner of Canada (2019), *The Role and Mandate of the Conflict of Interest and Ethics Commissioner: Factsheet*

## VIII. Recommendations

1. The *representative mandate* assumes that MPs shall act in accordance with their own conscience, even if it contradicts their own party. It is therefore recommended that the cases of forfeiture of seat provided for Parliamentary Rules should be kept, and that it should be stipulated in the to-be-adopted Electoral Code that MPs represent the Bangsamoro people and shall act in accordance with their own conscience, guided by the best interests of Bangsamoro People and Union. An amendment should also be made to Parliamentary Rules stipulating that in the case of an MP leaving the party on whose proportional list they were elected to Parliament, she or he shall continue to act as an MP but cannot join any other party during his or her tenure in Parliament.
2. To design specific and clear procedures for public and civil society to submit their opinions to committees, where there are no organised public consultations.
3. To provide clear procedures in terms of petitions and their outcomes. The procedures shall stipulate the form of the petition, how it shall be provided, how it shall be deliberated and voted on, and the avenues of involving the author of petition in deliberations. At the same time the whole process shall meet high standards of transparency.
4. To require that the author (sponsor) of a bill attaches all evidence on which the bill has been based (surveys, complaints received, media publications and so on) to the proposed bill (during the first stage).
5. To stipulate in Parliamentary Rules the procedure of a vote of no confidence. Within this, the cases and processes of impeachment and removal of the Chief Minister and Cabinet members should be prescribed.
6. To design a sophisticated mechanism for the confirmation procedure of ministers outside the Bangsamoro Transition Authority (BTA), which may entail preliminary screening in a designated committee. To make relevant amendments and alterations in Parliamentary Rules.
7. To amend the Parliamentary Rules with an aim to provide power to Parliament to carry out an inspection of state affairs (those affairs which under Organic Law falls within the competence of Bangsamoro Government) before the convocation of each year's regular session, for no more than 30 days.
8. To add a Regulation Review Committee as another type of Parliamentary Committee, as is the case in New Zealand, and to empower it to receive feedback from the general public about actual implementation and enforcement of regulation by executive agencies in BARMM, in order to ensure that the delegated law-making powers are being used appropriately.
9. To amend and alter the Parliamentary Rules in order to clarify which committees have power to conduct inquiry and investigations. To extend the power of inquiry to all committees. The Parliamentary Rules should clearly stipulate, without leaving any room for guesswork, the following: names of the committees that have power to make investigations; names of the committees that have power to make inquiries; the procedure of inquiries; and the procedure of investigations. To write detailed guides for each of the procedures and publish them on the committee's website (a page within the official website of the Parliament).

10. To reduce the membership in all committees to the range of 5-11, in order to increase the efficiency of committees and the Parliament, at large. It may be assumed that a small number of MPs means more committees will be able to work simultaneously and conduct their oversight functions over the Cabinet. This will substantially raise the efficiency of the Parliament.
11. To amend and alter the Parliamentary Rules in order to avoid duplication between the Statutory Committee on Finance, Budget and Management, the Parliamentary Committee on Accounts and the Audit and Parliamentary Committee on Ways and Means.
12. To prepare detailed guides for witnesses and to publish them on the official website of the Parliament in the local language, English and Arabic.
13. To provide opportunities for the public to send evidence to committees in an anonymous and confidential manner and with this aim to amend the Parliamentary Rules and provide a link at the official website to TOR software<sup>89</sup> for keeping the IP address anonymous. To prepare a guide for anonymous and confidential provision of evidence and publish this on the official website of the Parliament.
14. To repeal Rule XI, section 4 of Parliamentary Rules ('A witness may be ordered by the Committee to be detained in such place as it may designate under the custody of the Sergeant-at-Arms until such witness agrees to produce the required documents, or to be sworn or to testify, or otherwise clear himself of that contempt').
15. To make relevant amendments and alterations in Parliamentary Rules in order to eliminate the possibility of self-incrimination.
16. To designate some committees (both standing and parliamentary) to be led by the opposition (minority).
17. To repeal Rule IX, section 7 of Parliamentary Rules which by default provides for an executive meeting of a committee if such request is made by a Cabinet Minister.
18. To amend Parliamentary Rules with a procedure of debate between the Chief Minister and the Leader of Opposition (minority).
19. To provide detailed procedures for the scrutiny and deliberation of proposed budgets by amending Parliamentary Rules.
20. To adopt a Law on Budgetary System as a mean for promoting, protecting and ensuring the general welfare of the Bangsamoro people and other inhabitants of BARMM.
21. To provide in Parliamentary Rules cooperation mechanisms with the Commission on Audit of The Philippines.
22. To adopt a Code of Conduct and to stipulate the definition of Conflict of Interest and manners of its administration and penalties, and through the Code to establish an office similar to the Office of Conflict of Interest and Ethics Commissioner in Canada.

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89. Tor Project website, <https://www.torproject.org/download/>

23. To make the Statement of Assets, Liabilities, and Net Worth (SALN) available to the public by creating an additional registry (in addition to sending them to Ombudsman's office of The Philippines) and to make it public and publish it in a machine-readable manner.
24. To establish vigorous cooperation with the representatives of civil society and academia.
25. To create cross-party groups and conduct outreach in order to increase public trust in Parliament.

## About the author

Khachik Harutyunyan is an anti-corruption expert working in the sector since 2009. He has authored and co-authored more than 40 research products in the fields of anti-corruption and human rights. He is a member of Transparency International's Experts Network. He provided services to number of international organisations (Council of Europe, Organisation of Security and Co-operation in Europe, World Bank), CSOs, private sector companies specialising in provision of consultancy services to the EU and academia. Khachik is a lawyer by training and graduate of the University of Zurich (2011).

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