

# PUBLIC ADMINISTRATION IN SOUTHEAST ASIA

THAILAND, PHILIPPINES, MALAYSIA,  
HONG KONG, AND MACAO



Edited by  
**EVAN M. BERMAN**



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HONG KONG, AND MACAO

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*Evan Berman*





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# Comments on Purpose and Methods

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Evan Berman

This book serves the needs of those who wish to learn how government works in Southeast Asia, focusing on the systems of public administration. Whether readers are practitioners, professors, students, or just those with plain curiosity, nowhere else will they find a book that provides such a comprehensive treatment of public administration in Southeast Asia as presented. For many years, people have been fascinated with the cultures, peoples, and governments of Southeast Asia, and now they have a book that discusses the apparatus of governments in Southeast Asia—their agencies, contexts, processes, and values.

Growing internationalization and increased sophistication in teaching of public administration increases the need for actual factual information about these public administration systems. While separate journal articles and government reports look at some of these aspects, this book provides a comprehensive and comparative, in-depth look at major components of administrative systems. Specifically, topics cover the history and context of public administration, performance management reforms, civil service reforms, public ethics and corruption, and central-local government relations across several countries and regions. In this book, these topics allow answering such questions as:

- What is the history of public administration development in Southeast Asia?
- How are major decisions made in the agencies in Southeast Asia?
- What are the ethical underpinnings of public agencies in Southeast Asia?
- Why are intergovernmental relations an essential issue in Southeast Asia?
- What are the politics behind economic development efforts?
- To what extent is performance management emphasized in Southeast Asia?
- What is the nature of civil service reform in Southeast Asia?
- What is the nature of efforts to combat government corruption in Southeast Asia?

Without doubt, these are interesting matters, and both research and practices require this knowledge. For example, theory generation requires solid familiarity of the underlying facts of the region. This book is a second, parallel volume to *Public Administration in East Asia: Mainland China, Japan, South Korea and Taiwan*, published earlier. Both books are organized in parallel



sections that discuss similar topics of the countries and administrative regions (Hong Kong, Macao). When read in conjunction with the first book, readers can engage in comparative analysis that involves Thailand, the Philippines, Malaysia, Hong Kong, Macao, Mainland China, Japan, South Korea, and Taiwan. These two volumes provide the essential “one stop” shopping for public administration in East and Southeast Asia.\*

This book also has several distinctive features that we think readers will value. First, this account is written by those of the region, not by those outside the region. The advantage of getting the insider perspective and viewpoint is self-evident. Second, the authors are all experts in their fields, having published many journals and books in the discipline. Brief biographies are provided in the opening pages of this book. Third, authors were asked to cover both essentials as well as advanced points in their chapters. Fourth, each chapter contains useful resources to pursue further interest in specific, in-depth matters. Fifth, authors were given broad leeway and discretion to discuss whatever way they felt were most important for others outside geographic area to know about. They could also discuss additional topics. By doing so, we encourage the use concepts or perspectives that are different or distinctive to their area.

The selection of countries and regions in this book reflects the diversity of Southeast Asia. Some are large (e.g., Thailand), and some are small (e.g., Macao). They vary in colonial legacy: American and Spanish (the Philippines), British (Hong Kong and Malaysia), and Portuguese (Macao); Thailand has no colonial legacy. One is Buddhist (Thailand), one is Muslim (Malaysia), and the others are secular. Of course, the countries and administrative regions do not encompass all in the region. The nature of any detailed examination requires inevitable trade-off between breadth (countries) and depth (topics); it is inherent to a project such as this. The selection is also based on the availability of scholarship and experts in each field that can write at global standards. In some countries, public administration is nascent, at best, while in one instance (Singapore) scholars are unwilling or unable to share their views. The selection of topics within each country or administration region was guided by disciplinary interests and the possibility of using material in public administration education, in these countries and beyond. The practicality of marketing matters. For example, public administration education in Thailand is strong and centralized within National Institute for Development Administration within which a book such as this can find widespread adoption. We think that these chapters will be widely used in education throughout the world. We hope that in due time another volume might be compiled for countries not included here.

Of course, I am not an insider of Southeast Asia. In the spirit of full disclosure, I was raised in the Netherlands and spent 20 years of my professional career in the United States. My wife is from Brazil, which I have visited often. I have travelled several times to Africa, too. I am now working at National Chengchi University in Taiwan, and I am editor-in-chief for Taylor & Francis of the book series within which this volume appears (see *About the Authors*). I think my familiarity with the West is an advantage in this effort. Western concepts are significantly culturally and contextually embedded, that sometimes have different meanings or shades in Southeast Asia. I also used my editorial and scholarly experience to help avoid misinterpretation and confusion, and to ensure that writing styles meet global expectations for easy and smooth reading, which I hope readers appreciate. I carefully tried to convey the meanings and intentions of the authors.

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\* It should be noted that the countries in *Public Administration in East Asia: Mainland China, Japan, South Korea and Taiwan* include two additional chapters for each country, namely, public policy processes (and citizen participation) and e-government.

## The Approach

Considerable care was used in developing the methods for this book. A project like this requires many choices and requires much more than “slapping chapters together and putting them between book covers.” All comparative works require that guidance be given to authors so that chapters are comparable. A balance is needed between giving too much guidance, thereby stifling interesting insights and preventing authors from articulating that which may be unique to their setting and too little guidance that might result in little more than a collection of interesting, but unrelated facts. This task was addressed and described in the first volume, *Public Administration in East Asia: Mainland China, Japan, South Korea and Taiwan*, where area coordinators decided to provide a

**Table 1 Detailed Chapter Outlines**

<p><b><i>First Chapter: History and Context of Public Administration</i></b></p> <ul style="list-style-type: none"> <li>• Context and driving forces in the development of PA (include administrative culture, societal culture, institutional description of government, and definition of the public sector). Note: the chapter will focus on central government.</li> <li>• Historical periods of PA. Focus on practices, not development of PA as a discipline (though may additionally mention that). Should mention the development of major new tools, such as privatization.</li> <li>• Administrative values inherent in the above periods, but also discussion of the relationship with any core values in Western PA: equity, democracy, accountability, relationship with the legislature, efficiency of government, and role of government in society (restrictive vs invasive). Such a focus on “values” can help link the discussion to the broader global literature on PA.</li> <li>• Current state of democracy, civil society, democratization efforts, citizen input in decision making (narrow), and participatory democracy (broad). Discuss implications for public administration.</li> <li>• Emerging issues.</li> </ul>
<p><b><i>Second Chapter: Decentralization and Local Governance or IGR (for Hong Kong and Macao)</i></b></p> <ul style="list-style-type: none"> <li>• Decentralization or IGR reforms.</li> <li>• Driving forces, legal basis and barriers.</li> <li>• Results of decentralization reforms.</li> <li>• Description of local government as involving public authorities, schools, taxing districts, etc.</li> <li>• Examples or cases.</li> <li>• Discuss how decentralization affects the development of civil society, democratization, citizen input in decision making (narrow), and participatory democracy (broad).</li> </ul>
<p><b><i>Third Chapter: Public Service Ethics and Corruption</i></b></p> <ul style="list-style-type: none"> <li>• Ethics laws and legal compliance, especially unique features of the administrative system.</li> <li>• Nature of corruption: individual (e.g., bribery) as well as institutional and organizational (e.g., revolving doors).</li> <li>• Efforts to inspire ethical behavior through moral leadership of senior officials, ethics training, codes of ethics, ethics audits, performance measurement relating to ethics, etc.</li> <li>• May include international ranking such as Transparency International (and others).</li> </ul>

(continued)

**Table 1 (continued) Detailed Chapter Outlines**

<p><b><i>Fourth Chapter: Performance Management Reforms</i></b></p> <ul style="list-style-type: none"> <li>• Definition of performance management. Include program and organizational level reforms, as well as e-government. Note: individual level reforms are discussed in Chapter 4 (HRM); intergovernmental relations (IGR) are discussed in Chapter 5.</li> <li>• Brief overview of history of performance management in the administrative system. Include discussion of relevant laws and legal framework.</li> <li>• Discuss performance management reforms during the last 10 years in detail. May include budgeting.</li> <li>• Assess the outcomes of performance management reforms—cases, systematic evaluation, etc.</li> <li>• Examples or cases in so far as they are unique to the administrative system.</li> <li>• Avoid long discussions of IT applications that are well known in the international literature. Rather, provide unique IT applications, if any, the infrastructure or processes of IT decision making, and any legal issues (e.g., privacy) as relevant.</li> </ul>
<p><b><i>Fifth Chapter: Civil Service Systems</i></b></p> <ul style="list-style-type: none"> <li>• Include individual-level performance management in this chapter (not part of Chapter 2).</li> <li>• Recruitment and selection of workers and managers.</li> <li>• Status of civil servants in society.</li> <li>• Benefits and compensation.</li> <li>• Relationships between civil servants and elected officials.</li> <li>• Major reforms in recent years. (Note: should not be more than 30%–40% of the chapter.)</li> <li>• Civil service culture at the micro-level (human interactions, bureaucratic culture).</li> <li>• Obstacles to civil service reform.</li> <li>• Examples or cases.</li> </ul>

scope of general topics that constitute essentials as well as specific concerns that are relevant to a modern, international audience. Such an approach increases the likelihood of relevance, provides a context for prioritizing and, within that, great leeway for authors to discuss whatever they felt constituted the basic understandings about their topic. In comparative studies, such an approach is not uncommon.\*

A list of topics was provided to area coordinators of this volume and, for the most part, adopted. The resulting guidelines are shown in Table 1, which *de facto* are the chapter outlines and basis for comparison.

Considerable care was also given to matters of quality control. Authors were selected based on their expertise and reputation for their subject matter in their home countries. All manuscripts went through a three-stage review process. In the first review, manuscripts were reviewed by coordinators and others in the country for coverage (scope), accuracy, currency, and objectivity. They were also reviewed by me as editor to ensure coverage that would allow for cross-analysis later. The manuscripts were sent back to the authors, who then resubmitted their manuscript. In the

\* The introduction to *Public Administration in East Asia: Mainland China, Japan, South Korea and Taiwan* provides a detailed discussion of the process and content of coordinator meetings.

second review, I edited the language, format, and structure of the chapters to maximize readability and facilitate comparison; between three hours and three days was spent on each manuscript. The chapters were sent back to the authors for final review. In the third review, copyeditors from Taylor & Francis Group “fine tuned” the language and made it suitable for publication. The result is this book.

I hope this book increases familiarity with public administration in Southeast Asia, and also plays a useful role in integrating our world just a little bit more. Readers should feel free to contact the authors, all of whom have email addresses that can be found on the internet.

*Evan Berman*



# Chapter 1

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# Public Administration in Southeast Asia: An Overview

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Evan Berman

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## 1.1 Introduction

People have long been interested in the diverse cultures of Southeast Asia, and in recent years, there has been an increasing need to know more about the workings of their governments, too.

Globalization, education, and the interconnectedness of regional issues have caused an increase in demand for factual information about their governments. The cultures and practices of Southeast Asia are varied, and this book brings together, in a single volume, an in-depth analysis of the core components of public administration systems in selected countries of Southeast Asia. The detailed descriptions in the chapters provide for rich, comparative analysis.

It is no exaggeration to state that nowhere else will readers find a comparative “one-stop” shopping for the topics discussed of the countries here. The chapters in this book are written by leading experts in their fields. They cover such topics as the history of public administration, performance management reforms, civil service reforms, public ethics and corruption, and central-local government relations. This chapter provides an overview of some of the main themes and conclusions that are drawn from the chapters in this book. The parallel structure of topics (similar topics for each of the different countries and administrative districts) enables a unique, comparative perspective on Southeast Asia. The methodological foundation and strategies of this book are discussed in the Introduction, which readers are encouraged to read.

This book is a second, parallel volume to *Public Administration in East Asia: Mainland China, Japan, South Korea, and Taiwan*, which appeared earlier and discusses similar topics for those countries. By reading both volumes, readers gain even deeper factual and comparative knowledge of public administration in these parts of Asia. Obviously, this book does not cover all countries in Southeast Asia. As explained in the introduction, the selection reflects diversity of heritage, experience, and size.

In comparative works, reminders of cultural relativism and cultural provincialism are always appropriate. It is a fact that a good deal of our present-day knowledge and thinking about public administration has emanated from of the United States and the UK. Cultural relativism refers to the principle that other peoples’ activities and beliefs should be understood in terms of their own cultures, whereas cultural provincialism refers to the danger of one’s own cultural worldview blinding one from seeing others’ or different points of view. Try as we might to reach these ideal standards, at least they provide constant and powerful reminders to guard against closed-mindedness and instant judgments, no matter how right they appear at the time. Cultural, historical and local concerns shape government, and affect how facts and circumstances are interpreted and judged by their people. The task of this book is to bring these to the fore. I hope readers will appreciate these sentiments and recognize these efforts in the following pages.

Finally, the need to learn about others speaks not only to those outside the region, but those inside the region as well. Despite growing internationalization, the sense of community among the peoples and scholars of Southeast Asia is growing, but is not strongly developed. Knowledge of public administration systems within Southeast Asia is not as strong as outsiders might expect, and even within countries, knowledge of public administration systems is sometimes not as well developed as one might want to see or hope. In some countries, only a handful of dedicated scholars are responsible for providing a good deal of knowledge about these systems. The challenge of cultural provincialism cuts both ways, and people sometimes use various sentiments to resist dealing with others and learning about them, too. Hopefully, this book can contribute to a growing, shared sense of knowledge and community of public administration among all countries in the world.

### 1.2 Culture

The chapters provide convincing and fascinating evidence of the powerful influence of culture and colonial legacy on modern-day public administration. Danilo Reyes writes that “public

administration in the Philippines today is a product of the colonial era and adapted to the idiosyncrasies of indigenous cultural traditions, values, mores and norms.” The Philippines is not alone. If history is prologue, then the starting point for understanding the present is to understand these forces of the past that continue to influence public administration today. This section discusses the role of culture on public administration, while the following section examines the pertinence of colonial legacy.

In all countries and districts, the role of personal ties affecting public administration is strong. Indeed, Southeast Asia is well known for its attention to human relations; foreigners usually experience great personal attention and friendship bestowed on them. Familial traditions of close-knit relationships and kinship are strong and characteristic of the local population. Juree describes that in Thailand “a person’s primary duty and allegiance were to his family and then to his kinship network, then to his village or community.” Key relationships are often first personal, then professional. People get by and along through their personal relations that often have long and deep roots.

Authors describe how family and kinship relationships give way to strong client-patron ties in public administration. Danilo Reyes writes that in the Philippines “appointments of relatives to executive and bureaucratic positions by powerful family members remain a common practice in spite of laws to the contrary. Political dynasties in various provinces and cities are often built on the strength of these relationships.” Bidhya Bowornwathana sees in Thailand a strong, enduring legacy of patron-client relations that continues through today; “To advance in the bureaucracy, a young aspiring bureaucrat needs to have a powerful politician as patron.... Some successful bureaucrats were fortunate to be born into a powerful family with networks extending to the palace, military, political parties, and the business world. Those that are less fortunate will have to build their own political network connections.” However, because politicians have high turnover, “career advancement (increasingly) depends less on your immediate superior and more on your connections outside the department.”

In Malaysia, Beh notes policy making through “favored network relations” and collusion among “the elites of the society comprising politicians, businessmen, and certain segments of the civil service” such that the Malaysian bureaucracy “enjoys a position of power perhaps unequaled by any other civil service in a democratic country.” Strong family ties and *guanxi* relations are also well-known powerful means of career advancement in the Chinese community. Discussing corruption, Kwong notes patron-client politics in the civil service of Macao whereby some “subordinates condescendingly followed or even conjectured the patron superiors’ wishes, with disregard whether these actions that might step of the brink of illegality.”<sup>1</sup> Of course, not all such client-patron relations lead to unethical conduct.

The situation in Hong Kong is different. While people relations are generally strong in Asia, client-patron and kinship relations affecting public administration are largely absent in Hong Kong. Lee notes that from the early days, Hong Kong was a frontier outpost with little pre-existing power structure and “the absence of an indigenous ruling class.” Colonization brought about the transplantation of a western Weberian-type bureaucracy, “a modern bureaucracy... with principles of meritocracy, legalism, and generalist administrative class.” Perhaps for these reasons,

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<sup>1</sup> Likewise, Reyes also notes in the Philippines that, “such values as respect for senior officials or persons, or in many cases, of favoritism, paternalism, and nepotism can serve to compromise the exercise of official functions and duties.” This is further supported by cultural norms of avoiding confrontation or outright conflict that further compromise policies and procedures to avoid disharmony. See Reyes’ excellent description of administrative values in the Philippines.



the above patron-client and family-kinship relations did not develop in Hong Kong.<sup>2</sup> Whatever personal network relations existed among the later rapidly increasing migrant Chinese population, this culture did not affect or threaten rule by the Hong Kong civil service over the colony until the early 1970s, when, as described below, it successfully adopted a range of to ensure the dominance of its “Weberian” principles. Hong Kong is very much an exception to the general pattern in this part of the world.

While network ties are an important feature, other norms are present, too, which often further support client-patron relations. In the Philippines, Reyes notes that such cultural values as “amor propio” (self-respect), “delicadeza” (propriety), “hiya (shame), “utang na loob” (debt of gratitude), and “pakikisama” (friendship or familial ties) affect bureaucratic behavior and the exercise of official functions. Superimposed on these values are such accepted norms of behavior as social acceptance, respect for authority/elders, and the influence of religion. These can result in the avoidance of disagreement and confrontation, thereby upholding close relations. As in Chinese culture, harmony and conflict avoidance reign high as accepted personal and interpersonal norms that also sustain close relations. “In spite of a hundred and fifty years of British rule, to a large extent Hong Kong Chinese subscribe to a Confucian world view,”<sup>3</sup> which promote these. The norms that support network and close personal relations are many and deep. The colonial legacy, discussed below, is an overlay on these traditional values, rather than vice versa.

Common bonds that promote trust and further cooperation and alliances exist in all cultures, whether they are based on client-patron or kinship relations, or as in the West, support among those with common educational experience (e.g., Ivy League schools) or business connections. Familiarity breeds trust, which is the basis of all relations. The challenge in all cultures is to ensure that such “special relationships” serve rightful and proper public purposes, and do not become foremost a means of exclusion and self-enrichment. In the West, for example, cozy lobbying relations have many negative features, while at the same time strong efforts are underway to use closer relations in the service of “collaborative governance.” The matter is one of balance, recognizing and restraining the darker side of human motives, while bringing forth the positive. The ties in Southeast Asia also provide for experiences of essential humanity and connectedness that few people would be willing to give up entirely and that are often seen as lacking in the West. In all countries, the task is to contain these darker manifestations of cultural patterns, and to shape fundamental human motives in the service of public purpose.

### 1.3 Colonial Legacies

Latin legacies are found in Macao (Portuguese) and the Philippines (Spanish), while Anglo legacies are found in Malaysia, Hong Kong (both British), and the Philippines (American). Authors note numerous consequences of their colonial legacies that continue to affect public administration today. In general, authors describe colonial administrations as seeking to extract value from their territories, while having little commitment to their development beyond what is needed

<sup>2</sup> Additionally, Burns notes that, “the readiness of civil servants to accept orders from their superiors is ‘largely attributable to conventional Chinese attitudes of respect for authority and avoidance of conflict.’” This may be a secondary factor that facilitates acceptance of these cultural norms.

<sup>3</sup> In *Public Administration in East Asia*, the impact of Confucian values is more deeply examined. A certain overlap exists, such as attending to the needs of one’s superior as an important, if not penultimate priority. However, few authors mention this in Southeast Asia, and in East Asia there is also the strong, expected reciprocation by superiors to show great consideration and understanding for a subordinate’s effort and circumstances.

to profit from them. Additionally, the Spanish conquest of the Philippines had the motive to propagate Christianity, and its American occupation in the early twentieth century also had the self-proclaimed objective to prepare it for independence. Regardless of these purposes, the colonial legacy often endures in the administrative cultures and practices that were established.

### 1.3.1 *British Colonial Legacy*

The British colonial legacy in Malaysia and Hong Kong continues to be evident in three ways: (i) the molding of civil service culture that is based on merit; (ii) a reluctant but nonetheless certain provision of infrastructure (transportation, schools, sanitation); and (iii) population policies for economic advantage that have racial elements and which, in the case of Malaysia, lead to enduring racial tension and conflict.

As regards the first aspect, the British legacy in civil culture is undoubtedly strong. In both Hong Kong and Malaysia, the white, British senior managers upheld high values of ethics and professionalism. Chin states: “many of the white officers who served in Malaya were highly experienced, some having served in British colonies in Africa and the Indian subcontinent. Some were recruited directly from British Universities. The Malay Administrative Service (MAS) were generally corrupt-free and there was a strong respect for administrative law.” The legacy of professionalism and merit continues at lower levels of the service where Manaf notes that “for some posts, applicants are required to sit for tests relevant to the skills and capacity required to perform the job effectively. Thus, the emphasis... is based on merit, rather than political considerations or nepotism.” However, as described further, political neutrality is no longer a feature at the higher echelons.

The culture of professionalism in Hong Kong’s administrative culture continues today. Burns states that today’s administrative values in Hong Kong include “hierarchical loyalty, efficiency, meritocracy, and political neutrality,” although the latter has recently begun to change at the higher levels. He notes that, “compliance is reinforced by strict adherence to bureaucratic rules and regulations and an incentive system that highly values promotion.” Efficiency, meritocracy, and timeliness continue to be strong features in these cultures. The strength of commitment to these values set them apart from the bureaucracies of other cultures in Asia.<sup>4</sup> Such values may also be found in other former British colonies like Singapore and even the United States.<sup>5</sup>

Second, infrastructure investments were made. Chin states: “The MAS believed in developing the Malayan economy, thus schools (mostly manned by missionaries), hospitals, roads, airports and other infrastructure, were built. The belief was that a strong Malayan economy will contribute to the home country and the British Empire.” Likewise, Lee notes that for Hong Kong, “while the indigenous population numbered only in the thousands in 1841 before the British takeover, by 1911, the population had grown to over 450,000. Such a rapid increase in population naturally brought about demand for public services... and problems such as public sanitation required the

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<sup>4</sup> Anecdotally, the Hong Kong and Malaysian authors in this volume were the first to complete their chapters, by far!

<sup>5</sup> Professionalism and meritocracy, however, should not be confused with the absence of corruption. As Burns notes: “In Hong Kong until 1997 the civil service managed itself almost entirely on its own: it determined its own selection procedures, disciplinary codes, performance standards and pay levels and benefits – a civil servants’ dream one might suppose. For decades these arrangements were rubber-stamped by an appointed colonial legislature. The result was, at least initially, systemic corruption on a grand scale that existed until the public would tolerate it no longer and then compensation packages that have become among the highest in the world.”

colonial state to step in, for example, free vaccination was provided to the population to prevent the spread of epidemics. Thriving commercial activities also required substantial development in infrastructure.” However, social services were left to the local population, and various Chinese communal associations formed a robust community of self-help.

Third, all cultures have their dark sides. Manaf describes how the British brought large numbers of Chinese to work in tin mines, Indians to work on rubber estates and as white collar workers, and sent Malays to work in rural areas as farmers and fishermen. The result was segregation along economic lines, and Malays becoming economically marginalized in their own country. The British response was to open up the civil service to the Malays through recruitment quotas for the administrative elite, which were introduced in 1952, and the practice continued unaltered after independence (in 1957). “This historically sets the basis for the country’s civil service to be gradually dominated by the Malays, and continues until today.” Chin continues:

Because the British brought in the Chinese and Indians for economic reasons, there was no real attempt to integrate them into the local environment – the thinking then was that these were temporary workers and they would go back to China and India once they have saved up enough money for retirement. In reality with such large numbers, this was not possible. Many did not earn enough to go back to the Chinese mainland or India. The large numbers also allowed the Chinese and Indian communities to build their own insular communities – they establish their own schools, temples and townships. The British were also keen to keep the communities apart as it was easier to rule over them.

Then,

On 13th May 1969, serious racial riots broke out in the capital Kuala Lumpur and several other urban areas. The causes of riots are complex but in the main, it was political competition between the Chinese and the Malays. The Malays claimed that as the indigenous people of Malaya, this was their land and the concept of *ketuanan Melayu* (*Malay supremacy*) cannot be challenged by the non-Malays. In 1971 ...the government also launched the New Economic Policy (NEP), supposedly to correct the imbalance in the economy as identified by the May 13th report. Unfortunately, the NEP never lived up to its own stated goals. Rather the NEP was used as a policy to reinforced the “*special rights*” of the Malay and bumiputera community (indigenous groups) in all social, economic and political spheres. These “special rights” were defined broadly as meaning that the Malay community were entitled to preferential treatment by the government in all its activities. A quota was established for bumiputera entry to universities, bank loans, scholarships, business licences, etc. A special bumiputera-only tertiary institution, Institut Teknologi MARA (now called Universiti Teknologi MARA (UiTM)) was established to provide Malays with opportunities to get a tertiary education. The non-Malays who were excluded saw this policy as nothing more than state sanctioned racism and discrimination.

In this book, many chapters on Malaysia mention the racial divide. Hong Kong does not show such divide, undoubtedly because of the migrant nature of the Chinese population, the small size of the city, and the predominance of commerce and trading as the main economic activities. Still, with reference to Malaysia, one is reminded of similar racial divides in other former British

colonies such as South Africa, India, and the United States, all of which continue to struggle with the politics of racial integration and healing today. The United States is no exception, where consequential forms of racial discrimination and profiling continue to affect social attitudes and economic practices. Singapore, another former British colony and not discussed here, also experienced racial riots and strong tensions in its early birth; racial tensions are minor today, but not negligible and some separation still exists. Indeed, race relations are also tense in Britain itself. How well countries address the racial challenge of the British legacy varies. Racial divides seem to be a British legacy in many of its former colonies.

### 1.3.2 Latin Legacy

Authors are clearly negative about the impact of Spanish and Portuguese legacies on administrative culture in, respectively, the Philippines and Macao. Reyes notes that the Philippines was a colony of Spain for over 300 years until a successful revolution in 1896, when it declared independence on June 12, 1898. During this time, the administrative system was built on the framework of serving private interests with the “practical objective of increasing the royal estate through tributes, monopolies, fees and fines.” Appointments were also made on the basis of sale of public offices. A functionary would thus consider his purchase of office as an investment that needed to be recouped as quickly as possible and at a profit; public office was seen as a business venture. These positions were reserved for Spanish nationals while the natives—the *indios*, as they were called—occupied the lowest rung in the administrative hierarchy, as headmen of the villages.

The administrative system that these practices spawned brought about two attitudes among the bureaucrats—outright indifference and lack of commitment to public office. They are succinctly expressed in the Spanish phrases, “*no se haga novedad*,” or do not commit or introduce any innovations on royal prescriptions, and “*obedezco pero no cumplo*,” or I obey but do not enforce or comply. The Spanish colonial period ended in 1898, but there is ample evidence that these attitudes of rent seeking and inefficiency became very deeply ingrained, and in the poverty of the post-war period, civil servants engaged in such widespread rent-seeking behavior, using public office to support their families and private interests in ways that involved corruption and incompetence.<sup>6</sup> Even today, “such negative traits as refusal to initiate innovations (*no se haga novedad*) or weak or indecisive compliance of rules (*obedezco pero no cumplo*) continue to impair Philippine bureaucracy, though not as rampant as during the colonial era.” Of course, the culture of the modern Philippine civil service includes other elements, too, such as commitment to merit and fitness described below, but the Latin legacy endures.

Macao was governed by Portugal for over 400 years.<sup>7</sup> Bolong writes, “In Macao Government, the public administration has been heavily influenced by its Portuguese administrative culture, which has its own merits of easiness and relaxation, but lacks discipline and formalization as

<sup>6</sup> As Reyes states, at the beginning of the Philippine Independence in 1946, “The system ill-equipped... and also inept, incompetent and corrupt, with the war time habits of complacency and indifference overpowering the spirit of patriotic zeal.”

<sup>7</sup> The Portuguese tried to return sovereignty to the PRC. However, the Chinese government was apprehensive that the status of Hong Kong might be affected if she reincorporated Macao without resolving the Hong Kong problem with the British. Therefore, the PRC decided to resume sovereignty of Macao after resolution of the Hong Kong problem and allowed the Portuguese to continue to “administrate” Macao until 1999. It seems that the Spanish were not very concerned about losing the Philippines to the United States either in 1899. In both instances, the colonial, Latin masters had ceased considering their colonies as being a worthwhile investment or endeavor.

the modern management science requires. In comparison with the Anglo-Saxon administrative culture, the Latin style represents intimate personal relations, lax working attitude, and to some extent, easy to induce corruption.... From a Weberian perspective, Macao's bureaucracy arguably remains underdeveloped and backward." Despite several civil service reforms since handover to Mainland China in 1999, the culture remains largely intact, and Yu notes that the Portuguese legacy of patronage and nepotism continues today in some aspects of personnel appointments.

The challenge of public administration in the Philippines and Macao is to overcome these cultures of indifference, self-enrichment, and inefficiency. The same might be said of most public administration systems in South America today, which share these legacies. It might also be noted that, in comparison to former British colonies, race relations are not such an issue in many former Portuguese and Spanish colonies that are often characterized by race mixing and assimilation. Brazil is a celebrated and well-known example of this, but it is no exception.

### **1.3.3 American Legacy**

The United States was the colonial master of the Philippines from 1899 through 1946. The United States purchased the Philippines from Spain for \$20 million at the conclusion of the Spanish-American War. While by most accounts the United States sought to emulate the British form of extracting wealth and running colonies, and may have sought to eventually annex it as a forty-ninth state, Philippine resistance (the American-Philippine War 1899–1902 and continuing resistance thereafter) and the lack of commercial profit, soon led the United States to prepare the Philippines for independence. Thus, the United States supported an elected Philippine Assembly in 1907 and promoted the development of local governance, not least for lack of US officials who wanted to serve in the Philippines. The Philippines became a commonwealth of the United States in 1933, and became independent in 1946.

Reyes describes how the US experience with patronage, in particular the assassination of President Garfield in 1881 and the Pendleton Act of 1883, formed the basis of US efforts to institute a similar system in their newly acquired colony in 1900: "This was an opportunity to discover whether the system they adopted for themselves would work in a different culture.... A civil service system was created based on merit and fitness in the Philippines, characterized by professionalism and careerism, ensured security of tenure and with appointments determined by open competitive examinations. Another important feature of the system was the adoption of political neutrality for career members of the civil service which secured them against involvement in partisan politics."

The historical record is unclear about the implementation of these practices in the Philippines, and the change of culture that it may have brought about. Some authors talk about a heightened work ethic that ensued, but it quickly disappeared after the Japanese invasion. However, as a legacy, the policies remained on the books, and at some point these merit-based policies found favor, especially in recent democratic times. Reyes notes that, "the American values of merit and fitness and competitive examinations continue to hold sway and enjoy acceptance in the bureaucracy."

The Philippine case shows the impact of multiple sources on administrative culture: "Bureaucratic values and behavior in Philippine public administration can thus be viewed as a web of influences and curious blend of indigenous social forces, implanted norms and of colonial legacies." As regards the ultimate, current mix of these legacies, Reyes writes, "It can be said perhaps that these (the norms of Weberian bureaucracy) are the ones observed or upheld first, depending on the degree of the influence of cultural or political forces. The system of rules and procedures likewise are generally observed but can be set aside either because of the intervention of a politician or because of the demands and pressures of cultural values and ties."

It is tempting for some scholars and many practitioners to want to put aside the past of culture and legacy. It is said that, “these are modern times, circumstances are now different, we need to move on, and not dwell on the past.” These are true sentiments, but ignoring the past makes people blind to the larger forces of norms and practices that often continue today. The past is prologue—no more, but also no less. Without these, it is sometimes hard to understand why some things endure.

## 1.4 Decentralization

Decentralization has developed in the last 20 years as a major force for development. The development of effective regional and local governments allows for increased services and initiatives that can spur and support new economic activity. Yet, all three countries (Thailand, Malaysia, and the Philippines) have a strong tradition of centralization, which often led in past development efforts. Decentralization involves a loss of control by the central government, which has an obvious political element.

Bidhya notes that Thailand has had a long and strong tradition of authoritative rule, centralization, and big government. Achakorn and Chandra explain that, “the extremely tight traditional central-provincial-local relations were patterned on British colonial administrative regimes. This strong central state was designed to secure control over outlying rural areas... Only since the 1990s, and despite strong opposition from the Ministry of Interior, have Thai governments consistently supported decentralization.” Possibly, this reflects in some measure a growing influence of politicians elected from rural areas. Likewise, Brillantes and Ilago note that, “a leading argument on why decentralization was pursued in the Philippines was to correct the inherent centralism of the administrative system. The Local Government Code of 1991 is a landmark piece of decentralization legislation because of its unprecedented transfer of powers, functions and resources of the central government to the historically weak or politically insignificant local government units.”

Of concern has been the relatively weak competency of many local governments, of course. “Most local governments in Thailand feature weak financial management, insufficient resources, inefficient planning and service delivery, and deficient public infrastructure. These major problems, in turn, result from inadequate revenue resources, poor mobilization of existing revenues, lack of technical capabilities and personnel, and unclear responsibilities.” Still, progress is being made and Brillantes and Ilago state that “the relatively small size of municipalities make it more difficult to deliver extension services or to hire the needed expertise... In spite of these constraints, devolution has yielded some positive results such as the increasing cooperation between local government units and the private sector and NGOs in agricultural extension, an increased focus on training and extension for farm systems rather than on a single commodity, and local government focus on training and entrepreneurship for agricultural development.”

Some innovation is also present. According to Achakorn and Chandra, “critics of decentralization in Thailand have worried... that local power brokers would boost their influence. In 1988, the Ministry of Interior issued an order to all local governments to encourage, organize, recognize, and support Cooperative Community Groups (CCGs) in local areas. CCGs are local groups of residents formally recognized by the local government as representatives of their communities. CCGs can be organized at local governments’ behest or at the request of the groups themselves. (An approximate number of members is from 200 to 2000). The main objective of the CCG is to encourage community groups to be strong and depend on themselves as much as they possibly can in solving their own problems.”

Brillantes and Sonco describe how the Philippines has made earnest headway in decentralization. In 1991, the Local Government Code was enacted, which is considered “a landmark, far-reaching and the most radical piece of legislation in the history of Philippine politico-administrative system. It devolved significant functions, powers, and responsibilities to the thousands of local governments in the country that have long been operating under a highly centralized regime.” They describe the development of new initiatives and increased responsiveness as a result of decentralization. Its implementation has shown progress and desirable results, but they also note that, “strong familial ties and strong political clans of the Filipinos threaten the degree of democratization, electoral participation, and political accountability at the local government level.” They also note that capacity building for local governance is much needed. For example, “professionalizing the local bureaucracy requires establishing the competency needs of civil servants at the local level, their career path and development in the local bureaucracy.” They call for a comprehensive capacity-building program.

Centralization is also strong in Malaysia, but the demand for local governance has been weak, coupled with a perceived need to maintain a strong central structure. Phang states: “The theory and practice of development administration in Malaysia has thus far been based upon the premise that ‘effective governance’ should have priority over ‘good governance’ as the intensity of plural and communal politics may get in the way of national development. The key to Malaysia’s economic development and growth propensity is very much dependent upon racial harmony and the government will not be willing to compromise this.” Thus, maintaining racial harmony (or, peace) is the order of the day. Moreover, the capacity of local government has long been limited. Local governments must seek state approval over most matters in finance, appointment of its councilors and staffing, and local elections were abolished in the 1970s. The local government governance capacity is very weak.

The cases of Macao and Hong Kong are unique and a matter of decentralization only in the sense of Mainland China providing far-reaching autonomy to these former colonies and now special regions. Both Hong Kong and Macao are under the direct authority of the central government of China, and the highest level of the Chinese Communist Party (CCP), namely, the central leadership under Hu Jintao, decides on the policy toward Hong Kong. The top central body that takes charge is the Hong Kong and Macao Work Coordination Group of the CCP. Under the One Country Two Systems (OCTS) policy, Mainland China agrees to give substantial autonomy, though it appoints and removes the chief executive (who is chosen to be a political ally of Beijing), and China has responsibility for diplomacy and defense. A key to OCTS is the agreement that no offices or local authorities of the Mainland may interfere in the affairs of Hong Kong or Macao SAR. Peter Cheung writes that, “the OCTS policy reveals that the relationship between the central government and the SAR is hardly smooth. While most observers would agree that the first decade of OCTS has been largely successful, Hong Kong’s enjoyment of a ‘high degree of autonomy’ is first and foremost dependent upon Beijing’s restraint.” Similarly, Choi writes, “Macao is repeatedly reminded that autonomy is based on a grant from the centre, and that it is not an inherent right, suggesting that deliverance from central involvement is tenuous.”

Cheung writes that demonstrations in Hong Kong against the Tung administration on July 1, 2003, shocked the Chinese leadership, and caused it to become more active in shaping Hong Kong politics. China revamped its agencies and policy coordination group responsible for Hong Kong affairs, stepped up the monitoring of Hong Kong political developments, intensified its work with political, business, and community leaders, and offered economic policy support measures to boost the Hong Kong economy. Similarly, Choi notes that by supporting pro-China social groups in Macao, China maintains its unchallenged control on Macao politics, “the local elite, no matter old or new rich, sing in unison of the caring and kindness of the motherland.” Popular concern in

Macao continues to focus on the ineffectiveness of its government and on-going corruption cases, and the chapters on Macao voice widespread concern about this.

The cases may be different, but they all show themes of central government control over local government, and the effectiveness of local government to provide governance and services. With the exception of Malaysia, they show dynamic developments occurring in these three countries and two special administrative regions in Southeast Asia.

## **1.5 Ethics**

All public administration systems are concerned with the ethical conduct of its civil servants and elected public officials. Unethical conduct breeds distrust and is a serious distraction when trying to implement new policies and programs, while cultures of integrity are associated with increased commitment to excellence and improvements in the business climate. While the seeds of corruption lie in the human condition, the form and manner in which they are manifested show strong ties to the culture and legacy of the different countries and regions.

### **1.5.1 Types of Corruption**

Many authors trace corruption to patron-client relations that invite different patterns in which corruption occurs. For example, Bidhya states that, “clientelism in modern Thai politics and administration (...) fosters nepotism, corruption, and bureaucratic inefficiency.”<sup>8</sup> Gonzalez writes, “Rule of law itself is a concept that sits uneasily within the Philippine patron-client culture. Public agencies serve as conduits for capture of both policies and public resources.” The chapters are rich in detailing specific forms of corruption. Juree writes:

Examples or types of corruption involving public officials are numerous. Many of them are akin to corruption cases elsewhere around the world such as “kick-backs” or illegal “commission” from procurement, influence peddling, conflict of interest cases like selling own land at a higher than market value while holding a public office position. Or dictating policies or ministerial directive that will favor certain parties. Rezoning to increase land value is also one form of corruption. However, we also find that some public officials in Thailand may also engage in dishonest behavior regarding promotion and appointment. Large sums of money may change hands between the promoter/appointer and the promoted/appointee. This problem spreads like a wild fire and happens in local as well as national governments.<sup>9</sup>

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<sup>8</sup> Juree describes that traditional Thai social structure centers around personal relations and hierarchical structures giving rise “to an elaborate and intricate system of patron-client relationship where status unequals entered into a mutually beneficial relationship. In this framework of human relations, developed over hundreds of years, a person’s ethical and moral duties were to be a good patron as well as to be a good client. Thai people perceived moral obligations, social norms and social values through a personal lens; ‘what is good for my patron is alright by me.’ Interpersonal ‘debts of gratitude’, favors, care and concern, payment and repayment of kindness and favors reign supreme. Obviously, such close relations are conducive to a lack of transparency and corruption in various small and large ways.”

<sup>9</sup> Bidhya also writes, “Patrons and their clients enter into an exchange relationship which fosters nepotism, corruption, and bureaucratic inefficiency. Thus, the combat of corruption becomes a gargantuan task, because corruption defined in western terms runs counter to the traditional practices of the Thai bureaucracy.” Thus, the problem of client-patron networks is deeply embedded in the Thai bureaucracy.



When one has to pay for a promotion or a specific position, it is most likely that he/she expects to extract monetary returns from the position, at least to recoup the investment. Hence, corruption increases and spreads on. Corruption pertaining to payment for a position has reached an absurd level when it is reported that at the local government level, when applicants had to undergo a competitive examination, there will be a published list of candidates ranked by the scores they have made in the test. The top on the list will be recruited first and the list will be used for sometime as positions are made available and filled gradually. This provides an opportunity for the lower ranking candidates to bribe the ones higher on the list to give up his/her position thereby allowing the person below to move up the list. For a position to become available may also entail payment. Hence, to get a public sector job at the local government, a person may have to pay more than one person and for different acts before he/she gets the job.

Such sale of public sector jobs is reminiscent of the Spanish colonization of the Philippines, which involved the sale of public offices, as described earlier.

Corruption also involves elected officials. Gonzales notes that “Philippine political parties are unstable and makeshift coalitions held together only by patron-client relationships. Resources are obtained chiefly from corporate or private donations, and campaign financiers may come from the ranks of local political clans, businessmen or tycoons most of whom are often deeply involved in the formulation and implementation of policy and regulations that offer concentrated benefits as part of political paybacks by the winning (and financially supported) candidate.” Beyond this, “the power center is a centralized presidency that orchestrates the execution of policy and allocation of spoils... Because the president has discretion over disbursement and big-ticket government contracts, licensing authority, and fiscal management powers, politicians have to ally themselves with the chief executive to ensure funding for key projects and a major share in the patronage resources of the government.”<sup>10</sup>

Beh mentions quite similar issues in Malaysia, where procurement, contracts and regulations are means of corruption and rent seeking. For example, she gives this case: “Another issue is related to the recent inconsistencies in the awarding of Approved Permits (AP) to import cars where politicians were among the recipients. These Approved Permits licences have been monopolized by politically connected Malay ethnic businessmen and the politicians to import foreign vehicles and then these vehicles are resold to local businessmen who do not have access to the approved permits for imports with higher rate of at least three to four-folds.”

The source and main pattern of corruption is different in Hong Kong. As Burns notes: “In Hong Kong until 1997 the civil service managed itself almost entirely on its own: it determined its own selection procedures, disciplinary codes, performance standards and pay levels and benefits – a civil servants’ dream one might suppose. For decades these arrangements were rubber-stamped by an appointed colonial legislature. The result was, at least initially, systemic corruption on a grand scale that existed until the public would tolerate it no longer and then compensation

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<sup>10</sup> As an example, “Estrada’s vice-president, Gloria Macapagal-Arroyo was installed under controversial circumstances in 2001 and was elected as President in 2004, also after another disputed and contested election marred by allegations of massive cheating and manipulation. Her term was also marked by exposes of graft and corruption charges amounting to billions of pesos. President Arroyo’s stay in office was beset by a series of impeachment complaints against her, which would all be subsequently thrown out by her allies in Congress, who retained the majority.”

packages that have become among the highest in the world.” As then, “conflict of interest in post-public employment is another issue of perennial concern to the government and to the public. Post-service employment remains a source of concern.” This is a powerful reminder not to confuse professionalism and meritocracy, or the British heritage, with the absence of corruption.

It should be noted that these forms of corruption are certainly not unique to Southeast Asia. In *Public Administration in East Asia*, Lee and Jung describe that in South Korea “political elites used their regulatory power to solicit political funds from the *chaebols* (business groups) for the return of privileged business deals and political contributions.” Kamiko states that typical cases of corruption in Japan are related to bid rigging: “backroom intervention by government officials in the process of tender is frequently discovered,” resulting in payments to officials who can guarantee or further selection.<sup>11</sup> Such payments include cash, as well as discounted stocks, club memberships, below-market real estate, and so on. The nature of “systematic” (or institutional) corruption is not unique to Hong Kong, and is also mentioned in Japan. *Amakudari* (“descent from heaven”) is mentioned as a Japanese practice of corruption where “senior bureaucrats land attractive post-retirements employment in business using, as Imanaka states, “aggressive ways” to achieve this.<sup>12</sup> Indeed, such instances and patterns occur throughout the world.

But the extent of corruption matters, of course, and most countries in Southeast Asia score low or modest, with the exception of Hong Kong and Singapore. Transparency International publishes an annual Corruption Perception Index (CPI), which measures the perceived level of public-sector corruption. In 2009, the respective indices (1 = low, 10 = high) and rankings (among 180 countries) are: Singapore: 9.2 (3rd), Hong Kong: 8.2 (12th), Macao: 5.3 (43rd), Malaysia: 4.5 (56th), Thailand: 3.4 (84th), and the Philippines: 2.4 (139th). By comparison, the United States scores 7.5 (19th), below Hong Kong, as does Japan: 7.7 (17th).<sup>13</sup> It is thought that systematic corruption (revolving doors, legal use of regulation to favor insiders, etc.) is less visible to the public eye than illegal forms, such as those relating to bribery, kick-backs, use of insider information in procurement deals, as well as small bribes and grease payments to officials. A preponderance of the former results in higher CPI scores, and it is thought that Hong Kong, Japan, Singapore, and the United States exemplify such cases. Still, the rankings for Thailand and the Philippines are quite low and are indicative of widespread public sector corruption. As Juree states:

Corruption is commonly acknowledged as a problem, even a “disease” in Thailand today. It exists in many different forms... The size and scale of corruption range from small like petty corruption in terms of a small bribe to grand scale corruption that involves huge sums of money, as when 10–30% of the cost of a project is siphoned off from mega-projects which are often infrastructure building projects. To a certain extent, the Thai public is almost numb or have become “used to” petty corruption in everyday life. Small bribes are seen as semi-service charges to get the bureaucratic process moving. However, public attitude towards grand corruption however is much stronger than petty corruption. Especially among the educated public, information

<sup>11</sup> Sometimes competitors are in on the deal, too. By allowing each other to succeed in turn, all businesses gain a slice of the public pie, and public officials are brought under control.

<sup>12</sup> *Amakudari* may be offered for having given businesses preferential treatment, and those receiving are expected to secure further advantages for their new employer through their former co-workers. See: *Public Administration in East Asia: Mainland China, Japan, South Korea and Taiwan*, chapters 1 and 12.

<sup>13</sup> The top-rated countries are New Zealand (9.4, 1st), Denmark (9.3), Singapore and Sweden (both 9.2), Switzerland (9.0), Finland and The Netherlands (8.9). Source: [http://www.transparency.org/policy\\_research/surveys\\_indices/cpi/2009/cpi\\_2009\\_table](http://www.transparency.org/policy_research/surveys_indices/cpi/2009/cpi_2009_table) (accessed December 7, 2009).

on grand corruption evokes strong reaction – a seething anger and frustration over individual inefficacy to make changes.

By contrast, Scott provides this description of the situation in Hong Kong: “Overall, the public service in Hong Kong deserves credit for the way in which it conducts its business. Its officials are generally efficient, quite responsive and honest. There are rules that govern their behavior and which comply with the ethical standards that citizens have a right to expect of their public servants.” The experience of corruption is reflected in these different scores.

### **1.5.2 Ethics Management**

All countries have issues of corruption and unethical conduct, but their effectiveness at combating these varies. By and large, agreement exists today that effective ethics management involves clear and strong rules, programs of training and awareness, and vigorous and effective enforcement that is done with independence and impartiality. The chapters in this book support these propositions, but the question is, what factors impede countries from undertaking effective ethics management. It is instructive to examine the highest-rated country first, and then network toward lower ones. This strategy can be used to discern the absence of strategies as well as the presence of complicating factors in lower-ranked countries.

Hong Kong, the highest-ranked country or administrative district in this book, has made a strong and vigorous effort that is reflected in its high rating. Scott notes:

In Hong Kong, for the last thirty years, public service ethics have been dominated by the anti-corruption laws and by regulations and practices derived from them. So assiduously have the laws been enforced by the Independent Commission against Corruption (ICAC) that they have become a critical component of both the administrative culture of the civil service and the way that citizens view their government. Surveys show that the ICAC is trusted more than any other political institution or organization in Hong Kong.

Ethics management in Hong Kong is characterized by (i) precise anti-corruption laws, backed by detailed explanations of the law; (ii) a well-respected, independent, and competent enforcer (ICAC); and (iii) a variety of provisions in the civil service regulations, the common law, and Civil Service Bureau circulars, which are deliberately imprecise (or even platitudinous) but used with great vigor when specific events cause public concern.

Hong Kong adopted this stance in the late 1960s when riots “resulted from a spillover from the Cultural Revolution and disturbances represented a serious threat to the legitimacy of the government...” Corruption, in the police and elsewhere, had been a source of major concern. “The Governor decided to create an independent body and the ICAC began work in February 1974 armed with what have been described as ‘extraordinary’ powers, including the right to arrest, to detain, to search premises without prior court approval, and to freeze the assets of a person under investigation who had not yet been charged. It enjoyed wide support from the community notwithstanding some concern in both the courts and the legislature that its formidable powers might be abused.” Today, ICAC has a staff of 1263 persons that provide investigation, education, and other services. Scott provides many detailed examples. Turning around the ethical issues in Hong Kong took about 10 years.

ICAC also provides broad reaching education. Scott notes that the role of the ICAC – and what it means to accept an advantage – is one of the first lessons learned after joining the government. It is a message that is reinforced at various stages during the public servant's career.<sup>14</sup> As regards Hong Kong, until very recently, the highest levels of government were occupied by civil servants, rather than political appointees. This has recently changed, and people in Hong Kong are concerned about a possible erosion of ethics. But political appointees are the norm elsewhere, and are a source of ethical concern in countries such as Malaysia, where Beh notes that:

The common perception is that there may be little one can do about corruption particularly when it is embedded in the work systems and coexisting, the indifferent, powerful individuals who find the acts inevitable though offensive but profess innocence. Ineffective anti-corruption strategy and controls of corrupt behavior among civil servants and political leaders have not been able to remove the opportunities for corruption due to lack of political commitment and the ineffectiveness of the measures. The penalties for corrupt offences have not been prevalent as there seems to be a low probability of detecting corrupt offences and consequently the rewards for corruption are higher than the punishment for corrupt offenders... A criticism frequently made is that many of the arrests of corruption cases only involved the "small fish" (lower level of officials) and the "big fish" (syndicates, influential top bureaucrats, businessmen, and politicians) appeared unscathed.

Malaysia has seen a broad range of laws and rules, but the presence of selective enforcement and the absence of independent and effective law enforcement for all cases, has rendered progress at higher levels problematic.<sup>15</sup> Ethics laws are strongly enforced at lower levels of the bureaucracy, but not at the higher reaches. Beh also notes that "there is lack of trained and skilled staff to investigate the numerous allegations of corruption."

Macao's efforts at anti-corruption are recent. While the fight against corruption began in 1975, the High Commission Against Corruption and Administrative Illegality (HCACAI) was only formally established in March 1991. Kwong notes that, "it has its own innate defect that its functions laid down by the Organization Law stipulated that it could not carry out criminal investigation on corruption matters but only on matters of administrative nature because the legislature did not allow to vest related powers." The Commission Against Corruption (CAC) of Macao was established in 2003 and has only 109 people assigned to it. Additionally, the institutional or systematic nature of some forms of corruption (e.g., in hiring or land sales), linkages with powerful business and political interests, questioning of the impartiality of the CAC in recent cases,

<sup>14</sup> There are two principal booklets explaining what constitutes proper and ethical behavior, the *Civil Servants Guide to Good Practices* and *Ethical Leadership in Action: Handbook for Senior Managers in the Civil Service*. In both documents, the text goes into considerable detail about what it means to accept an 'advantage' – whether a 'red packet' at Chinese New Year may be accepted, whether the loan of a car is an advantage, whether taking part in a raffle may compromise official integrity and so on. Education and awareness raising occurs at all levels of the civil service.

<sup>15</sup> Additionally, a problem in Malaysia is the lack of transparency that forbids the release of information to the public that could expose wrongdoing. Beh writes that "government officials are prohibited from disclosing government information, including records of decisions and deliberations, as one could be charged under the Official Secrets Act. There is much to be lost as one could lose his/her job, pension and gratuity benefits in addition to the imprisonment of not less than a year but not exceeding fourteen years."

and civil service cultures that “tolerate and accept administrative ‘deviations’ as usual practices” affect the ranking, too. Kwong shows detailed regulations such as financial disclosure, conflict of interest, outside employment, punishments, as well as much effort to promote awareness of ethics. Undoubtedly, the recent nature of these efforts also contributes to the lower ranking.

Thailand also has a broad range of laws and institutions, and enforcement is selective and minimal. Yet, the need for enforcement is urgent because, as Bidhya writes, “The social impulse towards hierarchy and the *nai-phrai* relationship constitutes the basis for patron-client relationships or clientelism in modern Thai politics and administration.” Also, “national elections have been characterized by vote-buying and money politics. Corruption charges against government are rampant. Politicians try at all cost to be in government and consider being in the opposition as a loss. Politicians take turns becoming cabinet members. They move from one political party to another. New political parties are formed and joined by old faces. The new politician boss fosters an atmosphere of corruption, nepotism, and inefficiency in the ministry.... A major topic of discussion is the ethics and morality of Thai politicians. An honest, uncorrupted, and good politician is a rare commodity these days.” Juree also notes a lack of deep-rooted public values: “The Thai public sector in the past has not devoted time and energy to help public officials learn about public ethics so that ethical values and principles about public service would be well internalized by them.” There is little training and awareness.

Yet, the development of strong, independent anti-corruption authorities is also viewed with skepticism. “Those who have encountered adverse rulings meted out by accountability institutions often accuse the judges and commissioners of being biased and politicized. They accuse the judges of having been appointed by their political enemies.” Appointment to these positions provide significant benefits of power, privileges, and lucrative income beyond the normal retirement age in Thailand. Also, the enormous power of accountability institutions is seen to possibly obstruct the work of an elected government on legal grounds, hence, raising the question of “who guards the guardians?”

The situation is similar in the Philippines, where “rule of law itself is a concept that sits uneasily within the Philippine patron-client culture.” Yet, the Philippines have an additional complicating factor. Gonzalez writes:

conditions in the Philippines point to a systemic failure, where institutional safeguards work in fits and turns and reforms may not be working. Worse—in the clearest indication that the problem is embedded in the country’s heritage of clientelism—institutions are vulnerable to political capture by predatory interests. An inconsistently functioning legal system, weak accountability structures, and inadequate financial transparency are just some of the flaws that negate the country’s attempts at institutional effectiveness and credibility. As a result, scattered initiatives, including those in fighting corruption, left to run their own course, often run aground.

But the additional complicating factor is that the government institutions are weak: “it may as well also be acknowledged that the bureaucracy in the Philippines also suffers from severe cases understaffing, with an estimated 1.5 million civil servants servicing a population of over 82 million people. As it is, the bureaucracy also suffers from lack of funds, resources and facilities in the performance of their functions.” Beyond this, “compared to their Asian counterparts, Philippine presidents have the greatest depth of political appointments, totaling 11,000 positions, going all the way from cabinet secretaries down to assistant bureau directors.” In short, conditions and resources for effective ethics management are scarce. Nonetheless, Gonzales points to

numerous examples where, despite these problems, progress is being made, including increased auditing, stepping up anti-corruption activity in selected agencies (customs, internal revenue, and justice), going after tax evasion, and money laundering. However, changes in elections and campaign finance (and connections with powerful interests) have been hard to come by.

In conclusion, the chapters in this book provide a rich and compelling portrait of ethics in public administration. While unethical conduct lies in the nature of human beings and is found in all countries around the world, their manifestations and extent varies considerably, which, in turn, is shown to be related to the extent that ethics management can be pursued.

## **1.6 Performance Management**

The chapters in this book show considerable effort to improve the performance and competitiveness of public administration in the three countries and two administrative districts of this book.

### ***1.6.1 Five-Year Plans and Comprehensive Plans***

Thailand has a system of 5-year plans that lay out major initiatives and shape the direction of public administration in successive periods. The current, tenth 5-year plan (the first was adopted in 1963) emphasizes economic sufficiency and good governance, including improved administrative processes and governance, as well as excellence, “rightsizing,” and fiscal reform. Thailand also launched its third Government Administrative Reform plan, which further develops these aspects.

Malaysia also makes use of long-term plans and policies. At the launch of the Sixth Malaysia Plan in 1991, then Prime Minister Tun Mahathir Mohamed postulated his goal for Malaysia to become a fully industrialized and developed nation by the year 2020. The Third Outline Perspective Plan, also known as the National Vision Policy (NVP, 2001–2010), has been the latest 10-year policy governing Malaysia with similar broad goals and objectives. Five-year development plans, derived from these, are prepared by the Economic Planning Unit, which falls under the purview of the Prime Minister’s Office of Malaysia. Public consultations are increasingly conducted as part of the formulation. Execution and monitoring is done by the Implementation Coordination Unit (ICU), also falling under the Prime Minister’s Office.

In Macao, the government announced in 2007 a road map for administrative reform that emphasizes balanced development, re-establishing civil service values, strengthening the interaction between the government and the public, improving the organizational structure, and solidifying the inter-related responsibilities among the government, civil servants, and the public. The road map places a lot of emphasis on building up social capital as well as cultivating constructive and productive civil service values and beliefs. Bolong assesses that “so far, the reform roadmap has only achieved limited results in the areas of government restructuring, policy-making training, and improvement in efficiency.”

### ***1.6.2 Structural Changes***

Hong Kong has adopted a wide array of institutions to deliver public services. The trend has been toward moving away from traditional bureau-type agencies toward more hybrids that allow greater flexibility while attempting to ensure accountability. These changes have seen the number of civil service posts shrink from a high of 190,000 in 1990 to about 160,000 in 2008. Thailand, too, has moved to a broader range of public organizations. Tippawan and Ponlapat note that in

the past, there were only two main types of organizations in the Thai public sector, government agency and the state enterprise. Now, “there are many kinds of public agencies in the Thai public sector, ranging from the lowest level to the highest level of autonomy, as follows: government agencies, service delivery units (SDUs), public organizations (POs), autonomous organizations, state enterprises, public company limited, and independent agencies under the constitution.” Many of these operate with increased autonomy, and have their own establishment act.

### **1.6.3 New Public Management**

Throughout much of the world, the overarching framework for improving performance in the last decade has been new performance management (NPM), with its themes of greater citizen and customer responsiveness, performance measurement and accountability, and services streamlining. Process-re engineering, e-government, and re-organization (with some measure of agencification and contracting out) are the widely used strategies. Strategies for improving individual performance are discussed below, in the section on the civil service.

Cheung notes that performance management began in Hong Kong in 1992 with performance pledges and the establishment of an Efficiency Unit. A program management system was instituted in 1993, requiring each department to establish performance measures and targets for its programs. These evolved into separate effectiveness (service quality) and efficiency measures. Reports are annually submitted to the Finance Committee of the Legislative Council. In 2002, the budget processes emphasized relating resource allocation to performance and policy results. In recent years, the emphasis has been to:

- Focusing on the changing needs of the community
- Shifting from a process-oriented approach to a customer-oriented approach
- Developing the management system to cater for continuous changes
- Recognizing the effort and flexibility of government departments in supporting changing policy objectives
- Measuring performance for government units involved in delivering integrated services
- Linking up budget with performance result
- Adopting a life cycle perspective for continuous improvement

Still, Cheung concludes that despite a decade of practice, serious questions remain. Performance measures are not always used or quantified, do not always address program outcomes, and have unclear or misleading information. There are problems with inter-departmental coordination, spending does not always reflect “budgeting for results,” and pay for performance schemes have been rejected. Citizens seem more satisfied, but their involvement and participation is minimal.

E-government is used in many countries. Ponlapat and Tippawan state that in Thailand, after Thaksin Shinawatra came to the power in 2001, there was a big leap in information technology usage in the public sector. He attempted to launch many e-government projects, i.e., e-auction, smart card, and GFMIS (Government Fiscal Management Information Systems). During 2001–2006, the government under Thaksin had spent approximately 90,000 million baht (about \$2.5 billion) for e-government projects. In 2002, the Thai cabinet made a resolution that every department and state enterprise had to procure through e-auction and report the progress of implementation to the Office of Prime Minister every 3 months. However, an evaluation finds that “many e-government projects during the Thaksin government were influenced by modern technology rather than the real needs of the people.”

Thailand also uses Performance Agreement as a tool for monitoring and evaluating the performance of government agencies. The concept of the Balanced Scorecard has been applied as a framework of performance evaluation. The number of agencies that implement knowledge management, including Communities of Practice, is increasing (from 46.8% in 2001–2005 to 76% in 2006), but only 34.3% of implementers fully use knowledge management, whereas 41.1% of implementers use it with limitations.

In the area of budgeting, Thailand has had an excellent record of budget control. Public debt in Thailand has been quite low by international standards. The core objective of the budget reform in Thailand was to reduce centralized budget control by granting spending agencies more flexibility in their spending. Ponlapat and Tippawan describe how in 1999, the Bureau of the Budget agreed to ease detailed central control over spending agencies by reducing some line-item details in their budget allocations and moving toward block grants on the condition that the spending agencies must be able to pass seven hurdle standards. Slow progress was actually the problem in Thailand because the hurdle standards were set at such a high level that hardly any organization could fulfill them. Being dissatisfied with the pace of progress, the Thai government decided that all ministries and agencies (not just pioneers) would move to the new performance-based budgeting system—which was now termed the strategic performance-based budget (SPBB). This became effective in fiscal year 2003. In the SPBB framework, the first 4-year Government Administrative Plan was implemented in 2005. The plan was divided into nine strategies, and agencies need to show how their spending furthers these goals.

In Malaysia, the Administration Modernization and Management Planning Unit (MAMPU) is tasked with administrative modernization and human resources planning. Interest in modernization started early. In 1982, MAMPU launched a campaign based on Islamic values, which included calls for a clean, efficient, and trustworthy public administration. Performance reports were first introduced in 1979, and in 1982, the Anti-Corruption Agency (ACA) was also established under the Anti-Corruption Act. In the late 1980s and early 1990s, under the Excellent Work Culture, the civil service was to be transformed into a more customer-focused, result and performance-oriented, responsive, accountable, and innovative public service, and a broad range of total quality management (TQM) and NPM reforms were introduced such as quality circles, and a very broad range of e-government initiatives. The early 1990s saw the introduction of revision in procedural matters of the public service delivery system, and a landmark initiative in 1996 was for Malaysia to require its entire Government machinery to adhere to ISO standards, the first country in the world to do so. Yeoh assesses that “collectively, performance management reforms in Malaysia have resulted in improving efficiency at the bureaucratic and public service delivery system levels.” Yeoh cites a range of competitive rankings showing how Malaysia’s ranking has improved in the world.

Domingo and Reyes note that performance management has long been a fixture in the Philippines: “Since the Independence period, reform measures and program towards streamlining the bureaucracy have been a continuing effort and various measures have been adopted and legislated to promote the performance of the bureaucracy in the Philippines.” In recent times, these have focused on “reorganization, streamlining, reengineering, reinventing, performance management, and quality management, among others.” They conclude that “the shift to results-based management is gaining ground in the Philippines,” and their chapter includes many examples of improved service quality and responsiveness to citizens. Still, the development of indicators and measurement still needs attention. But they also point to a broader issue: “The recent economic crisis in the United States indicates that a ‘minimalist state’ is not necessarily the desirable reform measure for government. NPM methods are proving useful in the



Philippines for the moment but the government must be open to discover new methodologies to achieve optimum results.”

By contrast, Macao has been lagging in NPM initiatives, adopting them only since the hand-over in 1999. Performance pledges were first adopted in 2001, but despite efforts, chief executive Edmund Ho indicated in 2005 that “conservative bureaucratic culture still existed stubbornly in some government departments and that their service delivery had derailed from the concept of putting people first.” The key problems noted are lethargy, lacking meritocracy, small group politics, corruption, and non-responsiveness. Privatization is not part of the Macao performance management strategy. Relative to other governments, Macao has taken only a few steps toward NPM.

In conclusion, how successful are the performance management efforts? In many ways, the experience is consistent with that of elsewhere. While important and necessary gains have been realized in dealing with customer service and efficiency, and use of e-government, many of the larger issues have gone unaddressed. This concerns not only inherent problems in applying these tools to the public sector, but the broader issue that is succinctly stated by Mangahas: “there are definitely a critical mass of good performers in the system. However, political interference, political patronage, and governance issues are major stumbling blocks to government efficiency and effectiveness.” The case may be exacerbated in the Philippines, but the basic pattern is evident almost everywhere. This sentiment is echoed by Cheung in Hong Kong, who states: “Judging from the rather ambiguous and even superficial way in which performance measurement is put to use in Hong Kong, the lesson seems to be that unless the various stakeholders in government genuinely believe that performance measurement represents a fairer, more reliable, and generally more effective process to drive resource allocation, performance evaluation and reward decisions, it will continue to exist more on paper as a managerial rhetoric than as an effective tool to inculcate a fundamental shift in organizational thinking and behavior.”

In Thailand, too, “a meaningful budget reform cannot be achieved simply by relying solely on technical improvements. Technical improvements are good innovations, but they are inadequate. The role of Parliament in the budget process must also be strengthened in order to ensure that the budget policies, priorities, outputs, and outcome are actually responsive to the needs of the people; this means that the political aspect of performance budgeting reform must be taken into account as well.” Likewise, “considerations regarding political policy, approach, and intervention need to be reviewed for a successful performance management reform.” In Malaysia, Yeoh writes, “The last decade has seen numerous attempts at enhancing public administration. In recent years, however, Malaysians have observed acutely the manner in which public administration regulations are hampered by political influence.” In Malaysia, this interference is seen as a result of corruption, and a lack of inclusiveness and transparency in Malaysian public decision making. Yeoh notes that without the ability to correct these problems, “it is difficult to push for public administration reform.”

The conclusion seems inescapably clear that the next round of reforms need to address the bigger targets.

## 1.7 Civil Service

The quality of public service is obviously impacted by the quality and motivation of public service personnel. As in the rest of the world, concern for these aspects is reflected in strategies related to recruitment and selection, pay and incentive strategies, and training.

### **1.7.1 Size**

In Malaysia, according to Manaf, during the early “Post-colonisation era, the civil service formed the largest employment in the country, employing about 300,000, or 16 percent of total employment. In 1997, the number reached almost 700,000. Today, if the armed forces and police force are included, the Malaysian civil service numbers about 1.2 million employees for a population of about 27 million. Thailand has about 2 million civil servants for a population of about 65 million. In both Thailand and Malaysia, the civil service makes up about 3% of the total population, but in the Philippines about 1.5 million civil servants serve a population of 92 million people, which is only 1.6%. Macao has about 21,000 civil servants for a population of about 0.5 million, though the additional number if contract employees is thought to 30%–50%. Hong Kong has 160,000 employees for a population of 7 million, but relies increasingly on state-owned enterprises and contract services. Hong Kong’s civil servants do not include most teachers, who work in the state-subsidized private school system, or most medical personnel, now employed by the Hospital Authority. By comparison, in the United States about 20 million people work for government (civilian workers) out of a population of about 309 million, which is about 6%, and a significant amount is additionally contracted, perhaps doubling this number.<sup>16</sup> Hence, by most accounts, the relative size of the public service is modest in Southeast Asia.

### **1.7.2 Recruitment and Selection**

Historically, the civil service in Thailand, Malaysia, and Hong Kong is seen as a collection of the nation’s best brains to guide the country. Even if expectations have fallen short, entry has remained highly competitive. While concerns about the ability of the public service to lead nations in the modern age are increasingly common, selection into the civil service remains highly competitive. Thailand has a civil service examination, and in July 2009, amidst the economic downturn, more than 500,000 people applied for the competitive examination for less than 10,000 vacant positions in various departments. In Hong Kong, being a civil servant is the third highest prestigious occupation, behind doctor and teacher, slightly ahead of politician and businessman. In recent years, hiring has been sparse, as Burns states that “entry into Hong Kong’s civil service is highly competitive and for the most prestigious posts (e.g., in the Administrative Service) requires... passing a battery of examinations, tests, and interviews with a success rate of no more than 0.2 percent.”

In the Philippines, of the 132,602 who took the civil service examination in 2008 (professional level, i.e., university degree holders), 12,279 or 9% passed. At the sub-professional level, 4,707 or 13% passed out of 34,521 takers. Pay is not too good, and while “civil service appointment is competitive. The system, nonetheless, does not necessarily attract the best and the brightest despite efforts to do so.”<sup>17</sup> In Macao, caps have been placed on civil service hiring, but exempt contracts are given instead, which are often renewed. Also, Yu writes that, “many civil servants received inadequate education. Before the handover, nearly half of Macao’s civil servants received only a secondary school education or below... and many low-rank Chinese officials were promoted to senior positions to fill up the vacancies left by the Portuguese. However, many of them did not possess sufficient management experience.”

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<sup>16</sup> The amount of off-budget jobs is large; Paul Light estimates an additional 8 million jobs in 2002 for the federal workforce alone ([http://www.brookings.edu/articles/2003/0905politics\\_light.aspx](http://www.brookings.edu/articles/2003/0905politics_light.aspx)).

<sup>17</sup> Private communication from Joel Mangahas, December 2009.

### 1.7.3 *Pay and Performance*

Pay varies greatly. In Hong Kong and Malaysia, within the private sector the pay is competitive. In Hong Kong, rewards at the top have been exceedingly generous,<sup>18</sup> and Burns writes, “salaries in the civil service compare well with those in the private sector. Indeed, controversies in Hong Kong have focused claims that the civil service is over-paid compared to the private sector, not under-paid.” In Malaysia, Manaf writes, “over the years, civil service pay in general has much improved, although it will never be able to match the salaries of the larger corporations of the private sector... with the 2007 increase, civil service pay has become more comparable, if not better than the private sector.” Yu writes that Macao civil servants’ pay is very competitive and attracts many citizens applying for a position in government.

But in Thailand, Piyawat writes that “pay difference between the civil service and the private sector is one of the most challenging factors under the compensation system. The current entry level pay gap between the two sectors is approximately 20% for bachelor degree graduates in the field of social science... and climbs to about 40% for master degree graduates.” In the Philippines, “bright and talented young people seldom consider a career in the government. It is publicly perceived that the government is a poor employer in terms of pay, job satisfaction and career growth... (but) past reform efforts have steadily and significantly changed working conditions in the civil service. Government pay is now relatively at par with the private sector, at least for the first and second level positions.”<sup>19</sup>

Thailand like other countries has introduced a system of merit increases, which are conducted twice a year. Interestingly, Hong Kong has rejected pay for performance schemes because it finds them too difficult to implement. “In the absence of performance-based pay arguably the incentive for civil servants in Hong Kong to work hard is promotion and in 2006 more than 1,100 civil servants were promoted to middle and senior management and professional positions out of a total of some 33,000 or so positions in this range. Promotion opportunities are relatively few and highly sought after, in part because most civil servants have already reached the top of their current rank pay ladder.”

Lam writes that prior to changes, Macao’s employee performance assessment system involved 11 categories and that punishment for having an “average” or “poor” performance was quite harsh. However, this system did not lead to better performance, because in practice, assessors became lenient, consequently undermining the purpose of the assessment. As a result, legislators and scholars criticized civil servants for covering up poor performance and giving out “good” or “excellent” ratings as the norm. In 2004, rating categories were changed. Employees obtaining the “excellent” rating are rewarded with either a 10-day paid vacation or prize money equivalent to half a month’s pay. Those receiving the “excellent” or “very satisfactory” ratings will have their contract renewed, but those rated “slightly dissatisfactory” will have to go through a performance improvement process, including retraining, job redefinition, or job reallocation, and potential internal transfer or transfer out. Those rated “dissatisfactory” are investigated and those creating difficulties during the investigation will have their contracts terminated for pre-emptive reasons. While the evidence is still out on the effectiveness of this new scheme, the experience, not unlike elsewhere, may be that periodic changes are necessary.

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<sup>18</sup> Hong Kong’s Chief Executive is the second highest paid in Asia (after Singapore), earning \$5.15 million per year plus benefits, in 2008.

<sup>19</sup> C. De Leon, “Reforms In The Civil Service The Philippine Experience.” <http://unpan1.un.org/intradoc/groups/public/documents/un/unpan007437.pdf> (accessed December 7, 2009).

Interestingly, managers and staff in Hong Kong have resisted pay for performance plans, noting that “there is widespread reservation and skepticism on the feasibility and practicability of introducing performance pay in the civil service” and few, if any, success stories from overseas experiences. Instead, in Hong Kong the belief is that promotion is the reward for performance. However, such decisions often reflect considerations of seniority and promotion opportunities are scarce: “In the absence of performance-based pay, arguably the incentive for civil servants in Hong Kong to work hard is promotion and in 2006 more than 1,100 civil servants were promoted to middle and senior management and professional positions out of a total of some 33,000 or so positions in this range.” Also, by 2008, various government agencies had hired 16,000 employees as “non-civil service contract staff,” which include fixed-term appointments, no automatic salary increments, and no possibility of promotion.

### 1.7.4 Training

Malaysia and Thailand have huge, well-respected, central training institutes. Founded in 1972, the Malaysian National Institute of Public Administration (INTAN) provides training for the whole public sector, with courses in areas such as economic development and policy management, quality management, financial management, information technology, and languages. Throughout the 1990s, INTAN played a major role in enhancing awareness and commitment toward quality and continuous improvement among public sector employees, and this was followed by realignment in its courses toward achieving Vision 2020. INTAN also plays a central role in the selection and training of the Malaysian Administrative and Diplomatic Service (ADS). As Manaf writes:

Short listed candidates will first sit for a written test which covers topics on general knowledge about Malaysia and its environment, problem-solving skills, comprehension, and written essays in English and Malay language. Those who fared well in the exams will be short listed to attend the PTD Assessment Centre (PAC). The PAC is a three-day programme and is held in all INTAN campuses throughout the country... Being appointed as an ADS officer is just the beginning as there are four more stages that an ADS officer has to go through upon gaining entry into the service; the first being a ten-day course called “PTD *Unggul*.” The course serves as the foundation course in educating ADS officers on the need to subscribe to an excellent work culture and the role they have to play in fulfilling the aspirations of the nation and its stakeholders. At the end of the course, the young recruits are made known of their job assignments and which ministries or departments they are attached to, be it at the state or federal level. And so begins the next phase of the career path of an ADS officer, where he or she will then undergo a six-month on-the-job training. The six-month stint is next followed by the compulsory requirement to attend another six month of Diploma in Public Administration (DPA) course at INTAN’s main campus in Bukit Kiara. The DPA course not only stresses on the academic aspect of public administration, but also emphasises on elements such as discipline and character building in order to mould a “super” ADS officer.

In Thailand, the National Institute of Development Administration (NIDA) provides much of the graduate education in public administration for the Thai civil service. For example, its Master’s in Public Administration program has over 2000 students throughout its various campuses. By contrast, training in the Philippines’ civil service is supply driven. “It is usually tied

to development assistance or a meagre training fund in the government budget. Due to limited finance support over the past years, training receives the least priority. The level of competence across the civil service system is uneven, but there are definitely a critical mass of good performers in the system. However, political interference, political patronage, and governance issues are major stumbling blocks to government efficiency and effectiveness.”<sup>20</sup>

While numerous reforms have been undertaken, progress seems slow. While pay is sometimes a factor, the broader concerns of motivation and providing meaningful consequences still seem inadequately addressed.

## 1.8 Conclusion

The countries and two administrative districts in this book face a range of similar issues. All have local culture, legacies, and the commitment to progress, which affect public administration.

Regarding culture and legacy, the role of hierarchical relations and personal ties is strong in Southeast Asia, which give way to strong client-patron relations leading to favored network relations, patterns of advancement and appointment. Key relationships are often first personal, then professional, and other local norms also support strong client-patron relations. Hong Kong is unique in that the formation of its bureaucracy pre-dated significant population growth and the bureaucracy was able to successfully resist efforts to bring it under the influence of key client groups. Colonial legacies exist in the administrative cultures and practices that were established and still endure. The British legacy involves creating a civil service culture based on merit, a reluctant but nonetheless certain provision of infrastructure (transportation, schools, sanitation), and population policies that have led to enduring racial tensions. (Hong Kong is rather the exception to the latter, though divisions are present there, too.) The Latin legacy is indifference to public purpose, of using public offices for private gains, and of exceedingly weak management. The American legacy is minimal, mainly as policies to further merit and professionalism in organizations. Culture and enduring legacies are the essential templates for understanding some of the problems and strategies in public administration today.

All authors also describe the modern public administration challenges of structural reform (inter-governmental relations), ethics, performance management, and the civil service. While we do not seek to summarize the above here, the inescapable conclusion is that political interference and political corruption affects the efficacy of public administration. For example, while important and necessary gains have been realized in using performance management strategies, further progress depends on meaningful governance reform. The ethics ranking of many Southeast Asian countries is low, but while meaningful and effective ethics management strategies are known, the key barrier is independent and impartial enforcement by anti-corruption agencies.

Decentralization has developed in the last 20 years as a major force for development, yet all three countries have a strong tradition of centralization and the ability to achieve decentralization depends on both the willingness of central governments to relinquish control and the ability to build up effective local governance—both of which are preminent political questions. While numerous civil service reforms have been undertaken, progress seems slow and dependent on political questions about the size of the workforce and the ability to use meaningful consequences and efforts to build up competency.

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<sup>20</sup> Private communication from Joel Mangahas, December 2009.

Hong Kong is an exception—an outlier—in much of this. The comparative analysis shows that its significant achievements in ethics and performance not only rest on its use of public administration strategies, but also (if not more) on the absence of conditions that create the above circumstances. Hong Kong is unique in that the formation of its bureaucracy pre-dated significant population growth and the bureaucracy was able to successfully resist efforts to bring it under the influence of key client groups. The situation in Hong Kong is unique and probably not replicable. Yet, as reforms in Hong Kong have now increased the role of political appointees, and as the grip of Mainland China grows stronger, it seems likely that some of these circumstances will likely increase in significance in Hong Kong, too.

Rather than the above suggesting any inherent difficulties in the public administration of this region, it shows, at least for me, the limits of current public administration theories to address the situations that are common in Southeast Asia. The problem of personal relations and political corruption are certainly not unique to this region, but solutions for addressing these problems have not been well developed in either traditional or NPM public administration theory. The United States and the UK have these challenges to a seemingly lesser extent owing to the British legacy of professionalism and the absence of strong client-patron ties as a cultural trait. However, other western countries, such as Italy and Spain, also have different cultures and quite similar problems, as they do in Africa and other parts of the world. The wide occurrence of these problems seems *prima facie* evidence that the problems rest in theory rather than in region. The theories developed in the United States and the UK do not adequately address these problems; indeed, they do not address problems of systematic corruption in their own countries, as well as the managerial mediocrity stemming from thousands of political appointees in the United States. Ironically, then, these countries also show us the limits of current public administration paradigms, and the need to extend these in new ways.

The time has come to develop new practices and theories that better integrate public administration with political processes and human behavior in ways that begin to address these challenges. The extent to which scholars and practitioners in Southeast Asia are able to extend and innovate existing public administration paradigms will go a long way toward improving the conditions and development of their peoples. There is good reason, in common challenges, for public managers everywhere to be looking globally these days.<sup>21</sup>

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<sup>21</sup> This sentence is taken from *Public Administration in East Asia: Mainland China, Japan, South Korea and Taiwan*, chapter 1.



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# THAILAND

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*Ponlapat Buracom*  
Coordinator





## Chapter 2

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# History and Political Context of Public Administration in Thailand

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Bidhya Bowornwathana

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## 2.1 Introduction

The practice of public administration in Thailand is a product of a long evolutionary process dating back at least 800 years. It is a mix of five systems of public administration that were designed by five “masters” of the Thai bureaucracy. These “masters” are: kings, military elites, politicians, big businessmen, and citizens. While each new master tries to implement his own version of public administration, the legacies of past public administrations with their own traditions, culture, and values linger on. Therefore, the present public administration in Thailand manifests characteristics of all five systems of public administration (see Appendix A for a chronological development of public administration in Thailand).

The history of public administration in Thailand is conceptualized as a continuing manifestation of the struggle for power among these five masters. The strength of each master changes in the course of time. At any particular moment, the stronger masters are likely to overshadow the weaker ones. It is within this unique political context that public administration has developed for eight centuries in Thailand.

This chapter is divided into three parts. The first part outlines the historical development and legacies of the five systems of public administration: kings as master; military elites as master; politicians as master; big businessmen as master; and citizens as master. The second part summarizes the traits of governmental culture that have evolved from the five masters of the Thai bureaucracy. The third part explains the unique political context of public administration in Thailand.

## 2.2 Historical Developments and Legacies

### 2.2.1 *Kings as Master (1238–1932)*

Thailand was under the rule of absolute monarchs for 700 years. In 1238, independent city-states were weakened with the establishment of absolute monarchy under a powerful Sukhothai king. From then on until 1932, public administration was under the rule of absolute monarchs: from the Sukhothai period (1238–1438) to the Ayudhya period (1350–1767), the Thonburi period (1767–1782), and the early Bangkok (Ratanakosin) period (1782–1932). It is therefore a long tradition for Thailand to have “kings as master.” Kings who were founders of dynasties were warrior kings who fought battles to amalgamate neighboring city-states or expel foreign attacking forces such as the Burmese invaders. After victory, they then proclaimed themselves as kings and embarked on their own dynastic rule. Successive kings of a dynasty were sons or bloodlines of former kings.

Siamese kings and court nobles set up the royal bureaucracy as an essential instrument to exercise control and administer the country (Graham 1912, 237–96; Wales 1934, 69–101; Reeve 1951, 60–63; Damrong Rajanubhab, 1927). The king appointed royal kinsmen and court nobles to all high positions in the royal bureaucracy. Bureaucrats were royal servants (*karachakan*) who served the absolute monarch. In theory, the Siamese kings had absolute power to appoint, promote, and dismiss all royal servants according to ancient laws and traditions. In practice, the power of the monarch was sometimes challenged by princes, nobles, and local provincial elites. The struggle for high positions in the royal bureaucracy took place in the palace among the various patrons and factions of the royal kin and court nobles (Wyatt, 1976).

During seven centuries of absolute monarchy, major government reforms took place that laid the foundations for the present public administration. From that long period, several legacies linger on till now.

### 2.2.1.1 First Legacy: The Tradition of King as Leader

“The King as Leader” is part of Thai traditional political culture. There are two models: the Father King and the Divine God King. The legacy left by the Sukhothai period is the Father King or *Paw Kun* model, which portrayed kings as paternalistic and benevolent Buddhists. The father-figure king ruled in accordance with the ten Buddhist virtues, called *totsapit raja dharma*. Under the father-son administrative system, the Sukhothai kings were like a father to the bureaucrats and the Thai people. The father-figure king exemplifies a good king. The current monarch, King Bhumibol Adulyadej or Rama IX, is also regarded as a “Royal Father” (*Paw Luang*) by Thais.

Conversely, kings of the Ayudhya period were seen as divine god kings. Not only were they Buddhist kings who ruled according to *dharma*, but they were also *devaraja* or god-kings whose sacred power was associated with the Hindu gods Indra and Vishnu. The administrative system changed from the father-son model of the Sukhothai era to an administration based on divine right that owed its origins to Cambodian and Hindu influences. The concept of divine kingship meant that the king was like a semi-god worshipped by the people. The king was master, and the rest, including bureaucrats, were his servants.

The Ayudhyan bureaucracy consisted of a complex hierarchical administrative system of ranked and titled officials, all of whom had varying amounts of *sakdina* (assumed landholding by rank) (Phumisak, 1957). From the Ayudhya period to the reign of King Rama IV in the Bangkok period, royal bureaucrats, freemen, and slaves would have to prostrate themselves in front of the king; they were not allowed to look at him (Rabibhadana, 1976).

King Bhumibol Adulyadej or Rama IX (1946–present) is the longest reigning monarch of Thailand. His Majesty is much loved and revered by the Thais (Suwannathat-Pian, 2003). His development role through thousands of royal projects has brought the monarchy close to the people. He has strictly maintained his figurehead role as head of state, except in times of extreme political crisis, when he has come to the rescue. For instance, during the 1973 student-led mass demonstrations, the king asked Field Marshals Thanom and Prapass to go abroad; in May 1992, following mass demonstrations against General Suchinda, the king had to step in as arbiter by summoning General Suchinda and his rival Lieutenant-General Chamlong to an audience shown on live television; and during the Thaksin crisis in 2006, the king told senior judges in an audience to solve the nation’s political crisis by using legal means.

To be a strong king, one has to be both a father and divine god to the people. Nowadays in Thailand, there are practices that indicate that the idea of seeing the king as divine god is very much alive. Thais worship the king’s portrait at home. Buddha amulets are sometimes made with

the king's emblems. Royal customs regarding the birth, marriage, and cremation of the king and royal families indicate strong divine god tradition. Dissatisfied with elected politician bosses, Thai bureaucrats will identify themselves as *karachakarn* (royal bureaucrats) of the king, not of the elected minister. When a bureaucrat passes away, it is a tradition for his relatives to inform the king of his death ("to ask for his majesty's permission to die"). If you are a high-level bureaucrat, you will receive a "prestigious" gold-plated royal urn according to your rank in the bureaucratic hierarchy. Graduates of all public universities in Thailand receive their diplomas from His Majesty or from his representative (usually the crown prince or one of the royal princesses). All land in Thailand technically belongs to the king. A royal-sponsored wedding is considered to be prestigious and an honor to the families of the bride and groom. The royal decorations a bureaucrat is entitled to depend on his rank in the bureaucratic hierarchy. Another consequence of the divine god tradition is the controversial and sensitive *lese majeste* issue. Thai constitutions specify that it is not allowed for anyone to criticize the monarchy. In Thai politics, *lese majeste* has sometimes become a political instrument for a party to level accusations against its opponents.

### 2.2.1.2 *Second Legacy: A Tradition of Authoritarian Rule, Centralization, and Big Government*

The second legacy is the practice for rulers to expand the bureaucracy and enhance the grip of a few ruling royalty and court nobles over the bureaucracy. For seven centuries, Thailand was under the rule of a small group of royal kin (*chao*) and court nobles (*kun nang*). The king would appoint his favorite relatives to become "master of the department" (*chao krom*), who would have a free hand in managing their organizations. However, the king had absolute power to appoint and remove persons to these senior positions anytime he wanted (Englehart 2001, 12–13; Crawford 1915, 121; Bowring 1857, 93–169; Terwiel 1989, 251).

From the Ayudhya period to the reign of King Rama IV of the Bangkok period, the central administration consisted of two great ministries: the defense ministry (*kalahom*) headed by the *samuha phra kalahom* minister whose jurisdiction covered the South, and the interior ministry (*mahatthai*) headed by the *samuha nayok* minister covering the North and the East. The other four ministries were the *phra klang* (finance) in charge of territories south of the capital; the *krom muang* (capital) looked after the area around Bangkok; *krom wang* (palace) ministry was in charge of royal ceremonies, royal administration, and legal disputes; and *krom na* (cultivation) ministry of "rice fields" or lands oversaw rice and crops cultivation, and supplying food to the capital. This model of six ministries was originally implemented by King Baromtrailokanart in the Ayudhya period (1448–1488) (Dhiravegin 1992, 22–62).

On April 1, 1892, King Chulalongkorn or Rama V introduced a major structural reorganization of government. The original six ministries were replaced by twelve ministries: interior, defense, foreign affairs, royal household, metropolitan, agriculture, finance, justice, war, public works, public construction, and privy seal. The first cabinet in 1892 consisted of nine of the king's sons and three court nobles.

During the time of absolute monarchy, the king would appoint his brothers, cousins, and relatives to high positions in these ministries. It was customary for the king to have many wives and children. As the royal bureaucracy expanded, there was more need for princes to fill in positions in the ministries. For example, Kings Rama I, II, III, IV, and V had 42, 73, 51, 82, and 77 children, respectively (Premchit 1971, 70–72, 180, 237, 342, 471, 525). Kings would send their sons to study abroad in various fields of study with the expectation that they would help the king run the country once they graduated. Some examples are given.

HRH Prince Rachaburi Derekrit, the fourteenth son of King Rama V, was sent to study law at Oxford University in England. Among other things, he became the minister of justice and is known as the “Father of Thai Law.” HRH Prince Mahidol Adulyadej, prince of Songkhla, was the sixty-ninth son of King Rama V who was sent to study at a military academy in Berlin. Later he went on to study medicine at Harvard University. He is known as the “Father of Thai Medicine.” His Royal Highness Chumporn Ket Udomsak, the thirty-first son of King Rama V, studied at a navy school in England and became the Navy commander. He is known as “the Father of the Navy.” His Royal Highness Chiraprawat Voradej, the seventeenth son of King Rama V, studied military science in Denmark and became minister of defense. He is known as “the Father of the Army.” His Royal Highness Kittiyakorn Voralak, the twelfth son of King Rama V, read oriental studies at Oxford University and later became minister of commerce.

For seven centuries under absolute monarchy, administrative power was centralized in the hands of the king. The idea of an authoritarian rule under a single center of power is deeply rooted in Thai political and administrative history. Western ideas about a society with strong local government, an active civil society, and non-governmental organizations (NGOs) are something new to Thailand. Recent efforts to introduce decentralization have faced strong resistance from the traditional Thai bureaucracy, especially from conservative bureaucrats in the Ministry of Interior.

Government centralization reached its heights during the reign of King Chulalongkorn or Rama V (1869–1910). During his 42-year rule, King Chulalongkorn successfully centralized public administration. First, the enormous power of court nobles such as the Bunnag family at the beginning of the Bangkok era was gradually curtailed. Second, western-style ministries were introduced. King Rama V appointed his sons and cousins to run these ministries. Third, King Rama V consolidated his power in the capital and provinces by setting up a modern civil service system with remuneration. He abolished the practice of assigning bureaucrats to oversee the provinces without remuneration and gave them the right to extract taxes from the people as much as they wanted as long as their tax collection met the minimum requirement set forth by the king. Fourth, he replaced provincial rulers with salaried bureaucrats answerable to the Ministry of Interior in Bangkok. Fifth, a modern army under his command was established to maintain national security and suppress unrest in the provinces. Sixth, he abolished slavery and corvee, thus creating the opportunity for increasing numbers of freemen to enter the bureaucracy and the economy (Wales 1934, 21–68).

A further effort to centralize government during the reign of King Rama V was to organize provincial administration. King Rama V introduced the regional system (*monthon tesabhiban*) by dividing provinces into 18 regions (Damrong Rajanubhab, 1966; Wales 1934, 107–34; Bunnag, 1977; Noranittipadungkarn, 1984). Below the regions were cities (*muang*), districts (*amphoe*), sub-districts (*tambon*), and villages (*mu ban*). At the *tambon* and village levels, elections of sub-district and village headmen were held on a trial basis. Provincial governors were under the close supervision of the regional officials. They could no longer practice *kin muang* (or the practice of “eating cities”), which provided a free hand to the provincial leader to run the provinces and collect taxes at will. Limited local government was experimented with by introducing sanitation administration.

Nationalism also helped tighten centralization. King Vajiravudh or Rama VI (1910–1925) introduced “official nationalism,” which incorporated old symbols of monarchy and new symbols of nation. By instilling a strong sense of nationalism, local and regional ethnic identities were broken down. There was strong anti-Chinese sentiment. Provincial elites were sidelined.

Considering that Thailand has had a long and strong tradition of authoritative rule, centralization, and big government, it is not surprising to find how difficult it is to introduce western-style governance reform into the present Thai public sector. Efforts to disperse political and

administrative power, to introduce decentralization and foster strong civil society, and to downsize the central government, are policies that run counter to Thai government traditions and culture.

### 2.2.1.3 *Third Legacy: Traditions of Hierarchy and Clientelism*

By the early Bangkok period, everyone in the kingdom was ranked in a system of official hierarchy called *sakdina* (“dignity marks” or “power of the fields” or “landholding”). At the top of the hierarchy, the king’s *sakdina* was infinite. Royalty had *sakdina* ranks from one hundred thousand down to five hundred *rai* of land. Officials had ten thousand to four hundred *rai*. Ordinary commoners (*phrai*) had *sakdina* of ten to twenty-five *rai*. Slaves and beggars had five *rai* (Englehart 2001, 26–27). In addition to landholding ranks, the king also assigned titles that gave the bearers (*nai*) the right to command manpower (*phrai*). *Phrai* were mostly farmers who were used by their *nai* (master or superior) to cultivate fields for him. The *nai* kept track of his *phrai* and made their labor and resources available to higher levels of government (Englehart 2001, 38). He also gathered unmarked *phrai* to bring them into the official hierarchy. In fact, the *nai-phrai* system was an organization of manpower for defense against invasion. The *nai-phrai* hierarchical system also laid the foundation for social class differentiation in Thailand.

This legacy of hierarchy and clientelism helps explain why present-day Thais are very conscious of their positions in the social and administrative hierarchies. The bureaucracy is organized into a hierarchical pyramid. The bureaucratic system gives meaning and support to status (Siffin 1966, 151–168). People who come into contact with the bureaucracy are treated unequally depending on their social and economic status. A bureaucrat puts all his effort into moving up the ladder of the bureaucratic hierarchy. The more he moves up, the greater his social status, authoritative power, and prestige. Thais are very conscious of their positions in the social and career hierarchy, and this cultural trait is shown in the importance attached to superior-subordinate relations (*puyai-punoi*) in contemporary Thai society.

The social impulse toward hierarchy and the *nai-phrai* relationship constitutes the basis for patron-client relationships or clientelism in modern Thai politics and administration (Neher and Bowornwathana, 1986; Riggs, 1966). Patrons and their clients enter into an exchange relationship that fosters nepotism, corruption, and bureaucratic inefficiency (Scott, 1972; Punyaratabandhu and Unger, 2009). Thus, combating corruption becomes a gargantuan task, because corruption defined in western terms runs counter to the traditional practices of the Thai bureaucracy.

### 2.2.1.4 *Fourth Legacy: A Tradition of Reconciliation*

Unlike the Chinese Communist Revolution in 1912 that abolished monarchy, and the French Revolution of 1789 that ended absolute monarchy, the Thai 1932 revolution was more peaceful and compromising. Under constitutional monarchy, the Thai king became the head of state. Royalty and their descendants were allowed to retain their wealth and assets. Currently, there are 129 family lines from King Rama I to King Rama V. We can easily distinguish them by looking at their surnames ending in “*Na Ayudhya*.” Members of *Na Ayudhya* families have married outside their royal bloodlines, and intermarriage among different groups has helped harmonize Thai society.

The tradition of reconciliation is practiced to the present day. Even though some of their wealth and assets were confiscated by the state, corrupt military and civilian prime ministers such as Field Marshal Sarit, Field Marshal Thanom, Field Marshal Prapass, General Suchinda, and former

Prime Minister Thaksin Shinawatra were allowed to retain a portion of their wealth and assets. Corrupt leaders and their families are sometimes “socially pardoned” and can lead a normal life in the country. The assets and properties of their families and relatives are mostly left untouched.

### **2.2.2 *Bureaucratic Elites as Master (1932–1973)***

On June 24, 1932, a group of western-educated military and civilian bureaucrats overthrew the absolute monarchy and replaced it with a constitutional monarchy. Political power changed hands from the king to the bureaucratic elites. The political arena shifted from the king’s court to the military bureaucracy. King Prajadhipok (Rama VII) abdicated in March 1935. The new king was HRH Prince Ananda Mahidol, the 10-year-old son of HRH Prince Mahidol of Songkhla, one of King Chulalongkorn’s sons. In the beginning, the bureaucratic elites were powerful because the young king spent most of his time studying in Switzerland.

One must remember that Thai kings are descended from a tradition of warrior generals. Historically, a military general wielded a lot of political clout, and still does to the present day. In 1932, constitutional monarchy was established and modern western ideas about “professional soldiers” were introduced. But history and tradition have shown that in Thailand, soldiers are more than soldiers—they were the traditional power holders for 700 years.

At present, military elites are military men in high positions in the army, the air force, and the navy. Army elites are more powerful than elites from the navy and the air force. The police in Thailand are organized like the army, with ranks that go as high as police general. When one speaks about the political role of the military in Thailand, one tends to include the police as well. There are roughly 300 army generals and 300 police generals in Thailand. Military elites have frequently staged coups d’état to become prime ministers, cabinet ministers, and members of Parliament. Invariably, the coup makers are graduates of the Chulachomklao Royal Military Academy. The pattern of accession to government power by the military elites is determined by their graduating class. For example, if the coup leader is from Class 1, he is likely to appoint his classmates from the Chulachomklao Royal Military Academy to key positions in the government. Some Classes are more powerful than others. To be in power, the military leader must maintain a patron-client network that incorporates military men from other Classes as well. Graduates from Junior Classes must be co-opted because they are commanding officers of key military battalions. Eventually these junior officers will follow the power succession tradition by becoming prime ministers and cabinet members.

#### **2.2.2.1 *First Legacy: The Tradition of Bureaucratic Elites as a Privileged Group***

During absolute monarchy, Thai bureaucrats were already a powerful and privileged group, but they were under the absolute monarch. After the overthrow of absolute monarchy, the power and privilege of the bureaucratic elites were much enhanced because they became the primary power holders. Key military and civilian bureaucrats were appointed as cabinet members and members of Parliament. They became the new political heads of the Thai bureaucracy. For example, Field Marshal Pibulsongkram’s cabinet (March 21, 1957 to September 16, 1957) consisted of 12 military men, 2 policemen, and 8 civilians.

The struggle for power was a struggle for high positions in the military among patrons and factions of the bureaucratic elites. To be the commander in chief of the Royal Thai Army was the best assurance for becoming prime minister. To be a core member of the faction under the



commander in chief of the Royal Thai Army was the best assurance for being appointed minister and member of Parliament. Within the bureaucracy, bureaucratic elites became the patrons of various cliques and factions. Career advancement of bureaucrats was based on the power of their respective patrons and factions.

Thus, for four decades until 1973, the Thai polity was ruled mainly by military elites. Thailand was marked by short-lived civilian governments, a series of military coups d'état, martial laws, military governments, and constitution promulgations. Most of the time, however, political power was in the hands of military dictators. "Bureaucratic polity" is the term used by scholars to describe the Thai polity during this period when politics was exclusively in the hands of bureaucratic elites, and extra-bureaucratic political institutions that could control the bureaucracy in the interests of the people were not developed (Riggs, 1966; Siffin, 1966; Wilson, 1962). In this author's opinion, however, the term bureaucratic polity may be slightly misleading, as power was exclusively in the hands of military elites, and high civilian bureaucrats in the cabinet were performing the roles of technical experts such as in the area of economics, trading, and banking. Therefore, the terms "military polity" and "military elites" seem more appropriate.

High bureaucrats, military and civilian alike, were in control of their own bureaucracy. It was customary for these elites to make reform decisions beneficial to their own group. The gap between bureaucratic elites and subordinate bureaucrats began to widen in terms of power, prestige, rewards, and social status. This legacy lingers on to the present. In previous research conducted on rewards of high public office in present-day Thailand, the author observed that the gap between the rewards of high bureaucrats and the lower echelons is widening. The Thai model of rewards for high public office has the following characteristics: politics take precedence over rationality in reward decisions; rewards focus on nourishing and perpetuating the elite class or rule by the few; informal rewards override formal rewards; concern is for status rather than monetary returns; public office is seen as an economic opportunity, not as service to the public; hierarchy governs rewards allocation; information about rewards of high public office is kept as secret as possible; and high public officials make their own reward decisions (Bowornwathana, 2006a).

#### *2.2.2.2 Second Legacy: A Tradition of Authoritarian Rule, Centralization, and Big Government*

In the period 1932–1973, military leaders took turns to assume political power, and administrative reform was undertaken to centralize power in the hands of military dictators. In other words, the tradition of authoritarian rule, centralization, and big government set forth by the early era of kings as master was followed. During Field Marshal Sarit's rule, a giant ministry—the Ministry of National Development—was established, and the power of central agencies such as the Budget Bureau and the National Social and Economic Development Board was strengthened. A drastic reorganization of the Office of the Prime Minister took place, which centralized policy-making authority and control in the hands of the prime minister (Chaloemtiarana 1979, 276–83). Many state enterprises were established with military generals as directors and board members. For example, Field Marshal Pibulsongkram converted the Royal State Railway into a state enterprise in 1951, and the first governor was an army general. Under the premiership of Field Marshal Thanom, the Electricity Generating Authority of Thailand was set up as a state enterprise in 1968. In 1967, the Metropolitan Waterworks Authority, another state enterprise, was established with Field Marshal Prapass as the first chairman of the board.

A single hierarchy with a strong military leader at the top was seen as the ideal government structure. The guiding values were loyalty and obedience to the military dictator, spoils and nepotism, and corruption. The democratic principle of a government that is accountable to citizens did not exist. Mass media and the press were strictly censored. Notable prime ministers during this period were Field Marshal Pibulsongkram, Field Marshal Sarit Thanarat, and Field Marshal Thanom Kittikachorn.

In the bureaucratic polity, politics was a struggle for power among different factions in the military elite. While retaining their powerful military positions, military leaders assumed political positions. Military generals became prime ministers, cabinet members, members of Parliament and the Senate. Short-lived elected governments were often overthrown by military coups d'état. In short, government reform consolidated power in the hands of a single military dictator. Thus, the authoritarian tradition of administrative reform was very much alive, despite the fact that the overthrow of the absolute monarchy was meant to end absolute rule. An example of Thai admiration for a strong authoritarian leader is the case of Field Marshal Sarit Thanarat. Despite the fact that Sarit was a corrupt prime minister and had at least one hundred wives, he was acclaimed as a decisive leader.

### *2.2.2.3 Third Legacy: The Practice of Staging Military Coups*

Since the establishment of constitutional monarchy in 1932, there were 12 coups d'état and 13 rebels (failed attempts by the military to seize power). The frequency of using military power to topple governments reduced from the period 1932–1973 to the period 1973–present. There were four military coups and three rebels during the latter period. The belief that there will never be a military coup again because Thailand is now a democratic country has been proven false several times. Thus, we cannot rule out the possibility of another military coup in the near future. Nevertheless, things are no longer the same. It appears that it is becoming more and more difficult for the military to justify any coup attempt. Judging from the efforts of General Sondhi Boonyaratglin to justify his 2006 coup against the incumbent Thaksin government, and General Anupong Paochinda's recent reluctance to stage a coup against the Samak and Somchai governments at the request of many Thais in 2008, one can say that things have changed. Increasingly, military coups will be less acceptable to the growing urban educated middle class. If a military leader stages a coup without good reason, the urban educated middle class will protest. To accept military coups as an instrument to solve political crises is quite foreign for westerners; but it is less so for Thais. Two major conditions constitute *raison d'être* for a military coup: an extremely corrupt government and a government leader who is thought to threaten the monarchy.

### *2.2.2.4 Fourth Legacy: A Tradition for Military Elites to be Loyal to the King*

Despite the overthrow of absolute monarchy by a group of military men and civilians, the tradition for the military to be extremely loyal to the monarchy has been maintained. In fact, the love and respect that people have toward the present king and His Majesty's own personal charisma and goodness have reinforced this tradition of loyalty (Suwannathat-Pian, 2003). One of the main duties of the Thai military is to protect the monarchy. Some military troops are royal guards or troops under the royal patronage of the king, queen, prince, and princesses. The Prince and Princesses have military ranks of generals. They teach at the military schools.

### **2.2.3 Politicians as Master (1973–1997)**

After the overthrow of absolute monarchy in 1932, the first national elections for members of Parliament took place on November 15, 1933. From then on until the present (June 2009), there have been 23 national elections (Traimat 2007, 138). Elected politicians have assumed the premiership and cabinet portfolios. The conduct of, and decisions regarding, reform of the public administration are in the hands of elected politicians: not the king or the military elites. Although there have been many elected governments, all of them have been short-lived, ending in being ousted by military coups. Between 1932 and 1973, Thailand was under the rule of military and civilian bureaucrats. Politicians were weak, and most of the time, military leaders assumed cabinet seats concurrently. Democracy in Thailand was fragile, and continues to be so, to a great extent, to the present day.

In 1973, the Thai bureaucratic polity was, for the first time, severely shaken by a mass uprising led by students, which eventually overthrew the Thanom-Prapass military government. The 1973 revolution symbolized the beginning of the end for the legitimacy of military rule through coup d'état, and marked a major step toward democratic rule. From that time, the transformation process from a bureaucratic polity to democratic polity started to gain momentum. Executive control of the bureaucracy began to change hands from the bureaucratic elites to elected politicians, who assumed ministerial portfolios under a multi-party parliamentary democracy. Increasingly, democracy and national elections have become the norms of modern Thai politics, at least in theory. Influential military generals form their own political parties or join existing political parties in order to run for national elections.

The political arena is shifting from “military bureaucracy” to “general elections.” To become prime minister, or a cabinet member, or a member of Parliament, one has to be an elected politician, not a military bureaucrat. To be able to run for elections, one needs strong financial backing and support from a rich political party. During the recent governments of Chatichai, Chuan, Banharn, and Chavalit, the majority of cabinet positions have been occupied by politicians from political parties, not by bureaucratic elites. The struggle for political power is becoming a struggle among political parties for parliamentary seats and cabinet posts. Within a political party, the struggle among politicians is for senior posts in the party, so that they can qualify as the party's nominees for ministerial portfolios.

The process of democratization in Thailand is slowly eroding the traditional power of the bureaucratic elites. Since Thailand is still at an early stage of transition, however, the power of the bureaucratic elites in the bureaucracy remains strong. Nevertheless, in the new politics, politicians are gradually replacing bureaucratic elites as the new political heads or superiors of bureaucrats in ministries. Increasingly, bureaucrats see the importance of politicians as the new “patrons” who can support their career advancement and provide them with protection from enemies in the bureaucracy. Governments are coalitions of political parties because no single party has been able to win a majority. In coalition governments, power is diffused and executive authority is shared among members of the coalition. For the Thai bureaucracy, coalition governments have emerged as the key factor in determining which politicians will become their political superiors in the ministries (Bowornwathana, 2001b).

#### **2.2.3.1 First Legacy: Elected Politicians as the New Political Boss**

During 1973–1992, the Thai polity was transformed from a bureaucratic polity to a fragile democracy. After the student uprising in 1973, military rule was shaken. Former prime ministers during

this period, such as Seni Pramoj, Kukrit Pramoj, General Kriengsak Chamanan, General Prem Tinnasulanond, and General Chatichai Choonhavan, ruled with the support of a coalition government. Since 1932, there have been 27 prime ministers and 59 cabinets (Office of the Secretariat of the Cabinet, [http://www.cabinet.thaigov.go.th/bb2\\_main21.htm](http://www.cabinet.thaigov.go.th/bb2_main21.htm)). Government reform was marked by a struggle for power between the bureaucratic elite and the elected politicians. Reform was geared toward strengthening the power of politicians and political institutions. Politician-bureaucrat relationships became an important aspect of the Thai bureaucracy. The elected politicians gradually took over cabinet positions from military and civilian bureaucrats. New values and standard operating procedures in government as professed by politicians began to gain ground.

To advance in the bureaucracy, a young aspiring bureaucrat needs to have a powerful politician as patron. The longer a politician can retain his ministerial post, the more power he is likely to have over the career bureaucrats. To ascend to high important positions in the ministry, such as permanent secretary or director-general, the bureaucrat must be a “favorite” of the elected politician boss. The situation can become quite awkward for an honest candidate who wants to move up and is confronted with a corrupt political boss.

### *2.2.3.2 Second Legacy: Frequent and Unpredictable Changes of Political Bosses*

For bureaucrats in subordinate positions, frequent cabinet changes and unstable coalition governments created a new phenomenon in the Thai government. Under absolute monarchy, the bosses of bureaucrats were stable and predictable. During 1932–1997, military dictators were usually able to stay in power for long periods, so political bosses did not change that often.

Though military rule was no longer accepted during 1973–1997, coalition governments were fragile. There were frequent changes in government and unpredictable changes in ministerial posts. The bureaucrats in a ministry do not know when their political boss will be removed and replaced by another boss. A bureaucrat may move up the career ladder quickly under his patron, but find his progress halted when a new political boss takes the ministerial post. In Thai ministries these days, one can reasonably predict the destiny of high bureaucrats in a ministry when a newly elected politician becomes the new boss. If a particular bureaucrat has good connections with the political party of his new minister, he will have a good opportunity for career advancement.

### *2.2.3.3 Third Legacy: Politicians from the Provinces Becoming Bosses*

With the introduction of parliamentary democracy in 1932, the rules of the game for becoming political bosses or ministers changed. To become a minister in charge of a ministry, one needs to win a seat in Parliament in the national elections, join the coalition government, and carry enough clout to be selected as a cabinet member. The bargaining power of a candidate for a ministerial post rests heavily on the number of members of Parliament in his faction. The larger the number of members of Parliament one controls, the better. Since most of the members of Parliament are from the provinces, most cabinet posts are assigned to provincial members of Parliament. This is quite a departure from the old tradition when all heads of ministries came from the capital Bangkok. Gradually, provincial leaders have become more influential in national politics and administration. For instance, Chuan Leekpai, a popular member of Parliament from Trang province and leader of the Democrat Party, became minister of several ministries and ultimately prime minister. Another popular member of Parliament from Suphanburi Province, Banharn Silapa-acha, was also

prime minister and minister of several ministries. Newin Chedchob MP, from Buriram Province was deputy minister of the Ministry of Agriculture and Cooperatives. Vithaya Kaewparadei MP, of the Democrat Party from Nakorn Srithammarat province is the minister of public health. Julin Laksanavisit MP, of the Democrat Party from Panga Province is the minister of education. Many of these members of Parliament from the provinces are usually re-elected. For some, family members also run in national and local elections as well. In some provinces, members of prominent political families have tended to monopolize national and local politics. Together they constitute the new political bosses of the bureaucrats.

#### *2.2.3.4 Fourth Legacy: The Problem with the Credibility of Politicians*

Since 1933, Thailand's experience with elected politicians and governments has not been a smooth one. National elections have been characterized by vote buying and money politics. Corruption charges against government are rampant. Politicians try at all cost to be in government and consider being in the Opposition as a loss. Politicians take turns becoming cabinet members. They move from one political party to another. New political parties are formed and joined by old faces. The new politician boss fosters an atmosphere of corruption, nepotism, and inefficiency in the ministry. Politicians in Thailand have acquired a bad reputation, and the search for clean politics and politicians goes on. A major topic of discussion is the ethics and morality of Thai politicians. An honest, uncorrupted, and good politician is a rare commodity these days.

Bad politicians affect the career advancement of bureaucrats in the ministry. First, a corrupt boss will easily corrupt subordinate bureaucrats. Second, honest bureaucrats will have a difficult time surviving and advancing their career under a bad politician. The bad politician may want to transfer honest bureaucrats, who do not follow his orders, to inactive posts by justifying his transfers on grounds that the honest bureaucrats violated certain bureaucratic rules. He can set up a committee to investigate and implicate the honest bureaucrats of wrongdoings.

#### **2.2.4 Big Businessmen as Master (2001–2006)**

This fourth master, big businessmen, comes into power through national elections. In fact, “big businessmen as master” is a version of “politicians as master.” Of course, businessmen have been in politics since the first elections in 1933. Since then, the direct role of businessmen in politics has been increasing in Thai politics. In the old days of absolute monarchy, businessmen were mostly of Chinese origin. They carried out their trade with the approval of the king. Under the bureaucratic polity (1932–1973), Chinese businessmen began to expand their trade rapidly in accordance with the expanding world market and capitalism. They became owners of big companies such as banks (Akira, 1996). Military elites were appointed as board members and advisors to these banks. Rumors about businessmen providing large sums of money, assets, and real estate to generals in power were common. In return, the military elites in power would provide them with protection and support for their businesses. Gradually, during 1973–1997, these Chinese businessmen began to fund political parties indirectly, and some of them would send their sons to join political parties.

##### *2.2.4.1 First Emerging Legacy: Big Businessmen in Power*

What makes the 2001 elections unique is that a group of big businessmen with huge funding had formed their own political party (the Thai Rak Thai party) and won the national elections. The big businessmen consisted of: the Shinawatra family who owned the Shin Corporation

(telecommunication and satellite industry); the Jungrungreangkit family who owned Thai Summit and Summit Group (auto parts industry); the Maleenont family who owned BEC world and television Channel 3; the Bodharamik family who owned Jasmine International Company (telephone and satellite communications); the Mahakijisiri family (Nestle (Thai) Public Company); and the Chearavanont family who owned Chaoreon Pokkapan or CP Company (agro-industry and food, and telecommunications industry). Under the leadership of Thaksin Shinawatra, the Thai Rak Thai Party was able to attract many big businessmen, local businessmen, and politicians. Huge sums of money to fund election campaigns became a key factor in winning elections.

Big businessmen became cabinet members and members of Parliament. For example, the first Thaksin government (17 February 2001 to 11 March 2005) consisted of twelve big businessmen, nine former bureaucrats, eight politicians, and two others. The number of big businessmen increased in the next Thaksin cabinet. The second Thaksin government (11 March to 19 September 2006) consisted of fifteen big businessmen, five former bureaucrats, four politicians, and four former university professors.

By occupying positions of political power themselves, big businessmen no longer need the support of the king or the military elites; nor do they need politicians to protect their businesses as they did before. As long as national elections involve the expenditure of large sums of money, it is likely that big businessmen running for office will have an advantage over the other candidates. Thai politics has turned into “money politics.”

#### *2.2.4.2 Second Emerging Legacy: Super CEO Authoritarian Rule, Centralization, and Big Government*

Under big businessmen’s rule, the system of public administration began to change. In the author’s opinion, former Prime Minister Thaksin Shinawatra ran the country as though it was his company. Thaksin’s model of government consisted of the following assumptions: the prime minister is the Super CEO of the country; government growth is a sign of the company’s prosperity; a CEO management style works well in government; employment by contract in government increases efficiency; destroy business competitors, silence government opposition; voters are like customers, they must be kept happy; marketing techniques must be employed in government; government must serve business interests of government politicians; and government fairness is defined in capitalist terms (Bowornwathana, 2004a).

Elsewhere, I have argued that Thaksin’s style of government had resulted in the return of the traditions of authoritarian rule, centralization, and big government that had originated during the periods of kings as master and military elites as master (Bowornwathana, 2006b). Prime Minister Thaksin became a Super CEO at the apex of the government hierarchy. Administrative reform was conducted to consolidate power from other ministers and high bureaucrats into the hands of the Super CEO Thaksin. Under the first Thaksin government, a major structural reform took place that increased the number of ministries from 13 to 20. Under the new government structure, the 20 ministries are: Education, Culture, Tourism and Sports, Public Health, Justice, Interior, Finance, Foreign Affairs, Science and Technology, Natural Resources and Environment, Energy, Agriculture and Cooperatives, Industry and Entrepreneurs, Information Technology and Communications, Social Development and Human Security, Labor and Professional Development, Commerce, Transport, Defense, and the Office of the Prime Minister (Bowornwathana, 2002). The increase of ministries accommodated the desire of Thai politicians to be ministers who believed that ministerial positions are symbols of social status and achievement, power, and prestige.

### 2.2.4.3 *Third Emerging Legacy: Government must Serve Big Business Interests*

Subordinate bureaucrats tried to adjust to their new political boss, former Prime Minister Thaksin. Those who served the new political boss well were promptly rewarded with promotions to higher and more powerful positions in the bureaucracy. Those who failed to please big businessmen-turned political boss, were abruptly transferred to inactive posts. Government bureaucrats were treated as “company employees” of big businessmen in power. The problem with big businessmen-led governments such as the Thaksin government is that if one assumes that a government must serve the business interests of politicians in government, then the Thai polity will be overwhelmed with double standard practices, grand corruption, and conflicts of interest. Indeed, that was the story of Thaksin’s administration during 2001–2006 (Bowornwathana, 2009, 2009a; Pasuk and Baker, 2004; McCargo and Pathmanand, 2005).

### 2.2.5 *Citizens as Master (1997–present)*

“Citizens” here refers to educated persons who are supporters of the democratic reforms of public administration, which is much influenced by liberal ideas from western countries. Globalization plays a critical role in assimilation of the new foreign ideas of government reform, such as governance, into the educated Thai community. Educated Thais here may be intellectuals, educated middle and upper classes, or the educated poor.

Once in a while, this educated and active group is able to produce a major change or “big bang” in line with the principles and processes of democracy. The group does not occupy government positions. Its power for change is based on its ability to organize large groups of people in mass demonstrations to topple government and install western democratic institutions. Once the government falls, there is a power vacuum that provides pro-democracy citizens with the opportunity to introduce major changes in the government system by rewriting the constitution and pertinent laws. Examples of such political incidents include: the overthrow of absolute monarchy in 1932; the 1973 Student Revolution and the 1992 May Bloodshed that overthrew the military dictatorship and led to the promulgation of the 1997 Constitution; and the overthrow of the Thaksin government in 2006, leading to the 2007 Constitution that incorporates principles of democratic governance.

#### 2.2.5.1 *Emerging Legacy: The Clash between Governance Values and Thai Realities*

Governance or democratic governance has become the global trend for the ideal system of government in modern democracies. The basic assumption of governance is that the country belongs to the citizens and not to kings, military generals, politicians, or big businessmen. Citizens own government, and they are the true masters of all those who hold government positions. The prime minister, cabinet ministers, under-secretaries, directors-general, senators, members of Parliament, and other government officials are merely “representatives” of the citizens, working in the interests of the citizens. To make sure that these government officials operate accordingly, governance principles support the creation of independent accountability institutions that will monitor and guide the work of government and government officials to be in line with the principles of governance. Examples of these independent institutions are the Office of the Ombudsman, the constitutional court, the administrative court, the National Anti-Corruption Commission, the State Audit Commission,

the Senate, and the Election Commission. The major principles of governance are accountability, transparency, fairness, honesty, integrity, equity, small central government, privatization, strong civil society, and local governments (Bowornwathana, 1997).

The problem is that these governance values do not fit well with the realities of Thai polity and society, thus resulting in reform hybrids and unintended consequences (Bowornwathana, 2001, 2004b, 2006c, 2007, 2008a, 2008b, forthcoming c). First, the creation of strong independent accountability institutions such as the constitutional court has raised several new questions: Are judges of the constitutional court indeed independent? Can they be influenced by other masters? Are the new accountability institutions in fact highly politicized? In this regard, several observations can be made. In the first place, those who have encountered adverse rulings meted out by accountability institutions often accuse the judges and commissioners of being biased and politicized. They accuse the judges of having been appointed by their political enemies. Second, positions in these new accountability institutions provide lucrative job opportunities for retired government officials (who retire at 60) to be retired at age 70 (which is the retirement age of members of the accountability institutions) and to benefit from the power, privileges, and rewards derived from their positions. Third, a new question also arises regarding the enormous power of accountability institutions that can put an end to or seriously obstruct the work of an elected government on legal grounds. The issue of “Who Guards the Guardians” is still wide open in Thailand. Table 2.1 summarizes the origins of major public administration legacies from five different masters.

**Table 2.1 Origins of Public Administration Legacies from Different Masters**

<i>The Five Masters</i>	<i>Legacies</i>
Kings (1238–1932)	<ol style="list-style-type: none"> <li>1. The king as leader</li> <li>2. Authoritarian rule, centralization, and big government</li> <li>3. Hierarchy and clientelism</li> <li>4. Reconciliation</li> </ol>
Military elites (1932–1973)	<ol style="list-style-type: none"> <li>1. Bureaucratic elites as a privileged group</li> <li>2. Authoritarian rule, centralization, and big government</li> <li>3. Staging military coups</li> <li>4. Loyalty to the king</li> </ol>
Politicians (1973–1997)	<ol style="list-style-type: none"> <li>1. Politicians as new political bosses</li> <li>2. Frequent and unpredictable changes of political bosses</li> <li>3. Politicians from the provinces becoming political bosses</li> <li>4. Low credibility of politicians</li> </ol>
Big businessmen (BB) (2001–2006)	<ol style="list-style-type: none"> <li>1. BB in power</li> <li>2. Super CEO authoritarian rule, centralization, and big government</li> <li>3. Government must serve business interests of BB</li> </ol>
Citizens (1997–present)	<ol style="list-style-type: none"> <li>1. Clash between western governance values and realities of the Thai polity</li> </ol>



### 2.2.5.2 Traits of Governmental Culture Produced by the Five Masters

Table 2.2 summarizes the important traits of governmental culture that has accumulated over eight centuries. First, there is the culture of perceiving the King as the Leader of the country despite the fact that constitutional monarchy was established in 1932. During the present King Rama IX reign, prime ministers and cabinets may come and go, but the king remains the pillar of national unity. Second, the tradition of authoritarian rule, centralization, and big government acquired from the past has been with us to the present. This tradition of a centralized big government with a single authoritative figure has been a strong trait of Thai traditional governmental culture. The underlying assumption is that the entire government bureaucracy, central and local governments, should be under a single person such as the prime minister. Third, the traditions of the hierarchy and clientelism have been core features of the Thai bureaucracy and society from the past to the present.

Fourth, the reconciliation tradition has been much alive throughout modern Thai political history (1932 to present). Fifth, under absolute monarchy and military rule, bureaucratic elites were accepted as a powerful privileged group. Under elected politicians and big businessmen, bureaucratic elites still wield considerable clout in government, but their leading dominant role has been curtailed. Sixth, the practice of staging military coups was acceptable during absolute monarchy and military rule. Such practice became more and more unacceptable under elected politicians and big businessmen. Seventh, the tradition of the military's strong loyalty to the king has been kept alive to the present day.

**Table 2.2 Traits of Governmental Culture Produced by the Five Masters**

<i>Traits of governmental culture</i>	<i>Absolute monarchy under kings (1238–1932)</i>	<i>Bureaucratic polity under military elites (1932–1973)</i>	<i>Democratic polity under politicians (1973–1997)</i>	<i>Authoritarian capitalism under big businessmen (2001–2006)</i>	<i>Pro-governance citizens (1997–present)</i>
The king as the leader	Yes	Yes	Yes	Yes	Yes
Authoritarian rule, centralization, and big government	Yes	Yes	Yes	Yes	No
Hierarchy and clientelism	Yes	Yes	Yes	Yes	Yes
Reconciliation tradition	Yes	Yes	Yes	Yes	Yes
Bureaucratic elites as a privileged group	Yes	Yes	Yes	Yes	No
Staging military coups	Yes	Yes	No	No	No

**Table 2.2 (continued) Traits of Governmental Culture Produced by the Five Masters**

<i>Traits of governmental culture</i>	<i>Absolute monarchy under kings (1238–1932)</i>	<i>Bureaucratic polity under military elites (1932–1973)</i>	<i>Democratic polity under politicians (1973–1997)</i>	<i>Authoritarian capitalism under big businessmen (2001–2006)</i>	<i>Pro-governance citizens (1997–present)</i>
The military's loyalty to the king	Yes	Yes	Yes	Yes	Yes
Politicians as new political bosses	–	No	Yes	Yes	Yes
Frequent and unpredictable change of political bosses	No	No	Yes	Yes	Yes
Politicians from the provinces becoming political bosses	–	No	Yes	Yes	Yes
Low credibility of politicians	–	–	Yes	Yes	Yes
Big businessmen in power*	–	–	–	Yes	No
Government must serve business interests of big businessmen*	–	–	–	Yes	No
Clash between western governance values and realities of the Thai polity*	–	–	–	–	Yes

Note: Yes = supportive, No = not supportive.

\*Emerging legacies.

Eighth, the phenomenon of having elected politicians, especially from the provinces, as new bosses of bureaucrats is a recent one. Ninth, the tradition for the elected politicians to be seen by others as corrupted and bad is also another characteristic of the Thai governmental culture. Tenth, the use of government power to facilitate the businesses of big businessmen in power is unacceptable for the pro-democracy citizens. Lastly, the clash between governance

principles supported by pro-governance educated citizens with the old public administration traditions is a new emerging legacy. In principle, the system of public administration purported by pro-governance citizens is threatening to the bureaucratic elites, politicians, and big businessmen.

### 2.3 Uniqueness of the Thai Political Context

The author has described the five public administration systems of Thailand that left unique historical and emerging political and administrative legacies in the Thai polity. He will now provide examples that illustrate the complexity and dynamics of the Thai bureaucracy.

Why is it that the existence of five masters with different principles of government has not led to “a do or die” confrontation among them? The military coup makers of 1932 did not abolish monarchy. The strong position of the military in government and politics was not weakened after the 1973 Student Revolution. The power of big businessmen has not been shaken after the military coup against Thaksin in 2006. So far, the five masters have coexisted.

From the perspective of the five masters, the present struggle for power among Thaksin and his supporters (“red-shirts”) and anti-Thaksin supporters (“yellow shirts”) have shown that the former support the big businessmen model of government, while the latter claims to adhere to models of the citizens as master and the kings as master. After the military coup against Thaksin in 2006, former Prime Minister Thaksin was able to install his trusted nominees as prime ministers (Samak Sundaravej and Somchai Wongsawat who is married to one of Thaksin’s sisters). This has fueled protests and demonstrations from the yellow shirts. Thaksin’s nominee governments were short-lived because of the constitutional court’s rulings that invalidated their premierships. On December 17, 2008, the leader of the Democrat Party became prime minister. Since then, there has been violent protest against the Abhisit government (December 17, 2008–present) by the red shirts. For the bureaucrats, the uncertainty of the political situation has meant that their political bosses may suddenly change. Many bureaucrats who were transferred to inactive posts by the Abhisit government were accused of being pro-Thaksin. Many who were not favorites of Thaksin were promoted instead by the Abhisit government.

Despite the fact that the clash between “big businessmen as master” with other public administration models seems to be intensifying, the author believes the situation will not get out of hand. First, we have the tradition of reconciliation and peaceful coexistence. Second, there are factors that “cool down” the potentiality of conflict escalation. Thais are linked not just by profession, but also by family networks, school ties, and patron-client networks. A big businessman may have a brother who is an army general. The son of a big businessman marries the daughter of royalty. An elected politician may have gone to the same school as the big businessman and the army general. A patron may have clients who are army generals, big businessmen, educated citizens, and royalty. Moreover, a person may also be both royal kin, army general, and elected politician at the same time. These intermarriages and linkages undermine the extent of political conflict in Thailand.

What has this multi-master situation meant for the Thai bureaucrat? In terms of career advancement, it has meant a lot. To survive in a context of unpredictable changes of political bosses, the bureaucrat will need to expand his network connections. In fact, it would be wise to be under the patronage of royalty, army generals, elected politicians, and big businessmen. It would be unwise to rely on a single patron. If the bureaucrat has enough powerful backups, his immediate formal boss in the department may be reluctant to punish him or treat him unfairly.

The fact is that in the Thai bureaucracy, your career advancement depends less on your immediate superior and more on your connections outside the department. Some successful bureaucrats were fortunate to be born into a powerful family with networks extending to the palace, military, political parties, and the business world. Those that are less fortunate will have to build their own political network connections. Therefore, it is a wise practice to join government-training programs that allows a bureaucrat to make friends from other agencies and professions, and extend his connections further. I shall give an example of two influential families: the Sarasins and the Shinawatras.

The founder of the Sarasin clan was a Chinese named Tien who graduated in medicine from the United States and became a doctor in the court of King Rama VI. He was given an aristocratic title of Phraya Sarasin Sawamipak. His first son, Pote, became the ninth prime minister of Thailand through the support of coup-maker General Sarit. Pote's oldest son, Pong, is a big businessman (Pong Sarasin owns Thai Coca Cola Company and Isuzu Motor Companies) and former leader of the now defunct Kiksangkorn Political Party. His second son, Pao, became police chief. His third son, Bandit, became director-general of the Customs Department. His fourth son, Asa, became permanent secretary and minister of the Ministry of Foreign Affairs. He is now His Majesty's Principal Private Secretary. Asa's wife is from the Kittiyakorn family, the same family as Her Majesty. His youngest son, Supat, was a lieutenant-general in the army. His only daughter married a former secretary-general of the Civil Service Commission.

Another example is the Shinawatra clan. The founder of the Shinawatra clan is a Chinese by the name of Seng Sae Ku who lived in Chantaburi province and then moved to Chiangmai province. He served as a tax collector (*nai a-korn boin biew*) of the king. His son, Chiang Shinawatra, married a daughter of a rich merchant in Chiangmai. Chiang's son, Lert or Bunlert, the father of former Prime Minister Thaksin Shinawatra, married Chiangmai royalty bloodline (the *Na Chiangmai* family). He had a coffee business, and his wife traded clothes. Chiang had ten children. Some of them are: Yaowaluk, a former mayor of Chiangmai; Yaowalerk manages the Pue Thai Party in the South and is chair of the Women Council of Thailand; Yaowapa manages the Pue Thai Party in the North and is married to former prime minister Somchai Wongsawat. She also owns M-Link Corporation and other telecom companies. Her daughter owned a large amount of real estate. Yingkuck is the managing director of Advanced Info Services and SC Assets. She married the managing director of M-Link Company; and Payap Shinawatra takes care of the Pue Thai Party in the Northeast and manages Shinawatra Thai Silk Company. Former Prime Minister Thaksin graduated from the Police Academy. He married Pochaman Damapong, whose father was a former policeman. Pochaman's brothers are policemen. One is Deputy Police Chief General Puewpan. Another is a police lieutenant-general. She also has a step-brother, Bannapot Damapong, who is a businessman. Thaksin has a cousin, General Chaiyasit Shinawatra, who was commander in chief of the Royal Thai Armed Forces and commander in chief of the Royal Thai Army, appointed at the time when Thaksin was prime minister.

Winning government concessions is another good example. If you are a businessman bidding for a government project or concession, it is necessary that you have connections with several masters of the senior bureaucrats in charge of bidding decisions. These powerful masters can put pressure on government officials to choose your company as the winner. It is not enough for you to have good relations with the government officials in charge, as the situation can get very competitive as your rival bidders may pull strings from outside.

It should now be obvious why it is almost impossible for a Thai bureaucrat to work "without hatred or passion" (or Max Weber's "*sine ira et studio*"). One can understand why members of the

newly created accountability institutions such as the constitutional court and the National Anti-Corruption Commission have difficulties performing their jobs. They have family networks and school ties. They also have “masters” who may indirectly influence their decisions. For example, their sons may be working under the senior bureaucrat whom they are investigating. The bureaucrat under investigation may be a friend, relative, or classmate of powerful big businessmen and military generals.

It might be appropriate to explain why recent efforts to introduce governance reform in Thailand have not been so successful. Governance reform policies, such as accountability, transparency, fairness, smaller central government, decentralization, and citizen power, are not compatible with the historical traditions of public administration in Thailand. When governance reform policies are implemented, they are likely to deviate from their original forms and goals to serve the special historical contexts of the Thai public administration. The results are reform hybrids that are unable to serve the goals of governance, and in turn, produce unintended consequences. “The citizens as master” model is not compatible with models of “the kings as master,” “the bureaucratic elites as master,” “the politicians as master,” and “the big businessmen as master.” Pro-democracy citizens are not in favor of authoritarian rule, centralization, and big government. They are against allowing the bureaucratic elites to remain a privileged group, and against military elites staging coups d’état. But since kings, bureaucratic elites, politicians, and big businessmen are still powerful, governance reform is likely to face strong resistance. In Thailand, governance reform ideas are adapted to fit the needs and interests of traditional powerful actors in the bureaucracy (Bowornwathana, 2008a, forthcoming a).

## 2.4 Conclusion

For 800 years, Thai bureaucracy has been shaped by five masters: kings, military elites, politicians, big businessmen, and citizens. These provide legacies that live on today, notably the traditions of authoritarian rule, centralization, and big governments. Thailand also has traditions of reconciliation of ousted leaders, as well as client-patron relations for bureaucratic advancement. To survive in a context of unpredictable changes of political bosses, today’s bureaucrats need to expand their network connections, such as among powerful family/business groups or political parties. Adaptations of government reform ideas from abroad are sometimes hindered by the detailed realities of Thai politics and administration that can compromise efforts to ensure that government is responsive to citizen masters and operates with increased accountability and transparency.

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## Appendix A

### Chronological development of public administration systems in Thailand

1238–1438	Sukhothai period. Beginning of absolute monarchy—kings as master
1351–1767	Ayudhya period
1767–1782	Thonburi period
1782	Beginning of Bangkok (Ratanakosin) period under the Chakri dynasty
1821–1868	Growing challenge from the West
1855	The Bowring Treaty with Britain
1869–1910	Abolish slavery, improve public welfare, railway, post and telegraph services
1892	Major bureaucratic reform by King Chulalongkorn Rama V (1869–1910): authoritarian rule, centralization, and big government

1910–1925	King Vajiravudh, Rama VI: education reforms: Thailand’s first university, Chulalongkorn University, founded in 1917; compulsory primary education in 1921
1928	First Civil Service Act
1925–1935	King Prajadhipok Rama VII (1925–1935): political reform
1932	June 24, constitutional monarchy replaced absolute monarchy The birth of the “military” or “bureaucratic polity”—Bureaucratic elites as master
1933	First national elections of members of Parliament
1938	Beginning of the tradition for military elites becoming prime ministers and cabinet ministers
1946	June 9, King Bhumibol Adulyadej Rama IX ascended the throne
1950s	US assistance helps strengthen the bureaucracy, especially Ministries of Interior (police department) and Defense
1957–1958	Field Marshal Sarit Thanarat became prime minister after a military coup: first national economic development plan in 1957
1965	Number of bureaucrats increased from 75,000 (in 1944) to 250,000 (in 1965)
1973	Field Marshal Thanom Kittikachorn and Field Marshal Prapass Charusathien were ousted by student-led mass demonstrations Politicians began to challenge the traditional power of the bureaucratic elites Beginning of regime transition to a democratic polity—politicians as master
1974	A democratic constitution promulgated Political parties started to grow
1975	Civil Service Act of 1975
1976	October 6, a military coup took place. Return of military rule
1977–1980	General Kriengsak Chamanand government Bureaucratic elites maintained power
1980–1988	March 1980, General Prem Tinsulanonda government Compromise between bureaucratic elites and politicians on the allocation of cabinet posts. General elections of 1979, 1983, and 1986. Multi-party systems and the institutionalization of coalition politics and government
1988–1991	Chatichai coalition government Most ministerial positions filled by politicians
1991	Military coup in February overthrew the Chatichai government
1992	In May, urban middle-class demonstrations overthrew General Suchinda government Anand second interim government Civil Service Act of 1992 General elections Chuan government. Democrat Party became the core of the coalition government Politicians became ministers
1994	Civil servants Code of Ethics
1995	Banharn government. Chart Thai Party becomes the coalition party leader Elected politicians assume ministerial portfolios



1996	<p>November elections          General Chavalit government. His New Aspiration Party became the core party in the coalition          Politicians became ministers          Political reform movement</p>
1997	<p>New constitution (based on governance principles, and supported by pro-governance citizens)</p>
2001–2006	<p>Thaksin government—big businessmen as master          Ministries increased from 13 to 20</p>
2006	<p>Yellow shirts mass protest          Military coup led by General Sonthi Bunya-anan overthrew the Thaksin government</p>
2007	<p>New 2007 Constitution (revised 1997 Constitution)</p>
2008	<p>Short-lived Samak and Somchai governments          Yellow shirts mass protest          The military reluctant to stage a coup</p>
2008–present	<p>Abhisit coalition government          Red shirts mass protest</p>

## *Chapter 3*

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# Decentralization and Local Governance in Thailand

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Achakorn Wongpreedee and Chandra Mahakanjana

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Decentralization, posted by the 1997 Constitution, has had significant impacts on local government in Thailand. The new local electoral system, a strong executive system, and the new personnel system have changed the local political and administrative atmosphere during the past 10 years. This section of the chapter elaborates on the current surge of decentralization and current forms of local government in Thailand, including several ongoing issues that follow the surge of decentralization.

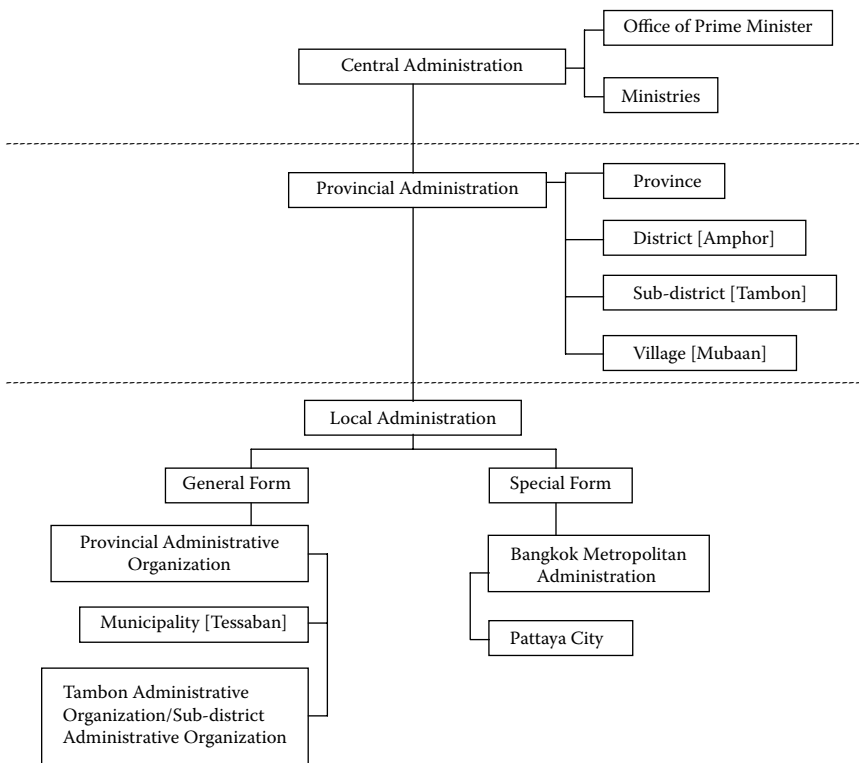
Thai scholars of public administration grew increasingly concerned to address weaknesses in local administration in the wake of the 1997 enactment of a new constitution that calls for extensive administrative and political decentralization in order to facilitate more efficiency and effectiveness in providing public goods and services. The decentralization policy also aimed at privatizing some local public services, promoting the emergence of civil societies, supporting the growth of democratic institutions, and responding to demands for greater local autonomy.

Chapter IX of the new People's Constitution of 1997 calls for the rationalization of the assignment of administrative functions across central and local administrative jurisdictions and the creation of a decentralization committee to oversee implementation of new parliamentary enabling acts. The new constitution prompted steps to realize radical administrative and political decentralization in Thailand. At the same time, opponents of radical decentralization among Thai officials and scholars pointed to the limited readiness and capacities of Thai local governments to handle their local affairs.

### 3.1 Thailand Administrative Structure

There are three levels of government in Thailand: central (*suan klang*), provincial (*suan phumipak*), and local (*suan tongtin*) (Thailand National Public Administration Act of 1991 see [Figure 3.1](#)). Provincial governments (76 in total—75 *changwats* and the Bangkok Metropolitan Administration, BMA) are headed by a provincial governor appointed by central government (except for an elected governor of the BMA). Generally, governors are officials within the Ministry of Interior (MOI), and usually from the Department of Local Administration (DOLA). The governor serves as head of the provincial administration (*sala klang changwat*) and is responsible for implementing central government policies. (In effect, however, the governor largely acts as coordinator of agencies under the direct control of other central government ministries.) Down one level are the district offices (*amphor*) headed by district officers (*nai amphor*) appointed by central government. Further down the hierarchy are sub-districts (*tambon*) and villages (*mubaan*). Village headmen (*phuyai baan*) are directly elected by the villagers and the sub-district headmen (*kamnan*) are generally chosen from among the village headmen in each sub-district. These local leaders, however, are directly guided and supervised by provincial governors and district officers under central government control. In short, province (*changwat*), district (*amphor*), sub-district (*tambon*), and village (*mubaan*) are parts of provincial government, which is viewed as part of central government apparatus. Overall, there are 795 districts, 7,255 sub-districts, and 71,864 villages (Thailand Ministry of Interior, 2003). Major responsibilities of sub-district headmen and village headmen include law and order, security, disaster and disease prevention and control, population registration, transmitting central government policies, and other development-related work (see also [Table 3.1](#) and [Table 3.2](#)).

Before 1999, based on the National Administrative Organization Act of 1991, there were five different types of local government, including the Provincial Administrative Organization (PAO or 'ongKaan borihan *suan changwat*'), municipalities (*tessaban*), sanitary districts (*sukapiban*), the BMA, and the City of Pattaya. The legal bases for these forms of local government are found in the Provincial Administration Organization Act of 1997, the Municipal Act of 1953, the Tambon Council and Tambon Administrative Organization Act of 1994, the Pattaya City Administrative



**Figure 3.1** Basic structure of current administrative system in Thailand.

Organization Act of 1999, and the Bangkok Metropolitan Administration Act of 1985. These acts were subsequently amended in the Decentralization Plan and Procedure Acts of 1999, implementing legislation stemming from the 1997 Constitution. As a result, all sanitary districts (sukapiban) have been upgraded to sub-district/Tambon Administrative Organizations (TAO).

The extremely tight traditional central-provincial-local relations were patterned on British colonial administrative regimes. This strong central state was designed to secure control over outlying rural areas. The high degree of centralization of the Thai state survived the fall of the absolute monarchy in 1932 (Japan International Cooperation Agency, 2001: 49). Internal communist insurgency and the threat from neighboring communist countries during the 1970s and 1980s reinforced commitment to strong central control. Only since the 1990s, and despite strong opposition from the MOI, have Thai governments consistently supported decentralization.

Most local governments in Thailand feature weak financial management, insufficient resources, inefficient planning and service delivery, and deficient public infrastructure. These major problems, in turn, result from inadequate revenue resources, poor mobilization of existing revenues, lack of technical capabilities and personnel, and unclear responsibilities. The economic and social crisis beginning in 1997 coupled with the growing challenges of globalization have boosted the need for administrative reforms aimed at decentralizing, downsizing, and restructuring government at all levels. In this context, the importance of good governance at local level is apparent. As a result, decentralization policy is identified as a priority in Thailand's 8th National Economic and Social Development Plan (1997–2001).

**Table 3.1 Current Types and Numbers of Local Government in Thailand**

<i>Types</i>	<i>No.</i>
Provincial Administrative Organization (PAO)	75
Municipal government	2,006
• City level	23
• Town level	142
• Sub-district level	1,841
Sub-district/Tambon Administrative Organization (SAO)	5,770
Bangkok Metropolitan Administration (BMA)	1
Pattaya City	1
Total	7,853

*Source:* Department of Local Administration, Ministry of Interior. Thailand (December 15, 2009).

## 3.2 History of Decentralization in Thailand

### 3.2.1 *Thailand as a Centralized State*

Before decentralization started in 1994, several Thai scholars have argued that politics and administration in Thailand was too centralized. In all ministries, policy initiatives, budget allocation, and personnel administration were determined in their Bangkok-based headquarters, and implementation was carried out through the ministries' provincial and district offices. By contrast, local government lacked authority, funding, and personnel.

The MOI played a special role in this regard. It was the very symbol of a centralized administrative system. Appointed provincial governors, apart from being the most senior executive officials of the MOI in each of Thailand's 75 provinces, also presided over most of the branch offices and agencies of other ministries located in the province. In addition, most other ministries and departments devolved power to the provincial governors to supervise and control their field officials in the provinces. Moreover, governors and other MOI bureaucrats also held *ex officio* positions in local government, which enabled them to control these bodies.

Decentralization in Thailand was very limited. In the past, neither politicians nor bureaucrats allowed real local self-government to take place, because both groups benefited from the existing system of a centralized state. Amorn (1995) found that societal forces in Thailand were too weak and insignificant to make demands for local self-government;<sup>1</sup> as a result, all forms of local administration in Thailand were closely controlled by central government. The structure of all forms of local government organizations prior to 1994 originated from and was formed solely by central government.

<sup>1</sup> Decentralization in Thailand could be classified as having occurred in four eras: (1) King Rama V established the sanitary district (*sukhaphiban*) in 1897 but it was abolished after the king's death. (2) The coup leaders in 1932 (known as the People's Party) established the municipality in 1933. (3) Field Marshal P. Phibulsongkram established the sanitary district, provincial administrative organization, tambon administrative organization, and tambon councils in 1952, 1955, 1956, and 1956, respectively. (4) The category of special city was established for Bangkok in 1975 and Pattaya in 1978. (Amorn Raksasat, 1995: 18–21).

Municipalities (*thesaban*) were first established in 1933. The councilors and chairman are elected, but the councils' scope of activity is limited to providing services such as rubbish disposal, water supply, slaughterhouses, markets, piers, and ferries, cemeteries and crematoria. Moreover, their budgets are inadequate even for this limited range of activities. Semi-urbanized areas were designated as "sanitary districts" (*sukhaphiban*) governed by a council presided over by the chief district officer (*nai amphoe*) as *ex officio* head. In the rural areas, Tambon Councils (TCs) were created as a local government body at the sub-district (tambon) level in 1972, but never acquired the status of juristic persons and hence were very limited in their scope of activity, and functioned mainly as advisory bodies for the governor and district officers.

The capital city has a more complex Metropolitan Administration established by its own act in 1975, and a similarly more complex form was created for the resort city of Pattaya by an act passed in 1978. However, in the cases of both Bangkok and Pattaya, the scope of the municipal government's authority is still rather limited.

The PAO was created in 1955, with a council partially constituted by direct election, but from 1955 to 1997, the provincial governor held the post of *ex officio* chairman and several other provincial officials also held *ex officio* posts, so officialdom dominated the PAO's activity.

In general, the forms of local government that existed in Thailand before 1994 did not correspond to the five key principles of local self-government advocated in the 1950s and 1960s as the blueprint for newly independent countries.<sup>2</sup> According to these principles, a local government body should: be a local body that is constitutionally separate from central government and responsible for a range of significant local services; have its own treasury, budget, and accounts along with substantial authority to raise its own revenue; employ its own competent staff who it can hire, fire, and promote; have a majority-elected council, operating along party lines, that decides policy and determines internal procedures; and have central government

**Table 3.2 History of Key Local Government Acts before 1994**

<i>Year of Enactment</i>	<i>Local Government Organizations</i>	<i>Structure of Administration</i>
1952	Sanitary district	Commission (government officers are assigned as <i>ex officio</i> officials)
1953	Municipality	Council (direct election); mayor (indirect election from municipalities' council members)
1955	Provincial Administrative Organization (PAO)	Council (direct election); mayor (governor in each province)
1975	Bangkok Metropolitan Administration (BMA)	Bangkok Council (direct election); governor (direct election)
1978	Pattaya City	Pattaya Council (direct election); manager of Pattaya City (contract by consent of Council, and city mayor)

Source: Thai Local Government Acts.

<sup>2</sup> Mawhood (1993: 12).

administrators serving purely as external advisors and inspectors, having no role within the local authority.

Thai local government bodies had little autonomy in fiscal and personnel affairs. Most of the people and politicians found no real advantages in local self-government,<sup>3</sup> and MOI bureaucrats cited the lack of popular enthusiasm as justification for constraining decentralization. They claimed that people were not ready for self-government, and that benign bureaucratic rule was the best means to make people happy.<sup>4</sup>

### 3.2.2 *Towards Decentralization*

Against this background, in the past 10–20 years, several international organizations, namely, the International Bank for Reconstruction and Development, the International Monetary Fund, and the Asian Development Bank, have actively promoted decentralization in many developing countries and in a variety of ways.<sup>5</sup> Examples of where they made their influence felt are Indonesia and the Philippines; the governments of these countries seriously embarked on decentralization in 1974<sup>6</sup> and 1987,<sup>7</sup> respectively. The effect of those international organizations in Thailand, however, was only slight. For several decades after the Provincial Administrative Organization Act was passed in 1955, little decentralization could be observed.<sup>8</sup>

Since 1973, Thai academics have been arguing in favor of decentralization. Scholars like David Morell and Chai-anan Samudavanija, for example, noted that decentralization was popular because it would allow people to participate in politics, especially elections.<sup>9</sup> In 1974, Likhit Thirawekhin, a political scientist from Thammasat University, proposed an initial step away from the dominance of appointed officials under which the MOI would nominate three to four candidates for the post of provincial governor, and the final selection would be made by the inhabitants of the province.<sup>10</sup> He argued that this would allow “the people” to elect a governor from their own province yet still allow Bangkok to have a say in provincial affairs. Two years later, Kraisorn Tantiphong, a member of Parliament from Chiang Mai, proposed that the provincial governor become an elective post. His proposal was soon forgotten, however, because he failed to mount an active campaign, and more importantly, because he gained no support from the parliament, media or general public.<sup>11</sup>

Without popular support, the idea to make provincial positions elective went nowhere. Even when the proposal was twice considered by Parliament—during the Seni Pramot government in 1976, and the Chuan Leekpai government in 1992—it was rejected because the coalition in power was not unified behind the measure.<sup>12</sup> Yet, the issue was never completely taken out of the legislative agenda.

<sup>3</sup> For details, see Tet (1989), Chaianan (1995), and Tanet (2002: 109–10).

<sup>4</sup> This motto was used to claim legitimacy by many MOI authorities since the establishment of the ministry in 1892. However, the motto was generally criticized as symbolic of an over-centralized ministry.

<sup>5</sup> Litvack, Ahmad, and Bird (1998: 1).

<sup>6</sup> Law No. 5 was passed in 1974, *PREM note*, Number 43, September 2000, p. 1.

<sup>7</sup> The Philippines Constitution of 1987 (Hutchcroft, 2000).

<sup>8</sup> Bangkok Metropolitan Administration (BMA) was established 20 years later in 1975 as an amalgamation of three contiguous municipalities. Pattaya City, upgraded from a sanitary district, was established in 1978.

<sup>9</sup> David Morell and Chai-anan Samudavanija (1981: 313–14).

<sup>10</sup> Likhit Thirawekhin (1974: 6–7).

<sup>11</sup> Interview with Associate Professor Dr. Thanet Charoenmuang, August 18, 2003, Faculty of Political Science, Chulalongkorn University.

<sup>12</sup> The Chuan Leekpai government was the first to specify decentralization to the “local” level (although without using the word “regional” government) (*Thai Congress Working Document* 1997).

### 3.3 The Politics of Decentralization in Thailand

Many students of Thai politics were thus surprised at the enactment of the Tambon Council and Tambon Administrative Organization Act in 1994. The TAO law has since turned out to have been a very significant step in the current decentralization process. Between 1994 and 2004, decentralization became an important process in Thai politics.

The coup led by the National Peace Keeping Council (NPKC) in February 1991 was an attempt by the military elite to return to a centralized government controlled by themselves and the bureaucrats. The coup ultimately failed when the military turned its guns on protesters in May 1992, prompting a fierce popular reaction against the military's ambitions, and in favor of greater democratization through, among other things, decentralization.<sup>13</sup> There were, in particular, three factors that created the conditions that gave rise to decentralization: the growing importance of political parties and the concept of "representativeness"; the decline of military power and with it the erosion of the power of the bureaucracy; and increased policy-based competition during elections. The pro-decentralization drive initially challenged the power of the MOI by demanding that the post of provincial governor be made elective.

#### 3.3.1 Political Parties and the Growing Importance of "Representativeness"

The main reason why the political crisis erupted in May 1992 was the protestors' opposition to the elevation of a prime minister who was not a member of Parliament. Earlier in November 1991, activists also objected to a senate in which all the members were appointed rather than elected, and two thirds of them were bureaucrats. This appointed Senate had considerable authority, including the power to initiate an administrative decree (*phraratchakamnot*) or to request a debate of non-confidence in the government. The power of non-elected senators was on a par with that of the members of Parliament elected to represent the people.

In June 1992, the constitution was amended to give higher importance to "representativeness." In concrete terms, this meant that only a member of Parliament in future could become prime minister.<sup>14</sup> The Speaker of the House of Representatives also became the *ex officio* president of the parliament instead of the Senate Speaker.<sup>15</sup> The president of the parliament played an important role in receiving the Royal Endorsement (*phraboromma-ratcha-ongkarn*) that legitimized the appointment of a prime minister. The reforms also reduced the power of the Senate, which retained the right to ask for a general session of Parliament, but lost the right to vote on non-confidence in the government. This right now belonged exclusively to the House of Representatives.<sup>16</sup>

As "representativeness" became increasingly important at the level of national politics, it inevitably had a reverberating effect at the local level as well. Many political parties raised the issue in relation to the provincial governor, arguing that election was a far better and more democratic

<sup>13</sup> Shortly after the February 1991 coup d'état, speakers at an academic seminar held at Thammasat University argued that real democracy could only be achieved when social groups had a greater say in policy making. The speakers also implied that, as long as MOI bureaucrats retained their stranglehold on the administration of the country, there would be no truly participatory democracy in Thailand. See "Academics suggest democratic solutions," *Bangkok Post*, March 20, 1991, p. 6.

<sup>14</sup> The 1991 Constitutions of Thailand (fourth amendment) September 10, 1992.

<sup>15</sup> Section 86 of the First Amendment became effective on June 29, 1992.

<sup>16</sup> Khien Thirawit (1993: 118–25).



option than the usual practice of appointment by the MOI. They argued that local representatives, who were able to understand the specific and complicated problems in their areas, were better qualified to hold this important post.

### **3.3.2 *Shrinking Political Power of the Military and Bureaucracy***

Before the political crisis of May 1992, the Thai military played a dominant role in balancing the political power of politicians and acting as a friendly and efficient adviser to civilian bureaucrats. But after the political crisis in May 1992, the military's capacity to intervene in politics declined considerably.<sup>17</sup> The army commander in chief, Gen. Wimon Wongwanich declared that the military would no longer be involved in politics—the first time that a top military leader had publicly expressed this view. One of the consequences of this announcement was that the military's strategic partners—civilian bureaucrats—also came under pressure to reduce their involvement in politics.

This new situation was different from the past when, since the revolution in 1932, the military had always played a significant role in preserving the balance of power between politicians and civil servants. Politicians respected and honored high-ranking permanent officials because they believed in the knowledge, ability, and work experience that the latter had fostered through their expertise in each specific field. But once the military withdrew from active politics, this balance was lost and civilian officials were weakened. The idea that power should be transferred to “those who are elected from the people” gradually increased. Permanent officials began to accept professional politicians, and this in turn created the opportunity for decentralization, despite initial confrontation between politicians and civil servants. Furthermore, the new balance of power gave scope for the idea that extra-bureaucratic forces could take over some aspects of government, which had formerly been closely guarded by officialdom. This idea was realized in the 1997 Constitution when the conduct of elections was transferred from the MOI to a new extra-bureaucratic structure.<sup>18</sup>

### **3.3.3 *Increased Policy-based Electoral Campaigning***

In 1992, the demand for elective provincial governors was strongly supported by academics and scholars, and was subsequently adopted by political parties as part of their election platform. At elections in March 1992, several political parties, including the Democrat Party (DP), Palang Dharma Party (PDP), New Aspiration Party (NAP), Solidarity Party (SLP), and Seri Dharma Party (SDP), announced support for elective provincial governors. But machine politics and vote buying were more important than platform promises in determining the election result. The Samakkitham Party (STP), which opposed this reform, won the largest number of seats and headed the coalition government. The issue of reforming local government was again pushed aside. Yet, when elections were called again six months later, after the bloody suppression of demonstrations in May 1992, there were signs of change. At elections in September, the DP and PDP again campaigned by promoting the value of local self-government and promising to bring about

<sup>17</sup> Tamada, Yoshifumi (2002: 120–72).

<sup>18</sup> “Kasem named head of new-look Poll Watch” *The Nation*, July 9, 1992, p. A1. The idea was for a non-governmental organization to oversee the election. The Constitution of 1997 Chapter 6, Part 4 specified an “Election Commission” as a non-governmental organization with the authority to oversee the election and ensure that it is righteous and fair. This effectively removed the responsibility from the MOI's hands, thereby reducing its power to some extent.

the election of provincial governors. They were now joined in this call by a third party, the SLP.<sup>19</sup> The mass media and academics strongly supported this proposal and greatly heightened its importance. The May 1992 incident shifted the balance of power away from the military and bureaucrats, toward the elected politicians and reform pressure groups.

In response, the MOI mounted a counter-offensive to preserve its authority over the provinces.<sup>20</sup> But this resistance proved futile in the pro-democracy atmosphere created by the May 1992 events. Media coverage caricatured the MOI position as defense of an old, out-dated, and undemocratic system. When several of the parties that campaigned for elective governors were subsequently inducted into the governing coalition, pressure to implement this reform increased.

### 3.4 Drafting the TAO Law 1994<sup>21</sup>

Shortly after the elections in September 1992, the new coalition government headed by the DP set up a parliamentary committee to consider reform in local government. The main proposal circulating in public debate at the time was to introduce elections for the post of provincial governor. Less than two years later, the process that began in this way resulted in the Tambon Council and Tambon Administrative Organization Act 1994 (TAO Law). The proposal to make the governor elective had disappeared. The trend of decentralization reform took a new course that has continued to this day. How did this happen? What were the politics behind this major deflection in the course of decentralization?

The first reason is that MOI bureaucrats, whose priority was to block the proposal for elective governors at all costs, still played decisive roles in policy formulation at all levels. To deflect attention away from the issue of electing provincial governors, they introduced the idea of making reforms at the tambon level instead. As a first step, a parliamentary committee, in which the MOI bureaucrats had considerable influence, proposed that the TCs, which had been established in 1972 but never been assigned significant powers, be given the status of juristic persons as a first move toward devolving more power on such bodies.<sup>22</sup>

<sup>19</sup> It is noticeable that in the general election of 1986, there were more parties advocating for the election of the provincial governor, but they were small parties (i.e., Muan Chon Party, Ratsadorn Party, and Kao Na Party). See fundamental information on current political parties and Manut Wattanakomen (1986) *Political Parties and Election 1979–1983*, p. 57–82. However, in the election of September 1992, there were more major parties joining the fray, led by the DP (which gained 21.9% of the seats in the parliament), PDP (4.7%), and SLP (2.2%) (Internal Letter from the Policy Studies Institution, 5th ed., February 1993, p. 5–6 and the outcome of the members of Parliament election 1992 (Bangkok: Department of Administration, 1992).

<sup>20</sup> In general, permanent officials had to follow political policies, but they often came into conflict with political groups over the provincial governor election matter. This is due to three reasons: (1) the coalition government parties had no agreed resolution and thus expressed disagreement among themselves, while the leading government party was not appointed interior minister; (2) a leader from the coalition government party running the Ministry of Interior disagreed with the elections; and (3) after studies were conducted by the government and the MOI on the elections, the prime minister, and interior minister were uncertain about organizing the elections, thus acting like MOI bureaucrats resistant to the idea.

<sup>21</sup> For more detailed studies in the process of promulgating the Tambon Council and Tambon Administrative Organization Act and the conservation of the act, see Trakun Meechai (1994: 142–160).

<sup>22</sup> The MOI order (No. 802/1992, dated October 28, 1992) granted “the Tambon Council (TC) legal entity status,” thereby revoking an earlier order of the Revolutionary Council Order Number 326 (RCO. 326 hereafter), which set up the TCs. *Bangkok Post* November 17, 1992, p. 1 and *Matichon* December 1, 1992, p. 11 and 22 identified this move as an attempt by the MOI to divert popular attention to decentralization at the tambon level instead of the provincial governor election.

Many proponents of local government reform instantly recognized that this proposal was an attempt to smother the issue of elective governors, and voiced strong opposition. The Federation of Thai Students pointed out that two-thirds of the parliamentary committee came from the MOI and demanded that the composition be broadened.<sup>23</sup> Politicians, such as Bunchu Rochanasatien, who supported the introduction of elective provincial governors, also criticized the government for not being sincere in implementing the decentralization policy and demanded that permanent officials be removed from the committee because they would only protect their own interests.<sup>24</sup> In the face of these criticisms, the Prime Minister's Office issued a new order<sup>25</sup> to reconstitute the panel. However, the composition changed little except for the addition of a few academics. Later, when a government bill was drafted and submitted to the parliament, the MOI still retained influence on the process. Members of Parliament and senators who were themselves senior officials were able to pack the parliamentary committee to review the bill. MOI bureaucrats were involved in the policy-making process at various levels.

Politicians who had earlier favored the election of governors, especially those from the PDP, were now drawn into a debate about introducing reforms at the tambon level. The PDP proposed a new form of local administrative organization at the tambon level, separate from the TCs, and called it the "Tambon Administrative Organization."<sup>26</sup> The party began to pursue the idea aggressively, leading to frequent rifts inside the coalition government. Other coalition parties, such as the DP and even the NAP, accepted the PDP proposal on the grounds that it was in line with the government's decentralization policy. The PDP and the NAP agreed that the issue should be sent back to the MOI for drafting into a new bill. That new bill eventually became the TAO law.

Not only did the political parties agree with decentralization to the tambon level by the establishment of TAOs, but the village and tambon heads, who were the lowest rung of the MOI hierarchy, also began to recognize that they would benefit from this reform.<sup>27</sup> On the one hand, they too opposed making the governor elective, and so valued this proposal as a way to smother the issue of elective governors. On the other, they were aware that they would become the key vote canvassers in any form of election for local government. The political parties would need their services, and would have to reward them. They also believed that they could increase their authority and budget allocation from central government by playing the role of administrative mediators between Bangkok and their tambon or province. Although they had earlier opposed decentralization, the village and tambon heads now also became supporters of the TAO bill.

In this changing context, the headmen of tambons and villages and the senior MOI officials successfully forged alliances to negotiate and bargain with the political parties. The MOI pushed the proposal to make the TC into a legal entity, as it would benefit the headmen of tambons and villages. The headmen, in turn, hoped that if they joined the alliance, their budget and power

<sup>23</sup> *Matichon*, December 4, 1992, p. 10.

<sup>24</sup> *Bangkok Post*, December 4, 1992, p. 3: "Permanent officials should not draft bill."

<sup>25</sup> Order 262/1992 (OR 262 hereafter) dated December 11, 1992.

<sup>26</sup> The PDP proposed such an idea when other coalition government parties demanded that the PDP end its support for the election of governors (*Matichon*, December 1, 1992, p. 1, 19, *Matichon* December 2, 1992, p. 1, 22, and *Siam Rat* December 2, 1992, p. 1, 16). The PDP was one of the coalition government parties that aggressively supported it, but was criticized by other coalition government parties especially the DP (Banyat Bantadthan, Chamni Sakdiset, and Suthat Ngoenmuen). *Bangkok Post*, November 17–18, 1992.

<sup>27</sup> The MOI had proposed a "Tambon Council" bill to the parliament on several occasions between 1981 and 1990. But on each occasion, the bill was not approved by the Senate, or the parliament was dissolved before approval was finalized. Therefore, when the MOI came under pressure from civil society groups and politicians over decentralization, it introduced this solution.

would increase and their freedom to administer the tambons and villages would be strengthened.<sup>28</sup> The political parties were obliged to listen to the headmen because they valued the headmen's role as vote canvassers during elections.<sup>29</sup> Senior MOI officials persuaded the interior minister, Gen. Chawalit Yongchaiyut, head of the NAP, to negotiate with other political parties to drop the proposal for elective provincial governors and concentrate on reform at the tambon level instead.<sup>30</sup> This compromise would allow the political parties to show their supporters that they had indeed fulfilled their election promise to pursue decentralization, and would allow the MOI to claim that it was now open to decentralization.

By lending support to decentralization at the tambon level, the MOI bureaucrats and the village and tambon heads hoped to be in a position to influence the drafting of the law in ways that would protect their interests. Their key strategy was to install themselves in the new tambon-level structure, by giving the village and headmen *ex officio* posts on the new TAO, and giving the governor and his subordinates in the provincial hierarchy roles in overseeing how the TAO operated. To achieve these key goals, this official coalition conceded some other reforms that the politicians wanted (e.g., greater opportunities for women in the MOI structure<sup>31</sup>). In return, some of the political parties, especially the NAP, lent their support to the MOI's proposals for the TAO, and also supported the MOI in other ways. For example, when the reformers proposed amending the constitution (sections 198–199) to make all seats on local government bodies elective, the NAP and allied parties strongly opposed the move, and the proposal had to be dropped.<sup>32</sup>

In short, the majority of policy stakeholders—politicians, permanent government officials, headmen of tambon and villages, and academics who had previously supported the election of governors—were satisfied with the idea of drafting a TAO bill.

### 3.4.1 Competition for Political Benefits (or, on Stage at the Parliament)

There were enormous differences, however, over what exactly should be in such a piece of legislation. As competition between the political parties for public attention intensified, no fewer than eight different bills were submitted. Five parties in the coalition (DP, PDP, NAP, SAP, CTP) each submitted one draft bill, as did the opposition,<sup>33</sup> while the Chart Phatthana Party (CPP) submitted two separate bills reflecting the intense competition among its members.

Although there were eight bills, the key conflict was between the drafts submitted by the NAP and the DP. The conflict was rooted in the differing electoral constituencies of the two parties. The NAP was a provincial party, based mostly in the northeast. At elections, it

<sup>28</sup> *Bangkok Post*, November 6, 1992, p. 1.

<sup>29</sup> Even though the truth is that no research has actually pointed out whether the capability of tambon and village headmen as vote canvassers for members of Parliament would have an effect on state-level elections.

<sup>30</sup> Interview with Aree Wongaraya, former permanent secretary of the Ministry of Interior, August 23, 2003 at his Lad Phrao residence.

<sup>31</sup> Even though there had been criticism from academics that such changes are not related to decentralization at all.

<sup>32</sup> An important reason that caused the instability in the government was the attempt to bring the Chart Phatthana Party into the coalition government. The DP (the core political party of the coalition government at that time) and New Aspiration Party began to have differing opinions as a result. (See press release on New Aspiration Party withdrawal from the coalition government party cited in Phornsak Phongpheaw (2001: 319–321).)

<sup>33</sup> For details of the differences in each of the eight bills proposed to the House of Representatives, see Trakun Michai (1994: 131–141). For details on the process of proposing the Tambon Council and Tambon Administrative Organization Act and the consideration of the stated act, see Trakun Michai (1994: 142–160).

depended on local politicians to act as its vote canvassers. It gave support to decentralization because this demand was attractive to local politicians. But the party was also aware that some of the most important local canvassers were the headmen of villages and tambons, and that local officials of the MOI at the provincial and district level also had important influence. Thus, the NAP favored a gradual decentralization under which local headmen and MOI officials would continue to have considerable *ex officio* power in local government, and hence the ability to aid the NAP at elections. The DP, on the other hand, drew a major part of its support from Bangkok. The party wanted to satisfy its supporters, including the new generations of academics, thinkers, and intellectuals who wanted to see immediate results from decentralization, and hence the DP supported a fully elective TAO. All parties were united, however, in the belief that the conflicts between the various bill drafts should be resolved in Parliament. Even so, the conflict was also played out in wider public debate. The DP went public with the claim that the MOI had had undue influence on the drafting of the reform proposals, and called for some compromise between official interests and the proposals made by political parties.

Once the bills entered the legislature, the coalition between MOI officials and headmen of tambons and villages, which had come together to oppose elective governors and substitute reform at the tambon level, began to unravel.<sup>34</sup> MOI officials proposed that the MOI should initially control the TAO while election rules and other infrastructure were being established, but the association of tambon and village headmen wanted the new bodies to be independent of the MOI from the start. The association submitted its proposal to the Standing Committee of the House of Representatives, supported by many civic organizations and pressure groups like the Confederation for Democracy, Association of People's Right and Freedom, and Federation of Thai Students.<sup>35</sup> The coalition was being pulled apart by the efforts of different interests to preserve their specific benefits. This became clearer when the House of Representatives held open-door hearings to listen to proposals from various groups and civic organizations.

However, when it came to major decisions relating to the bills, these pressure groups and civic organizations had no influence on the parliament; they were ignored and did not receive attention even at the Standing Committee of House Representatives or the Standing Committee attached to the Senate in charge of considering the draft bill.<sup>36</sup> Politicians and permanent government officials pushed their own sectarian proposals, and ignored the opinions of these "pressure groups,"

<sup>34</sup> This coalition was based on an expectation that the headmen would retain *ex officio* control over the TC and TAO, and the MOI would continue to have oversight power, under the pretext that the local people were not yet ready for self-government.

<sup>35</sup> Phong Sudthiparinyanon, chairman of the Independent Campaign for Tambon Councils as Legal Entity, Pracha Chartwongwan, chairman of the Northeastern Heads of Tambon and Village Association, Phrom Pangma, chairman of the Srisaket Heads of Tambon and Village Association, and Kamon Katiaunwat, chairman of Vaeng-noi, Khon Kaen Association, expressed their resistance to the version drafted by the MOI. For details see *Siam Rath*, May 31, 1993, p. 16, and *Siam Rath*, June 28, 1993, p. 1, 3.

<sup>36</sup> The 42 members of the Standing Committee attached to the House of Representatives included 8 government representatives, and members of Parliament proposed by various political parties in ratio to their seats in the parliament, namely, the Democrat Party and Chart Thai Party 7 each, Chart Pattana (6), Palang Dharma (4), Social Action Party (3), and Seri Dharma and Solidarity Party (1 each). The Thai Citizen Party, Mass Party, and Rassadorn Party had no representatives. The 27 members of the Standing Committee attached to the Senate included 8 experienced members who had formerly been attached to the House of Representatives, and 19 members who were permanent officials in the MOI, high-ranking officials in local administrative organizations and other permanent officials. This is a summary made from the records of the proceedings of the meeting. (I owe special thanks to Wasana Yangsuk and Tisa, officials of the Report Group, Meeting Division, Office of the General-Secretary of the Senate, for providing me with all 35 records of the meeting.)

including those of the association of tambon and village headmen. Ironically, this official pressure made the headmen more aware of the importance of gaining real independence from the MOI through the introduction of elections at the TC and TAO levels.

### 3.4.2 Reflections

The TAO bill was finally passed on November 26, 1994. The result was not a triumph for any particular actor, but more the product of compromises among policy formulators and policy stakeholders. The MOI had perhaps gained more of its objectives than others had. The village and tambon headmen were *ex officio* members of the new TAO, and provincial officials retained a supervisory role. But this victory proved to be relatively short term.

Decentralization became a national issue in Thailand in the mid 1990s. This resurgence began in the special atmosphere following the May 1992 incident when the military was forced back to barracks by a largely urban-based “democratic movement,” and subsequently academics and politicians demanded many different reforms in the Thai state. One of these demands was to make the post of provincial governor elective. National politicians took up this proposal because they could not ignore an issue that might be popular with the electorate on which they depended. But many of these politicians were reluctant to introduce dramatic change at the local level, which might actually undermine their existing electoral base among local canvassers and other influential forces. The permanent government officials of the MOI, for whom the proposal to make governors elective was a direct threat, made common ground with the national politicians to divert the demand for decentralization *away* from the issue of the governor *toward* reforms at the tambon level.

The more radical proponents of reform proposed that the new form of local government at the tambon level should be fully elective. However, this was opposed by the MOI, which hoped to maintain a supervisory role over any new local bodies, and by the village and tambon headmen, who hoped to maintain their local influence through *ex officio* roles in the new local bodies. These two powerful pressure groups were able to persuade some political parties, especially the NAP, that introducing over-radical reform at the local level might damage the electoral base of their member of Parliament. As a result, the TAO law passed in 1994 severely compromised the electoral principle by giving village and tambon heads *ex officio* positions, and by allocating supervisory roles to the governor and district officials.

The TAO law thus seemed to have achieved the MOI strategy of deflecting attention away from the issue of elective governors, and limiting the extent to which local self-government would challenge bureaucratic power in the provinces. But this victory was relatively short term, because the passage of the TAO act precipitated a broader trend toward democratic decentralization,<sup>37</sup> which continued over the following decade.

## 3.5 Impacts of the Decentralization Reform on Local Government in Thailand: Ongoing Challenges

The Chuan government (November 1997 to February 2001) established the Committee for Revision of Local Government Acts and Decentralization Promotion. The Chuan cabinet also enacted and amended implementing legislation for the realization of the local autonomy mandated

<sup>37</sup> For details of the development of decentralization in Thailand during 1994–2006, please read Achakorn (2004, 2005, 2005a, 2006, 2007).

by the new charter. Article 78 (282–290) of the 1997 Constitution requires the promotion of decentralization as a basic policy of the government, the definition of plans and procedures for decentralization in separate legislation, and the establishment of a decentralization committee. Accordingly, the Decentralization Plan and Procedures Act was enacted in November 1999. The act established a National Decentralization Committee (NDC) responsible for defining decentralization, elaborating decentralization plans and procedures, and promoting and monitoring the government's decentralization policy.<sup>38</sup>

The Decentralization Plan and Procedure Acts of 1999, implementing legislation stemming from the 1997 Constitution, has set a new local political and administrative environment. The new strong executive system in all forms of local government, ongoing process of fiscal decentralization, unfamiliar transferred responsibilities, limited spending on personnel, and the new local personnel system have forced all local governments to adapt themselves to handle this new environment.

### **3.5.1 Strong Executive System**

Major critical change in local administration concerns the new directly elected chief executives. Mayors and chairs of PAOs and TAOs are now directly chosen through local elections. Previously, mayors had been selected through negotiations among members of the municipal assembly, PAO Assembly, and TAO Assembly. Following are the descriptions of the current political structure of each of the five forms of local government in Thailand.

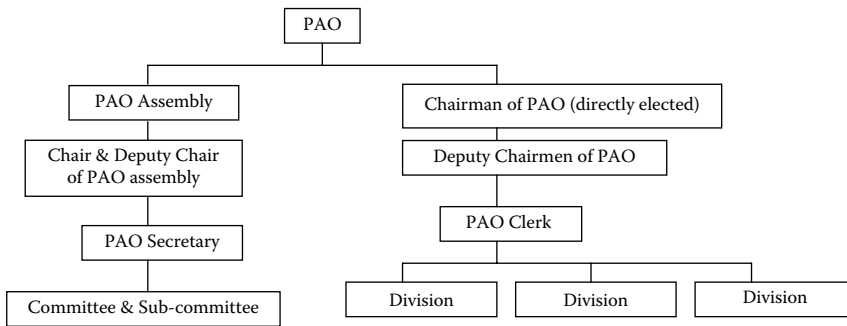
Based on the Provincial Administrative Organization Act of 1997 (subsequently amended in 1999), the PAO is divided into legislative and executive branches. Members of the PAO Assembly (4-year terms) are directly elected by local citizens.<sup>39</sup> During the first meeting of the PAO Assembly, chair and deputy chair of the PAO Assembly will be elected (2-year terms). Chairman of the PAO is the head of the PAO executive branch and is directly elected by the local constituencies. The chairman then selects his deputy, the number based on the number of assembly members.<sup>40</sup> Levels below includes the PAO clerk who is responsible for supervising all PAO employees within each division.

Municipal government, the oldest form of local government in Thailand, originated in 1933. There are three different types of municipal government—city level, town level, and sub-district

<sup>38</sup> The National Decentralization Committee (NDC) itself is composed of 36 members, led by the prime minister. Other members include politicians (from three parties), central (12) and local (12) government officials, and intellectuals or qualified authorities from the fields of governmental affairs, public law, economics, and local politics (12). The National Decentralization Committee has four subcommittees: (1) Strategic Planning, (2) Finance/Budget/Personnel, (3) Law and Legislation, and (4) Monitoring and Evaluation (Japan International Cooperation Agency, 2001, p. 43). The Strategic Planning subcommittee was responsible for guiding the NDC in developing the Decentralization Action Plan, finalized in November 2001; allocating functions among levels of governments; and establishing guidelines for transferring responsibilities to local governments (Thailand Ministry of Interior, 2003). The Finance/Budget/Personnel Subcommittee was responsible for providing recommendations regarding taxes and local personnel issues in accord with the Decentralization Action Plan. The Law and Legislation Subcommittee was responsible for giving recommendations regarding the revision of laws and regulations to enable the devolution and delegation of responsibilities, personnel, and financial issues to local governments. The Monitoring and Evaluation Subcommittee was responsible for assessing the progress and problems of the decentralization process (Japan International Cooperation Agency, 2001, p. 47).

<sup>39</sup> Population less than 500,000 → 24 members; between 500,000 and 1,000,000 → 30 members; between 1,000,000 and 1,500,000 → 36 members; between 1,500,000 and 2,000,000 → 42 members; more than 2,000,000 → 48 members.

<sup>40</sup> Assembly with 48 members → chairman selects four deputy chairmen; 36–42 members → chairman selects three deputies; 24–30 members → chairman selects two deputies.

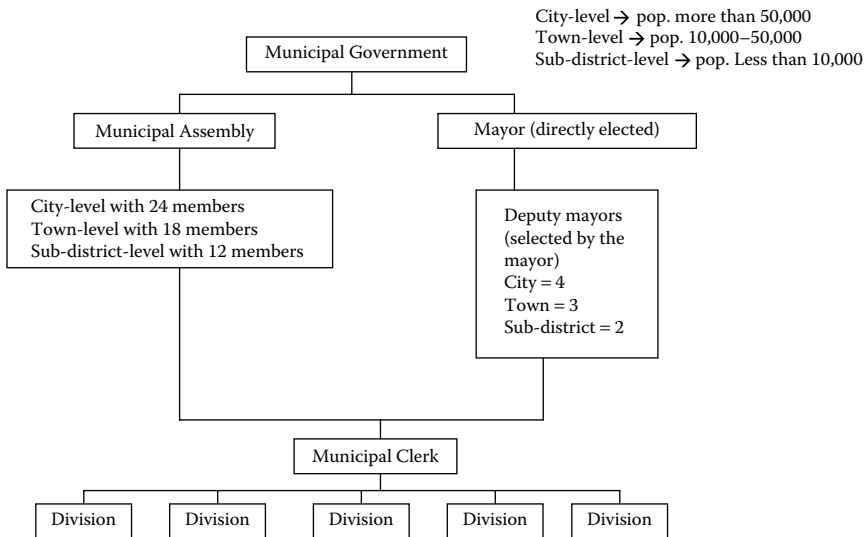


**Figure 3.2 Structure of Provincial Administrative Organization (PAO).**

level. The categories are based on the number of population in the municipal area. Members of the municipal assembly and mayors are directly elected by local citizens.<sup>41</sup>

Members of the TAO Assembly are directly elected from each village (two from each village) located within the TAO area. The head of the executive committee is also directly elected from the local constituencies.

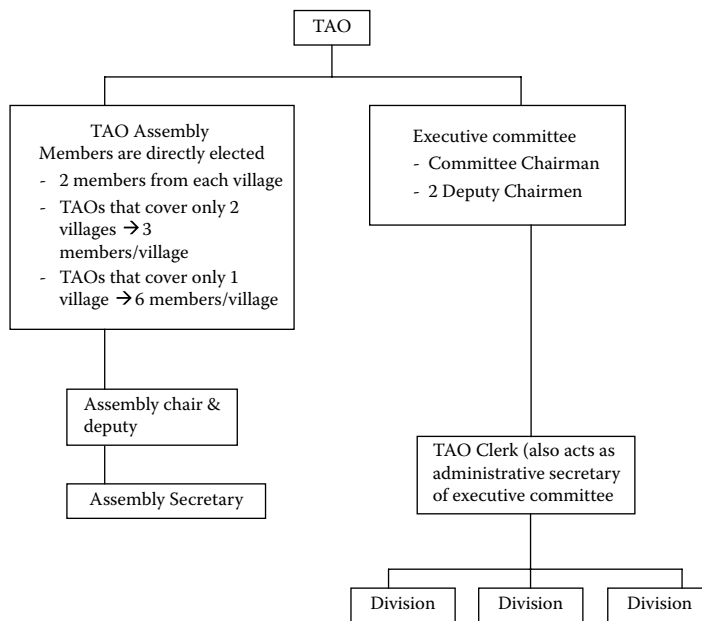
The BMA is a special form of local government (Bangkok Metropolitan Administration Act 1985). It is responsible for the well-being of Bangkok residents with some financial support from central government. The structure is also divided into two branches, the BMA Assembly and BMA governor. The governor is the chief of the city administration and is directly elected by popular vote for a 4-year term. The governor appoints four deputy governors as executive administrators. The governor and his team are responsible for policy formulation, supervision,



**Figure 3.3 Structure of municipal government (Tessaban).**

<sup>41</sup> The new direct-elected mayor system or the strong-mayor system is a result of the Decentralization Plan and Procedure Act of 1999.





**Figure 3.4 Structure of Tambon (sub-district) Administrative Organization (TAO).**

and control of all functions undertaken by the manpower of the BMA headed by the BMA clerk. The BMA Assembly is the legislative body. The assembly is responsible for making local laws, ordinances, regulations, rules, and by-laws as measures for city development and management. Members of the BMA Assembly are directly elected for a 4-year term by the citizens of Bangkok.<sup>42</sup> The BMA Assembly will then select one assembly chairman and now more than two deputy assembly chairmen (with 2-year terms).

Pattaya City is another special form of local government in Thailand (Pattaya City Administration Act of 1978). The structure of Pattaya City is divided into two parts—Pattaya City Assembly and the mayor of Pattaya City (Pattaya City Administrative Act of 1999). The assembly consists of 24 members (4-year terms) who are directly elected by eligible citizens in Pattaya City. The assembly then selects one assembly chairman and two deputy assembly chairmen. The mayor of Pattaya City is also directly elected for a 4-year term by citizens of Pattaya City.

### 3.5.2 Thai Local Political System

In the case of municipalities, before the local executives were directly elected, they typically were the head of a team of candidates that secured a majority of the seats in the municipal assembly. However, the position of the mayor usually rotated among the members of the dominant assembly team over their term. In cases in which there were no serious conflicts between executive councils and assemblymen, mayors and municipal assemblymen would negotiate the budget with each other and the assembly would then pass the budget proposal without delays. As a result, the budget approval process had little effect on the future of the executive councils.

<sup>42</sup> One assembly member represents 100,000 people.

The picture is very different, however, where there are serious conflicts of interest between the mayor and the assembly. In these instances, opposition groups in the assembly lobby assemblymen from the mayor's team to switch sides to block the mayor's budget proposal. As a result, municipal assemblies can be very unstable, as usually found in many developing countries with unstable coalition government. Elected local politicians in Thailand are frequently motivated by their personal business interests. If their short-term interests are not being served adequately, opposition groups in the municipal assembly go to work trying to undermine municipal executives. If they can criticize the municipal leadership for the gridlock they help create by spreading rumors or blocking budgets, they may hope to replace the existing leadership. The old system, in short, often produced weak municipal leadership. Municipal governments often lasted no more than 2 years.

Mayors, under the strong-mayor system, are directly elected by local residents, and are eligible to hold the mayorship for no more than two consecutive 4-year terms. The mayor can appoint deputy mayors (they need not be members of the municipal assembly): up to two deputy mayors for tambon-level municipal governments, three for town-level municipal governments, and four for city-level municipal governments. Mayors appoint advisors and secretaries who are allowed to sit in on municipal meetings (without a vote).

This system strengthens mayoral executive powers. Even though the municipal assembly can question the mayor regarding policies and administration, it cannot vote no confidence. The strong-mayor system does not allow the assembly to use the budgetary process to unseat the mayor and executive council. According to the Municipal Act of 2000, if a majority in the assembly do not pass the mayor's budget, the assembly must set up a committee of seven assemblymen, seven mayoral appointees (they need not be assemblymen), and a committee chair appointed through agreement among the fourteen committee members within a week of their initial assembly. The chair cannot be one of the fourteen committee members or an assemblyman. If there is no agreement on who will be the committee chair within 7 days, the provincial governor will appoint a chair. This committee has to consider the budget proposal within 15 days after the chair's appointment. If three-quarters of the assembly still oppose the committee's recommendations, the budget proposal is canceled and the municipal government operates under the budget proposal from the previous year's budget. In this event, the interior minister can dissolve the assembly with the mayor's consent. The threat of loss of office considerably reduces the likelihood that the assembly will reject the committee's recommendations (Thailand Municipality Act of 2000).

As a result, mayors under the new system enjoy more secure job tenure. Mayors and other executives can be driven from office only on the approval of the interior minister or if three-quarters of eligible municipal voters decide. This process is cumbersome and sets a high hurdle that is unlikely to be often cleared. This strong-mayor system obviously gives tremendous administrative and legislative powers to the mayor and his executives. Under this presidential-like system, municipal politicians who really want to serve the office and local community face lesser obstacles. Candidates for the mayoral position do not need to carry a slate of candidates competing in municipal assembly elections and this may boost the numbers of mayoral candidates in the future.

### **3.5.3 Fiscal Decentralization**

Table 3.3 shows local government revenue in Thailand. The fiscal decentralization process in Thailand focuses primarily on increasing revenue share of national budget. Table 3.4 shows local government revenue share.

The building and land tax is assessed based on the rental value of the houses and buildings for commercial and industrial purposes. It accounts for the largest portion of all local taxes, but is not

**Table 3.3 Local Government Revenue**

<i>Own Collected Revenue</i>	<i>Centrally Collected Taxes for Local Government</i>	<i>Grants</i>
<ul style="list-style-type: none"> <li>• Own-collected taxes               <ul style="list-style-type: none"> <li>◦ Land and building tax</li> <li>◦ Land development tax</li> <li>◦ Signboard tax</li> <li>◦ Slaughter duties</li> <li>◦ Swallow nest duties</li> <li>◦ Tobacco tax</li> <li>◦ Petroleum tax</li> <li>◦ Hotel tax</li> </ul> </li> <li>• Own-collected non-tax               <ul style="list-style-type: none"> <li>◦ Fees and fines</li> <li>◦ Revenue from property</li> <li>◦ Revenue from infrastructure services</li> <li>◦ Miscellaneous</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Commerce tax</li> <li>• VAT and specific business tax               <ul style="list-style-type: none"> <li>◦ VAT</li> <li>◦ Specific business tax</li> </ul> </li> <li>• Liquor tax</li> <li>• Excise</li> <li>• Vehicle tax</li> <li>• Property registration duties</li> <li>• Gambling tax</li> <li>• Royalties for minerals</li> <li>• Royalties for petroleum</li> <li>• Other</li> </ul>	<ul style="list-style-type: none"> <li>• General grants</li> <li>• Specific grants</li> <li>• Miscellaneous</li> </ul>

efficiently collected due to exemptions for owner-occupiers. Land values are used in computing the land development tax. Municipal governments are responsible for determining land values using current market values based on land sales and must revalue every 4 years. Signboard taxes vary with the size and number of foreign characters. The Slaughter tax varies by the type and number of animals slaughtered (from interviews with directors of the Division of Finance in four municipal governments). Grants from central government were the major sources of municipal revenue. General grant allocations were based on population (150 baht per capita). This general grant was allocated without earmarking for specific uses. Specific grants served various purposes, e.g., developing infrastructure, education, and other programs promoted by central government. Decisions on specific grants were made through discussions between officials in the Division of Local Finance and the Bureau of the Budget. Grants for specific purposes accounted for 45% of all grants and were allocated to local governments through many government bodies, including the Ministries of Interior, Agriculture and Cooperatives, Transportation and Communications, Public Health, Education, Industry, Labor and Social Welfare, Science and Environment, as well as state enterprises and other government agencies.<sup>43</sup> Both types of grants, however, were generally provided through the DOLA, MOI. Specific grants are among the most important grants designated for local development purposes, especially those allocated under the subject criteria of the Regional Cities Development Program (RCDP). This program aims to reduce regional income disparities and to dilute the concentration of economic activity and population in and around Bangkok by improving basic infrastructure in secondary cities.

<sup>43</sup> Japan International Cooperation Agency, 2001, p. 6.

**Table 3.4 Local Revenue by Sources**

<i>Revenue Sources</i>	<i>1999</i>	<i>2000</i>	<i>2001</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>
1. Own-collected	9,330.74	11,419.42	12,280.31	13,416.18	14,410.58	15,729.51
	8.88	11.40	9.46	8.21	7.36	6.77
2. Central government collected	42,887.98	50,262.16	63,643.37	73,100.27	106,983.16	121,666.58
	40.83	50.18	49.02	44.71	54.61	52.34
3. Fee and surcharge	8,271.44	6,024.74	4,990.00	5,648.48	5,966.09	6,465.46
	7.87	6.01	3.84	3.45	3.05	2.78
4. Grants	44,546.18	32,464.24	48,905.35	71,342.39	68,556.18	88,594.82
	42.41	32.41	37.67	43.63	34.99	38.11
Total	105,036.34	100,170.56	129,819.04	163,507.33	195,916.02	232,456.37
	100.00	100.00	100.00	100.00	100.00	100.00

Source: Department of Local Administration, Ministry of Interior. Thailand (October 2007).

Municipal government expenditures include (1) monthly wages and salaries; (2) allowances; (3) general expenses; (4) supplies expenses; (5) stationery expenses; (6) costs of land, construction, and other property; and (7) other expenditures based on specific clauses, regulations, and acts issued by the MOI.

The 1997 Constitution calls for increasing the share of local government revenues and expenditures, assigning more revenue sources to local governments, promoting local fiscal autonomy, and revising the system of intergovernmental transfers to provide grants in a more transparent and predictable way. According to the Decentralization Plan and Procedures Act of 1999, local governments are to be allocated at least 20% of the national government budget by fiscal year 2001 (October 2000–September 2001) at the end of the Eighth National Social Economic Development Plan, and at least 35% by fiscal year 2006 (October 2005–September 2006) at the end of the Ninth National Social Economic Development Plan. These specific targets have been subjects of heated debate. Central revenues will no longer flow solely through the DOLA of the MOI. The Decentralization Plan and Procedures Act of 1999 enables local governments to receive grants from other government agencies and ministries as well, beginning in fiscal year 2001 (Thailand Decentralization Plan and Procedures Act of 1999). Under the 2003 National Budget, central government successfully allocated 184,066.03 million baht, or 22.19% of the total national budget (829,495.60 million baht) to local governments (Thailand Office of Prime Minister, 2002).

### **3.5.4 Transferred Responsibilities**

As a result of fiscal responsibilities that were transferred, responsibilities were also transferred. Under the decentralization surge, municipal governments face major changes. Responsibilities, funding, and personnel are being transferred from central government to local governments all over the country. There are six major categories of responsibilities transferred from all ministries, including (1) basic infrastructure; (2) quality of life; (3) community development; (4) local commerce, investment, and tourism; (5) environmental preservation; and (6) local cultural preservation and local wisdom (Ministry of Interior, 2003; Thailand Transferring Responsibility Act of 2000). Municipal officials are frustrated with the rapid increase in their responsibilities.

Although municipal governments now receive more funds from central government, their discretion in administering those funds is very restricted. A fierce debate rages as to whether or not earmarked funds transferred to localities should be included in calculating the target of transferring 35% of the national budget to local governments by 2006 (this transferring target of 35% has not yet been met). Municipal governments oppose the inclusion of earmarked funds in these calculations, contending that they violate at least the spirit of decentralization legislation.

One of the major concerns among municipal governments is their responsibilities in managing municipal sewage systems. These responsibilities entail very high operating costs that may be shared if municipal governments can persuade municipal residents to assume some of the costs of the service. Total costs may also be lowered if information is shared and local residents cooperate in service delivery.

Still another burden that municipal governments, especially larger ones, confront is the need to assist new municipal governments in their regions. With sanitary districts elevated to tambon-level municipalities, these small, new municipalities lack experience in administration. Nearby governments with more resources and capacities are expected to provide technical and personnel help as well as some financial resources to the tambon-level municipal governments.

### 3.5.5 Limited Spending on Personnel

Another bar to promotion and transfer under the new local personnel system is the new limitation imposed by central government on municipal spending on personnel. Central government is trying to force municipal governments to use their personnel more efficiently by limiting all municipal government personnel expenses to 40% of the municipal budget, excluding grants from central government. The aim is to curb politicians' habits of trying to win votes by promising jobs in municipal offices. Many municipal offices are in fact staffed by the sons and daughters of election canvassers. At an extreme, such practices can consume the entire budget.

Many municipalities are struggling to contain their personnel spending. They have to either raise more revenue or cut back their personnel costs. Raising revenue is not easy since politicians do not want to alienate their constituents. Improving local tax collection is difficult in part due to the ceiling on personnel spending. Developing a "tax map" to trace a resident's property accurately is a labor-intensive exercise. Boosting taxes also confronts the hurdle of the "tax appeal" system that affords residents opportunities to appeal tax assessments. The final decision on appeals lies with vote prospecting municipal executives.

### 3.5.6 New Local Government Personnel System

Municipal governments are facing major personnel problems. The Local Personnel Administration Act was amended in December 1999 to give municipal governments, especially mayors, more authority in determining municipal personnel issues. The law established three layers of personnel committees, including the Committee for Standardized Local Personnel Administration (*Kana Kammakarn Borihan Nganbookkon Suan Tongtin*) at the central level, which is mainly responsible for setting broad, but flexible, national standards for merit systems and procedures for hiring, firing, recruiting, and setting salaries and benefits in local governments all over the country. The Central Committee for Local Personnel Administration (PAO or *Kana Kammakarn Klang Karajakarn Rurr Panakngan Suan Tongtin*) is responsible for more specific personnel guidelines for PAOs, municipal governments, and TAOs. The Committee for Local Personnel Administration at the Provincial Level (*Kana Kammakarn Karajakarn Rurr Panakngan Suan Tongtin Radap Changwat*) is responsible for approving local government's decisions on personnel issues such as recruitment, transfers, promotions, salary increases, appeals, dismissals, and investigating local officials for all local governments (Thailand Local Personnel Administration Act of 1999). This last committee is composed of an equal number of mayors and municipal clerks of municipal governments within each province, officials from DOLA, local residents, officials from the National Civil Service Commission, and representatives from the Bureau of the Budget. Despite this cumbersome administrative apparatus, local executives now have more authority in personnel decisions than ever before.

Generally, the act gives mayors tremendous powers in making decisions in hiring, promoting, and transferring municipal officials and employees. Previously, the DOLA had full jurisdiction in transferring municipal personnel through the Committee of Municipal Personnel (*Kana Kamakan Pannakngan Tessaban* or *Kor Tor*). Typically, municipal officials rotated jobs every 2 to 4 years. This is no longer the case. The Committee for Local Personnel Administration at the Provincial Level (*Kana Kammakarn Karajakarn Rurr Panakngan Suan Tongtin Radap Changwat*) now must approve municipal government personnel transfers and other personnel decisions. If municipal officials now want to be transferred to other municipal governments, they are dependent on negotiations among the mayors in their current and prospective administrative units and the approval of the provincial level committee.

All decisions regarding municipal personnel are now largely under the power of the mayors. The strong vertical connections between municipal officials and officials at central government, especially in DOLA, that were previously crucial for officials gaining their preferred jobs, are no longer relevant. Now, municipal officials are pretty much on their own and dependent on mayors.<sup>44</sup>

### 3.6 Local Governments Reaching Out to Local Community

One of the major goals of decentralization policy is to encourage public participation and to strengthen democracy at the grassroots level. Critics of decentralization in Thailand have worried that the result, instead, would be that local power brokers would boost their influence. In 1988, the MOI issued an order to all local governments to encourage, organize, recognize, and support Cooperative Community Groups (CCGs) in local areas. CCGs are local groups of residents formally recognized by the local government as representatives of their communities. CCGs can be organized at local governments' behest or at the request of the groups themselves. (An approximate number of members is from 200 to 2000.) The main objective of the CCG is to encourage community groups to be strong and depend on themselves as much as they possibly can in solving their own problems. CCGs will, it is hoped, try to take care of their own needs and problems before going to local governments to seek help. Many local governments have responded to the ministry's recommendations in part in the hope that CCGs may relieve local governments' workloads without increasing their financial burdens. Local politicians also see in CCGs a means of boosting their support bases.

The new constitution promotes popular participation, and encourages a strong civil society and democratic decentralization as a means to stimulate local economies, strengthen local social fabrics, and promote good governance. Central government has launched a variety of initiatives consistent with these goals. These schemes include CCGs, the Village Fund, the Economic Stimulation Fund, the One-Tambon One-Product plan (OTOP), and the Municipal Development Fund. In general, "messengers" between municipal residents in CCGs and municipal governments. CCG leaders are often the first to learn of problems such as flooding or electrical failures and bring these to the attention of municipal offices. CCGs apparently make municipal residents feel closer to the municipal government. As a result, they are more likely to visit municipal offices.

Local governments are required to encourage local citizens' participation in the process of generating annual and 5-year municipal plans. To do so, some local government units survey residents on their needs and their perceptions of existing local public services. CCGs are not intended to enjoy any corporatist status as the sole representatives of their communities. Accordingly, local politicians and officials employ institutions such as the "coffee assembly" (*sapha kafee*). These are usually small and informal local cafes where active local residents gather and discuss what is going on in the municipal area. Municipal politicians and officials apparently regard them as major sources of information. Even mayors may attend these coffee assemblies every few days to listen to the talk and hear opinions as well as to give their perspectives on local problems to the locals. A more formal alternative that also affords an opportunity for politicians and officials to show their willingness to listen to local residents is a government-organized public forum. Contributing to a diminished gap between citizens and their leaders is the greater openness of local assembly meetings. These are now often broadcast over the radio.

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<sup>44</sup> Chandra-nuj Mahakanjana (2004: 105–20).

Numbers of municipal governments have now formed a Municipal Development Committee responsible for developing municipal development plans. It is composed of municipal politicians and officials, heads of other levels of government within the province, and others interested and active in community development activities, usually CCG leaders. After the committee approves a draft proposal, the municipality organizes a public forum at which it presents the plan and solicits feedback before the plan is implemented.

Local residents are encouraged to try to help themselves, reducing burdens on municipal offices and, perhaps, making them more efficient and effective in responding to local needs. Politicians gain as a result. The CCGs that foster participation and a degree of self-reliance are instruments available to support politicians' elections. CCGs also create opportunities for citizens to build networks and foster trust.

Political participation involves a long-term learning process. As people learn what rights they have to try to influence municipal governments through democratic means, they need channels of access to the municipal government. State institutions may have unintended effects on society. Municipal governments have tried to co-opt local communities to improve service delivery and to enhance their political fortunes, and their personal business interests. As a result, however, the closer interaction with municipal governments engenders important changes within local communities themselves. They become more familiar with municipal political dynamics and participatory democracy.

### 3.7 Conclusion

This chapter illustrates the development of decentralization policy and the current surge of decentralization, and different forms of local government in Thailand, including several ongoing issues that follow the decentralization policy. Decentralization in Thailand has made significant impacts on local governments all over the country. The new local electoral system, which is a strong executive system, fiscal decentralization, transferred responsibilities from central government, limited spending on personnel, and the new local personnel system, have changed the local political and administrative atmosphere during the past 10 years. Thailand's experience on decentralization has taught us that rapid decentralization policy implementation force direct local level participation and cooperation between local communities and local governments to some extent. However, the tremendous burden on local governments as a result of rapid decentralization policy may delay local level development process and democratization as a whole if the policy implementation is not done carefully enough to suit Thailand's local socio-political context.

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## Chapter 4

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# Public Ethics and Corruption in Thailand

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Juree Vichit-Vadakan

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### 4.1 Introduction

Corruption is commonly acknowledged as a problem, even a “disease” in Thailand today. It exists in many different forms, some readily obvious, others more covert and not readily or immediately identifiable. Corruption ranges from small, i.e., petty corruption in terms of a small bribe, to grand-scale corruption that involves huge sums of money, such as when 10%–30% of the cost of a project is siphoned off in, for example, infra-structure mega-projects. To a certain extent, the Thai public is almost numb or has become “used to” petty corruption in everyday life. Small bribes are seen as semi-service charges to get the bureaucratic process moving.

However, public attitudes toward grand corruption are much stronger than towards petty corruption. Especially among the educated public, information on grand corruption evokes strong reactions a seething anger and frustration over individual inefficacy to make changes. Like an outrage that could translate into action, if and when conditions permit. Indeed, the root causes of the current political instability, conflict, and turmoil (2005–2009) stemmed mainly from grand-scale corruption or corruption charges against the former Prime Minister Thaksin Shinawatra. On the charge of using his political office and influence to pave the way for his wife's successful bidding for a very valuable piece of state-owned land, he was convicted by the Supreme Court for the Holders of Political Office and sentenced to 2 years in prison. He was convicted *in absentia* because he had jumped bail and left the country before sentence was passed.<sup>1</sup>

Corruption charges and allegations have been a common reason or justification for regime changes in Thailand.<sup>2</sup> This chapter discusses public ethics in Thailand, the reasons behind many current concerns, and various efforts to address public ethics.

## 4.2 Corruption: General Situation in Thailand

### 4.2.1 *Transparency International and its Corruption Perception Index*

Thailand has been included in the ranking system of Transparency International's annual Corruption Perception Index<sup>3</sup> (CPI). Since the CPI's inception, Thailand's score has not changed dramatically. Its score never reached 4 points out of a 10-point scale (Table 4.1).

As a perception index, it does not profess to measure the actual incidence of corruption, nor the degree or level of corruption in a country. Perhaps because this instrument has been around for over a decade, its continuity and virtual monopoly in ranking the transparency of countries at the international level has made the CPI a potent instrument that many countries look on seriously. Thailand is one such country. Government agencies and especially independent anti-corruption agencies like the National Anti-Corruption Commission (NACC) hope to upgrade Thailand's score in the CPI from 3 plus to 5 points in a few years. In fact, the NACC drafted a

<sup>1</sup> It is important to note that according to the design of this special Supreme Court to deal with offenders who are politicians, no appeal was allowed. The rationale for this rested on past experiences when political office holders utilized the regular lengthy three court-system with appeals court and Supreme Court to evade punishment and to continue carrying on their tasks and duties despite a first and second conviction. Because of the lengthy process from charges and investigation, to formal charges by the prosecutor's office, court hearings, and final court judgment, which may still involve another two tiers of appeal, some accused persons may have died before the final judgments. Worse still, criminal offences as with other offences have term limits or expiration that in the past had served to absolve many alleged wrongdoers before the conclusion of a case in the judiciary system. The Constitution of 1997 enabled this special one-tier court to come into existence. The current Constitution of 2007 did not make changes to this special "Supreme Court." However, under the current political conflict; many politicians are calling for a revision of the constitution, which may include changes to this special court system for politicians.

<sup>2</sup> Pressures against an elected government often include corruption charges, which when the urban public begins to be convinced of the charges, could eventually lead to the waning of the government's position, which may ultimately result in the dissolution of Parliament and the call for a new election. Likewise, charges of corruption are inevitable as justification for military take-over in coup d'états that Thailand has had a fair share of since 1932, when absolute monarchy was replaced with constitutional monarchy and the institution of parliamentary democracy.

<sup>3</sup> From Transparency International (<http://www.transparency.org/>). CPI's scoring systems runs from 0 to 10. The higher the score, the less corrupt a country is perceived to be.

**Table 4.1 Thailand in the Corruption Perception Index**

<i>Year</i>	<i>Score</i>	<i>Ranking</i>	<i>No. of counter ranked</i>
1995	2.79	34	41
1996	3.33	37	54
1997	3.06	39	52
1998	3.00	61	85
1999	3.20	68	98
2000	3.20	60	90
2001	3.20	61	91
2002	3.20	64	102
2003	3.30	70	133
2004	3.60	64	146
2005	3.80	59	159
2006	3.60	63	163
2007	3.30	84	179
2008	3.50	80	180

Source: From Transparency International, <http://www.transparency.org/>.

Note: The score of transparency is from 0 to 10. The higher the score, the less corrupt a country is perceived.

National Anti-Corruption Strategy to fight corruption. If the strategy works, the NACC expects to see Thailand's ranking in the CPI improve significantly.<sup>4</sup>

### **4.2.2 Types of Corruption**

Cases of public corruption often involve private sector persons or organizations. Particularly in grand-scale corruption, a sophisticated network or system of relationships may affect the supply or demand side of corruption. Examples of types of corruption involving public officials are numerous. Many of them are akin to corruption cases elsewhere around the world, such as “kick-backs” or illegal “commission” from procurement, influence peddling, conflict of interest cases like selling land at a higher than market value while holding a public office position; or dictating policies or ministerial directives that will favor certain parties. Rezoning to increase land value is also one form of corruption. However, we also find that some public officials in Thailand may also engage in dishonest behavior regarding promotion and appointment. Large sums of money may change hands

<sup>4</sup> The National Anti-Corruption Commission has designed a National Anti-Corruption Strategy that has four components. The first one focuses on awareness raising, instilling of moral values and ethics in all sectors of society to prevent corruption. The second strategy is to mobilize all sectors of society through participation and networking in a broad coalition against corruption. The third strategy is to strengthen all anti-corruption institutions. The fourth strategy is capacity building for strong professionalism for persons working in this sector.

between the promoter/appointer and the promoted/appointee. This problem spreads like wild fire and happens in local as well as national governments.<sup>5</sup>

When one has to pay for a promotion or a specific position, it is most likely that he/she expects to extract monetary returns from the position, at least to recoup the investment. Hence, corruption increases and spreads. Corruption pertaining to payment for a position has reached an absurd level when it is reported that at the local government level, when applicants undergo a competitive examination, there will be a published list of candidates ranked by their test score. Top on the list will be recruited first and the list will be used for sometime as positions are made available and gradually filled. This provides an opportunity for the lower-ranking candidates to bribe those higher on the list to give up his/her position, thereby allowing the person below to move up the list. For a position to become available may also entail payment. Hence, to get a public sector job in local government, a person may have to pay more than one person and for different acts before he/she gets the job.<sup>6</sup>

Corruption in the public sector often involves elected officials or politicians, not just permanent civil servants. Elected and permanent officials could be in collusion, or the elected officials may solicit assistance from the civil servants, through either interest enticement or coercion. As mentioned, political conflicts often stem from alleged corruption or even dissatisfaction with how benefits from corruption are not perceived to be fairly distributed among partners in corruption.<sup>7</sup>

Although the protracted political conflict since 2005 has taken on more issues as it progresses, accusations and allegations as well as charges against former Prime Minister Thaksin, which ultimately resulted in his conviction by the Supreme Court for Persons Holding Political Positions, was none other than corruption and conflict of interest. In simple terms, the prime minister helped his wife to win the bidding. The act violated the conflict of interest provision in the law that is under the jurisdiction of the National Counter-Corruption Commission.

To give a picture of the pervasiveness of corruption in Thai society, one recognizes that it occurs in both public and private sectors. At times, some allegations have also been made against some non-profit organizations for lack of transparency and improper use of funds, including some Buddhist temples where public donations are handled by the abbot (head of the temple) either singly or in conjunction with the temple advisory board. Buddhist temples are tax-exempted and donations to the temple can also be tax-exempted for their donors. This is a privilege not automatically granted

<sup>5</sup> See for instance studies done by Pasuk Pongpaichit et al. on corruption since 1994. In particular, a research report on Corruption in the Thai Public Sector in 1998.

<sup>6</sup> Data on “buying position” in the public sector tend to be communicated through the grapevine. It is a common practice that is widely known but not formally recorded. My data are drawn from statements made by public sector officials who are graduate students in my classes over the years. I have promised that there will be complete confidentiality. Their names will not be revealed, but they would need to write down actual transactions that took place.

<sup>7</sup> According to an article written by Prasong Lertratanavisuth, Thailand’s foremost investigative reporter in *Matichon*, December 27, 2008, p. 2, 20,000 Thai corruption cases have been lodged with the NACC over its 10-year existence. In 2007, there were 11,578 cases left from 2006 in addition to 2,826 new cases in 2007. The NACC was without commissioners for some time, hence cases accumulated. According to Prasong, only 68 cases were concluded in 2007. The NACC could dismiss cases, not accept cases, transfer them to other agencies for initial investigation, or it can proceed with its own investigation. The NACC law requires amendment to enable them to function more efficiently and effectively. The NACC law was amended by the National Legislative Assembly in 2007, but failed to be promulgated because of a small “technical error.” Currently, the NACC has resubmitted this law for amendment. There’s no predicting when it will be amended as parliamentary process is lengthy and political uncertainties may lead to dissolution of Parliament any time.

to most other philanthropic or civil society organizations. Most allegations against non-profit organizations evolved around the enrichment of the leaders involved.<sup>8</sup>

To a certain extent, the Thai public is almost numb or has become “used to” petty corruption in everyday life. Small bribes are seen as semi-service charges to get the bureaucratic process moving, to overcome red tape, to shorten the time needed for a transaction, or just simply to appease or placate the public officials in charge who are somewhat underpaid in any case. A bribe could be either solicited or offered. A bribe could also be seen as a welcome mechanism to save time, effort, and money, as in giving 100 baht to the traffic policeman for a traffic violation as opposed to having to pay a 400-baht fine at the police station. Petty corruption is so pervasive. It seems to penetrate into almost every sphere of public sector transaction with citizens in their everyday life. However, when asked how Thai people feel about corruption, the answers often reveal anger, frustration, and resignation.<sup>9</sup> When tolerance for and acceptance of petty corruption become an issue for discussion, the general sentiment is that petty corruption should also be curbed because it leads to grand corruption, to the detriment of society. Although corruption has become “a way of life,” it would be wrong to think that it is well accepted. The analogy of Thai people with petty corruption is like having to live with a seemingly incurable disease. No one would like to live with an incurable disease.

### 4.3 A Deeper Look at Corruption in Thailand

Why is corruption more pervasive today than a few decades ago?<sup>10</sup> This is a question often raised. Some may say that petty corruption has always existed in Thai society. Perhaps the media reports on corruption more than ever before. Or maybe information technology has improved so much that Thai people are now learning more about it. However, one cannot deny that corruption has certainly taken on more forms and is prevalent at all levels of Thai society, especially in the public sector. The amount of money involved in corruption has increased and there are certainly more players and actors in corruption today.<sup>11</sup> The following conditions have been offered to explain the rise and continuation of corruption.

#### 4.3.1 Vanishing Moral Lessons

In the past few decades, Thailand has been dominated by mainstream growth-led economic development. This has created a gap or a disjuncture in Thai moral and ethical values from its past. Traditionally, Buddhist temples played a crucial role in citizens’ lives and well-being. Neighborhood

<sup>8</sup> There is a well-known case involving a big and powerful temple where large sums of money were purportedly embezzled. Just as the case was to be decided by the court, the culprit returned the money and the prosecutor dropped the charges. This was suspected of being politically influenced because fraud cases are generally prosecuted to the conclusion. However, generally, no conclusive findings are reported on such allegations and virtually no prosecution or conviction over corruption is publicly known.

<sup>9</sup> See, for instance, surveys on attitudes toward corruption conducted by Transparency Thailand and the Center for Philanthropy and Civil Society, National Institute of Development Administration in the years 2001, 2002, 2007, and 2008.

<sup>10</sup> On this issue, the general explanation is that Thai society tends to put the blame on increased materialism and consumerism due to external forces, especially globalization. I would suggest that there are strong internal socio-cultural factors that need to be scrutinized as well.

<sup>11</sup> See, for instance, various surveys conducted by Sauwanee Thairungroj et al. since 2000 on public-private sector corruption issues, including “Thailand: Business Environment and Governance survey in 2004 and Anti-Corruption Strategy in Thailand in the year 2000.”



temples would have an all-inclusive role where the needs of the citizens were generally taken care of: schooling for boys, medical care for the sick, psychological and emotional solace and comfort for troubled persons, entertainment through temple fairs and even a meeting place for acquaintanceship and even courtship for the young men and women. While the elderly without family or relations, and the very poor and marginalized were adopted or fed by the temples, taking care of spiritual needs and dissemination of ethical and moral values would probably reign supreme in the different roles played by temples in those days. It was virtually impossible then for children and youth not to be inculcated by the moral and ethical lessons taught by the monks. Buddhist teachings (*Dharma*) would emphasize good vs. bad, right vs. wrong, merit vs. de-merits. Temples would also teach compassion and mindfulness. The virtue of rightful actions and refraining from sinful and wrongful acts was emphasized. Religious principles also call for self-restraint and self-censure in committing wrongful acts like lying, lust, engaging in greedy acts, and taking or stealing what is not rightfully one's own. Such teachings would only reinforce the formation of a person's conscience, which serves as an internal control mechanism to keep a person from wrongful acts like corruption.

With the advent of major social transformation as a result of societal transition from a traditional society into a "modern" society, religion lost ground to secularism. Most of the previous functions performed by temples were taken over by public sector agencies, yet declining and vanishing moral and ethical lessons from Buddhist religion have not been replaced by secular counterparts. While religious rituals and practices continue to flourish, the role of Buddhism in embedding ethical and moral principles has eroded. The neighborhood temple is no longer the all-encompassing center of people's life. In this transition, secular institutions like the family, schools, or the media have not substituted the role that religion played in the past. With increased urbanization and a lifestyle that inevitably drives urbanites into the fast lane and a busy life where getting ahead is an imperative, religious learning and socialization no longer takes place for most new generations of Thai people, especially those living in urban areas. In the past few decades, civic education and ethics have been neglected and even discarded from the school curriculum. As a result, we find Thai society today poorer in the understanding or appreciation of moral and ethical values; indeed, a vacuum or void exists in instilling moral and ethical values.<sup>12</sup>

### **4.3.2 Lack of Deep-Rooted Public Interest Values**

In the public sector, not enough attention is given to the issue of ethics. Perhaps the Office of the Civil Service Commission's (OCSC) effort to remedy this situation is due to recognition of how lacking it has been in the past. As Frank Mariner argues, ethics needs to be learned and discussed through anecdotes, stories, analogies, or moral injunctions and dilemmas in the form of stories [1]. The Thai public sector in the past has not devoted time and energy to help public officials learn about public ethics to ensure that ethical values and principles about public service are well internalized by them. One also finds a dearth of role models in morals and ethics in the public sector and in Thai society as a whole. It is also interesting that Thai people are less willing to acknowledge living role models than those who have passed away.

Perhaps the most worrisome issue about public ethics is that the notions of public interest, public good, public responsibility, and public accountability are relatively underdeveloped in Thai

<sup>12</sup> The call for civic education to enhance ethics, public mind, and responsibility are voiced by various sectors today since the political crisis came to a head. Prior to this, very few people paid any attention to the call for value change and the need to instill moral values and ethical principles in Thai society.

society [2]. Public officials may verbalize an ethic of the public interest and well-being of citizens, but public officials' real or actual behaviors reflect little of public interest; concerns about self-interest, relationship with bosses, their agency's role, stature and advantages often exceed public interest. Most agencies are unwilling to delete or downsize some out-dated or even obsolete division or function simply because of fear of losing the total size of their budgetary allocation. Also, when agencies fail to spend their allocated budget toward the end of the budget year, all types of seminars and conferences are hurriedly held just to expend the money. Hotel conference rooms are usually overbooked at the end of each budget year to accommodate the need for spending the money. The fear of being given less allocation prompted unwise and unproductive use of public money, which is counter to protecting public interest.

### ***4.3.3 Continuation of Patron-Client Relations***

The traditional Thai social structure, values and beliefs evolve around personal criteria, rather than universalistic principles. A person's primary duty and allegiance were to his family and then to his kinship network, then to his village or community. Mutual assistance, trust, reciprocity, and social cohesion operated well within the realm of one's personal affiliation. Traditional Thai society was also hierarchical and highly stratified, and such status differences gave rise to an elaborate and intricate system of patron-client relationship where status unequals entered into a mutually beneficial relationship. While a patron provided protection and connection for his client, he was supported and reciprocated by his client as well. A client could provide resources, both monetary and in-kind payment (like labor), to his patron. Loyal clients also became a member of the patron's entourage that surrounded and followed the patron to indicate the importance and power of a patron. Key values espoused by the patronage system were loyalty, obedience, and gratitude from the standpoint of a client to his patron. Kindness, compassion, and generosity were required of a patron toward his client. These relations extended from the apex of power—the king—to the lowest client in the social order.<sup>13</sup>

In this framework of human relations, developed over hundreds of years, a person's ethical and moral duties are to be a good patron as well as a good client. Thai people perceive moral obligations, social norms, and social values through a personal lens: "what is good for my patron is alright by me." Interpersonal "debts of gratitude," favors, care and concern, payment and repayment of kindness and favors reign supreme. Obviously, such close relations are conducive to a lack of transparency and corruption in various small and large ways.

Client-patron relations also explain the poor development of the public interest noted above. Loyalty is pledged and served to person/s and never to a "public" that one did not personally know or interact with. The notion of public interest as an ultimate goal in public ethics and public administration [3] is somewhat foreign to the traditional Thai way of perceiving the ethical/moral obligations of leadership that would lead to good governance. The goodness and benevolence of a leader is inherently good in and of itself. As a result of this goodness, followers are blessed with happiness and well-being. Consequently, the concept of public is not well understood or well developed in Thailand, and it is only a small stretch to state that beyond that personal sphere, a person bears no responsibility or expectations. Perhaps one needs to double efforts in fostering ethical leaders who will not distort laws, abuse power, and formulate policies to their own advantage.

<sup>13</sup> The many works of Akin Rabhibhand on patron-client system in traditional Thai society explain very well the issue discussed here.

#### **4.3.4 High Premium on Political Stability**

Political instability seems to be inherent in the Thai parliamentary system. Since 1932, coalition government has been in evidence more so than the domination of one strong party, like in the years 2001–2006. Beyond this, military coups are quite common.

Consequently, political actors tend to place priorities on political stability, on how best to serve out their term or on how to prepare for the next election. Rarely does true moral and ethical leadership emerge from political actors. Perhaps this fluid and unstable political arena also undermines the status of politicians. In pursuit of power, politicians usually exhibit weaknesses and lack of ethics and morals.<sup>14</sup>

Ironically, regime changes, whether by “democratic” means or by military coup in Thailand invariably cite corruption as the rationale or justification for making political changes. Charges of corruption are commonly made by politicians and political parties at one another. Political leaders in general are not looked on for moral or ethical leadership, and there is understandably little “political will” or action to fight and deter or suppress corruption among most politicians.

### **4.4 Existing State Mechanisms to Fight Corruption**

After the 1997 Constitution came into effect, a number of independent organizations were created with specific mandates to carry out their tasks independently from the control of the executive branch or the ruling government. It was believed that Thai society needed a national counter-corruption agency with independence, integrity, and autonomy so that it could carry out its task exclusively in tackling corruption among administrative and political officials. Moreover, the design of an “independent” status for these few agencies was aimed at allowing these agencies to act independently, not to be controlled, influenced, intimidated, or co-opted by the powerful government.

Independent organizations that came into existence from the 1997 Constitution include the National Counter-Corruption Commission (which has since changed its English name to the National Anti-Corruption Commission or NACC), the Election Commission, the Office of the Ombudsman, and the Human Rights Commission. The NACC was expected to be the key player in fighting corruption and abuse of power by public officials (both elected and administrative officials). Other ‘independent’ agencies, like the Election Commission, were designed to deal with frauds, corruption, collusion, conspiracy, and all forms of wrong practices, including vote buying by political actors and political parties, especially in political elections, from local level to national level.

The ombudsman’s office, an “independent” agency, was set up as an oversight organization where citizens’ grievances and complaints against public officials and public agencies can be addressed and heard. In Thailand, prior to the 1997 Constitution, it was virtually impossible for the average citizen to lodge a complaint against state agencies. The all-powerful state was seen as immured to public scrutiny, much less to public challenge. Citizens’ feeling of inefficacy vis-à-vis wrongdoing against them by the state was to be corrected by the creation of the Office of the Ombudsman. Although not legally empowered to prosecute or to make judgment on cases, the ombudsman’s

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<sup>14</sup> It is commonly discussed and agreed in Thai society that politicians and political leaders provide no moral leadership for Thai society. The public often expresses distaste and disgust for the poor behaviors of some politicians.

expected role was deemed essential. To receive and investigate complaints, to make recommendations, and to forward types of systemic problems and failures in the administrative apparatus for proper corrections are much needed in Thai society. Under the 2007 Constitution, the current one, the ombudsman was also tasked with initiating core values for public ethics. Currently, all state agencies are required to formulate their code of ethics/conducts based in part on the core ethical values or principles put forth by the ombudsman.

The nine core values are to: uphold integrity and ethics; be conscientious about honesty and responsibility; uphold national interest above personal interest and be mindful of conflict of interest; persist in doing what is right, just, and lawful; provide services to the people promptly with civility and without discrimination; provide full and complete information to the people without distorting facts; aim for work results while mindful of standards, quality, transparency, and accountability; uphold democracy in which the king reigns; and uphold the ethics of each profession and the organization it subsumes under.<sup>15</sup>

Not unlike the NACC, the ombudsman inherited a staff from a pre-existing institution. In this case, it was the Secretariat Office of Parliament, which had helped form the ombudsman's office. The ombudsman's office has three commissioners who serve as its board members in the capacity of policy making, oversight of the secretary-general and its staff members, and in guiding and directing the overall policies of the office.

The Office of the Ombudsman has kept a low profile, almost as if it were invisible from public view. It has recently played a more visible role by creating nine core values as a basis for the formulation of code of conducts for all public agencies. Hopefully, the ombudsman's office will make itself, its role and mission, as well as its accomplishments more visible and understandable to Thai society in general. The current board aims to work in a more proactive manner.<sup>16</sup>

The NACC was designed to be the leading agency in handling corruption and malfeasance by public officials (both elected and permanent officials). It inherited many of its staff members from a previous office for tackling corruption in the public sector, which was situated in the Prime Minister's Office. The NACC has a secretary-general and deputies as well as staff members, many of whom are legal professionals. The secretary-general is tasked with duties in supervising the office and its staff, like a chief administrative officer. Above the secretary-general are the policy bosses who are the nine commissioners. In reality, the commissioners serve as policy makers, decision makers, as well as chairpersons of various sub-committees that are tasked with investigative functions. The NACC staff members help work on cases, often supported by external experts or specialists invited to join in the investigating of cases. However, the chairperson responsible for each case is invariably a commissioner. Given that upward of 5000 cases are either under investigation or are pending or waiting to be examined at any one time, the work load for each commissioner is overwhelming. This brings about an unavoidable lengthy period of time before a case can be concluded. This problem needs to be resolved by law changes because this issue, as well as many other areas with inadequate flexibility for the NACC, awaits amendments of the NACC law.

Corruption cases that the NACC must deal with before 2008 vary from minor malfeasance to grand corruption. Cases also involve low-ranking government officials to ministers and even the prime minister. Therefore, there is a need to prioritize cases like determining what are the important

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<sup>15</sup> Translation of the nine core values of the ombudsman as presented here was done by Juree Vichit-Vadakan in a paper written for the World Bank Institute entitled Thailand. Country Governance in August, 2008.

<sup>16</sup> Drawn from personal discussion with various persons including a commissioner and the secretary-general of the Ombudsman.

or fast track cases.<sup>17</sup> The current commissioners of the NACC have made changes to many of the previous practices and have improved and speeded up the scrutiny process, which helps to make the NACC more hands-on and up-to-date with “hot issues” or allegations of wrongdoing either in corruption or malfeasance by public officials that the public is interested in.

However, given that Thailand has more than 63 million people, not counting at least a couple of million non-Thai aliens living and working in Thailand, the NACC is not adequately staffed or resourced to handle corruption in the public sector from local to national level. At present, the NACC permanent staff is around 600 with around 150 as contracted employees and around 40 temporary employees. Its annual operating budget is between 600 and 700 million baht, not counting money for capital investment.

Based on Saran Thitilak’s report,<sup>18</sup> the NACC had completed 131 cases of wrongdoings by public officials from October 2006 to October 2008. Some were corruption cases that were to be criminally prosecuted. Others were to be given disciplinary sanctions, and some cases fell under the “unusually wealthy” category. Under the NACC law, when a public official is accused of becoming unusually wealthy, he/she is responsible for producing evidence to substantiate the sources of such wealth. In one notorious corruption scandal some years back, the Ministry of Public Health, some of its top-level officials, its minister, and his advisor were accused of corruption in medical supplies procurement. After lengthy investigations (albeit with some resistance from the state) with pressure from civil society organizations and with assistance from the media as well as some sectors within the ministry like the Rural Doctors Association that initially blew the whistle, the Pharmacists Association, and the Nurses Association, the advisor to the minister was convicted.<sup>19</sup> The minister himself was eventually convicted, not on direct involvement in the corruption case itself as evidence could not link him directly to “kick-back” or “bribery.” The NACC, however, traced his money trail and found extra cash in his account. The NACC used the “unusually wealthy” law to charge him. The court did not believe his explanation of “winnings from casinos in Australia.” Hence, he could not explain the source of his unusual wealth and was convicted. Subsequently, this minister was sentenced to prison, which was actually the second case to date where a minister was sent to prison on corruption-related charges.

To the credit of the NACC, of the 131 cases, nine were important or major cases involving high-level public officials. A former big political boss who had held ministerial positions many times in the past was charged with corruption in land procurement for water treatment—a protracted case that took years to investigate and conclude. The culprit in this case has fled the country and has not served his sentence. The other cases involved directors general of departments, or secretary-general, or permanent secretary of ministry either for wrongdoing in corruption or malfeasance.

These high profile cases would obviously make a stronger impact on societal perception of the NACC’s efficacy as a corruption fighter. All told, the NACC is the main agency with its own law to investigate and make conclusions regarding public officials in corruption. Although the NACC is not mandated to arrest or make final judgment, their findings are usually accepted by

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<sup>17</sup> There were many complaints about the slowness of the NACC’s investigative process. The current commissioners have told me that they have changed their work process in an attempt to speed up investigations and also to prioritize important cases instead of the former “first come first serve” system.

<sup>18</sup> See Saran Thitilak, [www.thaigoodgovernance.org](http://www.thaigoodgovernance.org).

<sup>19</sup> Civil society leader Rosana Torsitakul, who is now a senator, rose to fame and national prominence in leading a coalition of 30 NGOs in monitoring and pressuring for sanction against the Ministry of Public Health’s corruption scandal in the medical procurement case. The protracted fight led to success in bringing the culprit to justice.

the prosecutor-general's office, which will then forward the case to the judicial court. Sentencing is under the jurisdiction of the judiciary.

To alleviate the NACC of its heavy case load, the Ministry of Justice in 2007 initiated the creation of another anti-corruption unit under its wing with the specific mandate to investigate corruption and malfeasance among middle to lower level public officials. The law was passed in early 2008 and in theory this new unit should be up and running. In essence, the structure and system of the Office of Public Sector Anti-Corruption Commission are much akin to the NACC's. Hence, it is expected to operate similarly with the NACC. In fact, the secretary-general of the NACC is also an *ex officio* commissioner of the Office of Public Sector Anti-Corruption Commission.

However, the selection of the Office of Public Sector Anti-Corruption Commission's commissioners and particularly the endorsement by Parliament have been delayed. As a result, the Office of Public Sector Anti-Corruption Commission does not function fully at this time because it is yet to have its commissioners.

The Office of the Auditor-General is tasked with auditing all public institutions, quasi-public institutions, "independent agencies," and other state affiliated institutions that receive budget from the state. The auditor-general supervises the day-to-day work of its office, including assigning special tasks and attention to vulnerable or high-risk agencies or projects. There is a board of commissioners that serves as advisors and gives support and policy guidance to the auditor-general and its office. Before the creation of the NACC, this office was the main agency for detecting and dealing with fraud and corruption in the public sector. The office conducts an annual audit of public agencies, although not necessarily of every unit within an agency. Its auditing duty generally focuses on how rules and regulations have been adhered to in financial matters and in procurement. Generally, auditors from this office can detect misuse of funds, irregularities regarding financial matters, and deviation from rules, regulations, and standard procedures. Its findings and recommendations are made known to the head of the agency. Response and remedial effort are required of the head of an agency. In cases of suspected fraud and corruption, the head of an agency is duty-bound to proceed with investigation and disciplinary action, including filing criminal charges when necessary.

The Office of the Auditor-General and its board of commissioners are now in the independent organization category and no longer under the executive branch of government. This is necessary to ensure its neutrality, flexibility, and independence from political pressure. Currently, it does not have power to arrest or prosecute. If the proposed amendment of its law passes Parliament and is promulgated, this office will be given more power to carry out its task in a more comprehensive manner. There are pros and cons to this proposed law change. It remains to be seen if it will come into effect.

In essence, the auditor-general's office serves as a regular check-up mechanism on the public administrative system to keep public sector agencies on their toes. Whereas the NACC serves as a body to investigate cases of alleged corruption and malfeasance, especially when a complaint is filed, unlike the Office of the Auditor-General, the NACC does not perform a routine or regular audit of public agencies.

Public agencies, except for very small agencies, also have an internal auditing unit that performs auditing and reports its findings directly to the head of the agency or to its board, if there is one. Increasing importance is given to the internal audit unit as it could help the executives with risk management, as well as with compliance, fraud, and corruption issues. In addition, public sector departments as well as all ministries have persons in the positions of departmental inspector or ministerial inspector. These inspectors are high-ranking officials usually at an equivalent level to a deputy director general of the department or a deputy-permanent secretary at the ministry level.

Since many central agencies also have offices outside Bangkok, inspectors tend to travel around the country to oversee if the agencies' representatives in the provinces are performing in a transparent manner. In reality, inspectors respond to complaints and reports of alleged corruption and malfeasance. At times, inspectors lack resources, and support from the very top of the agency.<sup>20</sup>

#### **4.4.1 Other State Agencies related to Corruption and Ethics in Public Office**

The OCSC is the central agency on issues relating to public officials' human resource (HR) management and development. It continues to conduct an entrance examination for the public sector, although this is no longer the big annual event it used to be because the Thai public sector is supposed to downsize and become lean, trim, and highly efficient. The OCSC sets standards for HR practices. It is also tasked with setting measures for disciplinary standards, rules, regulations, and proper procedures in all areas regarding HR management, like recruitment, retention, promotion, demotion, transfers, rotations, and disciplinary process and procedures. Another key role of the OCSC is training and development activities. In particular, the OCSC is tasked with the promotion of ethics and integrity in public officials. When the 2007 Constitution stipulated that ethics and codes of ethics/conduct were to be formulated in every public agency, while the ombudsman drew up the core values as a framework or guideline for public agencies to follow, the actual implementer of this task fell eventually on the OCSC. Within the OCSC, there is a Sub-committee on Ethics Promotion and an Ethics Center. These two entities are responsible for promotional activities on ethics with a view to transforming itself into an ethics office somewhat akin to the Ethics Office of the US federal government. Some of the past activities of the Ethics Center and the Sub-committee on Ethics Promotion include the creation of a hybrid public cum civil society organization with management and secretarial support for this organization coming from the OCSC. Although registered as a foundation like many other civil society organizations, Crystal Clear Thailand continues to be managed and run by the OCSC staff. Its activities waxed and waned although it has around 80,000 members countrywide. Some enthusiastic members have donated cash and land to the organization in the hope that the Thai public sector can become transparent and corruption free.

Ethics promotion of the OCSC has the blessing of the cabinet, which also entrusted the OCSE to carry out monitoring duties of public agencies to make them comply with writing their own codes of conduct. In addition, the OCSC is expected to provide training and other measures to promote public ethics. Other agencies that play a role in combating corruption, albeit not as a primary function, also need to be mentioned here.

The first is the Department of Special Investigation (DSI). This is under the Ministry of Justice with a special mandate somewhat like the FBI of the United States to investigate special crimes of a magnitude that will negatively impact the well-being of Thai society. It was conceived as a high-powered, highly specialized, neutral, non-partisan investigative body that will take on cases where high-powered and highly influential persons are involved as culprits, collaborators, or protectors of the alleged crimes. Where a regular police investigative team may fail to solve these cases, the DSI team is supposed to be able to deal with them.

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<sup>20</sup> From years of observations and discussions with public administrators, especially with inspectors themselves, I have come to this analysis and conclusion. Generally, to be appointed an inspector is not perceived as a good appointment but a disfavor from the boss.

However, since its inception, the DSI has not yet lived up to its full expectations. Not entirely its own fault, the DSI was alleged and believed to be influenced and pressured by political actor(s) some of the time, which unfortunately cast a cloud of suspicion on its leadership and its attempted effort to gain public trust and prestige.<sup>21</sup> The DSI's future performances will hopefully improve. The DSI's investigations would sometime lead to allegations of corruption, collusion, or malfeasance of some public officials with their partners in the other sectors.

The Anti-Money Laundering Office (AMLO) is another state agency under the Ministry of Justice that touches on corruption cases. The AMLO is specially designed to counter money laundering, especially from illegal businesses, such as the drug trade, trafficking in human beings, and illegal lottery. The tracing and chasing of money trails would often reveal that corruption by public officials helps facilitate money-laundering schemes. Illegal activities or business could not thrive if public officials directly tasked with curbing and combating them were completely honest, competent, and vigilant in carrying out their tasks. Hence, the AMLO in essence needs to cooperate and collaborate with the NACC because their work complements each other's work.<sup>22</sup>

From the above brief description and discussion of existing mechanisms to deal with ethics and corruption, we cannot deny that there is no shortage of designated institutions in the Thai public system to engender ethics or to fight and curb corruption and malfeasance. In fact, the Thai public administration system continuously adapts and changes in an attempt to find better structural arrangements to cope with existing problems and conditions. The critical questions to ask would be: What went wrong with the system? Why has corruption not lessened? Why can these agencies not function fully as mandated?

#### **4.4.2 Constraints and Limitations of Public Agencies**

What went wrong in Thailand where multi-agencies tasked with combating corruption are in place and yet corruption is still rampant? Some of the following points will attest to some other constraints and limitations that public sector agencies, described earlier, confront:

- (1) "Independent" agencies and other newly created agencies do not start out with a clean slate. They often inherit staff members from previously existing agencies with entrenched bureaucratic culture, mind-set and practices. In other words, new tasks and new mandates are mainly carried out by many bureaucrats accustomed to working in their former manner. Although the pay in most new agencies is higher than in their previous agencies, the difference in general is not significant enough to motivate or incentivize most staff members to be proactive or to think "out of the box." The sense of urgency and priority in handling assigned tasks may be lacking. Everything is done in the fashion of "business as usual."
- (2) At times, by taking a highly legalistic approach, as Thai public agencies tend to do, they are strapped by inflexible rules, regulations, and procedures that very few people are willing or courageous enough to interpret liberally to make things flexible for implementation. The delay in processing cases by the NACC as a result of needing a commissioner to head an investigative sub-committee is such a case in point.

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<sup>21</sup> This conclusion was drawn by the National Legislative Assembly's Committee on Governance and Anti-Corruption (2007–2008) as it conducted hearings on the roles of various public agencies, their role and performance vis-à-vis good governance and anti-corruption.

<sup>22</sup> The conclusion and analysis here is also drawn from the same National Legislative Assembly's Committee as it examined public agencies and their roles and performance regarding good governance and anti-corruption.



- (3) There is on-going political interference and influence with investigations on corruption because the stakes involved are high. At times, some corruption fighters may even be delayed, derailed, intimidated, or even co-opted.
- (4) Strong political will or leadership from the top could set the tone and temper of corruption fighting either positively or negatively. In Thailand, strong, continuous, pro-active support and endorsement for fighting corruption by the top leadership is far and few in-between. The current prime minister has thrown his support behind the NACC's initiative and effort to host the 2010 International Anti-Corruption Conference in Thailand. In the past, verbal support from the top leadership did not correspond with subsequent actions. A general sense of benign neglect appeared to be pervasive among most political actors.
- (5) Corruption fighters and their agencies are vulnerable to "backlash" from the people they have investigated. Either political leaders want or like to interfere with the search process for commissioners of agencies or they would threaten from time to time to change the laws to disband some of these agencies. As a matter of fact, allegations against the integrity, honesty, and honor of the commissioners have often been made by supporters of politicians and their cronies when the politicians are under the scrutiny of these agencies. Vulgar and rude behavior by opponents of the NACC have also occurred against it.<sup>23</sup>
- (6) Fragmented and uncoordinated patterns of activity by different agencies reduce the synergy, efficiency, and effectiveness of many tasks that could be better served through sharing of effort, energy, expertise, and resources. Thai bureaucratic culture, not unlike in other countries, stresses agency-based functions and activities. Performance and rewards are measured by what an agency has accomplished singly and not in terms of partnership or collaboration with other agencies. In a sense, it makes inter-agency cooperation difficult because each agency prides itself on its achievements. No agency wishes to share its achievements or rewards with others. Intra-agency lack of cooperation is also evident as each of its sub-units seeks to enhance its own domain and territory. This culture of "to each its own" is carried into national committees and commissions which may fail to obtain the full support from agency officials that participate in them as *ex officio* members. Each agency tends to think that only one agency is the official representative or main sponsor or owner of a given national committee, while others are of secondary support status, and many do not consider it their responsibility to push an agenda that is not their own.

## 4.5 Other Non-State Parties against Corruption

From civil society or the third sector, there are important groups that work hard to fight corruption. Rosana Torsitakul, a prominent non-governmental organization (NGO) leader, was credited with leading a loose coalition of 30 NGOs to fight against a famous case of corruption in the Ministry of Public Health pertaining to medical procurement. Through her tenacious efforts in pursuing this case and with the media's support, the culprits were convicted and served sentences.

There are other civil society figures, like Veera Somkhamkid, who has exposed case after case of corrupt practices by politicians and public sector entities. His major contribution perhaps is

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<sup>23</sup> As an example, the NACC was surrounded by protesters that barred people for entering or leaving the NACC office. All forms of dirty items were thrown into the NACC compound. Monitor lizards, which symbolize "lowers, crudest and most despicable form of being" in Thai culture, were unleashed into the NACC compound. Culturally, it is one of the worst forms of insult.

in showing society that there are “fearless” people who would serve as self-appointed corruption “watchdogs” for society. The conviction and sentencing of the former minister of public health and his advisor was symbolically an important act, which was hailed as a victory for corruption fighters, particularly as a credit and boon to civil society.

In the past 2 years, a group of citizens have organized themselves as the People’s Commission on Anti-Corruption as a counterpart to the formal NACC. The group has regional representatives and regional chairpersons from different regions of Thailand as well as a national chairperson. Having no legal status, as it is not a registered organization, it does however receive support and attention from some legislators, academics, media, and civil society organizations as well as some public officials. This network had its origin from one of the sub-committees of the National Legislative Assembly’s (NLA) Anti-Corruption Committee (2006–2008). Its development and growth still require ongoing support and nurturance. Consequently, some members of the NLA’s Anti-Corruption Committee felt obligated to assist the anti-corruption effort from the citizens. These NLA members have contributed a sum of money to initiate the founding of the Good Governance and Anti-Corruption Foundation (GAF) to help raise funds to support People’s NACC. As of October 2008, the foundation was legally instituted. Its first task was try holding a major fundraising event to help support the activities of the People’s NACC as well as other citizens working against corruption. The fundraising event has yet to happen partly because of the economic downturn in Thailand.

In addition, Transparency Thailand as a chapter of Transparency International has, over the years, put effort and emphasis on corruption prevention. Its main target groups are youth and the average Thai person, particularly from rural areas. Changing values and instilling morality, ethics, a sense of “publicness” (e.g., furthering the public interest), and public responsibility are Transparency Thailand’s main focus. To reach millions and millions of masses, Transparency Thailand’s intervention strategy for value change is through various forms of media program. As a result, it has a regular radio program, “spot messages” on television, infiltrating entertainment programs by infusing messages into the content of situational comedy. Transparency Thailand also writes and disburses children’s storybook, CDs, and DVDs with fun and interesting messages for different audiences, especially youth.<sup>24</sup>

Although this is a new effort, increasingly there are efforts by the state and civil society working together. The NACC, for instance, has put down in its National Strategy on mobilizing and harnessing civil society, media and private sector cooperation and support in preventing corruption. In concrete terms, this particular strategy is to be carried out by two sub-committees: one on civil society and the media, and another on the private sector. Chairs appointed for both committees are from civil society and the private sector, respectively. Since this attempted synergy is still in its early stage, it remains to be seen if and how far successes will happen.<sup>25</sup>

## 4.6 Conclusion

This chapter tries to provide insights into the complex situation of public ethics and corruption in Thailand. While Thailand has a significant number of agencies working directly or indirectly on corruption, it is still an endemic problem in Thailand. There is public awareness that corruption exists and that politicians and public officials are perceived to be the main culprits.

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<sup>24</sup> For more details, see Transparency Thailand’s website, [www.transparency-thailand.org](http://www.transparency-thailand.org).

<sup>25</sup> In general, Thai state and civil society organizations do not work together harmoniously, although there are exceptions. The notion of partnership cooperation and collaboration are somewhat recognized and accepted. Implementation of partnership still needs fine tuning.

Furthermore, the public does not like or condone grand corruption that siphon off taxpayers' money from public projects. However, not enough public action is taken against corruption beyond politically motivated protests. In everyday life, people do not condemn, ostracize, or sanction those allegedly involved in corruption. In addition to the many problems inherent in the public administrative structure and practices, the chapter also shows that other socio-cultural issues evolving from traditional society and culture may also be responsible for the lack of progress in Thailand's handling of public ethics and corruption. To conclude, corruption needs to be dealt with in a holistic manner. Good laws, a good, strong, and fair judicial system, a good and pro-active administrative apparatus, committed and strong political will, civil society's participation and involvement, and especially citizens' value structure and belief system with zero-tolerance for corruption and commitment to public interest are the important ingredients for the successful fight against corruption and in preventing it.

All told, public ethics is essential and integral to good administrative practices, without which there will be no immunity or any kind of preventive or protective shield against the ever-tempting and ever-persistent threats of corruption.

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## Chapter 5

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# Performance Management Reforms in Thailand

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Tippawan Lorsuwannarat and Ponlapat Buracom

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## 5.1 Introduction

Performance management reform in the Thai public sector was first addressed formally in the Fifth National Economic and Social Development Plan (1982–1986). The urgency of efficiency and effectiveness improvement in the public sector was clearly seen after evidence demonstrated that economic development was difficult to implement without the administration and performance management reform. Additionally, the economic crisis facing Thailand during 1997 clearly demonstrated the huge costs related to poor economic management, and increasing demands on the budget require Thailand “to do more with less” (Nimmanahaeminda, 2000).

Presently, the key central government agencies involved with performance management in the public sector at the organizational level include the Office of the Public Sector Development Commission (OPDC), the Bureau of the Budget, and the Office of the National Economic and Social Development Board (NESDB). Many main initiatives have been implemented in order to bring about more effective and efficient public service delivery in the Thai public sector.

## 5.2 History of Performance Management

### 5.2.1 *National Economic and Social Development Plans*

The National Economic and Social Development Plan is a 5-year national plan formulated by the NESDB, which is the central planning agency of Thailand. This 5-year national plan is prepared by government officials at the NESDB through a participation process with stakeholders, then it is submitted to the Cabinet through its Board<sup>1</sup> to get approval. The first four national plans merely focused on the economic growth aspect and short-term problem solving, and government administrative reforms were overlooked (Fifth National Economic and Social Development Plan, 364). Starting from the Fifth National Plan (1982–1986) to the Tenth National Plan (2007–2011), public management reform was formulated in a separate section of the Plan. [Table 5.1](#) illustrates a summary of contents related to performance management in the National Development Plans.

The focus of the administrative reform of the Fifth and Sixth National Plans was on coordination among central agencies relating to functional, budgeting, and personnel plans at the national level, collaboration among government agencies to reduce duplication and increase efficiency of operation, changing line-item budgeting to performance budgeting, and law and regulation modernization. The reform indicated in the Sixth National Plan relating to laws and regulation modernization was not fulfilled, but carried out in the Seventh Plan which included law modernization.

The Eighth National Plan (1997–2001) adopted a new paradigm to national development by shifting from an economic growth orientation toward a people-centered development. To achieve the objectives, the guidelines of the administrative development included efficiency improvement of central government agencies, process modernization based on the area-functions-participation system, people participation, and evaluation using databases and indicators.

The Ninth National Plan (2002–2006) adopted the philosophy of economic sufficiency emphasizing the middle path—self-support and self-reliance as well as good governance at all levels

<sup>1</sup> The National Economic and Social Development Board is composed of 15 economic and social experts, including the heads of the central agencies in the public sector, e.g., governor of the Bank of Thailand and the director of the Bureau of the Budget. Besides formulating the national plan, the NESDB has a duty to monitor and evaluate the plan.

**Table 5.1 Summary of the National Economic and Social Development Plans**

<i>No.</i>	<i>Plans</i>	<i>Period</i>	<i>Content related to performance management</i>
1	National Development Plan 1	1963–1966	Economic growth aspect
2	National Development Plan 2	1967–1971	
3	National Development Plan 3	1972–1976	No clear related performance management
4	National Development Plan 4	1977–1981	
5	National Development Plan 5	1982–1986	<ul style="list-style-type: none"> <li>– Coordination among central government agencies involving with functional, budgeting, and personnel plans (the Office of the National Economic and Social Development Board, the Civil Service Commission Office, Budget Bureau, and Ministry of Finance)</li> <li>– Organization reform, especially for the duplication reduction, and better coordination and integration</li> <li>– Performance budgeting</li> <li>– Roles of ministries in prioritizing plans and budgeting</li> <li>– Center for monitoring and evaluation</li> <li>– Decentralization</li> <li>– Data improvement</li> </ul>
6	National Development Plan 6	1987–1991	<ul style="list-style-type: none"> <li>– Working under planning system for better integration</li> <li>– Duplication reduction</li> <li>– Coordination among government agencies</li> <li>– Quality improvement</li> <li>– Public and private collaboration</li> <li>– Modernize laws and regulations to be more consistent with the changing environments, to increase efficiency, and to support the fair service to the people</li> <li>– MIS</li> <li>– Use PPBS budgeting to allocate budgeting</li> </ul>

*(continued)*

**Table 5.1 (continued) Summary of the National Economic and Social Development Plans**

<i>No.</i>	<i>Plans</i>	<i>Period</i>	<i>Content related to performance management</i>
7	National Development Plan 7	1992–1996	<ul style="list-style-type: none"> <li>– Legal modernization</li> <li>– State enterprise reform (privatization, corporate plan, internal management improvement, private sector collaboration)</li> <li>– Public administration reform (role of facilitator or supporter, size and organization structure, service-delivery process, information technology, and delegation)</li> </ul>
8	National Development Plan 8	1997–2001	<p>People-centered development</p> <ul style="list-style-type: none"> <li>– Efficiency improvement of central agencies</li> <li>– Process improvement based on area-function-participation system</li> <li>– Promotion of good governance through collaboration and participation</li> <li>– Evaluation system by using database and indicators</li> <li>– Legal reform</li> </ul>
9	National Development Plan 9	2002–2006	<p>Sufficiency economy</p> <ul style="list-style-type: none"> <li>– Streamlining the size and structure</li> <li>– Adjusting the roles of the public sector</li> <li>– Reliable management information systems</li> <li>– Strategic and result-oriented budgeting</li> <li>– Legal systems reform</li> <li>– Check and balance mechanisms</li> <li>– Corporate governance</li> <li>– Evaluation mechanisms and indicators</li> </ul>
10	National Development Plan 10	2007–2011	<p>Sufficiency economy and good governance</p> <ul style="list-style-type: none"> <li>– Strengthen the administrative structures, mechanisms, and processes based on good governance</li> <li>– Promotion of democracy and participative culture</li> <li>– Budgeting system</li> <li>– Legal reform</li> <li>– Body of knowledge and learning systems</li> <li>– Evaluation systems</li> </ul>

*Note:* National Development Plan = National Economic and Social Development Plan.

of society. The administrative reforms focused on size and structure streamlining, adjusting the roles of the public sector to be compatible with a new development approach, improving reliable management information systems, and modernizing the budget and legal systems. Other strategies were involved with the prevention of corruption, development of check and balance mechanisms, and promotion of corporate good governance in the private sector.

The objectives of the Tenth National Plan (2007–2011) were to strengthen the administrative structures, mechanisms, and processes based on good governance. The guidelines for supporting good governance include supporting and developing good democratic and governance culture to be a part of the Thai way of life, strengthening the participation of civil society, building up the public sector and state enterprises to be more efficient, decentralizing the authority to regional and local administration, reforming laws and regulations related to economic and social development for the sake of the balance of development benefits allocation.

In summary, performance management reforms emphasized in the National Development Plans include the following important issues: organization and work procedure improvement, budgeting system modernization, legal reform, and evaluation systems based on good governance principle.

### **5.2.2 Master Plan of Government Administrative Reform**

In 1997, before Thailand's economic crisis, the first Government Administrative Reform Plan (1997–2001) was formulated in an attempt to improve performance management reform in the Thai public sector. The Plan included roles, mission, size, and work procedures improvement. The need for government structure reorganization to be consistent with the new roles and missions was mentioned in the plan. In addition, autonomous public organizations (POs) and budget improvement were also presented in this plan. [Table 5.2](#) shows a summary of the Master Plan of Government Administrative Reform.

In May 1999, after the economic crisis, the government launched the Public Sector Management Reform Plan, which provided the government's vision for institutional change. This reform program had three key objectives: strengthening performance-based resource management by focusing on outcomes, improving service delivery by outsourcing, restructuring, or decentralizing government activities and strengthening accountability (Nimmanahaeminda, 2000). The implementation of these reforms received technical assistance from a Public Sector Reform Loan from the World Bank (Luangpenthong & Bhaopichitr, 2002).

More recently, the OPDC of Thailand, the agency established with responsibility for government administrative reform, issued the Strategic Plan for Thai Government Development (2003–2007). There were four main objectives of this strategic plan (Office of the Public Sector Development Commission Thailand, 2006): better service quality, rightsizing, fiscal reform, and high performance.

In the following section, we first review organizational performance management reform and in the latter section, we focus on performance budget reform. All these reforms were used as a means to increase service quality and performance in Thai public sector management.

## **5.3 Performance Management Reform: A Move Toward High Performance Organizations**

To improve public sector organizations to be high performance organizations is one of the major objectives in the Strategic Plan for the Thai Government Development Administrative Reform



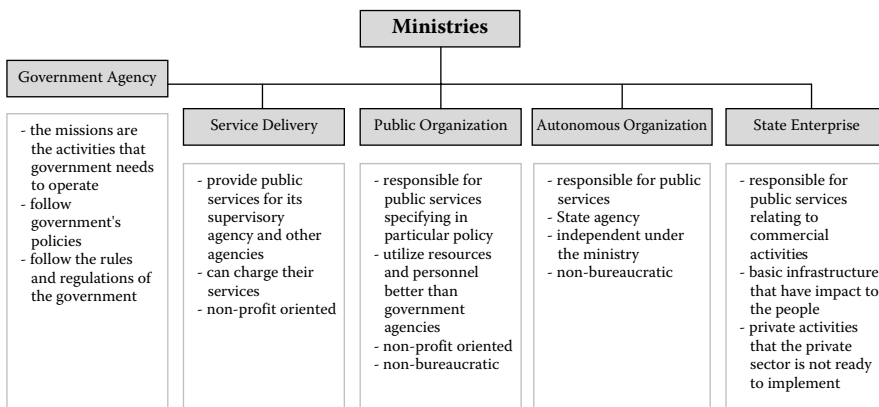
**Table 5.2 Government Administrative Reform Plans**

No.	Plan	Period	Content related to performance management
1	Master Plan of Government Administrative Reform	1997–2001	Roles, mission, and size improvement and working procedures improvement <ul style="list-style-type: none"> <li>– Autonomous public organization</li> <li>– Budget mechanisms and procedures and procurement management</li> <li>– Privatization</li> <li>– Using IT for improving efficiency of government agencies and state enterprises</li> </ul>
2	Public Sector Management Reform Plan	1999–2003	Institutional change <ol style="list-style-type: none"> <li>(1) Strengthening performance-based resource management</li> <li>(2) Improving service delivery by outsourcing, restructuring, or decentralizing government activities</li> <li>(3) Strengthening accountability</li> </ol>
3	Strategic Plan for Thai Government Development	2003–2007	<ol style="list-style-type: none"> <li>(1) Better service quality</li> <li>(2) Rightsizing</li> <li>(3) Fiscal reform</li> <li>(4) High performance</li> </ol>

Plan. A high performance organization in this chapter means “an agile organization which can deliver sustainable leadership results and has less trouble in responding to external pressures” (i.e., Light, 2005; McGee, 2004; Weick & Sutcliffe, 2001). In order to implement reform toward high performance organizations in the public sector, the relevant measures are organizational restructuring to increase autonomy, process improvement using information technology, knowledge management, and performance agreement (Bray & Konsynski, 2007; Chawla & Berman, 1995).

### **5.3.1 Organization Restructuring to Increase Autonomy**

In the past, there were only two main types of organizations in the Thai public sector, government agencies and the state enterprises. Because of the rapidly changing environment and the limitations of the traditional characteristics of public sector organizations, the government introduced other flexible types of organizations to increase autonomy and performance in the public sector. At present there are many kinds of public agencies in the Thai public sector, ranging from the lowest level to the highest level of autonomy, as follows: government agencies, service delivery units (SDUs), POs, autonomous organizations, state enterprises, public limited company, and independent agencies under the constitution. [Figure 5.1](#) presents the different types of organizations in the Thai public sector.



**Figure 5.1** Different types of organizations in the Thai public sector.

In 2005, the Office of the Prime Minister issued regulations about SDUs in order to support some functions that the government needed to perform internally and to maximize efficiency in these services SDUs are quasi-autonomous divisions under a department. The key characteristics of SDUs are: (1) service oriented, they can charge for services from mother organizations or customers, but they do not seek profit; (2) performing under the outlined policy; (3) linked and accountable to the mother organization; (4) required to have a clear result measurement; (5) a suitable size separated from the mother organization; (6) granted autonomy in issuing their own regulations related to budgeting, personnel, and other administrative matters. At present, there are five pilot agencies: the Royal Thai Mint, Printing Bureau, the Institution of Good Governance Promotion, Art and Cultural Museums, and Government laboratories (OPDC, 2006).

POs were established under the Public Organization Act, 1999. POs have juridical status but not bureaucratic status. The characteristics of a PO are (1) a public agency, but not government agency or state enterprise; (2) set up for public services; (3) not profit oriented; (4) granted autonomy to set up its own personnel system and financial management; (5) governed by an executive committee; (6) required to have clear reporting and evaluation systems as prescribed by the Council of Ministries; and (7) not subject to the enforcement of laws concerning labor protection, labor relations, social insurance, and monetary compensation.

For example, after the economic crisis in 1997, Banpaew Hospital, a public hospital, had changed its organizational structure from an agency reporting to the Ministry of Public Health to being a public autonomous hospital, as specified in the agreement between the Asian Development Bank as the creditor, and Thailand as the debtor. During 2003–2006, 12 POs were established, including the Agricultural Research Development Agency, the Energy Fund Administration Institute, and the Asset Capitalization Bureau (OPDC, 2006).

Autonomous organizations are similar to POs, but these organizations are established by their own Act. They are both a juridical entity and have autonomous administrative systems with the status of non-government agencies. They report directly to the minister. They can generate their own income to use within their organizations, without sending any of it back to the Ministry of Finance. Autonomous universities are examples of autonomous organization that are set up to allow universities to have more autonomy and flexibility in their administration. Four pioneering autonomous universities were established (i.e., Suranaree University of Technology in 1990, Walailuck University in 1992, Mae Fah Luang University in 1998, and King's Mongkut University of Technology Thonburi in 1998).

A state enterprise is a government-owned business organization or company or corporation that is more than 50% owned by government agencies or POs. The state enterprise performs business or commercial activities that are fundamental economic services, especially in energy, waterworks, transportation, telecommunications, and communications. Its objectives are both profit oriented and non-profit oriented.

### **5.3.2 Process Improvement through Information Technology**

Service process improvement in the public sector has been continually implemented since the Fifth National Development Plan. It was found that one of the successful performance management reforms during the Fifth National Development Plan was process reengineering, such as in passport and car license application procedures. The successful implementations were based on one-stop service and privatization concepts together with issuing a regulation relating to public mechanisms and service improvement.

Consequently, many government agencies continually integrated process-oriented concepts and information technology to improve their processes and procedures. The Thai government has been implementing information technology since 1963. Since then, information technology has played a major role in improving the processes in the public sector. Before 2001, these processes were incrementally improved.

After Thaksin Shinawatra came to power in 2001, there was a big leap in information technology usage in the public sector. He attempted to launch many e-government projects, i.e., e-auction, smart card, and Government Fiscal Management Information Systems (GFMIS). During 2001–2006, the government under Thaksin had spent approximately 90,000 million baht (about \$2,500 million) on e-government projects (Bureau of the Budget, 2000–2005).

In 2002, the Thai cabinet made a resolution that every department and state enterprise had to procure through e-auction and report the progress of implementation to the Office of the Prime Minister every 3 months. This resolution has been effective since January 2003. The objectives of this resolution were to improve the procurement process in the public sector in order to protect collusion and corruption, reduce the cost of procurement, increase efficiency, and stimulate investment and economy.

In 2003, the cabinet approved the smart card project to replace the existing national identification card. The smart card is a multi-application smart identification card that simply puts microchips into identification cards to store the data of the owner. The government aimed to issue 64 million cards from 2004–2006 with a budget of 6630 million baht.

### **5.3.3 Knowledge Management Toward Learning Organizations**

The Royal Decree on Good Governance Promotion (A.D. 2003) also states that government agencies have to regularly develop knowledge within their organizations in order to become learning organizations. Knowledge management is also inserted as one criterion in other mandatory management tools, e.g., quality assurance of universities and the Public Sector Management Quality Award (PMQA).<sup>2</sup> Each university has to prepare a self-assessment report annually according to the criteria set by the Office of National Education Standards and Quality Assessment (PO). Presently, most government agencies are implementing knowledge management in their organizations,

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<sup>2</sup> PMQA is a quality award in the Thai public sector, using the same criteria as the Malcolm Baldrige Award.

especially in hospitals, universities, other government agencies in the central administrative system, and state enterprises.

### **5.3.4 Performance Agreement**

The Royal Decree on Good Governance Promotion B.E. 2546 indicates that the government should announce the Government Administration Plan, which relies on a national policy and government agenda. All government agencies have to translate the Government Plan into their own 4-year Performance Plan and annual plan to request an annual budget.

The OPDC has initiated the Performance Agreement as a tool for monitoring and evaluating the performance of government agencies. The concept of the Balanced Scorecard has been applied as a framework of performance evaluation. Then, the OPDC will monitor and evaluate the performance of the agencies based on what was stated in their Agreement. The incentive scheme will be provided in accordance with performance.

In 2007, a total of 310 public sector organizations, including departments, universities, and provinces had performance agreements. The government agencies have to develop their performance agreement, consisting of four perspectives and negotiate with the OPDC to determine the performance indicators and targets to be achieved and the scoring criteria. The agencies have to report their implementation progress in the form of a Self-Assessment Report Card (SAR) at the end of six, nine, and twelve months (OPDC, 2006: 158).

### **5.3.5 Challenges and Lessons Learned**

#### *5.3.5.1 Organizational Restructuring*

One reason for the organizational restructuring in the public sector is to increase the autonomy of the organizations so that they will eventually be able to increase their performance. Banpaew Hospital is a successful autonomous hospital that was able to improve its performance after it changed its organizational structure from a government hospital to a public autonomous hospital (Tanchai et al., 2002; Thamtatchaaree et al., 2001). The hospital has efficient services and can provide free eye operations for people in many provinces. Banpaew Hospital signed a Memorandum of Understanding (MOU) with the Phuket Provincial Administration to help them manage the personnel administration in the newly established Phuket Provincial Administration Hospital (Manager, 2008). Additionally, it is the only public hospital that has been capable of taking over a private hospital.

Despite the success of Banpaew Hospital, other autonomous organizations have some limitations. The Budget Act (A.D. 2009) Scrutiny Committee made some observations regarding autonomous agencies (The Office of the Secretariat of the House of Representatives, 1998). It was said that the administrative costs and operating budget in some autonomous agencies is too high, especially salaries, personnel compensation, and renting expenditures. The Committee suggested that the government should review their missions, organizational structures, and formulate measures for efficient spending and control. In addition, the government should abolish autonomous agencies that fail to pass the evaluation or have duplicated functions with other agencies. Careful consideration needs to be given before any new autonomous agency can be set up.

#### *5.3.5.2 Process Improvement through Information Technology*

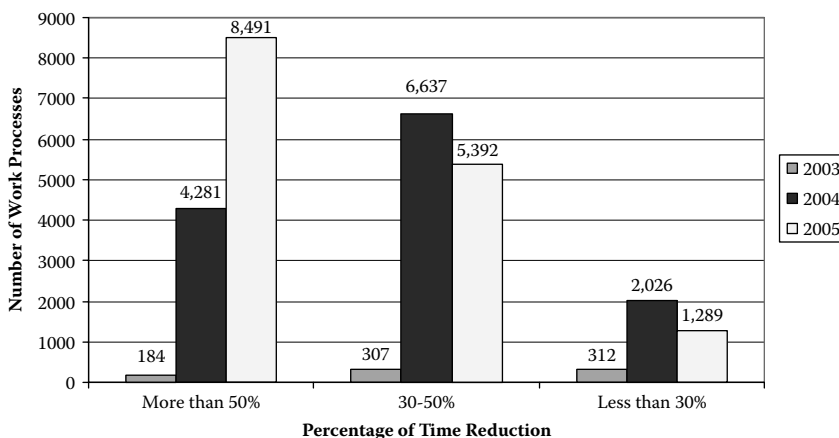
Service process improvement is an obvious example of successful performance management reform in the public sector. Examples include e-revenue, e-car license, and e-identification card. In the past,

people had to spend the entire day paying taxes or renewing their car licenses, and they had to wait 3 months before getting their ID cards. With the process improvement, people can now pay taxes online, drive in to get a car license, and spend only 10 minutes getting ID cards. These successes are reflected in terms of simple and shortened procedures for service delivery and time reduction. Such process improvement applies process-oriented concepts and information technology for implementation.

OPDC monitored the progress of process improvement during 2003–2005. Figure 5.2 shows the number of work processes during 2003–2005 and the percentage of time reduction in the various government agencies. The work processes, which reduced time by more than 50%, increased every year, from 2003–2005. There were 184 processes that reduced time by 50% in 2003, 4,281 processes in 2004, and 8,491 processes in 2005 (OPDC, 2006).

Despite the impressive numbers shown by the OPDC, there are some issues that need to be considered for quality improvement, i.e., the appropriateness of the guiding approach in using information technology, the objectives of the policy, and the readiness of the country. From an earlier study, it was found that the technical approach, emphasizing physical technology and system capabilities rather than the contexts surrounding the technology, plays an important role in guiding e-government projects (Lorsuwannarat, 2006). During the Thaksin government, many e-government projects were influenced by modern technology rather than the real needs of the people. Information technology is seen as a panacea to help increase efficiency, transparency, anti-corruption, and good governance in the public sector. Many other factors were neglected, such as culture, behavior, social structure, economy, and politics.

For example, e-auction is a procurement process using web-based software that allows suppliers to bid online for a contract to supply goods and services. It aims to prevent collusion. However, in practice, collusion is possible even before e-auction starts its course. At present, there are only a few people who use computers in Tambol districts. The smart card aims to be a multi-application ID card that uses the 13 digit ID to link with other databases. In reality, people can only use a smart card as a single application like a normal ID card, since it cannot link with other databases at the moment. Furthermore, the Thaksin government wanted to use information technology to provide services to people in every area of central, regional, and local government services before



**Figure 5.2** Summary of implementation on work process and time reduction during 2003–2005. Source: Office of the Public Sector Development Commission, *Annual Report 2006*, p.98, on [www.opdc.go.th](http://www.opdc.go.th).

2010. This objective was quite idealistic since only 9.56% of Thailand's population has access to the internet ([portal.unesco.org](http://portal.unesco.org)). This compares to other developed countries, such as South Korea, Japan, Australia, New Zealand, Finland, Sweden, Canada, and the United States, which have very high internet accessibility of approximately 50%–60% of the population (Lorsuwanarat, 2006).

### *5.3.5.3 Knowledge Management*

The strength of using laws and regulations made knowledge management diffuse rapidly in the Thai public sector. Many government agencies use community of practice (COP) techniques to share and distribute knowledge inside their organizations. Some use information technology to be the network for knowledge sharing in the organizations. Implementing systematic knowledge management helps government agencies to gain higher scores for their performance evaluation. The number of agencies that implement knowledge management is increasing (from 46.8% in 2001–2005 to 76% in 2006), but only 34.3% of implementers fully use knowledge management, whereas 41.1% of implementers use it with limitations (Lorsuwanarat, 2007b). One explanation may be because the concept of knowledge management is rather abstract and there are no specific guidelines for implementation. The success of knowledge management depends on the understanding of the agencies and the vision of their leaders.

### *5.3.5.4 Performance Agreement*

At present, most public sector organizations have used the Performance Agreement to evaluate their performance and have submitted the results in the form of SAR reports to the OPDC three times a year. This performance agreement is a systematic evaluation form that can assist the agencies not only to monitor and evaluate, but also to improve their performance.

Nonetheless, there are some limitations concerning the Performance Agreement. These include choosing the appropriate measurement to evaluate the performance of every agency, creating the culture supporting performance evaluation, and building the systems as well as the mechanisms for performance evaluation. Each agency has different missions, objectives, and contexts. To find the right measurement for every agency, quantitatively and qualitatively, including inputs, procedures, outputs, and outcomes, is a challenging job for the OPDC. Without organizational culture supporting the performance evaluation, an agency will have difficulties in following the Performance Agreement. Another limitation of the Performance Agreement is the high frequency of sending SAR reports (three times a year), which increases the burden of the agencies, especially for universities that are evaluated by the Commission of Higher Education and the Office for Standards in Education concerning their education quality. The universities still need to prepare performance agreements for the OPDC, instead of simply using the reports submitted to the two central education agencies. This limitation highlights the duplication of the structures and functions of the central evaluation agencies. As a result, the reporting agencies have to spend more time and effort in preparing the data and reports.

## **5.4 Recent Efforts at Budgeting Reform: A Move Toward Performance-based Budgeting**

Previously, Thailand's budget system had been highly centralized and based on line-item input budgeting. Government agencies requested budgets from the Bureau of the Budget in numerous

detailed budget lines. The budgets were approved on a very detailed level and were subject to further central input clearance when the agencies sought to spend the funds. While this centralization ensured overall fiscal discipline, it imposed inflexibility. And with this extensive input control, there was no incentive for the government agencies to increase the performance of their budgets.

As part of the Public Sector Performance Management Reform Program, in early 1999, Thailand launched a budget reform that would improve budget management and promote better flexibility and performance. The objective of budget reform in Thailand was to reorient the budget toward a greater focus on performance and result. At the same time, efforts were made to reduce input and other central control and to empower spending agencies to take on more responsibility for their own activities.

### ***5.4.1 Control-Orientation Budgeting in Thailand***

Thailand has had an excellent record of budget control. Public debt in Thailand has been quite low by international standards. Prior to the economic crisis in 1997 (especially from 1991 to 1996), the level of total public debt was only 20.08% of GDP on average. Following the 1997 economic crisis, public debt increased to more than 50% of GDP owing to the increase in public debt from government budget deficit and the debt assumed by the government in connection with the bailout of the distressed financial institutions following the economic crisis. Thailand's public debt peaked at 58.9% of GDP in 2002. Since then the government has been able to commit itself to running a balanced budget, which has caused the debt ratio to decline to 50.6% in 2004, 41.3% in 2006, 37.8% in 2007, and 39.9% in early 2009 (Public Debt Management Office, 2009).

This excellent record of budget control was facilitated in part by a centralized budgeting process based on line-item input budgeting (Blondal & Kim, 2006: 10). This detailed control helped Thailand avoid overspending, but it was also costly, undermining flexibility and the quality of agency spending.

During the agency budget preparation phase, line ministries and departments usually played a limited role in analyzing the policies and impacts of the budgets. The activities surrounding budget preparation focused mainly on figures and numbers to ensure that they were correct and within the budget ceiling. This over-attention to line-item details came at the expense of attention to larger policy and performance issues (Mokoro Ltd., 1999: 21).

During the budget approval period, Parliament did not have adequate information on budget policies or impacts. The line-item information provided in the budget documents fostered micro-management questions over details from Parliament. Information such as rationales for budget priorities, the development and fiscal impacts of budget policies, the performance of work plans and projects etc., were mainly absent during parliamentary budget approval (McCleary & Sakol, 1999: 11; Mokoro Ltd., 1999: 36).

During budget execution, budget allocations were made in numerous small lines. The Comptroller-General's Department replenished agency accounts on a detailed transaction-by-transaction basis. As a result, there was little flexibility within the appropriation structure for managers to redeploy funds to accommodate changing circumstances (World Bank, 2000: 58). In this rule-driven environment, managers had little flexibility or incentive to develop the budgeting capacity to allocate funds more effectively or to deliver outputs using fewer resources.

### ***5.4.2 Thailand's Budget Reform Strategy: An Effort to Increase Flexibility and Reinforce Financial Performance***

The core objective of budget reform in Thailand in early 1999 was to reduce centralized budget control by granting spending agencies more flexibility in their spending while trying to increase

the competencies of the agencies' financial and performance management. This granting of flexibility in exchange for enhanced performance was termed the "hurdle" approach to budget reform (Bureau of the Budget, 1999).

In 1999, the Bureau of the Budget agreed to ease detailed central control over spending agencies by reducing some line-item details in their budget allocations and moving toward block grants on condition that the spending agencies were able to pass seven hurdle standards. These standards involved: budget planning, output costing, procurement management, budget and fund control, financial and performance reporting, asset management, and internal auditing (Bureau of the Budget, 1999: 5). All these criteria cover the core financial and performance management competencies that a line agency needs to enhance in exchange for a reduction in external controls. External controls could then be reduced with less risk of wasted resources and greater chance of attaining better performance and outcome from government spending (Bureau of the Budget, 1999: 6).

This performance-based budgeting reform was piloted. In the fiscal year 2000, pilots were underway in six ministries: the Ministry of Education (Office of the National Primary Education Commission, Department of General Education), the Ministry of University Affairs (Chulalongkorn University), the Ministry of Public Health (Provincial Hospital Division), the Ministry of Commerce, the Ministry of Foreign Affairs, and the Office of the Civil Service Commission (Bureau of the Budget, 1999: 5).

Each pilot agency would sign a resource agreement with the Bureau of the Budget. For each pilot agency, the resource agreement would formalize the increased flexibility in budget funding, a medium-term expenditure framework, financial control standards, and performance reporting standards. Prior to signing a resource agreement, two steps were required from each pilot agency: (1) identification of gaps in its financial control and performance reporting systems, and (2) successful implementation of gap-filling actions. The timing of the resource agreement would depend on the scale of the gap filling required and the intensity of the gap-filling effort. This procedure was intended to provide spending agencies with more flexibility without compromising the standards of financial control and performance (Bureau of the Budget, 1999: 7).

### ***5.4.3 Move Toward Strategic Performance-based Budgeting***

Under the hurdle approach, the Bureau of the Budget would ease its controls over spending agencies only if the agencies were able to achieve the hurdle standards, which meant that central control was reduced only on an agency-by-agency basis. Therefore, this approach would increase the risk of stalled budget reform if agencies took a long time to achieve the hurdle standards.

Slow progress was actually the problem in Thailand because the hurdle standards were set at such a high level that hardly any organization could fulfill them. There was much confusion in the pilot agencies over what was required to achieve the hurdle standards (World Bank, 2002: 3; Blondal & Kim, 2006: 10–11). As observed by the World Bank (2002: 3), "in 2001 the Bureau of the Budget eased central controls on the six pilot agencies by reducing some line item details in the budget allocations, moving toward block grants. Only in 2002 has the number of pilot agencies been increased beyond the original six. Progress did not proceed entirely according to the textbook. The first steps toward block grants tended to precede improvements in financial management – creating a need for further post-devolution upgrading of financial management in most pilot agencies."

The Thai government, dissatisfied with the pace of progress, decided that all ministries and agencies (not just pioneers) would move to the new performance-based budgeting system—which was now termed the "Strategic Performance-Based Budget" (SPBB). This became effective in fiscal year 2003.



In this SPBB framework, all ministries and agencies are required to present the budget on an output basis, which means that all spending agencies must develop appropriate performance measures attached to all programs and activities outlined in the budget documents. Another major change in Thailand's budgetary system following the SPBB framework is that budgeting is intended to be used as a tool to translate government policies or strategies into tangible results.

Thailand has a long history of central development planning. The 5-year National Economic and Social Development Plan is normally developed by government officials from the National Economic and Social Development Board. These 5-year plans are more than indicative plans; they actually set agenda and budget priorities for the governments to follow.

From the SPBB framework, instead of responding to the 5-year National Economic and Social Development Plan, the government decided to adopt a system of the 4-year Government Administrative Plan. This plan is used as a means to translate the political will of the elected government into administrative actions. The 4-year timeframe coincides with the electoral term of the government. In this sense, it means that instead of government responding to a 5-year plan drawn by technocrats, the government agencies now have to respond to the will of the elected government.

In the SPBB framework, the first 4-year Government Administrative Plan was implemented in 2005. The plan was divided into nine strategies (Bureau of the Budget, 2006a: 6–18):

- (1) Poverty alleviation
- (2) Development of human resources and a quality society
- (3) Adjusting the economic structure for balance and competitiveness
- (4) Management of natural resources and the environment
- (5) Foreign affairs and international economy
- (6) Development of laws and promotion of good governance
- (7) Promotion of democracy and civil society
- (8) Upholding national security
- (9) Accommodation of changes and world dynamism

All government ministries and agencies had to prepare annual budget plans that demonstrated their alignment with these strategies or priorities proposed by the Government Administrative Plan.

#### ***5.4.4 Outcome of Budgeting Reform: The Budget Process in Thailand***

The budget process begins with budget preparation. During the annual budget preparation process, the first step is to determine the economic assumptions applicable for the budget. This calculation is carried out by four key central economic agencies: the Bank of Thailand, the Ministry of Finance, the National Economic and Social Development Board, and the Bureau of the Budget. Based on their calculation, the total resources available for the following year's budget will be known. From this information, the Bureau of the Budget will propose expenditure ceilings for each ministry, and the spending ministries must submit their budget requests consistent with these ceilings.

All budget requests must also demonstrate their alignment with the Government Administrative Plan. At the same time, the ministries and spending agencies must also develop appropriate performance measures attached to all the strategies and activities outlined in the budget documents. The Bureau of the Budget therefore evaluates budget plans not only whether they are in line with government priorities, but also whether they contain appropriate outputs and performance measures (Bureau of the Budget, 2006b: 13–14).

In order to assist the ministries and spending agencies in developing appropriate performance measures, a special performance office has been established within the Bureau of the Budget. It acts as a consultant to ministries and agencies in terms of how they can best define their outputs and develop appropriate performance measures.

During the budget approval process, however, the role of Parliament in the budget process has been very limited in Thailand. This is mainly due to the primacy of the executive in the budget approval process in Thailand and the limited information on budget policies and impacts available to Parliament. The Thai constitution imposes several restrictions on Parliament's budgetary role, which serve to ensure the executive's pre-eminence. Key constitutional restrictions can be specified as follows:

- (1) Members of the House of Representatives may only consider reductions in expenditure. They cannot propose additional expenditures.
- (2) The Senate cannot make any changes in the budget. It can only make an up-or-down vote on the budget in total.
- (3) If the House and the Senate have not finished their deliberations on the budget within fixed time limits (105 days), the proposed budget is deemed to have been approved by them.

These constitutional restrictions are aimed at ensuring the primacy of the executive over the legislature in budget approval.

Moreover, the pre-eminence of the executive over the legislature in budget approval can be seen from the structure of the Scrutiny Committee itself. During the parliamentary budget approval process, a Scrutiny Committee is selected to examine the government's budget proposals. It is an *ad hoc* committee that is formally selected anew each year. However, in comparison with parliamentary committees in other countries, the Scrutiny Committee in Thailand is mainly dominated by the Executive branch (Blondal & Kim, 2006: 24). It is a joint legislative-executive committee with the government nominating approximately one-fourth of the total membership. In addition, the Minister of Finance serves as the chair of the Scrutiny Committee. The committee normally divides into several sub-committees to address the different sectors of the budget, and most of the scrutiny meetings take place in the sub-committees.

The Bureau of the Budget also serves as the secretariat of the committee. The deputy director-general of the Bureau of the Budget serves as official secretary of the committee (Niphaphen Smerasuta, 2009: 25). This also reflects the executive's primacy in the budget process.

During the budget approval period, many scholars have observed that the members of the committee normally do not have adequate information on budget policies and their impacts. Due to the *ad hoc* nature of the committee, it has to rely on information supplied by the executive and the bureaucracies. In order to reduce this problem, many studies in Thailand have proposed that Thailand should set up a permanent budget office directly under Parliament. This parliamentary budget office will be responsible for providing information on budget policies and impacts to the members of Parliament so that they can more effectively evaluate and examine the government's budget proposals (Kraiyyuth Teeratayakeenan, 1996; Ponlapat Buracom, 2007: 79).

During the budget implementation process, the budget is divided into five types of appropriation modes:

- Personnel expenses
- Operating expenses
- Subsidies

- Investment
- Other expenses

The Bureau of the Budget has also made it possible for the spending agencies to transfer funds between and within the above categories so that the flexibility of the spending agencies in the implementation of their budgets can be increased. But there are also some guiding principles for such transfers (Bureau of the Budget, 2006: 13):

- The transfer should not be for new personnel
- The transfer should not change the output targets or change the core objective of the budget
- The transfer should not tie up funds in a future budget
- The transfer should not be for unplanned overseas trips

During this budget implementation period, the spending agencies are also required to submit a budget implementation plan to the Bureau of the Budget. This plan is a detailed action plan for how the budget will be implemented. Previously, the Bureau of the Budget would approve individual aspects of the plan on a rolling basis throughout the year. But following the reforms, it is now common practice for the Bureau of the Budget to authorize expenditure for the entire year at the beginning of the year.

After the approval, the budget implementation plan is forwarded to the Comptroller-General's Department of the Ministry of Finance for cash management function. A payment request would be sent by a spending agency to the Comptroller-General's Department, which verifies that the money for this item is authorized in the agency's budget implementation plan for the month requested. The Comptroller-General's Department then pays directly from its account in the Bank of Thailand into the recipient's bank account electronically.

The Comptroller-General's Department also prepares the annual financial statements that will be submitted to the auditor-general for certification. Following performance management reform, the Office of the Auditor-General also places greater emphasis on performance audits, with financial audits increasingly being outsourced to private sector audit firms. With Thailand's emphasis on performance budgeting, the Office of the Auditor-General has assumed an important role in evaluating the performance information provided by ministries and agencies.

### **5.4.5 Conclusion**

Thailand has been making significant reforms in its budgetary system. The objective of these reforms has been to increase flexibility and reinforce a performance and results orientation. But it should be noted that these reforms are still a relatively new phenomenon for Thailand. The sophistication of the internal budget procedures still varies from ministry to ministry. In some cases, they are based on elaborate internal strategic planning exercises; however, this may not be the case in others. At the same time, the role of Parliament in performance budget approval is still very limited due to the pre-eminence of the executive in this approval. To ensure that the budget priorities, outputs, and outcome are responsive to the needs of the people, the role of Parliament in performance budget evaluation must be strengthened.

Moreover, Thailand's budget reform mainly covers the central government budget. Budget reform at local government level has still not been incorporated. Over the past decade, various means of fiscal decentralization have been implemented in Thailand. It is widely recognized that local government capacity needs to be strengthened considerably if central government is to lessen

its role in the intergovernmental fiscal system. This is recognized in Thailand, and work is already in progress toward this end. Nevertheless, budget and performance reporting reforms at local level will need to be strengthened if fiscal decentralization is to succeed.

Finally, Thailand also uses various quasi-fiscal measures for implementing public policy, such as government-directed lending by government financial institutions. It is therefore important for Thailand to incorporate these measures into a comprehensive fiscal framework as well.

## 5.5 Conclusion

With the continuous attempts at implementing performance management reform in the Thai public sector for 26 years since the Fifth National Economic and Social Development Plan, the results of the reform are now evident and have a positive impact on the country's development. Process improvements with information technology are the successful cases that can reduce time of service delivery, e.g., e-revenue, e-health reimbursement, e-car license, and e-identification card.

However, there are some challenges and lessons to be learned in executing performance management. From the examples used in this chapter, including organization restructuring, process improvement with information technology, knowledge management, performance agreement, and budgeting reform, considerations regarding political policy, approach, and intervention need to be taken into account. The recommendations for performance management reforms include: appropriate approach to using information technology, clear guidelines in applying the concept used for knowledge management, setting the right performance measurement, supporting the organizational culture for performance management, and appropriate central evaluation structure with no duplication.

At the same time, the quality of the agencies' budgeting process must be further strengthened. Moreover, a meaningful budget reform cannot be achieved simply by relying solely on technical improvements. Technical improvements are good innovations, but they are inadequate. The role of Parliament in the budget process must also be strengthened in order to ensure that the budget policies, priorities, outputs, and outcome are actually responsive to the needs of the people; this means that the political aspect of performance budgeting reform must be taken into account as well.

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## Chapter 6

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# Civil Service System in Thailand

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Piyawat Sivaraks

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## 6.1 Background of Thailand's Civil Service System

### 6.1.1 Civil Service Personnel

The Thai civilian workforce consists of approximately 2 million personnel working in 19 ministries (excluding the Ministry of Defense) and 147 departments. Of this workforce, about 365,000 or one-third are ordinary civil servants under the jurisdiction of the Civil Service Commission (CSC). The largest ministry in terms of number of personnel is the Ministry of Public Health with approximately 170,000 officials, while the two ministries with the smallest number of ordinary civil service officials are the Ministry of Tourism and Sports and the Ministry of Science and Technology with about 750 civil servants. [Table 6.1](#) shows the main types of civilian workforce.

Although the size of the public sector is less than 3% of the country's population and around 5% of the labor force, the proportion of public personnel expenditure runs in the opposite direction. The budget for the public sector's expenses on the salaries and wages of its personnel is almost 30% of national budget, more than budget expenses on investment of the country, which is only about 10% of the budget (Bureau of the Budget 2009). This does not even include actual expenses on benefits and pensions, which usually account for about another 10% of the national budget. Concerning the size of personnel expenses, the government prohibits departments from creating additional positions unless the new positions are a trade-off with existing positions in order to compensate for the additional expenses the new positions will incur.<sup>1</sup>

### 6.1.2 Development of the Civil Service Human Resource System

Before 1928, human resource (HR) management in the Thai civil service was based on the patronage system where such functions as selection, recruitment, and promotion were not well regulated, leaving decisions on HR at the disposal of supervisors (Na Nakorn 2003). The first Civil Service Act B.E. 2471 (1928) transformed the Thai civil service into a merit system that relies on rules of law as well as the principles of competence, merit, and fairness.

The first act categorized civil service officials into three types: (1) ordinary civil service, which is the career service recruited through an examination process and entitles personnel to a pension on retirement; (2) special service, which are those who possess special skills that the government hire on a non-fulltime basis; and (3) government clerk.

The next major reform of the civil service was through the Civil Service Act B.E. 2518 (1975). This act changed the classification system from rank to position-based classification, which in turn created a job series and 11 grade levels and was supported by such related mechanisms as job

<sup>1</sup> Controlling public sector personnel, however, seems to contradict other government expansionary roles in society, including a universal coverage public health policy and a 12-year free education policy, which results in an increased workload for the civil service.

**Table 6.1 Types of Civilian Workforce in Fiscal Year 2007**

<i>Types of Officials</i>	<i>Number of Officials</i>
1. Officials in central and provincial administration <sup>a</sup>	1,113,325
1.1 Ordinary civil servants	364,486
1.2 Teachers	463,565
1.3 University lecturers and officials	53,084
1.4 Legislative body officials	2,366
1.5 Police officials	211,604
1.6 Public prosecutors	2,854
1.7 Judges	3,813
1.8 Autonomous organization officials	11,553
2. Local administration	162,025
3. Permanent employee <sup>b</sup>	248,547
4. Temporary employee	196,299
5. Government employee	92,138
6. Local temporary employee	126,824
Total	1,939,158

Source: Adapted from *Civilian Workforce in Thailand 2007*, Office of the Civil Service Commission, Bangkok, 2008.

<sup>a</sup> It should be mentioned that unlike many countries, several major state functions of the Thai public sector are implemented by central administration. This includes education and public health functions that together account for more than 900,000 personnel. This makes the degree of centralization of the Thai public sector rather high.

<sup>b</sup> Permanent employees and temporary employees are civil service staff with non-official status and are mainly hired for supporting functions. Permanent employees have no term of employment, while temporary employees are hired within one fiscal year. In 2004, the government employee system was introduced, employing the contract-based hiring approach to improve efficiency in hiring employees. It is expected that the government employee system will replace permanent and temporary employee systems (or at least become the majority of employee hiring) in the future.

description and step-wise salary structure. Other major changes under this act include: (1) the exclusion of “politician” from the Civil Service Act, defined under another specific law<sup>2</sup>; (2) the adoption of a “positive discipline” approach requiring managers to encourage their subordinates to follow discipline; and (3) a more strategic and expanded role of the CSC to perform an advisory role for the cabinet on both HR policy and on the civil service’s O&M policy (Na Nakorn 2003).

<sup>2</sup> This exclusion was to create a neutral civil service by prohibiting civil service officials from taking any political position at the same time. The laws on politicians, as a result, are prescribed under the Political Official Act B.E. 2518 (1975) (Kaewsri and Suchada 1983).



The Civil Service Act B.E. 2535 (1992) then brought with it the influence of democracy forces as well as managerial and strategic components. The act changed the combination of the CSC from merely consisting of experts to a combination of *ex officio* commissioners elected among high-level civil service officials, and selected commissioners. The inclusion of elected commissioners thus reflects a move toward a participative approach under the structure of the CSC, as five representatives of line departments are elected among permanent secretaries, deputy permanent secretaries, directors general, and provincial governors. In addition, the act added section 3 that highlights the importance of performance through compensation and rewarding mechanisms.<sup>3</sup> The role of the CSC also became more strategic as the act made the commission the advisor to the cabinet on the management aspect of the overall civil service. The position classification was also adjusted for the benefit of career advancement and the improvement of a compensation mechanism (through position allowance).

The most recent change in the civil service HR structure is the new Civil Service Act of 2008, which was enacted in January 2008 and came into effect in late January 2009. This act has five underlying principles (Vajrabhaya 2008). The first principle deals with “Managing Work,” which is pointed out under section 34 of the civil service regulations, which states that “the organization of civil officials shall be undertaken with a view to the result-based outcome, efficiency and good value in the discharge of State functions, and to make officials perform their duties with quality and virtuously and have a good quality of life.”<sup>4</sup> The second principle is “Managing Self” as put under section 78, which deals with ethics, emphasizing that officials “exhibit honor and dignity,” “relentlessly insist on taking the correct action,” act with “honesty and responsibility,” be “transparent and accountable in performance of duties” without “any unfair discrimination,” and use “result-based determination” when making decisions. Section 78 also provides government with rule making and implementation pursuant to technical principles and professional ethics.

“Managing People” is the third principle that lies within section 42 covering recruitment and selection, performance evaluation, promotion, disciplinary action, and political impartiality. The Thai civil service is merit-based in fairly customary ways. In essence, this section requires government agencies to take into account that: (i) entry is based on the knowledge, competency, equality, fairness and interests of the government service; (ii) management is directed toward the end-result and efficiency of the organization, while avoiding unfair discrimination; (iii) promotion and conferment of other benefits should be done fairly, based on work products, capacities, and behaviors, without regard for political views or party affiliation; (iv) disciplinary proceedings should be impartial and without prejudice; and (v) human resource management should be politically neutral.

The fourth principle is “Jurisdiction.” The act covers the roles and responsibility of all key stakeholders in the realm of the civil service’s HR management system, including the cabinet, the prime minister, ministers, the CSC and its sub-commission, government agencies’ executives (including the permanent secretary), and civil service officials. Finally, the fifth principle of the act

<sup>3</sup> In particular, section 72 of the act specifies that in considering a salary increase for their subordinates, the supervisor should consider the subordinates’ quality and quantity of work, effectiveness, and efficiency as well as sound behavior (Bureau of Personnel Development 1994).

<sup>4</sup> Good quality of life refers to a quality working environment that includes working atmosphere, appropriate benefits, and good relationships with co-workers and supervisors. One of the implications from this quality of life principle is the concept of flexi-time or flexi-pay for long-hour jobs, such as in the case of officials of the Department of Corrections who have to work more than 8 hours a day in prisons but receive a normal salary. Thus, section 34 can provide a good ground for either establishing a different pay range for the relevant job series or expanding manpower for the department.

is “Coverage” as it covers the management of all key HR areas, such as recruitment and selection, position classification, compensation, appointment and promotion, ethics, and discipline.

Another major change under this new act is the more focused role of the CSC and the Office of the Civil Service Commission (OCSC). That is, while the CSC under the Civil Service Act of 1992 has four major roles (HR advisor to the government, organization and management (O&M) manager for the civil service, civil service’s merit caretaker, and watchdog for the civil service officials), the new act streamlines the CSC’s role to only HR manager and advisor for the government, leaving other areas for other organizations. In addition, although the advisory role of the CSC to the cabinet covers all types of officials in the civil service, the jurisdiction of the CSC’s regulatory power is mainly on the ordinary civil servants. Regulating personnel matters for other groups of the civil service rests with their respective central personnel agencies. Section 8 of the act laid out the power and duties of the CSC under the Civil Service Act of 2008.

The Civil Service Act of 2008 also defines the role of the CSC and the OCSC. The CSC assumes the role of HR manager and advisor for the government. There are three major functional areas under such a role: (1) providing proposals and advising the cabinet on public HR management policies and strategies; (2) supervising and monitoring HR management of ministries and departments as well as issuing rules and regulations in pursuance of the Civil Service Act; and (3) formulating and managing government scholarships.

According to section 6 of the act, the CSC is composed of the prime minister or deputy prime minister designated by the prime minister as chairman, permanent secretary of the Ministry of Finance, director of the Budget Bureau, and secretary-general of the Office of the National Economic and Social Development Board as *ex-officio* commissioners, and no fewer than five but not more than seven commissioners appointed by the king from persons qualified in HR management, administration and management and law whose works are renowned in the relevant fields and being persons recruited under the rules, procedures, and conditions prescribed by CSC regulations, and the secretary-general of the CSC shall be a commissioner and secretary. Articles relating to Thailand’s CSC power and duties are provided in Appendix 1.

The OCSC serves as the secretariat to the CSC and is the operational unit assigned to undertake the CSC functions mentioned above. The OCSC is headed by a secretary-general who is in charge of its civil servants and administration, and is directly accountable to the prime minister. Duties of the OCSC are prescribed in section 13 of the act.

### **6.1.3 Problems of Civil Service Human Resource**

While the civil service is recognized as the leading element of national development and serves as the collecting body of the country’s best brains, paradoxically, it has not been characterized by such dimensions as productivity, innovation, accountability, efficiency, and transparency (OCSC 1999, Mutebi and Sivaraks 2007). In fact, the public sector, which the civil service belongs to, was viewed as one of the major factors that caused the crisis in 1997.

The economic crisis that befell the country beginning in mid-1997 and exacerbated by an accumulation of problems for over 50 years was a major turning point for Thai society. One vital factor was the inability of the public sector to manage and adjust to external and internal change (OCSC 2001)

In addition, being recruited into the public service was a dream of the majority of Thai graduates. This has changed. Today, the civil service is perceived as non-challenging, a slow and inflexible

working system, and patron-client relationships (OCSC 2009a). Inter-department/division teamwork is also another challenge of the civil service as job rotation is very limited and not systematic. It was estimated that only 13% of civil service officials have rotation experience (OCSC 2009b).

Compensation in the civil service has also been criticized. The single salary schedule organized in a step-wise structure that had been used until 2008 had various drawbacks. Relatively low salary levels compared to the private sector together with a limited quota of officials eligible for salary increases have decreased working motivation for officials.<sup>5</sup> In addition, although performance appraisal has been employed, the management of such a process has not been strong enough. Officials' performance indicators are rarely set, a feedback mechanism is not systematically used, and the behavior part of the performance appraisal is not concretized.

The civil service also seems to perform only moderately on the issue of good governance, which involves transparency and ethics. In 2008, Transparency International gave Thailand 3.5 out of 10 points on the Corruption Perceptions Index (CPI) of ethics and corruption, ranking 80th out of 180 countries. Factors that contribute to the good governance problem in the Thai public sector (which the civil service is part of) include a self-serving mindset (instead of servicing the public); lack of transparency and accountability; lack of appreciation for ethics and integrity as principles to be upheld; and lack of trust, understanding, or recognition of non-state parties. Also, efforts to fight against corruption are sometimes given relatively low priority compared to economic reform (Vichit-Vadakan 2008). Another problem of promoting ethics in the civil service is there are too many players. Leading agencies that are promoting good governance include the Ministry of Justice, the OCSC, the Office of the Public Sector Development Commission (OPDC), the National Counter Corruption Commission (NCCC), and the Ombudsman. It is of concern that coordination among these agencies is quite limited, which results in duplication of activities as well as waste of resources and budget. The OCSC is currently trying to create a forum where such agencies can share and coordinate their efforts.

Previous efforts have been implemented to solve the civil service problems, but the pace of such policies were viewed, even by the civil service itself, as too slow and passive. In 2001, the government tried again to alleviate the civil service problem by approving the Public Sector Management Reform Plan (PSMRP) to "accelerate the reform processes to achieve tangible results, to set priorities, and ensure that the agencies involved coordinate efforts to promote concrete and rapid change." The PSMRP aims to renew the civil service based on the new public management approach covering five reform areas: (1) revision of role, function, and management of the public sector; (2) budget, finance, and procurement management reform; (3) personnel management reform; (4) legal reform; and (5) reform of cultural and public values. These areas also lead to more than 40 reform measures, including the development of (i) competency-based position classification system; (ii) performance and competency-based remuneration system; (iii) open system recruitment; (iv) positive and creative values as well as a professional code of ethics; and (v) efficient reward and punishment procedures and disciplinary procedures that are consistent with the processes of the administrative court (Office of the Civil Service Reform Committee 2001).

Unfortunately, although the PSMRP provides a good starting point for modernizing the civil service, the weakness of the PSMRP lies in its own design. That is, most of the measures under the PSMRP are "new" systems that require time to progress and succeed. Lacking effective monitoring

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<sup>5</sup> Annually, a salary increase for an official can range from half step (approximately 2% of his/her salary) to 2 steps increase (about 8%). The regulation on salary increase requires that no more than 15% of officials can have 2 steps increase in a year.

and regulating mechanisms, these new systems have been taking more time than necessary and are not aligned. The key problems that the PSMRP intended to attack (i.e., slow and fragmented civil service reform) reappeared under the PSMRP itself.

Given such implementation drawbacks, the OCSC hopes that the new Civil Service Act of 2008 will provide a more systemic and practical platform for human resource management of the civil service. Key components under this act are discussed below.

## 6.2 Recruitment and Selection

### 6.2.1 Main Feature

Recruitment and selection in the Thai civil service has been based on the principle of merit, which is clarified by *neutrality, equality, fairness, and competence*. Under the Civil Service Act of 2008, recruitment and selection of the civil service can be undertaken through one of three processes: (1) through competitive examinations,<sup>6</sup> which typically applies for general entry level officials; (2) through selection (with interview or other suitable methods), which aims for special groups of candidates such as a government scholarship; and (3) under rules, procedures, and conditions prescribed by the CSC for the instatement of a person to a knowledge worker group at the position higher than entry level and to a general position group at highly skilled level. Along these processes, the OCSC advises ministries and departments to ensure merit practices and outcomes.

In addition, the Civil Service Act identifies the general qualifications of a person to become a civil service official. The general qualifications are that civil servants must be of Thai nationality,<sup>7</sup> be at least 18 years old, and support the democratic form of government with the king as head of state. People are prohibited from entering the civil service are elected officials or holders of executive or committee positions in political parties; legally incompetent or mentally disabled; morally defective; previously punished by suspension, expulsion, or dismissal from government service; or bankrupt. Exceptions to these exclusions may be granted by the CSC. Apart from the general qualifications, a person must possess the qualification requirement for such position as provided under the class specifications, comprising (1) knowledge, law, and regulations concerned; (2) necessary skills (computer, English proficiency, mathematics, data management); and (3) competencies as identified.

Another method of recruiting qualified persons into the civil service is the government scholarship program. The program has been recognized as a key mechanism to recruit highly competent civil servants and those with special qualifications needed in the civil service. Usually, around 70%–80% of candidates in the final selection stage are second or first degree honor students (OCSC 2006). The practice of sending competent students abroad began during the reign of King Rama the Fifth. Approximately 300 scholars are selected to study abroad each year.

### 6.2.2 Challenges of Recruitment and Selection

Probably, the major challenges of the civil service recruitment and selection involve trade-offs. The first trade-off is between equality and efficiency, which happens at the entry level. As of

<sup>6</sup> The examination curriculum has three stages: general examination, specific examination, and position suitability assessment.

<sup>7</sup> This nationality requirement applies also for government employees, permanent employees, and temporary employees.

July 2009, amid the economic downturn, more than 500,000 people applied for the OCSC-conducted competitive examination for less than 10,000 overall vacant positions in various departments. Those who pass this first round examination will be awarded certificates to apply later for departments' specific examinations. As a certificate can be used for the second round test in any department, it may create incentives for people to take the first round examination even if they don't know which department they would apply for in the future, or even if they are not certain of choosing the civil service as a career. Thus, the cost-effectiveness of the general examination conducted in a centralized fashion by the OCSC should be analyzed and compared with a possible decentralized approach implemented by each department or ministry.

The second trade-off between efficiency and merit occurs at the position higher than entry level, as section 56 of the current Civil Service Act allows government agencies to recruit a person to be instated for such positions. The civil service rule prescribed under this section further provides flexibility for ministries by devolving authority for lateral-entry recruitment to the ministerial sub-CSC. The intention of such a rule is to help ministries and departments, amid the situation of an aging bureaucracy<sup>8</sup> and tight labor market competition, to be able to recruit qualified people at any level of positions. The downside of this policy, obviously, is how the OCSC can prevent unmerited practice of this lateral-entry recruitment. Currently, the OCSC does so by not allowing such recruitment at management and executive positions.

In addition, the new Civil Service Act creates the need for a more aggressive role of the OCSC and departments in recruitment and selection. This act is the first to spell out the word "recruitment." In previous acts, recruiting people into the civil service was defined under the term "test" or "examination." Thus, the OCSC and departments should be aware that the term "recruitment" brings with it the concept of "job marketing" that requires a more proactive mindset than a testing or examination mechanism. How the civil service can segment the labor market to identify its potential candidates, how to re-brand departments and develop a job-marketing strategy, and how to develop effective selection tools are challenging tasks for the OCSC and departments to attract high caliber candidates.

The OCSC, in fact, tried to respond to the recruitment challenge by inventing more types of government scholarship. In 2007, for example, the OCSC launched the "Public Sector Innovation Scholarship" (PSIS), to attract Thai students who study overseas in top schools (master or doctoral degree) to come back to Thailand and work for the civil service. The scholarship incorporates the concept of the private sector's signing bonus and performance-based pay mechanisms. Selected candidates sign a 2 to 6-year contract with the OCSC, and receive a lump-sum signing bonus as well as annual top-up performance pay based on the progress of their innovation projects (OCSC 2008e). Likewise, in 2010 the OCSC will introduce a scholarship program aimed at high-potential students who are in their final year bachelor degree program. Unfortunately, the size of both new scholarship programs is small with about 50 scholarships in total.

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<sup>8</sup> At the same time, to fully utilize the potential of officials, section 108 of the act allows the extension of the retirement age for some positions up to 10 years. The CSC, therefore, issued its rule in September 2009 to extend the retirement age of civil service officials in the knowledge worker group at expert and advisory levels or those in the general group at highly skilled level from 60 to 70 years old. However, the extension would be granted based on necessity of the work and once extended, each official will be revised periodically.

## 6.3 Position Classification

### 6.3.1 Main Feature

The Thai civil service has systematically employed the position classification system since 1975. Before 2008, civil servants were classified through 11 common levels with level 11 as the highest rank (permanent secretary or senior advisor) while level 1 was the lowest (non-degree position). Positions can also be categorized into three groups: general position, specialized or professional position, and management position. The Civil Service Act B.E. 2518 (1975) postulated the general responsibility of each level. Later, this clarification was updated by the Civil Service Act of 1992 while leaving the specific job description of each position for the CSC to formulate.

Career progression is in accordance with educational qualification (as a condition of entry level), tenure, performance, and certain additional qualifications. Figure 6.1 illustrates the existing classification in the civil service.

Under this classification, one step-wise salary schedule (structure) is applied for all job series (more than 400 series). A salary increase for officials can be through promotion, performance appraisal, and/or the shift of the salary schedule itself. Each salary step represents approximately a 4% increase.

In 2002, the OCSC launched the “Modification of Position Classification and Compensation System for the Thai Civil Service Project.” This project, originating from the PSMRP in May 1999, aimed to renew the classification and compensation systems that had been used for more than 25 years and to help the civil service to become more performance oriented. Under this project, civil service jobs were systematically reviewed and re-evaluated, resulting in a new position structure that is broader and more practical. Such concepts as job broadbanding, competency, performance based and continued development were embedded into the design of this new position structure. The new position classification changes the single 11 level platform into a platform consisting of four position groups each with their own respective levels.

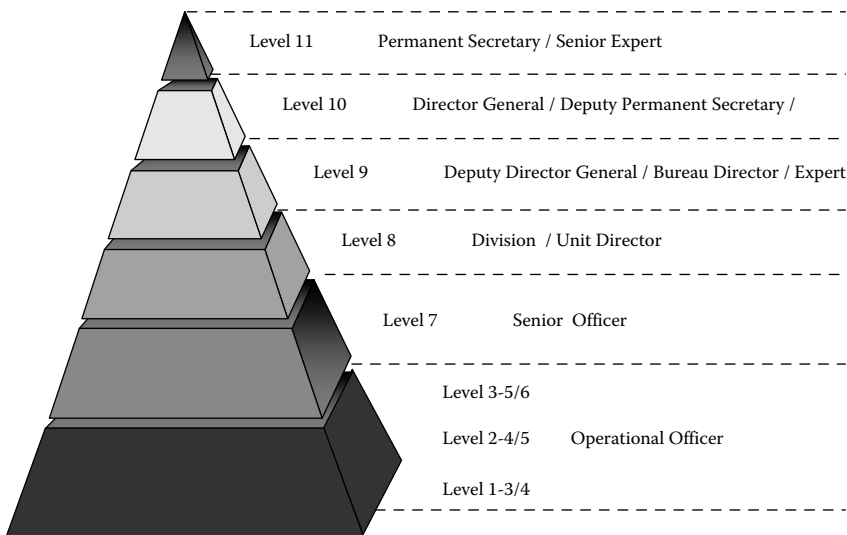


Figure 6.1 Civil Services's Position Classification under the Civil Service Act of 1992.

The current position classification of the civil service is prescribed under section 45 of the new act as involving (1) *executive positions* (namely, heads and deputy heads of government agencies at ministerial and departmental levels and other positions prescribed by the CSC as executive positions); (2) *managerial positions* (namely, heads of government agencies at levels lower than departments and other positions prescribed by the CSC as managerial positions); (3) *knowledge worker positions* (positions that require holders of bachelor degrees as prescribed by the CSC for performing duties in such positions); and (4) *general positions*, namely, positions that are not executive positions, managerial positions, and knowledge worker positions. Executive and managerial positions each have two levels (primary and higher level); knowledge worker positions have five levels (practitioners, professional, senior professional, expert, and advisory); and general positions have four levels (operational, experienced, senior, and highly skilled).

Under the new position classification platform, job series in the civil service are cut in half (from over 400 job series to about 200 job series). Similar or redundant series are combined while obsolete series are removed.

To progress within each position group, one must meet both time of service required and must reach the midpoint of his/her salary band. This is the improvement over career progression under the previous act, which mainly focused on years of service as a condition for promotion. It is estimated that only the most highly performing officials, for example, can be promoted from practitioner level to senior professional level after 8 years. This is because in order to progress in this time period, an official needs to be evaluated as outstanding every year for 8 years such that his/her salary can reach the salary band's midpoint. Under the previous system, the only connection between promotion and salary level was that an official needed to reach the lower band salary of the new salary band (the band for the new position group he/she would be promoted to). Such a requirement, however, was almost meaningless given that there was a huge overlap between each salary band (as high as 70% overlap).

In addition, the current act has devolved certain of the CSC's authority on position management to government agencies. For example, specifying the position regarding number, type, job series, and level, which was under the authority of the CSC, is now devolved to the ministerial Civil Service Sub-Commission (Ministry CSSC). To ensure the effectiveness of such a devolution, the CSC issues guidelines on position management (including the personal expenditure budget) for the ministry.

### **6.3.2 Challenges of the Position Classification System**

The successful implementation of the new position classification will depend on both management and cultural aspects. First, as new selection and promotion committees in departments and ministries have to be set up to replace the previous ones, effective and practical guidelines to setting up such committees must be provided by the OCSC. Second, as the competency model employed within the new job description is a new phenomenon in the civil service and has only been advocated by the OCSC, while the HR management capability of departments is not strong, sufficient communication and training of officials are needed to help departments comprehend the competency model and be able to apply the concept for their HR management process, especially training for line managers and HR personnel in departments (Wedchayanon 2009). Third, the new broadband classification means that officials who used to be at different position levels are now in the same position band. For example, a majority of officials at position level 3, 4, and 5 under the previous act are now classified as knowledge worker position at the practitioner level. Likewise, while a director general (head of department) used to be level 10, he or she is now in the executive position at the high level, the same level as a permanent secretary-general who is the head of the

ministry (which used to be level 11). Although the intention of the act is to use this new classification system to encourage officials to be more well-rounded, making officials forget their previous number-based level and management hierarchy requires effective change management effort.

Finally, the balance of the number of officials in different position groups deserves some consideration. Between 1996 and 2007, the number of officials at operation level (practitioner and operational levels of knowledge worker and general positions) has declined significantly at almost 50%, while the number of those at middle level (professional, senior professional of the knowledge worker positions and experienced as well as senior level of the general positions) has increased more than 100%.<sup>9</sup> The number of high-level officials (expert level of the knowledge worker position) has also increased more than 100% (OCSC 2009c). Such a trend therefore has begun to raise the concerns of both the OCSC and departments on the possible shortage of operation officials in the near future.

## 6.4 Compensation and Benefits

### 6.4.1 Main Feature

The civil service compensation is composed of take-home pay and fringe benefits. Take-home pay refers to direct compensation on a monthly basis, and consists of a basic salary or wage and position allowance. Salaries are distinguished from wages in that “salaries” are for personnel with official status while “wages” are for employees with non-official status.

### 6.4.2 Salary Management

#### 6.4.2.1 Salary Structure and Entry-Level Salary

The Civil Service Act of 2008 has changed the salary schedule from a single step-wise schedule into four range-based schedules corresponding with the position classification. A civil servant may receive salary increases in three ways:

- When there are changes in salary schedules
- When a civil servant is promoted to a higher level
- Through merit increase that is conducted twice a year

Usually, officials will join the civil service at practitioner level under the knowledge worker position or operational level under the general position. The salary of entry-level officials is determined by level of education, as described in [Table 6.2](#).

To ensure that civil service officials meet the standard of living, the OCSC provides a cost-of-living adjustment on top of their salary. Civil service officials are guaranteed 8200 baht as their monthly take-home pay (mostly non-degree officials in the general position group). For those

<sup>9</sup> One factor that contributes to the increase in the number of middle-level officials is the way the position is constructed. Under the previous act, an official whose position is labeled “deep-class” can be promoted through his own position (e.g., from practitioner to professional level), without competing against other officials. This structure of classification coupled with leniency in the promotion process, therefore, results in increasing numbers of middle-level officials. On the other hand, several departments have created new high-level positions. As mentioned earlier, to do so means that they have to abolish lower-level positions to compensate for the extra expenses that the new positions will incur (e.g., higher salary). Hence, this contributes to a decline in the number of positions and officials at the lower level.



**Table 6.2** Adapted from **Entry-Level Salary of the Civil Service**

<i>Education Level</i>	<i>Position/Level</i>	<i>Monthly Entry-Level Salary (Baht<sup>a</sup>)</i>
Bachelor degree	Knowledge worker/practitioner	7,940
Master degree	Knowledge worker/practitioner	9,700
Medical doctor	Knowledge worker/practitioner	10,190
Doctorate degree	Knowledge worker/practitioner	13,110

Source: Adapted from *OCSC Circulation on Education Accreditation*. 14 December 2008, Office of the Civil Service Commission, Bangkok, 2008.

<sup>a</sup> The exchange rate is approximately US\$1 for 33 Thai Baht.

whose salaries are above 8,200 baht, they can get an additional 1,000 baht (or less) as long as this top-up combined with the salary does not exceed 11,700 baht. The top-up, however, does not count as the basis for pension calculation.

#### 6.4.2.2 *Performance Management and Salary Increase*

A performance appraisal is conducted twice a year. The first round of the performance management is between October 1 (i.e., the beginning of the fiscal year) and March 31. The second round is between April 1 and September 30. Performance appraisal components are pre-announced and are in the ratio of 70:30 for output;job-related behavior (competency). Five core competencies<sup>10</sup> developed by the OCSC have also been promoted recently to be included in the performance appraisal criteria. Starting October 1, 2009, the new performance management system will be implemented along with the new range-based salary structure. An official's salary increase will be based on the midpoint of their respective salary band, instead of a step increase as in the previous act. The highest increase an official can be awarded is 6% of his/her respective midpoint. It should be noted that as the range of each salary band is still wide, the OCSC employs two midpoints in each salary band to prevent too much of a difference in salary increase between those who are close and further away from the real midpoint.

#### 6.4.3 *Position Allowance*

Unlike the aforementioned top-up pay that aims to compensate for the cost-of-living gap, the CSC created a position allowance in 1992 as a means of reducing the gap between public and private sector income, especially for those in management and other highly competitive positions.

Position allowances are paid only to officials who satisfy the requirement and conditions prescribed for each type of position allowance. There are two types of position allowances: *professional and specialization allowances* (for professional and knowledge workers, including, for example, doctors, nurses, mechanical engineers, and senior advisors who have acquired experience in their profession), and *managerial allowances* for those in managerial and executive positions (OCSC 1997). Examples of position allowance are shown in [Table 6.3](#).

<sup>10</sup> They are achievement motivation, service mind, expertise, integrity, and teamwork.

**Table 6.3 Managerial Allowances**

<i>Position Level</i>	<i>Rate (Baht/Month)</i>
<b>Top management allowances</b>	
High level (permanent secretary)	21,000
High level (director general)	14,500
Primary level (deputy director general)	10,000
<b>Middle management allowance</b>	
High level	10,000
Primary level	5,600

In addition, to further close the income gap with the private sector, since 2004 the government has double the rate of position allowance, but this additional portion is called a “special allowance.” For example, besides a monthly salary, a middle manager (primary level) will get 5600 baht as a position allowance and another 5600 baht as a special allowance.

#### **6.4.4 Fringe Benefits**

Fringe benefits are considered indirect compensation and are divided into monetary and non-monetary benefits. Major monetary benefits are educational assistance, housing allowance, medical allowance, retirement benefits, and survivor benefits. Among other things, royal decorations, long service awards, and paid leave such as vacation, personal leave, sick leave, maternity leave, religious leave for monkhood and pilgrimage, etc., are non-monetary benefits. On average, the proportion of take-home pay to monetary benefits is 70:30.

#### **6.4.5 National Compensation Committee**

The National Compensation Committee (NCC) was established following the promulgation of the Salaries and Position Allowances Act of 1995 to make public compensation determinations. The NCC membership is composed of the minister of finance as chairman, ten *ex officio* committee members, one representative from each of the central personnel agencies, and five appointed scholars. The OCSC and the Department of Comptroller General serve as co-secretariat.

The main responsibilities of the NCC are: (1) to make recommendations and provide consultation to the cabinet with respect to salaries, wages, position allowances, welfare, and fringe benefits for civil servants and employees of civilian departments, as well as military officers and cadets under the Ministry of Defense; and (2) to conduct an annual review of salaries, wages, position allowances, welfare, and fringe benefits for civil servants, military officers and cadets, and employees of government agencies, based on information and opinions derived from central personnel agencies and the Ministry of Finance, in order to improve the appropriateness, justification, consistency, and equity of public compensation. To this end, the committee takes into account changes in the cost of living, private sector compensation, the country’s financial status, the difference in earnings among officials at different levels in the same and different services, and any other factors deemed relevant.

Although the NCC is expected to play a major role in the salary adjustment of the civil service as well as of the public sector as a whole, historically its effectiveness depends on the leadership of the committee's secretariat (i.e., the OCSC and the Department of Comptroller General). For example, under the strong leadership of Khunying Dhipawadee Meksawan, the OCSC's secretary-general, the NCC was a leading and effective advocate in proposing salary schedule adjustments in the mid 1990s. Without a strong secretariat, the NCC finds itself difficult to act mainly because it is comprised of representatives from too many organizations that is likely to result in bandwagon effect of compensation adjustment which in turn creates unacceptable budget for the government.

#### **6.4.6 Retirement and Pension**

The retirement age of the civil service is 60. However, as mentioned earlier, section 108 of the current Civil Service Act allows the extension of the retirement age up to 10 years if the skill is considered necessary for the civil service.

To be eligible for a government pension or a lump-sum gratuity, a civil service official must (i) meet the compulsory retirement age (60 years old) or resign from the service at 50 years of age, (ii) have at least 25 years of service, (iii) have agency/position dissolved, or (iv) have permanent disability.

Officials who are eligible for a lump-sum gratuity are those who meet one of the above conditions and have at least 1 year's service. In order to be eligible for a monthly pension, an official must have at least 10 years of service. For those who resign from the service and do not meet the four conditions above, they have to have at least 10 years of service to be eligible for a lump-sum gratuity, and at least 25 years of service to be eligible for a monthly pension. The formula for a lump-sum gratuity is:

$$\text{Last Drawn Salary} * \text{Years of Service}$$

and the formula for monthly Pension is:

$$(\text{Average of Last 60-Month Salary} * \text{Years of Services})/50$$

but not exceeding 70% of average last 60-month salary.

In addition to a monthly pension and gratuity, retired officials will receive payments from the Government Pension Fund (GPF). Such a fund has been in effect since 1997 to promote long-term saving of officials as well as to ensure the government's pension obligations. The GPF was structured as a defined contribution system where the government and officials each contribute 3% of the officials' monthly salary into the fund. For example, an official who retires at senior professional level<sup>11</sup> with a last drawn salary of about 40,000 baht, with 30 years of service may receive a monthly pension of about 20,000 baht together with a lump-sum payment from the GPF of about 650,000 baht.

#### **6.4.7 Challenges in Compensation**

Pay difference between the civil service and the private sector is one of the most challenging factors under the compensation system. The current entry-level pay gap between the two sectors is approximately 20% for bachelor degree<sup>12</sup> graduates in the field of social science. However, such a

<sup>11</sup> A majority of officials retire at either professional or senior professional level. Senior professional level is the middle level of the knowledge-worker position type.

<sup>12</sup> For example, knowledge worker at practitioner level.

gap climbs to about 40% for master degree graduates, and could be higher than 90% in the field of applied science such as engineering (BLCI 2008). This external equity gap (i.e., the difference between private and public sector pay) therefore reduces the ability to retain high potential officials. Koonmee (2008) also found that pay satisfaction of civil servants decreases as their level of education increases. The OCSC hopes that changing from a single to four salary schedules under the current act will make the salary adjustment process more flexible (i.e., salary adjustment need not be applied equally across all position groups—the approach used in the past). In addition, section 50 of the Civil Service Act allows the CSC to set different salary ranges for different job series within the same position group (e.g., a job series on social science may have a different salary from that of science although they are in the group of knowledge worker). However, given the history of the civil service's salary adjustment whereby everyone got the same adjustment, effective communication by both the OCSC and the cabinet is required to ensure that unequal pay adjustment gains acceptance from more than 300,000 officials.

Next, the new salary structure requires a new mindset and skill in performance management of which the civil service has little experience. This includes (1) developing concrete performance goals that require both strategic and communication skills of managers, and (2) salary budget management skills of departments as the OCSC relaxes the quotas on officials who can have maximum salary increases. Furthermore, promotion under the new act is tied to salary, as it is required that an official has to reach the midpoint of his/her salary band in order to be eligible for promotion. This condition, therefore, means performance appraisal and salary increase will play important and sensitive roles for departments as well as officials. Finally, the NCC itself needs a revision. This is because the composition of the NCC includes representatives from many central personnel agencies in the public service. This can easily create a “vote exchange effect” among committee members, hoping that their compensation proposal will also be supported in return. The NCC, hence, needs to be redesigned so as to increase the effectiveness in compensation management of the whole public sector. In terms of compensation policy, the NCC should also set a clear guideline for adjusting the compensation mix in order to help all central agencies of the public sector manage their human resource system more effectively.

## 6.5 Training and Development

### 6.5.1 Main Feature

The Civil Service Training Institute was established in 1980 to enhance the formulation of training and development policy as well as to provide and coordinate training for ministries and their departments. The first Civil Service Development Policy was adopted by the cabinet in 1989 to guide and support ministries in planning and developing their officials. Later, in 2004 the cabinet approved the 5-year Civil Service Development Strategy proposed by the OCSC. The second 5-year Civil Service Development Strategy was launched in July 2009. Such a strategy is composed of four areas, each with its focused components:

- Area 1: To develop officials based on job-related competencies
- Area 2: To develop officials to be honest, integrity based, disciplined, and people oriented
- Area 3: To develop change leadership
- Area 4: To promote quality of work-life

**Table 6.4 Selected Development Programs Provided by the OCSC**

<i>Course</i>	<i>Reasons Conducted by the OCSC</i>
Executive Development Program	A required training program for those who will be a candidate for executive positions.
Middle Management Training Program Primary Management Training Program	The OCSC may conduct the program if it is considered that it will be more cost effective than conducted by departments.
New Wave Leadership Development Program (a training program for high caliber officials)	To promote a network of high-potential officials in various departments.

As the role of the OCSC is mainly on policy development, the majority of training activities are decentralized to ministries and departments to conduct. Only when a development standard is needed or for cost effectiveness, will the OCSC implement training and development. Examples of development activities conducted by the OCSC are shown in Table 6.4.

### ***6.5.2 Challenges of Training and Development in the Civil Service***

The first challenge in training and development is to ensure the implementation of the 5-year development strategy. Although about half of all departments had developed their development strategies by 2008, only 38% of all departments actually implement such strategies (OCSC 2009c). Thus, the OCSC needs to find its own strategy to both support and increase awareness of departments in developing and training their officials.

Regardless of the implementation of the strategic development plan, it seems that civil service officials are not provided with adequate development. The implementation of career management is found in only about 10% of departments, and about 50% of departments do not have a rotation system for important positions. Factors that may contribute to this low rate of career or rotation system and practice are the focus on specialization and the nature of inter-departments transfer. That is, as there are too many job series in the civil service (under previous acts), it automatically creates narrow job descriptions for these job series that, in turn, prevent officials paying attention outside their job series for self-development, thereby reducing the opportunity for an official to move outside his/her job. Moreover, before the current act, the CSC rule on inter-department transfer required consent from both the existing and the new department before an official could be transferred. This discouraged officials from moving to new organizations because they had to convince their current supervisors to let them go. Under the new act, the CSC requires only the consent of the destination department, hoping that this will facilitate official transfer.

Another factor that obstructs on-the-job development may come from the fact that departments do not have enough qualified HR personnel to analyze, plan, and manage their HR development strategy (OCSC 2009b). Another problem may be the lack of effective evaluation for training and development programs. According to the well-recognized Kirkpatrick's four levels of evaluation on the effectiveness of training courses,<sup>13</sup> most of the Thai civil service training programs are evaluated

<sup>13</sup> The four levels are composed of the evaluation on (1) reaction (what the trainees think about the training program); (2) learning (what have they learned); (3) behavior (behavior that they may change after the program); and (4) results (what outcomes the training program actually create).

only at level 1 of such model. Very few of the training programs conduct the pre-post assessment on knowledge and skills of the trainees, not to mention reaching the desired level 3 evaluation, which is considered the key to maximizing training effectiveness (Kirkpatrick 2007). Going beyond reaction evaluation, therefore, will be necessary for the civil service, as the government and taxpayers may demand an explanation on what is the return on investment from the training programs.

Regarding the preparation of leaders in the civil service, the OCSC has launched the High Performance and Potential System (HiPPS) since 2003. HiPPS was designed, under an integrated development approach, to systematically prepare high-potential officials to be ready for critical roles in senior management and specialist positions. Young talented officials who pass the intensive selection process will be prepared with a career plan against a benchmark position. In order to reach such a position, the official needs to rotate between targeted divisions in order to gain the required skills and knowledge. Although HiPPS has progressed impressively over its 6-year journey (i.e., the joining departments increased from 4 to 80 between 2003 and 2009), the size of HiPPS is still relatively small. Participating departments account for about half of all departments, and officials under this system number only about 230, more than 20 times below the target of approximately 5000 officials (OCSC 2009d).

## 6.6 Discipline and Merit Protection

### 6.6.1 Main Feature

The disciplinary system of the civil service is described by Chapter 6 of the 2008 Civil Service Act, “Discipline and Maintenance of Discipline”. In particular, the act groups the “Do” and “Don’t” behaviors for officials under section 82 and 83, shown in Appendix 2. This is an improvement over the previous act as disciplinary criteria were spread over several sections, making it difficult to understand (Pantumkomol 2007). For the most part, these are quite similar to what might be found in other merit-based systems.

It should be noted that section 83(8), which prohibits sexual violation or harassment, is a new item in the Civil Service Act. This shows how the social and democratic environment has influenced the trends of the civil service management. It is also interesting to point out that paragraph two of section 80 requires that officials carrying out their functions overseas must uphold the discipline of the civil service as well.<sup>14</sup> This requirement reflects the CSC’s intention to ensure the integrity and trustworthiness of the Thai civil service in the global community.

In cases of an allegation or a case of suspicion on a breach of discipline against a civil servant, the supervising official authorized to make an instatement order under section 57 (usually director general and above) will take preliminary consideration and decide whether the case has reasonable grounds. If the supervising official believes that such grounds exist, he/she may take the following actions: (1) if the case is a non-gross breach of discipline, the supervising official can order punishment as deemed administratively appropriate, which includes a written reprimand, deduction of salary, or reduction in salary; (2) if the preliminary consideration finds the case is a gross breach of discipline, a commission of inquiry will be appointed for further investigation. The mode of disciplinary action for a gross breach of discipline is dismissal and expulsion depending on the severity of the case.

<sup>14</sup> Such a paragraph reads “A civil servant performing official functions in a foreign country, in addition to maintaining discipline as provided in this Chapter, must also maintain discipline by carrying out acts and refraining from acts as prescribed by CSC Regulation.”

On the positive side, there have been several developments to improve the civil service's culture and values. Owing to the growing democratic sentiment and globalization tide, especially in the 1990s, the public is increasingly demanding a change in the civil service's working modality to become more transparent, accountable, responsive, and clean (Mutebi and Piyawat, 2007; OCSC 1999). On May 11, 1999, the cabinet approved the "creative values of public officials." Such values are (1) adherence and relentless insistence on taking the correct action, (2) honesty and responsibility, (3) transparent and accountable performance of duties, (4) performance of duties without any unfair discrimination, and (5) result-based determination. To further strengthen the civil service's ethics, these five values are under section 78 of the current Civil Service Act. In addition, paragraph two of this section allows government agencies to develop ethical rules in accordance with their technical principles and professional ethics.<sup>15</sup> The act also aims to put the ethics into practice by requiring under section 79 of the act that the supervisor should warn those who do not comply with the ethics and use ethical matters as part of appointment, salary increase, and development considerations.

The OCSC also established the Ethics Promotion and Information Center in 1999. The center is expected to play an effective role in increasing the awareness of both officials and the general public for good governance and transparency in the civil service, and to promote the high moral and ethical standards that are crucial for positive development of the country (OCSC 2001). Moreover, the "Following in the Royal Footsteps Project" has been carried out to instill officials with a strong moral consciousness of devotion to the people and the nation as the examples set by His Majesty the King (OCSC 2004).

In addition to the disciplinary process, the new Civil Service Act has created the Merit System Protection Commission (MSPC). The MSPC is composed of seven commissioners selected by the Selection Committee comprising the president of the Supreme Administrative Court as chairman, a vice-president of the Supreme Court designated by the president of the Supreme Court, a qualified CSC commissioner elected by the CSC, and the secretary-general of the CSC shall be a member and secretary. The MSPC has its main responsibility in (1) protecting the merit system by advising and preventing government agencies from issuing or regulating unmerited rules and regulations, (2) considering appeals, and (3) considering complaints. There are three key benefits in setting up the MSPC. The first strength of the MSPC is its status and professionalism. That is, the MSPC is the semi-court institution that is not under the executive arm and the qualifications required for commissioners are very high.

Second, the MSPC will help improve efficiency in considering appeals. That is, the act requires the time for the appeal process does not exceed 120 days, with two 60-day additional consideration periods. In addition, the appeals consideration of the MSPC is final. If the appellant disagrees with the ruling, he/she should file a plaint to the Supreme Administrative Court. This process is different from the appeal process under the previous Civil Service Act where the appeal consideration by the CSC was submitted for the prime minister's consideration.

The third benefit of the MSPC is to ensure non-political involvement in conflict management within the civil service. While section 123 of the act states that a complaint on a matter caused by the official's supervisor must be lodged with the respective higher level supervising official, paragraph 2 of such a section makes the official file a complaint directly to the MSPC for matters caused by department head who reports to the prime minister, minister, or permanent secretary.

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<sup>15</sup> Paragraph two of section 78 reads "A government agency shall prescribe rules on ethics of officials in accordance with the work descriptions in such government agency pursuant to technical principles and professional ethics."

### 6.6.2 Challenges of Discipline

On the one hand, the performance of the civil service regarding discipline looks satisfactory. The number of officials who breached discipline (gross and non-gross breach) in 2007 is 472 officials, which is only 0.1% of the civil service officials. In fact, the number of disciplined officials is improving over the years. That is, there were 937, 829, 563, and 502 disciplined officials in the year 2003–2006, respectively, compared to the mentioned 472 disciplined officials in 2007 (OCSC 2009b). However, the survey on upholding the civil service's values may tell another story. That is, it was found that civil servants perceive the civil service's value on "courage to stand for the right thing" is the value that is most breached (i.e., cannot be practiced), while the major obstacles against following the values include lack of a good role model (i.e., supervisors), distrust in the merit system, and a lack of incentive mechanisms (Sarapimpa 2009). Therefore, one might assume that the low rate of disciplinary actions might be because a lot of malpractice cases are not reported. Another challenge of the civil service discipline system is how to maintain a balance between discipline and performance. While the newly created MSPC and the credible Administrative Court will help the civil service to be more transparent and accountable, it is possible that as these check and balance mechanisms provide easy access for complaints, they can make officials too cautious in doing their jobs and in proposing innovations. Another challenge lies in the public sector's internal labor market. Legal officers in the civil service have been attracted by higher pay and a better career in other public sector organizations, such as the Administrative Court, Court of Justice and Public Prosecutor Office. The OCSC has responded to this problem with top-up pay for its legal officers. However, given the better image, status, and career in such organizations, brain-drain of legal officers from the civil service can still be predicted.

As for the MSPC, one challenge is how to manage its overflow of work. The MSPC has anticipated this problem by recruiting 14 prescribing commissioners to help its 7 core commissioners. It is expected that such prescribing commissioners will start work by the end of 2009. However, it is interesting to see the qualifications of these new prescribing commissioners. As the work of the MSPC is more than discipline and appeals (i.e., it also reviews the merit of departments' rules and regulations), the MSPC needs prescribing commissioners whose skills and experiences cover both disciplinary actions and organizational management. Next, the term of service of the MSPC commissioners is also worth mentioning. The system was designed such that the term of service of all seven commissioners will end at the same time. It means that a lot of organizational knowledge will be gone with the retired commissioners. The MSPC as an organization, therefore, needs to develop an effective knowledge management system to support the new set of commissioners to do their jobs effectively, in a timely fashion.

## 6.7 Conclusion

The Thai civil service has continually evolved through its 80-year journey from the first Civil Service Act in 1928 to the newly enacted Civil Service Act of 2008. This current act is the first major amendment in almost 20 years that aims to enhance the overall efficiency of the civil service HR management system, ranging from the restructuring of the CSC (which includes devolution of authority of CSC in various functions), establishing the MSPC, to renewing the position classification system and salary schedule (OCSC 2009e).

Driving this new management platform, however, requires secondary laws and regulations to turn concepts and principles into operations. It is this stage that will create the next momentum for the



civil service management. The new act will need 53 secondary laws (e.g., Royal Decree, civil service regulations, circulations, and standards), but as of September 2009 which is more than 1 year after the enactment of the act, only 27 of such laws have been adopted. One example of the important regulation that is still in the process of consideration by the CSC is the regulation on promotion and transfer of officials. This regulation is expected to integrate the promotion and transfer processes and procedures of all position groups into one regulation instead of having separate regulations for each position group as in the previous act. This integration requires consensus among working groups that draft laws and the CSC sub-commission on legal matters in many aspects including the clarity of concept of each position group, the appropriate legal language and terminology, and even the common pattern in writing the regulation. Without an effective coordination mechanism, such a consensus will be difficult to implement and as a result will affect the timely execution and credibility of the act. Therefore, in order to effectively drive the implementation of the new Civil Service Act, it is necessary for the OCSC to speed up the law-making process of these secondary laws.

In addition, the OCSC has to make sure that the outcome of dealing with all functional challenges discussed earlier will help the civil service to become the employer of choice in Thailand's labor market. The huge number of 500,000 applicants for the civil service in 2009 can only create the "reversed" employer of choice. Among these candidates, only about 30% came from leading universities (Wanichtanom 2009). Among this 30%, it is not known how many are in the top tier in their universities. The OCSC must work with departments to redesign recruiting strategy to show the public how the civil service is a place for energetic and talented people. Together with such a rebranding strategy, the OCSC should operationalize section 53 of the act, which allows the CSC to devolve the implementation function of recruitment and selection to ministries and departments, which in turn will catalyze these line agencies to innovate their recruitment and selection practices. Increased flexibility for departments, however, requires an effective facilitating and monitoring role by the OCSC.

Becoming the employer of choice also means the ability to retain and motivate qualified officials. The OCSC has to increase the confidence of officials on the merit system as stated under section 42 of the act. This is because such confidence can affect the work motivation of officials, and it turns out that confidence in the merit system is not satisfactorily high. According to the Report on the Civil Service Human Resource Management Status 2008, whose survey was the response from about 70% of all departments, more than 75% of officials are satisfied with their work. However, the officials' perception regarding the merit and fairness of the HR management system is in the opposite direction. For example, less than half of officials in the survey regard performance appraisal as merit-based and only 30% support the process and outcomes of promotion decisions of their departments. In addition, almost half of officials do not feel involved by their executives in the policy-making process. Punitamai (2009), moreover, found that although executives and HR officials in the public sector are in need of talent, almost 60% of talented officials in the survey admitted they used to think about leaving the organization. Trust building, therefore, is another key success factor for the civil service.

Finally, one of the main objectives under the current Civil Service Act is the devolution of authority from the CSC to departments and ministries, which includes position, recruitment, and selection management. Effective devolution of HR management requires the ability of line agencies to analyze their manpower situation. However, the status report mentioned above says that only 40% of departments keep updating their manpower database. A number of departments also do not use their manpower database for decision making on HR policy. The OCSC therefore needs to help departments' capability in managing their manpower database system and utilize the database in HR policy management.

## **Appendix 1: Civil Service Commission's Power and Duties (Section 8)**

- (1) To make proposals and advise the Council of Ministers on public human resource management policies and strategies with respect to standard for remuneration, management and development of human resource, as well as the manpower planning and other matters, which are to be adopted as operational guidelines for government agencies;
- (2) To report to the Council of Ministers with respect to considerations for the appropriate revision of salaries, positional allowances, subsistence supplements, welfare or other fringe benefits for government officials;
- (3) To prescribe rules, procedures and standards for the management and development of human resources of civil officials to be adopted as operational guidelines for government agencies;
- (4) To approve the manpower framework of government agencies;
- (5) To issue CSC Regulations and rules governing human resource management in pursuance of this Act, including to give advice or guidelines for the performance of functions under this Act; a CSC Regulation shall come into force upon approval by the Council of Ministers and publication in the Government Gazette;
- (6) To give interpretations and rulings on problems arising from the application of this Act, including to lay down practice guidelines for problem cases; a resolution of the CSC under this subsection shall be enforceable under the law upon approval by the Council of Ministers;
- (7) To supervise, oversee, monitor, inspect and evaluate the human resource management of civil officials in ministries and departments in order to maintain fairness and human resource management standards, including to inspect and monitor the performance of functions under this Act; in this regard, the CSC shall have the power to summon documents and evidence from government agencies, or to summon representatives of government agencies, officials or other persons to give statements of facts, and the power to issue rules requiring ministries and departments to file reports on human resource management of civil officials within their scope of authority with the CSC;
- (8) To formulate policies and issue rules concerning King's scholarships and government scholarships so as to correspond with human resource management policies with respect to government officials, as well as to assign scholarship recipients to government services in ministries and departments or State agencies upon completion of studies;
- (9) To issue directives or rules pertaining to the provision of education, supervision and assistance to public personnel, King's scholars, government scholars and private students under care of the CSC, including to collect service fees for the supervision and administration of education; in this regard, services fees for the supervision and administration of education shall be deemed as revenues of a government agency providing publicly beneficial services under the law on budgetary procedures;
- (10) To prescribe rules and procedures for accrediting the credentials of holders of degrees, vocational certificates or other credentials for the purpose of instatement and appointment as civil officials, and to determine the salary rates or remuneration as well as the position levels and categories for such credentials;
- (11) To determine rates of fees for the performance of functions pertaining to human resource management under this Act;
- (12) To consider the installment of a personnel record system and the alteration of personnel records with respect to the date of birth, and the control of retirement by age of civil officials;
- (13) To carry out other duties as provided in this Act and other laws.

In issuing a CSC Regulation under (5), in the case where it is deemed appropriate, the Office of the Civil Service Commission shall also consult the relevant ministries in conjunction with the considerations of the CSC.

**Section 13.** There shall be an Office of the Civil Service Commission, abbreviated “OCSC” with the Secretary-General of the CSC as the superior official in charge of the officials and administration of the OCSC, directly accountable to the Prime Minister.

The OCSC shall have the following powers and duties:

- (1) To act for the CSC and MSPC in the performance of their official functions and to perform other duties as assigned by the CSC or MSPC;
- (2) To make proposals and give advice to ministries and departments in relation to the rules, procedures and guidelines for public human resource management;
- (3) To develop, promote, analyze and conduct researches in relation to policies, strategies, systems, rules, procedures and standards on the human resource management of civil officials;
- (4) To monitor and evaluate the human resource management of civil officials;
- (5) To carry out acts in relation to manpower planning of civil officials;
- (6) To be the center of database on public human resources;
- (7) To prepare strategies, to coordinate and to carry out acts in relation to the human resources development of government officials;
- (8) To promote, coordinate, disseminate, provide consultation and advice and carry out acts in relation to the provision of welfare and the enhancement of quality of life for public human resources;
- (9) To carry out acts in relation to King’s scholarships and government scholarships in accordance with policies or rules of the CSC under section 8(8);
- (10) To carry out acts in relation to the care of public personnel and scholars in accordance with directives or rules of the CSC under section 8(9);
- (11) To carry out acts in relation to the accreditation of degrees, vocational certificates or other credentials of persons for the purpose of instatement and appointment of civil officials and to determine the salary rates or remuneration as well as the position levels and position categories for such credentials;
- (12) To carry out acts in relation to the maintenance of personnel records and to oversee the retirement by age of civil officials;
- (13) To prepare an annual report on human resource management in the civil service for submission to the CSC and the Council of Ministers;
- (14) To perform other duties as provided in this Act, other laws or as assigned by the Council of Ministers, Prime Minister or CSC.

## Appendix 2: DO’s and DON’T’s for Thai civil servants

**Section 82.** A civil servant must act in accordance with the following directives:

- (1) To perform official duties faithfully, honestly and fairly;
- (2) To perform official duties in accordance with laws, regulations, rules of official authorities, Council of Ministers resolutions, government policies and act in accordance with the regulatory framework of official authorities;
- (3) To perform official duties with a view to obtaining desirable results and in advancement of the government service with determination, diligence, attention and an awareness to preserve the interests of official authorities;

- (4) To act in compliance with orders of supervising officials made in the course of official duties in accordance with the law and regulations of official authorities, and to not disobey or avoid compliance with such orders; however, if the civil servant finds that compliance with such order will cause detriment to the government service, or will not be a preservation of the interests of official authorities, a written opinion must be immediately submitted to the supervising official to review such an order; upon submission of the opinion, if the supervising official confirms that the original order should be complied with, the subordinate official must comply;
- (5) To devote one's time to the government service, and not leave or neglect official duties;
- (6) To preserve official secrets;
- (7) To be courteous, preserve harmony and cooperate with other officials and colleagues in the performance of official functions;
- (8) To be hospitable, accommodating, fair and supportive to members of the public who comes into contact with respect to one's duties;
- (9) To be politically impartial in the performance of official duties and in other undertakings which involve the public, as well as to act in accordance with regulations of official authorities on political conduct of officials;
- (10) To preserve one's reputation and to preserve the dignity of one's official position from any discredit;
- (11) To perform other acts prescribed by CSC Regulation.

**Section 83.** A civil servant must not commit any of the following prohibitions:

- (1) To not make false reports to the supervising official; the concealment of facts that should be disclosed shall also be deemed as a false report;
- (2) To not perform official functions which amounts to bypassing one's superior official, except where one's superior official has ordered the act or special permission has been given on a case-by-case basis;
- (3) To not use or consent to other's use of one's official position for the exploitation of gains for oneself or others;
- (4) To not act negligently in the discharge of official duties;
- (5) To not commit acts or consent to other's commission of acts in seeking gains which may prejudice fairness or be detrimental to the honour of one's official position;
- (6) To not be a managing director or manager or hold any other position entailing a similar nature of work in a partnership or a company;
- (7) To not commit any act which amounts to an abuse, oppression or intimidation of others in the performance of official functions;
- (8) To not commit acts which amount to a sexual violation or harassment as prescribed by CSC Regulation;
- (9) To not insult, disparage, oppress or intimidate members of the public in contact with officials,
- (10) To not commit any other act as prescribed by CSC Regulation.

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# MALAYSIA

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*Loosee Beh*  
Coordinator





## Chapter 7

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# History and Context of Public Administration in Malaysia

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James Chin

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### 7.1 Introduction

This chapter provides the history and context of public administration in Malaysia. The central theme here is that while the civil service was fairly professional and representative at the time of independence, after the 1969 riots new political realities caused the civil service to become dominated by the Malay community. The leading Malay party, UMNO, assumed a pre-eminent place in the political system and began to control the state and all of the state apparatus.

### 7.2 Setting and Context

Malaysia is a federation of 13 states, 11 on the peninsula and 2 on Borneo Island. Malaya, as the peninsula is known, gained independence from the British in 1957. In 1961, Tunku Abdul Rahman, the

then Malayan prime minister, suggested a federation comprising Singapore, Malaya, Brunei, Sabah (then called British North Borneo), and Sarawak. In other words, he suggested merging all the British enclaves in Southeast Asia into a single political unit. After much discussion, the federation came into being in September 1963. Brunei, rich in oil resources, refused to join the federation at the last minute. Two years later, serious disagreements between Singapore's Lee Kuan Yew and Tunku saw the island state becoming an independent state.<sup>1</sup>

The Federation of Malaysia is a constitutional monarchy. The head of state is the *Yang di-Pertuan Agong*, or king of Malaysia. The *Yang di-Pertuan Agong* is elected for a 5-year term among the nine hereditary sultans of the Malay states, all situated on the peninsula. The other states are ruled by a *Yang di-Pertua Negeri* or governor. The bicameral parliament consists of the lower house, the *Dewan Rakyat* or House of Representatives, and the upper house, the *Dewan Negara* or Senate. Members of the lower house are elected from single-member constituencies, serving for a maximum of 5 years. Like the British prime minister, the Malaysian prime minister can seek to dissolve Parliament anytime within the 5 years and call for fresh elections. Members of the Senate are indirectly elected through a complex formula for a 3-year term; 26 are elected by the 13 state assemblies, 2 representing the federal territory of Kuala Lumpur, 1 each from the federal territories of Labuan and Putrajaya, and 40 are appointed by the king. Besides the federal parliament, each state has a unicameral state legislative chamber.

The executive part of the government is governed by a prime minister and cabinet members are selected from the ranks of Parliament. Although, in theory, power lies with Parliament and the written constitution, in practice, the executive dominates the entire political process [2]. Since independence in 1957, Malaysia has been governed uninterrupted by a coalition known as the Barisan Nasional (BN) or National Front.<sup>2</sup> This coalition is made up of political parties that represent all the major ethnic groups in the country. In the past decade, the coalition had 14 coalition parties.

The Federal Constitution (Article 132) defines "Public Service" as consisting of: (i) General Public Service of the Federation; (ii) Public Service of the States; (iii) Joint Public Service; (iv) Education Service; (v) Judicial and Legal Service; (vi) police force; and (vii) armed forces. This chapter refers to people who work in all branches except those in the police and armed forces. The civil service in Malaysia is further divided into the federal and state civil service. Six states (Kelantan, Kedah, Terengganu, Johor, Sabah, and Sarawak) have their own state service, while all other states and the federal government rely on the federal civil service. This dividing line, however, is more in theory than in practice since there is close integration and cooperation between the six state civil services and the federal service. Officers are regularly seconded to each other and many issues, such as development projects, are dealt with collectively. The existence of the six state civil services is due more to historical circumstances rather than deliberate design. The key difference between the federal and state civil service is simply who bureaucrats report to. The federal civil service reports ultimately to the prime minister while the state service reports to the chief minister or *menteri besar* of the state concerned.

To understand the formation of the Malaysian civil service requires an understanding of the period just prior to independence and the demography of the country. Malaysia is often referred to as a plural society. There are three major ethnic groups—the Malays, Chinese, and Indians. There are also many indigenous tribal groups found mostly in Sabah and Sarawak. Each of the three major groups has their own language, faith, and customs. Ethnic tensions in the political

<sup>1</sup> Singapore wanted a meritocracy-based political system—what Lee referred to as "Malaysian Malaysia" while Tunku wanted Malay dominance [1].

<sup>2</sup> The BN was previously known as the Alliance.

system exist as each group seeks to gain an advantage over the other. At the time of independence, the Malay constituted about half the population, the Chinese 35%, and the Indians about 11%. In 2007, the Malays and other *bumiputeras* (indigenous groups) constituted about 62% of the 27 million population, the Chinese 24%, and Indians 8%.

Malaya gained independence in 1957 through negotiations with its colonial master, the United Kingdom. These negotiations were led by Tunku Abdul Rahman, leader of the Alliance, a coalition of three political parties—United Malays National Organisation (UMNO), the Malayan Chinese Association (MCA), and the Malayan Indian Congress (MIC).<sup>3</sup> As their names suggest, these three parties represented the three dominant ethnic groups in Malaysia—the Malays, Chinese, and Indians. While the Malays are indigenous, the Chinese and Indians were brought to Malaya in large numbers during the colonial era primarily for economic reasons. The British wanted them to help expand the Malayan economy, especially in the tin mining and rubber industries. Most of them came in the nineteenth century and by the time of independence in 1957, they (Chinese and Indians) constituted about half the population.

Because the British brought in the Chinese and Indians for economic reasons, there was no real attempt to integrate them into the local environment—the thinking then was that these were temporary workers and they would go back to China and India once they have saved up enough money for retirement. In reality, with such large numbers, this was not possible. Many did not earn enough to go back to the Chinese mainland or India. The large numbers also allowed the Chinese and Indian communities to build their own insular communities—they established their own schools, temples, and townships. The British were also keen to keep the communities apart as it was easier to rule over them [3].

The British concentrated on building a civil service to fit their economic and empire needs while, at the same time, trying their best to co-opt the indigenous leadership—in this case, the Malay sultans and their senior officials. Through a mixture of strong-arm tactics, bribery, and promises of economic development, the British managed to convince the sultans to install a British “advisor” to help them rule their states. These “advisors”—far from offering suggestions—often ended up as the chief administrators, yielding real power in the name of the sultan. The only area where the advisors did not interfere was on the issues of Malay customs and religion—Islam. As part of their political ploy to win over the elite Malays, a Malay administrative service (MAS) was established in the 1930s [4]. The MAS was junior to the Malayan civil service (MCS), which was, in practice, reserved mainly for whites. Those few Malays who did manage to move from the MAS to MCS ended up as junior MCS officers. In other words, while selected Malays were co-opted into the civil service, at the higher levels of the MCS, the British were always in charge. Having Malays working in the bureaucracy helped to legitimize British rule.

Thus, the first group of Malays actively recruited to the MAS tended to be members of the Malay aristocracy and children of Malay chiefs. Many were sent to study at the elite Malay College Kuala Kangsar (MCKK) established in 1905.<sup>4</sup> One writer observed that the MCKK was for “the training of Malays boys for admission to certain branches of government service [5].” As a result of bringing them into the civil service and making sure that most would never be at the most senior levels, within a short period, the Malay elite saw the British not only as their protector, but also their benefactor. The unintended consequence of this policy of luring the Malay elite into the civil service meant that the Chinese and Indian population moved into commerce and the non-government sector. As the

<sup>3</sup> After 1963, these parties were called the Malaysian Chinese Association and Malaysian Indian Congress to reflect the name of the new federation.

<sup>4</sup> MCKK was often described as being modeled on Eton.

Chinese and Indians began to dominate the private sector, the Malay elite began to move even closer to the colonial officials, fearing domination by the non-Malays.

Although the British were selective in the recruitment of Malaysians into the MAS and MCS, this did not mean that the white officers who served in Malaya were less professional than the home service in the United Kingdom. By and large, many of the white officers who served in Malaya were highly experienced, some having served in British colonies in Africa and the Indian subcontinent. Some were recruited directly from British universities. The MAS was generally corrupt-free and there was a strong respect for administrative law. The MAS believed in developing the Malayan economy, thus schools (mostly manned by missionaries), hospitals, roads, airports, and other infrastructure, were built. The belief was that a strong Malayan economy would contribute to the home country and the British Empire. However, there was a common belief among senior officials that the whites were still superior to the “natives” and all the top posts had to be reserved for the whites; racism was common during the era. The other negative legacy of the colonial era civil service was the deliberate exclusion of the Chinese and Indians from the civil service. Although a very small number were recruited, the prevalent thinking among the British was that these immigrants had no future in Malaya and would one day return to China and India.

### 7.3 Malayan Union and the Birth of the United Malays National Organization

The myth that the British were invincible was shattered when Japan invaded Malay in 1941 and quickly overran it. The Malays and the other people realized that Britain and white people were not superior to the non-whites. The four years under Japanese occupation left an important impression among the Malay leaders that perhaps the British could be challenged after all. The first big challenge to the British came after the war when the British suggested the “Malayan Union” proposal.

The Malayan Union (MU) was a confederation of the Malay states and the Straits Settlements (excluding Singapore), which was placed as a crown colony under direct British rule from London. The British proposed this arrangement because it was the easiest way to consolidate their rule over the Malay Peninsula after the war. It was proclaimed on April 1, 1946, by the British despite strong opposition from the Malay elite. The Malay elite were against the MU because (a) citizenship with equal rights was granted to all residents of Malaya, including the Chinese and Indians who make up slightly more than half the population; (b) citizenship was based on the *jus soli* (place of birth) principle; and (c) power was transferred from the sultan to a British governor, except in matters of culture and Islam [6].

The Malay opposition was led by Malay civil servants. On March 1, 1946, Dato’ Onn Jaafar, a civil servant from Johor, established the United Malays National Organization (UMNO) expressly to oppose the formation of the MU. Seven of the 11 members of the first UMNO Executive Committee were civil servants.<sup>5</sup> Onn Jafaar and his followers were so effective in their opposition to the MU that the British dropped the MU completely two years later in January 1948. Hence, from day one of UMNO, a political party had close and intimate links with the civil service and, by extension, the British colonial authorities. The civil service, then and now, was a place for Malay

<sup>5</sup> For details on UMNO’s formation [7].

politicians to get their training on how government works. The British took note of this and made special provisions for these links to continue. For example, in the first general election in Malaya in 1955, the colonial government allowed Malay civil servants to retire if they wished to stand as a candidate. This was in stark contrast to Britain where civil servants had to resign if they wished to take part in active politics. Of the 103 Malay candidates who stood in the 1955 elections, 53 were ex-civil servants [8].

## 7.4 Post Independence, New Economic Policy, and Malay Dominance

The civil service continued to be closed to the non-Malay community until the 1950s. Even when the British decided to prepare Malaya for independence, they were of the opinion that the civil service, especially the upper echelons, be reserved for the Malays. Owing to security fears, the British were especially sensitive to the large number of Chinese entering the service. From the late 1940s onward, there was a serious communist challenge to the state. The Malayan Communist Party (MCP), led by ethnic Chinese, launched an armed insurrection against the British in 1948, claiming that they were fighting for independence and the end of colonial rule. In such a climate, it was not surprising that General Gerald Templer, the British high commissioner, introduced a quota system in the MCS. The quota was set at one non-Malay to every four Malays, with the result that at the upper echelons of the MCS, it was always 80% Malay [9]. Although attempts were made to extend this quota to the professional and technical services, this was not successful as there were not enough qualified Malay candidates.

In 1963, the year the Federation of Malaysia was established, Malays constituted 86.2% of the MCS. In 1969, for the whole civil service the ethnic composition was 60.8% Malay, 20.2% Chinese, 17.4% Indian, and 1.6% others [10]. Three decades later in 2005, the comparative figures were 77.3%, 9.37%, 5.12%, and 7.77% [11].

On May 13, 1969, serious racial riots broke out in the capital Kuala Lumpur and several other urban areas. The causes of the riots are complex, but for the most part it was political competition between the Chinese and the Malays. The main Chinese opposition party, the Democratic Action Party (DAP), made major gains at the expense of the Alliance. UMNO and the Malay community saw this as a direct challenge to them. Fights between pro- and anti-government supporters broke out during victory parades held by the opposition. This led to much bigger crowds and mass rioting between the Malays and non-Malays.<sup>6</sup>

The Malays claimed that as the indigenous people of Malaya, this was their land and the concept of *ketuanan Melayu* (Malay supremacy) cannot be challenged by the non-Malays [14]. With several hundred dead, the government had little choice but to suspend Parliament and impose emergency rule. An official report, *The May 13 Tragedy: A Report*, claimed that the economic disparity between the Malays and the non-Malays (read Chinese) was the main cause of the riots [15]. The report argues that the Malays were unhappy that they were shut out of the economy due to Chinese dominance of the economy.

In 1971, the government recalled Parliament and passed several laws to restrict public discussion on “sensitive” issues such as race relations, religion, the sultans, and Malay special rights. The

<sup>6</sup> Today, there is no clear account of who started the conflict. The most authoritative account of the rioting can be found [12]. For a completely different perspective, and one that argues that the rioting was deliberate and planned [13].

government also launched the New Economic Policy (NEP), supposedly to correct the imbalance in the economy as identified by the May 13 report [16]. The NEP set out in clear terms the government's commitment to eradicating poverty and restructuring society by ensuring that all ethnic groups were represented in all professions [17]. Unfortunately, the NEP never lived up to its own stated goals. Rather, the NEP was used as a policy to reinforce the *special rights* of the Malay and bumiputera community in all social, economic, and political spheres. These special rights were defined broadly as meaning that the Malay community were entitled to preferential treatment by the government in all its activities. A quota was established for bumiputera entry to universities, bank loans, scholarships, business licences, etc. A special bumiputera-only tertiary institution, Institut Teknologi MARA (now called Universiti Teknologi MARA (UiTM)), was established to provide Malays with opportunities to get a tertiary education. The non-Malays who were excluded saw this policy as nothing more than state-sanctioned racism and discrimination [18].

While the NEP was a political document, its impact was widely felt in the civil service, as the civil service was the main agency tasked with implementing the NEP. Overnight, the civil service and government-linked institutions, such as statutory boards, became an almost exclusive Malay environment. New intakes in the civil service were almost all bumiputera with a token few non-Malays. Since the inception of the NEP, the proportion of Malays in the civil service has grown from 60% to 77%. The elite ranks of the civil service, *Perkhidmatan Tadbir dan Diplomatik* (PTD) or the Administrative and Diplomatic Service<sup>7</sup> became 85% Malay, or had six Malays for each non-Malay [19]. The quota system created by the British for the MCS was not only kept, but also increased from one non-Malay to four Malays, to one non-Malay to six Malays.

PTD officers occupy all key senior positions in the federal bureaucracy, including the ministries and departments staffed mainly by professionals, leading to one scholar who served as a consultant to the Malaysian civil service calling the PTD “the strategic point of control” in the civil service [20]. Another scholar, Lim Hong Hai, reported that, “of the 21 Ministries, only the Ministry of Science, Technology and the Environment has a Chinese as its Secretary General and the Ministry of National Unity and Social Development has an Indian as its Secretary General. These Ministries also have a total of 41 Deputy Secretaries General, only three of whom are Chinese. All or nearly all of the 19 bumiputera Secretaries General and 38 Deputy Secretaries General are Malays [21].”

The dominance of the Malays in the civil service was a reflection of the new political reality in the wider political arena. UMNO, the main Malay party in the BN coalition, became its key anchor and undisputed leader. In 1974, the Alliance was reconstructed and became known as the Barisan Nasional (BN) or National Front. All parties were invited to join the BN, and although the BN was a coalition, it was clear that UMNO was the acknowledged leader of the coalition [22]. Since the 1974 general elections, the number of UMNO and Malay-majority seats constitutes the majority of seats won by the BN. In addition, UMNO alone command very close to half the seats in Parliament. For example, in the 2004 general election, UMNO won 109 out of 219 seats. As a whole, the BN coalition has never lost its two-thirds majority in Parliament until 2008. This allows it to amend the Malaysian constitution at any time.

In other words, the unspoken truth was self-evident—UMNO could rule Malaysia on its own. More than half the cabinet members came from UMNO, and UMNO occupied all the key posts such as those of the prime minister, the deputy prime minister, finance minister, foreign minister, home minister, and internal security and defence minister. The other BN parties, such as the MCA and MIC, could take part in the government as long as they did not challenge the *ketuanan Melayu* (Malay supremacy) concept. Although the non-Malays in government were

<sup>7</sup> The PTD is the successor to colonial-era elite MCS.

allowed to air their political wants and grouses, UMNO alone decided on the outcome of key government policies. Some concessions were granted to the non-Malays as UMNO did not want the non-Malays parties in the BN, such as the MCA, Gerakan, and MIC, to totally lose the support of their communities [23].

With UMNO dominating all levels of the political system, Malaysia is often called a semi-democracy or soft authoritarian state. The Malaysian prime minister (all UMNO presidents since independence) yields more executive power over the political system, especially the civil service, than any other institution in Malaysia. Although in theory there was an independent Service Commission—Public Service Commission (PSD), the Judicial and Legal Service Commission, the Police Force Commission, and the Education Service Commission—the appointment of the commissioners who sat on these commissions was often the prerogative of the minister and the prime minister. In all cases, the chairmen of these commissions were ethnic Malays although there was always (at least) one non-Malay member.

## **7.5 Centralization of Executive Powers under Mahathir**

No discussion of the Malaysian civil service is complete without mentioning the role of Dr. Mahathir. Mahathir, the fourth prime minister of Malaysia, is also the longest-serving prime minister. He served from 1981 to 2003, a period of 22 years. Much of the civil service we see today bear his imprint. When he came into power in 1981, he introduced several changes in order to cement his control over the civil service—then widely seen as dramatic. Using the slogan, “Clean, Efficient and Trustworthy,” all civil servants were made to wear name tags, they had to punch-in time clocks, and they had to undergo regular training and reviews. He strengthened the prime minister’s department control over the entire civil service through the Malaysian Administrative and Planning Unit (MAMPU), which began to review and restructure departments in order to make them more efficient. He gave more powers to the National Bureau of Investigations (NBI)<sup>8</sup> and reactivated the Public Complaints Bureau (PCB). He promised to fight corruption in the public service [24]. Mahathir vigorously pursued heavy industrialization using Japan and Korea as a model (so called “Look East” policy). Within the civil service, he pursued a privatization policy that saw many public utilities becoming privatized. One justification Mahathir used for the privatization exercise was the creation of a Bumiputera Industrial and Commercial Community (BICC). Many of these privatized corporations were given to selected bumiputera entrepreneurs while the government retained ownership of the larger ones. The end result was that many civil servants found themselves working under private sector conditions. More than 500 government-linked companies (GLCs) were established as a result of Mahathir’s privatization policies [25].

Many of Mahathir’s key projects were controlled by the Economic Planning Unit (EPU) of the prime minister’s department. With billions worth of privatization projects at stake, Mahathir, through the EPU, became extremely powerful. The EPU serves as the center of national planning, in particular, the national 5-year plans. Projects over a certain size initiated by other departments and ministries require the approval of the EPU before they can be implemented. All private sector proposals submitted to the government for approval must be cleared by the EPU before they go to cabinet. Needless to say, the EPU reports directly to the prime minister, i.e., Mahathir. For a time, Mahathir was also finance minister, ensuring that he controlled the entire financial process.

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<sup>8</sup> Later renamed the Anti-Corruption Agency (ACA) and Malaysian Anti-Corruption Commission (MACC).



In 1993, Mahathir initiated another major step when he created the Client's Charter (CC) for the civil service. The focus was on quality public service and public satisfaction. Mahathir believed in "Malaysian Inc." and saw the role of the civil service as enabling the private sector to flourish. The underlying philosophy is that both the private and public sectors should work together and share information and responsibility to upgrade the social, administrative, and economic development of the country. Public servants should see Malaysia as a "company" or "corporate nation" with both the private and public sectors holding equity. Mahathir was a man in a hurry, he made it clear to everyone that he wanted Malaysia to be a fully industrialized modern state by the year 2020. He even provided the blueprint and coined the infamous "Vision 2020" to prod the nation.<sup>9</sup>

With such an ambitious agenda, it was not surprising that Mahathir centralized power in the civil service through his office to serve his agenda effectively. All major initiatives and projects were directed through the prime minister's department. The creation of hundreds of GLCs added more power to the Prime Minister's Office as many of these GLCs had to follow the "national agenda," i.e., government's policies. With more than a million civil servants and perhaps an equal number working for GLCs, the state's control was extensive.

A bureaucratic culture of top-down decision-making process was reinforced during Mahathir's term. There was no attempt at decentralization. In the wider political arena, Mahathir also centralized power in the hands of the prime minister. All political leaders, including those from his own party, UMNO, found it easier to go directly to him than through normal party channels and this pattern became a permanent feature.<sup>10</sup>

## 7.6 Administrative Values

### 7.6.1 *Close Ties with the Political Party*

Given the omnipresence of UMNO and the historical close relationship between UMNO and the civil service, many of UMNO's core political ideology ended up as administrative values among key civil servants. It is still common for many senior UMNO politicians to be former civil servants. Four of the six Malaysian prime ministers (Tunku Abdul Rahman, Tun Abdul Razak, Tun Hussian Onn, and Tun Ahmad Abdullah Badawi) were all former civil servants. Even Malaysia's longest serving prime minister, Mahathir Mohamad, worked for a time as a government doctor. Although in the past decade, more businessmen have joined the senior ranks of UMNO, many of these businessmen started out as a civil servant or worked in one of the GLCs or state-owned enterprises (SOE). All these entities are controlled indirectly by UMNO through nominees. This makes issues like equity, democracy, accountability, relationship with the legislature, efficiency of government, and the role of government in society highly biased toward what UMNO leaders think, leading to one writer calling the Malaysian civil service "political bureaucracy [29]." This is often very apparent in ministries, such as the Ministry of Information, where the nexus between politics and the civil service can be clearly seen. The Ministry of Information is expected to present the views of the government, i.e., the UMNO/BN view, to the people and build support for that particular viewpoint. During election time, the whole government machinery, including civil servants, is expected to actively

<sup>9</sup> See Mahathir Mohamad's speech "Malaysia: The Way Forward," presented at the inaugural meeting of the Malaysian Business Council, February 28, 1991.

<sup>10</sup>For a description of how Mahathir defeated his internal UMNO opponents and centralized power in his office [26–28].

support the government, often using government facilities for campaign purposes. In most developed countries, this would not be tolerated as the civil service is supposed to be politically neutral, but in Malaysia, this is the norm [30].

The easiest way to understand the Malaysian civil service is to view the top level of the PTD as a bureaucratic extension of the UMNO leadership. Both share not only the concept of Malay dominance, but also many other values and beliefs [31]. Those PTD officers who expect to reach the top posts of secretary-general of a ministry or the top prize, chief secretary to the government, must exhibit loyalty to UMNO behind the scenes. This makes public accountability extremely difficult [32]. While in the immediate post-independence years, the civil service was much more accountable, in the 1980s, under Mahathir, public accountability had a different meaning. A new ruling meant that all government documents, including general correspondence, were automatically classified as secret. This made any reporting on corruption and maladministration very difficult or even impossible. A newspaper journalist, for example, could not write a story about corruption since he cannot use official documents as evidence. In one famous case, two lawyers representing two journalists from the *Asian Wall Street Journal* (AWSJ) were arrested under the Official Secrets Act (OSA) for “possession” of government documents. These documents were to be used as part of the journalists’ defense for an article related to corruption [33].

### 7.6.2 Laws that Promote Secrecy, Continuing Concerns with Corruption

The civil service is often the agency that selects and gives out government procurement contracts worth millions. Government tenders are often shrouded in secrecy and the successful bidder need not reveal any details of the price or any other information. Many of Malaysia’s multi-billion privatization projects are handled by the civil service. Civil servants prepare the paperwork under orders of their political masters who decide who got what [34].

At the lower level, corruption remains an issue. Although various programs were drawn up to tackle bureaucratic corruption (see separate chapter in this volume), such as reducing red tape, the general perception is that corruption is still widespread in the civil service. Transparency International (TI), which conducts surveys of corruption, called the Corruption Perceptions Index (CPI), ranked Malaysia 56 out of 180 countries in 2009. This ranking has not improved much over the years. In 2007, it was 43 out of 179 countries, in 2006 it was 44 out of 163 countries, and in 2005 it was 39 out of 158 countries.<sup>11</sup> Although junior civil servants are regularly arrested and charged with corruption, few senior bureaucrats and even fewer senior politicians are charged with corruption. This has led the Malaysian opposition leader to ask why “larger fishes” get away [35].

Civil servants who leak government documents, such as tender documents, can be charged under the OSA, which can include jail time. It does not matter if the document shows no evidence of corruption—the OSA was designed to stop all government documents from leaking into the public domain. Many could not help but suspect that the real aim of the OSA was not to protect government secrets, but to hide wrong doing [36]. The Malaysian Anti-Corruption Commission (MACC), successor to the ACA, established specifically to investigate graft in the civil service and government agencies, does not report to Parliament but to the prime minister. This makes investigations of bureaucratic corruption involving senior civil servants and senior politicians politically sensitive. Many critics claim that MACC is only interested in going after low-ranking civil servants who are of little political significance [37].

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<sup>11</sup> All figures from Corruption Perception Index (CPI) conducted by Transparency International, <http://www.transparency.org/> (accessed July 10, 2009).

The Public Accounts Committee (PAC), the main organ that Parliament uses to make sure there is no wastage or corruption in public funds, comprises members overwhelmingly from the BN. The PAC only deals with minor issues or issues with little political consequences. The works minister famously said he did not have time to appear before the PAC to answer questions. Ministries regularly ignore summons to appear before it.<sup>12</sup> Despite the close relationship between UMNO and the civil service, parliamentarians from other non-Malay BN parties do criticize the civil service and bureaucrats in Parliament. More often than not, these complaints are due to frustrations when the civil service do not attend to their complaints or worse, ignore them completely. One reason may be that the civil service is more attentive to UMNO politicians than non-UMNO politicians. Since civil servants know where the real power lies (in UMNO), it makes sense that they attend to the member of Parliament from the most powerful party more diligently than others. Similar complaints have been heard from non-Malay ministers as well. One non-Malay minister famously remarked that bureaucrats in his ministry are not afraid of him, but are afraid of UMNO leaders!

The inability of Parliament to provide clear oversight of the civil service machinery is almost certainly due to the longevity of UMNO in power. One could almost argue that you cannot really tell the difference between the top layer of the civil service and the top layer of UMNO. Since independence the civil service has only known UMNO as their political master and UMNO has always relied on the civil service to implement the bulk of its agenda. This mutual dependence does not augur well for full transparency and accountability. In fact, transparency may be impossible under this arrangement.

A recent example of the bias in the civil service can be found in the Perak case. In March 2008, the state government of Perak changed from the BN to the opposition Pakatan Rakyat (People's Pact). Within a year, the Pakatan Rakyat (PR) government fell when the BN engineered the defection of three PR legislators to the BN. Key civil servants played a fundamental role in the affair, including the chief secretary to the Perak State Government who, according to the PR *Menteri Besar* (chief minister), ignored the orders of the state executive council and actively worked against the PR government.<sup>13</sup>

### 7.6.3 *Politics over Performance*

Although significant reforms were undertaken to make the civil service more efficient, such as privatization, quality control circles, total quality management, effective counter service, CC, ISO90000 management systems, implementing a Code of Conduct, and annual appraisal systems (see other chapters in this volume), some of the efficiency gains were sometimes reversed by UMNO's political priorities. A recent review of reforms and initiatives in the civil service from the 1980s to the present day suggests that the civil service still suffers from inefficiency, corruption, and a host of other problems [38].

In the late 1990s and early 2000s, the government decided to trim the number of civil servants, numbering more than 1.2 million. For a country of 25 million people, this would be a sensible thing to do.<sup>14</sup> Although there was wide support for this move in the public arena, the plan never really took off for political reasons. When it was revealed that thousands of graduates from

<sup>12</sup> *New Straits Times*, Heated exchange at PAC meeting, June 26, 2006.

<sup>13</sup> Pakatan loses suit against Perak State Secretary, *The Malaysian Insider*, November 13, 2009.

<sup>14</sup> For comparison, the size of the Malaysian civil service is three times larger on a per capita basis than Laos. Compared with Thailand, Indonesia, and the Philippines, the Malaysian civil service is overstaffed by more than 50% [39].

local universities were unable to secure employment, the government quietly absorbed many of them into the civil service. This move was spearheaded by UMNO as almost all these graduates were ethnic Malays, UMNO's core constituency. The logic was simple but flawed; since UMNO created the quota system that allowed these Malays to enter universities and get a degree, it was UMNO's duty to get them jobs as well. Many of these graduates lacked basic skills, and many argue that they should never have been admitted to university, but were politically important to UMNO, thus the civil service had to meet UMNO's political demands.<sup>15</sup>

#### **7.6.4 Increasing Islamization of the Civil Service**

UMNO's key political opponent is Parti Islam Malaysia (PAS). As the name suggest, PAS sees itself as the only "true" Islamic party and vows to create a theocratic Islamic state when it gets into power. It often accused UMNO of being a secular party and UMNO leaders of leading a "kafir" (unbelievers) government. This is the greatest insult to a Malay in Malaysia. Thus, when Mahathir came to power in 1981, he decided that to outflank PAS politically, he had to be seen as being more "Islamic" than PAS. He undertook two significant things that changed the character of the civil service to boost his Islamic credentials. First, he greatly expanded the Jabatan Kemajuan Islam Malaysia (JAKIM or Department of Islamic Development). JAKIM comes directly under the Prime Minister's Office. Today, there is a JAKIM office in every state. Second, he instilled the "Islamic Values in Administration" policy, which was supposed to make the civil service more efficient, of higher quality, and more competitive. However, in practice, this policy of Islamization meant that the civil service devoted a huge amount of time and valuable resources to Islamic programs. Heads of departments had to organize, and often lead, religious functions outside office hours. Many of these functions used resources from the civil service. It also meant that it was much harder for a non-Muslim (hence non-Malay) to enter the upper echelons of the civil service since they cannot take part in these religious activities. It did not matter that more than one-third of the Malaysian population was non-Muslim.

### **7.7 Ethnic Politics and Reforms**

The single biggest issue facing Malaysia since independence is ethnic politics. In Malaysia, political parties are centered around one particular ethnic group. Even political parties that profess a multi-racial approach, end up championing ethnic issues. The issue of ethnicity permeates every level of society. The situation was made worse after 1970 when the NEP formalized ethnic divisions into two categories: bumiputeras and non-bumiputeras. Being classified a bumiputera brings benefits such as access to scholarships, jobs in the civil service, scholarships, easy loans for business and state aid, while the reverse is true if one is classified as non-bumiputera. By attaching benefits to one ethnic group, which incidentally is also the ethnic group (read Malay) that holds political power, this creates a sense of alienation and "second class" syndrome among the non-Malays.

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<sup>15</sup> All government-linked companies (GLCs) or state-owned enterprises (SOE), likewise, were pressured by UMNO to offer employment to these unemployed Malay graduates. *The Star*, July 12, 2006, reported that "The Public Services Department (PSD) and Public Services Commission have been urged to speed up the recruitment of graduates.... Deputy Prime Minister Datuk Seri Najib Tun Razak said that this would overcome the problem of unemployed graduates." See also 60,000 Malaysian graduates unemployed, *New Straits Times*, November 10, 2005.

It reinforced the UMNO notion of *ketuanan Melayu* (Malay supremacy) and created a political atmosphere that left little room for negotiation [40].

The civil service reflects this reality. UMNO's omnipresence has caused the civil service to be almost an exclusive Malay enclave. The non-Malays feel alienated from it. As a consequence, they see the entire civil service as a bureaucracy that serves the needs of the Malay and bumiputera community. Even if the government was to actively encourage non-Malays to join the bureaucracy, it would most likely be unsuccessful as non-Malays are afraid of being marginalized within the service. These are well-founded fears as the figures clearly show that the upper echelon, the PTD, is overwhelmingly Malay with the quota system to protect any meaningful changes. In other words, why would a non-Malay sign on to a career with almost no prospect of reaching the top?

Political will, or to be exact, political will within UMNO is the key to making the Malaysian civil service more transparent and representative. UMNO's lack of will thus far can easily be explained by its openly stated goals of Malay dominance [41]. If it opens up the civil service, there is a real fear that it may lose support among its core constituent, the Malays. Given the highly ethicized political climate, this could easily happen.

Although the government, from time to time, laments the lack of non-Malays in the civil service and calls for a greater intake of non-Malays into the bureaucracy, in reality this would be hard to do. It will face resistance from the existing bureaucrats. The most sensible proposal thus far is a gradual intake of non-Malays, over a 20-year period, to correct the imbalance. By setting a quota in favor of non-Malays every year, over a 20-year period the civil service will be more representative of the society it serves. The proposal, submitted to the government in 2007, did not get a reply from the government.<sup>16</sup>

Civil society groups that call for reform are also caught in this ethnic dilemma. While there is widespread support from all ethnic groups for reforms of the civil service to make it more transparent and accountable, the support dips among the Malay community when the reforms include opening up the civil service to non-Malays. The Malay community, which constitutes the majority in the country, sees the civil service as one of its traditional sources of political power, employment, state aid, and government help. It will probably not want to give up any of these benefits.

## 7.8 Conclusion

With UMNO dominating all levels of the political system, Malaysia is often called a semi-democracy or soft authoritarian state. The issue of ethnicity permeates every level of society, including the Malaysian civil service, where Malays dominate. UMNO dominates the Malaysian state, and the civil service, as one of the principle organs of the state, is securely under the control of UMNO. Any reforms and changes to the civil service require the sanction of the UMNO leadership. The civil service is the key implementer of UMNO's policies and a major source of UMNO's power. In this sense, the old mantra that civil servants must be loyal to the government in power is alive and well in modern Malaysia. Malaysia has a strong central government, and in recent decades, the civil service has been greatly shaped by Prime Minister Mahathir (1981–2003), who strengthened control over the entire civil service by the Prime Minister's Office. He did this through secrecy, the expansion of the bureaucracy in the Prime Minister's Office, appointing only UMNO-supporting bureaucrats to the upper echelons of the service, as well as economic policy making, which has been centralized in the Prime Minister's Office. The end result was a highly politicized civil service where

<sup>16</sup> The proposal called *Towards a More Representative and World Class Malaysian Civil Service*, was submitted by the Centre for Public Policy Studies (CPPS), a private think-tank organization.

high-level corruption was left unchecked for political reasons. The Islamization of the civil service also meant that the civil service took on a more religious character.

When the British left Malaya in 1957, they left a civil service that was, for the most part, modeled on the British service where political neutrality was one of the core administrative values. The top Malayan civil servants, almost all Malays from aristocratic backgrounds, saw themselves as above partisan politics. This legacy was largely intact for the first decade, but fell apart after the watershed 1969 ethnic riots. The creation of a Malay nation based on *Ketuanan Melayu* and UMNO dominance meant that neutrality was seen as a hindrance to the development of a modern Malay state. In the 1980s, an infusion of Islamic values into the entire civil service further removed any colonial British values in the civil service.

The British legacy of generally excluding the Chinese and Indians from the civil service, especially its top posts, remains to this day, although for different reasons. The exclusion of non-Malays from the civil service since independence is to *Ketuanan Melayu*.

Today, the only legacies of the colonial civil service found in the contemporary Malaysian civil service are the titles and structure. The administrative head of a ministry is called a secretary-general (*Ketua Setiausaha*), while head of the civil service is called chief secretary to the government (*Ketua Setiausaha Negara*). Structures of ministries, other than their names, have changed little since colonial times. As this chapter argued, political neutrality is no longer a feature of the Malaysian civil service. Political loyalty is now the cornerstone value in the upper echelons of the civil service.

In sum, real reforms of the Malaysian civil service are impossible as long as UMNO is in power. Reforms that do not threaten the hold of UMNO over the civil service are acceptable, but making the civil service more professional and non-partisan will not be acceptable. The politization of the civil service is so pervasive that one could argue that the whole civil service, especially the top echelon, is effectively a branch of the UMNO party.

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## *Chapter 8*

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# **Decentralization and Local Governance in Malaysia**

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Phang Siew Nooi

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### **8.1 Introduction**

Throughout Malaysia's administrative reforms and institution-building process, local government and decentralization have seldom been issues of priority. Indeed, the history of Malaysia's administrative reforms has always evolved around modernizing its civil service and laying the foundation for political stability and economic development of the nation. Decentralization, local autonomy, and local self-government were presumed inherent in the administrative structure, but were seldom the highlight of Malaysia's institution building and public administration reform strategies.

The government's quest for economic and administrative development has to be carried out mindful that the nation is multi-ethnic, multi religious, and multi-cultural. Logically, any development undertaken should therefore be based on democratic notions of good governance



and administrative modes for effective governance.<sup>1</sup> In Malaysia, this oftentimes gives rise to a decision conflict regarding the kind of governance to use; whether to adopt good governance, which can be interpreted as the global “desired” objective, or effective governance, which seems to be the “feasible” mode for practical implementation. Again, the country’s composition of “multi-ism” is a perpetual reminder of the necessity of maintaining peace in the nation rather than individual liberty within the confines of its unique democratic institution.

The theory and practice of development administration in Malaysia has thus far been based on the premise that “effective governance” should have priority over “good governance” as the intensity of plural and communal politics may get in the way of national development. The key to Malaysia’s economic development and growth propensity is very much dependent on racial harmony and the government will not be willing to compromise this just to achieve some of the objectives of good governance. Some examples of recent events that occurred in the capital, Kuala Lumpur, attest to this rationale.

From September to December 2007, street demonstrations and rallies were organized for three different concerns in various locations. The first was staged by the lawyers’ march to highlight their concerns about the erosion of the rule of law and human rights in Malaysia. The second protest, organized by the Coalition for Clean and Fair Elections, known by its acronym *Bersih*, on November 10, 2007, was against the conduct of elections and seeking electoral reforms; and the third was a single-cause demonstration to highlight the plight of the ethnic Indians, organized by the Hindu Rights Action Force (Hindraf) on November 25, 2007.<sup>2</sup> The use of water cannons and teargas by police to immediately disperse these street demonstrations and rallies exemplifies the government’s intolerance of such behavioral expressions and public actions. The government’s retaliation was phenomenal as some of these protesters were arrested on the spot. In the case of Hindraf, some of its members were not only arrested, but also charged under the feared internal security act.

Due to the continual internalization for harmony by the government, the majority of the Malaysian community has developed a sense of not insisting too much on democratic issues and practices. In fact, it seems to have become acceptable to have limitations on democratic freedoms and to abide by the policies of the government. The process has become so complete that the community seldom if ever questions the political statements or actions of political leaders, and the distinction between government administration and politics has become fused over time. It is therefore not surprising in Malaysia that governance based on the mode of effectiveness and feasibility is “desired” and accepted as “good” for promoting socio-economic development and growth. It is clear that “multi-ism” has become an essential concept in the administration of the central government. This perspective has also transcended to local government with consequences on its political and administrative relations with the higher tier governments, including the local community.

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<sup>1</sup> “From the perspective of development administration, ‘effective or feasible’ governance refers to using government institution to make economic development feasible as an outcome of government policy and action. Good governance refers to attaining development by providing economic opportunities and social facilities that remove deprivations and fulfill economic needs, through democratic ways that enhance society’s capabilities for effective participation in the process of development.” Sri Tharan, Prospects for administrative reforms in Malaysia, Faculty of Economics and Administration, University of Malaya, Kuala Lumpur, unpublished paper, nd.

<sup>2</sup> *The Sun*, December 28, 2007, p. 20; and January 2, 2008, p. 7, Kuala Lumpur.

## 8.2 System of Government in Malaysia

The basic structure of the Malaysian government administrative and political machinery follows closely that of the British system. The Malaysian government has inherited from the British the principles of parliamentary democracy and incorporated them within its administration. Yet, while British influence is pronounced, the head of state, the king, is a unique Malaysian institution, being a constitutional monarch who serves a term of 5 years and acts in accordance with the advice of the cabinet. The king, known as the *Yang Di Pertuan Agong*, is one of the sultans or Malay rulers of the states, and is elected from among them to serve as king for a period of 5 years. Thus far, the election has taken on the form of a rotation basis among the rulers, and the king normally acts according to the advice of the prime minister and the cabinet.

In legal matters, the Malaysian Constitution is supreme and was a product of detailed discussions between the British government, the Conference of Rulers, and representatives of the major political parties, which represented the three major ethnic groups of Malays (Bumiputera), Chinese, and Indians, at the time of independence. At present, the population of Malaysia is around 24 million, composed of different ethnic groups existing within the paradigm of consociation politics (see Table 8.1).

The Malaysian parliament is bicameral, consisting of a Senate (upper house) and a House of Representatives (lower house). Elections to the lower house are held every 5 years on the basis of universal adult suffrage. The cabinet headed by the prime minister consists of members of the legislature and is collectively responsible to Parliament. The prime minister is also the leader of the majority party in Parliament.

At the state level, other than the states of Penang, Malacca, Sabah, and Sarawak, a Malay ruler or sultan is sovereign in the state. Generally, the rulers act on the advice of the State Executive Council. The non-sovereign states are headed by a governor, who is federally appointed for 4 years and who also acts on the advice of the respective state governments. Each state has a unicameral legislature, elections to which are held every 5 years, in most cases in tandem with elections at the federal level. The state is headed by a chief minister, also known as the *Menteri Besar*, and is normally leader of the party that has a majority of seats in the state cabinet.

Local government is the lowest in the governmental hierarchy of Malaysia, known as the third tier of government or the *grass-root government*. The position of local government in Malaysia is entrenched in the federal constitution in the sense that local government needs to have a place in the governmental structure of Malaysia. By virtue of items 4 and 5 of the Ninth Schedule of the federal constitution, local government outside the federal territories of Kuala Lumpur, Putrajaya,

**Table 8.1 Malaysia: Population Size (million persons), 2005**

	No.	%
Bumiputera	16.06	65.9
Chinese	6.15	25.3
Indian	1.83	7.5
Others	0.32	1.3
Total	24.36	100

Source: Malaysia, *Ninth Malaysia Plan 2006–2010*, Government Printers, Kuala Lumpur, 2006.

and Labuan, is a subject under the State List. All local authorities outside the federal territories therefore come under the exclusive jurisdiction of each state government. This is the constitutional position. By virtue of this, the state government has wide legislative powers to control the local authorities and to ensure their proper functioning. However, through a consultative body, called the National Council for Local Government (NCLG), the federal government can exert influence to ensure that state and local authorities follow national policies. The creation of the NCLG through Article 95(A) of the federal constitution provides an effective channel through which the federal government and its agencies can exercise their influences and maintain functional links with the local authorities. The NCLG consists of representatives from the state and federal governments whereby the members meet and discuss policy matters relating to local government in Malaysia at least once a year. The policy decisions made at the NCLG bind both the federal and state government; except for those of Sabah and Sarawak who only hold observer status. It is this scenario of inter-governmental dynamics that to a certain extent determines and influences local government's relationship and response to the community and the notion of decentralization.

With the system of government consisting of three levels, namely, the federal, the state, and the local, it is clear that each level of government operates within its legally defined borders of jurisdiction and dutifully abides by the policies of the federal government as provided for in the federal constitution. As practice over the years indicates, there is the tendency for the imposition of controls and powers by a higher tier government over a lower tier government. The reality is that this erodes local government autonomy and also disempowers the local community. However, it sustains central control and the top-down process is the antithesis to decentralization in Malaysia.

### 8.3 Defining Local Government in the Context of Malaysia

Throughout Malaysia's history, there have been attempts to define local government and also efforts to restructure its local government system to give it precision and body. As stated in the Report of the Royal Commission of Enquiry to Investigate into the Workings of Local Authorities in West Malaysia, "There is no precise definition of the term 'local government' though many of us do know what it means and portends [1]." Basically, this sums up the knowledge and level of understanding of local government. Ultimately, the Report of the Royal Commission had to refer to John J. Clarke's [2] definition in explaining local government in this country [3]. Briefly, the concepts of local government according to Clarke mean:

- (1) A government confined to local affairs assigned to it by a superior government to which it is subordinate and subject to its control and supervision
- (2) It is autonomous to the extent to what is granted by the superior government
- (3) It is representative or non-representative in character
- (4) It is a separate legal entity with powers to sue and be sued
- (5) It functions in a defined area to which it provides services

However, as events begin to unfold in this country, such as independence, Sabah and Sarawak joining Malaya to form the nation-state Malaysia, and suspension of local elections, these influence Malaysia's system of government and administration, thereby warranting local government to be defined accordingly and what is understood based on a generic definition appear a misnomer for Malaysia; it lacked a precise definition. Yet, there were no immediate attempts to justify local government's position and the Royal Commission that recommended a restructuring of Malaysia's

local government was unable to provide a definitive concept. It merely referred to general guidelines of local government used in democratic countries, such as Clarke's definition. Later, a committee formed by the government to study the implications of the Report of the Royal Commission was also unable to express clear meanings except to state that "local government in Malaysia is a sub-system operating within or among a number of other sub-systems [4]."

The inability to express a precise definition has continued indefinitely. The Ministry of Housing and Local Government states that, "local government are infra-sovereign geographic sub-divisions of a sovereign nation or quasi-sovereign state, exercising the power of jurisdiction in a particular area. Many of them are legal entities, which means they can sue and be sued, and enter into contract [5]."

Malcolm W. Norris states that, "local government in Malaysia is concerned with those authorities established as municipalities, district councils, local councils and autonomous town boards. All these bodies are created by law and set apart from the central or state administration... They are subordinate units to the state and Federal Governments in law [6]."

Phang S. N. states that local government is, "a State-created (after consultation with the Minister in charge of local government) political entity thereby representing the third tier in a Federal structure, administered by state-nominated Councillors, geographically encompassing a portion of the country. It is infra-sovereign, subordinate and subject to the control of the State Government; yet is a separate legal unit being a body corporate having a common seal, with powers to sue and to be sued, mainly providing obligatory municipal services [7]."

The process of local government becoming less autonomous is accentuated by the relationship between the three levels of government, i.e., federal/central, state, and local. This relationship is based on a type of decentralization that accords power sharing and demonstrates democratic practice.<sup>3</sup> Each level of government has autonomy over certain areas of jurisdiction, such as land matters, religion, tax assessment, scholarship, vector services, and state laws. In reality, however, with the balance of power arrangements that maintain control at the central government, local government and decentralization have been weakened. In the past, what would have been identified as local self-government no longer applies. Instead, local government autonomy has been slowly eroded through further reassertion of federal and state government controls. Such a situation that leads to erosion of local autonomy and reassertion of central powers has been termed recentralization [9]. At present, Malaysia's local government seems to be experiencing this process.

## **8.4 Inter-Governmental Relationships**

In the area of inter-governmental relationships, the structure of government in Malaysia tends to be heavily biased toward the central government. This relationship is influenced by Malaysia's federal structure of government, which essentially allows the central government to have more powers over the state and local governments. In other words, state and local governments operate within a framework where they accede to the decisions of the central government if ever a conflict of opinion arises among them. This is further aided by the federal constitution that provides for federal laws to supersede those of the states when conflict exists between these laws. The division of powers between central and state governments reveals a central bias. "...in practice the states have little real autonomy. Although some federal functions have been decentralized, most

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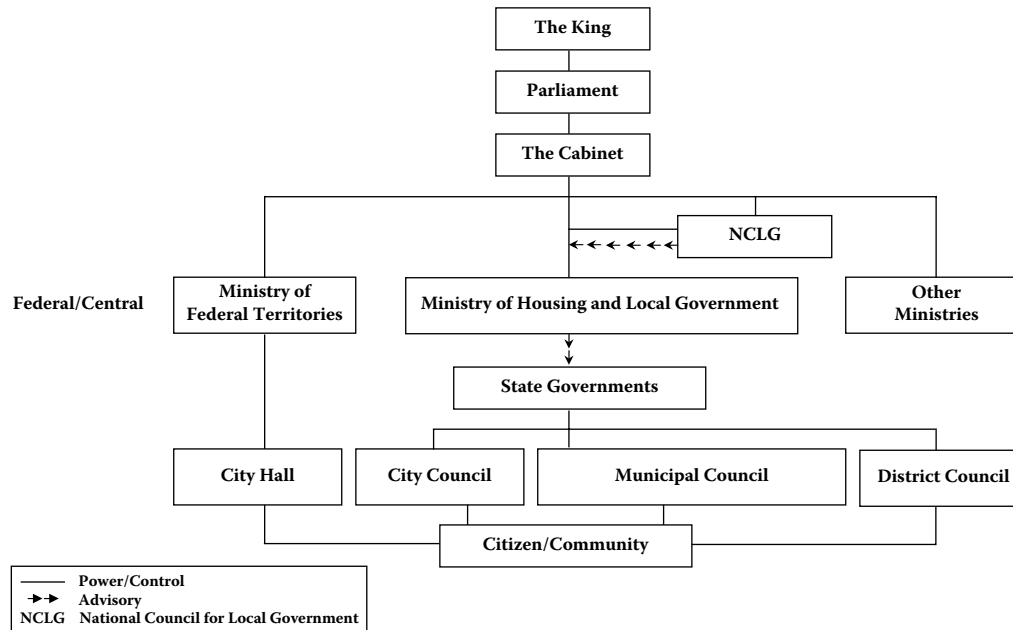
<sup>3</sup> There are three types of government in Malaysia: (i) the sovereign national (federal), (ii) the quasi-sovereign (state), and (iii) the infra-sovereign (local government). Infra-sovereign is a distinctive characteristic of local government in that it does not have any aspect of sovereignty [8].

decision-making remains at national level [10].” This situation is further reinforced by the central government’s control over major resources and wealth of the country.

Whereas the states still have some semblance of autonomy in their relationship with the federal government, the local government’s position is a paradox as it is under the jurisdiction of the state government yet, it also yields to federal control. The process of decentralization that was supposed to delegate a degree of autonomy and independence to local government when it was restructured in the early 1970s became instead the route to recentralization. Through the enactment of a series of by-laws and regulations, many traditional functions have been removed or privatized. For instance, the election of local representatives has been removed and traditional functions such as providing for water, electricity, sewerage, and bus services have been privatized. The outcome is a local government that resembles another government department carrying out administrative functions. The position of local government in a federal system is shown in [Figure 8.1](#).

At the local level, although local government is a state responsibility, however, through the NCLG, local government is made to feel the powers of the central government. Under the provision of the federal constitution Article 95(A), the decisions of the NCLG are binding on all state governments. The NCLG can formulate policies and advise on matters pertaining to local government, and all states, with the exception of Sabah and Sarawak, need to comply with these regulations. The NCLG has almost equal federal and state representation composed of all state chief ministers, the minister of housing and local government, and senior ministry officials from the said ministry as well as other central ministries; and observers from the two East Malaysian states of Sabah and Sarawak. However, it is ironic that this committee, which essentially deals with local government matters, is not represented by any of the chiefs and presidents of the local authorities or their secretaries. This situation weakens local government and reaffirms the process of recentralization. The policy decisions made by the NCLG bind both the federal and state governments. The Ministry of Housing and Local Government, a central ministry in charge of local government, can advise, a role that is only as strong as the expertise and financial resources at its disposal. Through the various federal laws concerning local government, such as the Local Government Act 1976 (Act 171) [11], the Town and Country Planning Act (Act 172) [12], and the Street, Drainage and Building Act 1974 (Act 133) [13], central control is further reinforced and intensified. The *raison d’être* for perpetuating this type of federal-local relations is to ensure uniformity of law and order, policy implementation, advice, and provision of technical and financial assistance, which states have long been unable to provide their local government. It is rather unfortunate that for these reasons, local government has to endure the loss of its autonomy and certain powers.

Historically, state-local relations in Malaysia had been eventful, leading to the reform of local government in the early 1970s [14] with subsequent federal interventions whenever the occasion demands especially in financial and political matters [15]. Consequently, local government in Malaysia is left to fend for itself as most times, states are seldom in a position to assist the local authorities, they themselves relying on the federal government for financial and political support [16]. Under such circumstances, there are concerns regarding the status of local government, its diminishing local autonomy and decentralization. There is, of course, the uncertainty of local government’s ability to sustain the challenges of a community that demands more transparency and accountability; a reflection of loss of powers felt by the community at the local level. In essence, the local community senses the erosion of local autonomy and central government further imposing its authority over local government. This concept of recentralization appears to be the trend in local government’s relationship with the upper tier governments. As the process continues, it also influences local government’s relationship with its local community. In Malaysia, the traditional “top-down” process in communicating with the local community has in fact been further entrenched, in contrast to the “bottom-up” approach.



**Figure 8.1** Local government position in the federal government of Malaysia.

## 8.5 Community Relations and Emerging Recentralization

There exists a contradictory situation in Malaysian local government where the principles of good governance are endorsed and strongly encouraged by the central government [17–19], but seldom carried out and if so, reluctantly. This is because existing capacities of local government's administrative and institutional systems are inadequate for operationalizing good governance on the ground. Thus far, the practice by Malaysian local government in managing their community is exclusively an exercise in centralized administration. The dilemma of local government is the need for it to acquiesce to community demands in the face of global change and increasing awareness of the right to participate, but not being prepared to confront the consequences of sharing in decision making, increasing community participation, being more transparent and accountable.

While the traditional relevance and position of local government in Malaysia remains, its approach vis-à-vis the community requires re-orientation in line with global demands for greater decentralization, emerging localism, devolution, and empowerment. Generally, there is a need to narrow the continuing distance between state and society with changing perception and growing demands for empowerment [20]. This is one of the intriguing paradoxes of globalization generating a new interest in the relationship between civil society and government; and as civil society flourishes, there is a weakening of state institutions especially at the national level [21]. Driven by the pressures of society's changing norms and values and increasing liberalization, local government in Malaysia faces the daunting challenge of responding to public participation and engaging the community in its decision-making process.

Political changes and power transformation that are unfurling within the region has also caught the attention of the Malaysian community. The dramatic but successful struggle for independence in East Timor and the flourishing of democracy and decentralization that transformed every region in Indonesia through the era of reform, referred to as *era reformasi* [22], to a certain extent captured the imagination of the Malaysian public. In addition, globalization gave rise to the concept of empowerment that was embraced by the local community, and citizens have tried to participate in political and social issues that affect them. Perhaps the recent public rallies and street marches, as mentioned earlier, are conspicuous indicators of the community's desire to be actively engaged and involved in the process of governance. Inevitably, this brings attention to the issue of local administration and local government's ability to work with and for the citizens. In enabling local government in Malaysia to meet the demands of the community for transparency, accountability, and participation, it too has to have the power to control its own affairs. However, Malaysian central-local relations reflect the importance of the federal government rather than those of the lower tier governments. While nations around the region subscribe to the process of decentralization and a shift of power from the center to local or district, by contrast, there is a resurgence toward greater central control and dilution of local autonomy in Malaysia.

## 8.6 Process Toward Recentralization and Weakening Decentralization

Recentralization or, in other words, the process of reversing powers from lower tier governments to the federal/central government, began in the 1960s when erosion of local government autonomy gathered momentum with the suspension of local elections in 1965. Local elections were subsequently abolished and the "take-over" process of local government administration by the respective state governments continued, fueled by allegations of maladministration and mismanagement [23].

Meanwhile, the federal government proceeded with the setting up of a royal commission to look into these allegations in local government, which led to it being subsumed into state administration. But the balance of power arrangement was such that the federal government still managed to maintain its control over local government via its powers over state governments.

The implementation of the Local Government Act 1976 by the federal government set the framework for the restructuring of all local authorities in Peninsular Malaysia, beginning with the Penang Municipal Council. The main reasons for the restructuring were to achieve the objectives of socio-economic development, national unity, democracy, freedom, and efficiency in local government; in fact, the bases of decentralization as characterized by A. F. Leemans [24]. This instrument was used by many state governments to actually diffuse the powers of those local authorities that had posed problems for them in the past. This was the case of the Penang state government that quickly seized the opportunity to implement and use the Local Government Act 1976 toward this end.

However, as events unfolded, decentralization through a restructured local government did not occur but instead became a process for recentralization, as the Royal Commission Report again reiterated that, "In promoting decentralized local government not all central or state governments are fully cognizant of the objectives of decentralization [25]." Thus far, the policy of promoting decentralization has been reluctantly exercised. Using this act, the state government dissolved the Board of Management managing the Penang local council and set up the Penang Island Municipal Council. The state government dismissed all the uncooperative members of the old board and established in its place a new council with councilors appointed by the chief minister that were beholden to the state government. In this manner, the Penang local council became the first restructured local authority in Malaysia that had in place a council that would almost certainly give no opposition. By this example, it was clear then that although the Local Government Act was intended to establish the process of decentralization and to give powers to the restructured local authorities, the immediate effect faced by the Penang council was the reality that the process had made it yet more subservient to the state government, which had effectively assumed overall control. This event demonstrates how an act of the federal government has been used to reduce the powers and autonomy of a local authority. A further contribution to the erosion of local autonomy was when one of the recommendations for local elections to be resumed was not accepted by the federal government.

## **8.7 Reinforcing Centralization**

Advocates of decentralization have pointed out that governments tend to emphasize de-concentration at the expense of devolution when facing challenges from local governments; and Malaysia is no exception [26]. The cut back on local self-government in Malaysia was based primarily on the premise that centralization would hasten socio-economic development and achievement of national unity in a country that is made up of different ethnic groups and largely dissected between the urban and rural areas.

Many a time this is carried out through various policies initiated by the federal government and implemented through its de-concentrated agencies and departments at the state and local levels. It is an on-going process that has helped the federal government to recentralize its powers over the lower tier governments. Indeed, using reasons such as maintaining national unity, achieving uniform growth, and spreading development in the country, central policies rather than state or local policies are initiated and implemented for the nation. In 2006, the federal government initiated



the National Physical Plan (NPP) with the cooperation of the state governments in Peninsular Malaysia. This plan together with the National Urbanization Policy (NUP) 2006–2020, further reinforces the powers of the federal government. This is so because the set-up allows the central government to meet the challenges arising from rapid urbanization on a nationwide level and provide uniform physical and town planning development. The NPP facilitates and coordinates all urban activities and services such as the development of urban transportation, infrastructure and utility, integrated economy, and a sustainable living environment [27]. Similarly, the drafting of the New Villages Master Plan will allow the Ministry of Housing and Local Government of the federal ministry to integrate all new villages and suburban areas in Peninsular Malaysia into the mainstream towns and cities. The integration physically, economically, and socially will bring the rural areas under the ambit of the federal government in conjunction with the NUP; planning development of the nation will be regularized and streamlined according to the NPP [28]. It is only natural that the powers of the federal government will once again be maximized through the utilization of such central policies and plans.

On the issue of abolition of local government elections, the argument in favor of this action appears to be based on the notion of too much autonomy for local government. It was simply a political decision based on power sharing between the states and local government with political implications for all concerned. Certainly, decentralization and the strengthening of local government as envisaged by the recommendations of the Royal Commission did not materialize [29]. Instead, the reason given for the abolition of local elections was based on the federal view that since there are elections at the state and central levels, these should be sufficient to reflect democracy in the country and the people should be contented. In a parliamentary statement on July 7, 1971, the minister of technology, research and local government said, “the Government has come to this conclusion considering the small size of the country, (and) that we have representative Governments at national and state levels. And considering certain functions of the local authorities can be taken over by state governments, it is considered unnecessary and indeed redundant to have another tier of representative governments at local authority level. It has therefore decided to consult with the state governments to abolish the system of local government with elected members [30].”

## 8.8 Restructuring and Impact on Decentralization

The local government restructuring process was implemented in stages as it depended on the state governments and involved complex procedures.<sup>4</sup> Toward the end of it, local authorities were amalgamated, created, and reclassified; their roles and functions were redefined to provide extended services to larger areas that encompassed outlying rural areas and to act as development and planning agents. Local government has to seek state approval over most matters, especially in finance, the appointment of its councilors, and staffing. Through the provisions assigned to federal government via the NCLG and the Local Government Act 1976, federal influence and domination are entrenched. At the same time, the role of the community and its influence on the local authority has diminished with the abolition of local elections and with it their right to elect their local representatives.

<sup>4</sup> The peculiarity of this restructuring did not imply greater devolution of powers and local government authority was limited by the principle of *ultra-vires*. It can only perform functions provided for in the statutes and in gazette areas.

With the right to local elections taken away, representation is now through the appointment of local councilors. At present, all local councilors in Malaysia are appointed by their respective state chief ministers with biasness toward the ruling party. Thus far, nominating and appointing members of the component parties of the ruling National Front Party to become councilors in local government has become the usual practice. Inevitably, the local councilors become subservient to the state and adherence to its directives is to be expected.

Today, there are 144 local authorities in Malaysia, made up of city halls, city, municipal, and district councils, and a town board (see Table 8.2). In effect, these local authorities provide services to about 84.4% of the population, yet these people do not have the right to vote and are not directly involved in the decision-making process of their local authorities [31]. In the future, with the process of change and globalization, increasing literacy and regional movement toward decentralization, this large population mass and its impact on local government cannot be ignored. Resuming local elections would mean that the citizens will have the right to elect their local councilors, which presently total around 3456 (there are approximately 24 councilors in each of the 144 local authorities as provided for in the Local Government Act). Indeed, the representation by these councilors of the local citizens would be more meaningful if they were duly elected, unfortunately because they are appointed, the word “representative” appears a misnomer in the Malaysian context.

Through prolonged absence of local government elections, it is inevitable that the community now regard the state appointment of councilors as the accepted norm of local representation. They only express that the councilors should be appointed from among the local citizens, but who do not represent any political party [32]. Local autonomy and democracy, which are the basic tenets for local government and decentralization, have been relegated to objectives of least importance as central government is reluctant to relinquish powers.

## 8.9 Where to Decentralization?

Decentralization is invariably complex and the term can be used and understood quite differently depending on the experience of the particular country. For instance, in parts of Africa, depending on whether they have been influenced by the British or French traditions, decentralization will be interpreted and used quite differently [33]. Until its independence in 1957, Malaysia was under British rule and, consequently, subscribes to the British understanding of decentralization. In this context, decentralization refers to the delegation of government responsibilities from a higher level

**Table 8.2 Malaysia: Number of Local Authorities by Type, 2008**

<i>Type of Local Authority</i>	<i>Peninsular Malaysia</i>	<i>Sarawak</i>	<i>Sabah</i>	<i>Total</i>
City Hall	1	1	1	3
City Council	7	2	–	9
Municipal Council	27	2	2	31
District Council	61	21	18	100
Town Board	–	–	1	1
Total	96	26	22	144

of government to a lower level of government. De-concentration refers to the delegation of higher-level government duties to lower level units while authority remains with central government. Devolution presumes the assignment of powers and resources to autonomous local government where the use of resources is decided locally and management is accountable to the local leadership.

In Malaysia, the administrative structure attempts a combined approach of decentralization, devolution, and de-concentration, but leaning toward the central powers of the federal government although seemingly encouraging administrative decentralization [34]. In a sense, decentralization of this nature seeks to improve governance and service delivery by reducing delays and bureaucratic processes at different tiers of governments. However, one would also expect that a significant effect of decentralization would similarly be experienced by the community, whereby the process of delegation of powers to citizens is expected to follow. A relationship between government and the people in a democratic environment provides the condition for delegation of powers through participation in public sector activities including electing the local leadership.

In this country, the interpretation and exercise of decentralization is apparently based and justified on the existing relationship between states and between states and the public, as well as due to events that took place when local government reformed. Seemingly, despite these fundamental reforms, there is an alarming lack of concerted and coordinated initiatives to delegate further autonomy to local government. Instead, there is a growing trend toward strengthening centralism and weakening decentralization. In an effort to harmonize relationships between states and local government and between local government and the community, the idea of decentralization has become the link for formal harmony. Formal harmony is perceived through institutionalized policies, rules, regulations, and basically the law. This mechanism weakens considerably when exercised at the third tier of government, i.e., between local government and the community where, as a consequence of institutionalized regulations, formal representation of the community via the process of voting in local government elections is completely absent. It is obvious that implementing administrative decentralization without adequate political reforms and devoid of political decentralization will result in informal discord in society. This supports the notion that the concept of centralization is further reinforced at the expense of decentralization. On the other hand, the implementation of Local Agenda 21 (LA 21) in 2000 by the Ministry of Housing and Local Government and its characteristic “bottom-up” approach actually acknowledges that a relationship exists between local government and its community [35]. Unfortunately, in Malaysia, LA 21 did not achieve political decentralization via formal delegation of powers from local government to the community. The manner in which some local authorities operationalize LA 21 is not dissimilar to a form of guided participation where significant control still remains with local government. Arising from the absence of a formal and legitimate transfer of powers and accountability to the community, local officials instead, become primarily accountable to themselves and local influential elites. Apparently, Africa experiences a similar condition and it appears to be a recurring trend among some of the African nations [36].

Invariably, the absence of direct civic involvement, such as community participation in local government decision making, has created a discord between local government and the public. For instance, the communities’ participation at full council meetings is not encouraged and attendance is by invitation of the local authorities. Criticisms and expressions of dissatisfaction with local government are constantly made through the local media rather than through councilors, as they are not viewed as the people’s legitimate representatives. The emergence of a range of non-governmental organizations, neighborhood and residents associations is also evident of Malaysian citizens’ desire to be engaged and directly involved in the process of local decision making, which is obviously lacking. It can be recognized that the reform in local government set the tone for centralization

with further changes after that being more *ad hoc* and “muddling through” rather than incremental and purposeful. Since then, community participation has been viewed more as an exercise in public relations rather than political decentralization with direct citizen engagement in local government activities. It is still reminiscent of a “top-down” approach in public administration.

In recent years, the concepts of public participation and local autonomy have been seen as prerequisites for sustainable development especially with rapid urbanization. With the emergence of non-governmental organizations, associations, and pressure groups, there is a demand for involvement in matters pertaining to the local environment. Many international agencies and bodies have also contributed to awareness in community development and the importance of decentralization. At present, the general trend is recognition of decentralization as an important element of good governance and elected local councilors as empowerment of the civil society. Indeed, there is a profound shift in the manner and system of how local government should perform and its relationships with the public and supra level governments.

## 8.10 Conclusion

With so much that have transpired, it is apt that local government is assessed as to its worthiness and functionality now as Malaysia moves toward a developed status in 2020 and with high expectations from the general public. For the moment, the lack of direct public participation, transparency, and accountability makes the practice of good governance a mere rhetoric rather than reality. Thus far, local self-government appears a misnomer as local elections have been abolished and with it local autonomy, which is so closely associated with decentralization. Local government in Malaysia may be more appropriately termed local administration with political powers consolidated at the center. Local government powers are limited to within what the Local Government Act 1976 allows with most decisions needing the approval of state and federal governments. Compounded is the fact that local government also lacks finances and has to be financially supported by central and to some extent state treasury. With limited resources, local government needs to have professional staff seconded from federal government, which debilitates its organizational powers resulting in weak control over staff matters.

Centralization is further reinforced by the argument for national unity in a country that is divided along different ethnic groups with diverse religious and cultural beliefs. Under such fragile conditions, national stability is of utmost importance and central intervention is inevitable. Since the restructuring of local government in the 1970s, the central government has never veered from this stance. During this period, a committee that was formed to examine integration of the district councils stated that, “modern economics and technology clearly indicate that centralization of local government functions is both essential and necessary... The committee believes that centralization of local government functions will gradually remove the existing barrier between the urban and rural people, pave the way for unity and thus help hasten the process of achieving the primary objective of national unity [37].”

The existing barrier between the rural-urban sectors also requires strong policies to bridge the economic disparity between them. In any case, further widening of the urban-rural gap may threaten the future growth and political stability of the country. As such, any possibility of political chaos and disunity arising from such divergence has to be immediately addressed and obviously central control is favored. Certainly, the central government does adhere to the theory of decentralizing powers through devolution and de-concentration, but the federal system based on the existing constitution ensures that formal control and power belongs with central government.

In a sense, what is displayed can be termed as “token decentralization [38]” as local government and the community are not involved in the decision-making process that takes place between state and federal government over local government matters.

By contrast, political, administrative, and fiscal decentralization have been happening in other developing countries augmenting the authority of local government and increasing community participation [39]. However, in Malaysia, it will be overly simplistic to assume that such events occurring outside the country may influence the transformation of its local government in the immediate future. But hope prevails and in this respect, the federal government should bring about change where necessary and the community itself should understand and consent to the changes where relevant and possible. For the moment, much work needs to be done to put a system in place that truly reflects decentralization and avoid the danger of further intrusion by the process of recentralization.

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## Chapter 9

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# Public Ethics and Corruption in Malaysia

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### 9.1 Introduction

The impact of transformation and governance on public administration in Malaysia has been modest. Though reforms are seen positively, the low ratings received in recent international and regional comparisons of the Corruption Perception Index (CPI) and Transparency International



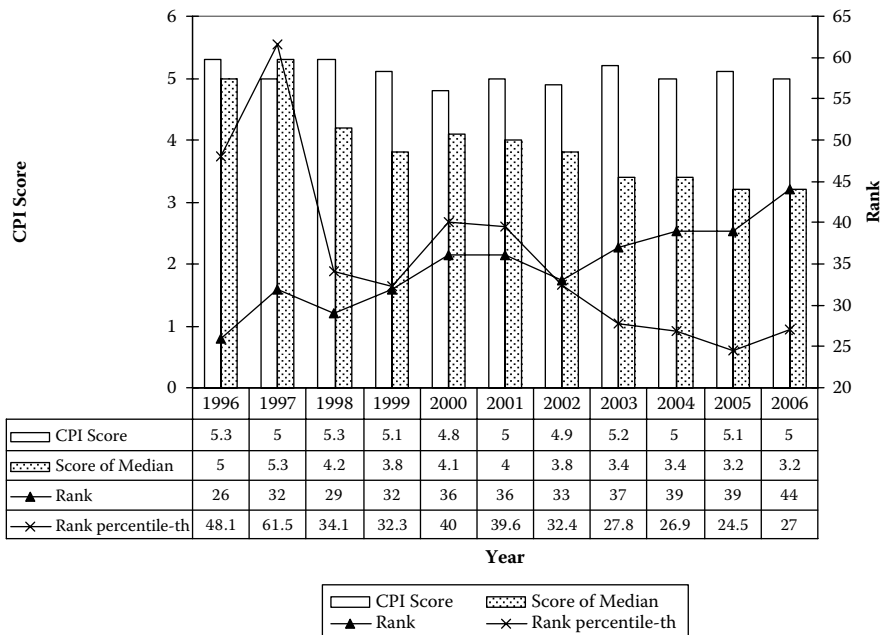
(TI), indicate that reforms have failed to bolster accountability and address corruption within the public sector. This chapter discusses ethics and corruption in the Malaysian civil service, and efforts to combat them. It also investigates the factors of corruption with recent scandals and anomalies of political patronage and networks resulting in inefficiencies and ineffectiveness of bureaucracy, policies, and procurements in a political system. This chapter analyzes the distortion and mismanagement in administration resulting from corruption, a controversial issue. Some observations are highlighted with regard to the issues of ethics and corruption in Malaysia, which implies administrative inefficiency and political clientelism in the system of governance. Yet, many anti-corruption measures and legislations have been fostered over the years with the setting up of various laws and institutions, a step in the right direction, to reconstruct the system and control the damage of corruption, only resulting in marginal changes. Assessments and propositions for change paradigms to rethink the issue of patronage and respond to an evident problem of corruption constitute the latter part of this chapter. Nonetheless, the policy of controlling and reducing corruption is a continuing challenge and an imperative concern for the government in promising better governance and performance of institutions and public servants that serve as mechanisms of accountability to the state and its citizens.

## 9.2 Ethics and Corruption in Malaysia: General Observations

Prior to independence, the legal provision on corruption was the enactment of the Prevention of Corruption Ordinance in 1950. This ordinance was later replaced by the Prevention of Corruption Act 1961, which was amended twice in 1967 and 1971. The 1967 amendment increased the powers of the public prosecutor in the conduct of investigations, and members of public bodies and legislators are legally obliged to make reports of corruption, whereas the 1971 amendment concerned the definition of “offence under the Act.”

In Malaysia, graft is defined in the Prevention of Corruption Act 1961 and similarly in the Malaysian Anti-Corruption Commission Bill 2008, which comes into operation in 2009 as (a) money or any gift, loan, fee, reward, valuable security, or other property or interest in property of any description, whether movable or immovable; (b) any office, dignity, employment, contract or services, and any agreement to give employment or render services in any capacity; (c) any payment, release, discharge or liquidation of any loan, obligation or other liability whatsoever, whether in whole or in part; (d) any valuable consideration of any kind, any discount, commission, rebate, bonus, deduction, or percentage; (e) any forbearance to demand any money or money’s worth or valuable thing; (f) any aid, vote, consent or influence, or pretended aid, vote, consent or influence, any promise or procurement of, or agreement or endeavor to procure, or the holding out of any expectation of, any gift, loan, fee, reward, consideration, or gratification within the meaning of this paragraph; (g) any other service, favor or advantage of any description whatsoever, including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary or penal nature, whether or not already instituted, and including the exercise or the forbearance from the exercise of any right or any official power or duty; and (h) any offer, undertaking, or promise of any gratification within the meaning of paragraphs (a) to (g). It was subsequently repealed and replaced with the Prevention of Corruption Act 1997 to include bribery, false claims, and the use of public position or office for pecuniary or other advantages.

In a recent TI Global Corruption Barometer (GCB) 2009, Malaysia was ranked 56th with a score of 4.5 and, respectively, in 2008 at 47th and 43rd place in 2007. For 2006, Malaysia



**Figure 9.1** Transparency Index of Malaysia (1996–2006). (Source: Transparency International.)

was ranked 43rd out of the 180 nations polled. Malaysia had a score of 5.1 points, just above the five cut-off points of countries with and without serious corruption problems. The level of effectiveness in fighting corruption has not improved for over 8 years; Malaysia still trails behind many countries such as neighboring Singapore (ranked 3rd for the past 2 years) and Hong Kong (in 12th position in 2009). The GCB, carried out by Gallup International Association on behalf of TI, interviewed 63,199 respondents in 60 countries between June and September. In Malaysia, the survey was conducted from July 2 till August 5, 2008, involving 1250 people from the urban areas in Peninsular Malaysia who were interviewed face-to-face. It was found that 53% of those surveyed said the government was effective in fighting corruption, but 63% anticipated that the future may not be promising with further increases in cases. According to the survey, the police were perceived to be the most corrupt, followed by political parties, registry and licensing services, business or private sector, parliament or legislature, legal system or judiciary, tax revenue, and media. In the 2009 GCB, 42% of Malaysians said that political parties are the most corrupt institution, followed closely by the civil service at 37%. Figure 9.1 shows the Transparency Index of Malaysia, depicting Malaysia's CPI score for the past 11 years (1996–2006) conducted by TI. Malaysia's CPI score and rank were also compared to the overall performance of participant countries. The average CPI score for Malaysia is 5.06, and 10 is the maximum score for least corruption. Malaysia's score fluctuated around 4.8 (worst) to 5.3 (best) and stagnant around 5.0–5.1. On the surface, the CPI rank for Malaysia seemed to be deteriorating across time, especially in recent years (26 in 1996 to 44 in 2006). However, the number of countries that participated in this survey also increased across the time (54 countries in 1996 to 163 countries in 2006).

### **9.2.1 Factors of Corruption**

The perceived level of corruption in Malaysia and across many countries is attributed to the absence of independent and effective law enforcement despite the public expectation that civil servants are to serve with full commitment and impartiality in addition to the anticorruption laws and measures in existence contributing to varying levels of effectiveness. The degree of corruption especially among the elites of society comprising politicians, businessmen, and certain segments of the civil service is considerable, even though there have been significant controls experienced in the country.

A feature of the Malaysian public bureaucracy is the connection and close ties between leading politicians and bureaucrats. Owing to the power position of the Malaysian bureaucratic elite and political elite, the Malaysian bureaucracy “enjoys a position of power perhaps unequaled by any other civil service in a democratic country” [1]. Patronage may work well when government is small, but growth and development in a democratizing country may progressively become more corrupt and inefficient. This could imply the coexistence of administrative inefficiency and political clientelism in the administration.

In addition, a persistent problem is the lack of transparency. Concern for secrecy prevents leakage of government secrets that forbid the release of information to the public. The formulation of legal restrictions such as the Sedition Act in 1948 (revised 1969), the Internal Security Act (ISA) in 1960 (revised 1988), and the Official Secrets Act have discouraged many from disclosing information to concerned citizens and interests groups. It means that government officials are prohibited from disclosing government information as one could be charged under the Official Secrets Act. There is much at stake as one could lose his/her job, pension, and gratuity benefits in addition to imprisonment of not less than 1 year but not exceeding 14 years. Further, no individual can be in possession of any classified documents as the penalty is similar. The Official Secrets Act 1972 (Act 88), which was amended in 1986, has been criticized for its regular and indiscriminate use in reducing transparency in the government’s working procedures and in reducing access to documents that are deemed important in the public domain. In this respect, the documents include cabinet documents, records of decisions and deliberations including those of Cabinet and State Executive Council Committees, State Executive Council documents, and those of national security, defense, and international relations. This means that a wide range of documents are not available for public view, particularly information of public interest. With such restrictions, many wrongdoings are difficult to expose, as evident in procurement issues and contractual agreements.

A criticism frequently made is that many of the arrests in corruption cases only involved the “small fish” (lower-level officials) and the “big fish” (syndicates, influential top bureaucrats, businessmen, and politicians) appeared unscathed. This is attributed to the government’s failure to eradicate corruption due to lack of independence despite increasing pressure from the public and the government’s assurance that corruption will be dealt with more seriously.

The common perception is that there may be little one can do about corruption particularly when it is embedded in the work systems and coexisting, the indifferent, powerful individuals who find the acts inevitable though offensive but profess innocence. Ineffective anti-corruption strategy and control of corrupt behavior among civil servants and political leaders have not been able to remove the opportunities for corruption because of lack of political commitment and the ineffectiveness of the measures. The penalties for corrupt offences have not been prevalent as there seems to be a low probability of detecting corrupt offences and consequently the rewards for corruption are higher than the punishment for corrupt offenders.

Further, there is a lack of trained and skilled staff to investigate the numerous allegations of corruption and lack of independence of the Malaysian Anti-Corruption Commission (MACC) in so doing, as even the institutional forces, i.e., the police and judiciary, also face the challenge of ethical practices.

Hence, in relation to the institutional police force, the government should not rely on the police to curb corruption as demonstrated in the force's questionable reliability in the TI Indices. This probably contributes to the success of both Singapore and Hong Kong in curbing corruption without relying on the police via the establishment of the Corrupt Practice Investigation Bureau in October 1952 in Singapore and the Independent Commission Against Corruption (ICAC) of Hong Kong in 1974 as independent anti-corruption agencies. Though MACC is set up with similar objectives, in essence it lacks independence. This brings us to the next contributing factor on the investigation stage where prosecution is subject to the sole discretion of a powerful position.

The provisions relating to the extensive power of the public prosecutor is tantamount to ineffectiveness as it is dependent solely on him to prosecute. The position of public prosecutor is a political appointment by the government. There have been many cases where individuals escaped prosecution due to political influence despite their perceived involvement and investigations conducted. As provided in the legislations, notwithstanding anything in any other law contained, where the public prosecutor is satisfied that there are reasonable grounds and evidence, only then a prosecution shall be instituted.

Without effective detection and punishment, and without a comprehensive legislation periodically reviewed and enacted to deal with loopholes and administer credible laws to punish offenders seriously, corruption cases will continue to rise. Corruption will thrive with increasing opportunities of bureaucrats on red-tape procedural processing if these are not minimized and made easy for business activities.

## 9.3 Recent Corruption Scandals

Corruption scandals in Malaysia often have some common themes, such as lack of transparency, vested interests, and costs that are borne by the public sector. Many scandals include these elements systematically embedded. The following are some examples.

### 9.3.1 Cases Involving Bureaucrats and Executives

The situation is perpetuated by the lack of enforcement from every single government body, from the town councils, to the ministries, to the law enforcement agencies. Examples include illegally clearing forests, forging official documents, destroying public property, illegally operating gaming machines, ignoring traffic regulations, stealing metal installations, pirating CDs and software, giving and taking bribes, misusing public office, illegally occupying government land, under-declaring income, dumping rubbish and toxic waste, poaching protected animals, etc.

One notable case in 2007 is that of an assemblyman, who was acquitted of charges despite violating the rules of being an elected representative and a civil servant holding multiple offices. TI Malaysia and the public were concerned about the decision to withdraw the 37 charges against him and six other directors for offences under the Companies Act as it might question the standard of independence, integrity, and professionalism of the institutions concerned. The Companies Commission of Malaysia (CCM) withdrew all the charges against him and six other directors

of Titi Steel Sdn Bhd and Harvest Court Industries Sdn Bhd in the Klang magistrate's court for, among others, not holding AGMs, not submitting financial statements, and not submitting profit-and-loss accounts. No reasons were given to the court, but CCM officials and lawyers for the assemblyman said that the charges had been dropped after "representations were made" to the CCM.

Another issue relates to the recent inconsistencies in the awarding of Approved Permits (AP) to import cars where politicians were among the recipients. These AP licenses have been monopolized by politically connected Malay ethnic businessmen and politicians to import foreign vehicles. These vehicles are then resold to local businessmen, who do not have access to the APs for imports, at higher rates of at least three to fourfold. There is no transparent guideline for who could apply for the licenses as many who have applied had been rejected over decades and the reservation policy as seen from the list recently released. Transparency was only witnessed, in addition to the many dissatisfactions of certain quarters, when the administration of previous Prime Minister Tun Abdullah Badawi released information pertaining to the full list of AP recipients resulting in the government enforcing stricter regulations pertaining to the issuance of APs.

Money laundering among politicians to a certain extent is appropriately dealt with—if convicted under the Anti-Money Laundering Act 2001, one could be fined up to RM5 million or jailed for up to five years, or both. Allegations of money politics appear especially during party elections. The fact that actions were taken despite lack of clear regulations by the Disciplinary Board of the political party, which exercised much discretion, resulted in 61 found guilty out of 99 cases with punishments ranging from warnings for 15, to suspensions for 46 for various periods up to two terms of office or six years, and 32 have appealed in 2007.

On November 2, 2007, the Federal Commercial Crime Investigation Department director, became the highest-ranking police officer to be charged with corruption. He claimed at trial to two counts of failing to declare his assets and with business involvement in his capacity as a civil servant and abuse of power totalling RM27 million.

Given the trend for more transparency, it is not suitable for one single person, i.e., the attorney-general, to decide if there is sufficient evidence to prosecute corrupt officials. As such, the Bar Council has proposed a commission to promote a transparent process and better judicial conduct extended to the Judicial Appointment and Promotion Commission. A recent incidence of alleged brokering of judicial appointments appeared in an incriminating video clip and those involved included the former prime minister, a cabinet minister, judges, and a prominent businessman. The Bar Council called on the government to set up a Royal Commission to investigate the video scandal currently ongoing and to set up a judicial appointment committee in order to restore confidence in the judiciary. With power, there is always a chance of misusing it, but a good and transparent complaints mechanism that takes into account the rights of public administrators and the public will serve all well. The public administrators must be aware that they are serving the public and society and not the reverse. Efficiency and authority are subordinate to the fundamental objective of the state, which is public interests, and public officials should be consistently reminded of such consideration and reconcile professional ethics and self-interests as represented by the rational choice school of thought, with much firmness.

Another case in point, in September 2007, in the report on the Treasury's response to the main issues raised by the Auditor-General's Report 2006, some departments justified their huge spending, which ran into millions of ringgit, as part of efforts to expand operations or upgrade information technology systems that had become outdated. There were questionable spending decisions that involved huge discrepancies between what the ministry or government department

had forked out for a purchase and the actual market rate, such as the Youth and Sports Ministry and the Women, Family and Community Development Ministry. Among the questionable expenditures were the Youth and Sports Ministry paying RM181,900 for 17 sets of technical books when the market price was RM417 each; RM224 for a set of screwdrivers worth RM40 each; a RM50 car jack bought for RM5700; and purchases totaling RM8.39 million at the Kelantan National Youth Skills Institute. The report was not taken very seriously because it was tabled in Parliament but not debated on. As a result, the ministries and departments did not feel obliged to make rectifications fast enough and the issues repeatedly occurred. Efficient expenditure management is important and necessary to safeguard the people's interest and if there is no proper practice of governance, integrity, transparency, and accountability, such wastage would continue to occur.<sup>1</sup> A week later, in his annual report, the auditor general announced the implementation of report cards with star ratings based on the financial management skills of ministry secretaries-general. A month later, the Anti-Corruption Agency (ACA) charged ten people as a result of cases of fund mismanagement highlighted by the auditor general. Six Welfare Department officials, two Youth and Sports Ministry officers, a negotiator, and a contractor were charged on October 22 under the Anti-Corruption Act.

### 9.3.2 Procurement Issues

Calls for transparency in public procurements have become a constant feature of national affairs. There are enough provisions in the statute books to ensure that public procurement is conducted with integrity and accountability. These include the Financial Procedure Act 1957, the Government Contract Act 1947, Treasury Instructions, and Treasury Circular Letters. Open tendering is prescribed for purchases above RM200,000 and each procurement exercise has to be evaluated by committees set up by a tender board that registers the bids and evaluates the financial and technical aspects of the offers. As the rules go for such large purchases, they then report their findings to the Finance Ministry, which makes the final selection. These are procedures that require procurement personnel to declare any conflicts of interest and withdraw from the tendering process. Dissatisfied bidders can complain to the procuring agency, which may cancel a tender that is marred by irregularities. Institutions that have made effective gains against corruption include those that have adopted the practice of posting all bids on their website and stating the reasons for the failure or success of each bid.

Significantly, little has been offered in the way of explanations of how those government contracts are selected, much to the acclaimed transparent tender system. In a sense, such functionality is a result of the political and social processes by which the state form evolve, notably for its functionality for the politicians' interests that represent it.

Another much-debated policy is privatization and public-private partnerships. There is a widespread view that the privatization policy in Malaysia has favored the vested interests and many beneficiaries were chosen based on political and personal connections [2]. Privatization programs and government procurement in Malaysia are conducted through non-transparent processes. Only notifications of tenders are made public, but concession agreements are considered official secrets. Owing to the non-transparent selection process, the concession agreements and government procurement lead to sub-optimal outcomes. This has also led to allegations of corruption. For instance, the Public Works Department is under siege for the multi-billion ringgit fiascos involving the Middle Ring Road 2 (MRR2), the Matrade Building, and the

<sup>1</sup> *The Sun*, September 10, 2007, p. 2.

Navy Recruit Training Center. Poor maintenance of government buildings such as leaks, burst pipes resulting in the collapse of ceilings, air-conditioning malfunctions, power interruptions and other incidents leading to records being damaged are common issues.

Interestingly, the latest call for greater scrutiny into highway privatization deals stems from an admission by former Prime Minister Mahathir Mohamad that concession agreements that his cabinet had approved in the past had been flawed. The government appears quite willing whenever possible to permit the private sector to do what it can, but the public is increasingly demanding full disclosure as the country's commitments in infrastructure projects keep increasing. Audit reports reveal high incidence of failures on the part of the federal, state, and local governments to comply with relevant rules and regulations, loss and embezzlement of public funds, improper monitoring, and supervision regarding procurement issues.

One recent example of Malaysia's economic and political landscape having had vested interests is the complex case of the Port Klang Free Zone (PKFZ) project. The fallout of a deal between Jebel Ali Free Zone (Dubai) and the PKFZ was because of red tape, political meddling, inaccurate land sale dealings, and attempted tax evasions. The government conducted a RM4.6 billion bailout through the issue of bonds between 2005 and 2006 for the project. According to the government, the PKFZ is a viable national project that will enhance Port Klang as a loading center, stimulate the economy as well as create spin-off activities and more jobs. This project is the government's second biggest investment in the port industry since 1990. There was a falling-out between Dubai-based Jebel Ali Free Zone and the Port Klang Authority (PKA) resulting in a pull-out from a long-term contract (15 years) to manage the Free Zone's development and investments for strategic reasons in July 2007. So far, there has been no proper accountability to the parliament by the Finance Ministry on the scandal, despite the exposes in the public domain. The turn-key developer, Kuala Dimensi Sdn Bhd (KDSB), had been involved in irregularities of between RM500 million and RM1 billion in a preliminary report by the PKFZ special task force and an independent report by Pricewaterhouse Coopers. It is suspected that previous transport ministers and other top bureaucrats are involved in the scandal, though whether any of these individuals will be prosecuted at the end of the investigation remains to be realized. Currently, the Minister of Transport, Ong Tee Keat, is committed to a transparent investigation into the malpractices and corruption. The country has not seen the enthusiasm and openness of a minister who is bent on seeking justice to a problem that he inherited. As of mid September 2009, all kinds of accusations have been leveled against the minister of transport in the name of politics and political donations and even appointments of key personnel are questioned. Again, those making the accusations are the same people against whom the special task force alleged has shortchanged the government and there suspicion exists that the higher echelons of the government are involved. The special task force set up to investigate this case has found that there were elements of conspiracy to cheat the PKA of up to RM12.5 billion, hence the PKA is expected to file two suits against KDSB amounting to RM1.64 billion involving over-charges.<sup>2</sup> However, in a recent development in early 2010, the decision to prosecute the director(s) of PKFZ in court was instead acquitted coincidentally soon after the Minister of Transport who was also the President of the Chinese ethnic based political party Malaysian Chinese Association (MCA) lost his presidency post after much inside party tussle.

If the PKFZ had been successful, the profits would have been enjoyed by shareholders, but if it continues to pile up losses, these losses would be borne by taxpayers. Such bailout creates a moral hazard and this case also shows the unhealthy proximity between politics and business and the

<sup>2</sup> *The Sun*, September 25, 2009, p. 1; *The Star*, September 26, 2009, p. 1.

network structures that facilitate administrative corruption. Further, these elected representatives have allowed themselves to profit from questionable business dealings by way of patronage and by assuming positions in companies to derive profit. The constitutional requirement in Article 48(1) (c) of the federal constitution clearly states that elected representatives in Parliament are prohibited from holding any office for profit or business ventures, as their primary and only role is to serve the people.

Drawing on past experiences in the country, much needs to be done when performance data are so commonly politicized and there is little transparency about costs and revenues. Often, there is no conclusive proof that the private sector has managed the projects at a cheaper cost or even more effectively than the public sector could have done despite the anomalies of public administration and the underlying assumptions of the performance of the private sector.

## 9.4 Efforts to Address Corruption and Instill Ethics

Every nation without exception needs to define and promote ethical conduct, as well as restrain bureaucratic corruption and curb unethical bureaucratic behavior. Efforts by some organizations such as the “Inter-American Convention against Corruption” by the Organization of American States, and the “Convention on Combating Bribery of Foreign Public Officials in International Business Transactions” by the Organization for Economic Cooperation and Development (OECD) are signs of current consensus to stem corruption.<sup>3</sup> Yet, one’s personal integrity and good intentions may fail when faced with unrelenting pressures from their political masters or a pervasively unethical work environment. Cooper [3] espouses the concept of “individual autonomy,” which requires “a conscious effort to continuously cultivate self-awareness of the dynamic relationship between the interest of the self and the demands of the role, without which laws and organizational safeguards are likely to be no avail.”

The Civil Service Commission plays a preventive role in setting standards and norms for civil service appointments and a punitive role in meting out penalties and punishments for violations. Having the highest ethical standards will presumably encourage a self-initiated compliance with the law with a sense of the public interests and the exercise of sound decision-making procedures. The civil service has developed a set of values known as “The Twelve Pillars” to which civil servants subscribe: (1) the value of time; (2) the success of perseverance; (3) the pleasure of working; (4) the dignity of simplicity; (5) the worth of character; (6) the power of kindness; (7) the influence of examples; (8) the obligation of duty; (9) the wisdom of economy; (10) the virtue of patience; (11) the improvement of talent; and (12) the joy of originating. Though the commission is entrusted with such conviction, confidence in such an arrangement is waning as it seems more preoccupied in the regulation of other matters such as the salary reviewing process rather than commissioning and instilling professionalism in the public service, which is currently lacking in enforcing mechanisms of control. The Public Service Commission would have greater credibility if it could better demonstrate its key role in the process of appointing quality public servants, terminating or dismissal of public servants and protecting against partisan influence.

The current Malaysian government is reforming the public service periodically and responding to demands for performance, and change management. Since the 1980s, in particular, greater

<sup>3</sup> United Nations, *Promoting Ethics in the Public Service*, Department of Economics and Social Affairs, Division for Public Economics and Public Administration, New York, 2000; ST/ESA/PAD/SER.E/8. <http://unpan1.un.org/intradoc/groups/public/document> (accessed January 2008).



attention has been given to the concepts of “Clean, Efficient, and Trustworthy,” “Integration of Islamic Values,” “Excellent Work Culture,” “Code of Work Ethics,” “Client’s Charter,” “ISO 9000,” and “Islam Hadhari.” Recent efforts to develop a public administration ethic grounded in good governance are compatible with increased attention to ethics. One such notion is Islam Hadhari, which aspires to demonstrate unity in diversity. Few public administration scholars have acknowledged the important roles that religion or spirituality play in managing organizations or public institutions [4]. The concept of Islam Hadhari was launched by the previous prime minister, Tun Abdullah Badawi, in 2003 with inclusive principles that outline a hybridization of religious and universal values, promoting a just and trustworthy government, with the emphasis on the individual being honest and hardworking as one of the key principles in promoting better ethics among public servants. Secularism and religiosity are jointly called on in the Malaysian context, particularly in terms of sharing the common ethics of life and work so that the principles of good governance can be accomplished more effectively, especially in tackling corruption and ensuring integrity in this conceptualization [5]. Public servants and leaders are obligated to serve as exemplars of spiritual values with commitment to the common good, service to others, and benevolence. Though Islam Hadhari is a holistic approach to human, social, and national development, hindrances have hampered the practice from within the dominant groups, be it coercion, conflict, or complicity. The desire to pursue this idea was not continued in the current reign of Prime Minister Datuk Seri Mohd Najib Abdul Razak, as it is common for a change of political discourse under a different leadership and administration, as is currently with the *One Malaysia* concept though a new philosophy, it is hoped to be one of a progressive realization.

### **9.4.1 The Anti-Corruption Agency/Malaysian Anti-Corruption Commission**

The ACA set up in 1967 under the Anti-Corruption Agency Act 1982 and the Prevention of Corruption Act 1961 (revised 1971) has been promoting awareness on corruption and maintaining integrity. A review of existing legislation led to the enactment of the Anti-Corruption Act 1997 to provide for additional offences and powers for the ACA and the public prosecutor.

The main functions of the ACA are to investigate offences of corruption, curb corruption in the public service, and to investigate the conduct of civil servants. There are six divisions, namely, Prosecutions; Investigations; Information; Prevention; Training; and Administration. Increasing responsibilities have been given to the agency, including the adoption of revised regulations for the conduct and discipline of public officers in 1993, and of a judges’ code of ethics in 1994. In reality, the ACA does not have the power to prosecute, as the final decision lies with the attorney general, even though the prosecution unit exists but its power is limited to investigation and recommendation to prosecute.

Staff is recruited at levels equivalent to the ranks of police sergeants, inspectors, and assistant superintendents. On-the-job training and specialist courses are conducted for the staff from time to time, such as criminology, and investigative science, locally and abroad. The director-general is a political appointment by the prime minister on agreement with the king as in other federal appointments. The number of staff is limited as it is only a small number, currently less than fifteen though recruitment drive is envisaged in the future.

The ACA utilizes a three-pronged strategy against corruption: educational, preventive, and punitive. The first focuses on efforts to inculcate ethical values among members of the administration whereas the second is aimed at eliminating weaknesses in work procedures that can provide

opportunities for corruption. The third strategy involves the strict enforcement of the law through investigation and procedures for prosecution.

#### 9.4.1.1 Educational Strategy

The educational strategy [6] utilizes the tool of religion, specifically Islam as the majority of the staff are Malays, via videoclips depicting morality concerns, social pressure, and self-respect, accompanied by penalty and punishment that can be used in the event of breaches of civil service ethics and corruption involvement. This strategy focuses on efforts in inculcating ethical values through in-depth preventive education against corruption, face-to-face communication, dissemination of information materials, lectures, dialogues, exhibitions, anti-corruption promotion competitions, radio interviews, press releases, courtesy calls, and community relations activities.

#### 9.4.1.2 Preventive Strategy

The preventive strategy is aimed at eliminating weaknesses in work procedures that provide opportunities for corruption. ACA serves as consultant by evaluating the weaknesses in the work systems and procedures and advising organizations on improvements in addressing corruption.

#### 9.4.1.3 Punitive Strategy

The punitive strategy involves the strict enforcement of the law through investigation and prosecution, providing a higher deterrent effect. In addition, any disciplinary reports by the ACA against public officers found violating the Public Officer (Conduct and Discipline) Regulations 1993 Act is another punitive measure. [Table 9.1](#) demonstrates the number of cases from the year 2000 to 2005. Current statistics reveal that investigations of cases have far surmounted, by approximately fivefold, the number of cases of arrests followed by prosecution by the attorney general. Hence, the ACA's credibility would be enhanced if it was made independent and answerable to the parliament.

Restructuring took place in replacing the ACA by making it more independent through an independent advisory board in naming it Malaysian Anti-Corruption Commission (MACC) in December 2008. This new structure includes the setting up of an independent corruption prevention advisory board and ensuring that public interest cases are dealt with appropriately and also empowered to investigate graft in the private sector. However, the ultimate decision to prosecute still lies with the attorney general, as previously, although the board could ask him to revise his decisions on cases he had decided not to prosecute. Initially, there was the intention to put in place legislation on whistleblowers, however, thus far, it has not been realized.

It was noted that the MACC investigated only 10.1% or just 7,223 cases, of the 71,558 reported between 2000 and 2006, and the number of people successfully convicted was only 0.7% or 524, of those suspected of corruption.<sup>4</sup> According to TI Malaysia president, Datuk Paul Low in a press statement, the MACC and other reforms introduced by the government have so far been ineffective in fighting corruption as the measures have not produced the desired results, hence the public perception of corruption remains unchanged.<sup>5</sup> Although previously the ACA

<sup>4</sup> *The Sun*, September 25, 2009, p. 7.

<sup>5</sup> *The Sun*, September 24, 2009, p. 1.

**Table 9.1 Corruption Cases from 2000 to 2005**

<i>Year</i>	<i>No. of Investigations</i>	<i>No. of Arrests</i>	<i>No. Charged</i>
2000	699	430	160
2001	663	318	115
2002	1063	290	200
2003	1058	339	175
2004	977	497	178
2005	1441	485	205

Source: Anti-Corruption Agency.

(MACC) was perceived to be selective in its investigations but thus far recent developments have not demonstrated otherwise.

### **9.4.2 Public Accounts Committee and Public Complaints Bureau**

The Public Accounts Committee is appointed pursuant to Standing Orders No. 77(1). It also has the power under Standing Orders No. 77(5) to summon persons, requests issuance of letters, papers and records, and statements to Parliament. The committee identifies areas that warrant explanation from the auditor-general's report and then may request the relevant agencies or ministries for information and explanations to queries of non-conformity raised in the report.

The official duties of the Public Accounts Committee are to:

- (1) Check the accounts of the federation and the appropriation of the sums granted by Parliament to finance public expenditure
- (2) Such accounts of public authorities and other bodies administering public funds as may be laid before the House
- (3) Reports of the auditor-general laid before the House in accordance with Article 107 of the constitution
- (4) Such other matters as the committee may think fit, or which may be referred to the committee by the House

The Public Complaints Bureau is set up under the Prime Minister's Department and provides an informal remedy for the public. It was initially under the General Planning Division, Prime Minister's Department in 1971 in respect of the Public Administration Development Circular No. 4/1992 – Management of Public Complaints, and Administrative Development Circular Letter No. 1/2002 – Improving the Effectiveness of Managing Public Complaints. The Public Complaints Bureau is one of the mechanisms set up whereby the public can lodge complaints on malpractices and abuse of power in the public service via a computerized complaints management system or traditional modes of writing and telephone calls to the bureau. The specific objectives of the bureau are to: (1) resolve complaints efficiently, fairly, and effectively; (2) improve the rate of resolving complaints received from the public; (3) provide and improve facilities for the public to lodge complaints; (4) reduce repetitive complaints against the public services; (5) introduce changes and innovation based on public complaints received; (6) provide advisory services to agencies in order to improve the

effectiveness of the public complaints management system; (7) detect issues that can lead to complaints made by the public; and (8) obtain public opinion to ensure the success of the government's development programs.

Evidence to date suggests that the objectivity of the Public Accounts Committees' findings can be questionable because of the appointment of the committee chairman by the ruling party, a member of the ruling party, therefore a conflict of interest may arise due to impartiality and non-independence. Further, witnesses may be reluctant to testify against the government and are under no obligation to do so. The bureau also acts as the secretariat to the Permanent Committee on Public Complaints, chaired by the chief secretary to the government and has senior officials from central agencies as members.

The powers of the Permanent Committee are outlined in Development Administration Circular No. 4 of 1992 on managing public complaints. It cannot instruct any compensation to be paid or any decision previously made to be reversed, although suggestions can be made. No prosecution or subpoena can be made, but government departments are merely required to look into the complaints and provide replies.

Accordingly, many complaints concerned delays in taking action, lack of public facilities and services, unfair action, inadequacies of policy implementation and law, failure of enforcement, failure to adhere to procedures, unsatisfactory quality of service, abuse of power, and misconduct of civil servants. Complaints relating to corruption were channeled to the ACA/MACC for investigation. In 2007, the latest report of the Public Complaints Bureau revealed that it received and investigated a total of 5347 cases and managed to solve 89.1% of the total.<sup>6</sup> The ten agencies with the most cases received in 2007 are shown in [Table 9.2](#).

### **9.4.3 Auditor-General's Office**

The Auditor-General's Office was set up under the 1978 Audit Amendment Act and the 1983 Audit Amendment Act to investigate and report cases of non-compliance with laws and regulations regarding finance management. The Auditor-General's Department is to ensure that public expenditure, revenue, and assets are well managed and accounted for according to the law and established procedures. In accordance with legal provisions, the auditor-general is required to submit his findings to Parliament for the scrutiny of the Public Accounts Committee. The auditor-general's role and responsibilities are clearly spelt out in the federal constitution (Articles 106 and 107) and the Audit Act 1957. However, despite improvements introduced, there still exist weaknesses as witnessed in (i) preparation of budget estimates that exceed actual requirements; (ii) additional allocations requested are not expended; and (iii) weaknesses in expenditure control, assets management, internal control with respect to revenue collection and in the management of development projects.

### **9.4.4 National Integrity Institute/Plan**

Little thought is given to what the ethical basis of public governance is or might be. In many cases, ethical codes are never seriously enforced or are only selectively enforced. They are only as valid as the practices of the chief executive officers (CEOs) and other corporate executives who promulgate them. They are worth as much as a corporate vision statement, which not many adhere to. The fact that only some cases are judged and enforced with any equity highlights

<sup>6</sup> Annual Report 2007, Public Complaints Bureau, 24–27.

**Table 9.2 Ten Agencies with Most Cases Received in 2007**

No.	Agency	Total Received	Total Resolved and Justified	Percentage
1.	Royal Malaysian Police	206	97	47.1
2.	Public Works Department	126	105	83.3
3.	Tenaga Nasional Berhad	114	87	76.3
4.	State Education Department	97	53	54.6
5.	Department of Irrigation and Drainage	85	64	75.3
6.	Kuala Lumpur City Hall	85	44	51.8
7.	National Registration Department	76	31	40.8
8.	Employees Provident Fund	59	45	76.3
9.	Inland Revenue Board	50	38	76.0
10.	Welfare Department	45	27	60.0

Source: Adapted from Public Complaints Bureau Annual Report 2007.

the problem of a growing discrepancy in ethical treatment based on social and other factors of class status. This assessment goes hand-in-hand with the recent scandals that have raised public awareness of the need for a broader ethical approach to governance. Probably, the shift to post-modernism and amoral secularism that rely largely on external forces, is designed to coerce good behavior, as opposed to appealing to internal goodness despite the strong affiliation to religious practices in some cases.

Nevertheless, it is worth noting that there have been efforts to inject more professionalism and dynamism to ethics and integrity in the current governance. The achievement of the National Integrity Plan (NIP) can be speeded up through the immediate implementation of transparency as a core principle at all government levels. The launch of the NIP in April 2004 and the setting up of the National Integrity Institute are the first steps in strengthening the principles of transparency, accountability, and good governance. Integrity and ethics often tend to focus on principles of action, on the action itself, and its consequences.

Accordingly, the approach adopted by the NIP is to coordinate the various components and sectors in their efforts to enhance integrity, requiring each of these to devise and implement their own programs. It is hoped that synergy arising from such implementation will contribute toward enhancing the integrity of society in general across the nation.

In Chapter 4 of its plan, the NIP spells out the broad definition of ethics and the integrity of individuals and organizations and professional ethos. Specifically in relation to ethics and integrity, the first target is to effectively reduce corruption, malpractices, and abuse of power and the third target is to enhance corporate governance and business ethics. However, the NIP's measurement target set for improvement from the score of 5.2 in 2003 for the nation by TI on the CPI to a score of 6.5 in 2008 and ranking at 30th position has not been achieved. So far, up to September 2009, there has been no updated information by the Integrity Institute of Malaysia

on its next course action as, apparently, the plan only covers a 5-year period from 2003 to 2008 though it was officially set up in April 2004 prior to its tabling to the Special Cabinet Committee on March 31, 2003 [7].

Efforts to enhance integrity have to be holistic, continuous in nature, and guided by the principles and objectives of the NIP. The overall approach is the mobilization of all components and sectors of the government and society to uphold the objectives and targets as well as to encourage cooperation and coordination among these components and sectors. The approach calls for synergy at the top and bottom rung of administration. The setting up of the Integrity Management Committee at the federal, state, and district levels to address all levels of the government machinery was to ensure the inculcation and integration of values in the public sector with eight terms of reference, namely, legislations, system and work procedure, noble values and ethics, code of ethics, recognition, internal control, investigative and punitive action, as well as rehabilitation in periodic reporting. The extent of the accomplishments of the Integrity Management Committee at the different levels of administration are not known, but seemingly the Select Committee for Competency, Accountability and Transparency (Selcat) for the Selangor state government led by the opposition party, *Pakatan Rakyat*, Speaker of the House, Mr. Teng Chan Khim (instead of the ruling party, National Coalition Front at the federal level), and also in the Penang state government, with its own CAT (competent, accountable, and transparent) formed in 2008, have been very active in conducting investigations of senior civil servants over allocations of funds and the expenditure nature of state assemblymen with regard to government procurement and contracts. The Executive Council of Selcat holds weekly meetings and open inquiry. Nonetheless, elected representatives are prohibited from questioning Selcat as the state government is working very hard in establishing a clean government as opposed to the previous state government held by the National Coalition. There has been resistance from district officers as changes are difficult to embrace, but such impact has impressed the public on the seriousness of the committee in eradicating corruption and upholding public and work ethics.<sup>7</sup> The state of Penang has been commended in the Global Corruption Report 2009 by TI for introducing several measures with regard to government procurement allowing savings of RM36 million in the state's operating budget and another RM34 million over 3 years from transparent negotiation over the price of solid waste disposal that reduced the rates agreed on by the previous National Coalition Front administration by 42.4%.<sup>8</sup> While the leadership should be exemplary and provide guidance, those at the bottom rung should give support, feedback as well as provide check and balance on the leadership. In this manner, efforts to enhance integrity will produce a dynamism and momentum of its own.

The NIP has five thrusts, the first of which reads, "to effectively reduce corruption, malpractices and abuse of power" and the third thrust to "enhance corporate governance and business ethics [8]." The specific objectives of the NIP [9] are: (i) give direction and guidance to various sectors so that they will work together to build a united, harmonious, moral, and ethical society; (ii) raise the level of awareness, commitment, and cooperation among all sectors in their efforts at enhancing integrity so that integrity becomes a way of life and practiced in all fields; (iii) encourage a sense of responsibility among members of the community and promote the development of civil society that respects and upholds the principles of integrity; (iv) strengthen the moral foundations of the community and the country, and improve the well-being of the people; and (v) raise

<sup>7</sup> *The Star*, September 23, 2009, p. 10.

<sup>8</sup> *The Sun*, September 25, 2009, p. 7.

Malaysia's competitiveness and resilience in meeting the challenges of the twenty-first century, especially the challenges of globalization. Key success factors of integrity in the plan include:

- Readiness of individuals to change
- Adequacy and efficacy of resources
- Effective legal framework and independent judiciary
- Cooperation between politics and administrative machinery
- Conducive cultural environment
- Effective communication
- Continuous education
- Sound policies and clear targets

The specific strategies are targeted at different groups, i.e., family institutions, community, civil society non-governmental organizations, socio-cultural institutions, religious institutions, and economic, political, and administration institutions. In each institution, objectives and strategies are put into action. Again, these strategies are reasonably broad based, as seen in [Table 9.3](#), and the institutions that directly involve ethics and corruption issues are the economic, political, and administrative institutions. For instance, strategies of the "politics" institution include: (1) uphold the sovereignty and enhance the integrity and effectiveness of the parliament; (2) enhance the integrity of the electoral system; (3) enhance the image of politics by developing a healthy, democratic, and mature political culture integrity; (4) enhance the image and sense of responsibility of political parties and politicians; (5) continue with the social justice programs involving the members of Parliament/state assemblies and politicians on integrity as well as their roles and responsibilities; and (6) enhance transparency and close all avenues and opportunities for corruption, malpractices, and abuse of power.

Apparently, efforts at enhancing integrity and ethics have not been implemented effectively in an integrated manner nor have they been comprehensive and well coordinated with the necessary synergy and zest. For this reason, it is hoped that the NIP will serve the purpose of upholding best practices and not remain rhetoric, as the current situation seems to be.

## 9.5 Other Efforts

Recent revamping of several public service departments and the introduction of a key performance index in reforming government-linked companies (GLCs) is an excellent opportunity to accelerate this process of good governance involving integrity and ethics as a fundamental issue in Malaysian nation building. GLCs remain the primary provider of utility and infrastructure services, including electricity, telecommunications, postal, airlines, airports, public transportation, water and sewerage, as well as banking and finance. Reforms recently proposed in the GLCs are consolidating in the hope that removing GLCs from ministerial control and setting up special governance and oversight management will start the process. Such reforms will reinforce both achieving financial goals and improving the public service and strengthening regulatory institutions from post-privatization restructuring. By reforming the boards of GLCs, governance issues will be addressed and policy makers can clarify and quantify the costs of a national development agenda on a periodic basis not to mention opening up greater investment opportunities in the region.

The GLCs transformation is effected primarily through the establishment of internal transformation teams, instituting key performance indicators, improving performance

management, increasing productivity through process and organization improvements, and divesting non-core unprofitable businesses and assets. The GLCs transformation program encompasses four phases spanning 10 years from mid 2004 until 2015. The transformation of GLCs is expected to generate benefits to at least five stakeholders—customers, employees, suppliers, Bumiputra business community, and other private companies operating within the same industries. More efficient and competitive GLCs are expected to increase the level of competition thereby benefiting the entire economy. GLCs account for 7.2% of the total number of companies listed in Bursa Malaysia and 34.9% of market capitalization as of May 18, 2007. In terms of employment, GLCs employed 325,722 personnel or about 3% of the national workforce in 2006.

**Table 9.3 Objectives and Strategies Outlined for Institutions in National Integrity Plan**

<i>Institution</i>	<i>Objectives</i>	<i>Strategies</i>
Family	<ol style="list-style-type: none"> <li>1. Family and individual development based on integrity through the concept of building a happy family</li> <li>2. Enhancement of integrity in the management of physical and spiritual health</li> <li>3. Strengthening of moral values as the basis for the development of identity</li> </ol>	<ol style="list-style-type: none"> <li>1. Creating a resilient, strong, caring, and happy family based on noble values</li> <li>2. Building an environment within and around the family that ensures the safety and well-being of family members as well as protecting the rights of children, women, and the elderly</li> <li>3. Enhancing integrity through continuous learning and education</li> </ol>
Community	<ol style="list-style-type: none"> <li>1. Strengthening of good neighborliness and community values</li> <li>2. Strengthening of grass roots organizations and institutions in the community</li> <li>3. Strengthening of patriotism and inter-ethnic unity as well as awareness for environmental protection</li> </ol>	<ol style="list-style-type: none"> <li>1. Inculcate noble values through neighborliness and community activities</li> <li>2. Establish networking between community and other organizations</li> <li>3. Strengthen patriotism and inter-ethnic relations</li> <li>4. Enhance awareness on environmental conservation</li> </ol>
Civil Society NGOs	<ol style="list-style-type: none"> <li>1. Enhancement of integrity of civil society organizations (NGOs)</li> <li>2. Enhancement of the role of NGOs in promoting integrity</li> <li>3. Greater cooperation between NGOs, the government and the private sector in enhancing integrity</li> </ol>	<ol style="list-style-type: none"> <li>1. Strengthen commitment of NGOs toward integrity-enhancing efforts in all fields</li> <li>2. Strengthen tri-parties cooperation between NGOs, the government, and the private sector in integrity-enhancing efforts</li> <li>3. Ensure the non-partisan role of NGOs</li> <li>4. Strengthen NGOs as an essential component in the democratic system</li> </ol>

(continued)



**Table 9.3 (continued) Objectives and Strategies Outlined for Institutions in National Integrity Plan**

<i>Institution</i>	<i>Objectives</i>	<i>Strategies</i>
Socio-cultural	<ol style="list-style-type: none"> <li>1. Developing individuals with integrity within a socio-cultural environment that upholds integrity</li> <li>2. Enhancement of integrity in the management of matters pertaining to health, as well as physical and spiritual development</li> <li>3. Strengthening of noble values, unity, and national identity</li> </ol>	<ol style="list-style-type: none"> <li>1. Develop knowledgeable and skillful individuals imbued with ethics, integrity, and accountability</li> <li>2. Raise health standards, as well as the levels of fitness, happiness, and productivity</li> <li>3. Promote the inculcation and practices of noble values</li> <li>4. Strengthen inter-ethnic unity and develop 'Malaysian race'/<i>Bangsa Malaysia</i></li> <li>5. Promote a creative, innovative, and responsible culture through the dissemination of news and information</li> </ol>
Religious	<ol style="list-style-type: none"> <li>1. Promoting cooperation, understanding, and mutual respect among followers of different religions</li> <li>2. Upholding and practice of noble religious values</li> <li>3. Upholding and practice of Islam as a religion of progress</li> </ol>	<ol style="list-style-type: none"> <li>1. Enhance cooperation, understanding, and mutual respect between followers of different religions</li> <li>2. Enhance the appreciation and practices of noble values through religious teachings</li> <li>3. Enhance character building of Muslims in accordance with Islamic teachings</li> </ol>
Economic	<ol style="list-style-type: none"> <li>1. Enhancing the integrity of the corporate sector</li> <li>2. Enhancing corporate social responsibility and accountability</li> <li>3. Widening and strengthening good business ethics</li> <li>4. Strengthening the unity between the different ethnic groups and regions through economic activities</li> </ol>	<ol style="list-style-type: none"> <li>1. Strengthen corporate sector integrity</li> <li>2. Promote and strengthen business ethics</li> <li>3. Strengthen cooperation among all sectors through the concept of Malaysia Incorporated in promoting integrity</li> <li>4. Strengthen cooperation between corporations and trade unions</li> <li>5. Continue the social justice programs involving various ethnic groups and between regions</li> </ol>
Political	<ol style="list-style-type: none"> <li>1. Upholding the sanctity of the constitution and the country's political system</li> <li>2. Upholding the sovereignty and integrity of Parliament as a legislative body</li> </ol>	<ol style="list-style-type: none"> <li>1. Uphold the sovereignty and enhance the integrity and effectiveness of Parliament</li> <li>2. Enhance the integrity of the electoral system</li> </ol>

**Table 9.3 (continued) Objectives and Strategies Outlined for Institutions in National Integrity Plan**

<i>Institution</i>	<i>Objectives</i>	<i>Strategies</i>
	3. Practice of politics based on integrity and the promotion of a healthy, ethical, and democratic political culture in accordance with our own mould  4. Strengthening the principles of transparency, accountability, and good governance	3. Enhance the image of politics by developing a healthy, democratic, and mature political culture integrity  4. Enhance the image and sense of responsibility of political parties and politicians  5. Enhance the committee and understanding of members of Parliament/State Assemblies and politicians on integrity as well as their roles and responsibilities  6. Enhance transparency and close all avenues and opportunities for corruption, malpractices, and abuse of power
Administrative	1. Strengthening the principles of transparency, accountability, and good governance  2. Enhancing the integrity of the public service machinery	1. Strengthen the effectiveness of good governance  2. Enhance the effectiveness of the public delivery system  3. Conduct awareness campaigns to wipe out corruption, malpractices, and abuse of power; and enhance integrity  4. Strengthen the administration of justice  5. Strengthen human resource management

Source: Adapted from National Integrity Plan, 2004.

## 9.6 Assessment and Recommendations

It remains a challenge for the government to root out corruption in upholding public ethics and public trust in the political system where the institutional capacity of relevant regulatory bodies can be further improved to ensure transparency, fairness, and accountability. This means that the adequacy of anti-corruption measures and the commitment of political leadership are arguably crucial as such negative corruptive practices will affect government performance. Notwithstanding the difficulties in completely eradicating administrative corruption in the country's bureaucracy, the underlying scenario is that the nature of political trust has changed to a more distrustful nature and this is unlikely to change until evident improvement is made in order to limit their power and promote accountability, transparency, and good governance.

Institutional reforms are paramount to addressing prosecutions as not many investigated cases/individuals are prosecuted. Firstly, the position and power of the attorney general is not

independent and is biased as the final decision to prosecute lies with him. He is also under the jurisdiction and political influence of the prime minister. The MACC or its director-general is also not independent as it is under the authority of the Prime Minister's Department, thereby raising doubts over its apolitical position. Thus, there is a need for both positions to be freed from the influence of the state bureaucracy via different appointing mechanisms of integrity and independence and not at the discretion of the executive. In addition, there is a need to effectively review the Official Secrets Act, in particular the penal provisions that have facilitated the suppression of information relating to malpractices in public administration.

Elected representatives are concerned with proposing legislative changes in Parliament, debating on proposed legislation, raising the aspirations of the citizens. However, we continue to see many elected representatives and retired top senior civil servants, though the latter are permissible, sitting on the boards of companies as independent directors, non-independent directors, and even CEOs of some companies, as reflected in many company annual reports, with the sole purpose of profiteering and political economic influence, further raising the numerous concerns on transparency and corporate governance. Legal actions have not been taken against them despite the clear prohibition and in the genuine pursuit of transparency and integrity, even though it is said that permission can be granted by their top superiors/authorities in their respective departments/chief secretary of the government. It only serves to further discredit public ethics. Elected representatives must be cognizant of their legal boundaries and effective governance and accountability to the public through a change of mindset. In retrospect, the issue of political parties owning businesses where financing of parliamentary and state elections could not be properly accounted for under existing legislation is another phenomenon that is seldom reviewed or scrutinized. The intertwining of money politics and political business in benefitting the funders is difficult to prove, but this factor further undermines fairness and accountability where politicians and political parties need not disclose their sources of funding, hence contributing consistently to the various allegations of public individuals and institutions being reputedly devoid of autonomy and independence to act without favor.

Thus far, selective prosecution cases have undermined public confidence in the authorities to regulate the gatekeepers and wrongdoers. The inter-relationship and participation between the government and the governed negates the concept of checks and balances as political patronage seems to be heightened over time in cases of procurement contracts and inappropriate public behavior and policy making. It would be commendable if such patronage and alliance were opposed or reduced to avoid seriously undermining the legitimacy of the entire governance of the politics and socio-economics of the country.

Existing legislation and disclosure requirements are inadequate in overseeing objectivity and restricting corruption practices. Genuine reformers who have the courage and will to change within the political system are needed in dealing with the challenges of implementing governance and embedded political and party patronage in further strengthening internal adjudication and regulatory capacity toward independently acting against violation of institutional regulations and impartiality in monitoring mechanisms and disclosure requirements.

## 9.7 Conclusions

It is important that there continues to be confidence in the capacity of institutions to improve in order to reflect government performance and better quality public administration ethics in Malaysia. If the government wants to win continuing support from the public, then it is essential that the relationship between the government and the governed is reformed on a clean, credible

and trustworthy behavior, resulting in the formation of a corruption-free polity, or at the very least, a reduced level of corruption. Policy making and the policy delivery process, ought to be based on the priority of the public interests, but through favored network relations, it is likely to result in a distortion of efficiency, effectiveness, and most of all, justification of a policy decision and stability. Accountability mechanisms can be better strengthened and further rooted in the system with better staff of honest public servants, positive value sharing, and a high level of moral integrity that promotes good governance comparable with the descriptions in the public administration literature. This implies that effective solutions to the malpractices of administration may require far-reaching approaches, from changing the current norms to reforming and restructuring the civil service and political systems, all of which are difficult to achieve in the short term in Malaysia. It may only be possible through the sustained and serious commitment of the leaders and the bureaucrats to undergo a desirable, wide revolutionary process, perhaps over a longer period to counter corruption and to practice better public ethics in reality. Good public ethics would help to reconstruct the democratic governance system in Malaysia with zero tolerance for corruption along with the conventional checks and balances system secured.

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## *Chapter 10*

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# Performance Management Reforms in Malaysia

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Tricia Yeoh

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### **10.1 History of Performance Management in the Administrative System**

Malaysia has undergone a radical transformation in its public administration system since the 1980s, peppered with numerous reform measures introduced by the government. Reform measures have come in the form of policies, development plans, and legal frameworks, and more general themes or mottoes, among others. The policy and legal frameworks already in existence at the time greatly facilitated the introduction and implementation of these reform measures. These frameworks help provide the context within which the administration was operating, and these are explored here.

### **10.1.1 Policy Frameworks**

Malaysia has made use of long-term plans and policies that were refined over time. The First Malaysia Plan was published for the years 1966–1970. Thereafter, the first Outline Perspective Plan (OPP1) was set out for the period 1971–1990, which incorporated the Second, Third, Fourth, and Fifth Malaysia Plans, each covering a 5-year period, respectively. The New Economic Policy (NEP) was introduced, and implemented between 1971 and 1991. This system of infusing a national development policy within a 5-year plan, which in turn is part of a broader and more visionary perspective plan, would then follow. Hence, the birth of the Second Outline Perspective Plan (OPP2), also known as the National Development Plan (NDP, 1991–2000), with specific socio-economic developmental targets to be achieved during that period, during which the Sixth and Seventh Malaysia Plans would be implemented. Finally, the Third Outline Perspective Plan (OPP3) was introduced, known as the National Vision Policy (NVP, 2001–2010), and is the latest and current 10-year policy governing Malaysia, also with similar broad goals and objectives. These, together with Vision 2020, announced in 1991 (discussed further below) have been instrumental in defining performance management reform within the public sector.

One can then generally associate the NEP with OPP1, the NDP with OPP2, and the NVP with OPP3, while the 5-year plans would be expected to fit into the broader national objectives already stipulated. Aside from the 5-year developmental plans, the government also publishes a Mid-Term Review of the plans, in order to gauge the effectiveness of the particular plan at its mid-point. Although this has been the traditionally accepted route of planning in Malaysia, there have been recent suggestions to shorten the period of national plans in light of rapid global change.

These developmental plans are prepared by the Economic Planning Unit, which comes under the purview of the Prime Minister's Office of Malaysia. Although in the past this process was largely centrally planned, where decision-making processes would only involve the public administration of various ministries, there is an increasing trend toward incorporating the views of the public. Public consultations are now being conducted to invite views and opinions from trade associations, non-governmental associations, independent think tanks, academics, and industry. Unfortunately, there is little information as to the actual process of vision formation, or the basis on which views and opinions are later chosen to be incorporated (or not) into the document. The EPU has primary jurisdiction over all developmental plans and policies' contents, which the Cabinet would have first access to on publication, and which in the final stages will be personally reviewed and altered by the prime minister of Malaysia. These plans are then tabled in Parliament, debated, and finally voted on. However, there is little opportunity given to members of Parliament to amend portions of the plans in any significant manner, and the vote is largely perfunctory in nature.

The structure of implementation has also been fluid in the last several decades; at present, the body tasked to execute and monitor the progress of all Malaysian developmental plans and policies is the Implementation Co-ordination Unit (ICU), which also comes under the Prime Minister's Office. Although this allows the prime minister to personally oversee the implementation of plans, it has also been suggested that an independent monitoring body be set up, incorporating many stakeholders, in order for there to be greater transparency and public accountability especially with regard to financial matters.

It is important to elaborate on the NEP (1971–1991), as its ethos and principles would eventually be applied to the later developmental policies. The NEP was introduced in 1971 as an affirmative action-based policy to eradicate poverty regardless of race, and to eliminate the identification of occupation with race. The policy was generally aimed at elevating the status of the poorest communities, at the

time the *Bumiputera* (literally translated as “princes of the earth”) community, made up of Malays, the ethnic majority group in Malaysia and the *Orang Asli*, the Aborigine community of Peninsular Malaysia. In reality, the policy would later take on a role of targeting mainly the Malay ethnic group in terms of corporate equity and wealth ownership of the nation. The NEP implied that the public sector would be given a significant role in being directly involved in the national commercial and economic sectors through productive activities such as banking and finance, manufacturing, and so on. The role of the state was given significant prominence, evidenced by the setting up of several state organizations designated to improving productive capacity, such as the *Bumiputera* Commercial and Industry Corporation (BCIC), and other public enterprises.

In the 1980s, however, there was a major policy shift, as Malaysia became a highly industrialized country, with increasing reliance on exports. Under the guidance of then Prime Minister Tun Mahathir Mohamad, the pace of industrialization was accelerated through his “Look East Policy,” emulating South Korea, Japan, and Taiwan; Malaysia introduced its first national made-in-Malaysia car, *Proton*, and in the early 1980s UNIDO sponsored studies that went into the formulation of the country’s first Industrial Master Plan (IMP), announced in early 1986. The manufacturing sector was emphasized, which eventually broadened to form a sizeable percentage of the Malaysian economy. Manufacturing industries grew at an average of 13% in the early 1990s, later slowing to 9% (late 1990s) and 4.1% (between 2000 and 2005).<sup>1</sup> As global approaches to development leaned toward privatization as opposed to state-run mechanisms, Malaysia responded likewise. This was also a response to high operational budgets and huge deficits faced by the government. The responsibility for economic development was shifted to the private sector, stemming largely from then Malaysian Prime Minister Tun Mahathir Mohamad, who introduced the Malaysia Incorporated and Privatisation Policy in 1983 and envisaged that the government would become the service arm of the enterprise. The Malaysian Privatisation Master Plan (MPMP) was later published in 1991 followed by Guidelines on Privatisation.

The civil service would now facilitate productive activities that could be more efficiently carried out by the private sector, still maintaining the objective of alleviating poverty and uplifting the status of the *Bumiputera* community, but through alternative means. The state would continue to play an important role in economic development and its performance through facilitation of legal structures, but the financial burden of the government would be reduced through transfer of actual activity to the private enterprise. Programs and projects were reviewed, with deliberate attempts to downsize the state to reduce excessive public expenditure, as indicated by Sarji. Under the Excellent Work Culture that was launched in 1989, another policy introduced was the Look East Policy, also aimed at reforming models of governing. This policy was specifically deployed to increase productivity, as inspired by Japanese and South Korean work ethics and methodologies. In the later plans of the NDP and NVP, although public-private co-operation was promoted for investment and growth, the public service was still expected to play a crucial role in achieving national developmental goals.

### 10.1.2 Organizational Structures

As early as 1965, a study was conducted on “Development Administration in Malaysia,” resulting in the Esman-Montgomery report. This was one of the milestones of impetus for change, recommending major changes in the public administration, education, and training systems. This led

<sup>1</sup> 7th, 8th, and 9th Malaysia Plans, Economic Planning Unit, Prime Minister’s Department, Government of Malaysia.



to the formation of the Development Administration Unit (DAU) in 1966. Given the responsibility of spearheading reforms in the government administration, the DAU was later expanded and renamed the Implementation Co-ordination Development Administration Unit (ICDAU), to co-ordinate development projects as well as planning and developing human resources. After several restructuring exercises, this unit was eventually split in two, one of which was named the Malaysian Administration Modernisation and Management Planning Unit (MAMPU). Tasked with the functions of administrative modernization and human resources planning, MAMPU was given the mandate to introduce strategies to improve public administration.

The National Training Institute, formed in 1972, was tasked to train a large number of public sector employees. In 1970, the Federal Establishment Office was also reorganized to form the Public Service Department (PSD) as a separate institution, entrusted with the responsibility for carrying out personnel management policies to ensure greater efficiency of the public service.

#### *10.1.2.1 Values and Work Ethic*

From the late 1970s, Islamic codes of conduct were considered the benchmark by which work ethic was measured. Indeed, in 1982, MAMPU launched a campaign based on Islamic values, which included calls for a clean, efficient, and trustworthy public administration, the first time in which religious values were used as bases for codes of bureaucratic self-conduct. In 1985, these three values were expanded to eleven: “trustworthiness, responsibility, sincerity, dedication, moderation, diligence, cleanliness, discipline, cooperation, and gratitude”. The code of conduct under the Public Officers (Conduct and Discipline) Regulations 1993, outline conduct guidelines for civil servants, including loyalty, priority of public interest, non-active participation in politics, strict rules against accepting gifts and presents for favors, and seeking outside employment that would jeopardize work performance. The “Leadership by Example” policy, introduced in 1983, encouraged public servant leaders to lead by example.

In the same light, later, in 1992, the National Institute of Public Administration, INTAN highlighted twelve values that should direct public servants’ conduct: valuing time, perseverance, pleasure of working, dignity of simplicity, character, kindness, influence of examples, obligation of duty, wisdom of economy, patience, improvement of talent, and joy or originating. These were then incorporated into human resource development courses for all civil servants, examined on values and ethics when being considered for job promotions. Islamic values, coupled with sociological postulations of Malaysian values, have therefore dominated the discourse and consequent implementation of imposed conduct and ethics within the civil service.

#### *10.1.2.2 Administrative Devices*

Under the Excellent Work Culture, the civil service was to be transformed into a more customer-focused, result and performance-oriented, responsive, accountable, and innovative public service. Prior to this, public criticism of the civil service included that of poor quality and service. A total of 22 Development Administrative Circulars were issued, including the Modified Budget System, Total Quality Management (TQM) of the Micro Accounting System, the NPA System, the Client’s Charter, and ISO9000, all of which were to improve the responsiveness and quality of the civil service. Other specific initiatives were one-stop counters to answer questions, additional counters, better layout, and basic facilities for the public.

One of the more significant Development Administrative Circulars was the introduction of Quality Control Circles (QCCs), which was defined as self-governing workgroups that would

meet regularly to identify and analyze work-related problems. The QCCs would then upgrade their quality of work through discussion, solving problems together, and generating interest in work. Triantafyllou reported that productivity and quality of work would be enhanced by encouraging QCC members to negotiate a “performance norm for the production output and product quality of the group.”

Another administrative device was the TQM, providing guidelines to civil servants to commitment toward product quality and customer responsiveness. Quality would be achieved in all operational aspects, including products, services, management, and employee competency and commitment.

In 1993, the Client’s Charter was introduced; a written commitment made by respective government departments on standards it would keep to regarding its public service delivery. The Client’s Charter would be made public, therefore departments would be held accountable for their actions. Departments that formulated their Client’s Charter reported a significant drop in complaints.

Other specific techniques of performance were introduced from the late 1980s to the early 1990s, from which only several will be mentioned here. These measures included the Civil Service Ethic, leadership by example, a clock-in system, and a name tag system, among others. Performance measurement was used at both individual and organizational levels, with the objectives of ensuring that programs and activities would be implemented efficiently and effectively. At the individual level, the New Remuneration System in 1992 was introduced to improve the public sector’s personnel administration and management system by “linking individual performance measurement to salary increment” [11], and the New Performance Appraisal (NPA) System was launched in support of this, where there would be direct links between individual performance and rewards in terms of a salary increase and promotion. On an organizational level, a manual was distributed in 1993 entitled “Guidelines for establishing performance indicators in government agencies,” which would assist government agencies in implementing performance measurements, indicators of which would be incorporated into budget estimates and annual reports.

### *10.1.2.3 Performance, Financial, and Budgetary Reporting*

In order to best manage performance in the public sector, performance reporting was considered essential, as this would improve individual and public accountability and responsibility. Hence, in 1979, the auditor general’s powers were expanded to include management audits. The Audit Act of 1982 was amended to enhance his powers and duties to undertake extensive investigative auditing of the activities of an agency [12]. This “performance audit” monitor the efficiency and effectiveness of agencies’ delivery systems. The Audit Act requires the auditor general’s findings to be submitted to Parliament for examination by the Public Accounts Committee (PAC).

The Public Complaints Bureau (PCB) was also set up within the Prime Minister’s Department to allow members of the public to report on any abuse of powers within government agencies, address these complaints, and improve any systemic flaws. The Parliament Committee on Public Complaints was set up to monitor these services. In 1982, the Anti-Corruption Agency (ACA) was also established under the Anti-Corruption Act. The ACA has received and investigated numerous cases involving high-level government officials and other business tycoons with political links. The ACA has now been transformed into the Malaysian Anti-Corruption Commission (MACC) after the MACC Bill was passed in Parliament in December 2008. The MACC, however, has recently come under fire for selective investigations (to be elaborated on below). At the time, these mechanisms were introduced to address any misuse of power and funds. Other tools initiated to improve performance reporting in the public sector included the Program Performance Budgeting

System (PPBS) and the Modified Budgeting System (MBS) in the area of financial management, the Computerised Vote Book, and the Micro Accounting System.

Under the MBS, aimed at ensuring greater public accountability in financial management, the MBS contained a set of modifications to the PPBS that typified the governmental budgetary process. This stipulated that all governmental agencies, federal departments, and statutory bodies would be required to enter into a program agreement with the Treasury (under the Ministry of Finance), giving specific details on the inputs and expected outputs for all programs in a particular financial year. This would develop a more accountable system of financial management in terms of effectiveness of program performance, according to Xavier.

## 10.2 Performance Management Reforms in the Past Ten Years

Given such a diverse background of performance management reforms in the 1980s, leading up to the early 1990s, it was now necessary to consolidate these numerous initiatives. The next wave of performance management reforms, beginning in the late 1990s toward the twenty-first century, was attributable in large part to Vision 2020. At the launch of the Sixth Malaysia Plan in 1991, then Prime Minister Tun Mahathir Mohamed postulated his goal for Malaysia to become a fully industrialized and developed nation by the year 2020. Part of this included seven key features of an excellent public service: quality, productivity, innovativeness, discipline, integrity, accountability, and professionalism. Strategies would be put in place to move Malaysia toward an effective, efficient, clean, trustworthy, and disciplined public service, earning maximum credibility from the public. Overall, national development as a theme was sustained throughout all of Malaysia's 5-year plans, but Vision 2020 was a significant shift in policy direction.

In his speech, he outlined nine challenges that Malaysia must overcome to achieve Vision 2020, one of which was to form a progressive science community.<sup>2</sup> Other objectives were to enhance the socio-economic development of the country over the next two decades.

### 10.2.1 *Electronic Government*

As a result, the Electronic Government (or e-Government) initiative was launched to lead the country into the Information Age. The Multimedia Super Corridor (MSC), tasked with the role of creating a multimedia haven in Kuala Lumpur, would first create the Corridor itself in its first phase, then grow (renamed) MSC Malaysia into a global information, communication and technology (ICT) hub by 2010, and consequently transform Malaysia into a knowledge society and economy. It had seven flagship applications, namely, the Electronic Government, Multipurpose Card, Smart School, Telehealth, R&D Clusters, e-Business, and Technopreneur Development, all of which were to improve services provided to citizenry at large.

The Electronic Government's objective was to provide services more efficiently to all people of Malaysia, responding to immediate needs. This would significantly improve the quality of interactions with citizens and businesses through better connectivity, access to information and services,

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<sup>2</sup> Other Vision 2020 challenges were to form a nation that stands as one; to produce a Malaysian community that has freedom, strength, and is full of self-confidence; to develop a mature democratic community; to form a community that has high morale, ethics, and religious strength; to cultivate a community that is matured and tolerant; to cultivate a community rich in values and loving culture; to ensure the formulation of a community with a fair economy; and to cultivate a prosperous community.

provide a feedback mechanism to systemic failures, and better processes and systems. The seven pilot projects of the Electronic Government Flagship Application when it started were the Project Monitoring System (SPP II), the Human Resource Management Information System (HRMIS), the Generic Office Environment (GOE), Electronic Procurement (EP), Electronic Services (e-Services), Electronic Labour Exchange (ELX), and e-Syariah. Along these lines, the Public Service Networks (PSN) was initiated, with the post offices acting as one-stop bill payment centers. They would also provide services such as renewal of licenses, stamping, and payment of road tax.

The e-Government in Malaysia was then developed into a comprehensive program, as originally proposed. It was envisioned to reinvent the service delivery and redefine the way the government relates to its public citizens, business sector, and inter-governmental transactions. A host of services and provision of information would be available on governmental websites and portals, including payment of bills and licenses and registrations renewals. The government's official portal, myGovernment, now contains information and services on all major sectors of public service, including education, employment, health, legal matters, taxation and collection, social welfare and community, among others, collating agencies at federal, state, and local authority levels. As initially proposed, this central portal has been the tool used in disseminating information and service to members of the public, enhancing the efficiency and effectiveness of the public service delivery system. This was a fairly ambitious project to start at a time when information and technology (IT) were not yet familiar tools. Nevertheless, this all-encompassing effort would allow citizens to access information from any location and time. This was viewed as a collaborative and proactive relationship between various government sectors in providing quality services to meet customer expectations in the information age.

In 2009, newly appointed Prime Minister Najib Abdul Razak has made unique use of the internet and technology in attempts both to project a personal image of efficiency and to invite recommendations on improving public administration in Malaysia. On his personal Web site, named 1Malaysia, ideas and proposals are invited from Malaysians on how to better the delivery system. A new portfolio was also given to a cabinet minister, monitored by the prime minister, to introduce "Key Performance Index" (KPIs) for all ministries. Part of the effort within the KPI is to ensure all contract procurement will go through an open tender process or a limited tender process. This is a prime minister who prides himself on being performance-driven, and more measures are expected to be introduced to that end during his tenure, although their effectiveness is yet to be evaluated. In particular, six "National Key Results Areas (NKRA) have been emphasized, ranging from improvement of public transportation to battling graft." At the time of writing, deliverables of numerous announcements made have yet to be translated into measurable action.

### ***10.2.2 Public Service Delivery System***

The early 1990s saw the introduction of revision in procedural matters of the public service delivery system. Government agencies were instructed to review their procedures for carrying out their duties in order to reduce red-tape, expedite delivery of services, and take action to ease regulations and procedures for the benefit of their clients. The objective of such measures was to speed up approval processes for business licenses, permits, land administration, and investment, thereby enhancing the bureaucratic systems as a whole. This led to new application forms, the reduction of processing time of applications, the establishment of local licensing centers, and consolidating several forms into a composite application form.

There were also inadequate guidelines and lack of facilities for the public, which led to poor performance of the public administration system. Over the years, these were gradually improved

on, taking the shape of better facilities, improved equipment, friendly staff, efficient counter service, cheque deposit boxes, and orderly queuing services. A program was introduced where public service agencies were required to establish one-stop clearance centers, where all issuance of licenses and permits were provided from one-point alone and would reduce the time for business approvals.

Throughout the late 1990s, these measures were deemed insufficient as problems continued to occur. With increased public education and equivalent demands, a Special Taskforce to Facilitate Business (PEMUDAH) was started after then Prime Minister Dato' Seri Abdullah Ahmad Badawi, in a speech, recognized the need for a public-private sector initiative. This taskforce was mandated to review the public services' delivery system in terms of processes, procedures, legislation, and human resource toward introducing and thereafter co-ordinating improvements. They would then monitor the implementation of policies, strategies, and procedures aimed at improving the delivery system's effectiveness and efficiency. Co-chaired by the chief secretary to the government of Malaysia (representing the public sector) and the president of the Federation of Malaysian Manufacturers (representing the private sector), since its inception PEMUDAH has successfully launched several reports and guidebooks, in particular the "Doing Business in Malaysia 2008" series, in which reform trends and options for Malaysia are outlined in detail. In its 2008 annual report, improvements recorded included enhancing transparency and streamlining processes and procedures, such as reducing the time taken for registration, facilitation of e-payment and establishment of a one-stop center to expedite the incorporation of companies. The success of PEMUDAH has also spurred the new Selangor State Government to launch its own version, naturally named PEMUDAH Selangor. Using the same model, it is hoped that the state will better facilitate business proceedings and operations.

### **10.2.3 Other Management Reforms**

The NPA was adapted to introduce a new matrix salary schedule (MSS), replacing the former linear salary scale. Salary progression would now follow employees' performance, with greater flexibility. Motivated and driven employees would receive increments according to their performance. Another new performance evaluation was then introduced, to decentralize performance appraisal where a panel would determine the number of officers eligible for a salary increase. Finally, a new system called the Malaysian Remuneration System (SSM) was initiated in 2002, where any civil servants dissatisfied with the existing system could choose the SSM scheme instead. This would drive employees to perform better in lieu of enhanced salary and the prospects of career advancement.

A landmark initiative in 1996 was for Malaysia to require its entire government machinery to adhere to ISO standards, the first country in the world to do so. Adapted from the internationally recognized standard ISO 9000, this would provide a holistic and comprehensive system of checks and controls across every stage of the work process to ensure standardized consistency in the quality of products, both goods and services. The five standards of the ISO 9000 series are: ISO 9000, ISO 9001, ISO 9002, ISO 9003, and ISO 9004.<sup>3</sup> Two of these standards (ISO 9000 and ISO 9004) are guidelines for understanding and selecting elements for the quality management

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<sup>3</sup> The ISO 9000 is a family of standards for quality management systems, maintained by the International Organisation for Standardization and is administered by accreditation and certification bodies. ISO 9001 is concerned with product design, development, production, installation, and servicing. ISO 9002 is concerned with quality assurance at production; ISO 9003 with testing; ISO 9004 for quality management. These taken as a whole are to ensure quality management of both goods and services.

system, while the other three are models for quality assurance. A benchmarking program was introduced in 1999, where a government circular gave guidelines to agencies to carry out processes to implement best practices. Each agency is now required to adapt such best practices for their respective need and use.

Part of this included the need to establish a more structured and uniform work system to ensure consistency of provided services, specifically the preparation of Quality Manuals, Procedure Manuals, Work Instructions and Contract Review, the latter of which expects customer requirements to be clearly understood, defined, and within organizational capabilities. To enhance quality and management of performance, orderly and systematic documentation would be strictly required. Other elements under the ISO provisions are process control, and inspection and testing.

On entering office, current Prime Minister Najib Abdul Razak reduced the number of ministries, from 28 to 25, in an apparent move to downsize the civil service to make bureaucracy leaner. However, although the number of ministers fell, the number of deputy ministers increased instead. The significant ballooning of operational expenditure in recent years is a sign that the top-heavy public service is in need of downsizing, in order to increase performance management and efficiency. Malaysia boasts the largest public sector per capita in Southeast Asia. This has also been criticized because of its large and increasing contribution to the widening national budget deficit in Malaysia.

### **10.3 Assessment of Performance Management Reforms**

In order to evaluate outcomes of performance management reforms in Malaysia, it is necessary to evaluate performance management reforms using international indices in order to make comparisons between Malaysia and countries around the world.

Collectively, performance management reforms in Malaysia have resulted in improving efficiency at the bureaucratic and public service delivery system levels. Malaysia fell from 21<sup>st</sup> place in 2009 to 23<sup>rd</sup> place in 2010 in the “Ease of Doing Business Report”. The Doing Business Report provides measures of business regulations and their enforcement across 181 economies and selected cities, where first place is the best. A high ranking on the Ease of Doing Business Index means the regulatory environment is conducive to the operation of business. Its reforms have improved ease of doing business in two specific areas of “starting a business” and “paying taxes,” although in other areas no significant improvement has been shown (dealing with licenses, registering property, protecting investors, enforcing contracts, closing a business), which would require greater stringent measures.

However, some areas could have been further improved on, where 25 licensing procedures were required to build a warehouse, compared with 6 in Denmark, one of the world’s top economies. The Global Competitiveness Report 2008–2009 showed that Malaysia’s ranking improved significantly from 65<sup>th</sup> in 2001–2002 to 25<sup>th</sup> in 2005/2006, and consequently to 21<sup>st</sup> in 2008/2009. However, Malaysia’s ranking dropped to 24<sup>th</sup> in the 2009/2010 report. Measured on a 0–7 scale (where 0 means least competent and 7 means the most competent), Malaysia scored 4.87 in its latest score, falling from 5.04 in the previous year’s report. Neighboring country Singapore, however, has steadily increased its ranking from 7<sup>th</sup> in 2004–2005 to 3<sup>rd</sup> rank in 2009/2010.

More recently, the IMD (a Switzerland-based leading global business school) released the World Competitiveness Year Book 2010, ranking Malaysia in 10<sup>th</sup> place, up from 18<sup>th</sup> place the year before. Deutsche Bank also rated Malaysia as Asia’s second best growth prospect for the 2006–2020 period with a GDP growth of 5.4%, based on four driving factors: population growth, investment, human capital and trade. Frost and Sullivan also ranked Malaysia 5<sup>th</sup> in the

world for shared services and outsourcing (SSO) in 2007, sliding up a notch from its 6th position in 2006, based primarily on its high level of service providers, largely due to the efficiency of service within the public administration.

“In the World Bank’s *Doing Business Report 2010*, which ranked Malaysia as 23rd place down from 21st place the year before, two specific positive reform measures were cited for Malaysia, which helped in the areas of starting a business and enforcing contracts. Evaluation was done on regulations facing investors in 10 categories, including business start-up, business operation (obtaining licenses, employing workers, registering property, investor protection, and credit), taxation, trade, and closure. Then Prime Minister Abdullah Ahmad Badawi stressed the need to improve on standards and achievements in order to become a world-class civil service. He emphasized that a fast and efficient delivery system would have the accompanying benefit of curbing corruption. This sentiment is strongly shared by the current Prime Minister Najib Abdul Razak, evident in his current efforts at administration reform.

Transparency International’s *Corruption Perceptions Index (CPI)*, however, indicates a worrying trend in Malaysia, where in just a short span of 3 years, it has fallen from a rank of 37th in 2003 (with a score of 5.2) to 44th in 2006 (with a score of 5.0), and further to 47th in 2008 (with a score of 5.1), and even further to 56th position in 2009 (with score of 4.5). More disturbing is that Malaysia initially scored 5.28 and 5.32, respectively, in 1995 and 1996, where higher scores are better. Further, in the *Global Corruption Report 2007*, also released by Transparency International, Malaysia was placed in Cluster 3 (Cluster 1 comprising countries least likely to bribe, Cluster 4 comprising countries most likely to bribe), implying that the administrative system was also likely to receive bribes, accepted as a cultural norm within the very structure of society. Despite the moral commitment by then Prime Minister Abdullah Ahmad Badawi to weed out corruption, public perception seems to indicate otherwise, reflecting deep schisms within the public administration system that have a direct implication on performance management. Although numerous reforms have been initiated throughout the 1980s till present, inherent structural flaws still permeate the institution, forming the roots of institutional dysfunction. The *Global Corruption Report 2009* states there exists a precariously close nexus between private business and public institutions in Malaysia.

Corruption in Malaysia has been duly recognized as being systemic, resulting in the formation of numerous bodies and legislation to help resolve the issue. Political corruption, money politics, the strong and inextricable link between business and politics, leading to administrative corruption within the bureaucracy, are also prevalent. Corruption concerns stem from the lack of institutional independence in the country, including law enforcement agencies, the judiciary, media, and even bodies set up to curb corruption. Without the ability to correct these mechanisms, it is difficult to push for public administration reform. (See also the chapter on ethics and corruption in Malaysia in this volume.)

In ensuring the integrity of the civil service, the Institut Integriti Malaysia (IIM), or Malaysian Institute of Integrity, was set up in 2004 to facilitate the aims and objectives of the National Integrity Plan (NIP), the objective of which is to shape a society that is firmly based on moral principles and ethics imbued with sound religious and spiritual values, attested by good manners. The IIM would therefore enhance integrity as a way of life for Malaysian society, including especially that of the public administration service. It has been fairly successful in advising government on strategies in enhancing integrity through training and educational programs, but this has largely been considered as rhetoric, as structural problems continue to plague the delivery system. Coupled with falling corruption perception, privatization policies of earlier years were largely considered to have experienced several decades’ worth of privatizing profits and

profitable assets and socializing losses and liabilities. Some innovations of performance management reforms have also been criticized, for example the Client's Charter, which fails to empower the ordinary person and user of such services, with poor accountability, class biased (those in low-income groups would not benefit from it), and finally, that promises are not always fulfilled since most customers are unaware of its contents.

In January 2008, the Conference of the States Parties (CoSP) to the United Nations Convention Against Corruption (UNCAC) met for the second time. Malaysia signed the UN Convention against Corruption in December 2003 and ratified it in September 2008, which now necessitates its implementation within national legislation. Ratification of the convention now means that national law must comply with international rules on promoting integrity, accountability and proper management of public affairs and public property although no such public review exists as yet on this regard.

Some budgetary reforms have been outlined in this chapter, such as the PPBS and the MBS implemented throughout the last decade. Nevertheless, at the beginning of the chapter, public accountability and transparency are crucial in producing a budget document that adequately contributes to better performance measurement and, ultimately, performance management of the public administration. To this end, the Treasury at the Ministry of Finance should be credited as they regularly ensure that public consultation processes are held annually. These meetings, a combination of small issues-based focus groups and larger-setting consultation forums, are held with the objective of obtaining views and feedback from a wide spectrum of society to input as proposals within the budget for the following year.

This consultation process, however, can be further enhanced. Firstly, there are no post-consultation indicators or reports showing that some or any proposals are eventually incorporated into the national budget. Secondly, since it is currently only conducted at the pre-budget stage, there are few if any platforms available for citizens to critically examine the actual budgetary documents on their approval and adoption in Parliament. A budget's impact can usually be assessed only after expenditures have been made, and a thorough examination accompanied with the ability to channel these responses back to government would hold them accountable for the budget's concrete results.

For the first time, Malaysia was included in the International Budget Project that reviewed budget transparency and the availability of public documents to that end.<sup>4</sup> This resulted in an international Open Budget Index 2008, categorizing countries by the manner in which the budget process is administered. Malaysia scored 35%, and ranked in the "minimal" category, which is defined as countries that provide minimal information to the public in its budget documents during the year. Apart from minimal provision of information (which would effectively allow for better and more efficient budget administration on the principle of accountability), the report also stated it is difficult to assess budget performance in Malaysia once the budget year is over. Although the audit report is public, no information is provided as to whether the audit report's recommendations are successfully implemented. The eventual target would be for Malaysia to adopt international best practices as outlined by the Organization for Economic Co-operation and Development (OECD) to ensure maximum information is provided transparently within budget documents, and to provide means by which the public and civil society can track and monitor expenditures through the entire budget implementation process. Providing such tools of accountability and transparency to the public would ensure the overall improvement of performance

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<sup>4</sup> The International Budget Project's Open Budget Initiative was conducted by the Centre for Public Policy Studies, Asian Strategy & Leadership Institute and results were released internationally in October 2008.



management of the public administration whose main purpose is to serve citizens' interests ultimately.

Despite government efforts at ensuring performance management reform over the past decade which has had to more, many incidences have unfortunately clouded their effectiveness. Scandals involving large sums of money are reflections of a system that may technically have rules and regulations in place, but in reality fail to measure up to these requirements. Essentially, most cases involve the complex relationships between business and politics, which the administration participates in—the finer details of which are beyond the scope of this chapter—and have in the past resulted in massive bailouts due to maladministrative practices. The most recent case involves the failed Port Klang Free Zone project that, which has had to be bailed out by government and to stand by borrowings exceeding their original amount. The Port Klang Free Zone's original cost of RM1.85 billion ballooned to RM4.6 billion amid allegations of irregularities. A continuous number of bailouts—in which government invested significant sums of money in corporations that would have “exited” from the marketplace due to market forces if not for such assistance—belie a system that unfortunately does not have in place the checks and balances to accurately measure, monitor, and assess performance management of government.

## 10.4 Analysis and Recommendations

Performance management reforms have been introduced to the Malaysian public administration in numerous forms and shapes, over the past several decades. In its earliest stages, reforms were instated with the contextual policy background of the NEP, and its consequent relatives the National Development Policy and the NVP, under which we are currently operating. Within these broad frameworks were the numerous organizational structures, principles of values and work ethics, administrative devices, performance and financial reporting standards introduced in Malaysia from the 1970s to the mid 1990s. In the last decade, however, the public administration fully maximized the benefits of previous reforms, and introduced more sophisticated tools under its ambitious e-Government program, among others.

At present, ongoing reforms are taking place, with PEMUDAH taking on an increasingly prominent role in ensuring standards are maintained. It has attempted to increase the efficiency and effectiveness of the public sector, by improving the delivery system in a number of areas. It has also successfully facilitated reducing the business registration processing time by the Companies Commission of Malaysia (CCM), and ensuring that the Immigration Department expedites the processing of work passes for expatriates.

While such performance management reforms have contributed significantly to the public service as a whole, the same cannot be said of that within rural areas of Malaysia. Technical knowledge, skills of and access to IT are lacking within smaller towns, causing citizens to be incapable of accessing information and data online. This inadvertently affects the success and effectiveness of the public delivery system. Greater internet and broadband access is continual, which will allow for greater internet services. New media and its ability to interact personally with Malaysian citizens is fast becoming an available option, where the public is able to respond immediately to government policies and government is equally able to respond to demands and requests from its citizenry. Some unique and unconventional ability to capitalize on the tools of new media in its various forms of weblogs, podcasts, videocasts, customer feedback forms, and so on, would be an important aspect to explore over the next decade. Despite efforts to ensure that public administration is awash with moral values and integrity, it is important that the upper levels of the civil

service are not given special privileges, which would effectively negate any efforts of maintaining strict rules on etiquette and behavior at its lower rungs.

There is no one standardized methodology to ensure that the best performance management reforms are put in place, and numerous attempts have been made to construct, correct, and refine the objectives and strategies to enhance public administration in the country. The government, in its continual efforts at maintaining a high quality public administration system, must ensure clear visions and structures under an overarching objective, along with their accompanying strategies and specific instruments. At this stage, when Malaysia is going through major political shifts, it is also a tremendous opportunity to substantially reform the way in which public administration performance is measured and managed.

Measures to improve performance management include the need for substantive reform such as to make the PAC hearings public. The PAC is a parliamentary body that looks into the financial management of most public entities. In making its minutes and reports publicly available, greater scrutiny of government administrative bodies would be assured, along with their performance management. The current PCB at federal and state levels could also be upgraded to become independent Public Complaints Ombudsman Offices that are answerable to Parliament or the respective state legislative assemblies. Such a Public Complaints Ombudsman would then be nominated by a Parliamentary or Assembly Standing Committee on Public Complaints endorsed by the Parliament or state legislative assembly. Existing training programs could include modules and subject content on public accountability.

Greater reform also requires that the Official Secrets Act (OSA), a dated piece of legislation used regularly by the government to keep most documents classified and hence not transparent, is repealed immediately. In order to improve accountability, efficiency, and enhanced levels of public administration's performance, it is necessary for transparent disclosure of most information. Calls have been made to legislate an Access to Information Act, existent and successfully executed in countries such as India and Ireland. Those documents, especially involving finance and budgetary information, should be made transparently available to the public, based on international standards as mentioned earlier. The Selangor State Government has announced its intention of legislating a State Freedom of Information Enactment, but this would only cover state agencies. It is expected to be tabled in its State Legislative Assembly Sitting by the end of December 2010. The Freedom of Information Act has not yet been discussed at federal level.

The institutions formed as checks and balances within the public administration system should be allowed to act independent of political instruction and patronage. The MACC, for example, tasked to investigate cases of corruption and whose jurisdiction also covers any governmental body, has been the subject of criticism and alleged selective investigation. Following the change in political structure after the 12th general election in March 2008, and the subsequent Act that gave the MACC greater powers,<sup>5</sup> the MACC has been aggressively pursuing cases that involve members of the *Pakatan Rakyat* (People's Alliance), the coalition of parties that forms the opposition at federal level. The success of performance management is highly dependent on the effectiveness of such bodies, originally crafted to improve efficiencies by weeding out graft and corruption. A system of checks and balances to ensure the powers of the MACC are not unduly abused would be an additional recommended reform measure.

The civil service in both theory and practice must continue to be neutral and independent. Their role is to effectively carry out the policies of government and to administer the running of

<sup>5</sup> The Malaysian Anti-Corruption Commission Act 2008 replaced the Anti-Corruption Act 1997 after it was debated and passed in Parliament in December 2008. Debates took place for two days.

the country. As a key non-elected institution, administrative neutrality cannot be violated nor can it be seen to serve the partisan interests of any party, which has unfortunately been the case in Malaysia. The last general election resulted in the *Pakatan Rakyat* leading five state governments, although they are the opposition at federal level. Therefore, in the *Pakatan Rakyat*-led states, the civil service should be encouraged to maintain neutrality and professionalism in their duties, although they are seconded from the *Barisan Nasional*-led federal government. Task-driven standards should be adhered to, in the interest of the public and work itself. The public administration should ensure it is driven by performance measures and not political directives.

Public procurement is also a key area to be reformed, where current practices still involve negotiated contracts as opposed to open tenders. The governmental procurement framework in Malaysia is made up of these components: the agents involved, the legal and regulatory framework, and the tender process. The government has held that limiting information about its procurement processes is necessary to support the national agenda to protect local suppliers. In reality, Malaysia's practice of affirmative action with procurement policies designed to upgrade *Bumiputera* equity has been shrouded in secrecy. In fact, greater transparency in public procurement, regulations, and procedures would result in better performance management at all levels of public administration and within all ministries and agencies. Hence, a clear, comprehensive, and transparent policy framework governing the public procurement system should be implemented. This would include the wide advertising of bidding opportunities, maintenance of records related to the procurement process, pre-disclosure of all criteria for contract award, contract award based on objective criteria to the lowest evaluated bidder, public bid opening, access to a bidder complaints review mechanism, disclosure of the results of the procurement process, and other good practices. The government has the option of making transparent all invitations for government procurement projects, regardless of the size of the projects. Restrictions that exclude participation on the basis of ethnicity or nationality, for the purpose of reform, would then eventually be phased out.

Selected civil service reforms would also be necessary to improve performance management in public administration, such as the introduction of merit-based appointment criteria to develop the best management and technical capacities. Other recommendations include the need to explore the relationship between government-linked companies (GLCs) and government, as well as between private crony companies and government, large financial transactions of which have a direct and invariable effect on the efficiencies of the administration's performance and their financial health. In addition, the civil service should also be representative of the ethnic breakdown in Malaysia. The current civil service is disproportionate, with Malays forming 77% of its workforce. It is imperative to have an ethnically balanced civil service not only to ensure equitable employment and governmental responsiveness to needs and wishes, but also to enhance the capacity and performance of the civil service itself through promoting a culture and ethos of national competitiveness. It is also important to ensure that all policies of ethnically based affirmative action are eventually phased out in line with the call for a united Malaysia. Presently, elements of the NEP that carry on till today are unhealthy and impede on operational efficiency. Specifically, it is important to amend those policies that grant favor toward the *Bumiputera* community on employment and promotions should be on the basis of meritocracy as opposed to ethnicity.

All performance management reforms could be correctly communicated to members of the public, in order that positive feedback can be obtained. Key is having quick response mechanisms to better facilitate and maintain the relationship between the public service and the public at large. Governance and accountability systems are perceived to be the more important of the reforms that need to be implemented immediately, as public demands for access to information and transparency steadily increase. Accountability and monitoring tools must be learnt from international best

practices, including keeping strictly to quality standards already set in place. Numerous reform measures will amount to little if these are poorly implemented, in particular government must ensure that performance management is not perceived to be ethnically biased, instead recognizing a system of meritocracy when evaluating efficiency and effectiveness of employees and staff.

## 10.5 Conclusion

It is important to note that performance management reforms have to be synchronized and equally matched with the political will to execute them. The last decade has seen numerous attempts at enhancing public administration. In recent years, however, Malaysians have acutely observed the manner in which public administration regulations are hampered by political influence. True reform places at its highest objective the need to implement programs efficiently, professionally, and effectively. Malaysia's international ranking within corruption indices has fallen, and the continuation of this trend will have a detrimental effect on efforts to improve public administration performance.

There are increasing calls for the independence of institutions in the country, which also has a direct implication on the effectiveness of the civil service. Future public administration reforms could do well in focusing on the areas highlighted in the above section. In a dynamic and changing environment, the Malaysian government has a wide menu of options available in institutionalizing such reform practices. Some fundamental reforms that have been recommended here include enhancing the work of PEMUDAH, expanding on IT tools, having clear vision and consolidation of public administration reform practices, putting in place systems of public accountability and transparency, legislating access to information as a principle, reforming the civil service, using meritocracy and need in place of ethnically based policy, and communicating these reforms effectively both internally and externally. All levels of the civil service need to be conscientized to both the reasons and detail of reform measures. Finally, in order for substantial reform to amount to actual results, it is imperative that the Malaysian government first sorts out its fundamental and systemic flaws. Only then will any regulation, circular, policy, and legislation take full effect independently. Prime Minister Najib's calls for the KPI and NKRA policies would see the successful implementation of public administration efficiency only with equal commitment toward integrity. With the fundamentals in place, it will then be possible for Malaysia to continue its past accomplishments of top quality performance management standards at all levels of its public administration.

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# Chapter 11

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## Civil Service System in Malaysia

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Noor Hazilah Abd Manaf

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### 11.1 Introduction

The Malaysian civil service (MCS) can be traced back to British rule when the Federated Malay States (FMS) were established in 1896. The FMS opened a new chapter for the centralization of administration of the states of Pahang, Negri Sembilan, Selangor, and Perak with the British residents in the respective states reporting to the resident general in Kuala Lumpur. The Unfederated Malay States (UMS) comprising Kedah, Johore, Kelantan, Perlis, and Terengganu were indirectly administered by a British adviser in each state, who was appointed in an advisory capacity and did not have executive power [1].

From 1824, when the Malay Peninsula came under the British sphere of influence under the Dutch-Anglo Treaty, and until Malaya gained independence in 1957, the country had been



under British rule for over 100 years. Thus, by the time the country gained independence, the administrative machinery of the country was already in place based on the British colonial influence. Among others, the British had instituted the District and Land Offices, and had formed the Malayan Civil Service (MCS) as the main administrative body of the country. The federal-state system of government was already in place with a cabinet that comprised the Department of Internal Affairs, Department of Economy, Department of Agriculture and Forestry, Department of Education, Department of Health, Department of Industry and Social Relations, Department of Land, Mining and Communication, and the Department of Housing and Public Works [2]. When the country gained independence in 1957 as the Federation of Malaya, the system of administration was naturally that of an extension of the British administration.

The constitution of 1957 that allowed for an independent Malaya, gave the states equal constitutional status and relations to one another. All states were also equal in their relations to the center, but they were not equal to the center except in constitutional recognition. The powers of the federal government were enhanced on matters such as financial provision since the central government is the main taxing authority of the country. The states are only allowed taxing rights over revenue from land and forests. The constitution also allowed for emergency provision to rest with the central authority and this clearly gave the federal government enhanced power over the states [3]. The 1957 constitution provided the basis for the Federation of Malaysia Constitution of 1963 with the admission of three new states, i.e., Singapore, Sarawak, and Sabah into the federation. Singapore eventually left the federation in 1965 to be an independent nation in its own right.

Three main government systems evolved against the historical backdrop of the country; constitutional monarchy, parliamentary democracy and federalism. The three systems looked after the interests of all parties—the position of the Malay rulers of the states, the autonomy of the state government, and the interests of a multi-racial society with Malays, Chinese, and Indians as the main racial groups. The three governing systems have allowed for the country to have stability over the years since its independence in 1957, and this stability has, in turn, allowed for economic progress and development to take place.

## 11.2 Malaysian Civil Service

Civil service in Malaysia is carried out at both the federal and state level. At the federal level, the administration of the country is performed by the various ministries and departments, while at the state level, the civil service system comprises the local government and local administration. The number of public sector employees was once the biggest in the country, although a dwindling of its size has been observed in recent times. During the early post-colonization era, the civil service formed the largest employment in the country, employing about 300,000 or 16% of total employment. In 1997, the number reached almost 700,000. Following the country's privatization exercise and an emphasis on the private sector as the country's engine of growth, the number has been decreasing, currently standing at about 650,000 [4]. Still, if the armed forces and police force are included, the Malaysian civil service numbers about 1.2 million employees.<sup>1</sup>

Employees of the Malaysian civil service can be broadly grouped into two categories, the Managerial and Professional Group; and the Support Group. The Managerial and Professional Group requires a university degree as entry qualification. Senior officers from the Management and

<sup>1</sup> *The Star Online*, May 8, 2007, <http://thestar.com.my/news/story> (accessed October 1, 2009).

**Table 11.1 Civil Service Structure**

<i>Categories</i>	<i>Group</i>	<i>Entry Qualification</i>
Managerial and professional group	Premier civil service position	Promoted from professional and management group
	Professional and management group	University degree
Support group	Support Group I	College diploma or higher school certificate
	Support Group II	Secondary school certificate or lower school certificate

Professional Group are promoted to the rank of Premier Civil Service positions or *Jawatan Utama Sektor Awam* (JUSA). These positions are most coveted in terms of salary, perks, and responsibilities, and are often referred to by the acronym JUSA. The Support Group on the other hand is further categorized into two, i.e., Support Group I and Support Group II. The entry qualification for Support Group I is college diploma or higher school certificate, while the entry qualification for Support Group II is secondary school certificate or lower school certificate. The Managerial and Professional Group serves as officers in the Malaysian civil service, while the Support Group serves as assistant officers. There are 246,202 officers in the Management and Professional Group and 1,603 in the Premier Civil Service positions<sup>2</sup>; while the rest are the Support Group employees. The structure is depicted in Table 11.1.

Malaysia's civil service is much influenced by its colonial past, a legacy left by the British. It must be noted that among the purposes of British colonization policy was for colonized countries to provide raw materials needed for the booming industrial sector in Britain. Thus, Malaya was developed by the British as a major producer of raw materials such as rubber and tin. This move saw mass migration of Chinese and Indians to work in the tin mines and rubber estates, respectively [5]. The resultant effect was ethnic segregation along economic functions, with the Chinese as traders and tin miners; the Indians in rubber plantations and as white-collar workers; and the Malays in the rural areas as farmers and fishermen. As the Malays became more concerned with being economically marginalized in their own country, this was, among others, placated by the British by opening the civil service to the Malays. The recruitment quotas for the administrative elite were introduced in 1952, and the practice continued unaltered after independence [6]. This historically sets the basis for the country's civil service to be gradually dominated by the Malays, and continues today. Table 11.2 shows the proportion by ethnicity on entry to the Administrative and Diplomatic Service (ADS).

While the practice was acceptable during the early post-colonial period as part of the bargaining arrangement between the Malays, Chinese, and Indians; the situation has changed after more than half a century of independence. There is now greater pressure for the composition of the civil service, particularly the elite ADS, to reflect the ethnic composition of the country. The government has responded accordingly. In 2007, non-Bumiputra composition in the civil service increased to 15.3%; and assurance was given by the Chief Secretary to the Government that

<sup>2</sup> The Malaysian Bar, May 22, 2007, <http://www.malaysianbar.org.my/news> (accessed September 30, 2009).

**Table 11.2 Entry to the Administrative and Diplomatic Service (1998, 2001–2003)**

Year	<i>Bumiputra: Malay, Sabah, Sarawak</i>	<i>Non-Bumiputra: Chinese, Indian</i>	<i>Non-Bumiputra as Percentage of Total</i>
1998	72	8	10.0
2001	229	15	6.1
2002	286	35	10.9
2003	241	34	12.4

Source: McCourt, W. and Foon, L. M., Malaysia as model: Policy transferability in an Asian country, *Public Management Review*, 19, 2, 222, 2007.

recruitment and promotion within the civil service will not be based on racial considerations.<sup>3</sup> However, job applications into the civil service from ethnic groups other than Malays are low to begin with. In 2003, only 1.9% and 2.2% of the 350,000 civil service applicants were Chinese and Indians, respectively [7]. It has also been noticed that since the 1990s the number of Chinese applicants has been decreasing for the technical and professional positions as well, such as accountants, engineers, and scientists, which they used to dominate [8]. A number of reasons have been attributed to this. One is the social belief that Chinese in particular are not interested in working for the government because of pay. Although a sharp salary revision carried out in July 2007 has made civil service pay more attractive, it is still a little early to see its impact. But sentiment deeply rooted in the historical divide of the Malays being in government, the Chinese in business, and the Indians in the plantations has also been reasoned as to why other ethnic groups are keeping away from the civil service [9].

In general, civil service pay has been much less than that of the private sector. This has led to a situation where the civil service was not able to attract the best talent, or as mentioned earlier, also made it less attractive to the other ethnic groups in the country. But a healthy trend toward it becoming the career of choice among graduates has been observed in recent times. It is now fast becoming very competitive to join the public service, as can be seen in the number of applicants as opposed to the number of vacancies for selected positions in [Table 11.3](#).

The notion that a government job does not pay well and is not attractive, no longer holds, especially following the sharp salary revision in July 2007, discussed further. Factor in the very generous pension scheme and housing loan, numerous perks such as medical benefits that extend to the spouse, children and parents; opportunities to further studies on government scholarship, and various allowances such as a housing allowance and a cost of living allowance; and critical allowance for some services; certainly the Malaysian civil service package has come of age. Thus, greater competition to join the civil service will be the order of the day.

The main central agency for human resource in the Malaysian civil service is the Public Service Division (PSD) or *Jabatan Perkhidmatan Awam* (JPA). All human resource policies and implementation are centralized under the PSD, and are transmitted to the various ministries and departments through administrative circulars issued by the PSD. Another central agency that is involved in human resource functions of the civil service is the Public Service Commission (PSC). However, unlike the PSD's comprehensive responsibilities over human resource management, the

<sup>3</sup> *China Press*, January 11, 2008, Regardless of race, gender, only the best will be employed and promoted, [http://www.pemudah.gov.my/China\\_press\\_110108\\_exclusive\\_interview\\_with\\_KSN.asp](http://www.pemudah.gov.my/China_press_110108_exclusive_interview_with_KSN.asp) (accessed January 28, 2008).

**Table 11.3 Response to Vacancies in the Public Sector in 2006**

<i>Graduate Post</i>	<i>Ministry/Department</i>	<i>No. of Vacancies</i>	<i>No. of Applicants</i>
Accountant	Accountant-Generals' Department	14	8,114
Economic affairs officer	Entrepreneurial Development and Cooperative Ministry	9	20,752
Research officer	Fisheries Department	2	21,941
Corporate communications officer	Human Resource Ministry	13	19,325
Counselor	Public Service Department	17	10,106
Factory and machinery maintenance	Human Resource Ministry	8	4,065
Information technology officer	Public Service Department	100	12,937
Law officer	Attorney-General Department	146	2,357
Electronic engineer	Railway Department	1	3,705
Investigation officer	Anti-Corruption Agency	33	12,055
Administrative and diplomatic officer	Public Service Department	350	44,758
Research officer	National Remote Sensing Center	1	22,218

Source: *The Star Online*, December 16, 2007, The civil service beckons, <http://www.thestar.com.my/news/story> (accessed December 10, 2009).

PSC's activities are confined mainly to recruitment and selection, and disciplinary matters of the civil servants. The need for another body to exercise these functions was a deliberate attempt to ensure independence and neutrality in the selection process, as well as on matters of a disciplinary nature.

### **11.2.1 Public Service Department**

The PSD determines policies on all matters pertaining to human resource of the Malaysian civil service. It is a department under the Prime Minister's Department. The main objective of the PSD is to ensure that the public service is manned by efficient, dedicated, and well-trained personnel capable of implementing government policies and objectives. The PSD exercises control over the terms and conditions of service as well as the creation and grading of posts in the civil service. Apart from that, placement and transfers of officers, promotion and disciplinary matters, administration of pensions and retiring benefits, and training and development of personnel also come under the jurisdiction of the PSD. This results in a highly centralized and hierarchical administration of human resources in the public service. Although this approach ensures uniformity across the civil service, it has often been criticized for unnecessary delays and bureaucratic hassle. This also creates a situation where the line departments become overly dependent on the PSD, a staff agency, for its human resource matters [10].

The training arm of the PSD is the National Institute of Public Administration, better known by its Malay acronym INTAN. It deserves further explanation owing to the importance of training and development in the Malaysian civil service. Founded in 1972, INTAN provides training to the whole public sector, with courses in areas such as economic development and policy management, quality management, financial management, information technology, and languages. Throughout the 1990s, INTAN played a major role in enhancing the awareness and commitment toward quality and continuous improvement among the public sector employees, and this was followed by realignment in its courses toward achieving Vision 2020<sup>4</sup> in later years.

The establishment of INTAN was in direct response to the recommendation made by Professors John Montgomery and Milton Esman in their report to the Malaysian government entitled "Development Administration in Malaysia," which was submitted in 1966.<sup>5</sup> The report emphasized the need for comprehensive training for the Malaysian civil service, after they had observed the following in the course of their interaction with the Malaysian civil service: "*We have encountered many references to on-the-job training, but little evidence that such training actually exists. In some instances individuals are given assignments with no training at all; in others, they are taught routines and procedures that offer no insight into the purpose and meaning of their work* [13]."

INTAN has come a long way since the Esman-Montgomery Report and has been a major player in enhancing the capacity and effectiveness of the public sector in addition to developing a civil service that is progressive and responsive to the needs of the nation.

<sup>4</sup> Malaysia's Vision 2020 aims to create a united nation, with a confident Malaysian society, infused by strong moral and ethical values, living in a society that is democratic, moral and tolerant, caring, economically just and equitable, progressive and prosperous, and in full possession of an economy that is competitive, dynamic, robust and resilient [11].

<sup>5</sup> The Montgomery-Esman Report is often considered a landmark in reform efforts in the Malaysian civil service as it sets the departure of orientation and philosophy of public administration in Malaysia from one of maintenance to development administration [12].

### 11.2.2 Public Service Commission

Under the federal constitution, the role of the PSC is to appoint, confirm, emplace on permanent or pensionable establishment, promote, transfer, and exercise disciplinary control over members of the civil service. Recruitment exercise is carried out by the PSC throughout the year and application is made online via the SPA website, where an applicant is allowed to apply for a maximum of ten job vacancies. Although, technically, the PSC is responsible for the appointment of all civil servants, respective ministries and departments are also allowed to appoint lower category staff (i.e., those requiring only Malaysian Certificate of Education certificate and below) by way of delegation of authority from the PSC.

Short-listed candidates are then called for interviews. However, in some cases, candidates are required to sit for examinations prior to the interview process. A total of 14 designated posts require candidates to sit for entrance examinations and these include administrative officer, archive officer, investigating officer, security officer, counselor, sports and youth officer, and public defence officer. Depending on the particular job designations, the scope of the examination generally covers aptitude, cognitive, talent as well as physical abilities. The examinations are also conducted throughout the year and the examination schedule is published on the PSC website.

Interviews for candidates are conducted all over the country, including Sabah and Sarawak, and representatives from the respective ministries are invited to sit on the Interview Board. Serving officers who have attained higher qualifications are also encouraged to apply for higher positions and they will be called for interview without having to go through the first selection process. This recruitment process, known as Promotion Through Direct Appointment or *Kenaikan Pangkat Secara Lantikan* (KPSL) however, does not guarantee the promotion of the applying officers since they are still required to compete with the other short-listed candidates. For critical positions such as medical officers, dental officers, and pharmacists, the selection process is through the “open system,” where candidates are required to submit their application online, then get an appointment for interview, and subsequently successful candidates will be given a letter of appointment on the day of the interview.<sup>6</sup>

### 11.2.3 Recruitment and Selection

The recruitment process of the Malaysian civil service begins with the concerned department getting clearance from the Treasury for the staff salary, and the PSD for filling the post. If it is a new post, the department will first need to seek approval from the PSD and the Treasury to establish the post during the annual budget exercise. This will require justification on the part of the requesting department for the need of the new posts. The task of recruiting and selecting qualified candidates for the post is then taken over by the PSC. The PSC runs the year-round application system, or *Sistem Mengambil Sepanjang Masa* (SMSM), made possible by the use of online application via the SPC website. The selection process comprising shortlisting of candidates and interview follow suit. For some posts, applicants are required to sit for tests relevant to the skills and capacity required to perform the job effectively. Thus, the emphasis in the selection and recruitment is based on merit, rather than political considerations or nepotism. This was the reason why this process was entrusted to another agency, endowed with its own constitutional authority, to ensure integrity and neutrality in the process.

<sup>6</sup> Public Service Commission, <http://www.spa.gov.my> (accessed February 20, 2008).

Successful candidates receive their appointment letters from the PSC subject to passing a medical examination. Once appointed, they are placed on a probationary period of 3 years. They can only be confirmed in service if they have met all the conditions for confirmation, which are: having fulfilled the probationary period; attended the induction course successfully and passed all required service examinations; and endorsed by the Head of Department.<sup>7</sup> Employees whose appointments are made by Promotion Through Direct Appointment or *Kenaikan Pangkat Secara Lantikan* (KPSL) are exempted from the probationary exercise.

The induction course was made compulsory to all civil servants employed after January 1, 1992 as criteria for confirmation in service under the New Remuneration Scheme (NRS). The objective of the induction course is to impart the knowledge and exposure to all civil servants on the history of the country, the government's main policies, and the national development agenda. Explanation on the government's administrative system, main procedures and directives, and the government's administrative circulars are also given to the newly appointed participants. Values such as excellent work ethics among the civil servants are also imparted to the participants during the induction course.<sup>8</sup>

Throughout his/her employment with the civil service, an employee is also required to undergo a competency-based evaluation known as competency assessment level (CAL). Competency assessment was introduced in 2002 under the Malaysian Remuneration System (MRS).<sup>9</sup> Under the MRS, achievement of specific competencies or proficiencies related to the job is given priority and encouraged. This is in tandem with the government's initiatives to create a learning culture within the civil service. Employees in the appointment grades are required to pass two CALs (CAL 1 and CAL 2), while for promotional grades, employees are required to pass one CAL at each grade, beginning with CAL 3.<sup>10</sup> The CALs and methodology employed is shown in [Table 11.4](#).

#### **11.2.4 Malaysian Administrative Modernization and Management Planning Unit**

Apart from the PSD and PSC, another important central agency in the Malaysian civil service is the Malaysian Administrative Modernization and Management Planning Unit (MAMPU). MAMPU also had its history rooted in the Esman-Montgomery Report, which had suggested the immediate establishment of a Development Administration Unit (DAU) in the Prime Minister's Department. Their suggestion came in light of the need to have some coordination in what had seemed an endless proliferation of new agencies that typified the civil service during the 1960s and 1970s. The unit was to be free of operating responsibilities and was to be entrusted with strategic long-term planning for administrative improvement and development within the civil service. DAU was later to give birth to the present day MAMPU, the body that is entrusted with the task of introducing administrative reforms for the various ministries and departments, which also comes under the Prime Minister's Department.

The reforms were aimed at increasing the quality, efficiency, and effectiveness of the public service in line with national goals. The Malaysian civil service has seen a number of reform efforts

<sup>7</sup> Public Service Commission, <http://www.spa.gov.my> (accessed September 29, 2009).

<sup>8</sup> Administrative Circular No. 2, 1992, Government of Malaysia.

<sup>9</sup> Administrative Circular No. 4, 2002, Government of Malaysia.

<sup>10</sup> Country paper on Human Resource Development in the Public Service – Malaysian Experience, presented by the Public Service Department at the 13th ASEAN Conference on Civil Service Matters (ACCSM), December 20–22, 2005, Phnom Penh, Cambodia.

**Table 11.4 Competency Assessment Levels and Methods According to Service Groups**

<i>Competency Assessment Level</i>	<i>Management and Professional Group</i>	<i>Support Group I (Diploma/Malaysian Higher School Certificate of Education/Malaysian Certificate of Education and Equivalent)</i>	<i>Support Group II (Lower Secondary Assessment/Lower Certificate of Education and Below)</i>
CAL 1	Examination and course on nation building	Examination and course on nation building	Certificates of skills, interviews, practical tests, or other types of evaluation specified
CAL 2	Examination	Examination	
CAL 3	Courses	Examination	
CAL 4 and above	Courses	Courses	

Source: Public Service Department.



carried out since the 1980s, and MAMPU oversees and monitors the implementation of the reform efforts in the various government bodies. Administrative reform currently undertaken by MAMPU is in inculcating a quality culture within the public service, strengthening management integrity in the operations of the public sector, and supporting the objectives of private-public sector collaboration under the Malaysia Incorporated Policy. MAMPU also serves as the central agency that provides technical and management expertise for the development of information and communications technology (ICT) and office automation in the public sector.<sup>11</sup>

### **11.2.5 Administrative and Diplomatic Service**

The Malaysian Administrative and Diplomatic Service (ADS) deserves a special mention in any write-up on the Malaysian civil service system. This is because almost all the senior government officials in the country are from the ADS, including secondment positions from the ADS to public corporations and other statutory agencies. Many of the strategic and key decision-making positions in the Malaysian civil service are held by ADS officers, and consequently they have tremendous responsibilities and discretionary powers. Such was the importance of the ADS that the Esman-Montgomery Report emphasized the need for the government to strengthen the skills and knowledge of its ADS<sup>12</sup> officers through specialized post-entry training. The ADS can be regarded as an elitist service, which derives its nature from the legacy of the colonial British administrative system. The British also realized the importance of absorbing Malays from the upper social strata to become administrators, a legacy that is observed today in the ADS being ethnically composed of mainly Malays.

The ADS was first established by the British as the Malayan Civil Service. It was renamed the Malaysian civil service after the country gained independence in 1957, and was later merged with the Malaysian Foreign Service in 1967 to form the Malaysian Home and Foreign Service. The name was changed to ADS in 1971 to reflect its role more accurately. A unique feature of the ADS is its generalist character, although this trait is more prevalent during the 1960s and 1970s where mostly liberal arts graduates were appointed to the ADS. The generalist character of the ADS has also been raised in the Esman-Montgomery Report to the Malaysian government. The report had raised the fear of over-specialization in the Malaysian civil service, which tends to weaken the capacity of the ADS to retain policy control since ADS officers are mostly generalists [14].

Senior civil servants in the country are organized and classified as administrators (generalists) and professionals (specialists). Most of the senior civil servants are ADS officers who are generalist. However, at the departmental level, most departments are headed by officers from related services such as the Public Works Department being headed by an engineer. The dichotomy between administrators and professionals, with greater power and authority vested in the administrators, produced a somewhat love-hate relationship between the ADS and the other services. Some professional departments resent the concentration of administrative authority of the ADS, and what is often seen as excessive administrative interference over professional autonomy [15]. As highlighted in the Esman-Montgomery Report, the Malaysian civil service system, which is closed to those who have not entered at junior levels, tends to prevent the rise of specialists into policy-making roles. This created a situation where specialists in the higher ranks are encouraged to

<sup>11</sup> MAMPU, <http://www.mampu.gov.my/mampueng/Corporat/Introduction.htm> (accessed April 6, 2008).

<sup>12</sup> The Esman-Montgomery Report referred to ADS officers as Malaysian civil service officers, as the service was then known.

become over-specialized, while the generalists tend to become over-generalized. Thus, an artificial gap exists between the professionals and the administrators [16].

The generalist nature of the ADS can be tied to its selection process where the minimum entry requirement is an honors bachelor degree (from any discipline) from an institution that is recognized by the government. However, being a premier service, the selection process for the ADS is more rigorous in comparison to other services from the Managerial and Professional Group. Despite the rigor of the selection process, fresh graduates are still attracted to join the ADS, understandably due to the “prestige” and its “elitist” image.

Short-listed candidates first sit a written test that covers topics on general knowledge about Malaysia and its environment, problem-solving skills, comprehension, and written essays in English and Malay language. Those who fare well in the examinations will be short listed to attend the PTD Assessment Center (PAC). The PAC is a 3-day program and is held in all INTAN campuses throughout the country. The competencies assessed during the PAC are personal qualities, knowledge, and skills. The personal qualities assessed are leadership potential, self-confidence and the ability to have a high tolerance level toward both physical and mental challenges, teamwork skills, and self-presentation. Aspects of knowledge that are assessed include the ability to generate ideas that are mature in outlook, substantive, and relevant. Skills that are assessed in the PAC are public-speaking skills, communication skills, and parliamentary debating skills. Apart from the three competency areas, candidates are also evaluated on their physical endurance. Marks obtained by the candidates throughout the PAC are then ranked and submitted to the PSC, where only the cream will be called for interview. Only those who successfully went through the interview will be appointed as an ADS officer.<sup>13</sup>

Being appointed an ADS officer is just the beginning as there are four more stages that an ADS officer has to go through on gaining entry into the service; the first being a 10-day course called “PTD *Unggul*.”<sup>14</sup> The course serves as the foundation course in educating ADS officers on the need to subscribe to an excellent work culture and the role they have to play in fulfilling the aspirations of the nation and its stakeholders. At the end of the course, the young recruits are informed of their job assignments and which ministries or departments they are attached to, be it at the state or federal level. And so begins the next phase of the career path of an ADS officer, where he/she will then undergo a 6-month on-the-job training. The 6-month stint is followed by the compulsory requirement to attend another 6-month Diploma in Public Administration (DPA) course at INTAN’s main campus in Bukit Kiara. The DPA course not only stresses the academic aspect of public administration, but also emphasizes elements such as discipline and character building in order to mould a “super” ADS officer.

ADS officers are assigned their postings once they have completed their Diploma in Public Administration. Only then are they full-fledged ADS officers, but their career development does not end with their postings. Throughout their career, they will be required to attend training courses from time to time in line with the spirit of continuous learning. These courses, collectively known as “PTD Training Roadmap M41” covers aspects such as communication and interpersonal skills, accountability and financial management, public policy management, strategic thinking skills, project management and planning, and public sector human resource management.

<sup>13</sup>National Institute of Public Administration (INTAN), [http://www.intanbk.intan.my/cda/m\\_ptd/on\\_pac.php](http://www.intanbk.intan.my/cda/m_ptd/on_pac.php) (accessed January 24, 2008).

<sup>14</sup>“*Unggul*” is literally translated as “important” in English, but the word carries a deeper meaning than just importance. The PTD website expresses the word as “*something beyond the ordinary*,” [http://www.intanbk.intan.my/cda/m\\_ptd/on\\_pac.php](http://www.intanbk.intan.my/cda/m_ptd/on_pac.php) (accessed January 24, 2008).

Such was the rigour in the selection and development of an ADS officer in recognition of the importance of the service to the Malaysian public sector. As it is, almost all strategic and important posts within the Malaysian civil service are held by ADS officers; among others, these include the posts of secretary general and deputy secretary general, director general and deputy director general, state secretary, ambassadors and district officers.

### 11.3 Compensation and Benefits

The Malaysian civil service is known to have a one-fits-all system for compensation and benefits that applies throughout the whole public sector. The career of a civil servant in the country is determined by the “scheme of service” of the various classes of jobs. Thus, an officer is recruited to the lowest grade in a scheme of service and not to a particular post. An officer who holds a post in a certain grade is eligible for promotion to a higher grade within the same scheme of service to which he belongs. All appointments in the civil service are made in accordance with the required qualifications as stipulated in the specific scheme of service, which are determined by the Public Service Department. The PSD also has the authority to make any revisions or amendments to the existing scheme of service, or formulate new ones [17].

Prior to the introduction of the NRS, which came into effect in 1992, Malaysian civil servants were classified into categories A, B, C, and D. Category A consisted of the Managerial and Professional Group, which required a university degree as entry requirement; category B consisted of the executive and sub-professional group, which required a diploma or high school certificate; category C consisted of the clerical and technical group, which required the Malaysian Certificate of Education (equivalent to the British “O” Levels); and category D consisted of manual workers and required only a lower school certificate as entry qualification. This classification was collapsed into two groups, namely, the Managerial and Professional Group, and the Support Group, following the introduction of the NRS. The purpose of collapsing the groups was to reduce the level of hierarchy within the civil service. The introduction of the NRS also saw 574 scheme of service reorganized and reduced to only 274 schemes and 19 classifications based on similarities of roles and functions [18].

The introduction of the NRS in 1992 was a milestone in the history of the Malaysian civil service, as it was the first time that a performance-based reward system was introduced. It was also an attempt on the part of the Malaysian government to prevent “brain drain” of its civil servants to the private sector. The NRS introduced an entirely new salary structure, known as the Matrix Salary Schedule (MSS), for all sectors of the public service except for those in the premier grade posts (JUSA). This allows for flexibility in remunerating the civil servants. Unlike the previous fixed one-line salary structure where the movement of salary was fixed, the NRS allows for salary movement to be either in the form of static, horizontal, vertical, or diagonal movement. The type of movement is linked to the performance of the individual based on his/her performance appraisal, which comes under the New Performance Appraisal System (NPAS). A civil servant whose performance appraisal is found to be “not satisfactory” receives no salary increment (static), while those whose performance is rated as “satisfactory” will be given horizontal pay progression (one-step pay increment). Vertical pay progression (two-step pay increment) is given to those with “good” performance rating, while those with “excellent” performance rating will receive diagonal pay progression (three-step pay increment) [19]. There is also a quota of 3% for vertical salary movement and 2% for diagonal progression. This is the main difference between the NRS and the previous system—the NRS is a performance-based

system as opposed to the seniority-based system of the past. Thus, the introduction of the NRS was a jolt to the civil servants who had long been accustomed to the seniority-based system. Performance appraisal used in the civil service beginning with the NRS was clearly performance-based, which was a significant and bold move on the part of the government in an attempt to change the culture of the civil service through its reward system. Consequently, the impact of the NRS has been significant, cited as “one reason for a dramatic improvement in civil service performance [20].”

Although the new system of performance appraisal under the NRS was meant to create a more objective and reliable appraisal system, it had, however, its fair share of critics. Comments and criticism were received from both the workers and the workers’ union (CUEPACS)<sup>15</sup>; the main contention being the issue of fairness of the evaluation decision. A survey by CUEPACS showed that 90% of civil servants were not happy with the implementation of the new appraisal system. The issue of subjectivity and human bias in evaluation, lack of consistency in the evaluation process, and raters did not seem to be knowledgeable or have adequate skills to rate their subordinates were among the bones of contention [21].

Taking stock of the mounting criticism, another pay plan was introduced in November 2002, known as the Malaysian Remuneration System (MRS). The MRS was not to replace the NRS. Rather it provided an avenue for those who were not satisfied with the NRS to opt for the MRS. The MRS retains the elements of the MSS. However, the static, horizontal, vertical, and diagonal salary progression was replaced with regular salary progression, which is akin to horizontal salary movement under the NRS. However, under the MRS, a shift in salary progression is not only based on an individual’s performance, but also subject to him/her passing the CAL. Thus, one of the main changes of the MRS is the introduction of competency assessment, which was totally devoid from the civil service landscape previously. One of the objectives of CAL is to create a learning organization in the public sector and also to develop knowledge workers among the civil servants [22]. It is still too early to gauge the effectiveness of the MRS on the issue of compensation in the Malaysian civil service, although the need to pass the CAL has been viewed in some quarters as an added bureaucratic burden to both the organization and the employees. Nonetheless, despite the shortcomings, a performance and competency-based reward system coupled with salary and compensation that is among the best in the region,<sup>16</sup> sees the Malaysian civil service moving in the right direction toward becoming a world-class civil service.

Civil service pay in Malaysia used to be much inferior to that of the private sector. However, over the years, civil service pay in general has much improved, although it will never be able to match the salaries of the larger corporations of the private sector. Between 1967 and 1977, seven salary commissions were appointed, and their recommendations were all acceptable to the government except for the recommendations of the Ibrahim Ali Commission in 1975. The government then established a cabinet committee following the Ibrahim Ali Commission, and the recommendations of the committee were implemented in the following year [23]. Following this, further salary revisions were decided on by cabinet-level committees. For the year 2000 pay revision, the government decided to make an across-the-board 10% salary increase for all services, and this was followed again in 2002 [24]. In May 2007, the government again announced a salary increase to

<sup>15</sup> CUEPACS stands for Congress of Union of Employees in the Public and Civil Service.

<sup>16</sup> *China Press*, January 11, 2008, Regardless of race, gender, only the best will be employed and promoted, [http://www.pemudah.gov.my/China\\_press\\_1101108\\_exclusive\\_interview\\_with](http://www.pemudah.gov.my/China_press_1101108_exclusive_interview_with) KSN.asp (accessed January 28, 2008).

the civil servants. This time around, the revision upward was substantial with the Support Group II getting an increment of 35% and Support Group I an increase of 25%. Higher-ranking officers from the Management and Professional Group, and the Premier Grade Groups (JUSA), received an increment of 15% and 7.5%, respectively.<sup>17</sup>

Thus, with the 2007 increase, civil service pay has become more comparable, if not better than the private sector. Lower-level workers in the government receive a minimum wage of at least RM1000 together with medical benefits for self and family, as well as a pension, while workers of the same level in the private sector receive between RM500 and RM600 monthly with minimal medical benefits.<sup>18</sup> Early career graduates in the private sector may draw a starting salary of RM1800 to RM2500, depending on the nature of the work, and the organization, as well as the industry. In the civil service, it may be higher, as shown in [Table 11.5](#). The stability of tenure of government jobs is also often seen as an attraction, however, the salary increments and upward mobility is still slow in comparison to the private sector. Unlike the private sector, which may swiftly decide on human resource matters such as promotion, in the public sector, such affairs have to be referred to the central agency, and given the size of the public sector and the numerous schemes of service and salary grades, this certainly affects the pace. Still, the civil service is fast becoming the career of choice given the attractive remuneration package.<sup>19</sup>

Other benefits enjoyed by civil servants, such as medical benefits for life and for the whole family, a generous pension scheme, housing loan with an interest rate of only 4%, scholarship for full-time postgraduate studies with full-pay, maternity leave for two months with full pay, career development opportunities in terms of training and professional recognition, has managed to retain civil servants over the years. The introduction of performance-based and competency-based performance appraisal through the NRS, followed by the MRS was also an attempt by the government to cap the flow of its workers to the private sector. Only in areas such as medicine, where the salary gap between the public and private sector is too wide, is the issue of brain-drain significant. This is also being addressed by the government giving a generous allowance to doctors and other health professionals, but the disparity between public and private pay is too wide for the government to match, especially for medical specialists in private practice [25]. The starting salary for a sample of posts in the civil service is as in [Table 11.3](#).

## 11.4 Civil Service Pension Scheme

It must also be pointed out that the pension scheme is one of the unique features of the Malaysian civil service, and a discussion on the compensation and benefits for the Malaysian civil servants is inadequate if the pension scheme is not deliberated on. The civil service pension scheme is also a legacy of the British administration, which was introduced in 1875. It is a non-contributory scheme that provides support to employees in public service after they retire and to their dependants for a specified period after their death. The pension formula is calculated from the last drawn salary divided by the length of service subject to a maximum of 25 years, but the resulting amount

<sup>17</sup> The Malaysian Bar, May 22, 2007, Record pay rise: Between 7.5% and 42%, <http://www.malaysianbar.org.my/news> (accessed September 30, 2009).

<sup>18</sup> *The Star Online*, February 16, 2009, In times of volatility, government jobs offer security, <http://biz.thestar.com.my> (accessed September 29, 2009).

<sup>19</sup> *The Star Online*, December 16, 2007, The civil service beckons, <http://biz.thestar.com.my> (accessed October 1, 2009).

**Table 11.5 Starting Salary for Selected Posts in Malaysian Civil Service**

<i>Post</i>	<i>Salary Grade</i>	<i>Starting Salary (RM)<sup>a</sup></i>	<i>Civil Service Allowance (RM)</i>	<i>Housing Allowance (RM)</i>	<i>Cost of Living Allowance (COLA) (RM)</i>	<i>Total (RM)</i>
<b>Managerial and Professional Group</b>						
Administrative officer	N41	1690.28	300	250	300	2540.28
Administrative and diplomatic officer	M41	1993.63	300	250	300	2843.63
Research officer	Q41	1899.01	300	250	300	2749.01
Mechanical engineer	J41	2088.25	300	250	300	2938.25
<b>Support Group II</b>						
Assistant administrative officer	N27	1204.55	160	180	300	1844.55
Assistant research officer	Q27	1207.58	160	180	300	1847.58
Assistant information technology officer	F29	1544.86	160	180	300	2184.86
Assistant engineer	1549	1549.40	160	180	300	2189.40
<b>Support Group II</b>						
Administrative assistant	N17	820.38	115	180	300	1415.38
Technician	J17	843.06	115	180	300	1438.06
Public health assistant	U17	862.73	115	180	300	1457.73
Cook	N17	820.38	115	180	300	1415.38

Source: Public Service Commission, <http://www.spa.gov.my/portal> (accessed September 29, 2009).

<sup>a</sup> US\$1 is equivalent to RM3.47.

must not be more than half of the last drawn salary.<sup>20</sup> Prior to the NRS, a civil servant would have to work with the government for at least 10 years before he or she is put on the pensionable scheme. However, under the NRS, the duration was shortened to 3 years, provided the employee has been confirmed in service. The pension is provided to a retiree for life, and in the event of his death, it is extended to his spouse, also for life; and to the children, until the age of 18 years. It is one of the benefits that have greatly contributed to the retention of workers in the public sector. The compulsory retirement age in Malaysia is 58 years, although civil servants are allowed to retire at 40 years of age, but they can only receive their pension at the age of 58.

Under the NRS, civil servants are also given the option to join the Employee Provident Fund (EPF), which relies on contributions from both employee and employer. The EPF was also established during the British administration in 1951, with the objective to provide financial support to employees on retirement, or of disability or death in work, to workers outside the public sector. Since 1997, employees contribute 11% of their salaries to the EPF while employers contribute 12%. However, in 2008, employees were allowed to reduce their contribution from 11% to 8% in order to give them more disposable income.<sup>21</sup> Employees are allowed to withdraw from the fund, which includes accumulated interest and dividends, on reaching the retirement age of 58. Apart from saving for retirement, contributors are also allowed to make partial withdrawal for housing, medical expenses, and children's higher education from time to time.

## 11.5 Civil Service Neutrality

A point that deserves a mention with regard to the Malaysian civil service is the concept of civil service neutrality. Malaysia has been ruled by the multi-racial Alliance Party since independence, which is the predecessor to the current ruling coalition of political parties known as the National Front. In both the Alliance Party and National Front, the United Malay National Organization (UMNO) has been the dominant political party. The first two presidents of UMNO as well as the country's first two prime ministers were former civil servants, which reflects the enhanced relationship between the top politicians and senior civil servants. It is also not uncommon for ministers and deputy ministers to come from the civil service, although they are required to resign from the public service in order to join politics. Despite the close relationship between politics and the civil service, Malaysian civil servants closely adhere to the concept of civil service neutrality. Though there has not been any change of government at the federal level since independence, nevertheless, political changes in state governments either from the National Front to the Opposition, or vice versa, has not in the least weakened the dedication and efficiency of the civil service to the party in power [26].

The neutrality of the civil service was also tested during UMNO's leadership crises in 1987 and 1997. In the crisis of 1987, former Prime Minister Mahathir's leadership was challenged by a group of ex-ministers; and in the 1997 crisis, the rift between him and his deputy caused him to dismiss his deputy, Anwar Ibrahim, from office. The tumultuous financial crisis that the country went through in 1997 was among the factors that led to the leadership crisis of 1997 [27]. In both cases, however, the civil service remained neutral and gave their loyalty to Prime Minister Mahathir [28]. The strongest test of civil service neutrality, however,

<sup>20</sup> Public Service Department, Pension Division, <http://www.jpapencen.gov.my> (accessed March 8, 2008).

<sup>21</sup> *The Star Online*, November 5, 2008, EPF down from 11% to 8%, <http://thestar.com.my/news/story> (accessed October 1, 2009).

was witnessed during the constitutional crisis of 1993, which erupted when the ruling party attempted to check on the prerogative powers of the Malay royalty [29]. The country, particularly the Malays, with their deep-rooted sentiment and loyalty to their sultans, were very much divided over the issue. The crisis put the country's top civil servants in a more difficult situation since they deal directly with both the *Istana*<sup>22</sup> and the political elites in discharging their duties. Despite the difficult situation, the civil service held true to the notion of neutrality, and was steadfast in its loyalty to the elected government.

Civil service neutrality was also witnessed in the aftermath of the 12th Malaysian general election held in March 2008, which was also a watershed in the political landscape of the country. For the first time in Malaysian history, the National Front lost control of four states: Kedah, Penang, Perak, and Selangor, with the Opposition continuing to retain their hold on the state of Kelantan. Overall, the opposition alliance comprising the Democratic Action Party (DAP), People Justice Party (PKR), and the Pan-Malaysian Islamic Party (PAS) won 82 seats—they had only 20 seats from the previous election—out of 222 parliamentary constituencies.<sup>23</sup> It was also the National Front's worst performance in a general election since independence, which also resulted in the loss of its two-thirds majority needed to amend the constitution.<sup>24</sup> Throughout the whole episode and the following repercussions from the election, the civil service was clear in their neutral and apolitical stance. This allowed the administration of the country to proceed as usual despite the political mayhem.

In most situations, civil servants remain aloof from the media, particularly in times of crises as mentioned above. This lends credence to their neutral stance. Even in managing daily affairs of the country, civil servants rarely make public pronouncements, leaving the task of talking to the press mainly to the political masters of the respective ministries.

## 11.6 Civil Service Culture

Civil service throughout the world with its bureaucratic image is often perceived to be less efficient than the market-driven private sector. In this respect, the Malaysian civil service has not been spared from criticisms of inefficiency too, and was perceived as a bureaucracy that was too big and too slow to adapt to a changing and dynamic world. In the words of the then Chief Secretary to the Government, Tan Sri Ahmad Sarji:

*the public service was more than not associated with “bureaucracy”; which conjures in the minds of people inefficiency and the worst of organisational nightmares. The people who have been to the “bureaucracy” experience it as red tape, inflexible policies, and being hard to do business with when decision seems to take forever [30].*

Consequently, the Malaysian civil service saw numerous reform efforts carried out from the 1980s onward. The realization on the part of the government that Malaysia will not be able to

<sup>22</sup> “*Istana*” literally means palace in Malay, but it is generally understood to be the administrative office of the sultan.

<sup>23</sup> *The Star Online*, March 9, 2008, MALAYSIA DECIDES 2008, <http://thestar.com.my/election/> (accessed October 15, 2009).

<sup>24</sup> Channelnewsasia.com, March 9, 2008, Malaysia's BN coalition suffers worst electoral defeat, <http://www.channelnewsasia.com/stories/southeastasia> (accessed October 15, 2009).



compete on a global front if its civil service does not change, prompted many of the reform efforts. The period was also signified by a global recession, and Malaysia was not spared the effects of the recession. In a move to steer the country out of the slump, the government embarked on major policy reforms that were to have radical and far-reaching consequences on the structure and culture of the Malaysian civil service.

However, despite the strides made in public service delivery, critiques have been quick to point out that the efficiency gains have been superficial, and the more deep-seated culture change within the public sector has not really materialized. Complaints received by the Public Complaints Bureau have been on the rise, ranging from issues such as delays in service provision, abuse of power, misconduct of officials, to the more serious problem of corruption. The civil service has recorded a 58% increase in formal complaints from the public, and the Public Complaint Bureau receives an average of 4000 complaints per year [31]. While the figure is high, it must also be noted that the Public Complaint Bureau has made it very easy for the public to lodge their complaints through its website complaint system. Thus, despite the criticisms, the Malaysian civil service has moved on and the government is committed to making it performance driven. The recent establishment of the National Unity and Performance Management Unit under the Prime Minister's Department to implement and monitor national key performance indicators and national key results areas (N-KRA) is a move toward enhancing performance management in the civil service.

## 11.7 Reform in the Malaysian Civil Service

Reform in the Malaysian civil service can be viewed from two perspectives. The first involves major government policies, such as Malaysia Incorporated and privatization; while the other is administrative reforms that were aimed at beefing up the service quality and productivity of the public sector. Administrative reforms aimed at improving service delivery are meant to contribute to and support the implementation of major government policies. These include the introduction of quality initiatives such as Quality Control Circles, Client's Charter, Total Quality Management, ISO 9000, and E-government, to name but a few.

Reform efforts in the Malaysian civil service were largely initiated during the 1980s, influenced by renewed interest in public sector reform in countries such as Britain, New Zealand, and Australia, and the highly influential 1992 book, *Reinventing Government* by Osborne and Gaebler [32]. The Malaysian civil service boarded the reform train too and consequently subscribed to an extensive privatization policy, as well as policies that are business-friendly such as Malaysia Incorporated and the "Look East Policy," which seeks to emulate the lessons of South Korea and Japan, for example. It is undeniable that the leadership of Premier Mahathir provided the political will for reform efforts within the Malaysian civil service. Since its independence in 1957, the public sector in Malaysia has been the prime mover in the country's development. Thus, the period from independence through the 1980s was characterized by institution building and a proliferation of public enterprises and government agencies, as the public sector was entrusted with implementing the country's 5-year economic plans. However, the global economic recession of the 1980s and the resulting financial constraints forced the Malaysian government to reassess its development strategies in the face of burdening massive public expenditure. There was also general pessimism in the ability and capacity of the government and its affiliate organizations to undertake the task of economic and industrial development of the country. The prevalent belief was that the government bureaucracies were inherently incompetent to perform this task through traditional public enterprises and state corporations. Thus, new directions and strategies were

formulated to chart the course of the country's development. This resulted in a shift in the role of the government from one of direct intervention, regulatory and system maintenance, to strategic national planning, development support, and more flexible administration [33].

Consequently, the Malaysian government introduced a number of major policies throughout the 1980s. The "Look East Policy" was introduced in 1982, which called for the nation to emulate the work ethics of more developed countries in the East, such as Japan and Korea [34]. Another major policy, "Malaysia Incorporated," patterned after Japan Inc., was introduced in 1983, and this policy had a far-reaching impact on the Malaysian civil service [35]. Malaysia Incorporated stressed the need for closer cooperation and collaboration between the public and private sectors. Under this concept, Malaysia is viewed as a company that is jointly owned by both the public and private sectors. The profits earned are shared by both sectors. Malaysia Incorporated requires the public sector to view itself as facilitators and beneficiaries of a private sector-led economic development, rather than a hindrance to the private sector through bureaucratic procedures and processes [36]. The public sector should provide the right infrastructure and environment for Malaysian businesses to have the competitive edge to compete globally.

The concept behind Malaysia Incorporated was alien to the Malaysian civil service, and the country at large. Critics saw the move as compromising the public sector to the interests of the private sector. The civil service has always been viewed as an independent body that showed no bias in carrying out the policies and programs of the government. Within the civil service too, there was apprehension that Malaysia Incorporated would lead to a diminishing role for the civil service [37].

Critics aside, the implementation of Malaysia Incorporated saw the establishment of a number of public-private sector consultative channels, such as the Malaysian Business Council (MBC) and the Malaysia Incorporated Officials Committee (MIOC). The MBC represents the highest forum for consultation between the public and private sectors, and is chaired by the prime minister. The MIOC, on the other hand, is the highest public-private consultative panel in the civil service, and is chaired by the chief secretary to the government [38]. Dialogue sessions between the public and private sectors are also regularly held in order to obtain feedback from the business community on areas of improvement in public service delivery. Administrative reform efforts, such as quality improvement efforts, Client's Charter, "paper-less" civil service, and implementation of ISO 9000, have all been attributed to policy implementation of Malaysia Incorporated.

The Malaysian government also joined the privatization bandwagon that took place widely during the 1980s, shortly after and during Margaret Thatcher's market reform era in Britain. Malaysia introduced its Privatization Policy in 1983, and is among the pioneers in the privatization movement among East Asian nations. As Malaysia was among the first few nations to embark on a privatization policy, the initial stages of implementation were rather *ad hoc* in their approach. The process and direction was made clearer with the release of the Privatization Master Plan (PMP) in 1991. According to the PMP, privatization was defined as the "transfer to the private sector of activities and functions which have traditionally rested with the public sector." The definition covers entities already owned by the government and those that would normally be undertaken by the government, such as the building of highways [39]. The PMP identified five major objectives of privatization, which were to relieve the financial and administrative burden of the government, to improve efficiency and productivity, to facilitate economic growth, to reduce the size and presence of the public sector in the economy, and to help meet the nation's development policy targets.

The civil service experienced massive rightsizing soon after the implementation of the privatization policy. Between 1991 and 1995, a total of 29 government agencies were privatized, involving the transfer of 45,546 public sector personnel to the private sector [40]. By 1999, the civil

service saw a reduction of 105,000 employees from its payroll. The significant impact was led by the privatization of large entities such as the Telecommunications Department, National Electricity Board, and the Postal Services Department, which together accounted for a reduction of 62,575 personnel, or 63% of the entire reduction [41]. The argument for privatization is for increased efficiency and productivity, with the view that the privatized entities, unencumbered by bureaucratic red tape, will move faster. Table 11.6 shows some productivity and efficiency indicators from selected privatized entities.

The objectives of privatization were timely, given the predicament Malaysia was in. Throughout the 1970s, following the implementation of the ambitious New Economic Policy (NEP), the civil service was entrusted with the role to spearhead the country's economic development through state-owned enterprises as the private sector was deemed insufficient to bear the burden of responsibility. The dual-pronged objectives of the NEP, which was to eradicate poverty and to restructure the society, also called for a state-interventionist approach. This led to the massive proliferation of the civil service, which impinged into the private sector in a decade regarded as the "golden age" of the civil service [42]. In 1965, the country had only 54 state-owned enterprises, which grew to 656 by 1980, and 1010 by 1985. Unfortunately, rapid growth did not yield commensurate gains. In fact, losses were far too heavy and by 1984, the state-owned enterprise sector deficit had reached

**Table 11.6 Efficiency and Productivity Gains Indicators of Selected Privatized Entities**

<i>Indicators</i>	<i>Before</i>	<i>After</i>
<b>Syarikat Telekom Malaysia Bhd</b>		
Return on assets (%)	4.0	9.3
Speed of access to basic services (%)	35	60
Response complaints/faults (%)	80	95
<b>Projek Lebuhraya Utara Selatan</b>		
Revenue per employee (RM)	77.69	217.57
Duration of traveling time (hours)	15.4	7.5
Daily average traffic volume (No. of vehicles)	112,117	586,125
<b>Kelang Container Terminal Bhd</b>		
Average container throughput (TEUs)	244,120	804,455
Average handling rate per ship hour average	19.94	35.78
No. of TEUs per vessel	219	415
<b>Penang Port Sdn Bhd</b>		
Gross annual profit (RM million)	24.14	41.48
Average container throughput (TEUs)	330,922	386,182
Average number of TEUs per vessel	271	322

*Source:* Seventh Malaysia Plan, 1996–2000, Economic Planning Unit, Prime Minister's Department.

RM6.8 billion [43]. With a change in climate from public sector-led to privatization sweeping the United States and the UK at the same time, it did not take long for the waves of privatization to reach Malaysian shores, given the quandary the country was in. The lure of efficiency and the workings of the “unseen hands” of market competition saw the country privatizing a whole host of services previously provided by the public sector, from utilities such as electricity and telecommunications, the postal service, garbage disposal, sewerage, and water supply; to building and operating highways, airports, seaports, rail transport, and urban public transport such as the light rail transport system; to the sale of equity and assets of state-owned enterprises ranging from the national airline to the government security printing [44]. In a complete reversal of a public sector-led economic development, the private sector was, in turn, entrusted as the engine of growth of the country’s economic development. Scaling down of economic activities from the public sector to the private sector has allowed the public sector to focus more on policy development and strategy formulation, and in tackling issues that are not attractive to the private sector, but of utmost importance, such as poverty eradication. Thus, a country that was premised on an interventionist role of the state in the 1970s went on to pursue a minimalist path through the various privatization projects that were carried out from the early 1980s onward.

However, the privatization efforts carried out by the government were not without their critics.<sup>25</sup> Issues such as conflict between public and private interests, the distributive role of government, and the ability of the private sector to undertake the social and other non-economic objectives of the government have often been cited [46]. Apart from that, the question of supervision and grouses on pricing and charges imposed by privatized entities, and service standards were other distressing issues [47]. Nevertheless, privatization continued to be an essential feature of Malaysia’s economic development strategy. During the Eighth Malaysia Plan period (2001–2005), privatization contributed to the growth and development of the economy, in line with private sector-led growth strategy and the Malaysia Incorporated Policy. During this period, 35 projects were privatized, of which 10 were existing projects and 25 new projects. At the same time, 6249 employees were transferred to the private sector, reducing the government’s administrative burden. Savings in capital expenditure to the government amounted to RM28.6 billion, and savings in operating expenditure was RM126.9 million. Proceeds from the sale of government equity amounted to RM40.5 million, while the sale of assets was RM21.7 million [48]. Privatization was carried on into the Ninth Malaysia Plan (2006–2010) and will continue to be used by the government as a vehicle to facilitate economic growth in line with the role of the private sector as the main engine of growth in the country’s economic development.

Reforming a civil service that is deeply embedded in a bureaucratic culture that has been nurtured for over a century, and one with over a million employees, is without doubt, a gargantuan task. So much so, that a prescription of a “*paradigm shift*” would be the order of the day. Various reform efforts, right from the simplest measures of wearing name tags and clocking-in system, to efforts aimed at transforming the very foundation of the civil service, such as privatization and Malaysia Incorporated, were all aimed at producing a world-class civil service that is able to face up to the challenges of globalization and a new world order. Malaysia Inc., for example, drastically changed the way the civil service was expected to play its role in national development. Privatization has also allowed the country to progress economically and has reduced the burden of the government in providing services to the public. But beyond the rhetoric, the reality of reform is further than it seems.

Without doubt, the Malaysian public has benefited much from the extensive use of ICT through the E-government initiative, but unfriendly applications and systems failure have also

<sup>25</sup>For an extensive critique of the implementation of privatization [45].

been lamented. Trying to pay taxes online has not been easy when the deadline draws nearer, so much so that extensions normally have to be given to the official deadline. The country's privatization efforts have often been criticized and dubbed "crony capitalism," particularly during the Asian financial crisis in 1997 when privatized companies such as MAS were renationalized at prices far exceeding the market value. On the administrative front, the NPAS, which was designed to introduce meritocracy in performance evaluation in the civil service, has also been heavily criticized for its unintended effect on inequity and fairness. Other administrative reforms, such as the Client's Charter, has also been criticized for being a mere publicity drive, since evidence shows that whatever is promised in the charter is not always practiced, and most customers are also unaware of their rights and entitlements [49]. Thus, reforms though well-meaning and designed for improvements in the civil service, also had unplanned effects in its implementation.

While the critics may be many and loud, the Malaysian civil service has not looked back. The personal role of Prime Minister Mahathir in his more than 20 years of premiership has indeed altered the paradigm of the civil service. Malaysia has survived the punishing financial crisis of 1997, and is looking forward to being a developing nation by 2020, despite the challenges of the current global financial crisis. Given time, the reform efforts will bear fruit, as the NEP did some 30 years ago. Acknowledging criticism and differences for improvements will further strengthen the civil service delivery system. For example, it used to take 3 days for the public to apply for an international passport, but now it can be done within 24 hours. Filing for income tax through the e-filing system has greatly reduced paperwork, and access to the system has very much improved over the years. The government is committed to further improve civil service delivery and, in 2007, established a special task force known as PEMUDAH, for the purpose of facilitating business. Currently, Malaysia is ranked 24 out of 178 economies in the World Bank's "Doing Business Index and Report 2008," which sees many quarters within the government wishing to improve on the ranking.<sup>26</sup>

## 11.8 Conclusion

In 2007, Malaysia celebrated its 50th year of independence. A country that has come of age is a far cry from its colonial beginnings. It is now the 19th largest exporting country according to the World Trade Organisation, and is in 24th position in terms of ease of doing business according to a World Bank Report.<sup>27</sup> Certainly, the civil service has contributed immensely to the development and growth of the country.

The Malaysian civil service has its roots in the British colonial administration of the country, a legacy that today still sees the civil service being highly hierarchical and centralized. Central agencies such as the Public Service Department, the PSC, and MAMPU exercise a great amount of control in the civil service. Apart from that, the elitist ADS also has a huge influence on the running and policy formulation and implementation of the civil service. The predominantly Malay workforce in a multi-ethnic and multi-cultural Malaysia can also be traced to its historical roots. The ramification of the divide-and-rule policy of the British colonialists is a largely homogenous civil service. Nonetheless, as the country forges ahead, efforts are being undertaken to attract more non-Bumiputra into the civil service.

<sup>26</sup> PEMUDAH, <http://www.pemudah.gov.my> (accessed October 1, 2009).

<sup>27</sup> World Bank, *Doing Business 2008*, World Bank, Washington, DC, 2007, <http://www.doingbusiness.org/ExploreEconomies/?economyid=119> (accessed March 24, 2008).

Reform efforts carried out within the civil service were both structural as well as administrative. Undoubtedly, the personal role of former Prime Minister Mahathir Mohammad had a huge impact on these reform efforts. Major policies such as Malaysia Incorporated and privatization were aimed at transforming the very structure of the civil service. These policies radically altered the civil service presence in the economic activities of the country; as well as in the conduct of its business. It has since been characterized as being “*genuinely performance-orientated* [50],” as bold moves such as performance-based and competence-based reward systems were introduced, coupled with an attractive remuneration package. In the words of the former chief secretary of the government, a “*paradigm shift*” would be the calling for the Malaysian civil service.

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# HONG KONG

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*Peter T.Y. Cheung*

Coordinator



## *Chapter 12*

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# History and Context of Public Administration in Hong Kong

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Eliza W.Y. Lee

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## 12.1 Introduction

Administrative development in Hong Kong can be attributed to the dual driving force of political change and economic development. The political economy of administrative development comprises the unique developmental path of Hong Kong, which features a situation of industrialization under prolonged colonial rule and its subsequent handover from one sovereign country to another. To a certain extent, Hong Kong stands out in British (or general) colonial history as the only major colony that has successfully undergone industrialization and then entered the stage of postindustrial society. It is also a rare case of colonialism, in which the path of decolonization did not lead toward independence.

We separate administrative development into five historical periods, namely, early colonial rule (1840s to 1940s), postwar years (late 1940s to late 1960s), late colonial period (early 1970s to early 1980s), political transition (1984–1997), and postcolonial era (1997–present). Each historical turning point signified major political change and economic development that triggered different institutional developments.

## 12.2 Early Colonial Rule (1840s–1940s)

### *12.2.1 Context and Driving Force of Development*

The major political change in Hong Kong began with the British takeover in 1842. Soon afterward, it was transformed into an entrepot where commerce and trading thrived. The strategic role of Hong Kong was largely defined by the metropole as a key trading post in the Asia-Pacific region.<sup>1</sup> Colonization brought about the transplantation of a western Weberian-type bureaucracy, a modern bureaucracy that originated from the British colonial administration first developed in India. The Indian civil service served as the model for the colonial bureaucracy. Its principles of meritocracy, legalism, and generalist administrative class became the hallmarks of the British home administration as well as their other colonial administrations (Chapman 1970).

Another characteristic of the colonial administration was how it constituted a bureaucratic polity. The government structure of Hong Kong resembled other British colonies in having a governor advised by the executive council, under which generalists dominated higher civil servants. Hong Kong was further distinguished by the absence of an indigenous ruling class, which was often present in other colonies and which would be co-opted by the colonial power into its governance structure. Post-1841 Hong Kong was “a new settlement with little pre-existing power structure,” a “frontier outpost,” as stated by Tsai (1993). As a result, more so than elsewhere, civil servants in Hong Kong were both the policy makers and policy implementers under a highly executive-dominant system.

Typically, a colonial bureaucracy had limited capacity and existed mainly to maintain law and order rather than to further economic and social development. The colonial administration in Hong Kong, however, soon found itself confronted with the need to deal with the rapid increase in population brought by the influx of migrants from mainland China. While the indigenous population numbered only in the thousands in 1841 before the British takeover, by 1911, the population had grown to over 450,000 (Faure 1997). Such a rapid increase in population naturally brought about demand for public services. Given the limited capacity of the colonial government,

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<sup>1</sup> Scholars such as Tsai (1993) argue that international shipping and trading activities were present in Hong Kong before the British arrival.

the local Chinese population had to resort to self-reliance. Indeed, various Chinese communal associations formed a robust community of self-help. At the same time, problems such as public sanitation required the colonial state to step in, for example, free vaccination was provided to the population to prevent the spread of epidemics. Thriving commercial activities also required substantial development in infrastructure. However, as a whole, the lack of a sense of permanence from the colonial state coupled with the transient nature of the migrant population contributed to a lack of moral commitment, if not motivation, to expand public service.

The ability of the colonial bureaucracy to develop in size and scope of service was also limited by its financial capacity. The Financial Procedures in the Colonial Regulations required that colonies avoid any deficit that would impose a financial burden on Britain. The ability of the colonial state to raise taxes was limited, and such a limitation was exacerbated by its close relationship with British commercial capitalists who favored a low tax rate and minimal government interference (Chiu 1994).

### ***12.2.2 Major Institutional Development***

The bureaucracy remained typically colonial in this period. The generalist administrative elites, called cadet officers (a title commonly used in British colonies then), arrived in Hong Kong soon after the British takeover. As standard practice, they were appointed to ranks and then subjected to periodic re-posting to various offices (Hamilton 1964). The early cadet officers mostly served as colonial secretaries, financial secretaries, officers of various ranks in the colonial secretariat, district officers and commissioners to the New Territories, and heads of departments. Specialists headed other technical departments. Naturally, European males monopolized the senior positions, especially the cadet officer grade. The educated local Chinese were mostly confined to the intermediate to lower ranks of technical departments as specialists, such as doctors (Medical) and engineers (Public Works). It was only in 1948 that the first Chinese cadet officer was appointed (Lee forthcoming).

The limited policy and administrative capacity of the bureaucracy was reflected in the size of the establishment and the degree of differentiation. Collins' (1952) chronological account of the development of the colonial administration revealed the logic of institutional development of the colonial bureaucracy in accordance with its interest in colonial domination. Among the first batch of appointments in public service were the chief magistrate and the police establishment, testifying to the top priority afforded to maintaining law and order in colonial domination. Soon afterward, the Land Office was established in response to the urgent need to build infrastructure such as roads, staff quarters, and land provision. Thereafter, with the rise of trading and shipping activities, the position of deputy superintendent of trade was created, followed by an officer in charge of the harbor (Harbor Master). The urgent need to attend to public health care resulted in the establishment of a colonial surgeon. Other departments that were subsequently formed in the late nineteenth century included the Judicial Department, the Public Prosecutor, the Financial Department, the Administration of Lands, Roads, and Public Works, and the Marine Department.

Beyond these basic institutional supports, the colonial state had limited involvement in social provision. It relied greatly on private and voluntary associations in the provision, if not financing, of these services. In 1873, the grants-in-aid system was initiated through funding offered to voluntary associations, establishing the dominance of church organizations in the provision of education. Funding was also later offered to hospitals run by voluntary agencies (such as the Tung Wah Hospital). Still, the private sector provided and financed most of the education and healthcare services.

In July 1937, Japan invaded China. In December 1941, the Japanese attacked Hong Kong. After 18 days of resistance, the colonial government surrendered and Governor Mark Young together with thousands of British soldiers, government officials, and civilians were kept in prisoner of war camps. The military government of Japan took over the rulership of Hong Kong, including control over key infrastructures such as the airport, reservoirs, hospitals, and schools (Carroll 2007). Life was extremely hard for the residents, and the population of Hong Kong dropped from 1.6 million in 1941 to 600,000 in 1945.<sup>2</sup> Aside from war casualties, many fled Hong Kong to the rural villages in south China. The Japanese also enforced a repatriation policy due to the scarcity of food.

## 12.3 Postwar Years (late 1940s to late 1960s)

### 12.3.1 *Context and Driving Force of Development*

The political change in China in 1949 signified a turning point for Hong Kong. In the mid-1940s, after the end of Japanese occupation, migration from mainland China into Hong Kong increased the population at a phenomenal rate, only to be accelerated by the establishment of the People's Republic of China in 1949. From 1945 to 1955, the population increased from 600,000 to 2.5 million. International and social resources, as well as institutional support, were much relied on to handle the critical situation. The city was declared a disaster relief area and international agencies swarmed in to provide the refugees with material and institutional support (Hong Kong Council of Social Service [HKCSS] 1987). On the other hand, industrialists from mainland China brought with them capital, technology, and entrepreneurial skills, and helped bring about Hong Kong's well-known "economic miracle." The rise of a labor-intensive manufacturing industry came at an opportune moment as Hong Kong's entrepot trade was stopped by the United Nations' embargo on trade with China because of the Korean War.

These political and economic changes triggered administrative reforms on multiple levels. The political change in China made the return of Hong Kong to China politically unacceptable for Britain (Miners 1995, ch. 1). Instead, Hong Kong's geopolitical position turned it into a "fortress colony" against communism, such that Britain deemed it necessary to ensure its good governance (Tang 1998, pp. 57–58). The reality of prolonged colonial rule compelled the colonial government to consider making increased long-term commitments in social and economic development. Socioeconomic development brought about by industrialization and population growth also added to the demand for a more active state role in social and economic affairs. Indeed, by the mid-1960s, the colonial state had begun to show more initiative in long-term plans in major policy areas such as education, health care, social service, and housing.

### 12.3.2 *Major Institutional Development*

In the immediate postwar years, the colonial bureaucracy had limited capacity to cope with the demand for service brought about by the huge increase in population. Thus, it relied on the private and voluntary sectors to provide services such as health care and education. International voluntary agencies were also virtual substitutes of the state in many service areas. Their social assistance

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<sup>2</sup> See *New York Times*, "Hong Kong: The Story," <http://www.nytimes.com/specials/hongkong/archive/> (retrieved September 30, 2009).

to the new migrants ranged from food, clothing, and medical attention, to employment projects, daycare centers, monetary assistance to college students and the needy, as well as interest-free loans for people to start up small businesses (HKCSS 1987, p. 30, quoted in Lee 2005a). The colonial bureaucracy did not even have a dedicated agency to deal with social welfare until the Social Welfare Office was set up in 1948. The establishment of the HKCSS in 1947 by the various voluntary agencies to better co-ordinate their humanitarian aid efforts illustrates the extent of the state's dependency on these voluntary agencies. Their Central Records Office contained the records of over one million welfare recipients and remained as the only keeper of formal social assistance records until it was transferred to the Social Welfare Department in the late 1960s, when the latter began to assume a more formal role in welfare provision.

At the same time, the government did begin to take up new areas of public provision as demanded by the political and economic change. In the early 1950s, to resettle squatters and clear land for redevelopment, it began to provide public housing in the form of resettlement estates,<sup>3</sup> and in the two decades that followed (1954–1973), 234,059 units were built to shelter over 1 million inhabitants. In the 1960s, major white papers were published for education, social service, public housing, and health care, reflecting for the first time the commitment of the colonial government to making long-term policy plans for these areas.

The gradual trend of the colonial government to assume an increasing role in social and economic development was reflected in the steady increase in the number and size of departments (Hamilton 1969). A formal policy of localization was initiated in the late 1950s (Scott and Burns 1988, p. 96). These processes hastened in the 1960s, with the first major batch of locally recruited administrative officers (the new title for cadet officers), mostly graduates of The University of Hong Kong, joining the civil service in 1962.

These developments also intensified the problem of a colonial bureaucracy. The highly centralized structure of the bureaucracy created a bottleneck in communication and decision making as more departments were added, all of which were supposed to report to the colonial secretary. By the late 1960s, the Colonial Secretariat was greatly expanded by the creation of 11 branches (Hamilton 1969). This precipitated the administrative reform in the early 1970s, discussed further.

## **12.4 Late Colonial Period: The Founding of the Public Service State (Early 1970s to Early 1980s)**

### ***12.4.1 Context and Driving Force of Development***

The events that precipitated the changes in the 1970s were the two social riots in 1966 and 1967. They revealed massive social discontent, and prompted the colonial state to adopt major adjustments in their governance approach. Governor MacLehose, who assumed office in 1971, pledged to massively expand services in the areas of education, public housing, social service, and health care (which he termed “the four pillars” of public service). Social assistance in the form of benefit-in-cash was offered to eligible recipients for the first time. Under MacLehose's administration, the colonial state evolved into the major financier and provider of health care and public housing, and the major financier of education and social service. Throughout the 1970s, social provision constituted over 40% of the yearly public expenditure (Lee 2005b, p. 5), even though the actual

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<sup>3</sup> In 1953, a squatter fire in Shek Kip Mei left 53,000 people homeless, forcing the government to start building resettlement estates.



amount of spending was still low by western standards. The late colonial state also tried to step up its management of society by launching the City District Office Scheme in urban areas and developing district administration. The expansion in the scope of public service and the enhanced management of society directly led to the expansion of the civil service.

The 1970s was also the period of Hong Kong's hyper-economic growth. Throughout the 1970s, an average economic growth rate of 9% of the gross domestic product (GDP) was achieved (ibid.), making it possible for the colonial state to finance an expanding government despite its insistence on financial conservatism. At the same time, colonial officials were cautious about the financial implications of such an expansion. As a financial control measure, officials of the Treasury Branch instituted administrative guidelines in the early 1980s. The guidelines that annual public expenditure should be kept below 20% of the GDP and that annual growth in public expenditure should not exceed the growth in GDP have since become the golden rule of Hong Kong's public finance.

Essentially, in this period, the late colonial state was transforming itself into a public service state, in which good policy and administrative performance became the basis of legitimacy to rule. By the 1980s, the expectation that the government had the primary responsibility for solving social problems (and thus should play the role of major provider of public services) had been firmly established among the population (Lau and Kuan 1988, p. 58).

### **12.4.2 Major Institutional Development**

A major review of the administrative machinery was conducted. The McKinsey Report, aiming to redress the problem of bottlenecks, proposed a major administrative restructuring of the Colonial Secretariat by formalizing the layer of policy branches between the colonial secretary and the departments (McKinsey & Co. Inc. 1973). Each policy branch oversaw a series of relevant departments as executive agencies. With the reform, there was a more formal division of labor between generalists and specialists. Policy branches became dominated by the generalist administrative officers and were the major policy makers; the specialists were mostly in charge of the departments and were responsible for policy execution. This change amounted to ministerialization (Cheung 1997) and consolidated the generalist-dominated system, if not the identity of the administrative officers as a corps of administrative elites (or an administrative class). Various scholars have commented that this administrative class, with shared values, identity, and world views, were to function as the *de facto* government party of the late colonial period.

As mentioned, another important direction of administrative reform was for the late colonial state to build up its administrative capacity for community building from above. This was achieved through the City District Officer (CDO) Scheme, which divided the urban areas into districts, each headed by a district officer. This scheme originated as an attempt of the colonial state to improve its communication with the people after the two social riots. In actuality, the new district administrative system turned out to be a mechanism for the state to better penetrate the community, if not to manage it. On the other hand, the policy-making structure remained highly centralized, as the district-level administrative machinery had little policy-making power.

Given the "episodic" (Tang 1998) development in various social programs, the colonial state relied heavily on voluntary agencies to provide service. For education, the grants-in-aid system was expanded to include a wide range of voluntary agencies of different religious and social backgrounds that ran over 80% of the primary and secondary schools under government subvention. For social service, hundreds of non-governmental organizations (NGOs) were incorporated into the state's funding regime and provided 90% of the social service. The employees of these schools and social service agencies, even though not civil servants by status, had their salary and benefits

linked to the civil service pay scale and the service delivery of their agencies was closely monitored by the government. Thus, these non-profit organizations and their employees were practically agents of the state in delivering essential service to the community.

## **12.5 Political Transition (1984–1997)**

### ***12.5.1 Context and Driving Force of Development***

In the 1980s, Hong Kong entered the period of political transition. Following the visit of Prime Minister Margaret Thatcher to Beijing in 1982, a period of negotiation between Britain and China finally led to the signing of the Sino-British Joint Declaration in 1984. This declaration stipulated that Hong Kong would be returned to China in 1997 and become the Hong Kong Special Administrative Region (HKSAR) under the “one country, two systems” arrangement. Provisions were included in the Basic Law to ensure that the basic institutions deemed important to the success of the city would be retained. These provisions included retaining the conservative public financial policies (Articles 107 and 108) and ensuring the smooth transition of the civil service (Article 100). During this period, Hong Kong society experienced tremendous political uncertainty as well as rising political consciousness brought about by a growing middle class and the mobilizing effect of political transition. At the same time, the city also underwent major economic restructuring as manufacturing industrialists relocated their production sites out of Hong Kong to south China. Benefiting from China’s open-door policy, the city was able to maintain a high economic growth rate through restructuring its economy to service industries. It was during this time that the government began to adopt some new public management (NPM) reform measures. Scholars have variously argued that NPM reforms during this period, unlike the reform in western liberal democracies, were not caused by financial or economic crises. Cheung (1996), for instance, argued that NPM reforms in Hong Kong were solely caused by the crisis of political transition, and that they were largely measures for “load shedding” and thus tactics for the colonial government to deal with the decline in legitimacy and capacity. Lee (1998) argued that the dual concern of the long-term financial sustainability of the public service state and the failure of democratization were the factors that compelled the late colonial state to adopt NPM reform. Despite the financial concerns, many major areas of public services actually experienced an increase in expenditure in the early 1990s, led by high revenue and the need to rescue political confidence after the Tiananmen Massacre in 1989.

### ***12.5.2 Major Institutional Development***

The 1980s witnessed a trend of corporatization. The Kowloon-Canton Railway Corporation (KCRC), which was originally managed as a government department, became corporatized. On the recommendation of the Scott Report (1985), the Hospital Authority was formally set up in 1990 and took over the management of all ex-government and ex-subsidized hospitals. The Housing Authority was reconstituted into a public corporation chaired by a non-official member and with grassroots representatives. The Provisional Airport Authority was set up in 1990 and was succeeded by the Airport Authority in 1995 to take up the responsibility of constructing and managing the new Hong Kong International Airport. (The Civil Aviation Department managed the old airport.) The trend of corporatization seemed to come with a diverse agenda. The Hospital Authority was set up to improve efficiency through better management of public

hospitals. While the ideas of user charge and cost recovery were partially implemented, public hospitals remained low cost and healthcare expenditure continued to rise in the 1990s. The restructuring of the Housing Authority was aimed at turning the public body into a more representative institution in view of the growing politicization of the public housing policy. The Airport Authority was set up to take up the project of building the new airport, which at that time was one of the largest infrastructural projects in the world. Privatization was only carried out in some service areas (e.g., the management of public car parks and public housing estates) and has not evolved into a massive scale. In sum, these NPM reform measures cannot testify to a major rolling back of the state.

In 1992, the Serving the Community Program was launched by the Efficiency Unit. The program stated four core principles, namely, (1) being accountable, (2) living within our means, (3) managing for performance, and (4) developing our culture of service. Lee (1998) analyzed the significance of the program, and she regards the first two principles as representing the articulation of a *public philosophy* in order to establish a normative basis for administrative power. Establishing accountability as the normative basis of administrative authority aimed to resolve the inadequacy of the legitimacy of administrative power. “Living within our means” wished to articulate prudent financial management as the primal principle guiding the distribution of resources. For managing for performance and developing a culture of service, they are typical reform measures of the new managerialism. In the context of Hong Kong, they serve the purpose of improving administrative performance and responsiveness, and as substitutes for democratic reform.

## 12.6 Postcolonial Development (1997–present)

### 12.6.1 *Context and Driving Force of Development*

On July 1, 1997, 13 years after the signing of the Sino-British Joint Declaration, 155 years of British colonial rule ended and Hong Kong was returned to China as HKSAR under the arrangement of “one country, two systems.” A high degree of autonomy was formally granted, as the HKSAR government was delegated the authority on all its internal affairs except for defense and foreign policy. Institutionally, the constitutional design of the Basic Law (the mini-constitution of the HKSAR) largely aims to preserve the political, administrative, and economic institutions of the colonial regime, especially the essence of its executive-dominant system and the capitalist system. The intent of the Basic Law drafters was to preserve an executive-led system with senior civil servants remaining the most important pillar of governance. The governor was replaced by the chief executive, who in turn is advised on policy matters by an Executive Council. The 60-member legislature is partially democratized, with 30 members currently being returned by universal suffrage. The common law system is largely preserved. At the practical level, the “through-train” arrangement of the civil service was successfully implemented, providing for stability and a smooth transition of sovereignty.

On the other hand, the Asian financial crisis erupted right after the handover of sovereignty and threw Hong Kong into an economic downturn and financial austerity. Ending decades of prolonged economic boom, the crisis brought GDP growth down to  $-5.3\%$  in 1998, while the budget deficit went up HK\$70 billion (5.5% of GDP) in 2002. Reviving the economy and reducing the budget deficit became the top policy priorities of the newly established HKSAR government. This economic and fiscal crisis was met with a substantial political crisis, as problems in

executive leadership, successive policy, and administrative failures revealed major deficiencies in the capacity-cum-legitimacy of the state and brought the approval rating of the government to an all-time low (Lee 1999).

These economic-cum-political crises revealed deep-seated problems in the political and economic institutions of the postcolonial era. The Asian financial crisis signified the end of the economic miracle and ended decades of continuous economic growth. In a way, it ended the myth of “financial conservatism,” or the myth that low tax rates and high economic growth will continue to support an expansion in public spending on social programs to satisfy the public’s need for adequate public service. The monopoly of policymaking power by the civil servants is increasingly challenged by a civil society of growing strength and a citizenry demanding more public input and accountability in the policy process. In short, the postcolonial state has lost its “performance legitimacy” on both the political and the economic front.

An equally important aspect is the changing relationship between central government and the HKSAR. In the first few years after the handover of sovereignty, central government did adopt a more hands-off policy toward Hong Kong, and understood such non-interference as the essence of “a high degree of autonomy” as promised under the “one country, two systems” arrangement. However, since the worsening governance crisis culminated in the eruption of a mass rally in 2003, central government has taken a more hands-on approach, and has actively intervened in Hong Kong’s political and economic development (Ching 2009). Instances of political intervention range from offering material support to their preferred candidates in local elections, putting Hong Kong’s democratization on hold, to more serious allegations of plans to set up “a second center of governance” comprising “local patriotic forces.” Economic intervention ranges from policies to revive Hong Kong’s economy to active measures to promote economic integration between Hong Kong and the regional cities. While some of these measures have helped Hong Kong weather the economic downturn, they have also made the city more dependent on central government if not more susceptible to the latter’s control.

In sum, while democratization is considered necessary to resolve the governance crises adequately for a postindustrial society that has already attained advanced socioeconomic development, the Beijing government has been indefinitely delaying democratization in Hong Kong.<sup>4</sup> A major characteristic of the administrative reforms in this period reflect the attempts of the postcolonial state to deal with these crises situations in the absence of democratization.

### ***12.6.2 Major Institutional Development***

Since the handover, a series of NPM-type reforms has been carried out. As Lee and Haque (2006) argue, the significance of these reforms for the Asian states has to be understood in the contexts of their particular macroeconomic factors, political systems, and state traditions. Reforms such as public-private partnership have been attempted to strengthen the state’s capacity in economic management. Such projects include the Cyberport project, Disneyland, and the West Kowloon Cultural District Project, in which the government collaborated with businesses in an attempt to strengthen Hong Kong’s economic competitiveness. Measures such as outsourcing,

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<sup>4</sup> In December 2007, the Standing Committee of the National People’s Congress (SC/NPC) announced that Hong Kong would elect its chief executive through universal suffrage in 2017, while the direct election of all seats of the Legislative Council would take place in 2020 at the earliest. While this schedule offers the possibility of belated popular elections in Hong Kong, the SC/NPC’s announcement has not alleviated the public’s suspicion that the elections will be controlled rather than be truly free.

corporatization, and privatization of public service, as well as civil service reform, were used to contain the size of the public sector and preserve the practice of financial conservatism. There has been more emphasis on performance, productivity, and accountability as ways to cope with rising popular aspiration through inculcating a public service culture. The adoption of cost containment and recommodification measures in social policy indicated retrenchment in social spending as ways to reduce public spending.

These reforms have mixed results. Many of the public-private partnership projects have been criticized as government-business collusions and have not been politically well received by the public. The outsourcing of municipal service has invited complaints about the inadequacy of contract management from the government, including complaints over the quality of the service, the protection of labor rights, and others. Measures to contain the size of the public sector (by reducing the number of civil servants and their remuneration) and attempts to further overhaul the public personnel system were made in the consultative document entitled *Civil Service into the 21st Century*, in which ideas of performance pay and the widespread use of contract staff were proposed. The civil service unions met these ideas with strong resistance and they have not been successfully implemented. In financial management, since the early 2000s, government departments have switched to one-line-vote (block grant) as the budget model. In the areas of social provision, education, health care, and social service have experienced budget cuts. In public housing, the government announced the indefinite cessation of the Home Ownership Scheme, and set out to privatize all public housing, car parks, and shopping malls as a way to generate funding for the Housing Authority.

In 2002, the Principal Officials Accountability System (POAS) was officially launched by Chief Executive Tung Chee-Hwa when he commenced his second term. Somewhat deviating from the intent of the Basic Law drafters to preserve a system of bureaucratic dominance, this reform is of far-reaching significance as it practically moves Hong Kong's political system toward a ministerial system. Under POAS, all principal official positions are no longer employed on civil service terms, but on non-civil service contractual terms instead. The change was adopted in the hope that it would improve the governance problems in the HKSAR after a series of policy and administrative failures that had led to massive discontent and a plunge in the approval rating of the chief executive, Tung Chee-Hwa. The new system also gives the chief executive a freer hand to bring in people from outside the civil service to become members of their own teams.

As Cheung (2003) states, with the implementation of POAS, for the first time in Hong Kong's history, there will be a political leadership team manned by full-time politicians. At the same time, it is still unclear how the institution of executive leadership will develop. For one thing, the administrative officers have been heavily relied on as a source of principal officials. With the appointment of a former administrative officer, Donald Tsang, as the successor of Tung Chee-Hwa (who was asked to step down by the Beijing government in the middle of his second term due to unsatisfactory performance), the tone seemed even more set for civil servants to be the major source of political leaders in the distant future. The latest development was the introduction of politically appointed undersecretaries and political assistants, which the chief executive claimed to be measures to consolidate the political accountability system and nurture political talents. The increase in appointees further invites criticism from the public (especially the democratic camp) that such a system will only provide opportunities for political patronage. In sum, it is widely felt that in the absence of a democratic system, the ministerial system will only empower the chief executive to increase control over administrative officials rather than enhance the political accountability of the government.

## **12.7 Public Administration and Society**

### ***12.7.1 Public Accountability and Participation***

Miners (1995), in his analysis of the political system of colonial Hong Kong, comments that the wide scope of power enjoyed by the governor could have turned it into a position of petty dictatorship. The major constraint was the lack of knowledge about the local community and reliance on civil servants. Bureaucratic dominance was secured in the colonial era through a system in which all officials below the governor were civil servants, and a legislature that until 1984 consisted only of appointed members that would always rubberstamp the decisions made by the executive. The institutional restraint on this system of executive dominance lay mainly in the horizontal accountability mechanisms, such as an independent judicial system, the Audit Commission, and since the 1970s, a powerful independent anti-corruption agency (the Independent Commission Against Corruption, or ICAC). In the absence of elections, the media and civil society played the major role in offering vertical accountability mechanisms.<sup>5</sup> Since the 1970s, the colonial state has tolerated the presence of a free and independent media, while civil society has also developed in increasing strength since the 1970s. Taken together, these vertical and horizontal accountability mechanisms (together with the legitimacy deficit of the colonial government) have restrained executive power in the absence of democratic elections. On the transition of sovereignty, these accountability mechanisms were guaranteed to continue after 1997 through the provisions of the Basic Law.

Formal channels for public participation, however, have been lacking. As mentioned, the legislature (Legislative Council) consisted only of appointed members until 1984, when elected seats returned by limited suffrage (through functional constituencies and electoral college) were introduced. Directly elected seats were introduced in 1991, and up to now, only half of the legislature is popularly elected. Local democracy is also equally underdeveloped. The two municipal councils, which were in charge of municipal and cultural policies and whose history dated back to the Sanitary Board established in 1883, were for a long time the only representative institutions with independent financial and executive power. These two institutions were abolished in 2000, leaving only District Councils as the local representative institutions. The District Councils, though only advisory in nature, at present still consist of 25% appointed seats. The highly centralized administrative machinery lacks responsiveness toward citizens' demand.

Administrative officials have been resorting to a system of advisory committees to collect public opinion in the course of policymaking. There are over 400 advisory committees attached to different policy bureaus and administrative departments. These advisory committees, however, have long been criticized as window-dressing measures that legitimize government decisions and co-opting. The government appoints their unofficial members, while government officials most often chair these committees and control the agenda setting. Another measure frequently taken for major policy change is the use of consultation reports and open invitations for citizens' inputs. In recent years, consulting district councils, politicians, and major stakeholders are also standard actions taken by officials in the policymaking process. However, these actions have not greatly improved the government's responsiveness toward public opinion or increased public satisfaction toward government policies. The most common criticism is that these consultation exercises are used to legitimize government decisions rather than as forums for listening attentively to public opinion and incorporating citizens' input. There is also a general impression that government

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<sup>5</sup> For a discussion of the concepts of horizontal and vertical accountability, see Schedler, Diamond, and Plattner (1999).

officials often have preconceived positions and are seldom swayed by opinions expressed in these exercises.

### **12.7.2 Administrative Values**

The majority of the time during colonial rule, these administrative officials operated behind a “secluded bureaucracy” in Lau’s (1982) sense, meaning that their (open) interaction with society was limited. In the absence of an active political leadership, political values were rarely articulated in official discourses. The colonial regime naturally suffered from normative deficit and thus found it difficult to lead its polity with a sense of mission or national purpose. Administrative officials came to play the role of political leaders as they constructed official discourse about public policy and administrative practices. Many of the values embodied in these discourses have become deeply entrenched not only in the institutional order of the bureaucracy and the policy approach of the state, but also in shaping the values of society. As these administrative values acquired the status of public philosophy, issues of political values were thus often technicized. For instance, while public spending level pertains to the allocation and distribution of resources and is a political problem in liberal democracies, in Hong Kong it has been articulated as a technical issue of “good” financial management. Administrative officials have often regarded popular demands for public accountability and responsiveness as detrimental to efficiency and good results. In actuality, the *apolitical* overtone of these administrative values not only serves the purpose of depoliticization, but also camouflages biases. One important bias is the pro-business inclination of this regime. Business elites have been the most important partner to the colonial regime since the early days of colonial rule. Many of these administrative values are highly compatible with capitalist values and serve capitalist interests.

As mentioned, since the 1970s, economic growth and the transformation of the colonial state into a public service state has enabled the state to establish its legitimacy on the basis of delivering good results in public policy. In this process, administrative officials have come to perceive themselves as “neutral technocrats,” guardians of public interest rather than the defender of any sectoral interest. Not bound by the pressure of democratic process, it easily led to a bureaucratic culture of intellectual arrogance that detached officials from the popular sentiment.

### **12.7.3 State-Society Relations**

While the state in Hong Kong is characterized by its limited capacity in both the colonial and postcolonial periods, and historically, the bureaucracy has been detaching itself from popular sentiment, it does not necessarily mean that the state has little interaction with society. Some earlier scholarly works were premised on the idea that the colonial state attained political stability largely through its segregation from society (Lau 1982), or through co-opting elites into the administrative structure (King 1975). Later works contended such view and regarded the colonial administration as playing a far more interventionist role in managing society. Such interventionism is evident in the ways the state historically subjected community organizations to its management and surveillance for fear that they would become anti-colonial forces. Pro-establishment figures were actively recruited by the state to occupy leadership positions in community organizations that were supported by the state (Lee 2006). The district administrative reform in the 1970s, including the launching of the CDO Scheme (discussed above), the Area Committee, and the Mutual Aid Committee (MAC) Scheme were efforts of the colonial state to step up its community-building effort from above. Channels for community participation have been limited

even in the postcolonial era. At present, the District Councils are the only local-level institutions with a representative nature, but are still not fully elected and are of an advisory nature with no executive power.

In sum, the history of colonial domination has brought about a modern administrative and capitalist system. These systems historically brought about a process of “rationalization” in Weber’s sense, as rational-legal authority, market relations, legal formalism, and entrepreneurship constituted the core of Hong Kong’s colonial modernity. As Hong Kong enters into the postcolonial and postindustrial era, citizens are increasingly questioning the supremacy of some of these values. Indeed, the demand for genuine citizens’ participation, public accountability, and responsiveness has been growing in the postcolonial era, while the capacity of the postcolonial state to respond to these demands has been limited.

## **12.8 Societal and Political Challenge over Bureaucratic Dominance**

The challenge of society over bureaucratic dominance was evident even during the early days of colonial rule, as seen in the numerous riots and social unrests. In the 1970s, a civil society rooted in the local population began to develop. Often led by social workers and labor activists, community activism was systematically organized to protest against the colonial government’s deficiency in policies related to labor, public housing, and others. The 1980s saw social mobilization triggered by political transition, and witnessed the birth of multiple political commentary groups. The introduction of elections to the legislature also changed the executive-legislative relationship, as elected legislators would not automatically support the executive and were vocal in criticizing government policy. In the early 1990s, political parties were formed with the introduction of direct election in the legislature, creating more organized opposition forces in the legislature. Meanwhile, civil society grew increasingly in strength, as numerous organizations concerned with democratization, human rights, sustainable development, environmental protection, women’s rights, minorities’ rights, consumer rights, and various kinds of self-help were formed (Bauhinia Foundation 2007). After 1997, societal mobilization gained even more momentum, as civil society groups stepped up their mobilization efforts on more issues related to environmental protection, harbor protection, heritage preservation, urban planning and redevelopment, poverty, minimum wage legislation, cultural policy, and so on. As scholars point out, in postcolonial Hong Kong, people have gained a stronger sense of citizenship and have shown stronger demand for a responsive and accountable government.

The postcolonial government was slow in responding to such societal change, and such failure cost heavily, cumulating in a mass rally of over 500,000 demonstrators in July 2003, and the subsequent resignation of the chief executive in 2005 on the instruction of central (Beijing) government.

The situation of an unelected executive, coupled with a partially elected legislature and a citizenry that enjoys the freedom to criticize the government and organize collective actions constitute the governance problem of this liberal autocracy. The postcolonial state, lacking in popular mandate, finds it difficult to push through any controversial policy. Issues such as health care financing reform have remained unsettled even years after the government attempted to solicit public support.

Apparently, the NPM-type reform that aims to inculcate a performance and customer-oriented culture was grossly insufficient in addressing the demand of a citizenry with heightened democratic consciousness. In the absence of full-fledged democracy, some scholars have recently



proposed that the government should strengthen its mechanism for civic engagement, such that citizens can actively participate in the process of policy formation and decision making. This idea of civic engagement is in line with the international trend, as embraced in such ideas as state-society synergy (Evans 1997; The World Bank 2004) and “empowered participatory governance” (Fung and Wright 2003). These ideas all point to the productive potential of collaboration/partnership between the state and society, and revitalize the political value of empowering ordinary people to participate in policies that directly affect their lives. Some instances have testified to the willingness of this government to experiment with the new mode of civic engagement. The most prominent one is the case of South East Kowloon planning, in which the Planning Department and other related government agencies actively collaborate with the civil society through the Harbour-front Enhancement Committee. The latter is not chaired by an official and provides for corporate representation by stakeholders. The exercise turned out a bottom-up approach in urban planning, allowing for inclusive representation and extensive engagement of civil society organizations, which is unprecedented in Hong Kong. However, so far, this relatively successful case has not led to any major institutional change in the policymaking process of other departments.

## 12.9 Conclusion

This chapter argues that the driving force of administrative development in Hong Kong can be best understood from the political economic perspective, i.e., administrative development has largely been a matter of the state adapting the colonial institutions to the challenge of political and economic change. Politically, the state in Hong Kong has evolved from a typical colonial stage in which the maintenance of law and order were its major goal, to a late colonial stage oriented toward public-service provision and performance legitimacy, and to a postcolonial stage under Chinese sovereignty, in which the state is captive of a situation of indefinite delay in democratization while performance legitimacy is no longer adequate to satisfy the demand of the citizenry. Economically, it has successfully gone through industrialization and has now reached the postindustrial stage of development. The various stages of administrative reform can be understood as institutional adaptation of the state in response to the challenge posed by these changing political and economic circumstances.

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## *Chapter 13*

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# **Intergovernmental Relations Between Mainland China and the Hong Kong SAR**

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Peter T. Y. Cheung

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## 13.1 Introduction<sup>1</sup>

The establishment of the Hong Kong Special Administrative Region (the Hong Kong SAR) on July 1, 1997 is a political and constitutional milestone in the history of the People's Republic of China (the PRC). Hong Kong and Macao are granted the policy of "One Country, Two Systems" (OCTS) so that under Chinese sovereignty, the two areas would continue with their capitalist economic and social systems and enjoy "a high degree of autonomy" for 50 years. The OCTS policy constitutes an important experiment of local autonomy in a unitary and socialist state like the PRC.<sup>2</sup> Hong Kong's experience in implementing OCTS since 1997 shows a tortuous path in maintaining autonomy within a unitary Chinese state governed by the Chinese Communist Party (CCP). This chapter is an overview of the changing relations between the central government in Beijing and the Hong Kong SAR since 1997.<sup>3</sup> My overall observation is that the Hong Kong SAR does enjoy a very high degree of autonomy, but its autonomy varies across different domains. Hong Kong's autonomy is much more evident in socio-economic and external affairs, but its autonomy over political and constitutional matters is much more subject to constraints imposed by the central government. The strategy of the central government toward Hong Kong has also shifted over time. This chapter has four parts. Part one introduces the historical context of the OCTS policy for Hong Kong. Part two discusses the key characteristics of the formal constitutional framework for OCTS set out in the Basic Law, the mini-constitution of the Hong Kong SAR. Part three examines the changing interactions between Beijing and Hong Kong in four areas, namely, the constitutional, political, economic, and external dimensions, and their implications for OCTS. My conclusion in part four discusses the implications of Hong Kong's experience in implementing the OCTS policy in the past decade and explores its prospects.

## 13.2 Historical Context of the "One Country, Two Systems" Policy

The cession of Hong Kong to the British under the Treaty of Nanjing in 1842 marked not only the beginning of China's humiliation by western powers with the conclusion of a series of unequal treaties, but also the metamorphosis of this small fishing village into a trading port in south China. When the future of Hong Kong emerged as an issue in the late 1970s, Deng Xiaoping, China's preminent leader at that time, proposed the OCTS model as a pragmatic strategy to reunify Taiwan, Hong Kong, and Macao in view of the huge socio-economic gap between Mainland China and these areas at a time when China began to open up and reform its socialist system.

After the Sino-British agreement on Hong Kong's future was signed in 1984, Hong Kong entered into the transition period. However, the city experienced many more ordeals before rejoining the Mainland in 1997, of which the most important was the political crisis in China in spring

<sup>1</sup> The author would like to acknowledge the support from a Small Project Fund from the University of Hong Kong and the research assistance offered by Kelvin Sit. In particular, I would like to thank Dr. Kitty Poon for sending me her latest book and to Professors Albert H. Y. Chen and Sonny Lo Siu-hing for sharing their recently published works and offering valuable comments on an earlier draft of this chapter. All the remaining errors are the author's sole responsibility.

<sup>2</sup> This section draws from any chapter, "Towards Federalism in China? The Experience of the Hong Kong Special Administrative Region (Cheung, 2007)".

<sup>3</sup> Given the limitation of space, I can only highlight the key issues in this complex, evolving relationship, rather than provide a comprehensive analysis.

1989. Reflecting their anxiety over their future return to the embrace of an authoritarian communist system, many people in Hong Kong sympathized with and actively supported the pro-democracy student movement on the Mainland. The subsequent crackdown in Tiananmen Square soon dashed their hopes and confidence in the promise of OCTS. Beijing also became deeply concerned that Hong Kong could serve as an anti-communist base that could threaten its communist polity. The fall of communism in the former Soviet Union and Eastern Europe further heightened the sense of insecurity among the top Chinese leadership. When the last British Governor, Chris Patten, introduced further democratic electoral reforms in Hong Kong in the mid 1990s, despite prior Sino-British understandings on these arrangements for post-1997 Hong Kong, the Chinese government took a tough stance to cope with what it perceived as attempts by western powers to extend their influence into the territory. For instance, instead of allowing the legislators elected in 1995 to continue their incumbency beyond 1997, Beijing set up its own provisional legislature, an organ that was not provided for in the Basic Law. The confrontational relations between China and Britain in the final years before 1997 over the future political arrangements not only seriously affected Hong Kong's final phase of political and administrative transition, but also divided the Hong Kong community over its future political development.

While China had to endure the radical political campaigns carried out by Chairman Mao Zedong in the 1960s and 1970s, Hong Kong's economy began to take off. As the British Empire began to roll back in the post-World War II era, the United Kingdom "had little desire to intervene in Hong Kong affairs and permitted the colony a degree of freedom from London's control without precedent in British imperial history" (Goodstadt, 2004: 49). Colonial officials sought to defend local interests and the interests of the business sector in Hong Kong from interventions by London. By the 1970s, for instance, Hong Kong had even earned the power to "fix its own exchange rate, operate its own currency, and manage its own reserves" (Goodstadt, 2004: 49). Together with Singapore, South Korea, and Taiwan, Hong Kong joined the ranks of the four newly industrializing economies in East Asia by the early 1970s, and its economic development in the post-1945 era has often been considered as the success of free market. From 1978, Hong Kong began another phase of its economic transformation and contributed significantly to China's economic reform and open door policy, especially by spearheading investment in south China and by transforming the region into a leading export manufacturing base (Sung, 1991). Not only has it obtained enormous benefits by serving as a trading partner and middleman between the Mainland and the world market, but it has also been transformed into a leading financial and business center in Asia. Democracy was not actively promoted by the British administration until the very end of colonial rule and often resisted by the local business community, which had become more closely associated with Beijing in the final stage of Hong Kong's transition. Nonetheless, despite the absence of a fully democratic form of government, by the time it rejoined China in 1997, Hong Kong had already witnessed the rise of a more affluent society demanding more political participation, the emergence of a vibrant media, the protection of civil liberties and freedoms, an effective and meritocratic bureaucracy, and most importantly, the rule of law.

### **13.3 Constitutional Framework of the Basic Law**

The OCTS framework does not resemble any extant political models such as federalism because the Hong Kong SAR has maintained a political and legal system radically different from that of Mainland China. The OCTS policy provides for "the separation and preservation of the two economic, social, political and legal systems through the legal entrenchment of Hong Kong's systems"

(Ghai, 1998: 32). The maintenance of Hong Kong's capitalist economic system after 1997, rather than the preservation of autonomy per se, constitute the primary goal of the central government (Ghai, 1998). The Basic Law of the Hong Kong SAR is the mini-constitution promulgated to implement the basic policies of the central government toward Hong Kong and it is meant to guarantee its separateness under OCTS. For instance, Article 22 maintains that no offices or local authorities of the Mainland may interfere in the affairs of the Hong Kong SAR that it administers under the Basic Law, and Mainland residents who want to enter into the Hong Kong SAR must seek approval. The Hong Kong SAR is granted a much wider range of powers than constituent units in a federation, although the central government, like other federalist governments, would be mainly responsible for diplomacy and defense. For instance, the Hong Kong SAR has powers in final adjudication, its own monetary and financial system, and a separate customs and immigration control mechanism. Hong Kong is neither taxed nor regulated by the central government in Beijing. Its extensive powers in external economic relations include a convertible currency as well as membership in key international bodies such as the World Trade Organization (the WTO).

The constitutional foundations for Hong Kong's autonomy are to be provided in the Basic Law. According to Yash Ghai (2007: 4), autonomy is "self-government, where within the division of responsibilities between the centre and the autonomous area, the inhabitants of the autonomous area are free to make policy and organise and run the government." However, other important conditions critical for maintaining autonomy, such as a democratic government, a clear division of powers, and an independent mechanism to adjudicate central-local disputes, are absent in the OCTS model. Although the Basic Law pledges that the adoption of universal suffrage in electing both the chief executive and the legislature is an ultimate goal, the political system designed in the OCTS model is not a full democracy (Chen, 2003).<sup>4</sup> The first chief executive was elected by a committee of 400 people and the second and third chief executive by an 800-member Election Committee comprised of four professional and societal sectors. These four sectors are: (a) industrial, commercial, and financial sectors; (b) the professions; (c) labor, social services, religious, and other sectors; and (d) members of the Legislative Council (the LegCo), representatives of district-based organizations, Hong Kong deputies to the National People's Congress (the NPC), and representatives of Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference (the CPPCC). Each of these four sectors can return 200 members to the Election Committee. However, the candidate elected needs to be formally appointed by the central government before assuming the office of the chief executive. Further, no more than half of the legislators are directly elected for the first three terms of the legislature, and the rest are elected from functional constituencies composed of different social, professional, and business sectors. The following sections examine the institutions of the central government dealing with Hong Kong affairs and the division of powers between the central government and the Hong Kong SAR under the OCTS framework.

The Hong Kong SAR is directly under the authority of the central government (Yep, 2007). The highest level of the CCP, namely, the central leadership under Hu Jintao, decides on the policy toward Hong Kong. The top central body that takes charge of Hong Kong matters is the Hong Kong and Macao Work Coordination Group of the CCP, which was formerly chaired by Vice President Zeng Qinghong, a member of the powerful Standing Committee of the Politburo of the CCP. A rising political star, Xi Jinping, also a member of the Standing Committee of

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<sup>4</sup> "Universal suffrage" is the term used in the Basic Law, although what it means is not clearly defined, and hence may be subject to further constitutional interpretation in future. In this chapter, it refers to the right to vote in directly electing public officials.

the Politburo and a newly appointed vice president, assumed this portfolio after the 17th Party Congress held in November 2007. Aside from assisting the premier and serving as a supporting office for the Coordination Group in dealing with Hong Kong and Macao affairs, the Hong Kong and Macao Affairs Office under the State Council mainly serves as a gatekeeper coordinating the interactions between the Hong Kong and Macao SAR governments and other Mainland government agencies and localities and managing the social, economic, and cultural relations between them and the Mainland.<sup>5</sup> The office also monitors and carries out research on the developments of the two SARs.

There are three central government offices in Hong Kong, namely, the Office of the Commissioner of the Ministry of Foreign Affairs of the PRC, the Hong Kong Garrison of the Chinese People's Liberation Army (the PLA), and the Liaison Office of the Central People's Government in the Hong Kong SAR. Officially, the Liaison Office, formerly the "Xinhua News Agency (Hong Kong Branch)," is the main agency of the central authorities in Hong Kong, monitoring local affairs, facilitating exchanges between the Mainland and the local community, coordinating with and helping Mainland agencies in managing their enterprises and other units in Hong Kong, and handling Taiwan-related matters.<sup>6</sup> But it also conducts united front work in Hong Kong that aims at winning over the support of the community and influencing local developments. The Liaison Office also coordinates the activities of the CCP in Hong Kong and its director likely serves as the party leader of the Hong Kong Party Committee located inside the Liaison Office, although the actual operation of the Communist Party in Hong Kong remains highly secretive (Yep, 2007: 250).<sup>7</sup> As in other federal states, the central government has exclusive control over national security and diplomatic affairs. The Hong Kong Garrison of the PLA serves as an important symbol of Chinese sovereignty. The Hong Kong police are responsible for public security, and the PLA would only be asked to help with public order and disaster relief if requested by the Hong Kong SAR government through the central government. The Office of the Commissioner of the Ministry of Foreign Affairs in Hong Kong is responsible for handling foreign affairs. Nonetheless, according to Article 18 of the Basic Law, the central authorities can declare a state of emergency, and apply relevant national laws to Hong Kong in case of war, or "by reason of turmoil within the Hong Kong Special Administrative Region which endangers national unity or security and is beyond the control of the government of the Region." It is unclear exactly how Beijing would interpret the emergence of circumstances described in this clause, however. If any departments of the central government or the provinces want to set up an office in Hong Kong, they need to obtain the consent of the Hong Kong SAR government as well as the approval of the central government. According to the Basic Law, these central government offices shall abide by the law of the Hong Kong SAR. However, in the colonial era, the "Crown" would be exempted in the laws unless it was expressly bound. The adaptation of laws by the Hong Kong SAR government after 1997 seemed to result in government agencies of the PRC in Hong Kong not being subject to certain Hong Kong laws, where such laws do not expressly bind them, because "the state," which replaces "the Crown" in various laws, encompasses the central government and its subordinate

<sup>5</sup> The official description of the work of the Hong Kong and Macao Affairs Office can be found at [http://www.hmo.gov.cn/public/jj/t20040102\\_2024.htm](http://www.hmo.gov.cn/public/jj/t20040102_2024.htm).

<sup>6</sup> The official descriptions of the work of the Liaison Office can be found at <http://www.locpg.gov.cn/jgjj/zyzn/>.

<sup>7</sup> For a study of the CCP in Hong Kong in the pre-1997 period (Burns, 1990). The memoirs of Mr. Xu Jiatun, the former chief of the New China News Agency in Hong Kong, remain the most authoritative account of the CCP's activities in Hong Kong in the pre-1997 period, *Xu Jiatun's Hong Kong Memoir* (in Chinese), Vols. 1 and 2 (Taipei: United Daily News, 1993).



organs.<sup>8</sup> While this may deride the rule of law in Hong Kong and violate the Basic Law, the review of the application of specific laws to these central government agencies has been slow and not fully completed by the Hong Kong SAR government, more than 10 years after 1997.<sup>9</sup> As of April 2009, the Hong Kong SAR government is still studying whether the remaining 12 pieces of legislation will apply to the three Mainland government offices in Hong Kong.<sup>10</sup>

The Hong Kong SAR has powers for final adjudication, a prerogative unlikely in other federal systems. While there may be two systems of courts in some federal systems, they still belong to the same legal system. A political organ of the central authorities, namely, the Standing Committee of the National People's Congress (the NPCSC), rather than an independent judicial body such as a federal supreme court, interprets the Basic Law. Nonetheless, in practice, Hong Kong's own courts have decided on numerous cases in the course of litigation involving interpretations of the Basic Law since 1997.<sup>11</sup> Further, no national laws, except those listed in Annex III of the Basic Law, would be applied to Hong Kong. Only the national legislature, i.e., the NPC, can amend the Basic Law. Aside from the NPCSC, the executive arm of the central government—that is, the State Council—also has the power to initiate an amendment. Although the Hong Kong SAR could also introduce an amendment, it would require two-thirds of the Hong Kong delegates of the NPC, two-thirds of all the members of the Hong Kong legislature, as well as the consent of the chief executive, who is appointed by the central government. The Committee for the Basic Law of the Hong Kong SAR also studies the amendments and gives its opinions before the amendment bill is put on the agenda of the NPC. Nonetheless, the Basic Law explicitly states that no amendments shall contravene the basic policies of the PRC regarding Hong Kong.

The legislative power of the Hong Kong SAR is substantial, but there are still certain constraints. First, while the legislature can enact laws and then report its legislation to the NPCSC for recording, Article 17 of the Basic Law indicates that the NPCSC can return any law deemed to be in violation of the mini-constitution regarding affairs within the responsibility of the central government or regarding the relationship between the central government and the SAR. Such laws will be immediately invalidated. Although this power has never been used by the NPCSC, what falls within these two areas is *not* clearly defined in the Basic Law. While the Committee for the Basic Law should be consulted and give its opinion on whether the laws of Hong Kong have violated the Basic Law and whether they should be returned, this body is “neither a judicial organ nor a political decision-maker” (Li, 1999: 170). The Committee for the Basic Law, which is under the NPCSC, is also appointed by Beijing with six of its twelve members from Hong Kong and the remaining six from the Mainland. Second, while no national laws would be applied to Hong Kong except those in Annex III of the Basic Law, such as nationality laws, the NPCSC may add or delete from the list after consulting the Committee on Basic Law and the Hong Kong SAR government. The list, however, would be restricted to the area of defense and foreign affairs as well as “other matters outside the limits of the autonomy” of the Hong Kong SAR.

Hong Kong has 36 seats in the NPC, hence enjoying representation disproportional to its population. Beijing can exercise strong influence over the selection of NPC delegates. Hence, these deputies are considered more as agents of the central government, rather than advocates defending

<sup>8</sup> I am indebted to Professor Albert H. Y. Chen for his advice on this issue.

<sup>9</sup> For the latest situation, please refer to the government's papers submitted to the Legislative Council: <http://www.legco.gov.hk/yr07-08/english/panels/ajls/papers/aj0319cb2-1356-1-e.pdf> and <http://www.legco.gov.hk/yr07-08/english/panels/ajls/papers/aj0319cb2-1356-2-e.pdf>.

<sup>10</sup> <http://www.info.gov.hk/gia/general/200904/P200904290197.htm>.

<sup>11</sup> I would like to thank Professor Albert H. Y. Chen for his comment and advice on this point.

Hong Kong's interest in the Mainland (Fu and Choy, 2007). These Hong Kong deputies can be involved in the discussions of the amendments to the national constitution and national legislations, but they cannot interfere in Hong Kong's local affairs. These deputies are also responsible for submitting amendment proposals of the Basic Law to the NPC for consideration. Further, there are Hong Kong delegates in the CPPCC, which is a united front organization for incorporating and wooing non-CCP elites to support the Chinese government. Together with legislative councilors and representatives of district organizations, these CPPCC delegates and NPC deputies form one of the four sectors in the 800-member Election Committee that chooses the chief executive.<sup>12</sup>

As the PRC is a unitary state, the autonomy enjoyed by the Hong Kong SAR under OCTS comes from the delegation or authorization by the central authorities. Several mechanisms can be used by Beijing in controlling Hong Kong. First, Article 31 of the Chinese Constitution provides the constitutional provision for the creation of SARs.<sup>13</sup> But this article does not specify the form of autonomy that would be applied to the SARs (Ghai, 2005). China's legislature has the constitutional power to decide on the specific systems to be implemented in the SAR. Article 2 of the Basic Law explicitly states that the "high degree of autonomy" and the powers of the SAR are authorized by the NPC. Second, there are two key constitutional powers that the central government can deploy to control the Hong Kong SAR, namely, the power to appoint the chief executive and the principal officials and to interpret the Basic Law. In other words, the central government's preference could be delivered through the chief executive and his administration, although Beijing would be careful to avoid overt intervention. The Basic Law also provides for a weak legislature, hence executive power is not as effectively checked as in other democracies. Challenging the Hong Kong SAR government may even be interpreted as questioning the policies of the central government toward Hong Kong. The undisputed authority of the NPCSC to interpret the Basic Law is also amply shown in the last decade. These key features of the unitary state enshrined in the Basic Law are proven to be critical in shaping the relations between Hong Kong and the Mainland in the post-1997 era.

Third, Hong Kong's high degree of autonomy and its executive, legislative, and independent judicial powers are only restricted to those areas laid down in the Basic Law. On the contrary, other autonomous systems can exercise their powers once they are granted, often only subject to general principles such as a bill of rights. However, while the scope of autonomy of the Hong Kong SAR is larger than other autonomous regions or states and provinces in federal systems, the exercise of these powers would be subject to scrutiny or monitoring by Beijing. Senior Mainland officials and legal scholars have repeatedly reminded the Hong Kong community that residual powers not stipulated in the Basic Law belong to the central government, not the SAR, because China is a unitary state, rather than a federal system. Although chapter two of the Basic Law delineates the sharing of powers between the central government and the Hong Kong SAR, there is still much room for interpretations concerning what falls under this category and other gray areas of the Basic Law, as shown in the various constitutional controversies that have emerged since 1997. The central government has rejected demands for clarifying such ambiguities, which means that it can enjoy much greater flexibility in interpreting the Basic Law, if controversies arise (Ghai, 1998).

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<sup>12</sup> There are over 100 Hong Kong delegates in the CPPCC, but only some of them sit in the Election Committee. The latest number of Hong Kong delegates appointed into the CPPCC is 125, see Hong Kong Economic Times, January 26, 2008, p. A14.

<sup>13</sup> Article 31 of the Basic Law states that "The state may establish special administrative regions when necessary. The system to be instituted in special administrative regions shall be prescribed by laws enacted by the National People's Congress in the light of the specific conditions."

Fourth, according to Article 23, the Hong Kong SAR “shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People’s Government, or theft of state secrets, to prohibit foreign political organizations or bodies from conducting political activities in the Region, and to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies.” The wording of this controversial article in the Basic Law was tightened in the aftermath of the Tiananmen crackdown. The Hong Kong SAR government did not proceed with the consultation on the draft legislation until the fall of 2002, more than 5 years after unification. But the huge controversies concerning the legislation of Article 23 prompted massive protests in Hong Kong on July 1, 2003. The subsequent withdrawal of the legislation has not resolved this matter entirely. Enacting Article 23 is still an obligation of the Hong Kong SAR according to the Basic Law, but this is clearly a very politically charged agenda. In short, this overview of the OCTS framework suggests that while Hong Kong has indeed been granted a great deal of autonomy, there are also key levers for the central government to maintain control.

### **13.4 Changing Relations between the Central Authorities and the Hong Kong Special Administrative Region**

Understanding the changing political context of post-1997 Hong Kong is critical before one can appreciate the changing relations between the central government and the SAR. The Hong Kong SAR government has encountered many challenges and suffered from serious policy failures in the past decade. The onset of the Asian financial crisis, the avian flu outbreak, and the airport opening fiasco are but some of the many problems that confronted Hong Kong in 1997–1998. The economic downturn further compounded the governance challenge for the first Hong Kong SAR administration under C. H. Tung, who was favored by Beijing but lacked strong political leadership. Since the top echelon of decision makers of the Hong Kong SAR government was staffed by civil servants who would not be easily removed, there had been popular demands for greater accountability after a series of public sector failures broke out after 1997, such as the short piling incident in building public housing. The Principal Officials Accountability System (POAS) was introduced by Tung at the beginning of his second term in 2002 in order to transfer policy-making power from the senior bureaucrats to a dozen political appointees who will be held accountable to the chief executive. This enabled the chief executive to select his own team of top officials, rather than just relying on senior civil servants as in the colonial era. However, the government was soon engulfed in the highly controversial national security legislation in 2003. Coupled with the severe acute respiratory syndrome epidemic and the ensuing economic downturn, Hong Kong was plunged into a political crisis that triggered more than half a million protesting on July 1, 2003. The political storm unleashed by the anti-Article 23 legislation has profoundly changed the political landscape and further weakened the popularity of C. H. Tung. The growing demand for a faster pace of democratization, the emergence of civil society activism against government policies, and the looming public discontent have compelled Beijing to provide economic policy support to the Hong Kong SAR, shore up the authority of the Tung government, and dampen the demands for democratization by means of constitutional interpretations. More importantly, it was widely believed that Beijing was behind Tung’s surprise resignation in March 2005 and the appointment of Donald Tsang, a senior bureaucrat, revealed the depth of the governance crisis experienced by Hong Kong under OCTS.

As shown in the political twists and turns in the past decade, Hong Kong's experience in implementing the OCTS policy reveals that the relationship between the central government and the SAR is hardly smooth. While most observers would agree that the first decade of OCTS has been largely successful, Hong Kong's enjoyment of a "high degree of autonomy" is first and foremost dependent on Beijing's restraint. A comprehensive assessment of Beijing-Hong Kong relations in its many aspects is impossible in this chapter, but an analysis of the key aspects of Hong Kong's interactions with the central authorities in the constitutional, political, economic, and external dimensions will be attempted below.

### **13.4.1 Constitutional Dimension**

#### *13.4.1.1 Contending Interpretations over the Basic Law*

The tensions in the constitutional relations between the central government and the Hong Kong SAR are best illustrated in the controversies concerning the authority of Hong Kong's courts and the use of constitutional means, namely, the interpretation of the Basic Law and decisions of the NPCSC, to shape Hong Kong's political development. According to Article 158 of the Basic Law, if the courts of the Hong Kong SAR have to interpret the Basic Law in adjudicating cases involving affairs concerning the central government, or concerning the relations between the Hong Kong SAR and the central government, and if such interpretation will affect their final judgments, they shall seek an interpretation from the NPCSC through the Court of Final Appeal of the SAR (the CFA), before making their final judgments, which are not appealable. The NPCSC only needs to consult its Committee for the Basic Law of the Hong Kong SAR before rendering an interpretation of the Basic Law. Further, the Mainland adopts the principle of legislative intent in interpreting laws, which many legal experts in Hong Kong would regard as an authorization to make new laws. A brief analysis of the three interpretations of the Basic Law by the NPCSC shows the limits of Hong Kong's autonomy under OCTS. In each of these cases, the central government has asserted its constitutional authority in order to show that its authority as the central government should *not* be challenged.

The first interpretation concerns the right of abode of the children of Hong Kong residents who were born in the Mainland. A resident in Hong Kong can only achieve full permanent resident status after residing legally in Hong Kong for a continuous period of 7 years. The Chinese and Hong Kong authorities have also imposed administrative measures to regulate the entry of Mainland people to Hong Kong. Article 24 of the Basic Law provides a definition of permanent residents of the Hong Kong SAR, but the provisions about the right of abode of the children of Hong Kong residents who were born in the Mainland were not entirely clear. The CFA's decision on January 29, 1999, ruled that children born of a permanent resident of Hong Kong in the Mainland, regardless of whether that parent had become a permanent resident before or after the birth of the child, should enjoy the right of abode and that the provisions in Hong Kong's Immigration Ordinance requiring that a Certificate for Entitlement issued by the Hong Kong SAR government, which was necessary for Mainlander settlers to enter Hong Kong, to be affixed to a One-Way permit issued by the Mainland authorities, were inconsistent with the Basic Law. The CFA also stated that Hong Kong courts "have the jurisdiction to review the legislative acts of the NPC and the NPCSC, on whether such acts were inconsistent with the Basic Law and to declare such acts as invalid if they are determined to be so inconsistent (Chan, 2000)." In February 1999, senior Mainland scholars and officials severely criticized the CFA (*South China Morning Post*, February 9, 1999, p. 1). In response to such strong reactions, the Hong Kong SAR government requested "clarification" from the CFA. The CFA thus clarified that "the Hong Kong court's power to interpret the Basic Law is derived

from the NPC Standing Committee under Article 158 of the Basic Law, any interpretation made by the Standing Committee under Article 158 would be binding on the Hong Kong courts,” and the judgment of January 29, 1999, did not question “the authority of the NPC and its Standing Committee to do any act which is in accordance with the provisions of the Basic Law and the procedure therein (Chan, 2000).” The clarification was accepted by the central government, at least temporarily, because it reaffirmed the constitutional supremacy of the central government.

Nonetheless, on April 29, 1999, the Hong Kong SAR government warned that as a result of the CFA’s ruling, an estimated 1.67 million people from the Mainland would be entitled to the right of abode in Hong Kong (*South China Morning Post*, April 29, 1999, p. 1). In response to this perceived threat, the chief executive requested the NPCSC to interpret the relevant provisions of the Basic Law on May 21, 1999, stressing that the interpretation was the “quickest and most effective option” to resolve the issue (*Hong Kong Commercial Daily*, May 19, 1999, p. A1). On June 26, 1999, the NPCSC rendered the first interpretation of the Basic Law by reasserting the authority of the central government regarding the entry of people from other parts of China to the Hong Kong SAR. The NPCSC’s interpretation stated that the CFA’s ruling involved interpretations of provisions of the Basic Law that concerns the responsibility of the central government and its relationship with the SAR, an area which the CFA should have sought an interpretation from the Standing Committee before making a final judgment, and that the CFA ruling was inconsistent with the legislative intent. It ruled that for Mainland-born children of Hong Kong residents to qualify for the right of abode in the Hong Kong SAR, at least one of the parents must be a permanent resident of the SAR when the child was born. These children are also required to obtain the Certificate for Entitlement issued by the Hong Kong SAR government and the One-Way Permit issued by the Mainland public security authorities before they are allowed to take up residence in Hong Kong (Chan, 2000)<sup>14</sup>. Although the NPCSC interpretation did not reverse the CFA’s judgments already rendered or affected the right of abode of the people who benefited from the January ruling, this interpretation of the Basic Law shall be adopted by Hong Kong’s courts in future. The Hong Kong SAR government’s request for an interpretation by the central government is widely considered to be putting policy expediency above judicial autonomy because of the estimated inflow of a huge number of Mainland people, especially among the legal community in Hong Kong. Further, this first constitutional crisis after 1997 showed that the CFA is not really the final court in interpreting the Basic Law. The interpretation rendered by the NPCSC shows that it has “the ultimate authority to interpret the Basic Law” in accordance with Article 158 (Chen, 2006: 641). But many sectors in Hong Kong have serious concerns about the use of constitutional interpretation as a means of political intervention into Hong Kong’s affairs and judicial independence, because after all, not all the provisions in the Basic Law are unambiguous (see below).

#### 13.4.1.2 *Conflicts over the Political Arrangements of the Basic Law*

Despite its earlier relatively “hands-off” approach to Hong Kong affairs, Beijing’s concern over its politics was aggravated with the failure of the Hong Kong SAR in passing the national security legislation in 2003. In September 2002, the Hong Kong SAR government initiated the legislative process for Article 23 of the Basic Law. The popularity of Mr. Tung and his government reached a nadir in early and mid 2003 with the unfolding of political scandal, such as his financial secretary’s purchase of a new car before introducing higher taxes on new car purchase, and the serious economic downturn caused by the severe acute respiratory syndrome outbreak. There were deep

<sup>14</sup> *TA Kung Pao*, June 15, 1999, p. A11

divisions in public opinion and strong opposition against the legislation and the legislative process of Article 23. As a result, on July 1, 2003, half a million people marched to vent their anger against Mr. Tung for his indecisive and ineffective leadership and protested against the Article 23 legislation. This political crisis compelled the government to withdraw the bill on July 7, 2003. Following the protest, the pro-democracy groups stepped up their demands for democracy. The pro-democracy parties successfully highlighted their demands in the District Council elections in November 2003, and quite a number of pro-democracy candidates won over pro-Beijing or pro-government candidates.

The second interpretation of the Basic Law concerns the future election method of the chief executive and the legislature of the Hong Kong SAR because the massive protest erupted on July 1 2003 fuelled demands for more democracy. In order to dampen the calls for the universal suffrage of the chief executive and the LegCo from the pro-democracy camp in Hong Kong, the central government began to steer the political debate in the SAR. In December 2003, President Hu Jintao highlighted his concern over Hong Kong's political development (*Ta Kung Pao*, December 4, 2003, p. A2). However, there are ambiguities in the Basic Law about whether Hong Kong could further democratize its political system after 2007. In December 2003, central officials took the initiative and reiterated that Hong Kong's constitutional development shall abide by the principles of "gradual and orderly progress" and that constitutional development should proceed "in light of the actual situation" and "balanced participation."

In January 2004, a task force on Hong Kong's constitutional reform was set up by the Hong Kong SAR government to consult the people about political reform. The Hong Kong SAR government echoed Beijing's claim that constitutional development was the responsibility of the central government, and that consensus among all three sides of the Hong Kong SAR government, LegCo, and the central government must be reached to start the process.<sup>15</sup> In fact, the Basic Law has not clearly spelled out the sequence of actions that have to be taken in order to initiate amendments of the Basic Law regarding the selection of the chief executive and the formation of the LegCo and its voting method subsequent to 2007. Beijing proceeded to interpret Annex I and II of the Basic Law in late March 2003 (*Wen Wei Po*, March 27, 2004, p. A1). The interpretation made on April 6 stated that any amendments to the method regarding the selection of the chief executive and LegCo must start with a report by the chief executive to the NPCSC, which will then "make a determination in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress."<sup>16</sup> Further, the bills on the amendments to the method for selecting the chief executive and for forming the LegCo and its procedures for voting shall be introduced by the Hong Kong SAR government. Soon afterward, in mid April, C. H. Tung submitted a request to the NPCSC and sought its determination on whether Hong Kong could proceed with political changes in 2007 and 2008. In order to curb demands for a faster pace of democracy, the NPCSC quickly followed up with a decision on April 26, 2004, that the method for the selection of the chief executive in 2007 and the legislature in 2008 would not be universal suffrage.<sup>17</sup> Nonetheless, the specific methods in choosing the third chief executive and forming the fourth LegCo could be amended as long as such changes conform to "the principle of gradual and orderly progress."

<sup>15</sup> See the press release of the Hong Kong SAR Government, March 26 and March 30, 2004 (<http://www.info.gov.hk/gia/general/200403/26/0326320.htm>); (<http://www.info.gov.hk/gia/general/200403/30/0330222.htm>).

<sup>16</sup> <http://www.cmab.gov.hk/cd/eng/basic/pdf/es22004080554.pdf>

<sup>17</sup> <http://www.cmab.gov.hk/cd/eng/basic/pdf/es2200408081.pdf>

The third interpretation of the Basic Law concerns whether the new chief executive of the Hong Kong SAR shall serve the remaining terms of the chief executive, or whether he/she shall serve a new 5-year term after C. H. Tung abruptly resigned on March 10, 2005. The Basic Law has no clear provision for this situation. The legal community in Hong Kong and even the government initially held the view that the new chief executive shall have a full 5-year term.<sup>18</sup> However, Mainland legal scholars representing the views of the central government argued that the chief executive should only serve the remaining term of the outgoing chief executive. The Hong Kong SAR government then adopted the Mainland position and proceeded to amend the relevant ordinance accordingly. Facing the challenge of a judicial review over this amendment, the acting chief executive, Donald Tsang, requested the NPCSC to interpret the relevant provisions of the Basic Law. The interpretation by the NPCSC stipulated that should an incumbent chief executive fail to complete a full 5-year term, the successor could only serve the remaining term of his/her predecessor (*Hong Kong Commercial Daily*, April 28, 2005, p. A1). Hence, Tsang, who enjoyed more popular support than Tung, could only serve the remaining 2 years before the next chief executive election in 2007. As one constitutional scholar put it, by seeking an interpretation from the NPCSC, the Hong Kong SAR government can pre-empt the judiciary from “making any ruling on the constitutionality or legality of any law or any government acts” (Tai, 2007: 72). Each of these constitutional interpretations have aroused great controversy and divided the community in Hong Kong.

### 13.4.1.3 *New Constitutional Order in the Making*

The constitutional relationship between the central authorities and post-1997 Hong Kong has proved to be conflict-ridden as Hong Kong’s common law system is becoming embedded in the broader Mainland legal order. The assertive role played by the central government reveals the limited scope for Hong Kong over political and constitutional matters under OCTS. Whether the Hong Kong SAR government has served mainly as an agent for the central authorities or as an advocate in protecting Hong Kong’s political and judicial autonomy remains a contentious issue. In 1999 and 2005, it was the Hong Kong SAR government, not the courts as expected in Article 158 of the Basic Law, which requested the interpretation of the mini-constitution. In 2004, it was the NPCSC that took the initiative to render an interpretation on annexes of the Basic Law regarding the methods to select the chief executive and form the legislature and its voting procedures. In order to manage demands for immediate political change, the central government was also keen to take decisions on the denial of universal suffrage in 2004 and on setting a more gradual timetable for democratic reform in late December 2007, so that Hong Kong could introduce universal suffrage for the election of the chief executive in 2017 and the LegCo in 2020.<sup>19</sup> While the overall rule of law in Hong Kong, including the protection of individual rights and civil liberties, has not suffered from major setbacks, judicial autonomy can become more precarious if the interpretation of the Basic Law by the NPCSC becomes more frequent.

Some scholars have explored the emergence of constitutional norms in guiding the interactions between the central authorities and the SAR (Chen, 2003; Lo, 2008). For instance, the central government has so far not nullified any Hong Kong laws that it considers to be beyond the SAR’s autonomy, nor has it set up a mechanism to examine systematically Hong Kong’s laws

<sup>18</sup> See the secretary for Constitutional Affairs’ reply to a legislator’s question, [http://www.cmab.gov.hk/en/press/press\\_204.htm](http://www.cmab.gov.hk/en/press/press_204.htm)).

<sup>19</sup> See <http://www.cmab.gov.hk/cd/eng/basic/pdf/decision.pdf>.

(Chen, 2003: 366). Since 1997, no national laws except those relating to exclusive economic zones, continental shelves, and immunity from compulsory measures concerning the property of foreign central banks have been added to the list of national laws that would be applied to Hong Kong.<sup>20</sup> However, there are no clear rules or legal principles with which the NPCSC has followed in rendering the three interpretations. Yash Ghai has argued that the procedures for the interpretation of the Basic Law should be “judicialised” (Ghai, 2005: 42–43). For instance, if the NPCSC wants to “interpret” the mini-constitution, it should invite submissions and carry out public hearings and the Committee for the Basic Law should be able to make its own recommendations. Hence, the cultivation, formalization, and adoption of constitutional norms might be one alternative in building constitutional relations between the central authorities and the Hong Kong SAR in future.

### **13.4.2 Political Dimension**

The political dynamics between Beijing and Hong Kong are multi-faceted.<sup>21</sup> The central government adopted a relatively “hands-off” approach in managing Hong Kong affairs in the early period after reunification. However, with the outburst of popular discontent against the Article 23 legislation in early summer 2003, the central leadership has become seriously concerned with Hong Kong’s political situation and has taken a very active role in shaping its economic and political development. The following section examines the precarious nature of Hong Kong’s political autonomy, the growing intervention by Beijing in Hong Kong’s governance since 2003, and the contention over political reform since 2004.

#### **13.4.2.1 Hong Kong’s Precarious Political Autonomy**

Most studies on the political relations between Beijing and the Hong Kong SAR highlight the precarious nature of Hong Kong’s autonomy. Some analysts emphasize the “Mainlandization” of Hong Kong, suggesting that Hong Kong’s political, economic, and legal systems have become much more influenced by Beijing and have been converging with the Mainland since 1997. According to Sonny Lo, Mainlandization refers to the Hong Kong SAR government’s policy of “making Hong Kong politically more dependent on or similar to Beijing, economically more reliant on the mainland’s support, socially more patriotic toward the motherland, and legally more reliant on the interpretation of the Basic Law” by the NPCSC (Lo, 2008: 42–43). Tung’s administration followed Mainland-style practices in reversing democratic politics such as the introduction of a proportional representation system in legislative elections in order to favor the pro-government and pro-Beijing political forces, the abolition of the two elected Municipal Councils and the reintroduction of appointed members into the District Councils, and the adoption of a pro-China and patriotic ideology (Lo, 2008: 55–57). However, Lo argues that such a policy backfired because the gap between the government and society exacerbated political alienation and the political exclusion of the pro-democracy camp only intensified the confrontation between the government and its critics (Lo, 2008: 44–49).

<sup>20</sup> For a list of the national laws that are applied to Hong Kong, see [http://www.info.gov.hk/basic\\_law/fulltext/](http://www.info.gov.hk/basic_law/fulltext/).

<sup>21</sup> Given the focus on public administration in this volume and the limitation of space, this section cannot provide a comprehensive analysis of the political dynamics between Beijing and Hong Kong. Please refer to recent studies by Suzanne Pepper, Sonny Siu-hing Lo, and Kitty Poon for more systematic treatment of this important issue.



In a similar vein, there are other scholars who also argue that Hong Kong's political autonomy is precarious (Holliday et al., 2002). The political autonomy in Hong Kong has been "unusual" because it lacks the two common elements in other autonomous areas, namely, cultural and ethnic distinction and democratic procedures (Holliday et al., 2002: 462). Moreover, they believe that a "dependent mentality" in Hong Kong has emerged as a result of Hong Kong's post-1997 economic crisis, and the pragmatism of certain segments of the elite and masses to look for short-term economic gains by seeking closer economic relations with the Mainland might accelerate the erosion of its autonomy (Holliday et al., 2002: 455–64). They believe that the protection of local autonomy in Hong Kong came from the actions of local civil society groups and support from foreign governments and the international media, such as the defense of press freedom by Hong Kong journalists and the champion of judicial autonomy by the legal profession, which "raised the stakes" for the Hong Kong SAR government in sacrificing local autonomy (Chan and Chan, 2007; Holliday et al., 2002).

On the other hand, some scholars hold a different view. Albert H. Y. Chen, a Hong Kong legal scholar who is a member of the Committee for the Basic Law, has offered a good summary of the perspectives of the central authorities. As he puts it,

China's understanding of Hong Kong's autonomy is that of "Hong Kong people ruling Hong Kong," provided that the majority of Hong Kong people exercising the power to rule Hong Kong are considered to be patriots—people whom the Chinese government and the Chinese Communist Party consider to be patriots and thus political allies. (Chen, 2007b: 34)

In other words, Beijing's perspective is that the Hong Kong SAR "already enjoys full autonomy in the sense of 'Hong Kong people ruling Hong Kong' and not Communist cadres ruling Hong Kong, and the central government not interfering with the administration, policy-making and law-making of Hong Kong" and it "already enjoyed a significant degree of democracy (including the Rule of Law, civil liberties, judicial independence, multi-party competition, direct elections, functional constituency elections, etc.)" (Chen, 2007b: 39).

The centerpiece of the Basic Law political system, from Beijing's perspective, is the executive-dominated government. The chief executive is the key interface through which the central government interacts with the Hong Kong SAR. Despite the strong constitutional power given to the executive, Mr. C. H. Tung, the first chief executive, experienced great difficulties in delivering effective governance. Theoretically speaking, the formal institutional arrangements of the Basic Law framework allow the Hong Kong SAR government to continue the previous colonial "executive-led" and "bureaucracy-based" governance, which was characterized, for instance, by co-optation of elites into the administrative machinery (often called "administrative absorption of politics"), the continuation of the government's capacity to "make sound policy in exchange for political legitimacy," the government's ability to stay above private interests, and the existence of a weak legislature and a weak civil society (Cheung, 2005, 2007). But these conditions no longer existed in the post-1997 period. For instance, the public demanded greater accountability and better government performance. Tung had committed serious policy blunders and set out many ambitious policy goals, but lacked the capacity to deliver them, especially when the economy had suffered from a serious downturn after the Asian financial crisis. However, despite his unpopularity, Tung was still able to secure a second 5-year term without any challenger competing with him, which can largely be explained by the strong support rendered by the former Chinese leader, Jiang Zemin. From Beijing's perspective, the critics of Tung and his administration were not just

criticizing his ineffective governance, but they were also seeking every opportunity to challenge the foundation of the political system designed in the Basic Law and hence indirectly the authority of the central government.

### *13.4.2.2 Beijing' Growing Intervention in Hong Kong's Governance since 2003*

Nothing is more critical than the political crisis in 2003 in defining the relations between the central authorities and the Hong Kong SAR. The deadly severe acute respiratory syndrome was transmitted to Hong Kong in February 2003 from neighboring Guangdong. Owing to the tight control over information by Mainland authorities, the Hong Kong SAR government was not informed of the dire situation and had encountered great difficulties in coping with this unknown disease, at least until Beijing decided to become more transparent due to international pressure and allowed better coordination between Hong Kong and Mainland health authorities. The epidemic had a chilling effect on Hong Kong's economy and further aggravated Tung's governance crisis, which was already marred by his poor handling of the car purchase scandal of his financial secretary and the aggressive championing of the national security legislation by his secretary for security. Even the conclusion of a free trade agreement with the Mainland and the relaxation of the inflow of Mainland visitors announced during Premier Wen Jiabao's visit to Hong Kong on the eve of the sixth anniversary of its reunification with China could not reverse the anti-Tung sentiments. Not only had the massive demonstrations against the Article 23 legislation and Tung's administration, on July 1, 2003, shocked the Chinese leadership, but it had also produced an indelible impact on relations between the central government and the SAR.

The July 1 protest could perhaps be compared to Hong Kong's massive demonstrations in 1989 supporting the pro-democracy movement in the Mainland, which similarly produced a reorientation in China's policy on Hong Kong by expediting the opening up and development of Shanghai and other coastal cities because Hong Kong was regarded as politically unreliable. The thrust of central policy toward Hong Kong in the 2003–2004 period aimed at achieving political stability and shoring up the falling popularity of the Tung administration, which could no longer be entrusted with full responsibility to ensure political order in Hong Kong. In contrast to its previous non-interventionist posture, Beijing has changed to a far more activist strategy to shape Hong Kong politics. Among the many initiatives the central government has taken include, revamping its agencies and policy coordination group responsible for Hong Kong affairs, stepping up the monitoring of Hong Kong political developments, intensifying unified front work with political, business, and community leaders, and offering economic policy support measures to boost the Hong Kong economy, including most importantly supporting the conclusion of the Closer Economic Partnership Arrangement (CEPA) agreement between Hong Kong and the Mainland. In other words, Beijing's growing interventions in Hong Kong affairs since mid 2003 can also be considered as a response to the governance crisis partly induced by the problematic political system designed in the Basic Law and partly aggravated by the ineffective governance delivered by its hand-picked appointee, C. H. Tung (Cheung, 2005, 2007; Lo, 2008: 48–59).

Aside from the constitutional powers to appoint the chief executive and his top officials and to interpret the Basic Law, there are various ways through which Beijing could directly influence Hong Kong's governance. The following discussion only highlights some prominent examples in the past decade. First, the central government can render (or withdraw) support to the chief executive and his administration. Getting central support is a prerequisite for the chief executive to govern effectively, hence the incumbent must also take whatever directives (or even indirect

clues) from the central government seriously. For instance, with the strong backing of the central government and especially President Jiang Zemin, C. H. Tung was able to secure a second term as chief executive, despite his low popularity, in 2002. When Tung was considered more a liability than an asset in Beijing's eyes in the aftermath of the political crisis in 2003, President Hu Jintao reprimanded C. H. Tung in a widely publicized meeting in Macao in December 2004, and by March 2005, Tung had tendered his resignation on the grounds of health (Poon, 2008: 88–89). The central government also indicated their positive assessment of Donald Tsang's work before the chief executive election was held in March 2007, although the central leadership no longer offered an open endorsement this time (Lo, 2008).

Second, the central government could influence governance in Hong Kong through political patronage and co-optation in order to influence political parties, interest groups, or other elites to toe Beijing's line. Sonny Lo uses the perspective of patron-client relations in a pluralistic context to characterize the relations between the central government and the chief executive and other political actors in Hong Kong (Lo, 2008: 29–37). Beijing, being the most powerful patron, can use its constitutional power of appointment of the chief executive and principal officials as well as other political and economic resources to solicit political allegiance from different political actors in Hong Kong. In exchange for political and economic policy support from Beijing, the chief executive would have to deliver his political loyalty to the central government. Similarly, the chief executive could serve as a political patron and obtain compliance and support from other political actors through appointing them as members in government advisory and policy-making committees or as politically appointed policy secretaries since 2002 (Cheung and Wong, 2004). In fact, a growing number of political elites, such as executive councilors, legislators, and politicians of the pro-government parties, and retired senior officials, have been appointed as delegates of China's NPC and CPPCC in recent years. Such a network is even larger if memberships in similar provincial and municipal level organs or other advisory bodies in the Mainland are counted. The overlapping membership in political institutions in Hong Kong and the Mainland is indicative of the growing interlocking of the two different political systems (Pepper, 1999, 2008).

Third, the central government also uses its symbolic power to steer the political discourse and shape public opinion in Hong Kong. Although central officials usually do not comment on local governance in Hong Kong, there are several controversial cases. For instance, in 2000, a senior central official maintained that the Hong Kong media should not advocate the "two states" theory after Taiwan's *de facto* representative in Hong Kong defended this controversial notion in a radio program of the publicly funded Radio Television Hong Kong. Similarly, a deputy director of the Liaison Office warned that the media should not report news on the advocacy of Taiwan independence after a Hong Kong television station broadcasted an interview with the newly elected Taiwanese vice-president (Wong, 2004: 22–24; Yeung, 2002: 251). Another important case concerns the discussion on Hong Kong's path of political reform from late 2003 to early 2004. In order to assert central authority over the discourse on political reform, Mainland officials and legal experts reminded the Hong Kong community of the primacy of the central government and the importance of "One Country" in the process of democratic political reform in Hong Kong and the need to emphasize patriotism as a criterion in assessing who would be qualified to govern Hong Kong. The "invisible hand" of Beijing can also be found in the policy rhetoric adopted by the Hong Kong SAR government, such as its emphasis on building a harmonious society and pursuing people-based governance since 2005, which ran parallel to the policy orientation of the central leadership in Beijing (*South China Morning Post*, April 27, 2008, p. A12).

Fourth, the central government has offered economic policy support to Hong Kong and hence has particularly privileged the business community. But the growing economic influence of the

Mainland in Hong Kong can easily be translated into political influence, which further reinforces Beijing's strategy in co-opting the business and professional elites. In order to jumpstart Hong Kong's economy in the aftermath of the political and economic crisis in mid 2003, the central government not only relaxed the inflow of Mainland tourists to Hong Kong through the Individual Visit Scheme, but also launched the CEPA initiative after July 2003. In addition to measures facilitating trade and investment between Hong Kong and the Mainland, the CEPA agreement offers zero tariff treatment to goods of Hong Kong origin and preferential treatment to Hong Kong services entering into the Mainland market, and promotes the mutual recognition of professional qualifications. Such policy measures were requested by Hong Kong's business community and the government, and the central government also believed that they helped to reduce the popular discontent against the Hong Kong SAR government. As Hong Kong's economy has become more dependent on capital and investments from the Mainland, economic integration between the two areas would further weaken Hong Kong's bargaining power and erode its autonomy (Holliday et al., 2004: 254–70).

Last but not least, the central government has played an increasingly powerful role in influencing elections in Hong Kong (Poon, 2008: 86–88). For instance, the central government had made its preferences over the candidates known in the 2002, 2005, and 2007 elections for the chief executive. It was also widely believed that Beijing was behind the coordination of the different pro-Beijing political forces before the 2004 legislative elections (Lo, 2008: 58–59; Poon, 2008: 86–87). The Liaison Office of the central government could mobilize community associations, trade unions, and other united front organizations to support pro-Beijing parties and candidates in legislative and district elections (Lo, 2008: 44). In order to prevent the splitting of support for the pro-Beijing political camp, the Hong Kong Progressive Alliance, a conservative political party composed of businessmen and professionals, did not field any candidates in the 2004 legislative elections and even merged with the Democratic Alliance for the Betterment of Hong Kong (the DAB) soon afterward. On the contrary, the exposure of the problems and scandals of politicians from the pan-democracy camp could be regarded as part of Beijing's strategy to weaken these critics of the Hong Kong SAR government and the central government (Lo, 2008: 58–59). Indeed, the pro-Beijing DAB had replaced the Democratic Party to become the largest party in the legislature by winning 12 seats in the LegCo elections in 2004.

### *13.4.2.3 Contention over Political Reform*

The key point of contention in the relations between Beijing and the Hong Kong SAR since mid 2003 concerns the pace of democratization.<sup>22</sup> There are many voices in Hong Kong arguing for a faster pace of democratization, but the pro-government and pro-business sectors tend to follow a more conservative view. The Hong Kong SAR government has collaborated closely with the central government in steering the consultation and debate over political reform. As mentioned earlier, in order to dispel any illusion about the prospect of earlier introduction of democracy, the NPCSC promptly interpreted the Basic Law on April 6 and made a ruling on April 26, 2004, that the selection of the chief executive in 2007 and the formation of the LegCo in 2008 would not be carried out by universal suffrage. A modest reform proposal was released by the Hong Kong SAR government in October 2005. This proposal recommended the expansion of the Election Committee that selects the chief executive from 800 to 1600 and all District Council members would become members of the Election Committee. The number of seats in the LegCo would

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<sup>22</sup>This section draws from my short essay, "Hong Kong Politics after (C.H.Tung)".

expand from 60 to 70. The geographical constituencies and functional constituencies would increase by five seats each, and the five additional seats in the functional constituencies would be allocated to the category of District Council members, who would be elected by the members of the District Councils themselves. However, the government would have to obtain the support of the pro-democracy legislators in order to obtain the two-thirds majority for the passage of the government's reform proposals because the pro-democracy legislators still held 25 seats in the 60-seat LegCo. However, all but one of the 25 legislators in the pro-democracy camp voted against the legislation on December 21, 2005. Only 34 legislators voted in favor of the government's proposal, 24 voted against, and one abstained. The political reform proposal from the government was thus defeated because it failed to obtain the support of a two-thirds majority. This defeat, however, meant that the electoral arrangements of the 2007 chief executive election and the 2008 LegCo election would remain the same as before.

The challenge from Alan Leong of the pro-democracy Civic Party had not changed the pre-ordained outcome of the 2007 chief executive election, although his candidacy did compel Donald Tsang to engage in electioneering as in a competitive election. Tsang finally won 649 votes out of the 800-people Election Committee. As soon as Donald Tsang began his 5-year term as chief executive in July 2007, his government issued a consultation on the roadmap and timetable toward universal suffrage. Instead of allowing the general public to indicate their preference toward different models of electoral reform, the consultation only invited the people to indicate their preference on individual items, such as the composition and size of the nomination committee for the chief executive, the method of nomination, or the method of universal suffrage. This has largely inhibited the public from indicating a clear preference on the way forward in political reform while allowing maximum flexibility for the government to manipulate the outcome of the consultation. Consequently, in mid December 2007, Donald Tsang submitted his summary of the views solicited and recommendations to the NPCSC, maintaining that "implementing universal suffrage for the Chief Executive first by no later than 2017 will stand a better chance of being accepted by the majority in our community."<sup>23</sup> He proposed setting a timetable for achieving universal suffrage on the basis that there were a lot of diverse views and suggested that the methods for selecting the chief executive and forming the LegCo might be amended in 2012.

Soon after receiving the report from the Hong Kong SAR government, the NPCSC rendered its decision on December 29, 2007, rejecting the possibility of universal suffrage in the fourth term of the chief executive in 2007 and the fifth term of LegCo in 2012. Instead, the NPCSC determined that the chief executive may be elected by universal suffrage in 2017 and that the LegCo may be returned by universal suffrage after that of the chief executive, i.e., in 2020.<sup>24</sup> There may also be changes in the electoral method for both the chief executive and the LegCo in 2012. Although this central decision could not fully satisfy the demands of the pro-democracy camp and other people who favored more democracy, there were no longer massive protests. After all, this is the first time that Beijing agreed to a timetable for universal suffrage. Nonetheless, future constitutional reforms would still require the approval of the NPCSC and the specific electoral arrangements to attain universal suffrage are yet to be formulated. For instance, Beijing may still

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<sup>23</sup> Report by the Chief Executive of Hong Kong Special Administrative Region to the Standing Committee of the National People's Congress on the Public Consultation on Constitutional Development and on whether there is a need to amend the methods for selecting the Chief Executive of the Hong Kong Special Administrative Region and for forming the Legislative Council of the Hong Kong Special Administrative Region in 2012, Dec. 2007.

<sup>24</sup> [http://news.xinhuanet.com/english/2007-12/29/content\\_7334596.htm](http://news.xinhuanet.com/english/2007-12/29/content_7334596.htm).

influence the nomination process of the candidates for chief executive and some form of functional representation in the legislature may still be retained in the future, even when “universal suffrage” is introduced. While the battle for democracy seems to be settled, at least temporarily, the Hong Kong SAR government will still have to manage the gradual reform of the political system by treading between the central government and the pro-democracy advocates before 2017.

### **13.4.3 The Economic Dimension**

Hong Kong’s capitalist economy is separated from that of the Mainland under OCTS. Not only can Hong Kong maintain its own currency and run its own finance, monetary affairs, and external economic relations, it can also administer its own customs and immigration systems. Hong Kong does not have to pay tax to the central government or contribute to the maintenance of the PLA garrison. Since 1997, Hong Kong has experienced two recessions—the first one from late 1997 to 1998 caused by the Asian financial crisis and the second one from mid 2001 to early 2002 sparked off by the September 11, 2001 terrorist attacks and the bursting of the hi-tech bubble, as well as one near recession in mid 2003 engendered by the severe acute respiratory syndrome (Sung, 2007). It was only in late 2006 that Hong Kong’s GDP per capita reached the level in 1997, and it has not yet been successful in fully transforming itself into a knowledge-based economy. In view of the huge impact of the economic downturn, such as high unemployment and deflation and the Mainland’s accession to the WTO, the Hong Kong SAR government has become much more proactive in deepening economic and financial relationships and promoting coordination in development planning between Hong Kong and the Mainland since 2001.

#### **13.4.3.1 Expanding Intergovernmental Links**

In the initial one or two years after 1997, the Hong Kong SAR government did not move quickly to seek economic cooperation with the Mainland. Collaboration with Mainland authorities was largely limited to the technical or administrative domain. Owing to the competing views and interests of the different governments involved and their concerns with the repercussions for OCTS, intergovernmental mechanisms between Hong Kong and the Mainland have expanded only in a gradual manner since unification (Cheung, 2006). In the first 3 years after 1997, there were only a small number of liaison channels between the two, focusing mainly on issues where cooperation and coordination were indispensable, such as public security, water supply, and boundary management.<sup>25</sup> However, under the initiative of C. H. Tung, the Hong Kong/Guangdong Cooperation Joint Conference was established in 1998 to promote cooperation across different policy areas between Hong Kong and Guangdong, its neighboring province. The framework has now become the umbrella for coordinating all key areas of cross-boundary cooperation.

The Office of the Hong Kong SAR in Beijing, inaugurated in 1999, was the only official unit-in-residence in the Mainland from Hong Kong until 2002. In response to repeated calls from the business sector demanding the setting up of more government offices in the Mainland, the Hong Kong SAR government finally established the first Economic and Trade Office in the Mainland in Guangzhou, the provincial capital of Guangdong, in 2002, to liaise between Hong Kong businesses and their Guangdong counterparts and to organize trade and investment promotion activities in the province.<sup>26</sup> This network was later extended to two more major cities, Shanghai and Chengdu.

<sup>25</sup> See <http://www.cab.gov.hk/upload/20050704094423/Annex.xls>.

<sup>26</sup> Website of the Economic and Trade Office in Guangdong, <http://www.gdeto.gov.hk/eng/about/role.htm>.

The Hong Kong SAR government also reorganized its internal structure in early 2006 by reframing the Constitutional Affairs Bureau as the Constitutional and Mainland Affairs Bureau in order to manage the growing intergovernmental links.

### 13.4.3.2 *Fostering Closer Economic Partnership and Financial Relations*

The conclusion of the CEPA agreement between Hong Kong and the Mainland is an unprecedented effort in deepening the economic relationship between both areas. After extensive lobbying by the local business community, the Hong Kong SAR government negotiated with the relevant Mainland authorities regarding a free trade area in early 2001 in order to tap the “first-mover” advantage after China’s WTO entry. However, the formal CEPA agreement was only signed in June 2003 at a time when the Hong Kong economy was in the midst of an economic downturn and a deepening political crisis. Beijing approved the CEPA arrangement not only to facilitate Hong Kong’s restructuring into a robust service economy and expedite closer integration with the Chinese economy, but also to relieve its economic difficulties that were considered a key source of its political discontent. Aside from providing zero-tariff for products of Hong Kong origin entering the Mainland, the CEPA arrangement facilitates the entry of Hong Kong service suppliers to the Mainland and introduces various measures on trade facilitation for Hong Kong businesses, starting from January 1, 2004, about 2 years before China had to open up in accordance with the schedule of the WTO.<sup>27</sup> The Hong Kong SAR government has also been active in lobbying Beijing to relax the relevant rules so that Mainland enterprises can invest in Hong Kong.<sup>28</sup> Further, the central authorities allowed the residents of four cities in Guangdong province to travel to Hong Kong on an individual basis starting from July 28, 2003, under the “Individual Visit Scheme.” Tourism between Hong Kong and the Mainland has flourished since 2003 and 49 cities with a population of 270 million are now covered by the scheme.<sup>29</sup> In 1997, some 2.3 million Mainland people had visited Hong Kong, but by 2008, the number had increased seven times to almost 17 million, and the share of tourists from the Mainland in the visitor total jumped from 21% in 1997 to 57% in 2008.<sup>30</sup>

The Hong Kong SAR government has also been actively promoting financial cooperation with the Mainland and Hong Kong continues to serve as the leading center for China’s firms to raise equity capital.<sup>31</sup> In 1997, there were only 98 Mainland firms were listed in the Hong Kong stock exchange. however, by the end of 2008, 465 Mainland affiliated companies were listed in the Hong Kong Stock exchange.<sup>32</sup> The market capitalization of Mainland-affiliated companies on the Hong Kong stock exchange only represented 16.3% of the total in 1997, but by the end of 2008, they contributed 60% of the total market capitalization and 71% of the annual equity

<sup>27</sup> The CEPA arrangement has been broadened further since 2004. A total of six supplements to the CEPA were concluded by May 2009.

<sup>28</sup> *The Chief Executive’s Policy Address 2001*, para. 82, <http://www.policyaddress.gov.hk/pa01/e82.htm>.

<sup>29</sup> See the discussion paper for the Professional Services, Information and Technology and Tourism Focus Group of the Economic Summit on “China 11th Five-Year Plan and the Development of Hong Kong.” See [http://www.info.gov.hk/info/econ\\_summit/eng/pdf/paper\\_10.pdf](http://www.info.gov.hk/info/econ_summit/eng/pdf/paper_10.pdf).

<sup>30</sup> Census and Statistics Department, the Government of the Hong Kong Special Administrative Region, *Hong Kong Annual Digest of Statistics 2003* (Hong Kong: Census and Statistics Department, 2003), p. 200; [http://www.censtatd.gov.hk/products\\_and\\_services/products/publications/statistical\\_report/general\\_statistical\\_digest/index\\_cd\\_B1010002\\_dt\\_detail.jsp](http://www.censtatd.gov.hk/products_and_services/products/publications/statistical_report/general_statistical_digest/index_cd_B1010002_dt_detail.jsp) and Hong Kong Tourism Board and [http://www.tourism.gov.hk/english/visitors/visitors\\_ind.html](http://www.tourism.gov.hk/english/visitors/visitors_ind.html).

<sup>31</sup> Given the complexity of the subject and the many developments in the past decade, this section aims only to highlight some examples of the deepening financial cooperation between Hong Kong and the Mainland.

<sup>32</sup> <http://tpwebapp.hktdc.com/print/print.asp?url=http://www.hktdc.com/main/economic.htm>.

trading turnover.<sup>33</sup> It would be difficult to enhance Hong Kong's role as the financial center of the Mainland without the direct sponsorship of the governments on both sides. Hong Kong's banking and financial sector has collaborated with the Hong Kong SAR government in such an endeavor. In May 2001, the Hong Kong SAR government recommended a set of measures to the central authorities in order to foster financial cooperation between Hong Kong and the Mainland. These included, for instance, allowing Mainland institutional investors to invest in stocks and funds in Hong Kong under a "Qualified Domestic Institutional Investor" (QDII) arrangement (*Hong Kong Economic Times*, August 8, 2001, p. A3). In response to the active request and lobbying from the Hong Kong SAR government, the Mainland authorities also promulgated the "Qualified Foreign Institutional Investor" (QFII) Scheme in 2002, which allows qualified overseas investors, including those from Hong Kong, to invest in the stock markets of the Mainland. In April 2006, the arrangements over QDII were officially promulgated by the central authorities, which will help to strengthen Hong Kong as an asset management center in Asia. Since 2004, in view of the growing passenger and business flows between Hong Kong and the Mainland, the central government also began to allow Hong Kong's banks to handle various Renminbi (the Chinese yuan) businesses. The deepening economic and financial relationship between Hong Kong and the Mainland is an apt example of intergovernmental cooperation under OCTS.

#### *13.4.3.3 Seeking Cooperation and Coordination in Regional and National Development*

In order to explore the opportunities promised by China's economic growth, the Hong Kong SAR government has stepped up its efforts in seeking cooperation with provinces and cities in the Mainland. Several agreements have been signed between the Hong Kong SAR and other Mainland cities and provinces, such as Shanghai (October 2003), Beijing (September 2004), and Hainan (November 2004).<sup>34</sup> C. H. Tung and Donald Tsang are both strong advocates of closer cooperation with the Mainland. The most important aspect of intergovernmental cooperation involves Hong Kong and Guangdong, the province neighboring Hong Kong. However, owing to competing interests and perspectives and other factors, intergovernmental cooperation between the two areas did not expand to a wider spectrum until after 2001 (Cheung, 2006). For instance, in view of the duplication of infrastructural facilities in south China and the inadequacies of Hong Kong's connectivity with its hinterland, the Hong Kong government tried to work closely with the neighboring Guangdong province and requested the central authorities to help coordinate the construction of cross-boundary infrastructure, such as the Hong Kong-Shenzhen-Guangzhou Express Rail Link and the Hong Kong-Zhuhai-Macao Bridge, since 2001. The bridge project was, however, perceived by the authorities in Guangdong as mainly benefiting Hong Kong. Hence, it was not until early 2008 that the three cities involved agreed on a financing agreement, after several years of delay. Further, in 2004, the Hong Kong SAR government participated in the Pan Pearl River Delta regional cooperation framework promoting economic cooperation among nine provinces in the southern and southwestern part of China and the two SARs (Hong Kong and Macao) in order to find a niche for its investment in the relatively less

<sup>33</sup> These refer to the market capitalization in the main board of the Hong Kong Stock Exchange, see [http://www.hkex.com.hk/data/chidimen/CD\\_TO.htm](http://www.hkex.com.hk/data/chidimen/CD_TO.htm), [http://www.hkex.com.hk/data/chidimen/CD\\_MC.htm](http://www.hkex.com.hk/data/chidimen/CD_MC.htm) and <http://www.yearbook.gov.hk/2008/en/pdf/E04.pdf>.

<sup>34</sup> See the discussion paper for the plenary session of the Economic Summit on "China 11th Five-Year Plan and the Development of Hong Kong," [http://www.info.gov.hk/info/econ\\_summit/eng/pdf/paper\\_1.pdf](http://www.info.gov.hk/info/econ_summit/eng/pdf/paper_1.pdf).



developed provinces.<sup>35</sup> In late 2008, after intense lobbying by Guangdong province, the National Development and Reform Commission of the central government approved “The Outline of the Plan for the Reform and Development of the Pearl River Delta (2008–2020),” in which Guangdong and Hong Kong are allowed even more policy support and flexibility to promote economic cooperation so that the south China region can once again become a champion of reform and development.<sup>36</sup>

The Hong Kong SAR government also requested the central authorities to highlight Hong Kong’s role in the national development plan in 2006. The National Eleventh Five Year Plan (the 11th FYP) stipulates that it supports the development of Hong Kong’s financial services, logistics, tourism, and information services, and Hong Kong’s status as a financial, shipping, and service center shall be maintained. Instead of reiterating the opportunities created by China’s rise as before, senior Hong Kong officials warned in March 2006 that in view of China’s rapid development, Hong Kong’s economy might actually be “marginalized” if it does not capitalize on the opportunities offered by China’s rise. A high-level Economic Summit was organized by the Hong Kong government in September 2006 and was attended by prominent businessmen, scholars, and officials in order to set out policy measures to complement the 11th FYP.<sup>37</sup> In short, in contrast to the suspicion about closer social and economic integration with the Mainland often expressed in Hong Kong before 1997, the Hong Kong SAR government has been increasingly active in ensuring that the city has a role to play in the regional and national development plans of the Mainland.

#### **13.4.4 External Dimension**

Hong Kong’s extensive international connection is a key aspect of the OCTS framework. While diplomacy remains a central government prerogative, Beijing has not hampered Hong Kong’s conduct of external affairs since 1997 (Ren, 2007; Ting, 2007). The Hong Kong SAR can use the name, “Hong Kong, China,” to develop relations and conclude bilateral agreements on its own with foreign nations in areas such as economic affairs, trade, financial and monetary affairs, shipping, communications, tourism, culture and sports, and to participate in international organizations (IOs) and conferences not limited to states. Unlike local governments even in federal systems, Hong Kong participates as a member of China’s delegations or in such other capacity as permitted by the central government and the IO concerned (such as associate member) in 24 IOs limited to states as well as 32 intergovernmental organizations not limited to states.<sup>38</sup> In particular, Hong Kong continues to be a member of important IOs limited to states, such as the International Monetary Fund, the World Bank, the International Maritime Organization, and the International Telecommunications Union, as well as other important IOs not limited to states, such as the Bank

<sup>35</sup> See the discussion paper for the Professional Services, Information Technology and Tourism Focus Group of the Economic Summit on “China 11th Five-Year Plan and the Development of Hong Kong,” [http://www.info.gov.hk/info/econ\\_summit/eng/pdf/paper\\_9.pdf](http://www.info.gov.hk/info/econ_summit/eng/pdf/paper_9.pdf).

<sup>36</sup> See <http://en.ndrc.gov.cn/>.

<sup>37</sup> See the discussion paper for the plenary session of the Economic Summit on “China 11th Five-Year Plan and the Development of Hong Kong,” [http://www.info.gov.hk/info/econ\\_summit/eng/pdf/paper\\_1.pdf](http://www.info.gov.hk/info/econ_summit/eng/pdf/paper_1.pdf).

<sup>38</sup> Hong Kong joined four of the former and nine of the latter after 1997. See the information provided by the Constitutional and Mainland Affairs Bureau of the Hong Kong SAR Government, for “Intergovernmental organisations limited to states,” <http://www.cab.gov.hk/en/issues/external1.htm>; “Intergovernmental organisations not limited to states,” <http://www.cab.gov.hk/en/issues/external2.htm>; “List of non-intergovernmental organizations,” [http://www.cab.gov.hk/images/iorg\\_ngo.xls](http://www.cab.gov.hk/images/iorg_ngo.xls); “List of treaties in force and applicable to the Hong Kong Special Administrative Region,” <http://www.legislation.gov.hk/interlaw.htm>.

for International Settlements, the Asian Development Bank, and the WTO. Hong Kong has also joined two major IOs limited to states after 1997—the World Tourism Organization and the World Health Organization.<sup>39</sup> Since unification with the Mainland, the Hong Kong SAR government has concluded more than 10 agreements with foreign states and regions on its own, covering areas such as customs cooperation, cooperation in information technology, and avoidance of double taxation. With the authorization of the central government, Hong Kong has also concluded 86 bilateral agreements with foreign governments in areas such as air services, visa abolition, reciprocal juridical assistance, as well as investment promotion and protection.<sup>40</sup> In 1997, there were 51 consulates general and 41 honorary consuls in Hong Kong, but both their numbers rose to 58 in 2008.<sup>41</sup> Further, the central government has authorized the establishment of five offices of IOs restricted to sovereign states in Hong Kong, although these offices are usually located in the capital of a sovereign nation.<sup>42</sup> In other words, Hong Kong's involvement in the international arena continues to be strong and extensive.

Beijing has so far supported Hong Kong's various international initiatives since 1997. For instance, the central government supported not only the hosting of major international events, such as the ministerial conference of the WTO in December 2005, the first time held in China, and the conference of the International Telecommunications Union in December 2006, the first time held outside Geneva, but also Hong Kong's application to the International Olympic Committee to move the equestrian events in the Beijing 2008 Olympics to Hong Kong. Beijing also supported the election of Dr. Margaret Chan, the former Director of Health from Hong Kong, as the Director of the World Health Organization in November 2006, the first time that a Hong Kong and Chinese citizen was appointed as a senior official of such an important international body.

Major foreign governments are largely satisfied with the implementation of OCTS, but they are still concerned with the interpretations of the Basic Law by the central authorities, the issue of media self-censorship, and the slow progress toward democracy in Hong Kong. For instance, the foreign secretary of the UK indicated in 2007 that “over the past ten years there have been some bumpy moments politically and economically, and some of the more dire predictions have not come true,” and she called for universal suffrage to be introduced to Hong Kong as soon as possible.<sup>43</sup> Like other western countries, the European Union is concerned with issues such as democracy, human rights, the level playing field for business, and the rule of law in Hong Kong. Despite the periodic hiccups in Sino-American relations in the past decade, Hong Kong has developed very good working relations with the US government.<sup>44</sup> The central government has also accommodated

<sup>39</sup> <http://www.cab.gov.hk/en/issues/external2.htm>.

<sup>40</sup> [http://www.yearbook.gov.hk/2005/en/01\\_07.htm](http://www.yearbook.gov.hk/2005/en/01_07.htm).

<sup>41</sup> <http://www.yearbook.gov.hk/2008/en/pdf/E01.pdf>; <http://www.protocol.gov.hk/eng/consular/index.html>.

<sup>42</sup> These offices include the Office of the Commission of the European Union, the Office of the Bank for International Settlement, the International Monetary Fund, the Regional Office for the International Finance Corporation for East Asia and Pacific, and the Private Sector Development Office for East Asia and Pacific for the World Bank. The information comes from the “List of Agreements and Arrangements for the Establishing of International Organisations in Hong Kong (Gazette References),” <http://www.legislation.gov.hk/table7i.htm>.

<sup>43</sup> Speech by the Foreign Secretary the Right Honorable Margaret Beckett MP at the British Chamber of Commerce Lunch, Hong Kong, on May 21, 2007. See [http://www.britainusa.com/sections/articles\\_show\\_nt1.asp?d=10&i=41059&L1=41059&L2=41059&a=46449](http://www.britainusa.com/sections/articles_show_nt1.asp?d=10&i=41059&L1=41059&L2=41059&a=46449).

<sup>44</sup> For instance, Hong Kong has been an active partner of the United States in law enforcement, including the protection of intellectual property rights, cross-boundary drug and human trafficking, money laundering, credit card fraud, and on the exchange of information on anti-terrorist operations. See [http://hongkong.usconsulate.gov/ushk\\_state\\_2007043001.html](http://hongkong.usconsulate.gov/ushk_state_2007043001.html); [http://hongkong.usconsulate.gov/pas\\_pr\\_2003050501.html](http://hongkong.usconsulate.gov/pas_pr_2003050501.html).

the continuation of the practice in the colonial era by allowing foreign naval vessels, notably those from the United States, to visit Hong Kong. As the American consul general in Hong Kong suggested in late 2007, “The Central Government has generally respected its commitment to Hong Kong’s high degree of autonomy,” although he favored the earlier introduction of universal suffrage in Hong Kong.<sup>45</sup>

Under OCTS, Hong Kong is also granted the power to issue the Hong Kong SAR passport as an international travel document. The growing acceptance of this passport worldwide is a good indication of Hong Kong’s privileged international status. In 1997, holders of the Hong Kong SAR passport could only obtain visa-free entry in 38 countries, but by July 2009, they can obtain visa-free entry to 139 countries in the world, which is higher than the number accorded to holders of the British National (Overseas) passport, which can only get visa-free treatment in 119 countries.<sup>46</sup> In sum, Hong Kong’s international links continue to be extensive and have not weakened after 1997. Such international connections cannot be taken for granted, however. With China’s growing prominence on the world stage and the increasing internationalization of its economy and society, how Hong Kong can maintain and further its international presence under OCTS remains a big challenge for the SAR.

### 13.5 Challenges and Prospects in the Relations between the Central Government and the Hong Kong Special Administrative Region

Beijing-Hong Kong relations since 1997 have shown that there are many contentions between the central government and the Hong Kong SAR regarding the boundaries and substance of the promised “high degree of autonomy.” On the eve of the 10th anniversary of the SAR, Wu Bangguo, chairman of the NPCSC, reminded Hong Kong that its “high degree of autonomy” is delegated by the central government and no residual power rests with the SAR (*Wen Wei Po*, June 7, 2007, p. A25). This is an apt reminder of the most important context of central-local relations in a unitary political system. The last 10 years offer important thoughts for further reflection.

First and foremost, Hong Kong’s “high degree of autonomy” should be considered as a form of contingent autonomy whereby its exercise depends ultimately on the restraint of the central authorities in Beijing (Holliday et al., 2002). According to Albert H. Y. Chen’s analysis of Beijing’s perspective, while the OCTS falls short of western conceptions of autonomy or democracy, the framework already constitutes a “significant breakthrough for China’s political and legal system” (Chen, 2003: 368). Most importantly, he suggests that:

Paradoxically, there is a connection between the limited democracy within the SAR’s political system and the huge scope of its autonomy. Precisely because the SAR’s degree of autonomy is so high, the central government cannot afford the SAR to be governed by someone who may be ideologically opposed to or otherwise unable or unwilling to adopt a cooperative attitude toward the central government. (Chen, 2003: 368)

<sup>45</sup> See [http://hongkong.usconsulate.gov/cg\\_jc2007111201.html](http://hongkong.usconsulate.gov/cg_jc2007111201.html).

<sup>46</sup> Information from the Immigration Department of the Hong Kong SAR website at <http://www.gov.hk/en/residents/immigration/travel/doc/hksarpassport/visafreeaccess.htm> and *Hong Kong Economic Times*, June 5, 2007. Also see <http://ukinhongkong.fco.gov.uk/en/passports/bno-visa-free-access.0>

Given such internal tensions of the OCTS framework, it is likely that many more contradictions between the central authorities and the Hong Kong SAR are bound to emerge in defining the substance and boundaries of OCTS in the run up to 2047. In fact, the more Beijing is concerned about western powers using Hong Kong as a base to destabilize the Mainland and the more it is worried about political stability in Hong Kong caused by democratization, the more likely it will use the control mechanisms to reduce the autonomy that could have been enjoyed by the SAR.

Second, Hong Kong's high degree of autonomy is more evident in the socio-economic and external, rather than the political and constitutional, domains. There are few overt interventions by Beijing into Hong Kong's economic or social affairs. Rather, it is the Hong Kong SAR government and business community that seeks more economic policy support from the central government. On the contrary, Beijing has been very active in asserting its constitutional and political authority. In particular, the series of central government actions since 2003, such as the interpretations of the Basic Law, the edging out of C. H. Tung, and the denial of a faster pace of democratization, all testify to Beijing's preemptive, interventionist strategy. The Hong Kong SAR government and the governing elites are increasingly subject to influence from the central government over political and constitutional matters. Various segments of the civil society, political parties, professions, and the mass media, on the other hand, are vigilant in guarding against the erosion of autonomy and in criticizing the SAR government for failing to represent fully Hong Kong's different voices before Beijing. Nonetheless, the central government has not interfered with the daily governance and administration of justice in Hong Kong. Nor are the social and economic freedoms of the Hong Kong people and the external autonomy enjoyed by Hong Kong vanishing yet. The scope of judicial autonomy and the protection of individual rights and freedoms under OCTS, however, remain contingent and the legislation of Article 23 remains to be resolved. The development of the constitutional and political order in Hong Kong still has to find a delicate balance between the imperatives of "One Country" on the one hand and "Two Systems" on the other.

Third, the rapid growth of the Chinese economy, its growing influence in the global community and Hong Kong's own economic well-being will also directly impact on the future trajectories of OCTS. With China's sustained growth, Hong Kong's economy will become more dependent on the Mainland economy. Its economic significance to the Mainland may also decline in the long run, which means that the incentives for Beijing to give special consideration to keep its autonomy may dwindle over time. Hong Kong's role as a gateway between China and the world economy will be affected by the phenomenal growth of China's coastal cities. More importantly, as China is embracing the market and the world economy, the differences between Hong Kong and the Mainland economic system will further reduce, hence weakening one of the key bases for OCTS. Apart from capitalizing on its ability to attract and develop high-value business services, Hong Kong would have to leverage on the advantages of its freedoms, rule of law, cultural diversity, and international linkages to attract talents from the Mainland and other countries in order to maintain its economic prosperity and consolidate the economic foundation for sustaining OCTS (Sung, 2007: 215–33).

Fourth, the growing social and economic interactions between Hong Kong and the Mainland have compelled the governments on both sides to cooperate with each other in order to tackle a variety of cross-boundary problems. This may create new challenges for OCTS, however. For instance, Hong Kong has to seek support from the central government or its provincial counterparts over coordination of cross-boundary problems such as public health and infrastructural development. With the rapid emergence of cross-boundary issues that demand governmental actions and the deepening of social and economic integration, the Hong Kong SAR government will become increasingly drawn into the intergovernmental political dynamics inside the Mainland. Together

with the growing interlocking of the Hong Kong and Mainland political systems through overlapping membership in various political bodies, it is likely that despite the differences in the legal and political structures, the separateness of the two polities may further reduce in the future.

To sum up, this chapter has argued that there have been many twists and turns in the relations between the central government and the Hong Kong SAR since 1997. In contrast to its initial restraint, Beijing has taken a far more interventionist approach in influencing Hong Kong affairs since 2003. Such a preemptive strategy will continue to be in place until the central leadership is confident that the internal political dynamics in Hong Kong will no longer threaten its stability and prosperity and the political stability inside the Mainland. Through the OCTS framework, Hong Kong is endowed with different economic, social, political, and legal systems within a unitary Chinese state and has indeed been granted a very high level of autonomy in many policy domains. Nonetheless, how to balance the political aspirations of the Hong Kong community and the concerns of the central government remains a critical challenge for both Beijing and Hong Kong before some form of universal suffrage is introduced in 2017.

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## Chapter 14

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# Public Ethics and Corruption in Hong Kong

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Ian Scott

### Contents

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Public service ethics is concerned with ways in which officials comply with formally expressed government and community norms and values and with the extent to which those norms and values adequately reflect how the community believes that public servants should perform their duties. Attempts to ensure compliance may involve sanctions, such as penalties proscribed by government regulations and anti-corruption laws; incentives, such as generous salaries to mitigate the possibilities of corruption; and moral suasion, aimed at inculcating appropriate values into the work and attitudes of public officials.

In Hong Kong, for the last 30 years, public service ethics have been dominated by the anti-corruption laws and by regulations and practices derived from them. So assiduously have the laws been enforced by the Independent Commission Against Corruption (ICAC) that they have become a critical component of both the administrative culture of the civil service and the way that citizens view their government. Surveys show that the ICAC is trusted more than any other political institution or organization in Hong Kong [1]. As a result of its efforts and the commitment of senior officials to clean government, corruption levels have been significantly reduced. In Transparency International's 2008 corruption perception indices, Hong Kong stood 12th in the world, second only to Singapore in Asia and six places ahead of the United States [2].



Public service ethics, however, has a wider compass than simply ensuring that officials act within the provisions of the anti-corruption laws. For example, it would be quite possible for officials to be both incorruptible and lacking in responsiveness to public needs or in accountability for their actions. To assess how the Hong Kong government has performed in this wider context, we will consider the core values that it has formally endorsed and then analyze the extent to which they have been instilled in the behavior of civil servants.

In 1998, the then head of the civil service, Anson Chan On-sang, said that the core values of the civil service were: commitment to the rule of law; honesty and integrity above private interests; accountability and openness in decision making; political neutrality; impartiality in the execution of public functions; and dedication and diligence in serving the community [3]. For the purposes of our assessment, we may compress the core values into three categories: honesty, integrity, and adherence to the law; accountability, openness, and political neutrality; and impartiality and service to the community.

## 14.1 Honesty, Integrity, and Adherence to the Law

Perhaps the broadest general rule governing the ethical behavior of Hong Kong civil servants is that they should obey the law. The colonial Hong Kong government placed great emphasis on the rule of law and implicitly used it as a distinguishing characteristic from governments elsewhere, notably in China. By the 1990s, when the transfer of power to the People's Republic was imminent, many believed that the maintenance and protection of the rule of law was the key to a successful transition [4]. Its inclusion as a core value of the civil service thus reflects both its long-standing importance within the government and its relevance to the community. In a government that is highly rule-oriented, the law is the first point of reference when civil servants make decisions and the first line of defense when they are criticized for those decisions. Anti-corruption measures fit well within this framework and have been carefully observed by most civil servants since their adoption in the 1970s.

The story of Hong Kong's fight against corruption has been told many times and need only be recounted briefly here [5]. In 1966, there were riots in which police corruption was probably an underlying cause [6]. In the following year, further riots resulted from a spillover of the Cultural Revolution. The disturbances represented a serious threat to the legitimacy of the government and major steps were taken to reduce the gap between government and the people, to improve the labor laws, to expand social policy outputs, and to combat corruption.

In 1970, the government introduced new legislation, the Prevention of Bribery Ordinance (POBO) (Cap 201), which significantly strengthened the penalties against corruption and improved the chances of apprehending the guilty. Two critical sections of the ordinance were directed specifically at public servants. Section 4 provides that a public servant who solicits or accepts an advantage is guilty of an offence and is liable for a maximum fine of HK\$500,000 and imprisonment for 7 years and is required to pay back the proceeds of corruption (POBO, S.4 and S.12). The government did not use "corruption" in the ordinance, preferring instead the word "advantage," which could be interpreted more precisely and which could be applied to relatives who accepted benefits on behalf of the corrupt officer [7]. Section 10 illustrates the government's intention to cast the net widely. It provides that any former or serving officer who has a standard of living or possesses or controls assets that are not commensurate with his official emoluments is guilty of an offence and is liable to a fine of HK\$1 million, 10 years' imprisonment, and is required to pay back the unexplained assets (POBO, S.10 and S.12).

In June 1973, the attorney-general charged a senior police officer, Peter Godber, under Section 10 of the POBO. Godber was found to have assets worth six times his total earnings since joining the police force. He then managed to escape from Hong Kong, causing a public outcry, but was eventually extradited from Britain, tried and convicted. The government, meanwhile, set up an investigation into the circumstances that had enabled Godber to leave Hong Kong, and into the effectiveness of the POBO. Blair-Kerr, the high court judge who conducted the investigation, recommended some tightening of the ordinance and noted that corruption still seemed endemic in the police force and in seven other major government departments and that the public had little confidence in the ability of the police force to conduct corruption investigations impartially [8].

The governor decided to create an independent body and the ICAC began work in February 1974 armed with what have been described as “extraordinary” powers, including the right to arrest, to detain, to search premises without prior court approval, and to freeze the assets of a person under investigation who has not yet been charged [9]. It enjoyed wide support from the community notwithstanding some concern in both the courts and the legislature that its formidable powers might be abused. The ICAC’s initial focus was primarily on public sector corruption, especially “syndicated” corruption in the police force. So vigorously did it pursue its task that in 1977, junior police officers attempted to storm the ICAC building. The governor granted them an amnesty although, over the next 2 years, most of them were dismissed from the force. It took some time for the ICAC to recover public confidence after the amnesty. By the 1980s, however, it was again heading the push for clean government in Hong Kong. Increasingly, it was perceived to be an institution for redress: a large number of the complaints that it received had nothing to do with corruption.

The ICAC is organized into three major divisions: the Operations Department, the Community Relations Department, and the Corruption Prevention Department with an administrative support section. At the end of 2008, it had an establishment of 1376 and an actual strength of 1263, comprising 936 in the Operations Department, 157 in Community Relations, 53 in Corruption Prevention, and 117 in administrative support [10]. It is some indication of the ICAC’s standing in the community that the government, despite a cost-cutting exercise that saw the total civil service establishment downsized from 189,139 to 163,637 between 1997 and 2009, did not reduce the ICAC’s budget. Its establishment, although not its actual strength, actually increased by over 100 between 1997 and 2008 [11].

In 2008, the ICAC received 3377 reports of corruption, 65% relating to the private sector. There has been a decline in the number of corruption reports about the civil service in recent years. Of the 35% of complaints about the public sector, 22% related to the police force [12]. Of those convicted of corruption offences, only 3 came from government departments, although a further 105 public servants were referred by the ICAC to the secretary for the civil service or to heads of departments for disciplinary action [13].

The corruption reports and conviction statistics do not entirely reflect the influence of the ICAC on Hong Kong life or its considerable impact on the administrative culture of public servants. A few examples may serve to illustrate the extent of that influence. In 2008, the ICAC’s Community Relations Department ran integrity training seminars for 21,076 civil servants from 78 government departments and 165 preventative education seminars for managerial and frontline staff of public bodies [14]. It was involved in a range of conferences and meetings with private sector organizations and it helped to organize community events that were estimated to have reached 400,000 people [15]. It also seeks to pass on the anti-corruption message to youth and to reinforce the message in the media in frequent campaigns, which include television advertisements.

The ICAC’s Corruption Prevention Department takes on assignments from government departments and businesses, which fear that new initiatives or changed circumstances might result

in more opportunities for corrupt behavior. It has a very wide remit. In 2008, for example, its 88 assignments ranged *inter alia* from the investigation of practices relating to the provision of school lunches, to the administration of markets, to the declaration of income and assets by public housing tenants, to issues concerned with good governance in public bodies outside the civil service [16]. Another function of the ICAC is to investigate complaints against electoral procedures and to run publicity campaigns to support clean elections. In 2008, it received 753 election complaints and prosecuted 24 people for improper procedures and corruption [17].

For public servants, the role of the ICAC—and what it means to accept an advantage—is one of the first lessons learned after joining the government. It is a message that is reinforced at various stages during the public servant's career. The two principal booklets explaining what constitutes proper and ethical behavior—*Civil Servants Guide to Good Practices* and *Ethical Leadership in Action: Handbook for Senior Managers in the Civil Service*—were both produced with considerable input from the ICAC [18]. In both documents, the text goes into considerable detail about what it means to accept an advantage—whether a “red packet” at Chinese New Year may be accepted, whether the loan of a car is an advantage, whether taking part in a raffle may compromise official integrity, and so on. Senior managers are advised on how the threat of corruption and malpractice can be minimized and they are provided with checklists on how they might identify corruption in the workplace and take action to stop it [19].

The anti-corruption measures dominate the ethical agenda to the extent that other issues are over-shadowed and not perhaps explained as fully as they might be. A civil servant reading the guide to good practice would be well versed in the anti-corruption laws, but might be less certain of the exact meaning of such phrases as “discharging official duties in an accountable and fair manner” or “bringing the government into disrepute.” It is difficult for a civil servant to be aware of all the regulations that govern behavior because they are not only contained in the “good practice” and “ethical management” booklets that the government distributes to civil servants, but also in the voluminous civil service regulations and in the circulars that the Civil Service Bureau issues from time to time [20].

From early colonial days, the purpose of the regulations has been to ensure top-down, centralized control with the objective of maintaining an honest, impartial, and fair civil service in which private interests should not conflict with public duties [21]. The regulations permit the government to take disciplinary or legal action against civil servants on a variety of different, often ill-defined, grounds. When it does so, the result is often to arouse political and public interest in the ethical issues involved. Three cases may serve to illustrate how the government seeks to deal with the consequences of ethical debates on its use of these broad powers.

Sin Kam-wah, then a senior superintendent in the Organized Crime and Triad Bureau of the police force, while off-duty, received sexual services from prostitutes provided by a businesswoman who had financial interests in a number of nightclubs. Sin did not pay the prostitutes. Presumably because it might have been difficult to prove that an advantage had been received, Sin was not charged under the provisions of the POBO, but with the common law offence of misconduct in public office. The defense claimed that, since Sin was off-duty and that no advantage had been received, no offence had been committed. In December 2003, the District Court nonetheless convicted Sin and sentenced him and the businesswoman to 3 years' imprisonment [22]. On appeal to Hong Kong's highest court, the Court of Final Appeal, the conviction was upheld, the court noting that the police ordinance stipulated that a police officer was always on-duty if the circumstances required him to exercise his powers and that, although no immediate advantage was received by the businesswoman, there could well have been future advantages for the clubs in which she had a financial interest [23].

The case aroused considerable public interest and the Civil Service Bureau possibly felt that it owed civil servants some explanation of what constituted “misconduct in office” in its guide to good practice. However, the explanation, using a Court of Final Appeal judgment, only serves to confirm that it is deliberately vaguely worded and may be used in many different situations [24]. The offence may have specific legal meaning under Hong Kong law, but there is no certainty of the circumstances under which the government will or will not prosecute.

Conflict of interest in post-public employment is another issue of perennial concern to the government and to the public. The government’s official position is that “[r]etired civil servants should act with good sense and propriety in pursuing post-service employment ...and avoid engaging themselves in activities which could be construed as being in conflict with their previous duties [25].” In the 1990s, a number of potential conflicts of interest in post-service employment made the government conscious of the need for regulation. But it remained light regulation and almost every application from civil servants to take up post-service employment was approved.

In December 2004, a legislative councillor asked the government about the alleged lobbying activities of a former senior civil servant, Ms Elaine Chung. On retirement, Ms Chung had been granted permission to take up a business position and had indicated the areas of the business in which she would be working. The company was associated with a larger conglomerate, the Henderson Land Development Company, which was bidding for multi-million dollar government contracts. Ms Chung was alleged to have assisted in the company’s promotions for those contracts, drawing on her experience as a senior civil servant. The Civil Service Bureau had not been aware that Ms Chung might engage in promotional activities for Henderson. Ms Chung vigorously defended her actions, pointing out that her relevant government experience was long out-dated. The Civil Service Bureau eventually agreed that there was no conflict of interest, but warned her not to engage in lobbying activities in the future [26].

In the meantime, the government came under considerable pressure from legislators to tighten its regulations on post-service employment. They passed a motion calling on the secretary for the civil service to apologise for his handling of the Chung case and to amend the rules in various ways to ensure that potential conflicts of interest could not occur in the future [27]. At first, it seemed as though the government would comply with their demands. However, the civil service unions were adamantly opposed to what they saw as a threat to their right to work after leaving the government. When the new regulations were put before the Legislative Council later in the year, some cosmetic refinements had been made but there were no major changes to the existing rules.

A further high-profile case in August 2008 saw the issue of post-service employment reach the headlines once more. A former director of housing, Leung Chin-man, was alleged to have been involved in a conflict of interest when he joined a company that had undertaken property development for the government while he was still in office. There was considerable public concern over the issue and Leung soon resigned from the company. The chief executive responded by setting up a committee to consider further the rules governing post-service employment [28]. In 2009, the committee produced a report that contained recommendations which refined the regulations and proposed measures aimed at enhancing awareness among civil servants of potential conflicts of interest [29].

In essence, then, the regulatory ethics governing the relationship between the government and its civil servants falls into two categories: there are, first, precise anti-corruption laws, backed by detailed explanations of the law and a well-respected and competent enforcer, the ICAC, and, second, a variety of provisions in the civil service regulations, the common law, and Civil Service Bureau circulars, which are deliberately imprecise or platitudinous or come up for more detailed consideration only when specific events cause public concern. By default, the moral agenda of the

ICAC has largely dominated the ethical debate to the exclusion of other issues. There has, for example, been almost no treatment of whistle-blowing as an ethical problem; the Hong Kong government has simply regarded the few cases that have occurred as breaches of the Official Secrets Act. Codes of conduct have been tried from time to time, but they have always been so loosely worded as to be unenforceable. As a consequence, civil servants find themselves in a position where they are expected personally to be morally neutral, to do what the Civil Service Bureau and the ICAC tell them to do, even if the injunction itself is imprecise. The government has always been rather more concerned, corruption aside, with rules that promote efficient operations rather than with prescribing ethical behavior [30]. Some recent developments, such as the stress on “integrity management” within the Civil Service Bureau and the ICAC [31] could conceivably lead to a more holistic view of ethical issues, but at present the anti-corruption laws and their continual reinforcement by the ICAC still provides the most important ethical parameters within which civil servants operate.

## **14.2 Accountability, Openness, and Political Neutrality**

The Hong Kong government’s core values of accountability, openness, and political neutrality have been particularly problematic areas since the retrocession to China in 1997. Like its colonial predecessor, the Hong Kong government finds it difficult to deal with problems of accountability and legitimacy in a constitutional setting that, in effect, does not require it to be accountable to anybody other than the government of the People’s Republic. Its attempts to improve this situation have had only mixed success and have not addressed the fundamental question of how the government is to be called to account for its actions. Its reliance on a well-established system of consultative committees in decision making has failing credibility as these have been increasingly seen as token organizations that serve only to endorse the government’s pre-determined course of action. The search for greater accountability has also had an impact on the key concept of political neutrality where “speaking truth to power” has been, to some extent, replaced with the notion that loyalty to the political order is the cardinal virtue. In the following, we examine in greater detail the impact of these changes and the government’s efforts to improve the situation.

### **14.2.1 Accountability**

Immediately after the handover, a number of issues—including the chaotic opening of a new airport, the incompetent attempt to slaughter 1.2 million chickens during an avian influenza outbreak, and a public housing corruption scandal—brought the question of the accountability of the government to the forefront of the agenda [32]. The difficulties lay in Hong Kong’s curious political system. Although, until 2002, all but one of the principal officials (the equivalent of ministers) were civil servants, they were accountable not only to the Legislative Council, but also, as Burns points out, to the Hong Kong government that they themselves composed and which they regarded as the body to which they were ultimately responsible [33]. There were many complaints from legislative councilors about the cavalier manner in which they were being treated by senior civil servants. In 2002, a new set of arrangements, known as the Principal Officials Accountability System, was introduced, making the principal official a political appointee and directly accountable to the chief executive. The new arrangements did not increase accountability to the legislature; rather, they were intended as a means of exerting more political control over the civil service.

To be judged a success, it would have been necessary for the measures to meet two tests of accountability. One would be whether the chief executive used his powers to require a principal

official, who had failed to discharge his or her duties properly, to resign. Three principal officials, who had been under fire for their handling of policy issues or had been guilty of improper behavior, did resign but in at least two of these cases it was not at the behest of the chief executive who explicitly said that he wanted them to continue [34]. A second test would be whether relationships between senior civil servants and the legislature improved and whether legislature councilors believed that principal officials were being called to account in the chamber. Relationships did seem to improve between the government and the legislature, but there is little evidence to support the view that principal officials became more accountable to it. The Legislative Council has weak powers; constitutional relationships are heavily weighted in favor of the government. For civil servants, the new system has meant changes in organization and their relationship with principal officials, but it has not changed the centralized, hierarchical nature of the government or the notion of bureaucratic accountability, which holds the individual civil servant strictly accountable to his or her superior.

### **14.2.2 Openness**

Openness in decision making is a core value that concerns the relationship between senior public officials and society over matters of public policy. Closed circle policy making is a colonial legacy that has been compounded by the nature of the post-1997 political system. Because the government does not have an electoral mandate and because political parties are weak and have relatively little influence over policy, the government “consults” public opinion using advisory committees and issuing policy proposals for comment. Both means have been increasingly regarded as inadequate.

In 2008, there were an estimated 400 advisory and statutory boards and committees that the government used as forums for testing opinions on its policies [35]. The government appoints most of the advisory bodies, however, and there have been many complaints that they are not representative. Civil society organizations, which grew rapidly after 1997, have been an alternative, often critical, source of comment on proposed policies. These organizations frequently form coalitions to oppose new proposals. Through the employment of a variety of tactics, including demonstrations and legal action, they sometimes generate sufficient opposition to prevent policy implementation. Because the government has had so much difficulty in obtaining a mandate for its policies, it has explored alternative channels for seeking public opinion, such as the Public Affairs Forum, which canvasses different sectors of the population, and a Commission on Strategic Development, which was re-constituted in 2005 to make it more representative and to cover more critical issues than most other advisory bodies. Neither the forum nor the commission appear to have worked effectively [36], but other measures that involve more face-to-face contact between senior officials and stakeholders have sometimes been more successful [37].

The second means of consulting public opinion on policy—the consultation document—has been even more problematic. The long-standing practice of the Hong Kong government was to issue a document outlining various proposals and, after token consultation, declare that public opinion supported a particular proposal, which had already been flagged as the desirable course of action. After the debacle over attempts to introduce security legislation in 2003, that tactic was no longer credible. On that occasion, the government issued a consultation document and found, as usual, that a majority of the population supported its proposals. However, a coalition of pressure groups under the banner of the Civil Human Rights Front was able to organize a demonstration of over half a million people, which eventually persuaded the government to withdraw the legislation. Since then, the government has been less dogmatic about what policy action it intends to

take. For example, it withdrew a proposal to introduce a goods and services tax after there was evident opposition to its consultation document.

There are some inconsistencies in the government's position on openness. On the one hand, there has traditionally been a culture of secrecy about decision making; on the other, the government's website provides a wealth of information that may be used by its critics—civil society organizations, think tanks, political parties, legislative councilors, and academics—to attack its position. This leads to a disjunction between what the government says is public opinion and the reality of critical comment and organized protest against some of its proposed measures. A more educated and better-organized civil society means that there is a need either to reform the consultation process or to change the political system.

### **14.2.3 Political Neutrality**

Political neutrality has long been a core value of the Hong Kong civil service, but its meaning has changed somewhat over the years. In its initial formulation, it was derived from the relationship between British ministers and their senior civil servants. It was based on the idea that senior civil servants should “speak truth to power,” placing before ministers different possible courses of action, with their likely costs and benefits, but implementing whatever political choice was finally made, fully and without reservation. Because, until 2002, Hong Kong's senior civil servants were also in effect ministers, the notion of advising themselves was clearly redundant. What political neutrality came to mean instead was that civil servants should serve the public interest without fear or favor and that they should have no hesitation in drawing the potential advantages or disadvantages of proposed policies to their superiors.

While power to make policy was entrenched in the small number of administrative grade officials, this notion of political neutrality worked well enough. After 1997, however, Chinese government officials, some Executive Council members and some pro-Beijing politicians were concerned that senior civil servants, who had all served under the colonial government, were not as loyal or as subject to political direction as they should be [38]. This resulted in some friction between Executive Council members, who were responsible for advising the chief executive on policy, and senior civil servants. In 2001, in her valedictory speech, the head of the civil service, Anson Chan On-sang, who had outlined the core values of the civil service a few years previously, expressed her belief that the system was becoming too politicized, opening the way for civil servants to obtain advancement by “currying favour, political correctness, second-guessing and shoe-shining [39].” This, she said, was far less likely to happen when the obligation of “speaking truth to power” was observed.

When the Principal Officials Accountability System was introduced in 2002, principal officials became politicians and were expected to exercise more direct control over their bureaus and departments. There was greater emphasis on loyalty to the government and less on the public service ethos. Civil servants were still expected to give impartial advice but were also expected to implement political decisions, which had sometimes not been adequately considered in the departments and bureaus [40]. The result was to reinforce an already hierarchical system without the ameliorating influence of a civil service that had been committed to the realization of the public interest as its first consideration.

## **14.3 Impartiality and Service to the Community**

Impartiality in the execution of public duties and dedication and diligence in service to the community is a core value that has changed significantly over time. During the colonial period, the

government was deliberately distant from the population, resting its claim to legitimacy on the rule of law and efficient, impartial administration. It was organized on traditional colonial lines with a large, paramilitary police force. The community perception of government was that it was best avoided. In the 1980s and 1990s, public sector reforms were aimed at changing that image. Their purpose was to re-legitimize the civil service prior to the transfer of sovereignty [41]. Three reform measures were particularly important: improving the culture of service; reforming the police force; and creating institutions that might serve to promote civil liberties.

The government saw the development of a culture of service as an important means of bridging the gap with society. In 1992, the government began to introduce performance pledges which were focused particularly on the level of service of those in frontline positions and which often stressed appropriate behavior in dealing with customers. Generally, civil servants were expected to be more open, accountable, and customer-friendly [42]. For the most part, the reforms were adopted with enthusiasm. Departments organized community liaison groups, organized customer satisfaction surveys, spruced up their offices, and held competitions for the best suggestions for improving service. By 1995, "Serving the Community," with its four principles of "being accountable," "living within our means," "managing for performance," and "developing our culture of service", had become government policy [43].

Serving the Community remained government policy after the handover in 1997. However, the traditional government concern with efficiency rather than responsiveness tended to receive more emphasis. Under the increased pressure of budgetary deficits, the government sought to cut positions and enhance productivity. Performance pledges were directed more toward targets than to the qualities that civil servants might bring to their relationships with customers. E-government was embraced as a means of dealing with customers online rather than in person. The culture of service was not entirely overturned, but the cuts may have had an adverse impact on some departments and on subvented organizations, such as social welfare agencies, which could no longer provide the same level of service.

One of the major departments in need of reform in the late colonial period was the police force. The ICAC had ensured that it was much less corrupt than in the past, but in structure, function, and attitude it was still very much a paramilitary force. It was also dominated by expatriates at the senior levels, a situation that was clearly unlikely to continue after 1997. There were some initial attempts to create a more community-based police force in the 1970s and 1980s, but the major thrust came with the introduction of organizational reforms shortly before the handover. The force began to develop projects with a community focus, including reviving neighborhood watch programs, re-designing police buildings to make them more friendly, school liaison, improving service quality through sharing best practices and continuing to support the long-running and popular youth-focused Junior Police Call. In addition, the force sought to improve the quality and educational levels of those recruited at constable level. One criticism of the reforms has been that they are a one-way street: that there is actually very little public involvement in the way the police force is run and that the focus is still very much on preventing crime rather than developing harmonious relationships with the public. Satisfaction surveys show improvements in police-public relations, especially in terms of courtesy, but community relations scored lowest of all police activities in one survey and over-zealous police action during street demonstrations has occasionally worsened relations [44].

In the final period of colonial rule, the Hong Kong government introduced legislation and created some regulatory institutions that were intended to quell fears about civil liberties after 1997. A Bill of Rights was passed in 1991 following the Tiananmen Square massacre. The ombudsman was given additional powers to allow complaints to be received directly from the public,



rather than through the Legislative Council, and to conduct independent investigations. An Equal Opportunities Commission was established to combat discrimination. A Code of Access to Information was promulgated and the Office of the Privacy Commissioner was set up [45].

The intent of these reforms was to ensure that the government complied with ethical and legal requirements after 1997. For civil servants, the reforms meant that they had to respond to the practical issue of how to incorporate these new measures into their work. Executive officers found, for example, that they were affected by the Code of Access to Information and the privacy legislation because they had to be more careful in handling personal data [46]. They were less directly affected by the increased powers of the ombudsman or the Equal Opportunities Commission. Nonetheless, some civil servants do have to answer the ombudsman's queries and strictures. In 2008, the ombudsman received 5386 complaints of which 247 were fully investigated (171 related to "topical" complaints about the same issue). All but 21 of the complaints that were fully investigated were found to be substantiated in whole or in part [47].

The new agencies have also provided some checks on what the government may or may not do. Since they are set up as statutory bodies, they have a degree of autonomy in their relationships with the government. The Equal Opportunities Commission, for example, successfully took the government to court over the issue of sex discrimination in school placements [48]. There have also been frequent challenges to the government under the Bill of Rights Ordinance. Opposing views, backed by legal authority, may help to provide alternative ethical reference points for civil servants who otherwise might find themselves in an organizational environment in which they were expected, unquestioningly, to do what they were told.

## 14.4 Conclusions

In assessing how the Hong Kong government's core values have been applied to public service ethics, three critical relationships have been identified. The first concerns how civil servants themselves behave in the execution of their duties. Are they honest? Do they obey the law? In any organization the size of the Hong Kong government, there will inevitably be those who break the rules. In general, though, it may be said that the vast majority of Hong Kong civil servants are honest and that they do respect the law. They have been required to be honest by stringent anti-corruption laws, encouraged to be so by generous salaries, and lectured at length on the virtues of doing so by the ICAC. The government itself has not always been clear on what are acceptable solutions to the ethical dilemmas that civil servants may face. There is nothing on whistle-blowing—other than scarcely veiled advice not to do it—and many of the offences of which civil servants may be found guilty are unclear and deliberately poorly defined.

The second issue concerns the accountability of the government. Do the present arrangements ensure accountability? Is the emphasis on political control over political neutrality in the public interest? The answer to both questions would appear to be negative. The rationale for the Principal Officials Accountability System was that it would improve accountability, but there is little evidence to suggest that the government is any more accountable than before the changes were made. In important respects, senior civil servants are less accountable to the public if they exchange political neutrality and a public service ethos for unquestioning loyalty to the government.

Finally, the relationship between the public service and the population raises significant ethical issues. Is the civil service impartial? Is it responsive to citizen needs? It appears that the reforms of the 1990s have become embedded in the culture of the civil service. The agencies that were created to protect and promote civil liberties have been an important step in both constraining the

government from unethical behavior and entrenching appropriate procedures in its operations. Against this, it must be said that the political leadership has not been unduly supportive of these agencies and that its understandable concerns with efficiency may at times come into conflict with responsiveness.

Overall, the public service in Hong Kong deserves credit for the way in which it conducts its business. Its officials are generally efficient, quite responsive, and honest. There are rules that govern their behavior and comply with the ethical standards that citizens have a right to expect of their public servants. Where difficult and unresolved ethical issues arise is at the interface of the political leadership and the senior civil service. But to rectify them would require a more supportive political culture and probably changes to the political system.

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## Chapter 15

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# Performance Management in Hong Kong

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### 15.1 Introduction

The current wave of performance management and measurement has come along with the new performance culture of new public management (NPM) (Lane, 2000), which seeks to make government and public administration more responsive to users of public services, and to place greater emphasis on performance monitoring and evaluation, so that “no public sector employee

has escaped the ever-extending reach of performance evaluation schemes” (Carter, 1998: 177). Performance indicators (PIs), targets, and customer feedback are now very much the “rules of the game” in the course of public sector management. As PIs have become increasingly linked to resource allocation and individual financial rewards, so organizational cultures and individual behaviors have been transformed along the way (Carter, 1998: 177). As Pollitt and Bouckaert (2000: 87) put it, performance measurement is as old as public administration itself. Over the last quarter century, performance measurement has blossomed along both extensively and intensively, and to satisfy internal as well as external needs:

Measurement is becoming more extensive. More levels... and more fields... are included. Performance measurement is becoming more *intensive* because more management functions are included (not just monitoring but also decision-making, controlling and even providing accountability).

performance measurement becomes more *external*. Its use is not just internal, but also for the members of legislative bodies, and even for the public. (Bouckaert, 1996: 234, emphasis original)

New performance management strategies are also generally tied to linking performance to resource allocation and budgetary management, to human resource management, and to the building of an outcome-based, customer-oriented public sector culture, through performance information and targets (Pollitt and Bouckaert, 2000: 86–90). Hong Kong is not immune from such a global performance management trend under NPM. This chapter gives an account of the current system of performance management in Hong Kong and the major reform initiatives launched since the 1990s. It argues that, in practice, performance management has remained somewhat disjointed from the processes of resource allocation, pay rewards, service accountability, and customer participation. The paradoxes in the practical use of “performance” in political, bureaucratic, and managerial transactions are discussed to help illuminate the limitations of performance measurement and management in the real world of the public sector.

## 15.2 Brief Overview of Performance Management in Hong Kong

Performance management is a recent initiative in Hong Kong, which began to receive attention within the context of the Public Sector Reform Program launched in 1989 (Finance Branch, 1989; Cheung, 1992). In 1992, performance pledges were introduced in government departments. An Efficiency Unit was set up in the same year, accountable to the chief secretary, to help promote all aspects of improving public services to the community. Within a new management framework, the focus has been to devolve more authority to those who carry responsibility for policy formulation and service delivery, and to place greater emphasis on serving customers and raising service standards (Efficiency Unit, 1995: 3). “Managing for Performance” has since become a key objective of the government, to be achieved by departments through (Efficiency Unit, 1995: 41):

- Refining performance measures
- Managing by program
- Improving efficiency
- Managing public finances

- Managing human resources
- Managing support services
- Preparing departmental plans
- Reviewing progress

A program management system was instituted in 1993 to help policy branches (now renamed “bureaus”)<sup>1</sup> and government departments manage performance better (Efficiency Unit, 1995: 45).

It comprises two key elements:

*Program structures:* Each department develops its own program structure, setting out the key programs that will deliver its aims and objectives. Larger programs may be further broken down into activities. Specific officers are held responsible for each program. This approach would help departments focus on results in clearly defined areas of work, with clearly defined objectives and responsibilities.

*Annual program plans:* Using their program structure, departments prepare annual program plans to focus management attention on key objectives and on the performance measures to be used to ensure that such objectives are achieved. These plans are based on the allocation of resources for the planning period. They provide the basis for the annual estimates of expenditure and for day-to-day performance management. Information is developed and presented along the following lines:

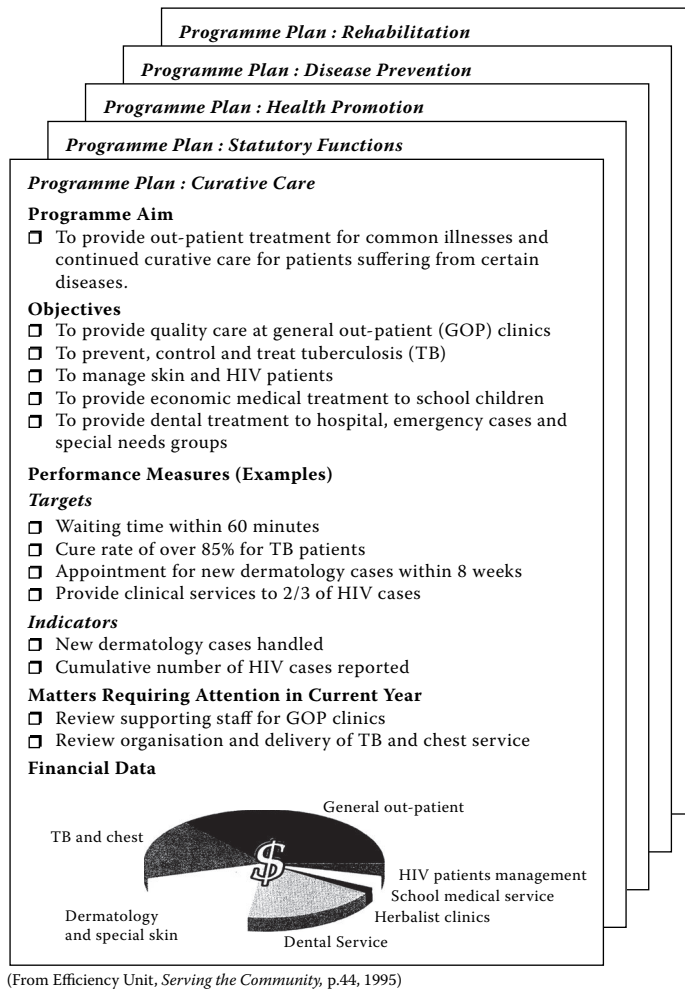
- Program aims
- Objectives
- Performance measures
- Matters requiring attention
- Financial data

An illustration of the program plan is given in [Figure 15.1](#).

By now, an elaborate performance management system has been put in place throughout government according to program structures and program plans. Resource allocation is also supposed to be linked to program needs and objectives, as well as performance results, which form part of performance review—to check if key performance targets have been delivered and if spending is in accordance with plans. The standard process of performance management includes setting strategic objectives based on customer needs, identifying key result areas, formulating measurement criteria, gathering performance information, and trying to bridge the performance gap (Efficiency Unit, 2005). The latest directions set by the Efficiency Unit for the further development of performance highlight the importance of continuous improvement:

- Focusing on the changing needs of the community
- Shifting from a process-oriented approach to a customer-oriented approach
- Developing the management system to cater for continuous changes
- Recognizing the effort and flexibility of government departments in supporting changing policy objectives
- Measuring performance for government units involved in delivering integrated services
- Linking up budget with performance result
- Adopting a life-cycle perspective for continuous improvement (Ibid.)

<sup>1</sup> “Branches” of the Government Secretariat, equivalent to ministries in other jurisdictions, were re-titled as “Bureaus” after the establishment of the Hong Kong Special Administrative Region on July 1, 1997.



**Figure 15.1** An illustration of program plan (From Efficiency Unit, *Serving the Community*, Government Printer, Hong Kong, 1995.)

The Efficiency Unit also supports government bureaus and departments in reviewing their business operations and implementing major changes to improve their organizational performance. It operates a Citizenship Centric Services Program geared toward promoting cross-functional service during and delivery around customer segments, together with a customer management assessment framework to enhance customer relationships and customer satisfaction levels (Efficiency Unit, 2008).

## 15.3 Significant Performance Management Reforms since the 1990s

### 15.3.1 Measuring and Assessing Performance

Since the 1990s, for the purpose of managing for results, all government departments have been required to come up with performance targets and indicators, which can demonstrate

how well their operational objectives are being achieved and with what degree of cost effectiveness. The Efficiency Unit (1995: 43) stipulates two main categories of performance measures, namely,

- *Quality measures*, used to monitor effectiveness—such as service trends and success rates to cover more strategic concerns, and response times and customer satisfaction levels to cover frontline service to the public.
- *Quantity measures*, used to monitor efficiency—such as workload, costs, and productivity primarily of interest to managers responsible for service delivery, and indicating overall performance, which is of interest to the community.

The performance information has to be provided in the Controlling Officer's Reports (CORs). These are reports prepared by heads of departments in their capacity as "controlling officer" of their budget allocation, to accompany their departmental expenditure estimates submitted to the Finance Committee of the Legislative Council (Legco) for scrutiny each year. Ideally, both legislators and the public should be concerned not just about the amount of resources (inputs) used by departments in program delivery, but also the outputs and outcomes actually achieved with these resources. To do so will be in line with the new "budgeting for results" orientation of budget reform.

In social services, following a comprehensive review of the social welfare subvention system by overseas consultants in the mid-1990s, a new Service Performance Monitoring System was set up to bring about more efficient "customer-focused, accountable and output-driven welfare services" (cited in Wong, 2007: 442). Two principal instruments have been used to enforce the new performance assessment strategy, namely, the Funding and Service Agreements (FSAs) drawn up between the Social Welfare Department and the subvented non-governmental organizations, and a generic set of Service Quality Standards (SQSs). In total there are 16 SQSs, grouped under four main areas—provision of information; service management; service to users; and respect for service users' rights.

### 15.3.2 Adoption of Performance Pledges

The adoption of "performance pledges" in all government departments (later extended to other public sector agencies and public corporations) in 1992 was perhaps the most visible, and arguably impressive, part of public sector reform as far as the ordinary people were concerned. However, from the outset, the Hong Kong government had refrained from any talk of empowering citizens through the performance pledges initiative (Hayllar, 1995). When he introduced the "performance pledge" concept in 1992, modeled on the British citizen's charter, the last British governor, Chris Patten, made clear a consumerist orientation:

*An increasingly prosperous and sophisticated community quite rightly demands greater openness and accountability from the public sector which it pays for – and an official attitude of mind which regards the public as clients not supplicants. (Patten, 1992: para. 89, original emphasis)*

He saw the need for a new "culture of service" that went beyond the provision of the bare minimum, and a culture that recognized the public as the paying customer. Performance pledges in practice, however, had mainly served to strengthen managerial autonomy, helping to re-empower



(and re-legitimate) public bureaucratic managers (Cheung, 1996a), and to de-politicize public services through a new logic that played up citizens as service consumers rather than political voters (Cheung, 1996b).

After the change of sovereignty in 1997, greater emphasis has been placed on managing *for* results and managing *by* results within a Target-based Management Process (Tung, 1997). In this process, all government departments directly serving the public have to produce performance pledges, to inform their customers what services are available, the standards set, and how these standards are monitored. The aim is to ensure that the government provides the best possible services to the public. More specific objectives are:

- Better manage relationships with customers
- Impart a customer focus on staff
- Act as a management tool in daily operations
- Provide performance standards for staff
- Provide a mechanism for reporting performance to customers and the community at large (Efficiency Unit, 1998)

In addition to publishing performance pledges, departments with a significant public interface are also encouraged and assisted by the Efficiency Unit to set up “user committees” and “customer liaison groups,” thus involving representatives of the public in the monitoring of performance and performance standards. A survey conducted by the Efficiency Unit of the public’s and departments’ reaction to the use of performance pledges in 1998—5 years after the launch of the pledges program—found that both the public as customers and service departments are generally satisfied with the use of performance pledges, at 84% and 87% rating, respectively (Efficiency Unit, 1998).

### ***15.3.3 Linking Budget to Performance***

Prior to the introduction of medium-term policy planning in the late 1970s, policy and spending decisions were dominated by the Central Budget Agency (CBA), namely, the Finance Branch of the Government Secretariat. According to Rabushka (1976: 136), the politics of budgeting at that time were played out through:

- Seeking the approval by Government Secretariat or Executive Council of specific policy plans that favored the department
- Screaming “politics”—to impress the government center of the political cost of inaction or insufficient services of the department, e.g., social unrest and instability
- Using the authority of technical specialist skills to bluff the Finance Branch on professional items
- Establishing credibility and good relations with the Finance Branch

This kind of bureaucratic negotiation was conducive to persistent internal conflicts and rivalries among government departments and agencies. However, by the 1980s, as government accumulated more fiscal surplus and adopted a less rigid “positive non-interventionist” approach toward the role, functions, and scope of activities of government, both the budget requesters and budget controllers had, in practice, learnt to mutually accommodate each other and to stabilize their negotiations within more manageable limits. Incremental budgetary behaviors were, of course, not

unique to Hong Kong. They characterized most developed budgeting systems (Wildavsky, 1964) before the advent of the current era of budget reforms in favor of “budgeting for results” (Schick, 1990) and one-line budget allocations.

Following the Finance Branch Review of 1993, as part of the Public Sector Reform Program, more powers over resource allocation and control were transferred from the Finance Branch to various policy branches of the Government Secretariat. Since then, policy secretaries, i.e., the ministers, have a say over the relative priorities of different policy programs and executive departments and agencies within their respective portfolios, as reflected in the budget allocations they make to them within the block budget received from the financial secretary. In practice, though, the Finance Branch continues to advise them on the calculation of budget allocations to departments based on the “baseline budgeting” model (Finance Branch, 1995).

After the introduction of “operating expenditure envelopes” (a form of one-line budget) in 2003–2004, in line with the global trend of budget reforms again driven by NPM, the thrust of the budget exercise now lies less in the CBA-department’s/bureau’s negotiations as in the past, but more in the budget “pre-preparation” stage (Schick, 1986), where the financial secretary, with the assistance of the CBA (now the Financial Services and Treasury Bureau—FSTB), determines and allocates to various bureaus a provisional operating expenditure envelope to guide their preparation of the annual estimates. Like NPM-inspired budget reforms elsewhere (Robinson, 2007; Kraan, 2007), the new budget language emphasizes relating resource allocation to performance and policy results. The Controlling Officer’s Report accompanying the annual expenditure estimates is required to specify the department’s program areas, the resources allocated to each program area, performance targets, PIs, and the actual performance in achieving those stated targets.

### **15.3.4 Relating Rewards to Performance**

Hong Kong has adopted a civil service pay system inherited from the British Priestley approach whereby pay levels of civil servants are linked to relevant private sector counterparts through “fair comparison”—using pay level surveys and pay trend surveys, or, in the case of there being no suitable comparables, by way of internal comparison among civil service grades (Cheung, 2005a). Such comparisons can at best guarantee comparable levels of pay for the position, and *not* pay for performance. There is also the longstanding practice of annual salary progression (through increments) on the basis of length of service rather than strictly defined performance. Such a centralized pay determination system based on external comparisons and internal relativities has deprived civil service managers of an important tool to induce performance on the part of their staff, given that remuneration is determined by a standardized process without regard to actual staff performance. The only tool available to managers is promotion. However, promotion is not the most appropriate reward for satisfactory performance in the present rank (cf. Peter’s Principle). Relying on promotion as the key staff motivator would result in the unnecessary proliferation of higher ranks as a means to improve career prospect.

As the 1999 Civil Service Reform consultation document argued:

The existing system of increments in the civil service pay scale is not closely linked to performance. Under the existing system, the reward for good performance comes through accelerated promotion. But promotion prospects are highly dependent on the individual grade’s or department’s vacancy situation and does not provide a major incentive for all staff. (Civil Service Bureau, 1999a: para. 3.3)

While linking pay to performance in the civil service has become a growing international trend (OECD, 2005; Fitzpatrick, 2007), there has been strong resistance from both management and frontline civil servants to any attempts to tamper with the existing pay system that is valued for its stability and uniformity. In the aftermath of the 1997–1998 Asian financial crisis, which triggered the most serious economic recession in Hong Kong for decades, large-scale wage cuts and redundancies in the private sector, and outcries for streamlining the civil service pay system as well, the government took advantage of the narrow window of opportunity to float the idea of introducing some form of performance-related pay in the 1999 Civil Service Reform consultation (Civil Service Bureau, 1999a). Not surprisingly, the idea did not go far and was soon withdrawn. As the Civil Service Bureau subsequently admitted on assessing the feedback received during the consultation period,

while there] is general agreement on the principle that there should be correlation between performance and pay; ...there is widespread reservation and scepticism on the feasibility and practicability of introducing performance pay in the civil service. Some have pointed out that unlike the private sector where there could be clearly defined performance targets based on business results, there are no easily quantifiable yardsticks by which civil servants' performance could be assessed, and in the absence of such yardsticks, the authority for determining performance pay might be abused. Some also refer to experiences overseas and note there are few, if any, success stories. The general view is that it is important to establish a fair and equitable performance assessment mechanism before proceeding to introduce performance pay and that this must be handled very carefully. (Civil Service Bureau, 1999b: 7)

Two more toned-down reform initiatives were, however, implemented to help recognize performance to a *limited* extent within the context of remuneration. One was to tighten the system of granting *annual increments* along the pay scale. The Civil Service Bureau had instructed all managers to follow more strictly the requirement of the Civil Service Regulations 451 and 452 and be vigilant in their application, such that each incremental jump in salary would only be granted on the basis of a conscious assessment of staff performance (covering conduct, diligence, and efficiency aspects) (Civil Service Bureau, 2000a: 6–7). A civil servant who received a 5th or 6th-level overall rating in the performance appraisal—defined variously in staff appraisal forms as “less than adequate,” “unsatisfactory,” “poor,” and “very poor”—would normally have the increment stopped or deferred until the next incremental date when another review takes place. Those staff receiving “moderate” ratings would be duly cautioned. However, no quota for the granting, stoppage, and deferment of an increment has been set service-wide; hence, the effectiveness of the requirement still depends very much on the supervisors' mentality and judgment.

The other initiative was a *pilot scheme on team-based performance rewards*, introduced in the first half of 2001. Departments joined the scheme voluntarily, on agreement of the staff concerned. A team-based reward system was intended to avoid the problem of subjectivity in appraisal and to promote team effort. Staff of selected outstanding teams of the departments on the scheme would receive a reward set at about half the officer's monthly substantive salary. Participating departments designed their own schemes to suit their management needs, selected the units to participate in the scheme, formulated their own performance targets, and decided on the detailed assessment criteria for bonus allocation subject to meeting some broad parameters (Civil Service Bureau, 2000c: 4). They had to fund the reward scheme using their own departmental budget, e.g., by utilizing

efficiency savings obtained from implementing the Enhanced Productivity Program introduced throughout government in late 1998 (Civil Service Bureau, 2000b: 4). In order to ensure that the pilot scheme is conducted fairly and equitably, external consultants were employed to offer advice and assistance to the Civil Service Bureau and participating departments.

Whether team-based performance rewards will be extended service-wide was supposed to depend on the government's evaluation of the pilot experiments. To date, however, no conclusions one way or the other have been officially made by the Civil Service Bureau. In a list of major initiatives to reinforce a performance-based culture released in 2005 (Civil Service Bureau, 2005), the bureau identified the following measures, which were by no means vigorous mechanisms to enforce a performance-related human resource management regime:

- The annual Customer Service Award Scheme launched in 1999
- The Management-initiated Retirement Scheme for directorate officers launched in 2000 (up to October 2005, 13 directorate officers had retired under the scheme)
- Streamlining the procedures for handling substandard performers in 2003 and 2005
- The Secretary for the Civil Service's Commendation Award Scheme launched in 2004

## 15.4 Assessment of Outcomes of Performance Management Reforms

Performance management is a management principle pursued by most governments and managers, in the current era of NPM. Citizens as taxpayers also demand government to be better accountable for its performance—in terms of policy outcomes and service delivery results. Introducing performance management measures is thus both an attempt at self-improvement as well as a response to legitimate public expectation by government. Performance pledges and indicators, in the form of response times to emergency calls by the police and other disciplined forces, for example, have been found to be very useful in crime control and security risk management (Brewer and Huque, 2004). Questions remain, though, as to how effective performance management measures actually are in practice. Here we focus on four aspects that are critical to the success of sustaining a performance management regime:

- Are departments properly measuring their performance?
- Are budget decisions based on performance results?
- Are pay rewards reflecting performance?
- Are customers involved in performance target setting and performance monitoring?

Answers to these questions would reveal if a proper causal link between motives and rewards, and between means and results, does exist, and whether there is an inbuilt *modus operandi* (and culture) that can support and sustain a cycle of continuous improvement.

### 15.4.1 Are Departments Properly Measuring their Performance?

In October 1994, the Audit Commission conducted the first review of the adequacy and quality of financial and performance information provided by policy bureaus and government departments to the Legco. In 2005, it again examined the appropriateness and adequacy of the performance

information reported in the CORs, as well as the reliability of such information. The results were presented in Chapter 6 of its Report No. 45 in November 2005 (Director of Audit, 2005).

The Efficiency Unit's guide on performance measurement directs that targets should be set wherever possible as they improve the clarity of expectations, motivate performance, and improve accountability. Similarly the FSTB guidelines require that targets reported in the CORs should indicate the extent to which a department's operational objectives are being achieved and controlling officers should focus on reporting the effectiveness of their departments' operations (Director of Audit, 2005: para. 2.8). However, several shortfalls in performance measurement were identified by the Audit Commission:

- *The lack of quantified targets:* Of the 3262 performance measures reported by all controlling officers in 2004–2005, only some 30% were “*quantified*” targets while the rest were “*non-quantified*” indicators (Ibid., para. 2.9). On many occasions, the performance information reported in CORs had not provided stakeholders with a complete and meaningful view of the bureau's/department's performance. Some performance measures reported by departments were found not to be the key and most meaningful ones that could best indicate the quality, efficiency, and effectiveness of their work. Of the performance measures, 59% related to workload, 25% to service quality, 11% to effectiveness, and only 5% to efficiency (in which 3% related to unit cost measures and 2% to productivity measures) (Ibid., Figure 2, p. 16).
- *Most performance measures did not deal with program outcomes:* For example, for the Education and Manpower Bureau's primary education and secondary education programs, the targets only set out those initiatives *launched* to improve education, like language support schemes, but “hardly reflect how students' achievements have been improved” (Ibid., para. 2.17 (b) (ii)).
- *Performance measures reported often did not address inter-departmental and horizontal issues:* An example was food business license applications, of which the overall time required for processing across several departments concerned was not stipulated. In some cases, there was insufficient information to facilitate the proper interpretation of the performance measures, and an explanation for the significant deviation from targets was found lacking.
- *The reliability of performance information in CORs was also called into question.* The following anomalies were found (Ibid., Part 3):
  - Incorrect/misleading performance results being reported
  - Clear definition of performance measures not always provided
  - Proper validation procedures not always established
  - Proper performance records not always kept

In terms of incorrect and misleading information, the Audit Commission cited the case of the Student Financial Assistance Agency's (SFAA) report on the processing of student loan applications (Ibid., para. 3.3(b)). SFAA included a target processing time of “two months” for all applications, and reported “two months” as the actual processing time for each type of application under the Local Student Loan Scheme, implying 100% compliance rate. In its COR, it was also stated that “the Agency was generally able to process all applications with complete information within the time frame as pledged.” The Audit Commission, however, found that “applications with complete information” only referred to the applications with complete information, including supporting documents, furnished at the *first time* of submission. The target did not cover the processing of those applications for which additional information was submitted subsequently. As the percentage of those applications without complete information furnished at the first time accounted for

65% and 77%, respectively, of the 2002–2003 and 2003–2004 applications, the “two months” target processing time was only applicable to less than 35% of all applications. It was also found that only 90.8% and 98.6% of the applications with complete information for 2002–2002 and 2003–2004, respectively, met the target, not 100% compliance as reported by the SFAA.

The merits of a system of management by results are laudable, but problems lie in the technical feasibility of working out proper, reliable, and preferably “quantifiable” performance measures that can cover the full range of services and activities of departments, and the mindset of service managers and providers—whether they really believe in performance management, or simply pay lip service to it, or even produce incomplete and misleading reports as illustrated above. The Audit Commission reviews suggest that most government departments tend to pay lip service to performance management and do it only for the sake of satisfying the requirements.

### 15.4.2 Are Budget Decisions Based on Performance Results?

To understand what has changed and what has not changed in the new mode of budgetary behaviors under one-line budget and budgeting for results, the author conducted a survey of departmental/bureau financial managers in 2004.<sup>2</sup> Three bureaus and twenty-two departments/agencies responded and their answers were illuminating. Despite considerable devolution of financial management, which they all welcomed, spending departments still felt frustrated with:

- Insufficient resources being allocated and the need to “do more with less” in an environment where the public has escalating expectations of government services
- Inter-bureau coordination problems<sup>3</sup>
- The cash-based accounting system that constrained multi-year expenditure planning

While most agreed with the notion of budgeting for results, there were quite a few skeptics as illustrated by the following expressions by interviewees:

We have worked out the broad performance targets and indicators for the different policy programme areas with the policy bureaus concerned. But in the process of resource allocation to departments, both the Treasury Branch [of FSTB] and the policy bureaus would take into account *criteria or factors from a higher perspective*. At present a top-down approach is adopted in budget/resource allocation. ...Departments are required to achieve efficiency savings/additional savings by various economy measures to achieve the cost-cutting targets. (Author’s emphasis)

In theory [budgeting for results] is correct, but in practice there are still so many constraints. “Results” tend to be derived from the easiest measurable indicator of what we already do which reflects us in a good light.

<sup>2</sup> A comparative research project on budget reform in Hong Kong and Singapore, fully supported by a grant from the Research Grants Council of the Hong Kong Special Administrative Region, China (Project No. CityU 1063/02H).

<sup>3</sup> Under the system of resource allocation according to policy program areas, for a department that delivers services under several program areas controlled by more than one policy bureau, it has to depend on multi-bureau funding. Insufficient inter-bureau coordination may give rise to conflicting program targets and gaps in overall service delivery.

The application of the concept of “Budgeting for Results” is not very obvious in the... reforms, although the Save & Invest arrangement<sup>4</sup> can be said to partly achieve this concept. In this context, “results” are measured by the extent of the Controlling Officer’s success in effecting genuine savings in recurrent expenditure. The “results” thus identified will be used to help determine the level of budget allocation by including a percentage of these genuine savings in the Operating Expenditure Envelope of each Director of Bureau in the Estimates of the next nearest financial year.

Although the COR accompanying the annual expenditure estimates now specifies the department’s program areas, the resources allocated to each program area, performance targets, PIs, and the actual performance in achieving those stated targets, such performance information is more to satisfy the Legco and its Finance Committee than to really guide the annual resource allocation decisions made by FSTB and the financial secretary. Budget caps imposed by the financial secretary are determined across the board and not tied to the specific measurement of performance. In any case, the fragmented nature of PIs would not be conducive to the determination of precise amounts of budget allocations. Any major deficiencies in meeting performance targets would probably be taken into account when policy secretaries review the budget request submitted by department heads under their portfolio, and might have some bearing on the level of budgetary allocation, but such impact is at best a holistic one. There are no clear links between the composition of budgetary allocations and the spending departments’ various PIs.

Expenditure envelopes were introduced in 2003 mainly for the purpose of capping departmental budgets at the time of fiscal stress, where balancing the budget became the priority objective of government. As a result, as confirmed by bureau/departmental managers interviewed, the financial secretary had in practice made reference to the historical spending patterns of departments when arriving at a provisional expenditure envelope, with a percentage deduction to take account of the ongoing need for budget cutback and of his own fiscal targets for eliminating fiscal deficits. The operating expenditure envelopes ultimately given to bureaus by the financial secretary were all based on historical spending levels as adjusted by targeted cutback rates, as well as additional provisions for any major new services approved by the chief executive to be launched, where sufficient savings could not be obtained, by way of redeployment of existing resources. One respondent to our 2004 survey added:

While the Treasury Branch [of FSTB] plays a role in assisting the FS [Financial Secretary] in determining the envelope provision and efficiency savings, the negotiation between the FS and Directors of Bureaus [i.e. policy secretaries] seems more important in deciding the envelope provisions and efficiency savings targets at the bureau level.

The implications seem clear. Budgetary decisions are not made on the basis of performance measurement *per se*.

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<sup>4</sup> The Save & Invest Account was introduced in 1999–2000, together with the launch of the Enhanced Productivity Program (EPP), whereby departments were required to achieve targeted efficiency savings and, in exchange, were given the flexibility to retain a portion of the savings in a centrally held account (Save & Invest), from which withdrawals could be made subsequently to fund re-engineering projects to improve productivity and efficiency.

### 15.4.3 Are Pay Rewards Reflecting Performance?

The straight answer to this question is no, based on the lukewarm attitude toward performance-related pay, whether from management or the staff side. Even the team-based performance rewards pilot scheme was not pursued after its first round in 2001. The lack of enthusiasm for any change can be illustrated by the fact that only six departments took part in the pilot scheme, while others, notably the Social Welfare Department, Education Department, and even the business-oriented Post Office, decided not to join, reflecting the worry among some departmental senior managers about the potential divisiveness of such bonus payments and the practical difficulties of performance measurement and evaluation.

The skepticism and hostility toward linking employee remuneration to performance measurement was strong throughout the civil service, ranging from the frontline to top management. Feedback from departmental managers and staff representatives alike during the 2002 review of the Task Force on Civil Service Pay Policy and System (Task Force, 2002) also reflected the continuing reservations about the merits and workability of performance-related pay arrangements.<sup>5</sup> Civil service pay issues are not just managerial ones, but entail wider political and even legal and constitutional repercussions in Hong Kong's case (Cheung, 2005a). Forcing through any performance-related pay scheme by government fiat alone may risk open confrontations and conflicts with the staff side and upsetting the stability of the civil service. So the existing pay system persists whereby performance and rewards remain disconnected, and salary remuneration is not determined on the basis of the individual civil servant's performance. At the same time, departmental managers cannot use pay rewards as a motivator to induce staff to work according to prescribed performance targets and levels.

Putting aside the political and institutional repercussions, the validity of any performance pay system in practical terms remains problematic because of methodological complexities, and managerial attitude, prejudice, and cynicism (Cheung, 1999). A performance pay system only works if the "performance" of individual civil servants can be reliably measured by objective PIs that are acceptable to both staff and management. Otherwise, performance evaluation will tend to focus on only those aspects of work that are technically easier to recognize and measure, overlooking the importance of the non-quantifiable aspects (the so-called "intangibles"), or PIs might turn out to be just "political products" of bureaucratic bargaining between staff and managers, making a mockery of the system.

There is also the question of transaction costs in implementation, for example, in terms of bureaucratic bargaining over the formulation of PIs and the valuation of performance output, the need to institute adequate scrutiny and monitoring mechanisms over supervisors to ensure fair and comprehensive performance evaluation, and managerial time and efforts to implement the new system. Unlike the private sector where performance can ultimately be denominated in gross quantifiable terms and monetary currency, government work is often team-based and quality- or process-oriented, not easily susceptible to simple measurement and quantification. What is measurable may not be what is most significant, but what gets measured tends to be what is performed. Performance pay is not necessarily a more effective performance motivator, either. For many public sector managers, job independence, sense of accomplishment, challenging work, and respect and fair treatment are more important factors than performance pay (OECD, 1997).

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<sup>5</sup> This author was a member of the Task Force, established by the Standing Commission on Civil Service Salaries and Conditions of Service, and heard first hand such skeptical views.



The successful implementation of a performance pay system, apart from the hardware elements such as reliable and trust-building performance measurement methodologies and tools, also depends critically on the attitude and culture of managers. If managers are risk averse, as many middle-level managers are, they may tend to play a “nice boss” to subordinates by adopting an egalitarian approach to attribute equal merit to their staff and to reward them more or less equally. To some managers, performance pay would mean greater control over staff performance; but to others, it may mean more work on performance measurement documentation, more office politics and less staff trust, and thus an unwelcome exercise (Cheung, 1999).

#### **15.4.4 Are Customers Involved in Target-Setting and Performance Monitoring?**

In the aforementioned Efficiency Unit survey of 1998, while the customers seemed generally satisfied with departments’ performance against their pledged standards and the departments also generally found pledges a useful means for managing their operations and staff performance, *less than two-thirds* of the departments surveyed included all their services in the pledges and *less than two-thirds* of the customers surveyed thought the pledges had contributed significantly to service improvements. In other words, the effectiveness of performance pledges as “contracts with customers” and as tools to secure service improvements was still obscure.

This author conducted a content analysis of a total of 80 performance pledges published during 2001 to 2003, to appraise their effectiveness with respect to five dimensions—access, choice, information, redress, and participation (representation)—following Potter’s (1988) five-principle framework for public sector consumerism (Cheung, 2005b). It was found that most performance pledges followed some kind of template, with standard listings like:

- Vision, Mission, and Values—usually separately listed
- Description of the department and its work and scope of services
- Performance standards and targets—comparing pledged targets, achievements in the past year, and target for a current or future year
- Customer feedback survey results (if any)
- Effective monitoring
- The public’s right of appeal
- Contact details (including telephone numbers and sometimes fax numbers and email addresses)

Of the 80 pledges examined, only seven met all five criteria of access, choice, information, redress, and participation in some ways. Most pledges looked more like publicity material than a carefully crafted tool to encourage customer response and involvement. The rights of customers and information on how they could be involved in the formulation of service provision decisions and the monitoring of the range and quality of services were largely absent, leaving little trace of the “culture of service” that was supposed to underpin the performance pledges. The pledges had thus served managerial interests rather than customer purposes. There was no evidence of customer input to the design of the pledges themselves.

Our findings corroborated the Efficiency Unit’s 1998 survey results, only more sharply. They pointed to the gradual routinization of the performance pledges program, rendering it just another management exercise that takes the customer role as a peripheral, if not superficial, one. What is contained in the performance pledge is grossly insufficient for discharging performance

accountability to the customers. The managerial bias or bureaucratic capture of performance pledges may well indicate that like many customer service techniques and strategies, the customer rhetoric of performance pledges has quickly become domesticated, to the extent that the production and content of pledges are now no more than just a public relations exercise, and a task to satisfy a top-down requirement. The culture of performance pledges has not permeated effectively into the public sector bureaucracy either because it remains something alien to the pre-existing non-inclusive culture (hence as an administrative fad, it would rise quickly but also decline quickly), or it has been subject to agency *and* staff adaptation in the process of implementation just like any new policy innovation.

### 15.4.5 Overall Evaluation

If performance management represents a new regime that is a more transparent, open, objective, bottom-up, customer-driven, results-driven style of management, then certainly Hong Kong's case so far has shown that despite the enthusiasm given to it in policy statements and management rhetoric, the reality remains that critical decisions in public sector management continue to be based on a broad-brush, across-the-board, political approach factoring in bureaucratic adaptation and negotiation. The discrepancy between claims and realities can be further explained in three aspects:

- The measurability of performance
- The ownership of, and responsibility for, performance
- The politics of performance

## 15.5 Measurability of Performance

Government and the public sector at large exist to provide public services to citizens and perform core functions (such as maintaining law and order) in society. Viewing the activities and operations of government in much the same way as those of a private firm within the general notion of “management,” it seems logical to emphasize the continuous improvement of public services delivery through a *good* management of performance. The crucial question is how “performance” is to be defined and properly measured for the purpose of management. Performance measures and indicators (as “proxies” where direct measurement is not feasible) have thus occupied a key part in the ongoing performance discourse. In reality, public sector performance measurement is inherent with major conceptual ambiguities and methodological complexities and uncertainties. Notionally, performance measurement has the benefits of providing an incentive for production, innovation, and adequate accountability, and of reinforcing an organization's external orientation. However, as de Bruijin (2002: Ch. 1) rightly pointed out, these benefits need to be qualified by the specific conditions pertaining to the nature of the organization and its products/services.

Performance measurement becomes problematic when: an organization has obligations and is highly value oriented; an organization is process oriented; products are multiple; products are generated together with others; products are interwoven; products are of wide variety; causalities are unknown; quality is not definable in PIs; and the environment is dynamic (de Bruijin, 2002: Table 1.1). These problematic conditions are often found in the context of public sector work that is less quantifiable, involves inter-departmental cooperation and teamwork, and is subject to more value-laden processes and a more politically charged environment. Furthermore, there are what de Bruijin (2002: Ch. 2) described as the “perverse effects” of performance measurement, which cast doubt on its reliability and effectiveness and hence lead to cynicism and staff resistance to its

use. Performance measurement could become a stimulus to strategic behavior should participants engage in “gaming the numbers,” which might in the worst case bring about even negative performance. Performance measurement tends to reward the constant reproduction of the existing, which might block innovations. Though it can serve to induce an organization to account for its performance and objectify such account, performance measurement might also veil an organization’s performance, if performance information is so aggregated as part of managerial strategic behavior that it misses or blurs the causal connections existing at the level of the primary process of production.

A fundamental problem of performance measurement is that most public sector has *both* quantitative as opposed to qualitative aspects of performance—the so-called tangibles and intangibles. How far can measurement be comprehensive and “objective” is always a point of contention. If non-quantitative measures or indicators can be accepted, how far is it a matter of subjective/judgmental measurement (e.g., views of peers, customers, and the public at large), which may also lead to disagreement and controversies? There is also a danger that average performance will be equated with good performance (Carter, Klein and Day, 1992: 48). Some studies have found that PIs that are accessible to the public do not necessarily provide a comprehensive view of the performance of public bodies; neither has government a common or rigorous approach to performance auditing (Taylor, 2006a, 2006b).

## 15.6 Ownership of, and Responsibility for, Performance

Because of these problems of measurement, and the transaction costs involved in order to come up with more reliable and comprehensive indicators within the public sector because of the nature of its work, most departments and agencies are reluctant to embrace performance measurement wholeheartedly. Not only that, the negative or “perverse” effects of performance measurement have also led to bureaucratic skepticism and resistance toward the wider use of PIs and the like to bear upon major policy or management decisions. PIs are controversial and may become highly divisive. To the extent that the results of performance measurement are used to determine individual or agency reward, results that “get measured” may tend to be those that “get done,” so that those activities that can produce easily measurable outcomes would take precedence over those that can’t. Bureaucratic politics are then conducted in terms of determining the ways in which performance is measured and evaluated for the purpose of resource allocation and rewards.

The degree of performance ownership in the public sector is constrained by the level of interdependence of different units, services, or activities within the public organization *or* between different government departments/agencies (degree of complexity in production), *and* by the extent to which performance is affected by environmental factors beyond the control of the principal unit/organization concerned (degree of certainty). The degree of individual unit’s or department’s control over performance outcome also varies. Some organizational actors enjoy a high degree of autonomy, e.g., professional independence from other managers over performance and performance evaluation. Others may be at the mercy of the policy perimeters set by higher-level bodies, or by external constituencies and partner departments. In organizations where there is greater professional autonomy, this may weaken the capacity of managers to “control” the performance of the organization as professional standards and priorities often take precedence over managerial targets and criteria. As a result, there is no unified set of performance standards and motives that can drive such standards. The combined result is that key decisions in human resource management (such as pay determination) and financial resource management (such as annual budget

allocations) remain based on the well-trying conventional wisdom of “negotiative politics,” in order to secure the widest mutual accommodation and institutional consensus.

## 15.7 The Politics of Performance

Finally, there is the issue of the actual purposes that performance measures and indicators are put to serve. According to Carter, Klein and Day (1992: 49), three different categories of PIs can be conceptually distinguished that serve different purposes. *Prescriptive* PIs are used to monitor progress toward the achievement of objectives set by ministers or managers. *Descriptive* PIs simply record change (i.e., comparing relative performance over time rather than performance against normative standards or precise targets), while *proscriptive* or negative PIs specify not targets or ends, but things that should not happen in a well-run organization. Prescriptive PIs are more a top-down management tool to ensure compliance of prescribed targets by subordinate agencies and staff, hence lending themselves to a command style of management (Carter, Klein and Day, 1992: 50). Descriptive PIs, which can be produced at any level of the organization, may entail a more persuasive style of management.

In the context of performance management, as witnessed in Hong Kong’s experience, top-down PIs have been imposed by the government center and senior management of bureaus/departments as performance targets, both for political consumption (to satisfy the legislature and rising public expectations as a form of *external* accountability) and for the purpose of bureaucratic compliance control (as a form of *internal* accountability). However, these prescriptive PIs may not have secured sufficient bottom-up involvement and buy-in, but are mainly introduced as a new *modus operandi* within the new atmosphere of performance rhetoric. As such, it is easy for middle managers and frontline staff to engage in reverse “strategic behavior” so as to beat the game—adopting those PIs that will be favorable to them and presenting performance information in such a way as to hide or blur the actual performance. The findings of the Audit Commission, as well as the degeneration of performance pledges into glossy publicity pamphlets, have all pointed to such a “moral hazard” tendency of bureaucratic adaptation and capture. What performance measurement has actually achieved is a bundle of mainly descriptive PIs indicating inputs and unit costs rather than outputs and outcomes, very often a product of internal managerial negotiations. Wong’s (2007: 452) case study of the experience of SQS in Hong Kong’s subvented social services, for example, has also found that these service standards soon become treated as “bureaucratic chores and rituals. ... [and the] compliance accountability and convenient ways to game the system will take hold,” so much so that “this is not accountability for the effectiveness of results, but rather accountability for documenting the processes by which the results are arrived at.” Frustrations and confusions set in, and service providers and professionals no longer take SQS seriously.

## 15.8 Conclusion

Performance measurement is *both* a science and an art. As science, measurement is subject to methodological, cognitive, and technical constraints and prejudice. As art, it has to be the “art of the possible”—accommodating bureaucratic negotiation and the limitations of management culture in the organization. The notion of performance is, in theory and practice, both contestable and complex. Therefore, great care has to be taken by policymakers and managers as to how to develop workable and reliable PIs and to interpret the findings generated by such indicators,

and how to gauge the intangible and non-measurable aspects in order to cast a fuller and more meaningful picture of performance that, in turn, can really inform intelligent decision making. This explains why performance measurement is often pursued in government organizations in a somewhat indeterminate and flexible context.

The skepticism toward and the politics of performance-related pay are not unique to Hong Kong, but are found even in OECD countries that have pioneered performance management reforms since the 1990s (Cardona, 2007a, 2007b). No link has been found between performance-related pay for public sector managers and improvements in organizational performance—“the technique has been useful only in overcoming labour market pressures driven from the competing private sector rather than actual outstanding achievements” (Cardona, 2007b). A 2002 survey of systems of productivity-linked remuneration in European Union member states concluded that:

- Performance-related pay systems were costly and time consuming to implement
- Measurement of performance, particularly in areas where there were no obvious quantifiable outputs, was very difficult
- Almost none of the current schemes addressed the issue of underperformance
- No evidence had been found that performance-related pay schemes had contributed to an improvement in performance, in human resource management, or in the quality of the service delivered

Different logics operate in political, policymaking, and managerial processes. The economic rational logic behind performance-based budgets, for example, is different from the political logic and these two logics do not necessarily converge (Cardona, 2007b: 5). In practice, as reported by a World Bank (2003: 38–39) research paper, performance management systems had demonstrated remarkably little influence on anything and in some cases produced negative effects. Such observations were echoed by a subsequent OECD (2005) study. If after 20 years of “disappointing experience” of OECD member countries with performance-related pay, with “the still unseen results” of performance management (in the words of Cardona, 2007b: 5), it is no surprise that Hong Kong has been so unenthusiastic about the implementation of performance management.

Judging from the rather ambiguous and even superficial way in which performance measurement is put to use in Hong Kong, the lesson seems to be that unless the various stakeholders in government genuinely believe that performance measurement represents a fairer, more reliable, and generally more effective process to drive resource allocation, performance evaluation, and reward decisions, it will continue to exist more on paper as a managerial rhetoric than as an effective tool to inculcate a fundamental shift in organizational thinking and behavior. Whether in political, bureaucratic, or managerial transactions, there are certainly genuine needs to define “performance” in order to assist decision making and to achieve accountability to stakeholders concerned, but the measurement of performance may be in totally different terms in different milieus, which cannot be easily reduced to a singular set of unproblematic denominators that can cross milieu borders.

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## Chapter 16

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# Civil Service System in Hong Kong

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John P. Burns<sup>1</sup>

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### 16.1 Introduction

The case of Hong Kong provides an opportunity to reflect on what a civil service system might look like in a liberal setting without rigorous political, especially legislative oversight. Until 1997, the Hong Kong civil service managed itself almost entirely on its own: it determined its own selection procedures, disciplinary codes, performance standards, and pay levels and benefits—a civil servant's dream one might suppose. For decades, these arrangements were rubber-stamped by an appointed colonial legislature. The result was, initially at least, systemic corruption on a grand

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scale that existed until the public would tolerate it no longer and then compensation packages that have become among the highest in the world. It may come as somewhat of a surprise, then, that Hong Kong's relatively autonomous civil service has adopted practices that have transformed it into a meritocratic and politically neutral service that enjoys relatively high prestige. The interest of Hong Kong's political executive in developing a kind of performance-based legitimacy goes a long way toward explaining the transformation.

## 16.2 Structure of the Public Sector

Hong Kong's political executive has struggled to control and hold to account both the civil service in government departments and the vast array of public bodies that help to implement public policy.

The public sector in Hong Kong consists of core government, hybrid organizations, state-owned enterprises, and private companies that deliver public services (see Scott, 2005). Public expenditure in Hong Kong is about 18% of GDP and personnel-related expenses for both the civil service and the large public sector beyond core government (see below) account for about 70% of government recurrent expenditure.

### 16.2.1 Core Government

Core government, mostly tax financed, is composed of 12 policy and resource bureaux, which are charged with making government policy, and 61 or so departments and agencies, supervised by the bureaux, which behave more like executive agencies in the United Kingdom and are charged with implementing government policy. This arrangement separates policy formulation and implementation in most areas and dates from 1973 when the government reorganized the colonial secretariat. The three key principal officials (chief secretary for administration, financial secretary, and secretary for justice), all political appointees since 2002, oversee the bureaux. The policy secretaries, who head the 12 bureaux are also (since 2002) political appointees and, although like all principal officials are appointed by the central government, serve at the pleasure of the chief executive. Policy secretaries are appointed in their own capacity and come to office without any organized political (e.g., party) support. Although by 2008 most of them were retired civil servants, a minority have come from business, the media, and academia. They have not been supported by politically appointed staff, political parties, or think tanks, as might be the case in developed democracies; consequently, they are heavily dependent on the civil service.<sup>2</sup>

The bureaux and government departments and agencies are mostly staffed by civil servants. The permanent secretary, the most senior civil servant in each bureau, is the budget holder or controlling officer for programs (and thus clusters of departments) managed by the bureau. The heads of the 61 departments and agencies under the bureaux are civil servants and they bid for resources and submit spending plans to their respective controlling officers. A head of department may report to more than one permanent secretary depending on the programs involved. Thus, the head of the Agriculture, Fisheries and Conservation Department bids for funds for food safety from the Health and Food Bureau and for conservation from the Development Bureau. Five departments and agencies (Companies Registry, Land Registry, Office of the Telecommunications Authority, Hong Kong

<sup>2</sup> The government provided further political support for Policy Secretaries in 2008. Most Secretaries since then are supported by a politically-appointed Under Secretary and at least one political assistant. Arguably these changes strengthened the political executive's control of the civil service.

Post, and Electrical and Mechanical Services) are operated as trading funds with considerable financial autonomy. Although initially tax financed, their subsequent expenditure comes mostly from fees and charges for services provided to the public.

In addition to the mostly tax-financed bureaus, departments, and agencies, the government has established a central bank, the Hong Kong Monetary Authority (HKMA). The authority, while a government agency, hires staff on non-civil service contracts, has more autonomy from the political executive than do other government departments, and is funded from non-tax sources.

### **16.2.2 Hybrid Agencies**

Hong Kong has made wide use of various types of more autonomous hybrid institutional arrangements to deliver public services. They may be publicly owned and either publicly or mixed financed. Typically, they are set up by statute and are unincorporated. Representative of the tax-financed hybrids are the Independent Commission Against Corruption and the Ombudsman, employees of which are not civil servants. Representative of the second, mixed-financed group are the Hospital Authority (HA), the Trade Development Council, the Securities and Futures Commission (SFC), the Mandatory Provident Fund Schemes Authority, Hong Kong's eight universities, and many schools. Controlling the behavior of these agencies has posed special challenges to the political executive.

Typical is the HA, established in December 1990, which took over the management of 38 public hospitals and institutions and their 37,000 staff from the Department of Health a year later. Currently, the HA manages 41 public hospitals and institutions and employs about 52,000 full-time staff with a budget of HK\$27.1 billion. The HA is responsible to a 25-member board that includes senior government officials: the head of the Department of Health, the permanent secretary for health, and a representative of the secretary for financial services and the treasury. The government took the decision to place public hospital management in a more autonomous agency to improve efficiency (most HA staff are now no longer civil servants) and to ensure that non-commercial goals of providing public health care to the community were met.

### **16.2.3 State-owned Enterprises**

The government also provides some public services through public statutory corporations either wholly government owned (such as the former Kowloon Canton Railways Corporation [KCRC], which until 1982 was a government department that employed civil servants) or government majority owned (such as the Mass Transit Railway Corporation [MTRC], which was merged with the KCRC on December 1, 2007). The MTRC is led by a chief executive officer and an Executive Committee who are supervised by a board that includes the secretary for transport and housing, the secretary for financial services and the treasury, and the commissioner for transport (head of the Transport Department). MTRC employees are not civil servants. The government approves MTRC requests to raise fares and these are discussed in Legco. To finance railway expansion, the government has granted the MTRC property development rights along subway lines. Control and accountability issues were especially severe in the former KCRC, which had been a government department before it was corporatized.

### **16.2.4 Private Businesses that Deliver Public Services**

Representative of private businesses that deliver public services are the bus and taxi companies, public utilities (gas and electricity, but not water which is provided by a government department),

and tunnel operators who, although publicly listed private companies, operate under various schemes of control that require government approval to increase tariffs and which in some cases (e.g., electric power) limits profits to a return on fixed assets. Many of these companies have received fixed-term licenses to operate on a franchise or monopoly basis. Most schools in Hong Kong are provided by private operators (often churches) and are governed by various regulations that limit fees, impose various qualifications on management, and lay down various performance standards. Their employees are also not civil servants.

Hong Kong has adopted a wide array of institutions to deliver public services. The trend has been toward moving away from traditional bureau-type agencies toward more hybrids that allow greater flexibility while attempting to ensure accountability. These changes have seen the number of civil service posts shrink from a high of 190,000 in 1990 to about 160,000 in 2008. Hong Kong's civil servants do not include most teachers, who work in the state-subsidized private school system, nor most medical personnel, now employed by the HA.

The civil service is dominated by an elite 600 or so, strong generalist Administrative Service, recruited from among university graduates to staff positions in the policy bureaus and to lead many government departments (see Burns, 2004). The Administrative Service makes up about one-fifth of the civil service directorate (the rest is made up of professional or departmental grades officers such as engineers, surveyors, lawyers, and so forth). The directorate numbers about 1000 positions or about 1% of the total civil service. Below the directorate, another 3,000 or so senior managers and professionals supervise a further 33,000 junior and middle managers. The largest departments are the police (a legacy of Hong Kong's colonial past, employing about 32,200), Food and Environmental Hygiene (11,000), Housing (employing more than 7,000 in Hong Kong's huge public housing program), and Leisure and Cultural Services (7,000) (Civil Service Bureau, 2007). Women make up about one-third of the civil service, but hold disproportionately more lower-ranking positions on the Master Pay Scale (clerks and secretaries) and the blue-collar workforce. As more women have graduated from university (since 1996 more girls than boys are enrolled in Hong Kong's tertiary institutions), the government has employed more women than men in the elite Administrative Service and women now make up about 55% of the administrative officer (AO) grade.

Research from the 1980s indicates that the public then accorded the bureaucracy considerable respect (Lau, 1982, 157). More recent studies reach similar conclusions (see [Table 16.1](#)). Only the occupations of doctor and teacher in a 2004 survey were perceived as more prestigious. Surveys of trust in various occupation groups, which may be considered as a proxy for prestige, come to broadly similar conclusions. According to a 2001 survey, people trust civil servants more than businessmen, but less than politicians (Lau, 2003, 61). (The survey of prestige, however, indicates no statistically significant difference between the levels of prestige of civil servants and politicians.) Both surveys reveal that people perceive the civil service as a job category to be both more prestigious and more trusted than businessmen. Because of the relatively high regard with which the civil service is held in Hong Kong, the government should be able to attract talented people. The professions, however, probably attract "the best and brightest."<sup>3</sup>

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<sup>3</sup> In a study of confidence in various political institutions, Hong Kong's senior civil servants did not score very highly. Respondents had more confidence in directly elected politicians than in senior civil servants. Still, respondents had more confidence in senior civil servants than they did in the chief executive and his political appointees (see Chan and Chan, 2006).

**Table 16.1 Prestige of Various Occupations in Hong Kong, 2004**

Rank	Occupation	Mean	Standard Error of Mean	Median
1	Doctor	1.99	0.049	1.00
2	Teacher	3.58	0.068	3.00
3	Civil servant	4.44	0.069	4.00
3	Politician	4.48	0.105	4.00
5	Politically appointed principal official	4.84	0.105	5.00
5	Businessman	4.84	0.083	5.00
7	Technician	5.44	0.075	6.00
8	Sales assistant	7.05	0.057	8.00
9	Cleaner	7.53	0.086	9.00

Source: Public Opinion Program, University of Hong Kong, March 5, 2004 in Burns, J. P., *Government Capacity and the Hong Kong Civil Service*, Oxford University Press, Hong Kong, 2004.

Note: Question “Rank order the following occupations by level of prestige going from most prestigious to least prestigious.” The survey was carried out from March 1 to 3, 2004 by telephone using the standard Public Opinion Program telephone sampling method (telephone numbers were selected randomly from telephone directories and mixed with additional numbers generated by computer). There were 1031 successful cases; the response rate was 63.7% and standard error <1.6%.

### 16.3 Administrative Values

Despite 150 years of British rule, to a large extent Hong Kong Chinese subscribe to a Confucian world view (Lau and Kuan, 1988, 83). Confucianism holds that society is bureaucratic and hierarchical with the state being stronger than civil society (Dao, 1996, 48). “The Confucian model of government is bureaucratic and unitary. In this model, political order is remarkably monolithic, with all political power and actions centered in a single bureaucracy headed by the Emperor” (Dao, 1996, 51). In Confucian states, the division between civil servants and politicians is blurred and the bureaucracy tends to be more powerful and autonomous than in Western states (Dao, 1996, 58). Entry into the bureaucracy is based on merit for a career in an organization that is highly prestigious. In the Confucian states, graduates of elite universities staff the bureaucracy. The Confucian concept of governance requires that the bureaucracy be staffed by superior men of talent. Although the consent of the governed is important for the legitimacy of government (and is obtained by a government that cares for the people and develops the country), Confucian government is not democratic. In this view, the people give their consent but do not participate in government. This world view resonates well with the experience of governance in Hong Kong.

Administrative values in Hong Kong include hierarchical loyalty, efficiency, meritocracy, and political neutrality<sup>4</sup> (Lui, 1988, 137–40; Scott, 2005, 64–87). In 1988, Terry Lui wrote that, “the

<sup>4</sup> Scott (2005, 65–80) identifies Hong Kong civil service values as small government, fiscal frugality (both arguably related to efficiency), centralization, rule by an administrative elite, merit, hierarchy, tenure, rule of law, corruption prevention, and political neutrality.

Hong Kong civil service demonstrates remarkable compliance with hierarchical authority. Line implementation is highly effective. Insubordination is uncommon, and ‘whistle blowing’ among serving officials is almost unheard of..” (Lui, 1988, 139). The importance of hierarchical loyalty has changed little since then. As Lui (1988, 139) points out, the readiness of civil servants to accept orders from their superiors is “largely attributable to conventional Chinese attitudes of respect for authority and avoidance of conflict.” Compliance is reinforced by strict adherence to bureaucratic rules and regulations and an incentive system that highly values promotion. Again from the vantage point of the 1980s, “efficiency is of overriding importance to government officials in Hong Kong,” evidenced by the extraordinary attention paid to the input phase of the administrative process and the detailed scrutiny paid to government expenditure within government (Lui, 1988, 137). The Audit Commission’s value-for-money audits reinforce the government’s preoccupation with efficiency. Official emphasis on small government and fiscal frugality continue to the present day.

Entry into Hong Kong’s civil service is highly competitive and for the most prestigious posts (e.g., in the Administrative Service), those holding the appropriate educational qualifications are required to pass a battery of examinations, tests, and interviews with a success rate of no more than 0.2%. Despite the low success rate, from 10,000 to 12,000 apply each year for 25 to 30 AO posts, indicating the continuing attractiveness of the positions even in the face of civil service reforms that abolished pensions and reduced benefits and other changes that since 2002 have put the top policy-making positions in the hands of political appointees, not civil servants. Merit within the civil service is largely defined in terms of seniority, however, where position-based rewards are the norm.

Although Hong Kong’s political system does not include well-developed political parties, official policy highly values political neutrality. Senior civil servants are prohibited from campaigning for candidates in Hong Kong’s elections or standing for election to the Legislative Council or District Councils without first resigning from the civil service.<sup>5</sup> Moreover, no civil servant of whatever rank may engage in any activity that would jeopardize the impartiality of government or that might lead to a conflict of interest (Lui, 1988, 138; Burns, 2004, 62–63; Scott, 2005, 77).<sup>6</sup> These regulations, however, have not prevented a pro-big business orientation within the government that has kept direct taxes and welfare payments low, delayed the introduction of a competition law, and occasionally led to charges of business-government collusion (e.g., over the construction of the Cyberport, a large property and business development project handed to tycoon Li Ka-shing’s son without competitive bidding).

Hong Kong civil servants’ utility maximizing orientation operates within the value milieu outlined above and also within a bureaucratic culture that values harmony and good co-worker relations.

## 16.4 Politicians and Bureaucrats

The relationship between politicians and bureaucrats in policy making has gone from one of almost complete bureaucratic domination during the colonial period to one of shared roles since 2002.

<sup>5</sup> This prescription applies especially to all administrative officers, directorate officers, police officers, and information officers.

<sup>6</sup> Hong Kong’s political neutrality was referred to as “British practice” by officials in China in 2003. Political neutrality is not carried out on the mainland (see Burns, 2004, 63).

The turning point came when the government introduced the Principal Official Accountability System (POAS) and replaced civil servants in the most senior policy-making roles with political appointees.

In the pre-2002 period, political power was concentrated in the hands of a single political appointee: the British governor until 1997 and the chief executive from 1997 until 2002. The evidence suggests that although they had the power to make policy and give directions to the civil service, they were highly dependent on the civil service for policy advice. Only occasionally did these single-appointee political executives dominate policy making. During the recent colonial period, among British governors, Murray MacLehose (1971–1982) was decisive in at least one area, the decision to establish the Independent Commission Against Corruption in 1973 (Scott, 1989, 146–52). MacLehose was also influential in other policy domains, such as various decisions to expand public services, including public housing, compulsory 3 years of secondary education, and social welfare. More recently, Chris Patten (1992–1997) put his personal stamp on reforms of Hong Kong’s political system in the run up to the transfer of sovereignty in 1997. Hong Kong’s first post-1997 chief executive, Tung Chee Hwa (1997–2005), attempted to make his mark on housing policy only to be undone by the Asian financial crisis in 1998. Tung’s supporters complained that the civil service failed to support the chief executive and obstructed his policies, leading the central government in Beijing to urge the civil service to better support Tung (*Ming Pao* 27.9.2000). Still, Tung was able to introduce the POAS in 2002, the prospect of which had prompted the head of the civil service, Chief Secretary Anson Chan Fang On-sang, to resign a year earlier.

Despite their constitutional position,<sup>7</sup> governors/chief executives have been highly dependent on the civil service, which has, for the most part, dominated policy making. Governors were outsiders who brought with them only a very small staff. Until 2002, all the top positions, except for the position of governor/chief executive and one or two personal assistants, were held by civil servants. The chief secretary (a civil servant) chaired the Policy Committee (made up of policy secretaries, all of whom were civil servants until 2002) that made policy before it was endorsed by the Executive Council, an advisory body appointed by the governor/chief executive. Senior civil servants were drawn almost exclusively from the Administrative Service. Because of its disconnect from the people, the civil service-dominated government, in the words of one pre-2002 policy secretary, sometimes made policy that “did not meet the expectations of the people.”

In July 2002, to gain tighter control of the civil service, the government introduced reforms (the POAS) that added a political layer (policy secretary) on top of the most senior civil service positions (permanent secretary). As originally conceived, the chief executive would nominate the politically appointed policy secretaries from among outsiders who, because of their standing in the community or professional accomplishment, would introduce reforms that would improve the popularity of the government. From 2002 to 2005, when Tung resigned, half of the policy secretaries were appointed from among experts who came from outside government. They brought with them ideas about reform and attempted to implement their proposals with varying success. Relations between the outsiders and the civil service varied from conflict and hostility as some new appointees sought to gain control of their portfolios, to cooperation and partnership based on agreed divisions of labor, depending in large part on personal style. The outsiders for the most part apparently perceived some deficiencies in the generalist orientation of the senior civil servants they worked with and in many cases a kind of “Yes, Minister” relationship developed with permanent

<sup>7</sup> According to the Letters Patent and Royal Instructions for the pre-1997 period and the Public Service (Administration) Order for the post-1997 period the tenure of civil servants is insecure. In practice, however, civil service positions have been “iron rice bowls” and dismissals or terminations of employment rare.

secretaries counseling caution and focusing on various implementation problems that they and their civil service colleagues could foresee.<sup>8</sup>

Because the political appointees were appointed on limited, non-civil service terms, they, unlike their civil service predecessors, were supposed to be held “totally” accountable for policy outcomes. These changes could both increase the power of the chief executive to control the civil service and improve the legitimacy of government by making it more accountable. Although three policy secretaries have resigned since 2002, in only one case has a policy secretary resigned to take responsibility for a policy blunder. In 2004, after widespread criticism of the government’s performance in its management of the severe acute respiratory syndrome (SARS) crisis in which 299 Hong Kong people died, Dr. Yeoh Eng-kiong, Secretary for Health, Welfare and Food, resigned from the government.

Since 2005, when a retired civil servant, Donald Tsang Yam-kuen became chief executive, retired civil servants have taken most of the top policy-making positions. By 2008, of 15 politically appointed principal officials, only four could be said to have come from outside government and one of these (Henry Tang Ying-yen) was a long-time official brought in during the colonial era and another came from the HA. With retired civil servants in charge of policy making, government has returned somewhat to the comfortable relations between politicians and bureaucrats that characterized the colonial era.

The introduction of the POAS has reduced the Administrative Service’s policy-making role and undoubtedly contributed to morale problems in the grade. Still, demand for positions in the grade remains high and competition continues to be very keen. It is likely that the reforms have increased risks and uncertainties for civil servants. The outsider-policy secretaries came from various backgrounds and were not bound by any ideology, policy platform, or party membership. They contrasted sharply with the coherence of the Administrative Service, which through selection and socialization held a relatively unified world view that subscribed to policies such as limited government, fiscal frugality, modest social welfare, low taxation, and so forth (see Lam, 2005). These risks and uncertainties have been reduced somewhat by having a majority of the post-2007 policy secretary positions in the hands of retired AOs. The reforms have also probably contributed to increased agency problems. Civil servants were less sure what the outsider-policy secretaries wanted and were probably better able to conceal information from them.

## 16.5 Management Tools and their Reform

The first post-1997 chief executive introduced various reforms in 1999 to cut administrative expenses and gain tighter control over the civil service. The reforms addressed adverse selection issues, performance management problems, and a compensation system that both failed to motivate and had become out of step with the external wage market. The reforms increased managerial flexibility, cut the establishment by more than 15%, and cut civil service salaries by 10% bringing them back to colonial-era levels.

### 16.5.1 Selection

The degree of autonomy public sector agencies have over recruitment and selection varies considerably. For tax-funded bureau-type agencies, government control of selection standards and

<sup>8</sup> Interviews, July–September 2009.

practices is centralized and relatively tight. The Civil Service Bureau (CSB) lays down selection rules for the hiring of professional and departmental-grade staff and directly manages the selection of key generalist grade staff, such as AOs and executive officers. The Public Service Commission, usually chaired by a retired civil servant, monitors selection and appointment processes and publishes reports on the extent to which government agencies have adhered to the rules. Within their budget ceiling, heads of departments have discretion to hire middle-level and junior staff on civil service terms and a growing number (since 1999) of “non-civil service contract staff,” the increasing reliance on which was part of recent New Public Management-inspired civil service reforms. By 2008, various government agencies had hired more than 16,000 employees on these terms, which include fixed-term appointments, no automatic salary increments, and no possibility of promotion. The CSB has used both budgetary and administrative means to control hiring, including the imposition of general civil service hiring freezes as occurred from 1999 to 2007, when government sought to cut costs to address the government budget deficits. Despite the freeze in 2006–2007, the government recruited “on an exceptional basis” over 3000 people to middle and senior management and professional positions in the civil service. Pre-freeze hiring ranged from 10,000 to 15,000 people per year (Public Service Commission, 2006; Civil Service Bureau, 2007).<sup>9</sup> Hiring of new employees on civil service terms resumed in 2007–2008 and the government is now somewhat less reliant on “non-civil service contract staff.”

The government selects civil servants for entry-level positions to managerial or professional posts through examinations of various kinds. Candidates first take the Common Recruitment Examination (CRE, which assesses English and Chinese language abilities and aptitude), held several times a year, and those who pass it go through a second examination (either written or by interview) tailored to the post applied for (such as the Joint AO/Executive Officer Recruitment Examination, a case-based task paper). Candidates for the Administrative Service then go through a battery of interviews and exercises following an assessment center format. By contrast, engineering graduates are selected to join a works department after passing the CRE and interviews. Less stringent selection methods, including performance tests and interviews, are used to hire Hong Kong’s dwindling public sector blue-collar workforce. Probationary appointments are a key part of the selection process. The 1999 civil service reforms lengthened the time required before a civil servant could receive a permanent position in the civil service, which enables the government to be confident of a civil servant’s abilities, potential, and intentions. Abuses of this system, such as selection based on nepotism or bribery have been very rare (see Burns, 2004).

In the absence of performance-based pay, arguably the incentive for civil servants in Hong Kong to work hard is promotion and in 2006 more than 1,100 civil servants were promoted to middle and senior management and professional positions out of a total of some 33,000 or so positions in this range (Public Service Commission, 2006). Promotion opportunities are relatively few and highly sought after, in part because most civil servants have already reached the top of their current rank pay ladder. Generally, departments and grades convene postings and promotion boards to arrange acting appointments, thus giving management an opportunity to observe the performance of a candidate working at a higher level, and then recommending him or her for promotion. Although postings and promotion boards consider performance appraisal reports to some extent for these exercises, generally for a variety of reasons (such as widespread over-grading in appraisals and the high value placed on seniority in the Hong Kong civil service)

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<sup>9</sup> During the freeze, the government hired about 16,000 new employees on “non-civil service contract” terms of service. That is new hiring continued, but not on the expensive civil service terms.



they make promotion decisions based largely on seniority (Burns, 2004). Thus, in a 1999 survey of the Administrative Service and the directorate, only about one-third of AO respondents agreed that civil service postings (the critically important acting appointments that generally precede promotion and give the government an opportunity to assess performance at a higher level) were based on merit. Less than half (46%) of AO respondents agreed that promotion procedures in the Administrative Service were fair, perhaps reflecting the desire of many AOs for a more performance-based system of promotions (Burns, 2004, 130).

Competition between generalists and specialists for promotion to head of department outside the AO-dominated policy-making bureaus has sometimes been intense. Indeed, from time to time, the government has chosen AOs to head such technical agencies as Customs and Excise, Environmental Protection, Buildings, Marine, and so forth. In some cases, AOs have been installed where feuding professional grades could not work together (e.g., engineers and building surveyors in the Buildings Department) and in other cases AOs have been selected to improve policy coordination (e.g., merging the position of director of environmental protection, a post usually held by a member of the environmental protection officer grade, with the post of permanent secretary, held by an AO, after an Environmental Protection Department-sponsored environmental impact study opposed the former state-owned KCRC from extending its rail line through an ecologically sensitive valley). In these cases, staff associations representing the professional grades bitterly contested the reduction in their promotion prospects, which these moves apparently entailed. The government's view is that professional or departmental grade officers should compete with AOs to head professional departments under the policy of an "open directorate." In practice, the "open directorate" policy has allowed AOs to take over and manage many professional departments.

Hybrids and state-owned enterprises among Hong Kong's public sector have much more discretion to set standards and design and implement their own hiring procedures. For statutory bodies this discretion is laid down in law. Although they may use examinations of various kinds, hybrids set their own selection criteria and processes. They also have discretion to make lateral appointments from outside the organization at mid-career or senior levels, a practice that is not common within government agencies.

Selection of senior officials of hybrid organizations has occasionally aroused controversy mainly because government officials felt that the hybrid had too much autonomy and was not sufficiently supportive of government policy. In 2003, the government refused to renew the contract of Anna Wu Hung-yuk, then head of the Equal Opportunities Commission (EOC), after a series of run-ins with the EOC under her leadership on policies that discriminated against girls in the assignment of school places (the EOC sued the government over this and won) and on the EOC's recommendation to implement a policy of "equal pay for work of equal value" within parts of the civil service, a recommendation strongly contested by government. In another case in 2006, the government sought the removal of the acting chief executive of the former KCRC, Samuel Lai Man-hay, for organizing a "show of force" to oppose the government-appointed chairman of the corporation. Cases of the government intervening in the recruitment and selection of officials of public sector hybrids have been rare, however. Generally, selection has been supervised by boards on which the government has some representation.

### **16.5.2 Performance Management**

Since 1999, government has somewhat decentralized the management of performance in Hong Kong's tax-financed government agencies to heads of departments. Adopting a New Public Management perspective, government outsourced many previously centrally provided training

activities to the private sector and local and overseas universities and emphasized that civil servants should take responsibility for their own training and development. Government has invested in management training for various general grades, such as AOs. For this grade, apart from induction training, seminars, and part-time training programs, officers have the opportunity to study in Beijing and overseas, and small numbers are provided with secondments to the private sector. Nevertheless, after the reform, departments and agencies continued to deliver most vocational training (e.g., that delivered by police and other disciplined services training schools).

The CSB encourages departments to improve their individual performance appraisal systems, which continue to be top-down; neither co-workers, subordinates, clients, nor customers are involved in these annual exercises. Although official training materials seem to endorse MBO-type appraisal processes that involve collaboratively setting objectives and mid-term reviews, in practice, appraisals are dominated by supervisors who, by virtue of their position, have the authority to recommend their subordinates for promotion. Higher-level officials endorse the appraisals, but may not even know the employees concerned. Over-grading is a serious problem. As an officer in the Customs and Excise Department observed, recognizing the importance of good co-worker relations: “In order to maintain a harmonious relationship with subordinates, we prefer to give an outstanding (appraisal) report to officers in the ‘promotion zone.’” “Don’t forget that in the Department avoiding trouble is always the main concern of all managers. So, why not just give [them] an outstanding report? It will do us both good” (Burns, 2004, 241). To improve the accuracy of appraisals, departments have adopted forced choice methods (e.g., permitting only 20% to be evaluated as “outstanding” or “very impressive”) and “appraisal committees” composed of a group of supervisors who compare and moderate appraisal results across various managers. These developments have probably gone furthest in the engineering grades within the civil service and may have improved the accuracy of appraisals. Nevertheless, they apparently have not prevented practices that reward seniority and involve over-grading senior officials in “promotion zones” of some grades and departments, e.g., the Housing Department (see Burns, 2004, 244). In 1999, the CSB also set up new mechanisms to streamline the handling of discipline cases (they are now centralized in a secretariat within the CSB, a move that has reduced the time taken to handle routine cases). The CSB also laid down centrally mandated procedures to manage under-performers. The policy requires supervisors to advise under-performing colleagues of their problem and help them to improve through “supervision, counseling, training, posting or other appropriate administrative efforts,” which might include stoppage or deferment of annual increments of pay (see Burns, 2004, 253). Poor performing civil servants are featured in the regular reports of the Audit Commission, indicating that these softer methods may not be effective. Yet each year, small numbers of civil servants (less than 10) are dismissed for “persistent poor performance.”

Hong Kong’s civil service system’s relative emphasis on competition and on *post hoc* monitoring and supervision, including effective anti-corruption measures, has probably reduced moral hazard to some degree (see Horn, 1995). Yet problems remain. As we have seen, promotion within the civil service is mostly seniority based. Moreover, monitoring some kinds of government work remains notoriously difficult. Audit Commission reports have repeatedly criticized the failure of various government departments to control the behavior of outdoor workers (see Audit Commission Report No. 37, October 2001; Burns, 2004). Further, organization cultures in other departments have encouraged staff to break the rules as well. Radio Television Hong Kong (RTHK), a tax-financed bureau employing individuals in the performing arts on civil service contracts, has run afoul of the rules on numerous occasions (on procurement, hiring of film crews, and the like), even leading to the conviction of some RTHK staff for various offenses and to the resignation of the head of department (see also Audit Commission Report No. 37, October 2001).

Hong Kong's mixed-financed regulatory agencies, such as the HKMA and the SFC, because they employ professionals such as bank supervisors, lawyers, and accountants, who are highly employable in the private sector, rely much more heavily on the discipline of external labor markets to handle agency problems. Bankers and brokers participate in HKMA and SFC rulemaking through various means both formally (e.g., in working groups of industry insiders) and informally. The work of the employees of the two agencies is thus relatively transparent to potential employers once they leave government service. Although data for the HKMA is unavailable (it is "secret"), data for the SFC indicates that turnover there is considerably higher than for the civil service as a whole. It is likely, then, that the external labor market provides incentives for employees of these regulators to work hard, thus reducing agency problems. The same incentives probably also apply to Hong Kong's state-owned enterprises.

Hong Kong's mixed or sales-funded hybrid organizations, such as the HA and the Tourism Board, have more autonomy and thus are more susceptible to agency problems. I will return to this issue in the following section.

### **16.5.3 Compensation**

Hong Kong's civil service compensation system is made up of pay for the job paid on the job and various benefits such as housing or education allowances attached to middle-level and senior positions to defray the high cost of living; pensions on retirement for those employed before the 1999 reforms were introduced and smaller provident fund contributions for the more recently employed; and controls on the post-retirement employment opportunities available to senior officials, acknowledging the fact that individuals are interested in their lifetime income.

The absence of democratic institutions in Hong Kong has allowed public officials to reward themselves handsomely (see Hood and Peters, 2003). Hong Kong's chief executive is the second highest paid in Asia (after Singapore), earning US\$5.15 million per year plus benefits (in 2008), much higher than the salaries of the prime minister in the UK or the US president.<sup>10</sup> Hong Kong's central banker is the highest paid among the world's central bankers, earning about US\$1.2 million per annum. Rewards at the top in Hong Kong have been exceedingly generous.

Like governments in other market economies, Hong Kong's civil service pay policy emphasizes paying "sufficient to attract, motivate, and retain" appropriate staff, broad comparison with the private sector, and equity. Turnover is low in the Hong Kong civil service, averaging from 2% to 4% per annum for the service as a whole including the elite AO grade.<sup>11</sup> This indicates that generally salaries in the civil service compare well with those in the private sector. Indeed controversies in Hong Kong have focused on claims that the civil service is over-paid compared to the private sector, not underpaid. This is the result of policies that allow the civil service itself to determine the civil service pay-setting system.

The salaries and benefits of Hong Kong's civil servants are set through an administrative mechanism that is mostly controlled by the civil service through the CSB. Authorities have relied in part on annual pay trend surveys that track pay movements in mostly large companies in the external labor market to determine pay increases in the civil service (see Lee, 2003; Cheung, 2005; Burns,

<sup>10</sup> In 2008 the US president was paid US\$400,000 plus an expense account while the UK prime minister was paid about US\$370,000. The Singapore prime minister is paid US\$1.1 million "basic" salary.

<sup>11</sup> In 2007/2008 wastage was 3.2% for the civil service as a whole, 76% of which was retirement. Only 12% of wastage was due to resignation or "brain drain." During economic booms, of course, wastage may increase to 5% (see Civil Service Bureau 2008, p. 48).

2004). On only two occasions since the 1970s has the government resorted to comprehensive pay level surveys to determine whether the civil service was paying compensation broadly in line with the private sector. In both cases (in 1986 and 2006) the government carried out the surveys only after widespread criticism that the government was paying too much. However, by the time the surveys were carried out, evaluated, and reviewed, private sector wage levels had rebounded and the government saw no need to cut salaries. Nevertheless, the government has pledged to carry out comprehensive pay level surveys in the future, at 6-year intervals.

The Asian financial crisis and SARS caused a crisis in public finance, including the first serious government budget deficits since World War II. To manage the deficits, the government cut civil service salaries by 10%, putting them back to 1997 levels.<sup>12</sup> The government took this unavoidable action, however, after ignoring pay trend survey results in 1999/2000 and 2000/2001, which indicated that private companies had cut their pay and then spread the cuts such as they were over 2 years. The government also cut starting salaries for many government jobs and abolished many benefits including pensions for all new hires. Given the dire financial situation at the time, the government had little choice but to act.

Unlike the practice in many other developed areas overseas, including most OECD countries, Hong Kong has not implemented performance-based pay for civil servants. After experimenting with team-based merit pay on a small scale from 2000 to 2005, officials declared that performance-based pay was too difficult to implement, and that, in any case, performance was rewarded through promotion. However, given the small number of promotion posts available and the high value placed on seniority, this policy is problematic. Officials also noted the strong opposition of civil service unions to performance-based pay. Indeed a police staff association pointed out that performance-based pay “would be very dangerous in the police. Favoritism, corruption and elitism must be avoided and variable pay for different units doing only slightly different jobs would result in serious conflicts... Experience overseas indicates that performance-based pay is difficult to manage, divisive, and does not bring improvements to efficiency” (Burns, 2004, 289). Neither the political executive nor civil servants saw much value in pushing forward with the reform, even as only a symbol of their intention to move toward a more performance-oriented culture.

Since the 1997 return of Hong Kong to Chinese sovereignty, most retiring senior civil servants have continued to live in Hong Kong. They usually retire at age 60, which by contemporary standards is relatively young, and those employed before 1999 receive generous pensions. Controversy has surrounded the government’s attempts to control the post-retirement employment of senior civil servants. In 2005 and again in 2008, critics accused the government of operating a system that appeared to allow senior officials who had given benefits to private businesses to take up jobs with these businesses on retirement. In the case of former director of housing, Leung Chin-man, government officials vetting his application for post-retirement employment appeared unaware that a perceived conflict of interest (or “transfer of benefit”) could have existed until Legco members and the media expressed alarm. While he was in government, Leung had arranged the sale of public housing to his new employer for an unexpectedly low price. Current proposals for yet another reform of the system call for maintaining a 6- to 12-month “sanitation” period during which retired senior officials may not take up paid employment, to be followed by more careful vetting of their job proposals to ensure appropriate outcomes (Committee on Review of Post-Civil Service Outside Work for Directorate Civil Servants, 2009). Similar controls also apply to political appointees, who would arguably have access to even more sensitive information. The government’s

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<sup>12</sup> The Basic Law provides that civil service compensation after 1997 shall be “no less favorable than before” 1997 (Article 100), a provision widely interpreted to mean that no further cuts are possible.

decision in 1999 to abolish pensions for new recruits has weakened their control over the post-retirement employment prospects of civil servants.

The public sector outside the civil service has considerable autonomy to determine pay systems and levels. Hong Kong's regulatory agencies, such as the Monetary Authority and the SFC, offer merit increases, although they are smaller than those paid in the private sector. Hybrids such as the HA and the universities also implement performance-based pay systems through, for example, performance-related increment assessment schemes, merit awards, and incentive awards for senior executives.<sup>13</sup>

Their autonomy has, however, led to charges that the hybrids are unaccountable "independent kingdoms" and that monitoring them is like "a man dressed in black trying to catch a crow on a dark night" (Scott, 2006, 188). Politicians and the public have focused on pay levels especially for senior executives. In 2001, the government reported that 91 senior executives of five major public corporations were paid an average of US\$400,000 per year and that bonuses were paid even by poor performing agencies, such as the Mandatory Provident Fund. In 2002, the government appointed Hay Management consultants to review the compensation of the top 100 executives of nine statutory bodies. This review pointed out that pay levels were comparable with those in the private sector, but debate continued (Scott, 2006). After much criticism of the HA, especially in the wake of SARS, the HA appointed a consultant to review the pay of its senior executives. A defensive HA acknowledged that "there remains misunderstanding" on the practice of paying incentive awards and in 2006 the HA abolished bonuses for its top 25 senior executives.

The Audit Commission has also criticized the generous pay and benefits of some hybrids. In 2007, for example, audit revealed details of an expensive healthcare package offered to the former executive director of the Tourism Board and her family and the fact that pay awards in the Tourism Board were apparently unrelated to performance. As one legislator pointed out, the executive director received 60% of allowed variable pay "despite failing to meet most of the performance indicators in 2006/07. How come a failed performance record was accompanied with additional pay?" (*SCMP* January 15, 2008). Legco convened public hearings stretching over several months on abuses in the Tourism Board in 2007/2008.

Hong Kong's weak system of holding hybrids to account has allowed the government and other public bodies to pay themselves at very high levels. The economic troubles of 1999–2003 exposed various abuses and the ineffectiveness of both legislative and board monitoring mechanisms.

## 16.6 Conclusion

Improving its control over the civil service has been at least one of the objectives of Hong Kong's public sector reforms. Introducing the POAS was clearly aimed at bringing the civil service under tighter political control. At the same time, the government has done little to reign in the "independent kingdom" hybrids.

The impact of Hong Kong's modest civil service reforms on the management of agency problems has been mixed. On the one hand, reforms to the entry system now allow the government more time to observe candidates for permanent positions and have extended the coverage of the government's basic entrance examination for junior manager and professional positions. On the

<sup>13</sup> Civil service policy also requires that only those who obtain a satisfactory performance appraisal may receive annual increments. In practice, however, virtually all civil servants receive annual increments until they are at the top of their incremental ladder.

other hand, the government's reluctance to implement performance-based pay in the face of very tight promotion opportunities has undermined their ability to align the incentives of supervisors and their subordinates. Other reforms have mainly focused on cutting administrative expenses.

The reforms were carried out in the context of a sharp economic downturn, downsizing through outsourcing, a general freeze on hiring on civil service terms, and across the board salary cuts. However, the reforms have left key elements of the civil service system intact, including a centrally managed service, generalists in control, permanent positions, position-based pay, and seniority-based promotions (Scott, 2005). By 2008, the government was able to produce a record surplus budget, the civil service was hiring again, salaries had gone up, and the incentive for further reform had all but dissipated.

Obstacles to reform in Hong Kong are similar to those found elsewhere: lack of political will, lack of popular support (and understanding), and bureaucratic resistance. With an unelected political executive recruited mostly from among retired civil servants, there is little desire or taste to impose pain on their former colleagues. The public is largely unconcerned about how the civil service is managed and only pays attention during economic bad times when the most outrageous abuses are revealed. Civil servants themselves, organized into relatively effective staff associations, lobby hard to exempt themselves from reform (e.g., the police and disciplined services won concessions on new entry terms in 1999) or to reduce the impact of reform. We can see that they have had some success.

Hong Kong's undemocratic political system means that there is little organized pressure from outside the civil service for more reform. In the absence of a strong political executive with vision able to impose its will on the civil service, civil servants write their own ticket. They have been helped in this regard by obliging governors and chief executives and ex-colleagues who form the political executive. Salaries are high and life is good in the "iron rice bowl" of the Hong Kong civil service. Still, the government is concerned about the efficiency and probity of the public service on which the government's legitimacy rests. This concern provides a powerful incentive to keep the service clean, implement meritocratic principles, and adopt various managerial reforms.

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# THE PHILIPPINES

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IV

*Alex Brillantes Jr.*

Coordinator





## *Chapter 17*

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# History and Context of the Development of Public Administration in the Philippines<sup>1</sup>

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Danilo R. Reyes

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## 17.1 Introduction

This chapter discusses the history, contexts and significant milestones that marked the development of the Philippine administrative system today, and the field of study that emerged to support it.

Like many other countries in the Asia-Pacific region, public administration in the Philippines evolved and shaped from a constellation of influences from its colonial past. Subsequently, it was compelled to adapt to the vagaries and idiosyncrasies of Filipino culture and temperament. Its structure and functional features today consistently retain the patterns inherited from the American colonial period. The public administration's behavioral dynamics and practice, however, follow and assume distinct Filipino characteristics and traits, adjusted and superimposed on explicit structures and formalities manifested in Western bureaucratic models.

## 17.2 The Philippines: A Brief Background

Located in Southeast Asia, bounded by the China Sea to the West, the Celebes Sea to the South, and the Philippine Sea to the East, the Philippines is an archipelagic country with an estimated population of about 82 million in 2005. It is separated from Taiwan in the North with Indonesia and Malaysia as its neighbors to the Northwest. Found just below Taiwan and about 530 km at its Northern tip from the nearest coast of China, the Philippines has over 7,000 islands and an area of about 300,000 km<sup>2</sup> (115,800 square miles). The country has an irregular coastline spanning to about 10,850 statute miles, roughly twice as long as that of the continental United States and is endowed with a landscape characterized by coastal mangroves, fertile plains, tropical jungles, rugged mountains drained by small river systems, and active volcanoes (Cariño, 1988; Agoncillo and Guerrero, 1977).

With a population predominantly of Malay stock, the country is also composed of other ethnic races, mainly of Chinese origins and ancestry. The majority of the people are Roman Catholic with a considerable Muslim minority, as well as other Christian denominations.

The Philippines was a colony of Spain for over 300 years until a successful revolution in 1896 when it declared independence on June 12, 1898. The Philippines may well be considered the first republican state in Asia, having promulgated what can be regarded as the first republican constitution in the region in 1899, now commonly referred to as the Malolos Constitution.<sup>2</sup> However, the independence of the fledgling republic was frustrated when the islands were ceded to the United States by Spain under the Treaty of Paris, which also ended the Spanish-American War.

The Americans gained control of the Philippines after a brief Filipino resistance to American rule, which eventually paved the way for the United States to institute a colonial government in 1900. During the American colonial regime, the country established a system of government and a political structure that followed the American model. Many of the institutions in the Philippines today, such as the bureaucracy, the educational system, and various aspects of culture and practices, reflect American influence. In 1935, the Philippine Commonwealth was established under the supervision of the Americans to prepare the islands for independence. A constitution was then framed and ratified, which established a presidential system under a unitary government with three co-equal branches of government, the executive, a bicameral legislature, and the judiciary.

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<sup>2</sup> The Philippine Constitution of 1899 was called the Malolos Constitution because it was ratified by an assembly of Filipino delegates in Malolos, Bulacan, a province North of Manila.

The commonwealth government, however, went into exile when Japan invaded the Philippines during World War II.

With the end of World War II, the United States granted the Philippines independence on July 4, 1946. The political system and structure under the 1935 constitution was restored and the country continued to adopt a presidential form of government. The years following the granting of independence from the United States in 1946 were difficult periods of reconstruction, rehabilitation, and consolidation. The post-war era saw the Philippine economy at a standstill. Poverty was endemic and the widespread destruction of property and dislocation of businesses exacerbated the situation. Senator Millard Tydings of the U.S. Congress commented that the Philippine capital, Manila, was among the “the most completely devastated capital city in the world” next to Warsaw in Poland (Shalom, 1986: 33).

Following years of reconstruction and despite an insurgency movement in Northern Luzon, the post-war era in the Philippines saw a vibrant democracy marked by a two-party system. On July 4, 1946, Manuel Roxas was proclaimed president after an election held two months earlier. Roxas, however, died in office in 1948 and his vice-president, Elpidio Quirino, promptly assumed the presidency. Quirino was subsequently elected as president in 1950. However, Quirino was defeated in his run for re-election by his former secretary of national defense, the charismatic Ramon Magsaysay, who was credited as having broken the backbone of an insurgent Communist movement in Northern Luzon.

Magsaysay proved to be a popular and populist president who was loved by the masses. However, his term was cut short in 1957 when his plane crashed in the Visayas in the southern part of the islands. Again, Magsaysay’s vice-president, Carlos Garcia, assumed the presidency. Garcia was, however, defeated in his run for the presidency in 1961 by his vice-president, Diosdado Macapagal, father of Gloria Macapagal-Arroyo, who would assume the presidency in 2001. In the presidential elections of 1965, Macapagal in turn was defeated by Ferdinand Marcos, who would rule the Philippines for the next 20 years.

From 1946 to 1965, elections for presidential, congressional, and local government positions were held. The elections in the Philippines at both national and local level were not always harmonious or smooth. They were generally marred by charges of fraud, vote buying, intimidation, and vote shaving. Still, the Philippines emerged as among the vibrant democracies in Asia characterized by a strong two-party system.

Nevertheless, during this period, while its economy was able to recover slowly from the ruins of the war, poverty remained constant and agrarian unrest rekindled the insurrection movement led by Communist partisans that was supposed to have been checked in the early 1950s. In the southern part of the country, in Mindanao, an armed secessionist movement led by Muslim separatist leaders threatened to divide Philippine territory. Likewise, student alienation against the government and with President Marcos was expressed in continuing noisy protests and violent demonstrations in the streets. In this turmoil, Marcos saw the opportunity to perpetuate himself in power by way of declaring martial law, a power vested in him under the 1935 constitution.

In September 1972, President Ferdinand Marcos, barred under the constitution from seeking re-election as president after two terms, proclaimed martial law, abolished the legislature, adopted a new constitution, and ruled the country by decree. He also convened a Constitutional Convention to write a new constitution that would give legitimacy to his regime. In 1985, stung by criticisms that he no longer enjoyed the mandate to continue to rule as president, reinforced by pressure from the international community, he called for snap presidential elections. He was challenged by Corazon Aquino, the widow of his mortal enemy, Senator Benigno Aquino who was assassinated at Manila airport on his return to the Philippines after 3 years of exile in the United

States. The snap presidential election was again marred by accusations of cheating, until Marcos was ousted in the celebrated people power revolution in February 1986 and Corazon Aquino was installed as president.

Democracy was restored under President Aquino following Marcos' ouster. President Aquino subsequently proceeded to submit the adoption and ratification of a new constitution that was approved by the Filipino people in 1987. A second people power revolution, however, occurred again in 2001 when the populist president, Joseph Estrada, was forcibly ousted after a failed impeachment trial. Estrada was hounded by allegations and charges of involvement in *jueteng*, an illegal numbers game that started during the Spanish era and continues to be widespread in the country today.

Estrada's vice-president, Gloria Macapagal-Arroyo, was installed under controversial circumstances in 2001 and was elected as president in 2004, also after another disputed and contested election marred by allegations of massive cheating and manipulation. Her term was also tainted by exposes of graft and corruption charges amounting to billions of pesos. President Arroyo's stay in office was beset by a series of impeachment complaints against her, which were subsequently thrown out by her allies in Congress, who retained the majority.

The presidential system under a democratic framework established under the 1986 constitution remains in force today, although efforts have been made under the current president, Gloria Macapagal-Arroyo, to change or amend it into a parliamentary form under a federal system. President Arroyo, like Marcos, has been accused of perpetuating herself in power by shifting to a parliamentary system because of term limits under the 1987 constitution.

Thus, in 2009, a resolution was unanimously passed calling for Congress to convene itself into a Constituent Assembly to amend the constitution. This was met by criticisms from various sectors who insisted that presidential elections, as mandated under the 1987 constitution, be held in 2010.

### 17.3 Pre-Colonial Era in the Philippines

The pre-colonial period in the Philippines has been described and documented in various respectable accounts that trace the origins, lives, and social organization of the early settlers and inhabitants of the islands.<sup>3</sup> But as Corpuz points out, prior to the colonization by Spain in 1521, pre-colonial Philippines "rests in historical twilight" and documented in obscure works (Corpuz, 1957: 1).

The pre-historic Filipinos were an indigenous population characterized by waves of settlers and migrations between 25,000 and 30,000 BC, who came to the archipelago from mainland Southeast Asia in big boats (Tan, 1997: 33; Abueva, 1988: 22). From these settlers emerged patterns of ethnic lines that shaped strong cultural patterns and features. They ranged from the dark-skinned pygmies whose cultural remains are preserved in Negrito-type Filipinos, to those of Malay stock who came from the ancient Malaysians and Indonesians (Tan, 1997: 33).

The new inhabitants lived in scattered villages or communities called *barangays*, named after the boats or vessels that brought them to their area of settlement (Corpuz, 1957: 107).<sup>4</sup> The *baran-*

<sup>3</sup> For those interested in the pre-colonial era and the early Filipinos, the accounts of Tan (1997), Corpuz (1989), and Agoncillo and Guerrero (1977), among others, may be useful references. Tan's slim volume goes back a hundred million years to the evolution of the land.

<sup>4</sup> The word *barangay* is also described interchangeably by other authors as *balangay* or *balanghai*, which according to Veneracion (1988: 26), were the cognate to the Malay *perahu berangai* or *piratical prahu*, also known as *perahu balang*, a two-masted ship. The term *barangay* replaced the *barrio* to denote the basic unit of local government in the Philippines representing villages or communities that comprised a city or a municipality.

*gays* consisted of 30–100 households with the family as the nucleus and largely based on kinship. These settlements were self-sufficient and generally self-contained, enjoying independence from each other because the early Filipinos did not have a centralized government (Abueva, 1988: 23; Corpuz, 1957: 2). According to one account, many of these villages or *barangays* existed within the same territories but were not subject to one another (Veneracion, 1988: 26).

Sultanates, or governing institutions under the rulership of Muslim leaders called sultans, however, were believed to have also been established in the southern part of the islands in Mindanao, particularly in Maguindanao, Lanao, and Sulu. As early as the fifteenth century, parts of the region had been somewhat consolidated under a sultan (Tan, 1997; Corpuz, 1989; Reyes, 2003). But these communities apparently had not laid down the foundations of an established bureaucracy, even if these cohesive communities were governed by internal rules and practices, suggesting some form of political and economic organization and relatively mature culture and institutions. Corpuz (1957: 107) suggests that the origins of local government in the Philippines are perhaps rooted in this kind of arrangement, with each unit headed by a village chieftain, called the *dato* or *datu*.

A system of division of functions and duties appeared to have evolved in the stratification of classes marked by a hierarchy of status. The nobility, where the *dato* and leaders come from, consisted of men of wealth, prestige, and power. The *dato* was chosen not only by virtue of blood or inheritance, but also by merit, or in terms of courage, leadership, and heroism in tribal battles with other communities. The brave warrior commanded recognition, respect, and admiration in order to be given the honor of becoming the chief of the village (Veneracion, 1988: 26–27; Abueva, 1988: 23).

A class of freemen, who enjoyed the rights and privileges of social mobility, comprised the largest sector in the communities and assumed the roles of warriors, artisans, artists, and other special professions. The last level, the serfs and slaves, performed forced labor and were considered properties that could be sold or exchanged. These were usually captives in tribal wars or those born into slave families (Tan, 1997: 45; Abueva, 1988: 23).

As village head, the *dato* was the acknowledged paternal and political leader, who exercised almost unlimited power and dispensed and supervised the administration of justice, the use of communal lands, the delivery of basic services, the arbitration of conflicts, and collected tributes. The defense of the settlement against territorial encroachments by other communities and other conflicts was also a major function (De la Torre, 1986: 6).

Supported by a council of elders, a legal system embodied laws that defined aspects of private and public ownership of property, inheritance, marriage, rights and obligations, and many components of individual and institutional behavior (Abueva, 1988: 24). The enforcement of these laws and rules are now generally associated with the duties of modern bureaucracies.

Out of these practices evolved traditions and practices that somehow extended to the colonial and modern eras despite the compelling influences of colonial rule. These traditions may have been assimilated into modern Philippine bureaucracy and made to adapt to the explicit formalizations of the Western model. Traces of these administrative practices remain embedded in the Filipino culture and have an impact on the administrative system today.

Specifically, the nuclear family and its extended kinship were the basic units of social organization that continue today. The strong kinship and patrimonial systems that were shaped in the pre-colonial times persist in Philippine bureaucracy today, and can be understood in terms of the practice of officials and politicians alike who are disposed to provide special favors or preferential treatment to relatives and friends. The strong familial tradition of closely knit relationships and kinship that tend to provide undue and sometimes illegal favor for relatives persists in the present political and administrative system in the Philippines. Appointments of relatives to executive and bureaucratic positions by

powerful family members remain a common practice despite laws to the contrary. Political dynasties in various provinces and cities are often built on the strength of these relationships.

Likewise, the spirit of the *dato* leadership lives in Philippine *barangays* today, especially in remote villages or peripheral communities where the *barangay* captains serve as the galvanizing spirit of community activities, and are often at the forefront of settling conflicts, negotiations and arbitration, peace and order, and other duties that are not performed by the nearby local government.

## 17.4 Philippine Bureaucracy during the Spanish Colonial Regime

The Spanish conquest of the Philippines began in 1521 with the coming of Ferdinand Magellan, the Portuguese explorer in the employ of the Spanish Crown. The Spanish conquest “was swift and relatively bloodless, but the Muslims in Mindanao resisted colonization” (Abueva, 1988: 25). Arriving to find fragmented and ethnically diverse and isolated communities, the Spanish conquistadores did not find it difficult to contain resistance in the islands, except in parts of Mindanao where consolidated sultanates were claimed to have existed and vigorously resisted subjugation by the Western invaders.

The Spanish conquest of the Philippines was founded for two basic interrelated reasons. Spanish colonization was first, a religious crusade to propagate Christianity in what were believed to be heathen and pagan lands, and second, as an opportunity to seek wealth that would support the Spanish Crown. The centuries-long struggles of Spain against the Moors had been draining the royal coffers, not to mention the need to finance the Crown’s excessive and extravagant lifestyles along with its nobility. It was also incumbent for the monarch to provide rewards and incentives to loyal subjects who had served the king well in his wars to insure their continuing loyalty and also to assure others that they stood to be rewarded (Corpuz, 1957: 10–11).

It was thus logical that the political, economic, and administrative institutions that Spain established in the Philippines would be anchored or founded on these predicates. Spain established a centralized authority and absorbed the *barangays*, except those in the predominantly Muslim areas in the South. The *datos* or the village chieftains were subsequently appointed as heads of towns or *pueblos*, and called the *gobernadorcillos*, the highest position given to the natives in the early stages of Spain’s colonial rule (Abueva, 1988: 27). Spain also instituted what Abueva validly calls a “theocratic” rule, where the union of church and state was fostered, with the friars exercising far-reaching powers in the affairs of the state (Corpuz, 1989, 1957; Abueva, 1988).<sup>5</sup> The friars assumed powerful influences and roles in the administration of the islands to the effect that they enjoyed vast powers that exceeded even those of officially appointed functionaries in the localities.

The extensive powers enjoyed by the friars were so strong that disputes between church and state almost always ended in their favor. In one incident, a governor-general in the Philippines, Fernando de Bustamante, who served between 1717 and 1719, ordered the arrest of some civilian officials involved in irregularities. These officials sought and were given sanctuary in the archbishop’s cathedral. The friars then incited a riot against Bustamante, who was killed trying to defend himself against the rioters. As a result, four of the succeeding nine governor-generals in the Philippines were either bishops or archbishops, none of whom earned distinction for competence. (Corpuz, 1957: 56).

The powerful church also acquired properties in the form of vast land holdings in many parts of the islands, particularly in the provinces of Bulacan, Laguna, Cavite, and what is now Rizal

<sup>5</sup> Corpuz’ (1989) two-volume work, *The Roots of the Filipino Nation*, provides a more detailed and incisive account of these, along with penetrating analysis of not only Spanish colonization but of Philippine history.

province (Abueva, 1988: 27). The administrative system that the Spanish colonial rule installed was largely subservient to the church which actively meddled in the making of policies and their implementation or execution.

At the same time, the administrative system was also built on the framework of serving private interests with the “practical objective of increasing the royal estate through tributes, monopolies, fees and fines” (Endriga, 2003: 394). Spain also adopted a policy of appointments to public offices in the country based on grants or favor, called *merced*, from the king. The colonies were considered the Spanish monarch’s personal kingdom and thus, could dispose of any property therein as he pleased. Thus, Endriga points out,

Claimants for such favor were plentiful and they included those who participated in the conquest and pacification of the colonies, including their descendants who expected, and asked for, such grants. (Endriga, 2003: 394)

Appointments made from grants were usually for the highest colonial positions such as those of viceroy, governor-general, members of the *Audiencia* (or supreme court), and provincial executives.

Enhancing this was the policy of dividing the native populations into communities, called *encomiendas*, under the control of a recipient, called *encomendero*, who was vested with the right to collect tributes from the people belonging to these communities. The *encomiendas* or *haciendas* were distributed or granted to those in recognition of their dutiful service to the Spanish Crown, “to discoverers and their descendants, to royal favorites or meritorious officials, or to settlers in the New World, as rewards, favors, or inducements” (Corpuz, 1957: 16).

Another mode of appointment was made on the basis of the sale of public offices, a practice that was apparently common even in Europe at that time, particularly in France and Prussia (Raadsheiders and Rutgers, 1996: 77). The sale of offices to the highest bidder was also a regular feature of all colonial regimes in the Indies (Endriga, 1979: 248; Corpuz, 1957: 27), and practically resulted in a corrupt bureaucracy based on patronage instead of merit.

A variety of positions in Spain’s colonial administration in the Philippines were offered for sale, such as clerkships, notarial offices, the offices of constables, sheriffs and wardens, treasurers, assayers, and inspectors, among others (Corpuz, 1957: 28; Veneracion, 1988: 37–44).<sup>6</sup> These saleable offices were not minor or inconsequential positions inasmuch as “many of them involved the assessment, collection and custody of public funds, as well as the collection of fees ordinarily charged for the performance of official acts” (Corpuz, 1957: 29).

To institutionalize these arrangements, a variety of laws were established to govern and legitimize the sale. Corpuz provides an almost graphic description:

The bureaucrat who had acquired his office via purchase held a title or deed which stated in detail: the royal *cedula* authorizing the sale; the name of the judge who presided over the auction; the public notices announcing the sale; the value of the office the last time it was sold; the previous holder of the office, and how the post was vacated (- by death, promotion, or renunciation); the bids and bidders for the office; qualifications and special conditions attached to the sale, in addition to a host of other details. (Corpuz, 1957: 28)

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<sup>6</sup> Veneracion (1988: 39–43), citing Cushner (1971), provides a tabulation of offices in the bureaucracy that were sold from 1589 to 1834, identifying therein the buyer and the price, as well as date of confirmation.



A functionary would thus consider his purchase of office as an investment that needed to be recouped as quickly as possible and at a profit. It was therefore understandable that the bureaucrat treated his office as a personal business venture. The factors of distance between the Philippines and Spain, and the long months of travel, made it exceedingly difficult for Spanish authorities to check on excessive bureaucratic rapacity. It should be noted that these positions were reserved only for Spanish nationals while the natives—the *indios* as they were called—occupied the lowest rung in the administrative hierarchy, as headmen of the villages, known as *pueblos* or *barrios*.

Institutionalized corruption often went unchecked despite the feeble efforts of the Spanish colonial administration using mechanisms such as investigative authorities—the *visitador-generales*—and the *residencia*, a practice whereby bureaucrats were required at the end of their terms to give a report of their actions and conduct while in office.

Institutionalized corruption flourished and created not only instability, but also growing resentment among the populace, the natives or the *indios*, who were at the receiving end of bureaucratic misfeasance. Thus, Veneracion explains:

Nothing contributed more to structural instability than the various cases of defalcations and embezzlements in the period between the middle of the 18<sup>th</sup> and the late 19<sup>th</sup> centuries. Extant documents at the Philippine National Archives are packed into 106 big bundles of 6 to 8 cases, investigated and litigated by various offices throughout the Philippines. At the root of these cases of embezzlements and defalcations were the institutional arrangements. (Veneracion, 1988: 56)

The administrative system that these practices spawned brought about two remarkable attitudes among the bureaucrats. These involved outright indifference and a lack of commitment to public office, while keeping the appearance of obedience to established and formal political and administrative policies and rules.

Two outstanding philosophies or principles guided bureaucratic conduct during that period and are succinctly expressed in the Spanish phrases, *no se haga novedad* or “do not commit or introduce any innovations on royal prescriptions,” and *obedezco pero no cumplo* or “I obey but do not enforce or comply” (Veneracion, 1988: 29; Endrigna, 2003: 394).

For the pragmatic bureaucrat, then and now, the best response is not to innovate or depart from accepted practices and rituals even if this means compromising the goals or objectives of the agency. Accompanying this comfort zone of “trained incapacity”<sup>7</sup> is the bureaucrat’s propensity to openly, but half-heartedly accept instructions, and even express an enthusiastic response. But that would end in rhetoric, not actual compliance would not be made. The practice continues today with both politicians and bureaucrats proclaiming support or advocacy for one thing, only to do another.

It was thus understandable that these, aside from other abusive and exploitative practices committed by Spanish civilian and military officials, and abetted or aggravated by the friars, would result in instability and alienation among the native populace, which brought about countless numbers of Filipino revolts during more than three centuries of Spanish misrule.

These excesses evoked Filipino nationalism and resistance to Spanish rule, which were decisively subdued and quelled. A propaganda movement in Spain was launched by newly educated Filipinos, called the *illustrados*, to call attention to Spanish abuses in the Philippines.

<sup>7</sup> The term “trained incapacity” refers to the state of affairs in which one’s abilities function as inadequacies or blind spots, as defined by Merton (1961) in his analysis of negative bureaucratic behavior.

With Jose Rizal, the Philippines' national hero, and other patriotic young members of the intelligentsia, the campaign managed to reach receptive ears, but did not succeed in bringing about much needed reforms especially in uplifting the fortunes of the lower-class of Filipinos.

In 1896, following a long and protracted struggle, a successful revolution was staged under the leadership of the plebeian Filipino revolutionary, Andres Bonifacio. While experiencing setbacks at the hands of the Spanish defenders, Bonifacio was soon joined by other Filipinos coming from different classes.

## 17.5 Short-Lived Philippine Republic: Beginnings of a Professional Civil Service

The Spanish colonial rule in the Philippines formally ended in 1898 when the new leader of the revolution, General Emilio Aguinaldo, who wrested power from Bonifacio, proclaimed Philippine independence on June 12, 1898, at Kawit, in the province of Cavite. At this time, war broke out between Spain and the United States as an offshoot of the Cuban revolution against Spain. Admiral George Dewey of the United States and his fleet appeared in Manila Bay to destroy the Spanish armada. Spain surrendered Manila to the Americans, and in December of the same year, the Philippines was ceded by Spain to the United States by virtue of the Treaty of Paris in December 1898.

The Filipinos, believing that they had become independent, assumed for the Philippines the status of a sovereign state. They soon inaugurated the first Philippine Republic at Malolos, Bulacan. Accordingly, a republican constitution was promulgated and ratified. The new charter, known as the Malolos Constitution, was adopted in January 1899 by delegates from Philippine provinces and was patterned after the constitutions of France, Belgium, and South American republics (Abueva, 1988: 32). The Malolos Constitution was excessively long consisting of 101 articles and provided guarantees for civil liberties and rights, with three branches of government, a strong legislature, and executive and judicial departments.

The striking feature of this document, for public administration and for executive institutions, is that it incorporated full blown provisions on the "Administration of the State," under Title 12, which defined procedures on the budget, payment from the appropriation laws, disposal of property, and securing of loans; Title 11 also provided for the organization and powers of provincial and municipal assemblies, which in effect embodied a system of local governments in the country.<sup>8</sup> It should be noted that even the American Constitution of 1787 did not provide for provisions to govern administrative practice. Stillman (2000: 19) states that the American Constitution "says nothing about the civil service, budgets, executive departments, planning and, yes, public administration, all essential to promoting effective government performance."

The experience of bureaucratic rapacity and inefficiency committed by unqualified civil servants during the Spanish regime impelled the Filipinos to advocate for a civil service based on merit and fitness that not only ensured appointments determined by open competitive examinations, but also guaranteed security of tenure.

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<sup>8</sup> Here, I am using the English translation by Jacinto Manahan (1935) from the original Spanish version, which was published as part of a large volume. This appeared as an index to a reprint of Majul's *Apolinario Mabini, Revolutionary* in 1998 as part of the centennial Collection of Filipino Heroes series under the auspices of the National Centennial Commission headed by Dr. Salvador Laurel (see Majul, 1998). This material also included a reprint of the Malolos Constitution.

Apolinario Mabini, Aguinaldo's controversial adviser and generally regarded as "the brains of the Revolution," advocated in his draft constitution a provision under Article 22 "that all the offices in the government that were not elective were to be filled by competitive examinations, and no holder of an office could be removed except for cause" (Majul, 1998: 54). Mabini also carefully distinguished between appointive positions and elective positions in government. In his own work, *La Revolucion Filipina* (The Philippine Revolution, 1935), Mabini denounced what he saw as the practice of appointing personnel not acquainted with the country and relieved at every change of ministry.

Even the patriot, Jose Rizal, executed by the Spanish regime on December 30, 1896, expressed his disapproval for the sale of offices in the bureaucracy. In his celebrated novel, *Noli Me Tangere*, Rizal made fun of Capitan Tiago, one of the characters and "objected to the sale of office or appointments to private persons, presumably belonging to [Capitan Tiago's] group" (Majul, 1996: 65). All these point to the fact that the Filipinos already had a vision, if not an insight, toward an administrative system. Unfortunately, the fledgling republic was frustrated under the Treaty of Paris when Spain, in consideration of 20 million dollars, ceded the Philippines to the United States. In February 1899, war broke out between the United States and the Philippines, but quickly ended with the capture of Gen. Emilio Aguinaldo in March 1901. Filipino resistance to the American colonial regime continued however, with hard-core leaders resorting to guerilla warfare. The resistance was effectively contained in 1902.

In that same year, the Philippine Commission, the assembly established to act as the government of the Philippines under authority from the president of the United States, certified to the existence of "general and complete peace" (Corpuz, 1957: 159).

## 17.6 American Colonial Regime and the Philippine Commonwealth

The American takeover of the Philippines upon the pacification of the islands in 1902 was auspicious for the Philippines because the Americans introduced a civil government that was in marked contrast to that of Spain. The Americans established a political system in the Philippines patterned after the republican and democratic characteristics of the U.S. government. Where the Spanish regime exerted efforts to deny ordinary Filipinos the right to an education and to speak the Castilian language, the Americans introduced an extensive public educational system and even required the teaching of English. But one of the most important contrasts was the separation of church and state. Thus, Endriga provides the following critique:

Politically speaking, the contrast with the unlamented Spanish regime was glaring. The separation of church and state, the completely secular character of the latter, the political participation of the Filipinos in all levels of government were a world apart from the Spanish system where the power of the priests and the minimal participation of natives in government gave the Filipinos practically no experience in running their own affairs. (Endriga, 2003: 400)

It was also during this period that public administration was professionalized. It is instructive to note here that the United States had just undergone a critical period of civil service reform after decades of dominance of patronage and spoils in its own bureaucracy. The spoils system was

legitimized as a government policy during the presidency of Andrew Jackson in 1829, who sought to democratize positions in bureaucracy as part of what is now known as “Jacksonian democracy” (Reyes, 2003b).

Jackson rationalized that the duties in the federal bureaucracy were simple and did not demand education or prior experience. He also argued that it was only proper that a sitting president and the political party in power must have the leeway to appoint federal jobs supporters, protégés, or recommendees of the administration. Jackson believed that by doing so, he was making available to ordinary citizens the opportunity to serve in government. The result was a decline in the professional competence of those manning the bureaucracy and gained prominent attention and concern in 1881 with the assassination of President James Garfield by a disgruntled office seeker (Reyes, 2003b).

The Pendleton Act of 1883 subsequently established a professionalized civil service in the American bureaucracy that ended over five decades of the spoils system. This was soon followed by the Gilded Age in America, which saw increasing prosperity and modernity of American society. Thus, it was understandable that the Americans would institute a similar system in their newly acquired colony in 1900. This was an opportunity to discover whether the system they adopted for themselves would work in a different culture.

The American colonial regime thus introduced a civil service system based on merit and fitness in the Philippines, characterized by professionalism and careerism, ensured security of tenure, and with appointments determined by open competitive examinations. Another important feature of the system was the adoption of political neutrality for career members of the civil service, which secured them against involvement in partisan politics. It may be relevant to mention here that it was this latter issue that defined the field of Public Administration in America, commonly referred as the politics-administration dichotomy. The neutrality of apolitical and career bureaucrats was contained in the provisions of the Pendleton Act of 1883 in the United States, which established a professional civil service in America.

From here, the young academic Woodrow Wilson would draw inspiration in his celebrated 1887 essay, *The Study of Administration*, calling for a “science of administration.” Frank Goodnow’s (1900) *Politics and Administration* would strengthen the proposition with similar ideas of insulating the administrative system from the currents of political activities. But, this would be rejected by scholars of the discipline in the United States.

The law that established the civil service in the Philippines was one of the early pieces of legislation enacted by the Philippine Commission. Passed on September 19, 1900, Act No. 5 also known as the Philippine Civil Service Act, with the formal title of “An Act for the Establishment and Maintenance of an Efficient and Honest Civil Service in the Philippines,” set the tone for the establishment of a professional bureaucracy in the Philippines based on merit and fitness. The Americans deemed this as the response to the graft-ridden bureaucracy of the Spanish period and made sure that the merit system would be upheld, regardless of religious beliefs or political affiliations. Corpuz explains further:

The colonial government was laudably obsessed with the desire to make the service a strictly merit system, and to this end there were strict proscriptions and injunctions against inquiry into the political or religious opinions or affiliations of examinees or employees whether for appointment or promotion. Likewise, direct or indirect solicitation, collection, or receipt of political contributions by or from employees were sternly prohibited. (Corpuz, 1957: 167)

Another significant feature of the administrative system established by the American colonial regime was that it was open and made available to Filipinos. Unlike the Spanish system, which restricted Filipinos to almost inconsequential positions, the administrative system established by the Americans fostered broader Filipino participation in the civil service even if executive and policy-determining posts remained in the hands of the Americans.

In fact, Section 6 of the Civil Service Act gave priority of appointment to Filipinos “where other qualifications were equal...” (Corpuz, 1957: 176). This policy was also influenced by the fact that American officials recruited to man the bureaucracy were not disposed to take up residence in the islands for extended periods. The potential lost career opportunities in the home country made it difficult to recruit Americans. This was also compounded by the uncertainty of the length of time of the United States’ tenure in the Philippines.

In time, the Americans adopted a policy of Filipinization of the bureaucracy, owing to the instability of recruitment in the American segment of the civil service. It was, to use President Theodore Roosevelt’s words, to be “a bureaucracy of Filipinos, assisted by Americans.” Thus, by 1919, Filipinization of the bureaucracy was practically accomplished with Americans comprising less than 6% of the total (Corpuz, 1957: 180, 201).

Therefore, it was not surprising that when the Philippine Commonwealth was established in 1935, the Filipinos strengthened the civil service and further expanded its coverage and powers. The establishment of the commonwealth was provided under the Tydings-McDuffie law, which stipulated that independence will be granted to the Philippines after a transition period of 10 years during which the Filipinos will exercise self-rule.

In 1934, a Constitutional Convention was convened that subsequently promulgated the 1935 constitution. Under this charter, a full-blown article on the civil service, Article XI, again provided and restated the policy on merit and fitness in appointments to be determined by competitive examinations and insulated from partisan political activities. Accordingly, a law was subsequently passed, Commonwealth Act 177, which elevated the status of the then Bureau of the Civil Service from a second-class bureau to a first-class agency to be headed by a commissioner with the rank of undersecretary. Aside from these, the agency was also given special powers in formal investigations and other pertinent and supporting provisions, which led one American observer to call it “the civil service reformers dream come true” (Corpuz, 1957: 217). The policies that were thus adopted then upheld and supported the values of merit and fitness in the civil service.

## **17.7 Japanese Interregnum, 1942–1945**

Unfortunately, World War II intervened and the Philippines was swept into the war in the Pacific with the Japanese army invading the country in 1942. As a result, the commonwealth government and its leaders were forced into exile.

The Japanese occupation of the Philippines disrupted and dislocated the political, economic, and social life of the country. On gaining control of the islands, the Japanese Imperial government established a puppet government and conscripted political leaders and bureaucrats alike who stayed in the country to render service to the new Japanese-sponsored government.

The 3 years of Japanese occupation had a severe impact on the bureaucracy in the Philippines. The civil servant who manned the government during the truncated commonwealth period were forced to serve under pain of reprisals. The civil servants were coerced to serve and were forcibly drafted into the service, which by and large, resulted in a demoralized and demotivated administrative system.

For these civil servants and for the rest of the populace, the government and its administrative machinery “was the instrument of a hated regime,” and acts of sabotage to undermine the Japanese-sponsored republic were regarded as a patriotic act (Corpuz, 1957: 220). Thus, such “acts of administrative delay and obstruction,” and “countless ways of less-than-full compliance with administrative orders, came to be habitually indulged in, and were condoned as moral and patriotic” (Corpuz, 1957: 221). Those who chose to perform their duties efficiently were considered as “collaborators” and “traitors,” which made it more convenient for the politically astute to go through the motions and rituals of administrative activity while secretly committing covert acts of sabotage.

The war years exacted severe repercussions on the country’s institutions and left the country in ruins. Manila emerged as the most devastated capital city in the world, next to Warsaw in Poland, according to the assessment of Senator Millard Tydings of the U.S. Congress. By the end of the war, as discussed earlier, the Philippines was a ravaged nation, and the people experienced widespread poverty. Its hospitals, ports, banks, libraries, buildings, and other structures and facilities were in shambles, particularly those located in the urban areas (Reyes, 2003a: 51; Shalom, 1986: 33; Steinberg et al., 1971: 373, as cited in Abueva, 1988: 47).

The end of the war brought about unemployment, food shortages, inflation, and internal conflict and strife, as the country was enmeshed in a campaign to seek out and punish collaborators and supporters of the hated Japanese-sponsored government. Unrest in the countryside grew, especially in the Northern provinces, as a growing Communist movement, remnants of the resistance to the Japanese, began to gather strength, taking advantage of the confusion and upheaval besetting Philippine society.

The bureaucracy, like the society that enveloped it, was severely traumatized by the war, and the work ethic that was supposed to have been implanted during the American regime was soon eroded. While the American regime promoted and instilled professionalism, responsibility, and commitment to public service in the bureaucracy, the war truncated the full flowering and internalization of these values.

It seemed that the habits and practices of negative bureaucratic behavior that were shaped during the Japanese interregnum continued and rendered an administrative system almost incapable of addressing the multiple and complex problems brought about by the war.

Following the war, faced with low income that did not measure up to living standards, it was not difficult for civil servants to commit misfeasance and other corrupt acts. Moreover, exposes of big-time graft and corruption cases among unscrupulous political leaders, including presidents, practically dominated the newspaper headlines. It was therefore understandable that civil servants would be prone to follow the example of their leaders, who would on occasions, enlist or involve the bureaucracy in the commission of corrupt dealings.

## **17.8 Independence Period and the Establishment of the Institute of Public Administration**

When the Philippines was granted independence by the United States on July 4, 1946, the prospects of nationhood and self-rule were not exactly convivial. It was a welcome development, but the events were not exactly festive. The economy was in shambles, political and social institutions were traumatized, society was in disarray, and unrest and upheaval loomed in the offing as rebel and Communist groups began to rearm in the countryside. It was evident, as the noted writer Hernando Abaya maintains, that democracy was “in distress” and “the national economy was on the verge of collapse” (Abaya, 1967: 56; also cited in Reyes, 2003a: 53).

The bureaucracy, the administrative mechanism that was supposed to deliver basic services and implement policies designed to address the problems confronting the newly independent nation, was likewise a damaged institution. Stigmatized as it was during the dark years of the Japanese regime, the administrative system was not by any means equal to the complex and multiple challenges facing it. Not only was the system ill-equipped to respond to the demands of the new republic, it was also inept, incompetent, and corrupt, with the war-time habits of complacency and indifference overpowering the spirit of patriotic zeal.

As discussed earlier, the milieu of the post-war period made it attractive for civil servants to engage in rent-seeking behavior, which brought about inefficiency. Moreover, a new generation of civil servants, most of whom were exposed to inhospitable and cruel living conditions, took over and abandoned the values that had been implanted during the American colonial era.

Widespread unemployment also characterized the period, and in this, politicians saw the opportunity to put their constituents in government posts by way of circumventing civil service rules and regulations.

The civil service, although designed to function on the basis of merit and fitness, did not exactly behave that way, as spoils and patronage resurfaced. The dedication and professionalism that had been ingrained during the American and commonwealth periods had somehow virtually eroded, as members of the bureaucracy became preoccupied with their own personal struggles to survive.

The agenda of reconstruction and rehabilitation became the foremost concern for both the Philippines and the United States. A United States Economic Survey Mission, headed by Daniel Bell, was promptly dispatched to the Philippines “to consider the economic and financial problems of that country and to recommend measures that will enable the Philippines to become and remain self-supporting” (Bell Report, 1950; also, as cited in Reyes, 2003a: 53).

Out of the package of recommendations submitted by the Bell Mission in 1950 were programs designed to rehabilitate agriculture, industry, internal and external finances, domestic and foreign trade, and public administration. On the latter aspect, the Bell Mission recommended a host of measures that would restore competence and integrity in the bureaucracy.

The efforts toward professionalizing the conduct of public affairs in the Philippines had started even before this when a joint US-Philippine Commission was constituted in 1947 on the initiative of Washington to study and improve the financial condition of the country through such measures as tax reform, the establishment of a central bank, and the imposition of import controls, among others (Reyes, 2003a: 52; Shalom, 1986: 71).

Thus, the Bell Mission recommendations on public administration in the Philippines read as follows:

that public administration be improved and reorganized so as to insure honesty and efficiency in the Government; that the civil service be placed on a merit basis and civil service salaries raised to provide a decent standard of living; that the Philippine Government remove barriers to the employment of foreign technicians and take steps to improve training facilities for technicians in the Philippines; and that in accordance with the request of the Philippine Government, the United States send a Technical Mission to assist the Philippine Government in carrying out its agricultural and industrial development, fiscal controls, public administration, and labor and social welfare programs. (Bell et al., 1950: 6, also cited in Reyes, 2003a: 53)

In 1952, as part of the proposals of the Bell Report, an Institute of Public Administration (IPA), based at the University of the Philippines, was established to administer a training

program that would professionalize the Philippine civil service and restore its competence and confidence.

Eventually, the institutionalization of the study of Public Administration in the Philippines was formalized following a technical assistance agreement concluded between the University of the Philippines and the University of Michigan. That same year, two distinguished academic officials from the University of Michigan, James K. Pollock, chairman of the political science department, and John W. Lederle, director of the IPA arrived in the Philippines to organize the IPA (Reyes, 2003a: 55).

Working under a two and a half year contract, which would be extended until 1956, the American academics, with the assistance of Filipino scholars, set in motion the establishment of a Public Administration library, which would contain a collection of books, journals, documents, and other materials on Public Administration. Simultaneously, a two-pronged program was introduced: an in-service training program for government workers; and an academic program designed to offer undergraduate and graduate degree programs in Public Administration. A program for the conduct of research and publication was also established (Reyes, 2003a: 54-55).

These interventions contributed considerably to the reconstruction of Philippine society and its government, even as it struggled to overcome the many complex problems that it faced. The 1935 Charter was restored as the fundamental law of the country. Gradually, the economy recovered and political and social institutions were re-established. The presidential system of government was retained, a bicameral Congress was reconvened, and the judicial system resumed its functions of adjudication and dispensing justice.

Elections were held even if, more often than not, charges and allegations of vote buying, terrorism, cheating, disenfranchisement, and other anomalies were raised. In time, the Philippines was restored to a vibrant democracy under a two-party system, where civil liberties and basic freedoms were upheld.

The Communist rebellion, which emerged from a splinter group of the Filipino resistance against the Japanese, known as the Hukbalahap,<sup>9</sup> was contained so as not to threaten the stability of society, even if insurgents continued to operate underground and repeatedly undertook lightning strikes and attacks on government troops and installations. Thus, Abueva recounts:

From 1946 to about 1968, the legitimacy, stability, and responsiveness of the Philippine political system appeared to have passed a series of tests. Except for the Communist HUKBALAHAP rebellion, there was little serious challenge to the authority of the national government. Political and governmental processes operated within constitutional bounds, restrained by the press, civic organizations, and the Supreme Court... The bureaucracy and the military were subordinate and responsible to Congress and [to] an increasingly powerful President.... Although criticisms of the malfunctioning of Filipino democracy were common, various opinion polls showed its general approval by the people. (Abueva, 1988: 50-51)

With the democratic system restored and political institutions somewhat stabilized, the civil service was also reinvigorated. The principle of merit and fitness, with its attendant and complementary canons of open competitive examinations, political neutrality, professional career,

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<sup>9</sup> Hukbalahap is the shortened name for the Filipino *Hukbo ng Bayan Laban sa Hapon*, translated roughly as the People's Army Against the Japanese. This would later be further shortened to Huk.



and security of tenure were reinstated. The bureaucracy experienced several reorganizations beginning in 1954.

In 1959, the civil service law was revised under Republic Act No. 2260, which provided for the civil service to embrace all branches, subdivisions, and instrumentalities of the government, including government-owned and controlled corporations.

But the evils and venalities of spoils and patronage continued to plague the civil service. For example, de Guzman, in a case study, identified one of the schemes as the “50-50 Agreement.” This scheme involved the filling of new positions in the bureaucracy to be split and divided “50-50” between appointees recommended by the executive and by members of Congress, specifically, the House of Representatives or the lower house. The arrangement was made in order to secure the smooth approval by the House of the budget proposed by the executive branch (de Guzman, 1963, 1993). However, the practice was checked, if not eradicated, when the upper chamber, the Philippine Senate, got wind of the arrangement and proceeded to establish oversight bodies to monitor appointments.

It is not correct, however, to say that the civil service system abandoned the merit and fitness principles that are well enshrined not only in the law but also in the constitution. Merit and fitness continue to be the established norms in the recruitment, selection, and appointment processes in the bureaucracy. Nonetheless, these principles were compromised when politicians intervened, and they do intervene whenever constituents, qualified or not, approach them. This did not mean that politicians would have their way at all times, for well-meaning leaders, even from their ranks would support resistance against civil service violations committed with impunity.

In this milieu, the confluence of competence and partisan politics interspersed. A combination of the legacies of the Spanish era and that of the American regime adapted to Filipino culture and temperament evolved.

In 1972, President Ferdinand Marcos placed the country under martial law, closed Congress, suspended civil liberties, arrested critics and opponents, and governed by decree. Elected in 1965 as president and re-elected in 1969, Marcos was barred under the 1935 constitution from seeking a third term. The declaration of martial law was a quick solution to stay in power and Marcos took advantage of the worsening insurgency in Central Luzon and a growing secessionist movement in Mindanao to justify his decision to put the country under martial law.

Upon declaration of martial law, Marcos at once directed the reorganization of the bureaucracy under the Integrated Reorganization Plan, a proposal that languished in Congress for many years. Under these conditions, the civil service became both willing and unwilling collaborators of the regime. Marcos also initiated the professionalization of the public service and took steps to purge the civil service of unqualified personnel. A Career Executive Service was organized and a new civil service law was codified. But, by summarily dismissing a number of civil servants, Marcos also compromised security of tenure. Protégées and accomplices of the regime soon replaced those dismissed.

Marcos ruled for another 14 years until 1986 when he agreed to call a “snap election” in 1985 to prove that he still enjoyed the confidence of the people. Marcos was challenged by Corazon Aquino, the widow of his arch enemy, Senator Benigno Aquino, who was assassinated three years earlier on his return to the country from exile in the United States. As in previous elections, charges of cheating and manipulation of election results were made against Marcos, which eventually led to his ouster in the celebrated and bloodless people power revolution.

Upon Marcos’ ouster, Aquino became president and democracy was restored with a new constitution promulgated and ratified in 1987. Under this constitution, the independence of the Philippine civil service based on merit and fitness was restored and upheld. Like Marcos, the newly

installed Aquino government undertook massive and wide-scale reorganization of the bureaucracy, which brought about dislocation and discontinuities.

The Aquino government, on its assumption to power, promptly directed and implemented a reorganization of the bureaucracy, as part of the efforts to “de-Marcosify” the government, and to remove all vestiges of the Marcos’ regime. As Carlos (2004: 43) points out, “one of the first things that the Aquino administration did was to rationalize the bureaucracy.” A Presidential Commission on Reorganization (PCGR) was established and, accordingly, submitted a report in June 1986 seeking among others, the streamlining of 3000 offices attached to the Office of the President, and the privatization of 87 government-owned and controlled corporations, and the abolition of 38 non-financial corporations (Carlos, 2004). Consequently, the Aquino government also adopted an administrative code that spelled out the structure and functions of various government agencies and approved the enactment of a law that would serve as the code of conduct and ethical standards for public officials and employees.

This law, as provided for under Republic Act 6713 and approved in 1989, stipulated the norms that public officials and employees, whether appointed or elected, should observe. Thus, such norms as patriotism and nationalism, commitment to public service, transparency, and similar ideals were embodied in law. The Aquino government also sought to decentralize the government and put into law a Local Government Code in 1991, a year before Aquino relinquished office. The code provided for greater local autonomy and to a large extent empowered local government units.

The succeeding administrations of President Fidel V. Ramos (1992–1998) and the abbreviated administration of President Joseph E. Estrada (1998–2001) likewise adopted their own respective initiatives to reorganize the bureaucracy, which in effect sought to enhance civil service performance, contain corruption, and introduce reforms to enhance efficiency. In 2001, Estrada’s vice-president, Gloria Arroyo, took over the reins of government following another relatively bloodless people power revolution. Arroyo’s government also sought to introduce measures to rationalize the bureaucracy, but in itself, got embroiled in charges of massive and wide-scale corruption. As a result, officials of the bureaucracy were again implicated in conspiring with high government officials in defrauding the government by way of misusing public funds.

## 17.9 Administrative Values in the Philippines

It is perhaps safe to say today that public administration in the Philippines observes and pursues administrative values that are a mixture of three major sometimes compatible, sometimes conflicting influences. The first major influence is the impact of the larger societal culture where bureaucracy must operate. The wider Filipino societal culture in part shapes and influences the values found in Philippine bureaucracy. Thus, such cultural values (identified and loosely translated) such as, *amor propio* (self-respect), *delicadeza* (propriety), *hiya* (shame), *utang na loob* (debt of gratitude), and *pakikisama* (friendship or familial ties) reflect on bureaucratic behavior and the exercise of official functions. Superimposed on these values are such accepted norms of behavior as social acceptance, the respect for authority/elders, and the influence of religion. The result of these can be both positive and negative, and expressed in terms of refusal to engage in confrontation or outright conflict or compromising policies and procedures to avoid disagreements or differences. Likewise, such values as respect for senior officials or persons, or in many cases, of favoritism, paternalism, and nepotism can serve to compromise the exercise of official functions and duties. Special treatment in government transactions can also be accorded to relatives or even province mates (Varela, 1996).

Secondly, the formalities dictated under the norms of Weberian bureaucracy remain equally strong in Philippine bureaucracy. Merit and fitness, competence, and qualifications persist as standards in recruitment and appointments even if disrupted at times by patronage and spoils. It can be said perhaps that these values are the ones observed or upheld first, depending on the degree of influence of cultural or political forces. The system of rules and procedures likewise are generally observed, but can be set aside either because of the intervention of a politician or because of the demands and pressures of cultural values and ties.

Thirdly, the influences of the colonial periods continue to influence administrative behavior, again in positive and negative ways. The American values of merit and fitness and competitive examinations continue to hold sway and enjoy acceptance in the bureaucracy. But such negative traits as refusal to initiate innovations (*no se haga novedad*) or weak or indecisive compliance of rules (*obedezco pero no cumplo*) continue to impair Philippine bureaucracy, though not as rampant as during the colonial era.

As such, bureaucratic behavior and the values pursued by the Philippine bureaucracy today could be viewed as having adapted and adjusted to the vicissitudes and vagaries of its environment and its past. Bureaucratic values and behavior in Philippine public administration can thus be viewed as a web of influences and a curious blend of indigenous social forces, implanted norms, and colonial legacies. These are adapted and suited according to the demands of particular situations.

## 17.10 Reflections on the Origin of Public Administration as a Study in the Philippines

Public administration in the Philippines today is thus a product of the colonial era, adapted to the idiosyncrasies of indigenous cultural traditions, values, mores, and norms. From these, Filipino public administration practices and processes would evolve into a complex art of adaptation and improvisations that would reconcile the characteristics of Weberian models with that of Filipino values. It is a composite blending of influences and vestiges of past practices and processes derived from colonial times and at the same time made to apply to the vagaries of Filipino values and norms. The American system has been somewhat the dominant influence, insofar as the system, rules, structures, and formalities are concerned.

Beneath the layer of professional conduct and the formal structure configured following the Weberian model, as found in Western systems, would emerge a sub-culture that would be reflective of Filipino culture and its idiosyncrasies. In his analysis of public administration in the Philippines, de Guzman for instance pointed out that the bureaucracy in the Philippines exhibits the structural features of the Weberian model, such as aspects of division of labor, specialization and spheres of competence, hierarchy, recruitment based on merit, and similar characteristics. He maintains, however, that “family, kinship, religious, socioeconomic, and other factors impinge on the performance of government agencies” (de Guzman, 2003: 4–5). The dynamics and practices of the administrative system are conditioned likewise by cultural factors, mores, and norms that influence bureaucratic activities.<sup>10</sup>

The discipline or the field of study was introduced in 1952 by American scholars as part of American rehabilitation efforts of the country following its devastation from World War II and the grant of independence in 1946. Like Philippine bureaucracy and its administrative system,

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<sup>10</sup> A more extensive discussion on Filipino culture and its impact and relevance on public administration is provided in Varela (1996, 2003).

the study and teaching of Public Administration<sup>11</sup> in the Philippines was heavily influenced by the Americans, which established what could now be acknowledged as the first school of Public Administration in the country, and perhaps in Asia, the IPA in the University of the Philippines. The institute was set up under a technical agreement between the University of the Philippines and the University of Michigan.

Unlike American Public Administration, the discipline in the Philippines was not shaped as a result of fission from Political Science or any other social science discipline. It did not experience difficult episodes of struggling and justifying its legitimacy as a scholarly or academic discipline. It did not have a politics and administration dichotomy tradition, as its American counterpart. Rather, it came to the country as “an assembled product,” the discipline evolving as a product of “a natural response to a felt need,” as described by Lederle and Heady, who were part of the American team of scholars who started the IPA (Lederle and Heady, 1955: 8; also cited in Reyes, 2003a: 54). One scholar who helped establish the IPA in the Philippines, observed that public administration in the Philippines “combines to an exceptional degree the institutional patterns and behavioral characteristics of both Western and non-Western administrative systems” (Heady, 1957: 45).

It was a discipline that was introduced to meet the demands of a critical era that needed intervention and was thus designed to assume a service function to address the problems of Philippine bureaucracy at the time of its inception and it did not experience the painful crisis of identity, crisis of confidence or thought as that of the American Public Administration (Reyes, 2003a; 1993). Given that, the field of study in the Philippines assumed an eclectic or multi-disciplinary character.<sup>12</sup> Public administration study in the country has been based on the influences of knowledge, techniques, and methods adopted from such other older disciplines as Political Science, Law, Economics, Sociology, and History among others. There is now a growing and respectable collection of literature that chronicles and examines the historical development of public administration in the Philippines, its bureaucracy and the civil service, and the influences and impact of the past (Reyes, 2003; Corpuz, 1957, 2003; de Guzman, 2003; Endriga, 1978, 1995, 2003; Delagoza, 1991; Tancangco, 1991; Abueva, 1988; Veneracion, 1988; De La Torre, 1986).

But perhaps the most salient feature of public administration, the profession and its practice, and that of Public Administration, the discipline or field of study in the Philippines, is that they came during critical periods of transition. The civil service in the Philippines and the bureaucracy that serves it was shaped following the end of the Filipino-American war at the turn of the twentieth century. This was a period of continuing pacification and consolidation as the American colonial government introduced a civil government. Likewise, the discipline emerged at a time of reconstruction and rehabilitation when the country had a full agenda toward national recovery and restoration of its institutions.

Today, public administration and the bureaucracy that practices it in the Philippines remains a vibrant and dynamic institution. It suffers, as in most bureaucracies of other countries, problems and perceptions of inefficiencies, incompetence, and corruption. These may well be impressions of citizens frustrated by negative experiences in their transactions with the bureaucracy, with all the rules, procedures, and processes that are imposed on them. More often, consumers’ expectations

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<sup>11</sup> For convenience, this study adopts the distinction started by Waldo in 1968 where the discipline or the field of study is denoted by capital letters while the processes, practice, and the profession are put in lower case. Thus “Public Administration” refers to the discipline or field of study, while “public administration” to the processes and the dynamics. It should be noted that his earlier works did not use this as can be seen in the succeeding citation (see Waldo, 1968, 1975). See also Stillman (2000: 17, fn) and Reyes (1995: 57, end notes).

<sup>12</sup> More detailed discussions on the development of the discipline of Public Administration in the Philippines are also provided in Reyes (1995, 2003a), Alfiler (1998), and Endriga (1995).

of the bureaucracy are high. But it should also be acknowledged that the bureaucracy in the Philippines suffers from severe cases of understaffing, with an estimated 1.5 million civil servants servicing a population of over 82 million people.<sup>13</sup> As it is, the bureaucracy also suffers from lack of funds, resources, and facilities in the performance of their functions.

## 17.11 Conclusions

This chapter has briefly presented the history, evolution, and context of the development of public administration practice and study in the Philippines. It has endeavored to present a discussion of the shaping of Philippine bureaucracy and the various influences that guided it into its present form, from the pre-colonial era to the colonial periods up to the present. In order to provide a better appreciation of the development of bureaucracy as an institution in the country, the milieu and context by which this development shaped has also been presented. The geographic location and demographic character of the country was discussed to provide a brief, perhaps passing, appreciation of the country as a whole. The prevailing values and norms practiced by the bureaucracy in the Philippines were also discussed to account for what the public administration in the Philippines has become and the forces that shaped it into becoming the institution it is in its present form. This account is by no means comprehensive, but it provides a quick reference of Philippine public administration today.

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<sup>13</sup> The data are taken from official estimates of the size of the Philippine bureaucracy made by a joint study of the government of the Republic of the Philippines (GRP), World Bank, and the Asian Development Bank in 2003. Apparently, no updated data has been generated at the time of this publication (see GRP, WB and ADB, 2003).

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## Chapter 18

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# Decentralization and Local Governance in the Philippines

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Alex Brillantes Jr. and Jose Tiu Sonco II

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## 18.1 Introduction

The imperative to transfer powers, functions, responsibilities, and accountabilities to local governments through a process of decentralization has been central to the value to encourage citizen participation and deepen the democratization process. It is within this context that many countries in the region have adopted decentralization as a strategy to deepen democracy and empower local governments.

In the Philippines, Republic Act 7160, commonly known as the Local Government Code of 1991 (LGC), was enacted. The code has been considered as a landmark, far reaching, and the most radical piece of legislation in the history of the Philippine politico-administrative system. It devolved significant functions, powers, and responsibilities to the thousands of local governments in the country that have long been operating under a highly centralized regime (Brillantes 2003, 2002, 1998).

This chapter is divided into five sections. Section two provides a historical brief of local autonomy and decentralization in the Philippines. Section three highlights the LGC: its key features and the current state of local governments, the gains and the emergent challenges of the policy design and its implementation over the past 17 years. It also discusses some critical reviews of decentralization. Section four discusses local governance reforms and capacity building directions toward a more desirable design and implementation of decentralization. Section five provides the conclusions and way forward.

## 18.2 Toward a Genuine Local Autonomy and Decentralization in the Philippines

### 18.2.1 *Evolution of Local Autonomy*

The development of local autonomy in the Philippines can be traced as far back as the pre-Hispanic societies when the chieftain of native settlements exercised executive, judicial, and legislative powers assisted by a Council of Elders. The monarchical chieftain, called the *datu*, *pangino*, or *pangulo*, headed an autonomous territorial and political unit.

The colonial governments of the Spanish colonizers consolidated autonomous villages into *pueblos* (towns), *cabildos* (cities), and *provincias* (provinces). They enacted the Maura Law 1893, which established *tribunals*, *municipals*, and *juntas provinciales*, but the government remained centralized.

In 1898, the Malolos Constitution introduced “decentralization” and “administrative autonomy” by instituting localized law-making bodies through the municipal and provincial assemblies. Local officials were then elected on a popular basis.

During the American occupation (1902–1935), a number of policies were promulgated promoting local autonomy; however, because of security considerations, local affairs had to be under the control of the Americans. The Commonwealth placed local governments under the general supervision of the president, who could, in effect, create or abolish them.

In 1959, the first local autonomy act (RA 2264) entitled “An Act Amending the Laws Governing Local Governments by Increasing their Autonomy and Reorganizing Provincial Governments” was enacted. This act vested in city and municipal governments greater fiscal, planning, and regulatory powers. It broadened the taxing powers of the cities and municipalities within the framework of national taxing laws.

In the same year, the Barrio Charter Act (RA 2370) sought to transform the *barrios*, the smallest political unit of the local government system, into quasi-municipal corporations by vesting in them some taxing powers. An elective *barrio* council governed the *Barrios*.

The “Decentralization Act of 1967” (RA 5185) further increased the financial resources of local governments and broadened their decision-making powers over administrative (mostly fiscal and personnel) matters.

The imposition of martial law in 1972, which abolished local elections and vested in the dictator the powers to appoint local officials who were beholden to him, was a great setback for the local autonomy movement. The 1973 Constitution rhetorically committed itself to a policy of “local autonomy.” The Local Government Code of 1983 (Batas Pambansa Bilang 337) reiterated the policy of the state of local autonomy.

After the fall of the Marcos dictatorship, the 1987 Constitution was promulgated. It included specific provisions guaranteeing autonomy to local governments. The LGC was enacted in 1991.<sup>1</sup> It was only then that a genuine local autonomy started to take root after a number of patchy policy statements and given the country’s past of a highly centralized politico-administrative system.

### 18.2.2 Government Structure and the Local Government System

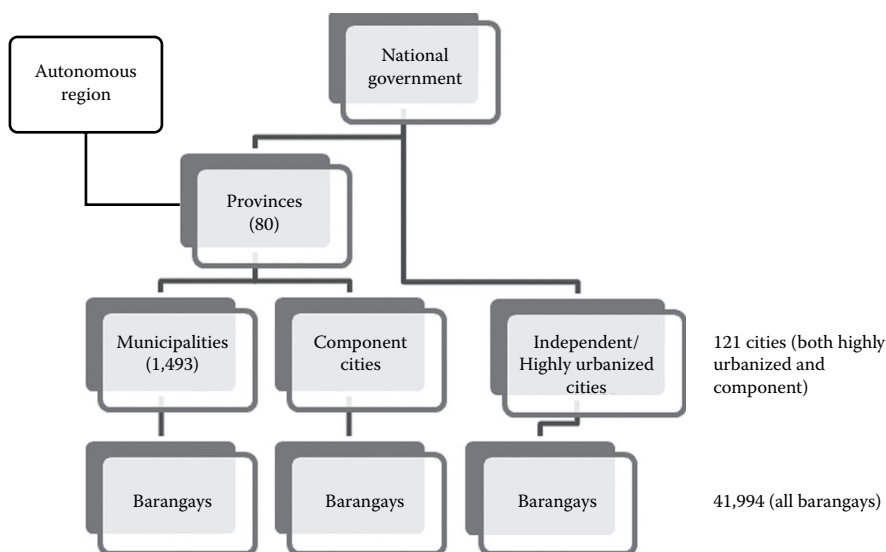
The 1987 Philippine Constitution enshrined a new politico-institutional system that hoped not to repeat an authoritarian regime experienced under former President Ferdinand Marcos. Some of its key features include checks and balances, term limits for elective positions, people empowerment, and the promulgation for a genuine local autonomy in the Philippines. It provided the enabling policy framework for decentralization under the new LGC.<sup>2</sup>

The Philippines is a presidential-unitary state headed by a president with co-equal branches of government—the executive, the bi-cameral legislature (Senate and the House of Representatives), and the Supreme Court (SC). Its president is elected for a 6-year term and cannot seek re-election. The Senate comprises 24 nationally elected senators, while there are more than 220 lower house seats for congressional district representatives and a few more for sectoral-party list representatives.

It has a three-tier local government system—province, city/municipality, and *barangays* (village or the lowest political unit). The 1987 Constitution provided for the creation of autonomous regions or metropolitan political regions. The Autonomous Region of Muslim Mindanao (ARMM) was created as a political region—an institutional response to the peace conflict in Muslim Mindanao—to be headed by an elected governor. The Metropolitan Manila Development Authority (MMDA), formerly Metro Manila Council, was designated as a special development authority with functions to coordinate metro-wide services, plan for regional development, and respond to externalities that have trans-border effects. An appointed chairman heads the MMDA, who is under the direct supervision of the Office of the President. [Figure 18.1](#) shows the structure of local government system in the Philippines.

<sup>1</sup> This summary draws from Brillantes and Moscare (2002).

<sup>2</sup> This section also appears as a sub-section of the MA thesis of Tiu Sonco (2009).



**Figure 18.1** Structure of local government system in the Philippines. Source: Based on LGC of 1991; Department of the Interior and Local Government for the figures.

Each local government unit (LGU) has executive and legislative functions. Each level is headed by an elected local chief executive (LCE) who serves a 3-year term, i.e., a governor for the province, a mayor for the city or municipality, and *barangay* captain for barangays. An elected governor or a mayor may seek re-election for two more consecutive terms, giving a maximum of 9 years in office if elected. Each level has its own local legislative council with elected local legislators and is presided over by a vice-governor for a province or a vice-mayor for a city/municipality.

The LGC prescribed the criteria for the creation of LGUs as well as their powers and functions, including the authority and magnitude to levy taxes at each level. On the other hand, an Organic Act for ARMM expands the powers and degree of authority over the local governments within the jurisdiction of the autonomous region; however, it follows the LGU structure provided by the LGC. Since the implementation of the LGC, LGUs have been growing in number. Table 18.1 indicates the changing number of political subdivisions before and after the implementation of the LGC. Additional provinces, municipalities, municipality to city conversions, and barangays have been created over time. A major incentive for the creation of a new LGU is greater fiscal resource transfers from the central government. Individual municipalities are converted into cities to enjoy a greater internal revenue allotment (IRA)<sup>3</sup> share and local taxing powers.

The provinces have grown from 76 to 81 in 2008; two and three provinces were created under President Fidel Ramos (1992–1998) and President Macapagal-Arroyo (2001–present), respectively. The number of cities has more than doubled from 60 to 137 in 1979 and 2008, respectively. It is interesting to note that a total of 5 provinces and 71 cities have been created since the implementation of the code. In 2008, the Macapagal-Arroyo administration recorded the most number of municipality to city conversions with 41, followed by Ramos with 18 and Estrada with 12.

<sup>3</sup> IRA is the main form of intergovernmental fiscal transfers of the central government to the LGUs. It follows a predetermined formula between the central government and LGU based on certain percentages distributing a pool of resources by LGU level, and across each level of LGUs on certain percentages of the population, land area, and equity sharing.

**Table 18.1** Number of Local Government Units, Various Years

<i>LGU</i>	1979	1981	1991	1998*	2001	2003	2008	2009	2010
Provinces	75	75	76	78	78	79	81	80	80
Cities	60	60	66	84	96	115	137	121	138
Municipalities	1484	1497	1,540	1,540	1,513	1,497	1,493	1,509	1,496
Barangays	n.a.	n.a.	41,820	41,820	41,943	41,971	41,994	41,994	42,025

Sources: National Statistical Coordination Board; DILG.

\*Unofficial data source. Computed by the author based on various reports.

Figures in 2009 indicate a major change in the number of cities and municipalities, and a decrease in provinces. In December 2009, the Supreme Court declared the laws that created the 16 cities as constitutional. Another city and two *barangays* were created in March 2010.

### 18.2.3 Devolution under the Local Government Code of 1991

The LGC devolved powers and functions including the delivery of basic services; responsibility to enforce regulatory powers; power to increase financial resources by broadening their taxing powers, shares from internal revenues, and the exploitation of national wealth; legitimization of participation for civil society in local governance; and authority to engage in entrepreneurial and development activities. Table 18.2 presents its key features and the powers, authorities, and functions devolved to local governments. Annex 18.1 indicates the devolved services by LGU level, which include agriculture, environment, health, social welfare, education, public works, tourism promotion, and the administration of justice.

In hindsight, the proponents of the LGC hoped to “bring development to the countryside, by allowing local governments develop at their own pace.” As such, the LGC provided for the

**Table 18.2** Devolved Functions and Key Features of the 1991 LGC

<i>Devolved functions</i>	<i>Features</i>
1. Delivery of basic services	<ul style="list-style-type: none"> <li>• Health (field health and hospital services and other tertiary services) and social services (social welfare services)</li> <li>• Environment (community-based forestry projects) and agriculture (agricultural extension and on-site research) projects and public works undertakings (locally funded)</li> <li>• Education projects (school building program)</li> <li>• Tourism activities (facilities, promotion, and development)</li> <li>• Telecommunications services and housing projects (for provinces and cities); and other services like investment support</li> </ul>
2. Responsibility to enforce certain regulatory powers	<ul style="list-style-type: none"> <li>• Reclassify agricultural lands</li> <li>• Enforce environmental laws</li> </ul>

(continued)

**Table 18.2 (continued) Devolved Functions and Key Features of the 1991 LGC**

<i>Devolved functions</i>	<i>Features</i>
	<ul style="list-style-type: none"> <li>• Inspect food products and imposing quarantines</li> <li>• Enforce a national building code</li> <li>• Operate tricycles</li> <li>• Process and approve subdivision plans</li> <li>• Establish cockpits and holding cockfights</li> </ul>
3. Increase financial resources of LGUs	<ul style="list-style-type: none"> <li>• Broadens their taxing powers</li> <li>• Provides them with a specific share in the national wealth exploited in their area (e.g., mining, fishery, and forestry charges)</li> <li>• Increases LGU share in the national internal revenue taxes, i.e., internal revenue allotments [IRAs] from a previous low of 11% to as much as 40%</li> </ul>
4. Legitimize participation for civil society in local governance	<ul style="list-style-type: none"> <li>• Allocates to NGOs and POs specific seats in local special bodies, which include local development councils, local health boards, and local school boards</li> <li>• Promotes local accountability and answerability through recall and people's initiative</li> </ul>
5. Authorize entrepreneurial and development activities by LGUs	<ul style="list-style-type: none"> <li>• Provides the foundation for LGU to enter into build-operate-transfer (BOT) arrangements with the private sector, float bonds, obtain loans from local private institutions</li> </ul>

Source: LGC of 1991; Brillantes, A., *Innovations and Excellence in Local Governance: Understanding Local Governments in the Philippines*, UP National College of Public Administration and Governance, Quezon City, 2003.

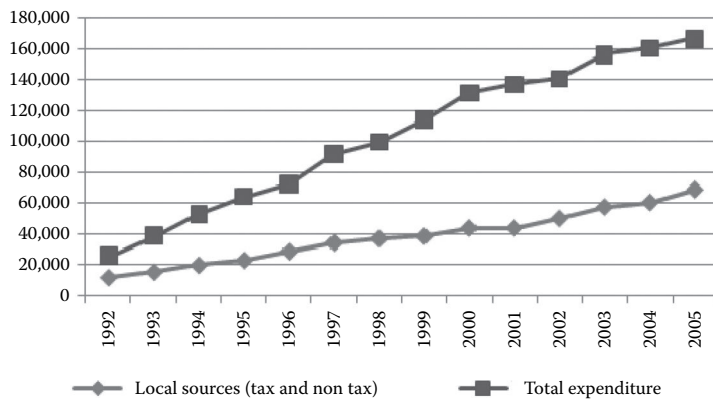
automatic release of IRA share to LGUs to avoid central government control over it, thereby abolishing a system of patronage to the national government leadership. It encouraged local governments to allocate at least 20% of their fiscal resources on development projects.

### **18.2.4 Local Government Finance**

The LGC provided three main sources of revenue for the LGUs. These include (1) locally generated revenues from local tax and non-tax sources; (2) the IRA fiscal transfers, shares from the exploitation of national wealth, and other grants; and (3) external sources such as loans/borrowing, issuance of bonds, and private sector participation.<sup>4</sup>

Local governments are given the authority to levy and collect local taxes (real property and business taxes) and non-taxes such as fees, user charges, and receipts from economic enterprises. Real property and business taxes are their main income sources. However, tax assignment varies from each level of local government—provinces, city, municipal, and barangays. Cities assume all taxing powers of both the provinces and municipalities.

<sup>4</sup> See Gatmaytan (2004) for legal bases.



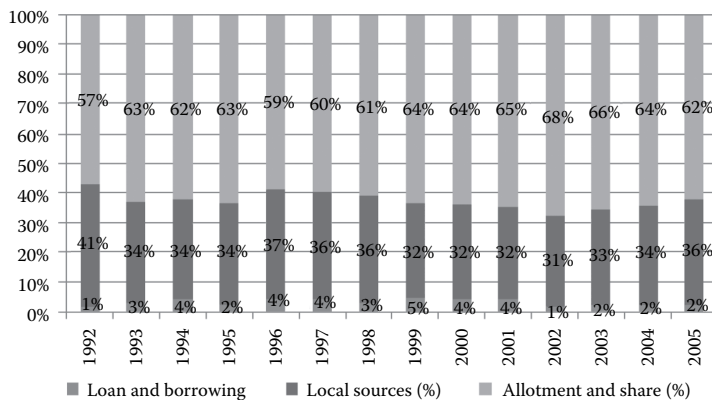
**Figure 18.2** Aggregate LGUs expenditure and local sources (in million pesos). Source: Basic data from the Bureau of Local Government Finance (BLGF).

Moreover, LGUs may borrow from banks—but limited to government financial institutions (GFIs) and the municipal development fund office (MDFO)—and float bonds for financing local public investments. They can also engage in partnership ventures such as build-operate-transfer (BOT) schemes to build infrastructure and operate public services.

Since the implementation of the LGC in 1992, it can be noted from Figure 18.2 that local government expenditure and locally generated income have been increasing. However, the gap between the two continues to widen. This gap is largely filled by intergovernmental fiscal transfers from the central government, particularly the IRA.

Figure 18.3 shows the trend of the consolidated local revenue sources of local governments—local income sources, IRA and shares, and borrowing. Locally generated revenues range from 31% to 41%, loans/borrowing from 1% to 5%, while allotment and shares range from 57% to 68% of local revenues with the lowest in 1992 and the highest in 2002.

The figures clearly indicate that the IRA constitutes a very significant amount of revenues for LGUs and remains a substantial balancing factor for local government budgets. However, Pardo



**Figure 18.3** Percentage share of aggregate local revenues: IRA and other shares, local sources, and borrowing/loans. Source: Basic data from BLGF.

(2005) observed that the dependency ratios of LGUs are as follows: 75% of provinces are 90% dependent; 75% of municipalities are 88% dependent; and 50% of cities are 45% dependent.<sup>5</sup>

### **18.2.5 Local Government Bureaucracy and Personnel**

The composition of LGU personnel to the entire government bureaucracy has been changing over the past three decades. With the devolution of services under the LGC, about 70,283 personnel were transferred from the national government agencies (NGAs) to local governments. The Department of Health (45,896), the Department of Agriculture (17,673), and the Department of Social Welfare and Development (4,144) were heavily affected by devolution (Manasan 2004).

Table 18.3 and Figure 18.4 indicate the size of LGU personnel vis-à-vis that of the NGAs and government-owned and controlled corporations (GOCCs) over the past four decades. Between 1984 and 1994, the percentage share of LGU personnel from the total number of civil servants has increased by 7% from 19% to 26%. There has been an increase of about 126,000 local government personnel since the 1983 LGC, which is slightly lower to that of the NGAs at 130,000 civil servants. Box 18.1 defines some the terms used.

The 2008 figures indicate that 29% of total civil service personnel come from the LGUs; however, the increase can largely be attributed to the ongoing rationalization program under Executive Order (EO) 366.<sup>6</sup> Subsequently, EO 444 was also issued directing the Department of the Interior and Local Government to conduct a strategic review on the continuing decentralization and devolution of the services and functions of the national government to LGUs in support of the rationalization program of functions and agencies of the executive branch.

Nonetheless, there has been a substantial decrease of NGA personnel between 2004 and 2008 at the NGAs, thereby increasing the percentage composition of LGUs by 4%.

The LGC provides that LCEs appoint local government staff and personnel with the exception of the local government treasurer, who is appointed by the secretary (minister) of the Department of Finance (DOF) (Ilago 2007). Career and non-career civil servants comprise the local government bureaucracy. Of the 381,502 local civil servants in 2008, 71% or 272,610 personnel are career officials and 29% or 108,892 are non-career officials.

The career officers mostly belong to the first level at 62%, followed by the second level at 37%, and the third level and non-executive with less than half of 1%, respectively. On the other hand, non-career positions are largely filled by casual employees<sup>7</sup> at 63%, then by elective officials at 19%, co-terminus staff at 10% and 8% contractual, and one-half percent non-career executive positions. Table 18.4 shows the numbers and corresponding percentages of career and non-career positions. Figure 18.5 shows the distribution of non-career LG personnel by type of appointment.

<sup>5</sup> It should be noted however that if the data on each level of government are grouped in percentile; we can observe a totally different picture. The sub-section on LG finance draws from Tiu Sonco (2009).

<sup>6</sup> It instructs the Department of Budget and Management (DBM) and the Civil Service Commission (CSC) to pursue a rationalization program for the executive branch. It also requires rationalization and/or abolition of functions to avoid duplication and overlaps in government agencies to ensure government efficiency. Special benefits and separation packages have been put forward for employees who would be affected.

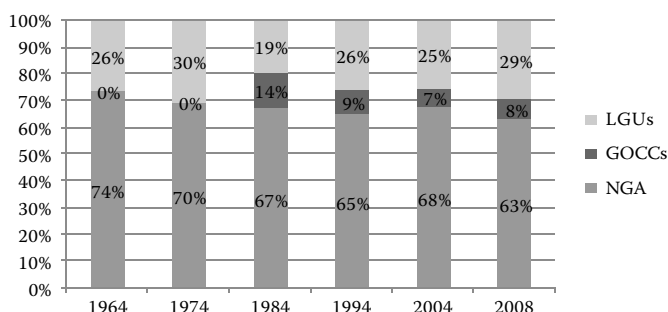
<sup>7</sup> For non-career civil servants, a casual employee may refer to a person whose appointment is based on an emergency or seasonal basis and whose salary is drawn from lump-sum appropriation; while a contractual appointment is issued to hire a person on a project basis or depending on the project being undertaken (Tagum City 2005).

**Table 18.3 Philippine Government Personnel, 1964–2008**

Level	Year											
	1964		1974		1984		1994		2004		2008	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
NGAs	201,401	74	194,735	70	667,114	67	796,795	65	1,001,495	68	832,676	63
GOCCs	0	0	0	0	134,453	14	112,858	9	103,977	7	99,360	8
LGUs	71,444	26	85,432	30	189,878	19	316,023	26	370,227	25	381,502	29
Total	272,845	100	280,167	100	991,445	100	1,225,676	100	1,475,699	100	1,313,538	100

Source: Basic data from CSC; updated by Authors.





**Figure 18.4** Distribution of government personnel, 1964–2008. Source: Basic data from the Civil Service Commission.

The local government bureaucracy needs further integration with the Philippine civil service system and human resource development. Although the LGC provides for its professionalization, this has been one policy area that warrants attention if the country is to elevate decentralization to the next level, including a clearer career path, growth, and development. Needless to say, a professionalized and improved quality of local bureaucracy can make a difference in planning, policymaking, and implementation on the ground. Continuity of good plans and programs could be pursued given the political dynamics and short-term limit of the local political leadership.

### BOX 18.1 DEFINITION OF TERMS

**Career service:** the entrance of employees is based on merit and fitness, determined by competitive examinations or on highly technical qualifications. Employees under this category enjoy opportunities for advancement to higher career positions and security of tenure.

**Non-career service:** the entrance of employees is based on factors other than the usual test of merit and fitness utilized for the career service. Their tenure is limited to a period specified by law or is coterminous with that of the appointing authority or is subject to his pleasure, or is limited to the duration of a particular project for which purpose employment was made.

**First level:** clerical, trades, crafts, and custodial service positions.

**Second level:** professional, technical, and scientific positions.

**Third level:** positions in the Career Executive Service (CES).

**Non-executive career:** career positions excluded from the CES with salary Grade 25 above (e.g., scientist, professional, foreign services officers, members of the judiciary and prosecution service); third level positions in the LGUs.

**Non-career executive:** secretaries/officials of cabinet rank who hold their positions at the pleasure of the president; supervisory and executive positions with fixed terms of office (e.g., chairman and member of Commission and board).

**Contract of services:** engagement of the services of a person, private firm, non-governmental agency, or international organization to undertake a specific work or job requiring special or technical skills not available in the agency to be accomplished within a specified period not exceeding 1 year. This includes consultancy services.

**Job orders:** hiring of workers for a piece of work or intermittent job of short duration not exceeding six months and pay is on a daily or hourly basis.

**Sources:** The Civil Service Law and Rules (Book V of EO 292 and Amended Omnibus Rules); CSC MC No. 17, s. 2002—Policy Guidelines for Contract of Services; 2004 Inventory of Government Personnel.

## 18.3 Review of the Local Government Code of 1991 and its Implementation

### 18.3.1 Gains and Successes of Decentralization

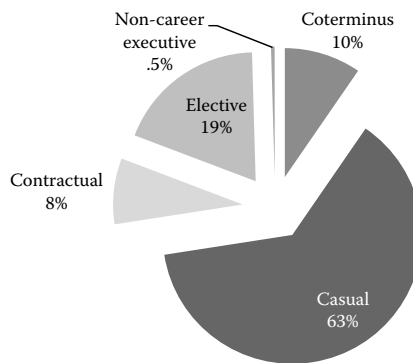
The many innovations and excellence, gems and jewels and success stories of local governance are testimonies that decentralization works and has progressed in the Philippines (Manasan and Villanueva 2006; ADB 2005; Brillantes 2003). Included among the highly credible awarding bodies are the Galing Pook Foundation, Local Government Leadership Awards (LGLA), Gawad Pamana, Clean and Green, *Lingkod Bayan*, Magsaysay Awards, and Konrad Adenauer Medal of Excellence.<sup>8</sup>

**Table 18.4 Position Level and Type of Appointment of Service Personnel at the LGU level, 2008**

Career			Non-career		
Position level	No.	%	Status of appointment	No.	%
First level	169,021	62.0	Coterminus	10,422	9.6
Second level	101,863	37.4	Casual	68,554	63.0
Third level	931	0.3	Contractual	8,997	8.3
Non-executive career	795	0.3	Elective	20,425	18.8
			Non-career executive	494	0.5
Totals	272,610	100		108,892	100

Source: Basic data from CSC.

<sup>8</sup> See Galing Pook Foundation, [www.galingpook.org](http://www.galingpook.org), for the documentation of best practices in local governance.



**Figure 18.5** Distribution of non-career LGU personnel by type of appointment, 2008. Source: Basic data from CSC.

Brillantes, Llanto, Alm and Sosmena (2009: 5) conducted an in-depth study and comprehensive review of decentralization commissioned by the DILG with support from ADB. They maintained that, despite the criticisms against and set-backs of decentralization, “it is not an exaggeration to say that the LGC has unleashed the potentials in the countryside encouraging frontline LGUs to take the lead in local development processes in partnership with other key stakeholders including the NGAs, local businesses and civil society and NGOs.”

The key success factors of decentralization in the Philippines are an enabling policy framework, strong leadership at the local level, improved access to financial resources, stronger inter-local government partnerships, wider participation with civil society institutions, and the broader role of leagues of local governments (Brillantes, Llanto, Alm and Sosmena 2009: 65).

### **18.3.2 Assessing the Impact of Decentralization**

The LGC has been implemented for more than 17 years and has provided the enabling policy framework for a genuine decentralization program in the Philippines. Academics and observers have noted “mixed” results since its implementation in 1992—its effects on delivery of devolved services, poverty reduction, fiscal balance, economic growth, government size, and governance (Miral 2009; Mangahas 2008; Diokno 2003, 2007; Balisacan and Hill 2007; Manasan 2004, 2007; Brillantes 2003).

Balisacan and Hall (2007) rightfully characterized decentralization in the Philippines as “neither a complete success nor a failure.” Economic models and performance measures are still works in progress, and there are significant constraints on information sources in the Philippines. The results on causality or effects of decentralization on improved governance, service delivery, economic growth, and poverty reduction are neither definitive nor conclusive. In addition, cases of success stories across local governments in the Philippines are being documented; however, the importance of effective local leadership must be pointed out (Tiu Sonco 2009).

An assessment of the progress of decentralization described decentralization under the LGC as such: (i) mixed results, modest gains in devolved services including health, agriculture, and social services; (ii) improved context and initiative for participation in local governance, but token participation in some areas of local; (iii) national sectoral planning has not been fused with local planning; (vi) improving conditions for local finance, but policy design flaws need correction; and (v) policy implementation did not escape the political process, but firm policy support shores up decentralization

(Ilago 2007). See Annex 18.2 for some details of the assessment indicating the positive and negative effects of the LGC over the past 17 years of implementation.

The variations of the rationale, meanings, and dimensions of decentralization—de-concentration, delegation and devolution; political, fiscal, administrative, and market decentralization—as well as the structures and characteristics, size and number of sub-national governments, and the lack of adequate data of each country make it difficult to set a standardized framework to compare decentralization experiences.

In this chapter, decentralization may be reviewed by looking into (1) the overall policy design of decentralization under the LGC vis-à-vis the economic and political rationale of decentralization; and (2) the implementation of the LGC using the administrative, political, and fiscal dimensions of decentralization. Administrative decentralization considers what functions to decentralize from central to sub-national, in which sectors, and in which regions. Political decentralization looks into the devolution of powers to democratically elected local officials and formal/informal processes for citizen participation in development and policy making at the local government level. Fiscal decentralization deals with the revenue responsibilities and expenditure assignments to local government, and the redistribution, stabilization, and allocation function of the central government (Fritzen and Ong 2007; Smoke 2006; Brillantes 2004; Prud'homme 1995).

### 18.3.2.1 Overall Policy Design

The LGC of 1991 may have not fully rationalized the importance of the economic function of decentralization. It may be argued that decentralization was largely based on a political motivation to move control of government functions away from the central government or leadership—especially after the long history of centralism and the 20-year dictatorship under Marcos—and to bring the government closer to the people. It may indeed be true for the Philippines that political considerations for decentralization came first, and fixing of the technicalities should be pursued.

Brillantes, Llanto, Alm and Sosmena (forthcoming 2009) noted that the Philippines “had many of the characteristics of a country that typically pursues decentralization as an economic policy, but it had chosen to remain a highly centralized, a unitary state.”

Although the LGC features the idea of “bringing development of the countryside,” it needs to further provide the appropriate fiscal arrangements that would promote distribution equity, allocative efficiency, and pursue the development function of the central government at the local level. The capacity of local governments to raise revenues at optimal levels may be considered as *implementation lag*, which can be addressed by continuing capacity building activities. Attaining local fiscal independence (also referred to as fiscal federalism) is the ultimate policy objective of fiscal decentralization; however, it is only achievable to a certain degree, particularly in richer localities—with higher per capita income, more people, better infrastructure, higher investments, and available employment opportunities, etc.—with better tax bases and relatively developed or vibrant local market economies.

Within this context, Panadero<sup>9</sup> (2006) developed and introduced a new framework for decentralization to further rationalize LGC by matching the prescribed devolved functions with the devolution objectives and broad development outcomes—economic, governance, autonomy, and capacities.

The following section discusses some of the critical assessment pertaining to the implementation of decentralization in view of the need for a more desirable policy design of decentralization in the Philippines.

<sup>9</sup> Austere Panadero is currently undersecretary (vice-minister) of the Department of the Interior and Local Government (DILG).

### 18.3.2.2 *Administrative and Political Issues*

#### 18.3.2.2.1 Central and Sub-National Role in Devolution

The implementation of the LGC saw problems in the capacities of not only the sub-national governments, but also the central government agencies affected by devolution vis-à-vis their vertical functional relationships. Moreover, major devolved functions and personnel experience suffered severe inadequacy of financing their “true cost.” The passage of legislations and the assignment of functions and responsibilities to sub-national governments also continues without the benefit of assigning fiscal resources or the so-called “unfunded mandates.” Certain regulatory powers (e.g., environment laws) that have been transferred to sub-national government remain contested between central government and LGUs. On the other hand, important functions, which are not mandatory, remain neglected by local governments, such as the delivery of agricultural extension services.

#### 18.3.2.2.2 Political Capture of some Local Officials by the Central Leadership

Local officials do not necessarily enjoy political autonomy from national government leadership. A huge chunk of the national budget is channeled through the legislators (senators and congressmen) as “pork barrel”—the countrywide development fund (DF) or now the priority development assistance fund (PDAF). This diminishes the development function of decentralization, which is further used to maintain political patronage and the loyalty of LCEs to central leadership.

#### 18.3.2.2.3 High Budget for Personnel at the Local Level

A significant portion of local government budgets is allocated for personnel due to temporary/casual employees as political accommodations by local officials—LCEs and members of the local councils. The LGC has not been able to professionalize the local bureaucracy, which has been a neglected area of concern since its implementation. The utilization of budgets for development functions remains low.

#### 18.3.2.2.4 Political Capture by the Elite

The danger of political capture by the powerful elite in some areas—individuals and strong political families—also holds true in the Philippines. There has been a long history of patronage politics, and the proliferation of political dynasties persists from local to central governments. Money politics are rampant at the local level; local politics and elections have been plagued by “vote buying” for individual candidates and their political parties—local to central. Local elections seem to have failed the people to make erring government officials be accountable by ousting them from their elective positions. Sometimes they are rewarded with longer terms in their political posts; some even go up the ladder and win national elective positions.

#### 18.3.2.2.5 Policy Change for a Better Decentralization Policy is a Major Challenge

The central leadership and members of the legislature benefit from the present institutional policy of decentralization, in terms of pursuing their political interests—holding on to power, and in most cases, pursuit of personal gains.

### 18.3.2.3 Fiscal Decentralization Issues

#### 18.3.2.3.1 Macroeconomic Stability

Former DBM Secretary Benjamin Diokno questioned the rationale and viability of the 40% mandated share of IRA from the internal revenues. He noted the important role of the national government in managing macroeconomic stability given the fiscal problems confronting the country. The 40% share had no functional or computational basis; rather, it was a result of political grandstanding in Congress, where both the former senate president and the Speaker of the House during the LGC deliberations, had the intention of running for the presidency in 1992 (Diokno 2003). Thus, there would have been political incentives for them should they receive the support of local governments.

Some economists believe that the arguments to increase the share of local government in the national budget and broaden the taxable items (including sharing of centrally collected taxes) may face the risk of leading the country into serious macroeconomic stability problems; perhaps there is a lack of recognition that the country suffers from serious fiscal restraints, e.g., budget deficit and the increasing debt service payments.

The central issue is the equitable redistribution of resources from richer to poorer local governments, which can only be done by central government through a good fiscal transfers system. Obviously, poor local governments have low tax bases, which by increasing their revenue powers will not necessarily make significant gains to raise their revenue compared to geographically rich ones.

#### 18.3.2.3.2 Policy Design Issues of the Internal Revenue Allotment

Manasan's (2007) policy notes on the IRA design issues and challenges<sup>10</sup> categorized the criticisms on IRA into four major issues: (1) vertical imbalances, (2) lack of equalizing feature in the IRA, (3) disincentive effects on local revenue generation, and (4) poor predictability of IRA. As a result, the current IRA design leads to the inadequacy of funds for LGU expenditure functions, i.e., the cost of devolved functions,<sup>11</sup> creation of mandatory positions, unfunded mandates, and 20% DF. It widens the geographic disparities in human development outcomes and level of economic development. It tends to provide a substitutive effect for tax revenues of provinces and cities. And finally, the non-appropriation in full, i.e., 40%, or the untimely release of IRA (between 1998 and 2004), has undermined the effective planning of LGUs.

Observers of the implementation of the LGC have articulated apprehensions about the insufficiency of IRA for the devolved functions and the payment of salaries for devolved personnel; uncertainty of receiving their estimated IRA shares; problem of equality of sharing among levels of LGUs; and the responsiveness of the criteria (i.e., population, land area, and equal sharing) to the funding needs of poorer LGUs (Ilago 1997). The "IRA formula has bias for cities," which paradoxically have higher revenue earning capacities to finance the delivery of services (Gatmaytan 2001). Evidence has also shown that the IRA formula has a counter-equalizing effect; the per

<sup>10</sup> This paper perhaps summarizes Manasan's analyses on the IRA issue since she wrote, "Intergovernmental Fiscal Relations, Fiscal Federalism, and Economic Development in the Philippines" in 1992. PIDS policy notes are observations and analyses by PIDS researchers on certain policy issues to provide useful inputs for decision making.

<sup>11</sup> In an earlier study, Manasan argues that computation for the cost of devolved functions covered only the personnel and facilities transferred to LGUs, and the maintenance and operating expenses (MOOE); not the "true cost" of devolved functions.

capita income of LGUs is positively correlated with their IRA share from national government (Pardo 2005; Guevara 2004; Manasan 1992).

#### 18.3.2.3.3 Dependency of Local Government Units on Internal Revenue Allotment

Some argue that most LGUs are heavily dependent, while some are completely dependent on IRA. The IRA structure does not encourage LGUs to mobilize revenue, and serves as a substitute for local revenues. Hence, they fail to update their real property values and LGU revenue codes (Pardo 2006; Gatmaytan 2001). As a result, there is high IRA dependency among LGUs; they are unable to maximize their revenue potentials.

#### 18.3.2.3.4 Disruptive Effect of the Creation of New Local Government Units

The changing number of LGUs continues to disrupt and cause irregular resource allocation of IRA among LGUs. There is a huge incentive for municipalities to attain city status, thereby increasing “equity share” to their IRA. This has been disruptive to the entire IRA package for LGUs. LGU classification is also another mismatching factor in the IRA (Brillantes and Tiu Sonco).

#### 18.3.2.3.5 Disparate Planning, Unhealthy Competition, and Corruption

The extant number of sub-national governments in the Philippines does not promote economies of scale in both service delivery functions and local economic development. There is a tendency for local governments to compete on service areas, production, and utilization of meager resources, instead of maximizing mutual benefits. The revenue share of local governments from mining and exploitation of national wealth continues to be a gray area. Some believe that the authorization for extraction of resources by multinational companies has become a source of corruption by central and local government officials.

#### 18.3.2.3.6 Danger of Borrowing by Local Government Units with Inadequate Safety Nets

This opens up a threat to unsustainable debt trap at the local government level, and eventually might lead to distorting the macroeconomic stability and financial burden at the national level. Indeed, there are potential dangers of borrowing by LGUs, using the IRA as collateral, for unsound development projects. For instance, a province in the Visayas borrowed a few hundred million pesos for supposedly agricultural development projects. The project components include the procurement and distribution of fertilizers to farmers; and the purchase of a number of heavy equipment, which are intended for lease to contractors. There is a danger that the provincial government might not be able to pay the debt from expected and/projected revenues since the investments do not provide clear revenue generation potentials. This might further aggravate the LGU’s inability to provide social services once the debt becomes mature for repayment. The IRA it will receive from national government will be captured by the bank or the lending institution. There were also allegations that the distribution of fertilizers was based on political favors received by key local officials from the LCEs of the municipalities and individual farmers in the recent local and national elections (2005 and 2007) (Tiu Sonco 2008).

## 18.4 Local Governance Reforms, Capacity Building, and Research Agenda

This chapter argues that one thing is certain: decentralization is “here to stay.” It is therefore imperative to “build upon the hard earned gains” and “learn from the lessons” of decentralization in the Philippines.<sup>12</sup> It is “on course in terms of consolidation, but perhaps needs deepening” (Ilago 2007). There is a need to recognize the imperfect processes of change and align with the perspective of pursuing “incremental” policy change.

The implementation of decentralization saw issues and problems as “implementation lags,” which can be addressed by capacity building programs. But others are policy design issues that may require policy change, and institutional and structural readjustments. They have to be recognized as *imperatives* to improve the existing decentralization program.

The Department (Ministry) of the Interior and Local Government (DILG) is mandated to monitor the implementation of decentralization in the Philippines; thus, it continues to craft and design a sustainable strategy that will deepen devolution in the Philippines and develop and strengthen the capacities of local governments. In response to the need for harmonizing and managing for development results, the government of the Philippines (GOP), together with the international development organizations, academe, and civil society groups, has organized the Philippine Development Forum (PDF) to shepherd governance reforms, programming and utilization of official development assistance (ODA).

DILG (as lead convenor) and the World Bank (as co-convenor) organized a working group on Decentralization and Local Government, which identified four themes and corresponding goals to work on. These are: (i) capacity building: formulate the framework and mechanisms for improving coordination and harmonization of capacity building interventions; (ii) performance benchmarking: institutionalize performance benchmarking systems; (iii) local government financing: improve the environment for local government financing; and (iv) policy reforms: clarify the roles of LGUs and NGAs in the delivery of basic social services, e.g., health, social welfare, agriculture and environment, and natural resources (Panadero 2006).

Panadero (2006: 44) noted that such forum has led to “better coordination of initiatives/reform areas on decentralization and local government; more aligned and harmonized donor assistance to LGUs; improved information-sharing on LGU matters.” A Coordinating Committee on Decentralization (CCD) was also set up to pursue policy concerns of decentralization. One of its tasks is to look into policy issues that require deepening through policy issuances by the executive branch and its instrumentalities, e.g., executive order, department order/circular, joint memorandum, etc., without the need for legislative action by Congress. Likewise, a Consortium on Good Local Governance (CGLG) with representatives from the leagues, the Senate, the House, and members of the Oversight Committee has been organized as a venue and perhaps a lobby group for local governance reforms in the country.

Brillantes, Llanto, Alm and Sosmena (forthcoming 2009) conducted many consultations in major regions of the country and reviewed policy proposals elevated to Congress. The study identified 10 reform areas to strengthen and deepen decentralization in the Philippines. These were: (1) financial resource and reforming the IRA, (2) inter-local cooperation and inter-LGU alliances, (3) clarifying government powers and functions, (4) local personnel administration, (5) national-local relations, (6) local government performance measurement, (7) capacity building, (8) people

<sup>12</sup> Brillantes (2003) outlines 10 important lessons and topical points of devolution in the Philippines. In a more recent work, he added that “leadership” matters in good local governance.



participation, (9) political concerns, and (10) federalism. The following section discusses the key issues and challenges pertaining to the implementation of the LGC drawn from the study.

#### ***18.4.1 Financial Resources and Reforming the Internal Revenue Allotment***

These two issues continue to stand-out, be articulated and re-articulated by local government officials and stakeholders. They felt that the resources transferred to LGUs are inadequate to cover the cost of devolution. They also raised the issue on the continuing transfer of responsibilities by NGAs without the appropriate financial resources.

#### ***18.4.2 Inter-Local Cooperation and Inter-Local Government Unit Alliances***

This is one area where better results and outcomes can be expected from LGUs not only in adjacent areas, but also between well-performing LGUs and those LGUs with high institutional resources and geographic constraints, e.g., financial resources, service delivery capacity, and area management, etc.

The issues here include (i) lack of appreciation among LGUs of the potentials of inter-LGU cooperation in addressing cross-border concerns, e.g., environment, health, ODA access, social services, etc.; (ii) some conflicting policies issuance of NGAs including those with oversight functions; (iii) need for a binding document to build alliances; restriction on the use of the 20% DF for fees and contributions, including alliances; (iv) legal identity issue of LGUs once they form and join alliances; and (v) need for supplemental details on alliances in the LGC's Implementing Rules and Regulation.

#### ***18.4.3 Government Functions and Powers***

The study was once again reminded by the many stakeholders of the need to clarify further certain powers and functions devolved to LGUs.

#### ***18.4.4 Local Personnel Administration/Human Resource Development, Organization, and Staffing***

The professionalization of the local bureaucracy has been considered as one important issue that has remained on the back burner. More specifically, the study highlights the following issues that emerged: (i) low compensation of local officials, (ii) low compensation/pay of barangays officials and staff, (iii) certain sectors are not given attention/priority at the local level, (iv) need to clarify specific positions at the local level, and (v) unclear career path of local appointive officials.

#### ***18.4.5 National-Local Relations***

The study highlighted planning for development and the conditions concerning the creation and/or conversion of LGUs as two areas that require more attention in this area. More specifically, these are related to: (i) lack of synchronization/harmony between national and local government development planning and action; (ii) NGAs generally bypass local development plans formulated by LGUs; and (iii) unclear conditions concerning the creation and conversion of LGUs.

### **18.4.6 Local Government Performance Measurement**

It is instructive to reiterate that the measurement of local government performance would significantly improve the Philippine decentralization policy. It would provide inputs for the adoption of better policy frameworks for regulation, planning and development, intergovernmental fiscal transfers and the IRA, access to ODA, etc. The study found that there continues to be: (i) a lack of a well-crafted and functional performance measurement system of LGUs, and (ii) the proliferation of performance indicators and lack of awareness of such indicators by LGUs.

### **18.4.7 Capacity Building**

The study re-emphasized that capacity building is a continuing process. It would bring about significant results for good local governance. The main issues here are: (i) lack of awareness and appreciation of a comprehensive capacity building program for local governments, and (ii) election of local officials who are not ready or prepared to assume the position due to lack of technical skills.

### **18.4.8 People Participation**

Inasmuch as the LGC has created an enabling framework for genuine people participation in local governance, there are key issues that require attention to improve the policy framework. These are: (i) unclear relations between non-governmental organizations (NGOs) to operationalize their participation, (ii) inability of many LGUs to fill-up the 25% NGOs mandatory representation requirement, and (iii) LCEs do not convene the local development council.

### **18.4.9 Political Concerns**

The study validated that: (i) the current 3-year term of local officials does not allow authentic development work, (ii) Sangguniang Katabataan seems to be highly politicized, and (iii) unclear rules and procedures of Congress in the conduct of referendum.

### **18.4.10 Federalism**

Finally, the study echoed the high hopes and opportunities that federalism may bring as a possible politico-administrative set-up to push decentralization in the Philippines further. However, one constraint here is “the lack of understanding and information about federalism” (Brillantes, Llanto, Alm and Sosmena 2009: 52–59).

The study has generated substantial information and validated proposals for amending the LGC of 1991 and the issuance of policy instruments by the executive branch and oversight agencies; many of which have also been articulated by the various leagues of local governments, the House of Representatives and the Senate through a number of pending billings in Congress. These are areas where the CCD, PDF, and CGLG shall take cognizance of and prioritize the proposals to amend the LGC.

Moreover, the study also identified inadequate local finance, weak local-national capacity, and unclear and inadequate corporate and taxing powers of local governments as among the hindering factors of decentralization and local governance. Hence, there is need to strengthen local finance and improve local-national capacities.

There are three major areas that need to be strengthened in order to make fiscal decentralization work better. First, the fiscal structure of the national government should pursue fiscal discipline or *spending within our means*, optimal and appropriate revenue assignments and expenditure responsibilities between central and sub-national government levels, and a good intergovernmental fiscal transfers system. Second, political institutions and the larger political system of the country where decentralization operates should be considered in establishing systems of accountability. The behavior of national and sub-national officials affects the utilization of fiscal resources for developmental functions—which jeopardizes the desired development goals and policy objectives. Third, fiscal decentralization policy should be able to promote market-preserving local institutions and the development of an optimal economic system both at the national and sub-national levels. There has to be mutual reinforcements between the markets and the fiscal decentralization policy, thereby enhancing the performance of the private and public sectors (Tiu Sonco 2008).

It is within this context that the following may be considered for further research: (1) establish measures on the impact of decentralization vis-à-vis various performance indicators including economic development, fiscal effects, distribution and poverty reduction, service delivery and revenue generation, and governance; (2) given the existing revenue assignments, LGUs should be able to approximate or estimate their revenue earning capacity; (3) mapping and policy options on the appropriate intergovernmental fiscal transfers in the Philippines; and (4) attaining a market preserving fiscal decentralization policy and operationalizing inclusive growth at the local government level.

## 18.5 Conclusions and the Way Forward

Indeed, decentralization is like a double-edged sword: when correctly implemented and given the proper policy and capacity mix at the national and sub-national levels, it has the potential to be a very powerful tool to effect good governance and a potent poverty reduction strategy; however, if not used properly, it can exacerbate inequalities across local governments and regions, and even lead to fragmentation of the state (Brillantes 2004).<sup>13</sup>

On the one hand, there are perceived policy design flaws of the LGC. On the other hand, its implementation has shown progress and desirable results. Policy change and continuing capacity building are necessary to strengthen and deepen decentralization.

Partisan politics has affected the implementation process of the decentralization policy in the Philippines. For instance, the strong familial ties and strong political clans of the Filipinos threaten the degree of democratization, electoral participation, and political accountability at the local government level.

Strengthening the local bureaucracy would go beyond the competences of LCEs. It is one area that has been left on the back burner; but, if appropriately addressed, it would create significant and long-term gains in making local governments become responsive and accountable institutions. Professionalizing the local bureaucracy requires establishing the competency needs of civil servants at the local level, their career path and development in the local bureaucracy.

<sup>13</sup> Brillantes', *Innovations and Excellence in Local Governance* and other papers articulate the gains of the Code. The Center for Local and Regional Governance (CLRG) and Center for Policy and Executive Development (CPED) of UP-NCPAG likewise continue to build the capacities of local governments to attain better governance, development results, and local fiscal sustainability in the Philippines, among other things; it has likewise been documenting some best and leading practices on local governance for replication by others—inside and outside the Philippines.

In developing countries, central governments still hold a greater capacity to raise revenue and equitably redistribute the countries fiscal resource. In the Philippines, efforts to improve the capacities of local government to attain fiscal sustainability—updating of real property values and revenue codes, computerization, and other innovations—should be coupled with a new policy design of the intergovernmental fiscal transfers system that promotes distribution equity and offers incentives for revenue collection efficiency, and avoid dependency of LGUs on the IRA.

The many issues and challenges noted above certainly require attention by decentralization advocates and stakeholders in the Philippines. A comprehensive capacity building program would respond to capacity problems of the central and local governments in decentralization. Key institutions should be able to prioritize policy decisions and the issuance of the appropriate policy instruments. Should policy change be warranted, i.e., amendment to the LGC of 1991, oversight agencies may have to step up their involvement and pursue a common policy agenda. A policy design team from within the executive department with support from serious policy studies and the academe would be able to pursue and shepherd the political process of policy change. Perhaps it can reconcile and balance the competing interests of the various stakeholders, including the leagues of local governments, interest groups from the civil society, central and local government officials, and the legislators.

The process of decentralization in the Philippines has been a long and arduous task. There have been many victories and there have been many challenges as well. One thing is sure, decentralization is an irreversible process and it is here to stay.

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## Annexes

### Annex 18.1 Devolved Services by LGU Level

	<i>Province</i>	<i>City</i>	<i>Municipality</i>	<i>Barangay</i>
Agriculture	<ul style="list-style-type: none"> <li>• Agricultural extension and on-site research (prevention of animal pests and diseases, artificial insemination centers, assistance to organizational assistance to cooperatives)</li> </ul>	<ul style="list-style-type: none"> <li>• All services and facilities of the province and municipality plus, support for education, police, fire services and facilities</li> </ul>	<ul style="list-style-type: none"> <li>• On-site research and agricultural extension services (livestock dispersal and seedling materials for aquaculture, cooperative development, inter-barangay irrigation system)</li> </ul>	<ul style="list-style-type: none"> <li>• Agricultural support services (distribution system and farm operation)</li> </ul>
Environment	<ul style="list-style-type: none"> <li>• Law enforcement: community-based forestry, pollution control, small-scale mining</li> </ul>		<ul style="list-style-type: none"> <li>• Implementation of community-based forestry projects</li> <li>• Management of communal forests (less than 50 km<sup>2</sup>)</li> <li>• Solid waste disposal system</li> </ul>	<ul style="list-style-type: none"> <li>• Sanitation services and solid waste collection</li> </ul>
Health	<ul style="list-style-type: none"> <li>• Management of hospitals and tertiary health services</li> </ul>		<ul style="list-style-type: none"> <li>• Field health services and hospital services (primary health care, maternal and child care, disease control, purchase of medicines)</li> </ul>	<ul style="list-style-type: none"> <li>• Maintenance of barangay health centers and day care centers</li> </ul>
Social Welfare	<ul style="list-style-type: none"> <li>• Programs for rebel returnees and evacuees</li> <li>• Population development services</li> <li>• Low-cost housing and mass dwellings</li> <li>• Investment support services (access to credit financing)</li> </ul>		<ul style="list-style-type: none"> <li>• Programs and projects for youth, women, elderly, disabled</li> <li>• Rehabilitation programs for vagrants, beggars, drug abuse victims, etc.</li> </ul>	

(continued)

**Annex 18.1 (continued) Devolved Services by LGU Level**

	<i>Province</i>	<i>City</i>	<i>Municipality</i>	<i>Barangay</i>
Education			<ul style="list-style-type: none"> <li>• Building of schools (public elementary and secondary facilities)</li> <li>• Maintenance of public library</li> </ul>	<ul style="list-style-type: none"> <li>• Putting up information and reading center</li> </ul>
Public Works	<ul style="list-style-type: none"> <li>• Locally funded projects (provincial roads, inter-municipal waterworks, reclamation projects, irrigation systems, drainage and sewerage, etc.)</li> </ul>		<ul style="list-style-type: none"> <li>• Locally funded public works and infrastructure projects (local roads, clinics, communal irrigation, small water pounds and water supply systems, fish ports, drainage and sewerage, traffic signals, etc.)</li> </ul>	<ul style="list-style-type: none"> <li>• Facilities like multi-purpose halls, plaza, and sports center</li> <li>• Maintenance of barangay roads, bridges, and water supply systems</li> <li>• Satellite or public market, if viable</li> </ul>
Tourism Promotion	<ul style="list-style-type: none"> <li>• Promotion programs</li> </ul>		<ul style="list-style-type: none"> <li>• Provision of facilities and equipment acquisition</li> </ul>	
Administration of Justice				<ul style="list-style-type: none"> <li>• Maintenance of <i>Katarungang Pambarangay</i></li> </ul>

Source: Adapted from Ilago, S., *Decentralization in East and Southeast Asia*, Institute for Comparative Studies in Local Governance, Tokyo, 2007.

### Annex 18.2 An Assessment of the Progress of Decentralization

<i>Area</i>	<i>Description</i>	<i>Positive</i>	<i>Negative</i>
Devolved services	Mixed results, modest gains in devolved services	<p>On health:</p> <ul style="list-style-type: none"> <li>• Improved efficiency in the procurement of medicines and supplies</li> <li>• A more flexible orientation on basic health programs</li> <li>• Innovative mechanisms for revenue generation</li> <li>• Integrated and area focused planning</li> </ul>	<ul style="list-style-type: none"> <li>• Mismatch between revenue and health expenditure requirements</li> <li>• Difficulty to maintain quality of service in poorer areas</li> </ul>
		<p>On agriculture:</p> <ul style="list-style-type: none"> <li>• Increased cooperation between LGUs, the private sector and non-governmental organizations in extension, i.e., farm systems</li> <li>• Adopted partnership models involving municipalities, NGAs, academic institutions, and private organization, i.e., for improved coordination, information sharing, consolidation of produce, etc.</li> </ul>	<ul style="list-style-type: none"> <li>• Weak linkage between the Department of Agriculture and the local governments</li> <li>• Unclear personnel requirements</li> <li>• Lack of financing prioritization by LGUs</li> </ul>
		<p>On social welfare services:</p> <ul style="list-style-type: none"> <li>• Most successful among devolved services due to careful devolution of personnel, funding, opportunities for access to external funds, preparedness of personnel, and demands for social services at the local level</li> <li>• More efficient and effective delivery by reducing bureaucratic procedures</li> </ul>	<ul style="list-style-type: none"> <li>• Limited funding at the municipal level</li> <li>• Low priority of social services in some local governments</li> <li>• Lack of technical support in the delivery of social services from other government agencies</li> </ul>

(continued)



## Annex 18.2 (continued) An Assessment of the Progress of Decentralization

<i>Area</i>	<i>Description</i>	<i>Positive</i>	<i>Negative</i>
People participation	Improved context and initiative for participation in local governance, but token participation in some areas of local governance	<ul style="list-style-type: none"> <li>Increased participation in the formal processes of local government through the special bodies in local development council: 55% of provinces; 67% of municipalities; and 63% of cities</li> <li>Greater and “embedding” citizen participation in better led LGUs, e.g., Naga City</li> </ul>	<ul style="list-style-type: none"> <li>Inability to meet the 25% requirement for NGO participation by the LGC</li> <li>Marginal inputs of local civil society organizations</li> </ul>
Development planning	Sectoral planning has not been fused with local planning	<ul style="list-style-type: none"> <li>A comprehensive land use plan and a comprehensive development as requirements for effective resource management and programming</li> </ul>	<ul style="list-style-type: none"> <li>Disconnect of sectoral plans between national and LGUs</li> <li>Need assessment for effectiveness of local planning</li> </ul>
Local finance	Improving conditions for local finance, but policy design flaws need correction	<ul style="list-style-type: none"> <li>Automatic release of IRA transfers</li> <li>Increased innovations in resource mobilization and generation</li> </ul>	<ul style="list-style-type: none"> <li>Broad-based taxes remain collected by the central government</li> <li>Policy restrictions in setting local tax rates</li> <li>Inability to increase tax rates due to political risks</li> <li>Mismatch between taxing and expenditure responsibilities, e.g., provinces have low taxing powers and IRA transfers relative to their expenditure responsibilities</li> </ul>
Political process	Policy implementation did not escape the political process, but firm policy support shores up decentralization	<ul style="list-style-type: none"> <li>Received firm support from the president, especially during the time of Presidents Aquino (preventing authoritarianism) and Fidel Ramos (vetoed attempts to recentralize health services)</li> </ul>	<ul style="list-style-type: none"> <li>Tendency of the president to misuse authority over local governments and the purse to ensure “political survival” and maintain legitimacy in offices</li> </ul>

Source: Summary based on Ilago (2007) with additional inputs.

## Chapter 19

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# Public Ethics and Corruption in the Philippines

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Eduardo T. Gonzalez

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### 19.1 Introduction

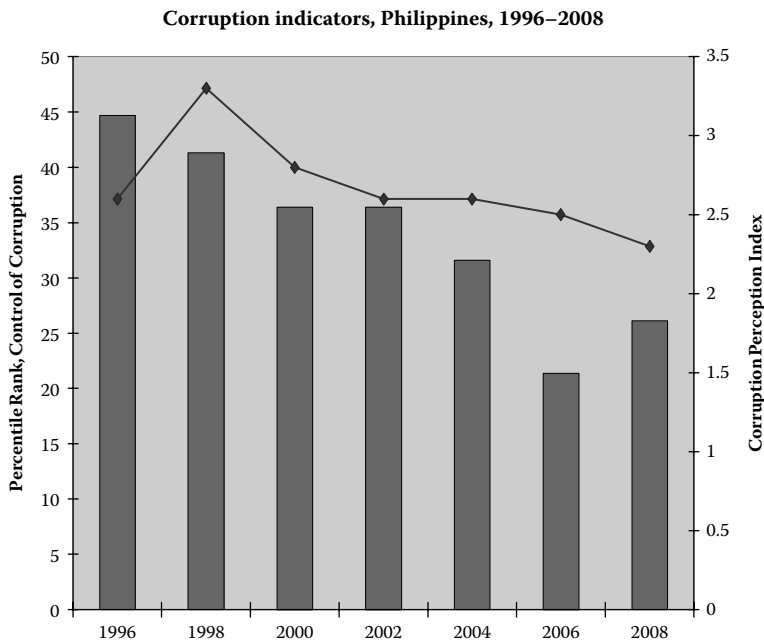
Corruption is a failure of public ethics, and generally holds back growth and progress. For developing countries, learning the right development lessons requires ensuring that gains from economic growth do not shake themselves free of high ethical standards. Yet at the same time, their future

options in fighting corruption are constrained by particular country contexts. The Philippines typifies this quandary, although there are ways of getting out of it.

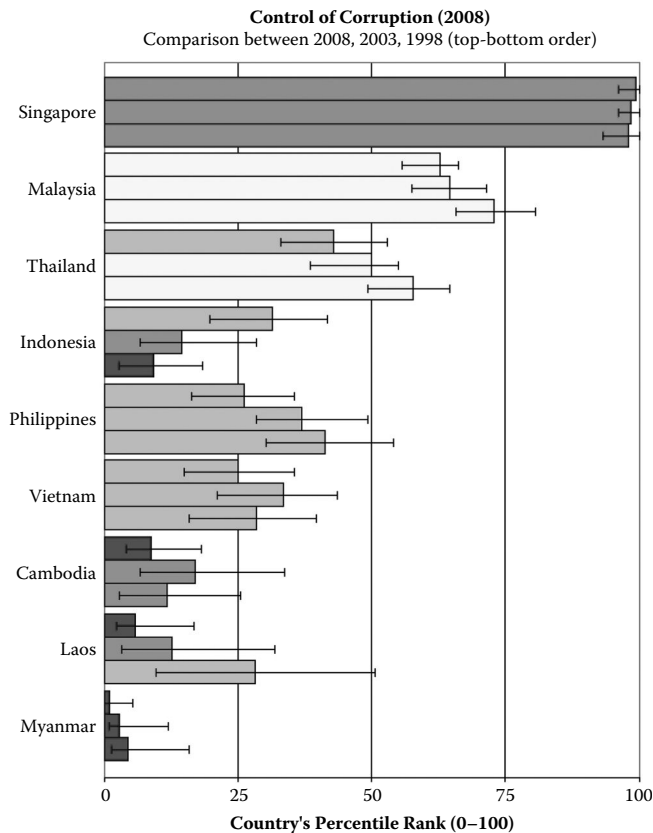
Conditions in the Philippines point to a systemic failure, where institutional safeguards work in fits and turns and reforms may not be working. Worse—in the clearest indication that the problem is embedded in the country’s heritage of clientelism—institutions are vulnerable to political capture by predatory interests. An inconsistently functioning legal system, weak accountability structures, and inadequate financial transparency are just some of the flaws that negate the country’s attempts at institutional effectiveness and credibility. As a result, scattered initiatives, including those in fighting corruption, left to run their own course, often run aground.

Indeed, since the late 1990s, the “ethics barometers” of both the World Bank and Transparency International have indicated that the overall quality of Philippine public ethics has slipped (Figure 19.1). The Philippines also comes out in between the scores of its more affluent neighbors (Singapore, Malaysia, and Thailand) and the emerging economies (Vietnam, Cambodia, and Laos). As the Asian Development Bank (ADB) (2007) notes, the Philippines’ loss of momentum is apparent (Figure 19.2). Its scores aptly put the Philippines in a middling status, unable to soar but risks going under unless thoroughgoing institutional and policy reforms are introduced. Thus, the country has little choice but to push ethical reforms much harder than usual to break out of this crippling bind.

Windows of opportunity for meaningful reforms intermittently open up to major breakthroughs, but only up to a point. It is important to acknowledge that the lack of a disciplined and capable bureaucratic culture, deficiencies in legislation and law observance and enforcement, and collusion by public officials with powerful persons—characteristics that typify a “soft state” (Myrdal, 1970)—will work as powerful brakes on anti-corruption initiatives, eroding their efficacy



**Figure 19.1** Corruption control: A declining trend in the Philippines.



**Figure 19.2** A middling status of the Philippines in Southeast Asia. Source: Kaufmann D., A. Kraay, and M. Mastruzzi 2009: *Governance Matters VIII: Governance Indicators for 1996–2008*. Note: The governance indicators presented here aggregate the views on the quality of governance provided by a large number of enterprise, citizen and expert survey respondents in industrial and developing countries. These data are gathered from a number of survey institutes, think tanks, non-governmental organizations, and international organizations. The WGI do not reflect the official views of the world Bank, its Executive Directors, or the countries they represent. The WGI are not used by the World Bank Group to allocate resources.

and sustainability. Anti-corruption policies thus should be crafted around realistic “litmus tests” that recognize the qualifying factors in the Philippine political and social environment.

Although corruption is a complex problem, it is important to isolate the underlying factors influencing the “right” behavior in the public service. This can be done, following Bertok (2000), through a range of approaches—an ethical infrastructure—that can keep back undesirable acts and provide the correct incentives for professional performance. Three building blocks hold the infrastructure up—control, guidance, and management of official conduct in the public management context (Mills, 1998; Bertok, 2000). According to Mills, all components must hang together, as each one would rely on the rest to succeed. But emphasis may vary. If a strong directed change is needed, it might be important to take steps to reinforce professionalism through training. On the other hand, clear evidence of wrongdoing may shift anti-corruption strategies toward oversight and control.

We use this ethics infrastructure to identify inventive policy responses aimed at some of the principal constraints in the fight against corruption in the Philippines. We briefly discuss some recent policy reform experiences to find out if the anti-corruption measures adopted were equal to the task, that is, if government targeted each policy response as closely as possible to where reform was supposed to yield the greatest gain.

## 19.2 Control

Control mechanisms embody the defined limits of public official behavior. They work mainly through the country's legal framework, and secondarily, through forms of administrative accountability such as mandatory reporting requirements, audit inspection, transparency measures, and formalized public scrutiny. As a regulatory dimension, the control component facilitates prosecution of misconduct (Mills, 1998). And yet, as the Organization for Economic Cooperation and Development (OECD, 1997) points out, if there is too much control, nothing will get done; but if there is too little control, the wrong things will get done.

### ***19.2.1 Laws that Break Up the Alignment of Forces to Minimize State Capture***

From time to time, political will can bring about ethical policy changes even in the presence of closely aligned interests. A worthy example is the passage in 2003 of the Philippine anti-money laundering law, which successfully broke intra-elite alignment by opening suspicious bank accounts to scrutiny. Money laundering is, by definition, a high-stakes operation involving the collusion of factions of the elite, the banking sector, and international “brokers,” as well as the acquiescence of legislature (through the lack of sanctions). Stepwise, however, it took 3 years and two Philippine Congresses to diminish the degree of power concentration among colluding factions in government and reverse the Philippines' blacklisting as a money-laundering entity. Another positive step is the Philippines' support for the “establishment of clear rules and tools for identifying and managing conflicts of interest” within the framework of the ADB-OECD Anti-Corruption Action Plan for Asia-Pacific. OECD (2007) cites the Philippines and Vietnam as among those who have already used the Guidelines in the development of new laws.

Under more normal circumstances, the Philippine legislature tends toward entrenching the incumbents' political and economic power rather than balancing and rewarding competing interests in society (with a view to upholding the welfare of those with neither political nor economic power); its policies, laws, and resource priorities are widely seen as directly favoring powerful constituencies (Gonzalez and Mendoza, 2002). An example of a possibly captured legislation is the new “sin” tax law, which increased the tax rates on cigarettes and alcoholic beverage in 2005. The law retained old levies (which were low) on old brands, most of which belong to a single monopoly producer. Standard and Poor suggested that the entire legislative exercise was “not encouraging because of... what its passage demonstrates—that vested interest has a huge influence in the passage of reform measures” (Congress of the Philippines, 2004).

The patron-client structures in the Philippine political system have conditioned the responses of the political actors to policy development, and, thus, set the stage for policy failure. Various interpretations of the Philippine political economy commonly suggest the likelihood of state capture by vested interests anchored on political clans (De Dios and Esfahani, 2001). Rule of law itself

is a concept that sits uneasily within the Philippine patron-client culture. Public agencies serve as conduits for capturing both policies and public resources, in the process blurring the separation between public duties and private interests. This type of corruption, according to Azfar (2008), is comparable to organized crime: the players do act not on their own but in tandem with each other, maintaining the system that allows them to extract rents.

### ***19.2.2 Executive Measures that Optimize Deterrence***

Beaming a spotlight on mischief makers can persuade them not to misbehave if they are sure that they will be caught and punished if they do, according to Florini (1999). Three recent initiatives from the executive branch, with fairly differing outcomes, illustrate the point. The Presidential Anti-Graft Commission (PAGC) was set up in 2001 through executive fiat to screen political appointees (i.e., assistant director up to department secretary) and recommend to the president appropriate administrative sanctions (e.g., cancellation of civil service eligibility, dismissal from government service) to be applied to those who commit irregular or corrupt practices. Between 2003 and 2005, of some 326 cases the PAGC handled, 292 have been affirmed by the Office of the President.

To build up deterrence in revenue generation—a corruption-prone field in any developmental setting—President Arroyo created in 2003 the Revenue Integrity Protection Service (RIPS), through another executive order. RIPS is tasked to be the anti-corruption watchdog in the Bureau of Customs and Bureau of Internal Revenue. If the evidence warrants, RIPS (1) files corruption charges against officials under its jurisdiction before an appropriate court of law or administrative body, and (2) assists the prosecuting agency toward the successful prosecution of these cases. Compared to PAGC, RIPS has a lean record of successful prosecution.

Yet another anti-corruption program is the Run After Tax Evaders program (RATE). Based on government figures, the average income tax evasion rate across all sectors in the Philippines is 35%, which translates into a yearly loss of PhP85.4 billion (US\$2.1 billion) in skirted taxes. This high-profile chase of tax cheats, launched in 2005, was supposedly a no-holds barred effort. At the outset, it targeted prominent individuals and corporations, netting, among others, a cabinet member, a military general, a large pre-need company, and a host of entertainment celebrities, all of whom were recommended for prosecution. Very few of these cases have prospered, in part due to reversals by the Department of Justice. Civil society watchdogs observed that RATE also lost luster after a new management took over, which was open to compromise agreements with taxpayers with pending cases.

Administrative remedies, such as presidential punitive sanctions initiated by PAGC, are easy to dispense and inexpensive to administer. They lend themselves to quick action and create a continuing and credible deterrent. However, they are also open to abuse by field officers and those with power to issue penalties, which may reduce their “moral shock” value.

Initiatives that depend on court action, such as RIPS, are more protracted, and the delays and costs of court action need to be weighed against the benefits of punitive action. When the time costs do not justify the expense of court action, prosecutors have less incentive to pursue cases, and the whole effort may fall apart.

The RATE program proves that anti-corruption campaigns are ineffective without adequate penalties. According to the theory of optimal deterrence, “expected penalties” should be set equal to the social costs of the crime, where expected penalties are the amount of the penalty multiplied by the probability of being detected and penalized. If the government is unwilling to impose high penalties on persons or firms being prosecuted (which lowers the probability of being penalized),

government initiatives would lack credibility, and would induce public pessimism over the entire effort (Dee, 2006).

### **19.2.3 Initiatives that Close Regulatory Gaps**

Excessive regulations, according to Bardhan (2003), offer awesome powers of discretion to bureaucrats in order to interpret and implement these rules, giving them openings to practice corruption. As part of its corruption resistance strategy, the Philippine government attempted to tighten safeguards, plug loopholes, and root out pathologies. To deal with *regulatory inefficiency*, the government introduced a new public accounting system and took steps to rationalize the bureaucracy.

The monitoring and detection of fraud gained a new lease of life with the adoption of the New Government Accounting System (NGAS) introduced by the Commission on Audit in 2002. NGAS is a modified accrual-based system that follows internationally accepted standards. Its primary intention is to simplify government accounting, but perhaps the most important feature of the system is its adoption of responsibility accounting that enables managers to understand and rein in excessive disbursements. An electronic version of NGAS links the government accounting system with the budget mechanism, a step that will enable real-time and whole-of-government financial reporting and auditing, which is crucial in raising transparency and in making high officials more accountable for their financial decisions. Yet, until the system is fully computerized and implemented, government agencies will have to continue to deal with *ex-post* appraisals.

In 2004, President Arroyo issued an executive directive requiring the Department of Budget and Management to undertake a strategic review of the functions and organization of all government agencies. This administrative track aims to arrest the “wasteful” allocation of resources to non-core, obsolete, and redundant functions of government. Although rationalization has the potential to reduce opportunities for corruption by providing clearer lines of authority and accountability, this is a case of a government initiative that has limped along, unable to find or sustain the right moves. Excepting the Civil Service Commission (CSC), only a handful of small, largely inconsequential agencies have been tidied up.

Although government is focused on addressing regulatory inefficiency, its more important task is to keep an eye on the bigger ethical transgression—*regulatory capture*. Regulatory agencies are a point of political access for purchasing major influence over government policy. Arguably, major regulators are the focus of demands to align governmental preferences with the interests of firms and individuals seeking (or maintaining) influence over public policy. Regulatory capture also suggests purchase of laws and policies to get both the legal framework and the policy-making process out of shape—in a systematic striving for concentrated rents. Effectively, representation in the regulatory process could cause regulators to allow incumbent firms to earn excess profits, perhaps as a reward for cross-subsidizing select users (such as government officials). Regulatory capture has encoded advantages in both old and new rules and institutions for narrow vested interests. In effect, the Philippines, as a rent state, has generated a *market for rules* (Fabella, 2000), with the “products” such as laws, rules, policies, regulations, and even legal interpretation going to the highest bidder.

In time and with close familiarity, it is the industry that ultimately regulates the regulator. For instance, the Civil Aeronautics Board’s policies have favored privately owned Philippine Air Lines and discouraged granting more flights to foreign airlines to and from the Philippines. Consequently, efforts to boost the economy through tourism are effectively hindered. The Maritime Industry Authority’s licensing power has been used to protect incumbents in the shipping industry by

erecting barriers to competitors. Likewise, Philippine law allows cross-ownership of power generation and distribution utilities. A power distribution company can enter into supply contracts with its generation subsidiaries, and create hidden profits for the conglomerate (Patalinghug and Llanto, 2005). Generally, as Abad (2005) notes, current industry regulatory measures are vulnerable to rent seeking.

#### **19.2.4 Collateral Measures on Electoral Reform**

Theoretically, elections offer a means for the orderly removal of corrupt incumbents from power (Azfar, 2008). Yet an outdated electoral process, which is heavily dependent on manual counting of votes, makes Philippine elections a fertile ground for control and manipulation by vested political interests. In recent years, automation of vote counting has been high on the electoral reform agenda. The Philippine Congress passed an election modernization law in 1997 giving the government enough headstart to automate the 2004 elections. But the proposed cure turned out to be as bad as the illness, as the automation project itself, handled by the Commission on Elections, became embroiled in an overpricing controversy. As a result, the Philippine Supreme Court nullified the project prior to the May 2004 presidential elections. The government's own candid assessment of the problem pinpointed both the failure to implement the electoral modernization law and the flawed regulatory capabilities of the Commission on Elections as responsible for impeding reform efforts in the electoral process (MTPDP 2004–2010).

Arguably the more important challenge faced by government regulators is in the area of campaign finance. Central to winning elections—given their high costs to candidates—are campaign contributions from wealthy benefactors. Since Philippine political parties are unstable and make-shift coalitions held together only by dyadic patron-client relationships (Romero, 2002), resources are obtained chiefly from corporate or private donations (Gonzalez, 2002). Campaign financiers may come from the ranks of local political clans, businessmen, or tycoons most of whom are often deeply involved in the formulation and implementation of policy and regulations that offer concentrated benefits as part of political paybacks by the winning (and financially supported) candidate. The spending limits imposed by law are unrealistically low; the Commission on Elections often looks the other way when it comes to campaign finance violations. At any rate, ensuring that the campaign kitty is used only for ethical campaigning purposes by the party or the candidate, and is not eventually channeled to policy makers, is a regulator's nightmare. So far, the Philippine legislature, for obvious reasons, has failed to pass any meaningful campaign finance reform laws.

### **19.3 Guidance**

With guidance, values and standards come to mind, expressed in codes of conduct and credible commitment from public administrators and political leaders. Values and standards have to be understood and communicated. They may likewise be demonstrated through professional socialization programs such as education and training. Guidance highlights leadership, personal responsibility, and living by example. If politicians accused of misconduct can stage-manage investigations in order to shield themselves, and if civil servants are faced with secrecy and apparent cover-ups when they lodge their complaints to public authorities, they will be less than receptive to official exhortations to more ethical conduct (Mills, 1998). Unlike control that zeroes in on problems, guidance focuses on predicaments, which may lend themselves to several solutions (Bertok, 2000).



Does government's guidance objective—the promotion of zero tolerance for corruption through leadership, education, value-formation, and advocacy—stand a chance in the face of the state's behavior as a Stackelberg follower, with its weak ability to credibly commit to a particular policy course (instead, it merely reactively responds to the autonomous actions of private actors such as special interest groups) (Bardhan and Udry, 1999)? Consider the following initiatives.

### ***19.3.1 Leadership that Casts a Wide Net over Corrupt Acts***

Murphy, Shleifer, and Vishny (1993) show that a coordination failure may arise when more resources are allocated to rent seeking, that is, when returns to productive activities fall faster than returns to rent seeking. This lowers the opportunity costs of further rent seeking, making it a more sought-after activity. In an effort to prevent coordination breakdown, the heads of the CSC, the Commission on Audit, and the Office of the Ombudsman sealed a compact to combine their anti-corruption efforts. Known as the Solana Covenant, the pact has reinforced the three agencies' monitoring and enforcement capabilities, and permitted them to conduct joint projects such as lifestyle checks and integrity development reviews. But this is only a beginning and Solana is vulnerable to coordination failure whenever changes in leadership in these institutions occur.

The Philippine judiciary also pro-actively forged anti-corruption alliances. Recognizing that the Philippine judicial system and procedures are susceptible to externalities such as quasi-judicial bodies, law enforcement, investigative and prosecutorial systems of the Department of Justice and the Philippine National Police, the Supreme Court launched the Action Program for Judicial Reform to improve judicial processes, decongest courts, and minimize their vulnerability to corruption.

On the whole, it can be said that joint action is a significant force in maintaining rule of law and in deterring wrongdoing. Coordination programs serve as an ex-ante (preventive) rather than an ex-post (curative) mechanism to curb corruption. There is no direct mode of sanction execution since the focus of the program is network building among civil society groups and other divisions of the government.

### ***19.3.2 Limiting Monopoly and Discretion to Constrain Abuse of Power***

A professional civil service and an executive restrained in its exercise of appointing power are preconditions to the establishment of a corruption-free bureaucracy. Compared to their Asian counterparts, Philippine presidents have the greatest depth of political appointments, totaling 11,000 positions, going all the way from cabinet secretaries down to assistant bureau directors. The practice of offering "courtesy resignations" with changes of administration, according to an ADB report, also creates the potential for high turnover of senior officials and opens the door all the more to the possibility of filling those positions with political protégés.

On its assumption to office, the Arroyo administration vowed to respect the career executive service. But its track record shows otherwise, as scores of career civil servants have been placed on floating status, or have been relieved of their posts and replaced by non-eligibles. Most executive departments have excess undersecretary and assistant secretary positions. The Philippine Center for Investigative Journalism reported in 2006 that of the 2583 career executive positions appointed by President Arroyo, 42% were filled by non-eligibles (Chua, 2006).

Guidance, in this case, requires leadership of a different kind—resistance and non-acquiescence. The CSC took steps to put the brakes on the propensity of the executive department to disregard rules on meritocracy, by disallowing career appointments not based on eligibility, prohibiting

non-career officials occupying career positions from exercising control or supervision over regular personnel of an agency, and conferring only temporary appointment (not exceeding 1 year) to presidential appointees lacking the appropriate eligibility requirement. That put the CSC on a head-on collision with the Office of the President. It remains to be seen whether this act of political will shown by the CSC can be sustained in the long run.

### ***19.3.3 Participatory Appraisal that Increases Agency Resistance against Misconduct***

In many government agencies, too few civil servants have the training and enterprise to prevent corruption from taking place. Yet the bureaucracy provides an excellent training ground for civil servants to learn how to shore up safeguards against wrongdoings. One such participatory program that increases the likelihood of avoiding ethically unacceptable situations and complements technical and organizational help is the integrity development review scheme, launched in 2004 by the Philippine government.

Integrity development review entails a systematic diagnosis of an agency's vulnerability to corruption and the corruption resistance mechanisms in place to forestall wrongdoings. Developed by the Development Academy of the Philippines, this appraisal scheme has been conducted as a training program in as many as 20 government departments to equip employees with tools to plug their agencies' vulnerabilities. Because its impact is long term, it will take a little while before concrete outcomes are known.

### ***19.3.4 Steps that Encourage Public Vigilance and the Growth of Civil Society Watchdogs***

Successful anti-corruption programs always counted on broad-based involvement. Even self-interested politicians, according to Boerner and Hainz (2006), can be compelled to implement anti-corruption policies if there is widespread political support for such measures. Persistent high corruption levels, in fact, suggest the absence of public support.

The Aquino government is credited with encouraging the emergence of civil society activism in the Philippines. Forming watchdog organizations that monitor government actions, publicize transgressions, and press for reforms has become a leitmotiv of anti-corruption discourses. Freedom of expression and association has shored up non-governmental organization (NGO) involvement. The impeachment of President Estrada in 2001, for instance, was triggered by a damning investigative report of the Philippine Center for Investigative Journalism of his lifestyle and undeclared assets. The atmosphere has led to a franker discussion and stronger proposals for reform.

From watchdog work in monitoring specific government activities (procurement, revenue collection, presidential appointments, "big-ticket" contracting, and elections) to fact-finding to draw attention to and deepen understanding of the problem and its debilitating effect on society (SWS surveys, PCIJ investigative reports), civil society involvement in anti-corruption went into high gear when it set up its own anti-corruption organization (the Transparency and Accountability Network) and formed broad coalitions in the implementation of anti-corruption measures.

Civil society organizations, free of the governmental obligation of balancing interests, can cover more grounds in the anti-corruption fight. Acting as both advocates of change and pressure points, they can inform, probe, lobby, protest, and provide technical assistance. Yet, as Azfar (2008) cautions, it would serve NGOs well to keep their activism and service delivery wings apart;

activism demands an arm's length and adversarial relationship with the government; working on service delivery often needs close coordination. To do both at the same time would raise its own ethical compromises.

### ***19.3.5 Decentralized Guidance that eases Log Jams in Centralized Decision Making***

In the Philippine political economy, the power center is a centralized presidency that orchestrates the execution of policy and allocation of spoils. Such concentration of power at the top blends with the decentralized power of families and clans, within the context of a “neo-patrimonial” political system (Azfar et al., 2000). Because the president has discretion over disbursement and big-ticket government contracts, licensing authority, and fiscal management powers, politicians have to ally themselves with the chief executive to ensure funding for key projects and a major share in the patronage resources of the government.

The Local Government Code, passed by Congress in 1991, is a step in the right direction since it reduced the monopoly power of national government in decision making and the allocation of resources. It has improved the contestability of political markets by providing (through local government) an excellent training ground for local politicians to discover the processes of governing and campaigning—both crucial in increasing the choices among voters, allowing them to vote reformers into office and throw out rascals (Azfar, 2008). Nevertheless, in the absence of effective and enduring restraints on patron-client politics, decentralization will not prevent local politicians from leveraging local power effectively during elections and, in between, demanding major concessions from the central government (Rocamora, 1995).

## **19.4 Management**

The third building block in the ethics infrastructure is management. Management elements found in the organizational and administrative apparatus—rewards and incentives, workplace conditions, productivity and efficiency aspects—can encourage, or chip away at, goodness and honesty in public administration. Management policies and practices must reflect the basic values of public service in form and in content, routinely maintained by continuous analysis of performance and system effectiveness. The end result should be an operational environment that has both basic and supportive enticements for ethical conduct, and a public ethics regime that blends greater managerial flexibility with basic standards of accountability (Mills, 1998).

Here, government's management objective consists of preventive measures to minimize opportunities for corruption and ensure that systems are corruption resistant. The country is no more likely to forgive corruption than it is inefficiency and mismanagement. What role does public management play?

### ***19.4.1 Innovations that Alter Incentives in order to Deal with the “Agency Problem”***

According to Charap and Harm (2000), corruption serves as a hostage mechanism to minimize the probability of defection or insurrection by low-level insiders of the corrupt bureaucracy: they are effectively constrained—due to their own participation—from turning to the public to denounce the system. In this case, it is necessary to alter entirely the basis for an agency's incentive

structure. That is what the Lateral Attrition Law, enacted in 2005, hopes to do. In revenue collection, government is continually faced with the challenge of aligning the “private” motivations of revenue collection agents with the public goals of the agency. Lateral attrition provides a constructive back side for deterrence (which is handled by the RIPS program) by entitling internal revenue and customs employees to incentives amounting to 10% of the excess over the agency’s allocated target. Under the scheme, bonuses earned by employees who beat the targeted collection goal can proxy for illegal payoffs. Of course, the law also prescribes sanctions for bad performance (e.g., collections shortfall).

Wages are often seen as a panacea, but in isolation they mean little. The role of competitive salaries as an anti-corruption measure is unclear, according to Rose-Ackerman (2004), although wage levels and enforcement intensity have complementary impacts. Combining improved base pay with incentives for good performance should thus do the trick. Currently, while there are “islands of performance excellence” within the Philippine civil service, the uncompetitive salaries have nurtured a culture of mediocrity in the rest of the bureaucracy. Under the watch of CSC Chairperson Karina Constantino-David, salary decompression based on performance rather than length of tenure was high on the reform agenda. Analysis of the current salary structure has revealed that the civil service is externally uncompetitive at the technical and executive levels. The pay decompression scheme is thus anchored on four basic principles: (1) internal equity, which means equal pay for work of equal value; (2) external equity, which means rates will be competitive with a medium-sized private firm; (3) performance-based policies and programs where salary increases will be based on meritocracy and performance, and longevity is awarded as a flat incentive bonus; and (4) pay systems that are efficient, effective, and easy to administer. The CSC and DBM are working on an incentive-compatible yet fiscally affordable compensation structure, but no timeframes have been set for when the new scheme will be passed into law and implemented.

On the expenditure side, the government has somewhat succeeded in reducing procurement fraud and corruption. Systemic corruption of this kind lessens competitiveness by limiting the number of bidders, favoring those with inside connections over the most efficient candidates, limiting the information available to participants, and introducing added transactions costs (Rose-Ackerman, 2004). Although no reliable estimates are available, the perception of large leakages in government procurement persists. In addition, more than 60 laws, executive orders, presidential decrees, and agency-based administrative orders governed public procurement, resulting in confusion and increasing the likelihood of irregularities in the bidding process (World Bank et al., 2003). In 2003, Congress consolidated all existing procurement regulations into a single law, which now requires all government agencies to post their procurement needs in the government’s electronic procurement system, a move that increases transparency and creates a single source of public procurement opportunities. The new procurement law also simplified pre-qualification procedures and strengthened the post-qualification process that circumscribed the discretion of officials on bids and awards. A strong deterrent comes with the imposition of sanctions for those found guilty of collusion and other irregularities. The record shows that the new procurement rules have discouraged/decreased campaign contributions of businessmen since the process has become tighter and more competitive.

A more proactive mechanism to monitor the performance of civil servants is the Public Service Delivery Audit (PASADA). It was installed by the CSC in the last quarter of 2003 to systematically test frontline services. Instead of waiting for the public to send in reports, PASADA takes a different tack by actual testing the service. The CSC deploys a pool of undercover volunteers who pose as ordinary clients to simulate the experience of the public, good or bad, when transacting business with government offices. The volunteers can document the specific ways that corrupt

employees and intrusive rules affect service delivery and show how corrupt environments impose costs on citizens. The program is still in its infancy, but it may yet strengthen the capability of the CSC to spot frontline areas that are prone to corruption.

Note that many of the reforms discussed above, which require long-term nurturing, are *just beginning*—it takes time for new efforts to take hold—or are *overshadowed by serious stresses and imbalances*, which include bureaucratic standoff (such as the Department of Justice reversing Department of Finance cases against tax evaders), weak agency response (to abuse of executive power in appointing non-career eligibles), and compromises in the reform effort itself (such as legislative concessions on the anti-money laundering law). This explains largely why the Philippines has a “low” ranking in [Figure 19.1](#). In all, the downside risks of unsustained effort outweigh the upside gains. The country’s low score across the years, rather than its position at this time, indicates the direction it is taking, suggesting the enormous effort that needs to be made to lift the country to a higher ethical status.

## 19.5 Creating Virtuous Circles in Public Ethics and Accountability

Being a soft state, the Philippines has few effective resources to do battle. Hence, it makes sense to concentrate resources on strategies that would provide the impetus for changes along a broad front. *Capitalizing on a few but high-impact initiatives can be critical when resources are limited.* The entrenched nature of corruption requires breakthroughs, but they have to be cost-effective to give the campaign more dividends. The lock opener is not a singular capacity to pursue reforms all at once. Some institutional reforms that are already underway add up to maintaining constructive conditions in the war against malfeasance: pay decompression in the Philippine civil service, stricter enforcement of the new procurement law, wider coordination among the judicial and quasi-judicial bodies (notably, the Philippine high courts, the Department of Justice, and the Office of the Solicitor-General), and furthering established partnerships with civil society (such as *Bantay Lansangan*, which is a joint government-NGO partnership monitoring corruption in infrastructure projects).

A key participatory strategy (e.g., civil society observers in the budgeting and bidding processes of government agencies) needs to be continued. Introducing greater transparency into political financing is an old battleground that can benefit from new initiatives, such as launching a coordinated drive for new legislation on campaign finance. Deeper decentralization through putting more teeth into the Local Government Code holds the key to preventing undue concentration of economic and political power in the central government, with all the rent-seeking practices that it implies. Because transparency depends crucially on freedom of press so that right and wrongdoings on the part of the government can be publicized, a freedom of information law ought to be enacted by Congress.

It may be helpful to lift the level of compliance by encouraging agencies to meet intermediate, rather than absolute, standards (Dee, 2006). An ethical bar that is raised too high is politically a non-starter. In this regard, it is more important to generate transitional mechanisms that can point the way toward higher reform. For instance, think-tanks like the Development Academy of the Philippines have developed and adapted middle-level anti-corruption tools like the report card surveys, corruption vulnerability assessment, integrity development review, and citizen’s charters—all powerful impetus for developing performance benchmarks, and providing a breeding ground of change from a control-oriented framework to one of quality service delivery and accountability.

*Better risk analysis of anti-corruption programs may yield superior outcomes.* It may not make much sense to target sure winners, they would have succeeded anyway (e.g., COA did not need additional resources when it successfully implemented NGAS). On the other hand, it is a waste of resources to target “lemons” and “flavor of the month” projects as these are merely transient activities. Moral recovery programs (such as those being conducted in government offices) have very low impact in a society where corruption is endemic. They easily wear off unless they are part of a wider strategy to build social capital. What makes economic sense is to target projects with high social returns (such as enacting a new Philippine campaign finance law or amending the Local Government Code for deeper devolution). But projects should not be carried out simply on the basis of a pure cost/benefit analysis, which, as Rose-Ackerman (2004) indicates, is agnostic about who obtains the benefit and looks only at net total gains (a good example is the current sin tax law, which nets the government substantial revenue, but benefits a cigarette monopoly).

In the long run, dealing with the agency problem is clearly not enough. It is only the tip of the iceberg. *Over the long haul, the need is to shift the battleground from “small wars”* (principal-agent problem like the Lateral Attrition Law, picking of “low-hanging fruits” like PASADA) *to a “grand war”* (state capture like the sin tax law). The existence of state capture requires rethinking the traditional advice of controlling corruption as if it were solely a problem within the bureaucracy (Kaufmann, 2003). There is a need to focus on the links between elective public officials and private sector through campaign finance (the successful prosecution of ex-President Joseph Estrada involved illegal campaign donations); links between appointive public officials and the private sector through regulation, policies, contracts, etc. (the recent World Bank debarment of seven firms and one individual for engaging in collusive practices involving Department of Public Works and Highways officials under a major bank-financed roads project in the Philippines (World Bank, 2009)). Paradoxically, even limited reforms also set the stage for state capture (take for example the initial anti-money laundering law that set a very high threshold of Php2 million for bank transactions involving illegally obtained money), thus enabling narrow interests to shape policies to their liking, in the end undermining public trust and weakening the impetus for further reform. The key, too, is to avoid strategic behavior (for instance, Department of Justice adverse rulings on RATE, if they are no longer exceptions to the rule, serve as “guarantees” that encourage moral hazard).

Corruption is endogenous since the regime itself is predatory to state capture (Charap and Harm, 2000). That implies the urgent need to put constraints on the state’s instruments of discretion on franchising, licensing, and policy making. Under the Philippine constitution, the chief executive has enormous leeway over big-ticket contracting. *A good starting point is to devolve this power of discretion and ensure that big-ticket items are out of the reach of the few big players who hold concentrated authority.* The key still is to decentralize power to independent regulatory agencies that can mediate different interests, as well as to ensure the presence of multiple veto points (independent courts such as the *Sandigan Bayan*, constitutional entities such as the Office of the Ombudsman, and other non-elected bodies that can “check” the acts of power wielders) that can prevent collusive arrangements (De Dios and Esfahani, 2001).

A serious anti-corruption campaign cannot be commanded from the outside, but needs committed leadership from within, correctly from the topmost levels of the state. While pressure for reform can come from below—indeed, this can effectively supply a broad social consensus—any effective program must be supported from the top. Yet any strategy that relies only on high-level leadership will be vulnerable to the many uncertainties of the political process. Marshalling credible commitment should cover key state institutions and organizations within civil society. *A “convergence” of strong players would make for a breakthrough performance against corruption—the*

CSC attempting to reduce the politicization of the career bureaucracy, the Supreme Court putting restraint on executive power, NGOs acting as watchdogs against abuse of power. A broad-based leadership makes the difference in devising means for sustaining ends.

While valuable windows of opportunity may arise on specific occasions, it is necessary to manage expectations and emphasize the long-term character of reform (it is impossible to completely wipe out corruption), while still taking swift, decisive actions (such as putting the big time corruptors in jail). The Philippine government must assign budget resources as well as capable managers to execute a targeted and programmatic anti-corruption campaign. Filipino civil society organizations can only give so much of their own. Business associations like the powerful Makati Business Club and influential NGOs like the Transparency and Accountability Network can help identify priorities and can monitor results, but they cannot deploy the political will and resources of the state that are eventually needed to create transparent and accountable institutions. Taken together, the building blocks of effective anti-corruption policies appear overwhelming, as they entail significant changes in the nexus of relationships within government and among government, the private sector and civil society, and in the current policy practices of government. The challenge ahead is awesome and the task will not be easy.

## 19.6 Conclusion

Corruption in the Philippines is a failure of public ethics. To isolate the underlying factors influencing the “right” behavior in the Philippine public service, an ethical infrastructure must be put in place. Its touchstones—control, guidance, and management—can keep back undesirable acts and provide the correct incentives for professional performance. Control mechanisms include laws that break up the alignment of predatory forces in order to minimize state capture, executive measures that optimize deterrence, and initiatives that close regulatory gaps. With guidance, values and standards come to mind, expressed in integrity development reviews, credible commitment from public administrators and political leaders, constraints on abuse of power, and steps that encourage public vigilance and the growth of civil society watchdogs. Management elements are found in the organizational and administrative apparatus—rewards and incentives, and productivity and efficiency aspects.

Taken together, these building blocks entail significant changes in the nexus of relationships within government and among government, the private sector and civil society, and in the current policy practices of government. If they are in harmony with both the limits and possibilities of vulnerable governance in the Philippines, they are likely to draw the government, the private sector, and civil society into new acts and new types of engagement, thus generating a virtuous circle of reforms.

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## Chapter 20

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# Performance Management Reforms in the Philippines

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Ma. Oliva Z. Domingo and Danilo R. Reyes

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## 20.1 Introduction

The problem of bureaucratic performance persists today as an enduring and long-standing concern in the Philippines. As in other countries, both developed and developing, bureaucratic performance in the Philippines has been plagued with recurring issues of bureaucratic competencies, efficiency, accountability, transparency, and responsiveness, among others. Over the years, various reform measures and initiatives in the country have been instituted or adopted to improve the performance of public agencies and instrumentalities, both at the national and local levels.

This chapter discusses performance management reforms that have been launched in response to problems of underperformance of Philippine bureaucracy. Admittedly, the causes of underperforming institutions in the country are many and varied, and perhaps, in some cases agency or sector-specific. Likewise, the causes can be traced or attributed to such factors as organizational ethos and temperaments, human frailties, weak leadership, policy gaps, poor systems and procedures, declining resources, and political intervention, among others.

In an era of growing citizen disenchantment and activism in the management of public affairs, the performance of the bureaucracy has become an important consideration by which the perception and acceptance of government are judged or determined. The years that have been characterized by the expanding involvement and intervention of civil society organizations and various interest and pressure groups in the shaping of policies and the delivery of public goods and services have shown the significance of making bureaucracy work better and perform according to the expectations of its public.

The chapter thus presents at the outset, an overview of Philippine bureaucracy and the problems that beset it. This part provides a quick random discussion of Philippine bureaucracy and the maladies that afflict it. In so doing, it identifies approaches and efforts instituted in the past to make the bureaucracy perform better.

The initiatives introduced during the past 10 years (1999–2009) to address current problems are subsequently discussed. A number of reform measures have been introduced in the Philippines in the various facets and aspects of government operations. These cover important components such as the financial system, mainly auditing and budgeting, expenditures, disbursements and procurement, manpower distribution, and delivery systems. The discussion therefore will attempt to present a number of policies adopted to put across reforms in the areas of audit as exemplified by the introduction of a new government auditing system (NGAS), the reform of the public management expenditure program under the medium-term expenditure framework (MTEF) adopted in the medium-term development plan, the procurement system, through the omnibus procurement law, and efforts to adopt a rightsizing policy to ensure having the appropriate size of personnel manning the bureaucracy.<sup>1</sup>

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<sup>1</sup> For the purposes of the present discussion, “performance” as it relates to public administration or the bureaucracy can be construed as the efficient, effective, and rational delivery of public goods and services, the creation of opportunities or the exercise of government’s authority in its regulatory and service functions to fulfill its mandate to serve and protect the general public interest and welfare. As Van der Walle notes, definitions of performance are should be “composed of performance values that are multifaceted and even sometimes contradictory” such as transparency, responsiveness, sustainability, legitimacy, and sensitivity to gender issues as well as the disabled and vulnerable sectors, among others. He also asserts that any definition should be “acceptable to the widest possible range of actors” (Van de Walle, 2008: 267).

The term “performance” and “performance management” therefore may mean different things to different administrative systems and people. This chapter follows the definition adopted by the Organization for Economic Cooperation and Development (OECD), which defines performance management as how a government transforms its highest priorities into strategic outputs that are cascaded down to organizations and individuals, such as through improved quality and effectiveness of programs (2001: 10). Many performance management initiatives in the Philippines over the past decade involve financial and human resource management.

## 20.2 Problems and Challenges Facing Bureaucracy in the Philippines Today

The demands for bureaucracies today to perform and fulfill mandated functions reflect an array of enormous and burgeoning pressures. They involve such realities as marked rising expectations by a potentially alienated or frustrated populace, declining public funds and resources, and such continuing ills as corruption, red tape, low morale, incompetence, and problems of recruiting capable and qualified personnel in a situation where salary levels are low and way below those received by workers in the private sector.

As such, public sector reform in the Philippines has been a continuing concern, like the bureaucracies of other countries, developed or developing, where reform has practically persisted as an enduring and recurring agenda (Reyes, 2009).

The foremost issue perhaps that affects the performance of the bureaucracy and its efficient delivery of services in the Philippines is the size and distribution of manpower in Philippine bureaucracy. The bureaucracy in the Philippines roughly consists of agencies and instrumentalities at the national level of government, namely, regular government departments and its agencies and subdivisions, government-owned and controlled corporations, regulatory bodies, constitutional commissions, and those operating or manning the local levels of government and its instrumentalities. The local government system in the Philippines is comprised of the provincial governments, the chartered cities and municipalities, and special districts as the Autonomous Region of Muslim Mindanao (ARMM), the Cordillera Administrative Region (CAR) and Metropolitan Manila.

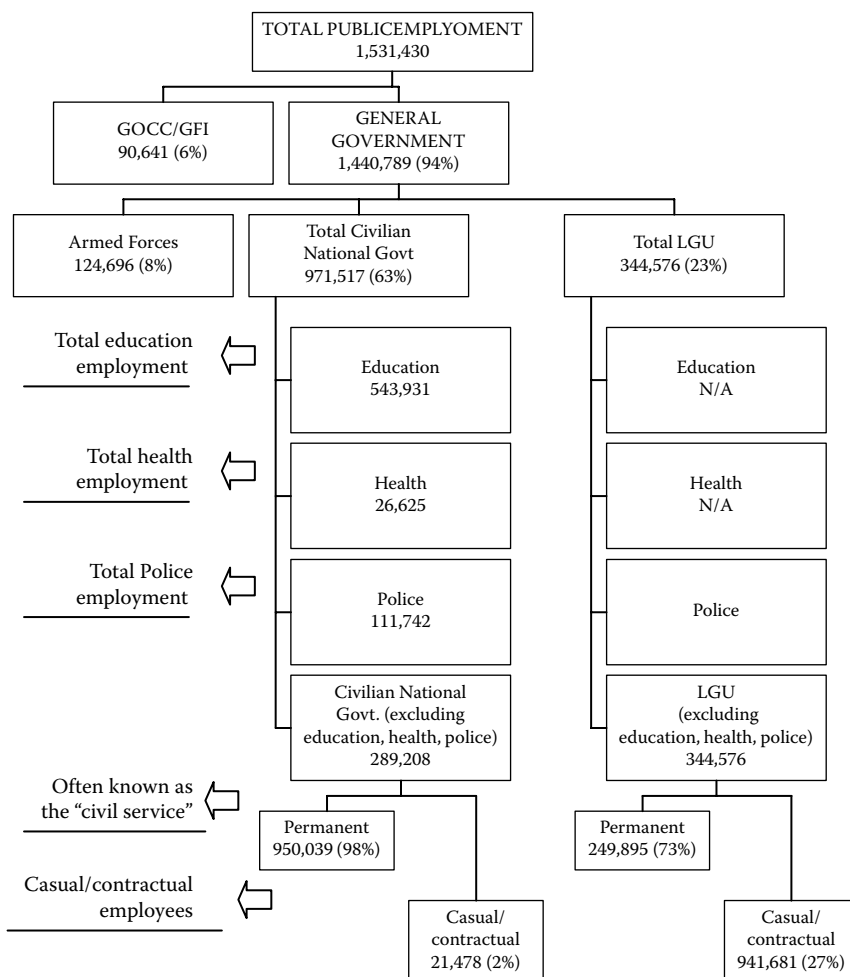
With roughly a little over 1.5 million employees consisting of employees at the national and local levels, as well as the uniformed services (i.e., the Philippine National Police and the Armed Forces of the Philippines), bureaucracy in the country serves an estimated population of about 91 million Filipinos in 2009. It is also over centralized. As can be seen in [Figure 20.1](#), the distribution of personnel is quite lopsided and uneven.<sup>2</sup>

Most of the civil service personnel are concentrated at the national level, and are mostly employed in the education sector. Only about 23% are employed at the local levels of government, where primary and important interactions with citizens are made and conformably where delivery of basic service is expected to be accomplished.

With undermanned and understaffed employees, particularly at the grassroots or the community levels, it could be said that Philippine bureaucracy is hard put to deliver a good performance compared to other countries. Sto. Tomas (2003: 420), for instance, cites that Canada “has two million civil servants to service a population of about 24 million.” She thus asserts that, “[t]he Philippine bureaucracy may not be the bloated monster it has been pictured to be if we are to factor in the size of the clientele we are serving” (Sto. Tomas, 2003: 424).

Mangahas (1993), in an earlier study, compared and analyzed the ratio of the number of government employees of various developed and developing countries in relation to population. Mangahas, using Civil Service Commission (CSC) estimates of the number of government

<sup>2</sup> These are estimates based on a report on a publication of the government of the Republic of the Philippines, World Bank, and the Asian Development Bank, 2003. At the time of this study, no updated data exist. Prior to data have been apparently made. Prior to the GRP, WB, and ADB publication, Patricia Sto. Tomas, former chairperson of the Philippine Civil Service Commission (CSC), a constitutional body, decried in fact the lack of “accurate, updated information on the bureaucracy” as bedeviling the civil service (see Sto. Tomas, 2003). It is, however, a safe assumption that the number made in 2001 has been maintained considering government efforts to control the size of the bureaucracy through such downsizing policies as attrition, hiring freeze, non-filling of vacant positions, and the abolition of government offices. A related study is that of Mangahas (1993).



**Figure 20.1 Public Sector Personnel.** Sources: Department of Budget and Management (Republic of the Philippines), Philippine Statistical Yearbook, World Bank Staff Estimates. See Government of the Republic of the Philippines, World Bank, and Asian Development Bank, 2003.

personnel at that time, as well as data on the size of the bureaucracy in the 1980s for other countries, showed that for every 100 of the population, the Philippines had an equivalent of only about 2.3 civil servants, as compared to Malaysia with 4.5, Singapore with 5.4, Australia with 9.8, and Sweden with 14.7. The Philippine figures for civil servant and population ratio compare favorably today with its ASEAN counterparts, such as Singapore and Brunei (NEDA, 2001).

An important concern related to this is dwindling and declining budgets for government expenditure in financing vital programs and projects. Analyzing fiscal and monetary policies in the Philippines, Briones (2003: 559) points out that, “[d]ebt service remains the number one priority item in the budget consistently exceeding allocations for economic and social services since 1983.”

Apparently, as of 2009, the situation has not changed since budgetary allocations in the national appropriations act remain somewhere between 35% and 40% of the total. This is, in fact,

compounded by problems of a dysfunctional tax administration system where target tax revenues generally fall behind tax collection targets (Briones, 2003; Boncodin, 2003). The problem is further aggravated by leakages stemming from corruption and wastages.

Like other bureaucracies, corruption remains a scourge in the government. Conspicuously contributing to the problem of underperformance in the country is the important problem of graft and corruption. Both political and bureaucratic corruption has undermined the quality and efficiency of services in the Philippines, thus compromising performance.

Over the years, vigorous initiatives have been launched to contain graft and corruption in the Philippines which has hampered performance especially in the efficient delivery of public services in the country. The measures adopted to contain these are many and involve the establishment of anti-corruption agencies as well as streamlining policies and procedures.<sup>3</sup>

Corrupt practices impair government operations and performance because public funds are siphoned off or drawn away from their intended or mandated use, and diverted to the personal bank accounts of government officials both from the bureaucracy and elected politicians. Corrupt activities that impair or compromise performance are many and creative—rent-seeking bureaucratic officials, bribery, embezzlement of public funds, ghost employees, kickback and overpricing of supplies and services, collusion with suppliers or service providers such as contractors, rigging of bidding processes, and several other methods that are often tolerated and abetted by government officials.

Commissioner Mary Ann Fernandez of the CSC in the Philippines points out that in a span of a little over 50 years, there had been 15 presidential anti-corruption agencies established to combat corruption in the country (Fernandez, 2004).

The magnitude and effects of the corruption problem in the Philippines is further described by Fernandez:

The impact of corruption has been quantified in numerous studies in the country. Last year, the Department of Budget and Management (DBM) estimated that the Philippine government lost almost US\$382 million due to fraudulent practices in procurement services and US\$1.3 billion for government build-operate-transfer road projects through leakages in transactions and purchases. During the last 20 years, the estimated amount lost due to corruption is US\$48 billion. (Fernandez, 2004: 92)

Coupled with these are such problems as poorly established systems and procedures that either open opportunities for corruption or result in red tape (Reyes, 1982). Linked to corruption, rules and regulation, for instance, designed to contain corrupt practices are circumvented or manipulated to intentionally create delays or inaction until a client comes across with a bribe. Thus, unscrupulous bureaucrats may require documentation in various government transactions, which may be onerous and cumbersome, but can be set aside if a client is willing to bribe his way to avoid complying with onerous requirements.<sup>4</sup>

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<sup>3</sup> The specialized laws that represent measures to contain graft and corruption in the Philippines can be found and compiled in Office of the Ombudsman (2004), as revised. Other pertinent laws, however, are scattered throughout several laws and issuances. There are also a number of studies and commentaries made on graft and corruption in the Philippines, such as Carlos (2004), Alfiler (1979), and Endriga (1979). A good reference is Carino (1986), who compared and analyzed corrupt practices in selected countries in Asia.

<sup>4</sup> See Carlos (2004) Chapter V: "What Needs to be Done?" pp. 235–99, for a more detailed discussion of the ills and challenges afflicting Philippine bureaucracy.

## 20.3 Past Reform Initiatives of the Philippine Public Administrative System

Performance management is not a recent initiative in the Philippines. It has in fact been a fixture in the advocacies of good government and has been adopted with various labels and in dramatic fashion, from such banner slogans as President Diosdado Macapagal's moral regeneration program (1961–1965), the Integrated Reorganization Plan of President Ferdinand Marcos (1966–1986), energizing the bureaucracy under President Corazon C. Aquino (1986–1992), reengineering the bureaucracy for better governance under President Fidel V. Ramos (1992–1998), President Joseph Estrada's effective governance program (1998–2001), and the streamlining the bureaucracy program of President Gloria Macapagal Arroyo, who assumed the presidency in 2001 and whose term ends under the 1987 Constitution of the Philippines by 2010.

Since the independence period then, reform measures and programs toward streamlining the bureaucracy have been a continuing effort and various measures have been adopted and legislated to promote the performance of the bureaucracy in the Philippines.

The efforts are a heady mixture of various approaches with the most pervasive and most common being that of government-wide reorganization of departments and agencies. In an early study of patterns of reorganization in the Philippines since the independence period, Abueva (1969) maintains that almost every elected president of the Philippines have in one way or another adopted reorganization as a policy in response to the perceived ills of the bureaucracy.

Reorganization and restructuring of instrumentalities of government thus emerged to be the standing and standard policy from the administration of President Manuel Quezon during the Commonwealth Era (1935–1941) to the independence period under President Manuel Roxas to President Macapagal Arroyo.

Analyzing reorganization programs of the Philippine administrative system from President Manuel Quezon during the Commonwealth Era (1935–1941) to President Corazon A. Aquino (1986–1992), Cola (1993) affirms this, saying that,

After political independence in 1945, (sic) the administrative system of the country had been reorganized five times. Thus, the government conducted an average of one reorganization every eight years (versus one every ten years under the Americans).

The spirit of the reorganization programs involved creation, mergers, abolition, restructuring, or expansion of government departments and agencies. Most of these programs rode on the banner themes of enhancing government operations, curbing wastages as well as graft and corruption, and ensuring fiscal economy, among others. But much of the emphasis of reform measures here involved structures and review of functions and mandates.

With the advent of new philosophies of public sector reform that came during the last two decades, however, new approaches were introduced toward enhancing the performance of the bureaucracy. The 1990s brought substantive changes in the contours and landscape of government and governance. For one, the rise of civil society organizations brought heightened activism. Information and communication technology also reconfigured the relationships between governments and their publics so as to make information on government activities more widely accessible.

The influential best-seller *Reinventing Government: How the Entrepreneurial Spirit is Transforming the Public Sector* by David Osborne and Ted Gaebler (1992) acquired further prominence when its principles were adopted by the newly installed administration of President Bill Clinton, as the American “roadmap” toward reforming the US federal bureaucracy.

Reinventing government and its principles of reform prescribing a shift toward market approaches for the public sector anchored on entrepreneurial philosophies became evident not only in the United States, but in other countries as well. Given different labels, such as “new public management” (NPM), managerialism, market-based public administration, and post-bureaucratic paradigm, the new philosophy advocated economic approaches and private sector techniques in the management and operations of public agencies.

Public administration in the Philippines adapted to these new directions in public sector reform as embodied in such themes as NPM (Ocampo, 2003), reinventing or entrepreneurial government (Reyes, 1996, 1994), reengineering (Reyes, 2003; Sta. Ana, 1996; Presidential Committee on Streamlining the Bureaucracy, 1995), privatization (Mendoza, 2003), and decentralization (Brillantes, 2003), among others.

## **20.4 The Philippine Experience in Promoting Results-based Management**

Heppell (2008) identifies four major functions of government: making policies, raising revenue, providing goods and services, and regulation. Every president or political administration in the Philippines since the 1900s has been under pressure to continuously and effectively institute reforms in the bureaucracy to improve the performance of these functions. These reforms have taken various forms, as pointed out earlier, such as reorganization, streamlining, reengineering, reinventing, performance management, and quality management, among others.

Developing sometime in the 1980s, NPM advocates minimal government, a focus on policy making rather than on service delivery, on “steering rather than rowing.” Its initiatives include deregulating the economy, reducing the size and role of the bureaucracy, decentralizing government, empowering the citizens, involving other sectors in governance, and developing performance measures that focus on outcomes rather than rules and regulations. In sum, NPM promotes the adoption of private sector methods in the public sector.

To be able to access credit from multilateral institutions, countries had to accept structural adjustment packages (SAP) and conditionalities that include embarking on reforms that were pro-market and pro-private sector. The World Bank and the International Monetary Fund (IMF) viewed the role of government in many crises states as “far too extensive, intrusive, expensive, and inefficient” (Larbi, 1999: 7–8). The language of NPM such as “value for money,” “doing more with less,” “consumer as customer,” “results over process,” “downsizing and rightsizing,” “lean and mean,” “contracting out,” “outsourcing,” and “empowering rather than serving” have influenced public sector management reforms (Larbi, 1999: 11; Tillah, 2005: 12).

This section focuses on performance management initiatives implemented in the Philippines over the past decade that take the nature of NPM. The rise of NPM coincides with the transition of the Philippines from an authoritarian regime to a democratic government, thus a brief background on the post-martial law reform measures puts in context the strategies adopted more recently.

### **20.4.1 *Rebuilding Institutions and Improving Performance***

As a reflection of the power and centralized decision making that the martial law dictator exercised from 1972 to 1986, the Office of the President of the Philippines had grown in size with about 3000 agencies and institutions attached to it, while the number of government-owned or controlled



corporations (GOCCs) had ballooned from 75 in 1970 to around 303 in 1985 (Carlos, 2004: 43–47; Tillah, 2005: 24).

After the peaceful people-power EDSA Revolution in 1986 that ousted the dictator Ferdinand E. Marcos and restored democracy, expectations ran high that the bureaucracy would be rid of its inefficiencies and focus on serving the people well. Administrative reform measures that followed addressed the issues of curbing graft and corruption, defining ethical standards of bureaucratic behavior and promoting accountability, managing the size of the bureaucracy and enhancing the efficiency of government service delivery systems, structures, and processes, and decentralizing operations.

#### *20.4.1.1 Size and Effectiveness of the Bureaucracy*

President Corazon Aquino inherited a politicized military, a bureaucracy that was primed to respond to authoritarian ways, public institutions and processes that were savaged, and an economy that was in ruins. The housewife-turned-President faced a man's job of repairing the damage to institutions, energizing a unmotivated bureaucracy, rehabilitating the military, and turning the economy around.

One of the first things that President Aquino did was to “rationalize” the bureaucracy. Soon after the EDSA Revolution, reforms started as a drive to “de-Marcosify” the bureaucracy, i.e., to purge it from appointees and loyalists of the dictator, using the policy of reorganization. Because there were virtually no ground rules to govern the wholesale replacement of elective and non-elective officials and the reorganization that took place from 1986 to 1987, and because the “de-Marcosification” was selective and arbitrary, the results were unsettling and a sense of insecurity and instability in the bureaucracy was discernible.

By 1988, the CSC moved in to stabilize the bureaucracy by upholding “the basic democratic doctrine of due process and the right of government employees to security of tenure even during reorganization and radical political change” (Sto. Tomas, 1992: 7, 14). The passage of the Security of Tenure Act (Republic Act 6656) made government reorganization more methodical and orderly. At the same time, it made it extremely difficult to remove inefficient and ineffective employees since these were not sufficient grounds for dismissal, unless really pronounced and provided employees were criminally negligent.

President Aquino issued directives ordering the revamp of government along five principles: promotion of private initiative, decentralization, cost effectiveness, efficiency of frontline services, and accountability (Sto. Tomas, 1992: 6).

The workforce kept growing bigger, however. While the size of the bureaucracy was only 898,000 in 1982, it grew to 942,000 in 1986, reached 1.61 million by 1989, and stood at 1.3 million in 1991. The term “bloated bureaucracy” gained greater currency during the Aquino administration (Sto. Tomas, 1992: 14). By 1999, the civil service had 1.4 million employees representing 1.93% of the population. At that time, the civil servant to population ratio in other developing countries in Asia was over 2%. The Philippines has a ratio of 19 civil servants for every 1000 of the population and thus compares favorably to Singapore's 23:1000, Europe's 70:1000, or Brunei's 73:1000. Despite this, the public perception of a bloated bureaucracy remained. The issue was more of efficiency, distribution, and cost (NEDA, 2001: 257–58). The wage bill was eating up more than 30% of the national budget so reducing the size of the bureaucracy was a major concern.

The ratification of a new constitution in 1987 was not sufficient to reverse the damage to the bureaucracy wrought by more than a decade of martial law. It restored the balance of power

among the executive, legislative, and judicial branches, reaffirmed the merit system as the foundation of the civil service, established the Office of the Ombudsman (OMB) to deal with issues of graft and corruption, and recognized the role of civil society in governance. But more needed to be done to satisfy the longings of a people for an efficient and effective government. A weak economy, political instability, weak political institutions, corruption, and a politicized bureaucracy, however, proved to be formidable obstacles in performance management.

The smooth transition of leaders after the 1992 elections indicated that democracy was thriving once more. President Fidel V. Ramos, however, faced the phenomenon of a “bloated bureaucracy” that needed to be trimmed down. Emboldened by a Supreme Court decision that upheld the power of the president to reorganize the Executive Branch, he marshaled the powers of the Office of the President to streamline the bureaucracy (Carlos, 2004: 55). He reconstituted the Government Corporate Monitoring and Coordinating Committee (GCMCC) to monitor and evaluate the performance of government corporations and initiated a management audit to determine the disposition of GOCCs that were not privatized.

From 1992 to 1995, 130 agencies, or 45% of national government agencies, streamlined their public delivery systems and 48 agencies downscaled operations by eliminating redundant or outdated activities. These dramatic reductions were due to various measures, particularly the implementation of Republic Act No. 7430 or the Attrition Law that was passed on April 15, 1992. Within 5 years from the approval of the law, no positions vacated as a result of resignation, retirement, dismissal, death, or transfer to another office could be filled, with few exceptions (RP, 1992). The law arrested the growth of government and generated savings of over Php6 billion in the 5-year period. As the Ramos administration approached the end of its term, the size of the bureaucracy had been cut by 2.5%, or by over 60,000 positions (Carlos, 2004: 55–56).

Within a year after assuming office, President Joseph Ejercito Estrada issued Executive Order No. 165 on October 19, 1999, reiterating that “reengineering the bureaucracy for better governance” was a priority program of his administration “to develop an efficient, results-oriented and innovative bureaucracy that will support effective governance and sustainable socio-economic growth.” A Presidential Committee on Effective Governance (PCEG) was created to oversee and coordinate institutional reforms in the bureaucracy. The PCEG was tasked to study and investigate the organization and operations of all agencies of the Executive Branch, including GOCCs and state universities and colleges (SUCs), and to prepare a “Public Sector Institutional Strengthening and Streamlining Agenda that will establish the framework, governing principles, and guidelines and pacing” for the process (RP, 1999: 2).

A provision of the 1999 General Appropriations Act had earlier directed heads of agencies to identify activities that were no longer essential in the delivery of public services and which may be scaled down, phased-out or abolished, eliminate programs, projects and activities and that are redundant, irrelevant, and outdated and strengthen key functions and priority programs (RP, 1999: 1). The PCEG formulated a comprehensive plan to streamline the bureaucracy but this was not realized due to the sudden change in political leadership in 2001.

The setting up of the Housing Assistance One-Stop Center (to assist developers and beneficiaries of socialized and low-cost housing projects) and the Department of Finance (DOF) One-Stop-Shop for Tax Credit and Duty Drawback Center (to expedite the processing of tax credit certificates and tax debit memos) were among the efforts to simplify government operations during the administration of President Estrada (Carlos, 2004: 61).

President Arroyo continued the efforts to streamline the bureaucracy. The Medium-Term Philippine Development Plan (MTPDP) 2001–2004 adopted the Reengineering the Bureaucracy for Better Governance Program of the previous administration. This resulted in the abolition in

2002 of 77 agencies and task forces attached to the Office of the President, generating a savings of Php56 million.

#### *20.4.1.2 Privatization*

Inefficient public enterprises are a fiscal burden to the state, thus NPM prescribes privatization. Reforma (2003, cited in Tillah, 2005: 24) identifies four goals of privatization: (1) a mechanism to get government out of the business of private sector; (2) a means of disposing non-performing assets to fund the agrarian reform program; (3) a way of reducing outlays for GOCCs and easing the financial burden of government; and (4) satisfying the SAP and conditionalities of multilateral lending institutions. These goals are reflective of the characteristics of NPM.

Privatization took the form of sale of government assets such as real estate, infrastructures, and facilities; abolition; mergers; build-operate-transfer (BOT); joint ventures; commercialization; and relinquishing government responsibilities and functions as opportunities for private sector businesses.

During her term, President Corazon C. Aquino immediately started privatization efforts as part of the SAP with the World Bank and the IMF, which specified austerity measures in government spending. She embarked on a privatization program that targeted government corporations and their subsidiaries and issued Proclamation No. 50 on December 15, 1986, creating the Asset Privatization Trust to expeditiously dispose of government assets under the supervision of the Committee on Privatization (RP, 1986). Intense bickering among high officials and politicians whose interests were affected delayed the privatization efforts. By 1992, some 122 of these corporations were privatized (OECD, 1998: 4).

Proceeding on the intertwined battle cry of liberalization, deregulation, and privatization, the Ramos administration pursued privatization more vigorously and urged Congress to pass laws to implement these. Midway through his term, only 79 GOCCs remained, from the previous high of 300 GOCCs.

After many years of dialogue and debate, in June 2001, Republic Act 9136 or the Electric and Power Industry Reform Act (EPIRA) was passed, privatizing the National Power Corporation, which was bleeding the resources of government as it was mired in debt. The EPIRA provides the framework for structural reform toward an open and competitive power sector to attract substantial private investment. The law authorizes the Energy Regulatory Commission (ERC) to adopt alternative forms of internationally accepted methods of setting rates that would ensure reasonable prices for electricity and enhance efficiency in transmission (GOP, WB, ADB, 2003: xi–xii).

#### *20.4.1.3 Addressing Corruption*

Every administration has its own inventive way of dealing with the issue of corruption. As an indication of the seriousness of their intentions, new offices or agencies are created with new mandates. This has resulted in redundancies and waste of government resources and has not assuaged the public that is still waiting to see the “big fish” convicted for corruption.

On February 20, 1989, the Philippine Congress passed Republic Act No. 6713 establishing a Code of Conduct and Ethical Standards for Public Officials and Employees and upheld the time-honored principle of public office being a public trust. The code spells out the norms of conduct and expected duties of public officials and employees, refers to incentives and rewards for exemplary service, and enumerates prohibited acts and transactions and the penalties for violations (RP,

1989). While the code may not deter those determined to pursue personal gain over public good, it sets the standards of acceptable behavior for civil servants.

President Aquino had her President's Committee on Public Ethics and Accountability (PCPEA) while President Ramos created the Presidential Commission Against Graft and Corruption (PCAGC) on January 11, 1994, by virtue of Executive Order 151 to demonstrate the will of the administration to curb graft and corruption. It was mandated to investigate cases or complaints involving graft and corruption filed against all presidential appointees in government and any of its agencies, including members of the governing board of any instrumentality, regulatory agency, chartered institutions and directors or officers appointed or nominated by the president to GOCCs. Its jurisdiction went as far as non-presidential appointees who may have acted in conspiracy or may be involved with a presidential appointee.

For his part, President Estrada issued Executive Order No. 79 in August 1999 establishing the Inter-Agency Anti-Graft Coordinating Council (IAGCC), composed of representatives from the CSC, PCAGC, Commission on Audit (COA), OMB, and the National Bureau of Investigation (NBI). The IAGCC's task was to promote greater coordination among the agencies involved in addressing the issues of graft and corruption. He eventually abolished the PCAGC on July 18, 2000, by virtue of Executive Order 268 and created the National Anti-Corruption Commission "to implement and coordinate policy at the national level for the prevention, control of and ultimately elimination of graft and corrupt practices at all levels of government by public officers and private persons alike" (RP, 2000). The Commission, however, was never activated.

On April 16, 2001, President Arroyo issued Executive Order No. 12 creating the Presidential Anti-Graft Commission (PAGC). The PAGC was tasked to investigate and conduct hearings on cases and complaints against all presidential appointees in the Executive Department and to assist the president in the drive against graft and corruption. A unique feature of the PAGC, which is also considered the Arroyo administration's unique contribution in the fight against graft and corruption, is its authority to proactively conduct "lifestyle checks" on government officials with the rank of director and higher, including the First Gentleman. The PAGC has partnered with other government agencies and civil society organizations to craft a National Anti-Corruption Plan.

While the legal framework and institutional requirements to address corruption are in place, efforts and political will to successfully implement laws are sorely insufficient. Corrupt officers and employees have managed to go scot-free through inventive ways of going around laws and rules.

#### *20.4.1.4 Decentralizing Operations*

Previous attempts to decentralize operations were generally limited to giving field officers and local authorities the responsibility to implement programs or perform certain functions. The passage of Republic Act No. 7160 or the Local Government Code (LGC) in October 1991 effectively devolved powers from national government agencies to local government units (LGUs) and institutionalized greater involvement of the people in the process of governance (RP, 1991).

Among the functions devolved to LGUs were provincial health offices, social services, agriculture and fishery extension services, forest management, local budget officers, public works funded by local funds, programs for rebel returnees, and development of tourism, involving over 70,000 positions.

Devolution of powers promotes administrative efficiency as local chief executives can make faster decisions on local issues. The LGC has expanded citizen participation in governance and institutionalized the representation of civil society representatives in local councils such as the Local Development Council, and the local school and health boards. It has enabled

visionary and reform-minded local chief executives to implement innovative programs in pursuit of local development objectives and raise the performance levels of their respective LGUs.

A number of these initiatives are widely acclaimed and multi-awarded within and outside the country, such as the performance and transformation of Naga City under the leadership of Mayor Jesse Robredo. The Naga City government demonstrated how the full potential of the various offices and of the entire city can be tapped for effective and efficient delivery of public services that meet the requirements of the population. It focused on getting optimum outputs with minimum expenditures and producing desired quality results as planned. It succeeded in making services not only accessible, but also acceptable on the basis of the greatest good for the greatest number (UNDESA, 1997: 105–6).

Mandaluyong City embarked on a BOT scheme to construct a public market. In partnership with the private sector, the LGU built a public market with a mall that approaches world-class standards. It provided the land while the private sector built and operated the market. The revenues of the city increased because of the numerous business and license taxes collected from the establishments in the market/mall (UNDESA, 1997: 105). These innovations are reflective of NPM, which encourages private sector methods and broadening citizen participation.

#### *20.4.1.5 Improving Work Processes*

To seize the potentials of information and communication technology for national development, President Ramos approved and adopted the National Information Technology Plan (NITP) 2000 and established the National Information Technology Council in 1994 (RP, 1994). In October 1997, he further adopted the updated NITP 2000 that reoriented and revitalized public service delivery through information technology (IT). The computerization of the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC), the revenue generating arms of government, contributed a great deal to the improvement of their operations (Carlos, 2004: 58).

To standardize the processing time for the bidding and award process for infrastructure, construction work, and consultancy service contracts of the national government, President Ramos issued Administrative Order No. 129 on May 16, 1994.

### ***20.4.2 Performance Management Initiatives for the New Millennium***

Government efforts to improve the performance of the bureaucracy that are reflective of NPM principles are anchored on the legal foundations built after the restoration of democracy in 1986.

#### *20.4.2.1 Financial Management*

There are four major processes in financial management: budget making; budget implementation; accounting; and audit (OECD, 2001: 17). Several oversight agencies share responsibility for financial management in the Philippines. Revenue generation, cash management, borrowings, and oversight over the finances of GOCCs and LGUs rest with the DOF and its agencies. The Department of Budget and Management (DBM), on the other hand, is responsible for the budget, organizational management, and compensation policy for the public sector. Meanwhile, in addition to its audit functions, the COA issues accounting rules and regulations. This fragmentation of responsibilities for financial management has put considerable strain on government agencies that have to deal with numerous, overlapping, and oftentimes conflicting policies, guidelines, and reportorial requirements (GOP, WB, ADB, 2003: 67).

### 20.4.2.2 New Government Accounting System

To strengthen public fiscal accountability, the COA introduced a new accounting system (NGAS) in November 2001, to replace the “outmoded” 50-year-old accounting system. The COA mandated all national agencies and LGUs to implement the NGAS, which is based on a modified accrual accounting system that follows international accounting standards. The NGAS simplifies accounting concepts and procedures, ensures correct, complete, and timely recording of government financial transactions, facilitates the timely preparation of financial reports, and presents a clearer picture of the government’s financial position. It adopts responsibility accounting that is activity-based, a feature not present in the old system (Carague, 2009: 73–75; Carague, 2004: 46–47; GOP, WB, ADB, 2003: xi). In contrast to cash accounting, which registers costs when payments are made and revenues when they are received, accruals accounting records costs and revenues as they are incurred or earned. Advocates of accruals accounting argue that “it yields improved management information” and “facilitates a closer integration of financial and performance measures” (OECD, 2001: 19).

The old accounting system deviated from common accounting practices. It was complex and thus caused problems in compliance with reporting requirements. It did not accurately reflect the full cost of agency operations and was unable to allow benchmarking of costs with the private sector (NEDA, 2001: 262). It produced a balance sheet and a statement of operations, but the latter was neither an income statement nor a cash flow statement, much less a funds flow statement. By contrast, the NGAS produces a balance sheet, income statement, cash flow statement, and generates financial information in real time, which is vital to decision making.

Prior to the NGAS, the various agencies, the Bureau of Treasury, and the COA kept separate sets of accounting records. The lack of regular reconciliation procedures resulted in large amounts of unreconciled balances, “which cast doubt on the accuracy of the financial reports that the system produced” (NEDA, 2001: 262). The NGAS has harmonized the accounting systems of national agencies, LGUs, and GOCCs, thus facilitating evaluation of financial performance. The NGAS has made some report requirements of oversight agencies redundant (Carague, 2009: 73–79).

To guarantee correctness, reliability, completeness, and timeliness, the COA funded the development of electronic accounting software (e-NGAS) from its own savings. In October 2003, only the Office of the President, the CSC, the Department of Social Welfare and Development, and two LGUs applied the e-NGAS. By 2007, 207 national and local government agencies and GOCCs had the e-NGAS installed. This, however, represents only 10% of all government agencies. The rest are still using the manual version of the NGAS.

It is still too early to say whether the NGAS will be sustained after a change in the COA leadership without the required legislation. Furthermore, the estimated cost of shifting to e-NGAS for the remaining 90% of agencies is a staggering Php850 million (Carague, 2009: 79), something the government can ill afford at this time.

The COA has restructured its offices across the regions to strengthen the performance of its audit functions. It is also moving toward value-for-money auditing and developing a risk-based auditing model.

### 20.4.2.3 Public Expenditure Management

A key component of the Philippine government reform program is Public Expenditure Management (PEM). The government has been implementing reforms in PEM since 1998, as advocated by the World Bank, to pursue fiscal discipline, allocate resources efficiently, and obtain the best value for

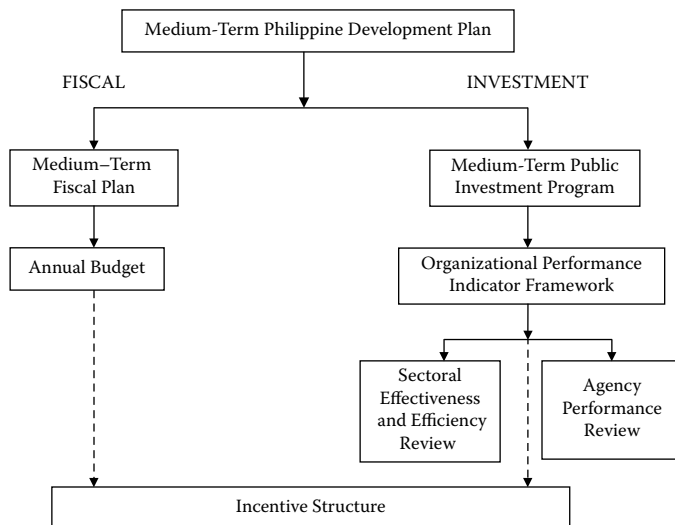
money. The DBM, the DOF, and the National Economic and Development Authority (NEDA), the highest economic planning agency of the government, are jointly responsible for PEM, which emphasizes the importance of performance-based or results-based budgeting.

The MTPDP is the blueprint for Philippine development that guides the economy. To better support the government's development strategy, PEM establishes a results-based MTEF, which involves the development of performance indicators and a performance measurement system, and consists of fiscal and investment components (Boncodin, 2004: 4). Figure 20.2 reflects the various components of the MTEF.

The fiscal component of the MTEF includes a more realistic medium-term fiscal plan (MTFP). The MTFP is the fiscal blueprint for a 6-year period. It is made up of an explicit statement of medium-term fiscal targets on a macro level in terms of deficit reduction, revenue and disbursement, and the overall debt management strategy. It includes an estimate of the cost of ongoing and committed programs that impact on the medium-term position of the government. This cost estimate is reflected in the annual budget submitted to and approved by Congress. PEM uses the budget as an instrument for ensuring desired results. A 3-year rolling budget was introduced in 2001 to cost ongoing as well as proposed programs, activities, and projects (PAPs) (Boncodin, 2004: 2–4; GOP, WB, ADB, 2003: xix). The 1-year budget has been criticized for its tendency to allocate resources for agency programs and for its lack of a system of prioritization. The multi-year budget links budgeting decisions to medium-term fiscal targets.

The MTFP establishes clear targets and assessment mechanisms, strengthens incentive structures, and enlists the support of civil society to monitor results. It includes a clear set of rules for updating revenue and cost estimates such as how to balance the national budget and reduce the public debt to GDP ratio.

The investment component consists of the medium-term public investment program (MTPIP). It lists the broad investment requirements to support growth, the programs and projects that



**Figure 20.2 Medium-Term Expenditure Framework.** (Boncodin, E. T., *Introducing Results-Based Approaches into Public Sector Management Processes: The Philippine Experience*. Paper presented during the 2nd International Roundtable on Management for Development Results, Marrakech, Morocco, February 5, 2004, 3.)

will be pursued over a 6-year period, and the possible modes of funding them. An important component of the MTPIP is the Organizational Performance Indicator Framework (OPIF). The OPIF identifies and prioritizes the investment programs that best contribute to the medium-term development goals. It shifts indicators from inputs to output/outcome performance indicators. It enables agencies to focus efforts and resources on core functions and undertake high impact activities at reasonable costs. A key element of the reform is the separation of administrative priority setting from political priority setting. Agency outputs are identified separately from the identification of the outcomes that result from these outputs.

The OPIF is a roadmap that defines where government and its instrumentalities should direct their development efforts. It focuses on objectives and the corresponding outcomes to be achieved and clarifies the expected performance and accountability of government agencies. The OPIF establishes an integrated performance management system (PMS) where organizational performance targets are cascaded down to lower level units and used as a basis for performance-based compensation. The PAPs of the different government departments and agencies should be able to show how these contribute to the achievement of the societal, sectoral, and organizational goals and objectives. The activities involved in the OPIF are outlined below (Boncodin, 2004: 2–6; GOP, WB, ADB, 2003):

- (1) The oversight agencies and the line agencies identify desired outputs and outcomes on a parallel basis
- (2) This includes the identification of major final outputs measured in terms of quality, quantity, timeliness, and cost
- (3) Harmonization workshops level the understanding of these targets for both the oversight agencies and the line agencies
- (4) Programs and projects that contribute to the realization of the major final outputs are identified
- (5) The performance indicators for each major final output are identified

The OPIF is applied to only about 42% of the national budget, however, and does not include the Special Purpose Fund, which is Php850 billion. The 42% represents the budget of line agencies, not all of which are using the OPIF. It is tedious to apply, not to mention the difficulty of determining the major final outputs and identifying relevant performance indicators rather than simply process outputs or work counts. For instance, what would be a quality indicator for a justice program? In 2004, only six departments had completed their OPIF (Boncodin, 2004: 7) and by 2007, the number more than doubled.

The Sectoral Effectiveness and Efficiency Review (SEER) is a tool for regularly assessing the efficiency and effectiveness of ongoing PAPs of an agency and their actual contribution in attaining desired sectoral outcomes. It enables the government to review priorities to determine what will be discontinued, downscaled, or continued over the medium term and to redirect its resources and strategic programs. An assessment of the PEM revealed that oversight agencies have been more advanced than line agencies in implementing the SEERs because the former have better skills and greater capacity to do so. The implementation of the SEER has led to the termination of projects, restructuring of others, and the cancellation of excess financing of projects.

The Agency Performance Review (APR) complements the SEERs through a more detailed assessment of the specific agency's performance, particularly their budget utilization and whether funds should be released to them (Boncodin, 2004: 8).



The MTEF provides incentives to agencies that are able to save funds from streamlined activities. These agencies that exhibit financial discipline are given more flexibility in using their budget. They may be allowed to keep savings and use them for their priority activities, given one-liner budgets instead of an itemized budget, or granted autonomy in expenditure (Boncodin, 2004: 8–9).

The OPIF was mainstreamed in 2007, but the shift to results-based management requires further enhancement of appropriate skills for the procedures and methods that it entails.

The DBM also introduced the Budget Execution and Accountability Tracking System (BEATS) to automate and track budget releasing. It consists of the Customized Budget Execution System (CUBES) based at the DBM, and the agency-based budget execution system (ACUBES) that links budget execution with accounting at the agency level. The CUBES automates the programming and issuance of Allotment Release Orders and Special Allotment Release Orders. The BEATS is linked to the NGAS. Both use the same codes. Meanwhile, the government is trying to generate a coding system that integrates/unifies the different codes used by the DBM, CSC, and the Government Service Insurance System for personnel numbers of government employees (GOP, WB, ADB, 2003: 69).

The role of civil society in the Philippine budget process is not limited to merely commenting on the budget as passed by the legislature. Civil society is actively involved from budget preparation to budget execution. The Budget Call specifically requires agencies to consult with civil society. In recent years, civil society has been invited to submit an “Alternative Budget” for consideration of government.

The working relationship between the executive and the legislature during the annual budget process remains an area of concern. Reconciling the priorities of the Executive Branch with those of the legislature have led to delays and the phenomenon of the “re-enacted budget,” i.e., implementing the previous year’s budget because a new budget law has not been passed.

#### *20.4.2.4 Procurement Reforms*

Conflicting laws, rules, and regulations governing the procurement process in the Philippines have led to discretionary decision making, delays, lack of transparency, and collusion (NEDA, 2001: 260). Administrative measures, legislation, partnership with civil society, and the use of technology jointly address these problems.

In 2000, the DBM launched the first phase of the Electronic Procurement System (EPS). The components of the EPS are: (1) the Public Tender Board, which serves as the one-stop electronic bulletin where all government bid opportunities and decisions are posted; (2) the Suppliers Registry, which lists all accredited suppliers of agencies; and (3) the Electronic Catalogue, which serves as a virtual store for supply requirements of agencies. These features promote transparency, enhance competition, and level the playing field for all suppliers. The president issued Executive Order No. 322 on November 22, 2000, directing all agencies to participate in the EPS (NEDA, 2001: 261).

On January 10, 2003, Congress passed Republic Act No. 9184, known as the Government Procurement Reform Act, to modernize, standardize, and regulate procurement activities. It mandates all government agencies, including GOCCs, SUCs, and LGUs to abide by the principles of transparency, competitiveness, accountability, efficiency, simplicity, and adaptability to modern technology in all procurement activities. It covers the procurement of infrastructure projects, goods, and consulting services, and lease of goods and real estate, regardless of the source of funds. It established the government EPS (G-EPS) as the single portal and primary source of information on government procurement. The law prescribes the process, terms and conditions, and structures

for the procurement system (RP, 2003). The law simplifies pre-qualification procedures, encourages electronic procurement, and reduces the discretion of public officials on bids and awards. A Government Procurement Policy Board oversees the regulations process.

The Department of Public Works and Highways (DPWH) uses the EPS for determining the eligibility of contractors. The Department of National Defense has developed a system for the procurement of military uniforms and defense hardware. The National Power Corporation uses it for coal procurement. Other agencies use the EPS mostly for the procurement of small supplies and materials.

### **20.4.3 Human Resource Management**

#### *20.4.3.1 Organizing for Performance*

When the chair of the CSC first assumed her post in 2004, she diagnosed the state of affairs of the civil service with the help of practitioners, academics, civil society, and career personnel of the CSC in order to define the strategic direction of the CSC. The diagnosis led to the following conclusions about the bureaucracy she “inherited”: a “monster of an organization which is a complex of many substructures with really no single coordinating unit to orchestrate individual functions and overlaps”; the systems and procedures were inefficient because government personnel were “primarily concerned with adherence to rules rather than with attainment of intended results and productivity”; the bureaucracy has not seized the opportunities offered by advances in technology to improve systems and procedures; it is prone to red tape and processes are inflexible; it “subscribes to the old-fashioned top-down approach”; appointments continue to be vulnerable to political patronage; the setting of minimum requirements have helped to professionalize the bureaucracy, but value dimensions such as integrity, character, work ethics, and client-service orientation are not factored in the recruitment process; and that compensation is not adequate to attract and retain the best and the brightest (David, 2004: 4–8). The CSC thus embarked on seven major paradigm shifts (David, 2004: 8–10) (see [Table 20.1](#)).

Along the lines of NPM, the CSC launched the “Text CSC” project, which uses text messaging as a mechanism to get instant client feedback. During its first few months in 2002, the project received 4618 text messages that ranged from queries on CSC rules (42%), to complaints about government agencies and personnel (38%), to request for assistance to get documents or receive claims (15%), as well as suggestions (4%). Only 1% of the messages were commendations for good service (David, 2004: 15).

To improve frontline services, the CSC embarked on a project called Public Service Delivery Audit, more popularly referred to by its acronym PASADA (literally meaning on the road). Trained volunteers masquerade as clients to observe the behavior of employees, as well as the systems, procedures, and physical working conditions of frontline services. The CSC recognizes and awards courteous and efficient employees and agencies with systematic, transparent, and client-friendly procedures. On the other hand, it provides training rather than reprimanding discourteous and inefficient employees.

#### *20.4.3.2 Performance Evaluation*

Performance management is a process that enables managers to measure employee performance against agency objectives and targets. In the Philippines, it is ironic that while the public perceives civil servants as generally incompetent and inefficient, most employees in government get either a

**Table 20.1 Paradigm Shifts for the Civil Service**

<i>Focus</i>	<i>Shift from</i>	<i>To</i>
Role of civil servants	Followers and implementers	Source of knowledge and expertise for improving the quality of public service
Recruitment of civil servants	Minimum qualification standards of education, training, relevant work experience	Factor in value dimensions: integrity, honesty, courtesy, love of service, and work ethic
Role of the Third Level or Career Executive Service (CES)	Managers	Visionaries; expertise and experience as source of self-confidence and independent thinking
Appointments to the CES	Presidential discretion	Open competition based on performance and merit
Management style in government units	Hierarchical; authoritarian supremacy	Participatory and consultative
Role of government	Regulator	Perspective of assisting clients
Relationship among branches of the government	A bureaucracy that follows directions	A professional bureaucracy with direction, autonomous from the political regime

Very Satisfactory or Outstanding performance rating. Government agencies were using the New Performance Appraisal System (NPAS), which was founded on the wings of management by objectives (MBO) advocated by management gurus. The challenge was to develop a rating system that accurately and objectively assesses employee performance and to link this with administrative decisions on tenure, promotions, or rewards.

In 2004, the CSC developed the Performance Management System based on the concept of performance contracting that links employee efficiency and productivity with security of tenure. A component of the PMS is the Office Performance Evaluation System (OPES). After piloting it in 2005, the CSC formally rolled out the PMS-OPES throughout the bureaucracy in 2007. The PMS-OPES objectively links performance with office targets, agency goals, and department's OPIF, and ultimately the MTPDP. It creates a "culture of individual and collective efficiency, productivity, and ultimately, performance-based security of tenure in government" (CSC, 2007). There are still difficulties in defining the major final outputs (e.g., what should be counted), but there are high hopes that the new system will spur productive, efficient, effective, and accountable public service.

### 20.4.3.3 Rationalizing the Bureaucracy

Wave after wave of reorganization have been concerned with the size of the bureaucracy and the wage bill as a share of the budget. Is there an optimum size for the bureaucracy? A large workforce may be undersized if its size and skills cannot respond to the responsibilities that citizens

expect from it. On the other hand, a very small civil service would suffice for a big population if its quality, mix of skills, and accountability mechanisms are good (Schiavo-Campo, 1997: 35). Rationalizing functions would be the proper way to arrive at the right size of the bureaucracy.

On October 4, 2004, President Arroyo issued Executive Order No. 366, “directing a strategic review of the operations and organizations of the executive branch and providing options and incentives for government employees who may be affected by the rationalization of the functions of the executive branch.” More popularly referred to as the “rationalization plan,” EO 366 called on agency heads to “transform the bureaucracy into an effective and efficient institution for the delivery of core public services” and to “ensure the long-term sustainability of core government services through resource mobilization and cost-effective public expenditure management” (RP, 2004). It called for the scaling down, phasing out, or abolition of functions that do not produce desired outcomes, duplicate or overlap with other programs, compete with the private sector, or have been devolved to LGUs. Personnel affected by the rationalization were given options to be separated from the service or to remain in positions that are co-terminus with the appointing authority. The police, military, public school teachers, and health workers were exempt from the rationalization program.

Government employees perceived the rationalization scheme as a means to reduce the budget deficit by eliminating jobs and an early retirement program. Neither did the unions welcome the scheme. After all, past reorganization efforts resulted in the displacement of employees and did not improve the efficiency of the service. Meanwhile, agencies delayed the submission of their rationalization plans to the DBM. As of this date, there are more agencies that do not have approved rationalization programs than those that have.

The Attrition Act of 2005 passed on January 25, 2005, was intended to improve revenue collection performance of the BIR and the BOC through the creation of rewards and incentives. It links performance to rewards by granting incentives to revenue or collection districts that exceed their targets by 10% for a given period, to be apportioned to the officials and employees according to their contribution to the excess collection. On the other hand, the districts that do not meet their targets are subject to disciplinary measures, including dismissal from the service.

In an era of unemployment and economic crisis, and with the national elections in 2010, the size of the bureaucracy will continue to grow bigger rather than reduce. What matters more is to ensure prompt and efficient delivery of public service, accountable and transparent performance, and achievement of desired development outcomes.

#### *20.4.3.4 Public Sector Compensation*

Compensation levels have been deterrents in attracting and retaining competent employees. Furthermore, the principle of equal pay for equal work was not being followed, leading to the demoralization of public servants. Worst of all, low pay can trigger corruption.

There have been three major legislative enactments providing for the standardization of salaries of government workers: Republic Act No. 6758, Salary Standardization Law of 1987 enacted on August 21, 1989, or SSL1 effective July 1, 1989; Joint Resolution No. 01 approved on March 7, 1994, by the Senate and the House, or SSL2 effective January 1, 1994; and the Joint Resolution of the Senate and the House approved on May 8, 2009, or SSL3 effective July 1, 2009.

SSL1 was an implementation of the constitutional mandate to standardize compensation throughout the service to correct existing external and internal inequities. Government salaries were externally inequitable with equivalent jobs in the private sector and internally inequitable because of the many exemptions from the existing scale, especially for offices under the Office

of the President that paid higher salaries. SSL1 had 33 salary grades with eight steps for each grade. This compressed salary scale discouraged performance because of the narrow bands that overlap at the 4th or 5th step. It hardly had room to reward outstanding performance. The 6th to 8th steps were longevity steps awarded for years of service. This resulted in situations where a subordinate would have a higher salary than a newly appointed superior. The overlaps in the scale encouraged underachievement because the benefits of longevity outweighed the financial gains from promotions that resulted in more responsibility but lower compensation levels (Monsod, 2009:11).

Studies done by the DBM and the CSC have shown that the salaries of Second Level public servants or the professional group were about 30% lower than their private sector counterparts, while it was 70%–80% lower for the Third Level or the executive class. SSL3 significantly reduces the disparities, but salaries for the executive class remain much lower than their equivalent in the private sector. The implementation of SSL3 is spread over 3 years and will be fully implemented by 2012. The current salaries of First Level positions will increase by roughly 12% as these already compare favorably with their private sector counterparts. The salaries of the professional group or Second Level will almost double to approximate the private sector, while salaries for the Third Level will have the biggest increase, but will still be below the level of their private sector counterparts. For instance, the salary of the president of the Philippines by 2012 will only be Php120,000 a month (US\$2,500), which is a lot less than what the chief executive officer of a big business corporation receives. Whether the improvement in incentives will eliminate corruption and redound to improvement in the quality of service is yet to be seen.

#### *20.4.3.5 Quality Management Systems*

In 2005, the Philippines ranked 77 out of 117 countries in the Global Competitiveness Index (GCI). This improved slightly in 2006 when the Philippines ranked 71 out of 125 countries. In 2007, it ranked 71 out of 131 countries, and again 71 out of 134 in 2008, but it dipped to 87 out of 133 countries in 2009 (World Economic Forum).

To effect actual improvements in public governance, President Arroyo issued Administrative Order 161 on October 5, 2006, to institutionalize quality management systems along the International Organization for Standardization (ISO) 9000 series, which ensures consistency of products and services through quality processes. It directed the DBM's Organization and Productivity Improvement Bureau (DBM-OPIB), the Department of Trade and Industry's Bureau of Product Standards (DTI-BPS), and the Development Academy of the Philippines to formulate the necessary institutional structure, mechanisms, and standards to implement the Government Quality Management Program (GQMP). Executive Order No 605, issued on February 23, 2007, directed all departments and agencies of the Executive Branch, including GOCCs, to adopt the ISO 9001:2000 Quality Management Systems with priority to be given to frontline services (RP, 2007). It likewise enjoined SUCs and encouraged LGUs, the judiciary, the legislature, and constitutional offices to pursue certification.

As of the latest count, some 40 national and local government agencies have received ISO 9001 Quality Management Systems certification. Among them are the Bangko Sentral ng Pilipinas (BSP, or the central bank); National Kidney and Transplant Institute; the Bureau of Labor and Employment Statistics and Philippine Overseas Employment Administration of the Department of Labor and Employment; several research and development institutes of the Department of Science and Technology; four bureaus and centers of the Department of Agriculture; the Department of Trade and Industry's Regions 2 and 12; the Development Academy of the Philippines; the

National Power Corporation; the University of the Philippines' Information Technology Training Institute and the Philippine General Hospital; the Philippine Economic Zone Authority; and the Philippine National Police Crime Laboratory Group. Among the LGUs that have received ISO certification are the city governments of Angeles, Makati, San Fernando, and Puerto Princesa. The drive for quality improvement is spreading as more agencies are in the process of getting certified.

#### *20.4.3.6 Local Government Initiatives*

The Local Government Code of 1991 has empowered LGUs to engage in programs and activities that would promote local development and improvement in the lives of local residents. This heightened awareness for the need to develop a way of assessing the effectiveness and efficiency of LGUs in performing their functions. Among the instruments developed over the years are the Minimum Basic Needs approach (MBN), which measures the presence or absence of basic services and facilities and their impact on residents; the Local Productivity and Performance Measurement System (LPPMS), a self-assessment system that measures performance by measuring the multisectoral impact and presence of LGU services, facilities, programs, and projects (e.g., health, education, waste management); and the Local Governance Performance Management Systems (LGPMS), also a self-assessment of impact and services with emphasis on good governance. While the MBN is a profiling tool, the LPPMS and the LGPMS are combinations of input, output, and outcome indicators.

The LGPMS has a total of 46 input indicators, 51 output indicators, and 25 outcome indicators. It serves to benchmark local government performance against established standards and provide national policy makers with vital information on the state of local development. The LGPMS website was not in operation in 2008 owing to a system malfunction, but is now operational and has better features. Basic facts and figures about a specific LGU are just a click away. It includes summaries of State of Local Governance Performance and some other quick statistics. More than just a database for profiling, it has the capability of processing data electronically to interpret the LGPMS results. The Department of Interior and Local Government advocates the use of the LGPMS to strengthen the culture of performance management among LGUs.

## **20.5 Conclusion**

Over the past decade, the introduction of PEM as the performance management framework at the national level and other initiatives at the agency level are linking individual, collective, and agency objectives to sectoral and national goals. The problem of developing indicators and measuring performance at the individual, agency, and LGU levels still needs further attention, but the shift to results-based management is gaining ground in the Philippines.

Performance management and good governance have parallel objectives—the attainment of development goals through efficient, effective, transparent, accountable, and participatory delivery of public goods and services. To be sure, there will continue to be new and more challenges in strengthening institutions, eliminating inefficiencies, and satisfying a public that has become increasingly activist. The recent economic crisis in the United States indicates that a “minimalist state” is not necessarily the desirable reform measure for government. NPM methods are proving useful in the Philippines for the moment, but the government must be open to discover new methodologies to achieve optimum results.

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## Chapter 21

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# Civil Service System in the Philippines

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## 21.1 Introduction

This chapter describes the Philippine public administration system in terms of its evolution, structure, appointments, employment patterns, and distribution, and, to the extent possible, discusses its development effectiveness. This chapter is organized as follows: (1) country background, (2) beginnings and current state of the Philippine civil service system, (3) development performance of the civil service bureaucracy, (4) key development challenges, and (5) conclusion and future directions.

## 21.2 Country Development Context

For most of the last 30 years, the development performance of the Philippines has been less satisfactory than many of its Asian neighbors. In the 1950s and 1960s, the country had one of the highest per capita gross domestic products in the Asian region—higher than that of the People’s Republic of China, Indonesia, and Thailand. The Philippines is now lagging behind. The 2008–2009 Global Competitiveness Report ranked the Philippines 71st out of 134 countries. Placed 82nd out of 118 countries in the 2008 Global Enabling Trade Index, the Philippines trailed behind its Association of Southeast Asian counterparts, such as Singapore that ranked second in the survey, Malaysia at 29th, Indonesia at 47th, and Thailand in 52nd place. The economic performance of the Philippines has been slow and erratic—characterized by spurts of growth followed by bust and stagnation.

The ADB 2007 Critical Development Constraints Study on the Philippines identifies the following critical factors that constrain growth: (i) tight fiscal situation; (ii) inadequate infrastructure, particularly in electricity and transport; (iii) weak investor confidence due to governance concerns; and (iv) inability to address market failures leading to a small and narrow industrial base (ADB 2007). It is viewed that easing these critical constraints can trigger a growth process conducive to alleviating poverty and reducing inequality in the country. Improving the system of public administration and governance will significantly improve the country’s development effectiveness.

## 21.3 Evolution and Current State of the Philippine Civil Service System

### 21.3.1 *Beginnings of a Modern Civil Service*

The Philippine civil service system is often associated as having been patterned on that of the American civil service system. During the American colonization of the Philippines, a merit system in the government was institutionalized. Civil service positions required passing the civil service examination as compared to the feudal, subjective, and politicized practices under the Spanish regime.

Public Law No. 5, also known as Act for the Establishment and Maintenance of Our Efficient and Honest Civil Service in the Philippine Island, established the Philippine civil service system in 1900 by the Second Philippine Commission. It created the three-man Civil Service Board (CSB)—headed by a chairman, assisted by a secretary and a chief examiner—to determine examinations, set age limits, and classify positions in the executive branch and the city government of Manila. Although CSB was reorganized as the Bureau in 1905, its function remained limited to examinations and appointments (CSC 1977: 4–6).

The 1935 Philippine Constitution established the merit system as the basis for employment in the government. Succeeding years witnessed the expansion of the Bureau’s jurisdiction to include

the three branches of government: the national government (NG), local government, and government corporations. In 1936, an executive order (EO) increased the function of the Bureau to include authority over the removal, separation, and suspension of subordinate officers and employees in the civil service.

Republic Act (RA) No. 2260 of the Civil Service Law was enacted in 1959. As the first integral law on Philippine bureaucracy, it superseded the scattered administrative orders issued since 1900 pertaining to government personnel administration. It introduced personnel policies that to date remain the most salient features of the system—promotion based on a system of ranking positions, a performance appraisal system to improve employee performance, and a more participative approach to management and interaction with employees. It elevated the Bureau to a Commission whose head is given the rank of department secretary (CSC 1977).

RA No. 6040 of 1069 amended RA No. 2260, which decentralized certain civil service functions, particularly examinations, appointments, and administrative discipline. Right after the imposition of martial law in 1972, Presidential Decree No. 1 reiterated the decentralization of personnel functions and restructured the commission to make it more amenable to its quasi-legislative and quasi-judicial functions. In 1975, Presidential Decree No. 807 (The Civil Service Decree of the Philippines) re-defined the role of the commission to become the central personnel agency of the government.

The 1987 Constitution provides the framework for the professionalization of the Philippine bureaucracy after the fall of the Marcos dictatorship. It mandates the Civil Service Commission (CSC) to administer the civil service and that it shall be directed by a chair and two commissioners. It covers all branches, instrumentalities, and agencies of the government, including government-owned and controlled corporations (GOCCs) with original charters.

The Philippines is a democratic and republican state. It has a unitary form of government with a multi-tiered structure. There are three branches of government—the executive, the legislative, and the judiciary—that provide for separation of powers and a system of checks and balances. [Figure 21.1](#) shows the structure of the government of the Philippines. An elected president heads the Executive branch. The upper and lower chambers of Congress—the Senate (with 24 senators elected nationally, for a 6-year term) and the House of Representatives (with more than 250 members elected by a legislative district and by party-list organizations)—comprise the Legislative Branch.<sup>2</sup> The Supreme Court, headed by a chief justice, the Court of Appeals, regional trial courts, and other special courts comprise the Judicial Branch (ADB 2005b: 5–10).

Both the president and the vice president are elected nationally for a 6-year term. A president who has served a full term cannot be re-elected; the vice president cannot serve for more than two successive terms (The Omnibus Election Code of the Philippines 1992). The president has the power to (i) make executive decisions, (ii) veto laws passed by Congress, (iii) control the disbursement of NG funds, (iv) appoint secretaries and undersecretaries of the executive department, and (v) appoint justices and judges of the judicial branch (ADB 2005b: 5–10). The NG operates through about 20 departments, 28 other executive offices and services (OEOS) under the Office of the President, and 60 GOCCs including government financial institutions (GFIs) (DBM 2008).

The country is divided into 17 administrative regions and two autonomous regions, namely, the Cordillera Autonomous Region (CAR) and the Autonomous Region of Muslim Mindanao (ARMM). Most government departments maintain regional offices. See Annex 1 for the administrative map of the Philippines. The local government units (LGUs) comprise the second tier of government—that

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<sup>2</sup> Senators can serve for two consecutive terms while members of the House of Representatives, elected every 3 years, can serve for three consecutive terms.

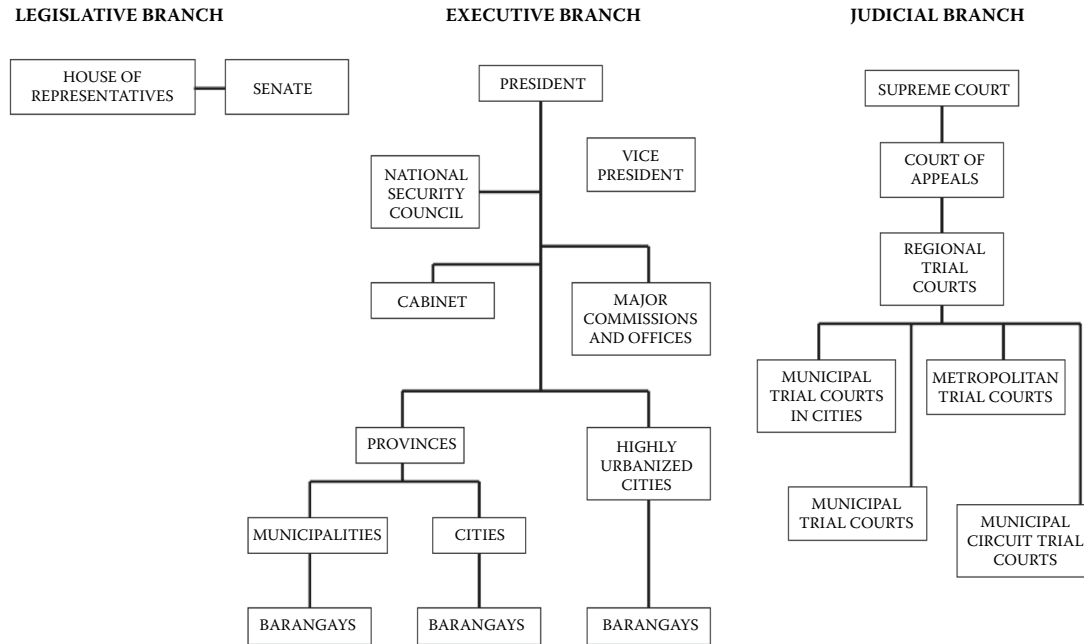


Figure 21.1 Structure of the Philippine government. Source: U.S. Library of Congress, July 2006.

consists of three layers: provinces, component cities and municipalities, and villages or *barangays*. There are also independent or highly urbanized cities (HUCs) that are at the same level as provinces and are directly divided into *barangays*. Each level of LGU is headed by an elected official, i.e., provincial governor, city/municipal mayor, or *barangay* captain. Each level of LGU also has a legislative body consisting of an elected vice-governor or vice-mayor and council members (ADB 2005b: 5–10).

The enactment of RA 7160 or the Local Government Code (LGC) of 1991 has been considered a landmark, far-reaching, and the most radical piece of legislation in the history of the Philippine politico-administrative system. It devolved significant functions, powers, and responsibilities—and personnel—to the thousands of local governments in the country that have long been operating under a highly centralized regime: the delivery of basic services, authorized responsibility to enforce certain regulatory powers, increased financial resources to LGUs, legitimized participation for civil society in local governance, and authorized entrepreneurial and development activities by LGUs (Brillantes 2003a, 2003b).

### 21.3.2 Inventory of Government Personnel

Table 21.1 and Figure 21.2 show the inventory of government personnel from 1964 to 2008. National government agencies (NGAs), including state universities and colleges (SUCs), constitute the bulk of government personnel comprising 74% in 1964, 65% in 1994, 65% in 2004, and 63% in 2008. This is followed by LGUs at 26% in 1964, 25% in 2004, and an increase to 29% in 2008. GOCCs comprise 7% in 2004 and 8% in 2008. Table 21.1 also shows that the number of government personnel in 2008 is smaller by 162,161 compared to 2004. Figure 21.3 shows the employment pattern of the NGAs, GOCCs, and the LGUs.

The LGC transferred some 70,283 personnel of devolved functions from NGAs to LGUs. The Department of Agriculture (17,673), Department of Health (DOH) (45,896), and the Department of Social Welfare and Development (4,144) were heavily affected (Manasan 2004). The local government system consists of 80 provinces, 121 cities, 1,509 municipalities, and 41,994 *barangays* (or villages). Local governments are tasked to promote the general welfare of the people and provide a broad range of services that are administrative, corporate, regulatory, and developmental in nature.

Geographically, the National Capital Region (NCR) has the most number of government employees with 506,103 in 2008, followed by Region 3 with 104,354, and Region 4 with 100,758 employees. CARAGA and Region 2 have the smallest workforce among the regions, with 23,186 and 23,258 employees, respectively (Figure 21.4).

In 2008, the Department of Education (DepEd), the DOH, and the Department of Public Works and Highways (DPWH) had the most number of employees of NGAs with 519,954 (51.92%), 27,906 (2.79%), and 27,826 (2.78%), respectively (CSC 2008).

As the central government personnel agency, the CSC is mandated to establish a career service and adopt measures to promote morale, efficiency, integrity, responsiveness, progressiveness, and courtesy in the civil service. It shall strengthen the merit and rewards system, integrate all human resources development programs for all levels and ranks, and institutionalize a management climate conducive to public accountability (1987 Constitution, Article IX, Sections 2–3).

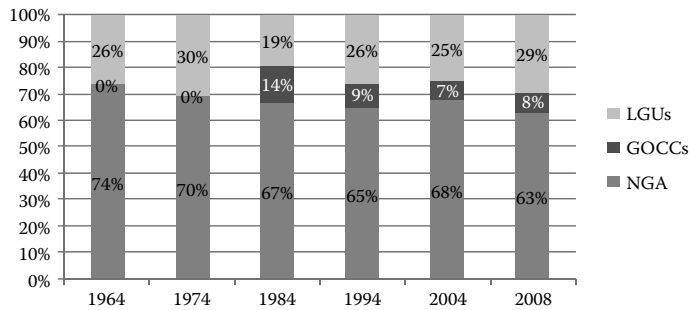
In 1987, the Administrative Code was adopted to elaborate on the key principles and policies for the Philippine administrative system. It reiterates that civil servants are appointed based on “pre-determined merit and a competitive technical examination.” It provides for the rights to self-organization and the benefits of government employees. It prohibits government employees from participating in partisan politics. It also mandates the CSC to uphold due process when investigating offenses by civil servants. The organizational structure of the CSC is shown in Figure 21.5.



**Table 21.1 Inventory of Government Personnel, 1964–2008**

Level	Year											
	1964		1974		1984		1994		2004		2008	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
NGAs	201,401	74	194,735	70	667,114	67	796,795	65	1,001,495	68	832,676	63
GOCCs	0	0	0	0	134,453	14	112,858	9	103,977	7	99,360	8
LGUs	71,444	26	85,432	30	189,878	19	316,023	26	370,227	25	381,502	29
Totals	272,845	100	280,167	100	991,445	100	1,225,676	100	1,475,699	100	1,313,538	100

Source: Adapted from CSC 2004; CSC, 2008 Inventory of Government Personnel, 2008; updated by the authors.



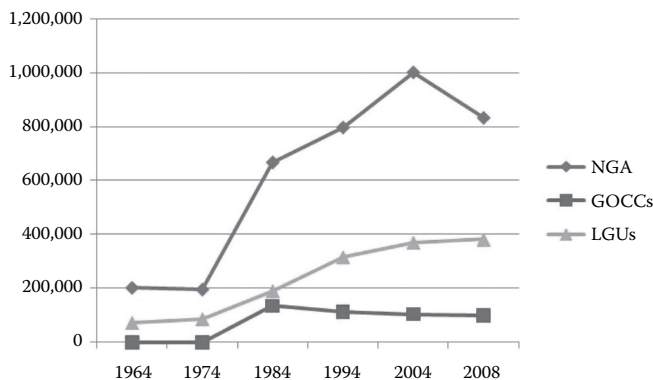
**Figure 21.2** Distribution of government personnel, 1964–2008. Source: by the authors.

The CSC, being one of the three independent Constitutional Commissions, has adjudicative power. Thus, it renders final arbitration of disputes and civil service personnel matters.<sup>3</sup> Since then, the CSC has been responsible for recruiting, building, maintaining, and retaining the government workforce. The CSC also underwent changes through the inclusion of a three-man body and the introduction the Career Executive Service (CES) (Box 21.1).

Positions in the Philippine civil service are categorized into “career” and “non-career.” Career officers are further categorized into first, second, and third levels. These are permanent positions with security of tenure. Promotion to higher levels of appointment must meet certain qualification standards and performance. Table 21.2 lists the career appointments in the civil service system.

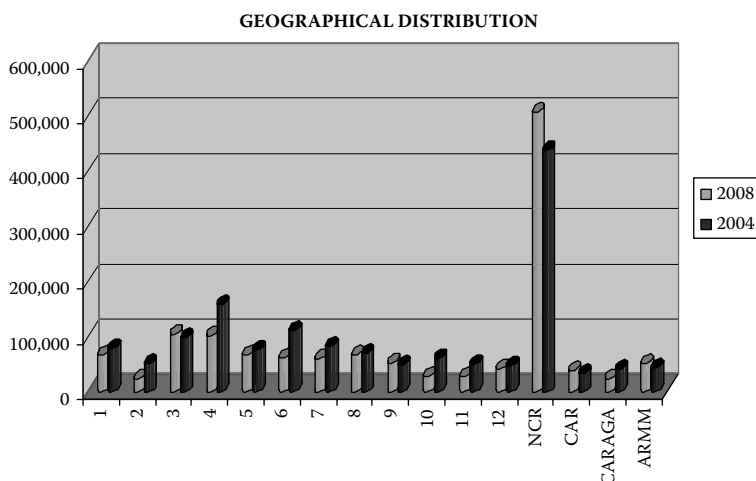
Non-career service refers to appointments that have a fixed-term or temporary status in government. These appointments are not based on the usual tests of merit and fitness, and tenure is otherwise limited. They include “elective officials” (national and sub-national); appointment of officers holding positions at the pleasure of the president; chairpersons and members of the commissions and boards with a fixed term of office, including their personal and confidential staff; contractual personnel; and the emergency and seasonal personnel.

In 2008, there were 1,153,651 CES and 159,887 non-career personnel. The government also hired 281,586 employees under contracts of service and job orders (CSC 2008). Table 21.3 and Figure 21.6 show the number of career service personnel by appointment level. Career appointments



**Figure 21.3** Government employment, 1964–2008. Source: by the authors.

<sup>3</sup> The other two are the Commission on Audit (COA) and the Commission on Elections (COMELEC).



**Figure 21.4** Geographical distribution of government personnel, 2004 and 2008. Source: Adapted from (CSC 2004 and CSC, 2008 Inventory of Government Personnel, 2008.)

at the second level (professional and technical) stood at 67.3% or 776,182, while 30.4% or 350,824 were at the first level (clerical, trades and crafts group). The third level (executive) comprised 1.2% or 13,316 appointments. Non-executive career appointments were at 1.2% or 13,329.

Non-career service casual employees comprised 60.9%, while contractual, elective, and co-terminus positions were at 13.1%, 13%, and 12.1%, respectively (Table 21.4 and Figure 21.7). About

### BOX 21.1 THE CAREER EXECUTIVE SERVICE

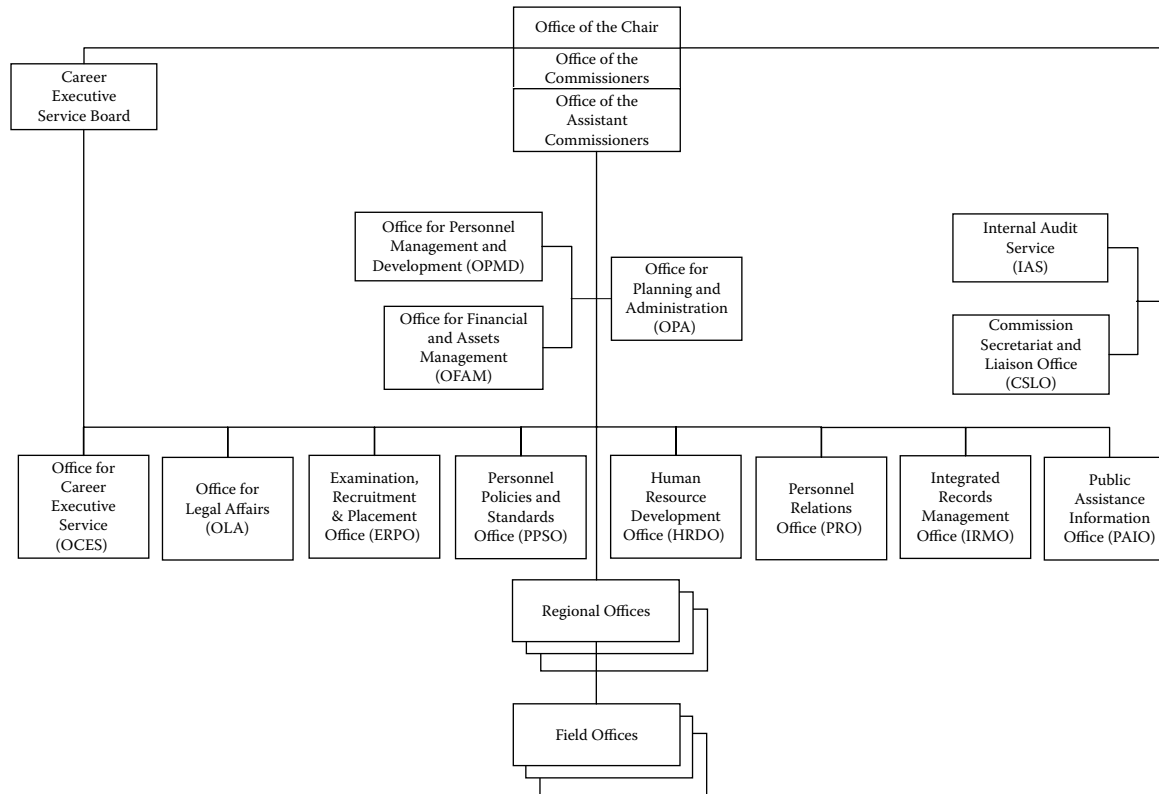
CES is the third level or the managerial class in the group of career positions in the Philippine civil service. It was created by Presidential Decree No. 1 to “form a continuing pool of well-selected and development-oriented career administrators who shall provide competent and faithful service.” The CES is also a public personnel system program, but separate from the program for the first two levels of positions in the Philippine civil service.

Career Executive Service Officers (CESOs) are appointed to ranks and only assigned to CES positions. As such, they can be re-assigned or transferred from one CES position to another and from one office to another, but not more often than once every two years. The CES is similar to the Armed Forces and the Foreign Service where the officers are also appointed to ranks and assigned to positions.

The Career Executive Service Board (CESB) is the governing body of the CES. CESB is mandated to promulgate rules, standards, and procedures on the selection, classification, compensation, and career development of members of the CES.

The positions in the CES are career positions above division chief level that exercise managerial functions. These are the positions of undersecretary, assistant secretary bureau director, bureau assistant director, regional director, assistant regional director, department service chief, and other executive positions of equivalent rank as may be identified by the CESB.

Source: CESB website at [www.cesboard.gov.ph](http://www.cesboard.gov.ph).



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**Figure 21.5** Organizational structure of the CSC. Source: CSC.

**Table 21.2 Levels of Career Appointments**

<i>Level</i>	<i>Coverage</i>
First	Clerical, trades, crafts, and custodial service positions, which involve non-professional or sub-professional work in a non-supervisory or supervisory capacity requiring less than 4 years of collegiate studies
Second	professional, technical and scientific positions involving professional, technical or scientific work in a non-supervisory or supervisory capacity requiring at least four years of college work up to Division Chief level
Third	positions in the Career Executive Service

Source: CSS (2008); de Leon (2000).

69% of all career employees are working in NGAs, while 24% and 7% are in LGUs and GOCCs, respectively. Of the non-career positions, 68% are in LGUs, 21% in NGAs, and 11% in GOCCs.

Despite the implementation of the decentralization program since 1991 and the succeeding rationalization efforts, the civil service system remains top heavy, particularly in terms of distribution of government personnel. Between 1984 and 2004, the NGA comprised 67% to 68% of the total workforce. In 2008, NGA personnel declined to 63% in 2008, while LGU employees increased to 29% and GOCCs increased to 8%.

### **21.3.3 Recruitment and Selection**

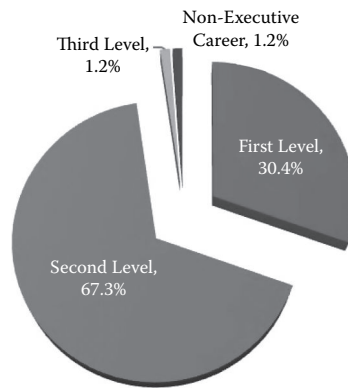
The Philippine civil service has well-established rules and procedures on recruitment and selection, which include announcement of job opportunities, competitive application, and qualification standards, among others. Each government agency has a designated human resource development office/unit responsible for performing this function.

The civil service, however, is generally not a very attractive career in the Philippines. Aside from the low compensation packages, there are concerns about the recruitment process and procedures, stigma of an inefficient bureaucracy, and rent seeking. On some occasions, political patronage and interference impede career advancement and undermine established procedures that uphold the merit system.

**Table 21.3 Career Service Employees by Position Level, 2008**

<i>Position Level</i>	<i>NGAs</i>		<i>GOCCs</i>		<i>LGUs</i>		<i>Total</i>	
	<i>No.</i>	<i>%</i>	<i>No.</i>	<i>%</i>	<i>No.</i>	<i>%</i>	<i>No.</i>	<i>%</i>
First level	148,528	18.6	33,275	40.4	169,021	62.0	350,824	30.4
Second level	628,146	78.7	46,173	56.0	101,863	37.4	776,182	67.3
Third level	10,305	1.3	2,080	2.5	931	0.3	13,316	1.2
Non-executive career	11,605	1.5	929	1.1	795	0.3	13,329	1.2
Total	798,584	69	82,457	7	272,610	24	1,153,651	100

Source: Adapted from CSC, 2008 Inventory of Government Personnel, 2008; authors' computations.



**Figure 21.6** Distribution of career service employees, 2008. Source: by the authors.

During the incumbency of CSC chairperson Corazon de Leon, she introduced the Brightest for the Bureaucracy Program (BBP) to attract honor graduates and the best talent to the Philippine public service system. Government agencies are directed to allocate a certain number of vacant positions for BBP eligibles, but there is lack of empirical data on the progress of BBP.

### 21.3.4 Examination-based Entry and Appointment System

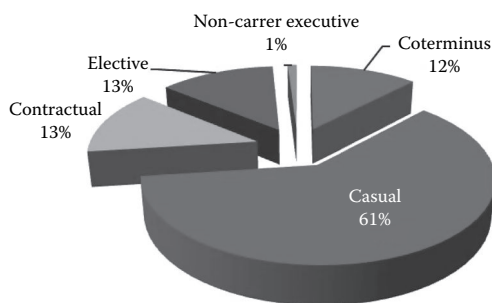
Regular appointment in the Philippine civil service requires civil service eligibility (CSE)—both at professional and sub-professional levels.<sup>4</sup> Eligibility is generally earned by passing the civil service examination. University graduates with academic honors (e.g., *cum laude*, *magna cum laude*, *summa cum laude*) are conferred with eligibility under a special law. Individuals who have passed the professional certifications (board examinations) by the Professional Regulatory Commission

**Table 21.4** Non-Career Service Employees by Type of Appointment, 2008

Type of appointment	NGAs		GOCCs		LGUs		Total	
	No.	%	No.	%	No.	%	No.	%
Co-terminus	6,075	17.8	2,843	16.8	10,422	9.6	19,340	12.1
Casual	18,718	54.9	10,052	59.5	68,554	63.0	97,324	60.9
Contractual	8,036	23.6	3,849	22.8	8,997	8.3	20,882	13.1
Elective	322	0.9	0	0.0	20,425	18.8	20,747	13.0
Non-career executive	941	2.8	159	1	494	0.5	1,594	1
Total	34,092	21	16,903	11	108,892	68	159,887	100.0

Source: Adapted from CSC, 2008 Inventory of Government Personnel, 2008; authors' computations.

<sup>4</sup> Professional level requires university degree holders while sub-professional are undergraduates and at least high school graduates.



**Figure 21.7** Distribution of non-career service employees, 2008. Source: by the authors.

(these are engineers, doctors, nurses, among others) are CSE. Lawyers who passed the bar examinations also have CSE.<sup>5</sup> Foreign service officers who passed the foreign service examination (FSE) likewise earn CSE.

In 2008, 132,602 took the civil service examination (professional level, i.e., university degree holders), of which 12,279 or 9.1% passed. At the sub-professional level, 4,707 or 13.6% passed out of 34,521 takers. A total of 10,331 (professional and sub-professional levels) joined the government service in 2008. CSC statistics, however, cannot show whether those who took the examination in 2008 were the same individuals who joined the government service. CSC examination passers do not necessarily enter the civil service. Table 21.5 shows the number of civil service examinees for the professional and sub-professional levels.

The CSC introduced the Walk-In and Dispersed Career Service Examination to provide greater access for potential entrants. The system was designed to improve the examination process for individuals seeking CSE. The passing mark was also increased from 70% to 80% to give greater premium to the most basic requirement in entering the government service, which is the CSE. This marks the intention of the CSC to increase the competency and requirements for

**Table 21.5** Examinees and Passers in CSC Eligibility Screening, 2005–2009

Year	Professional			Sub-professional		
	Examinees	Passed	%	Examinees	Passed	%
2005	125,120	4,542	3.6	23,377	3,222	13.8
2006	129,534	9,915	7.7	25,506	2,581	10.1
2007	147,064	15,870	10.8	33,924	5,630	16.6
2008	135,602	12,279	9.1	34,521	4,707	13.6
2009	95,208	8,669	9.1	23,786	2,941	12.4

Source: CSC (2009), percentages by the authors.

Note: Partial results for 2009.

<sup>5</sup> See [http://www.csc.gov.ph/cscweb/elig\\_special.html](http://www.csc.gov.ph/cscweb/elig_special.html) for the “Eligibilities Granted under Special Laws and CSC Issuances.”

civil servants. This effort needs to be complemented with strategies and programs to attract more highly skilled and intelligent graduates, board passers, and CSEs.

The Computer-Assisted Test (CAT) CAT-VIP and the Job Opportunity Data Bank System are two innovations by the CSC. CAT is a CSC-developed software program instituted to revolutionize the pencil and paper types of civil service examinations. CAT facilitates the systematic storage, updating, retrieval, checking, and scoring of examinee data through the computer software. It allows examinees to find out whether or not they have passed the examination in about an hour. Individuals with special needs like the visually impaired were initially precluded from taking the civil service examinations; however, the CAT-VIP introduced a voice-sensitive computer aid and specially designed instruments or keyboards for those with disabilities.

### **21.3.5 Position Classification, Compensation, and Salary Structure**

During the presidency of Corazon Aquino and the CSC chairmanship of Patricia Sto. Tomas, the Salary Standardization Law (SSL) was implemented through the enactment of RA No. 6758 entitled, “An Act Prescribing a Revised Compensation and Position Classification System in the Government and for Other Purposes” or “Compensation and Position Classification Act of 1989,” on August 21, 1989, which covers all positions in the government, including GOCCs and GFIs.<sup>6</sup>

The Department of Budget Management (DBM) through its Compensation and Position Classification Bureau (CPCB), now named Organization, Position Classification and Compensation Bureau (OPCCB) determines the position and its equivalent rank in the salary grading system. A manual on position classification and compensation provides details on the operationalization of the SSL.

The staffing positions of the NG are further classified into constitutional positions, key executive positions, and other permanent positions. Constitutional positions (with 315 filled positions in 2005) cover the highest level—elective and appointive—positions in government service, including the president, vice president, senate president, Speaker of the Lower House, chief justice of the Supreme Court, senators, members of the House of Representatives, associate justices of the Supreme Court, and chairpersons and commissioners of the constitutional commissions, and the Ombudsman. Key executive positions refer to executive, managerial, and chief division or equivalent positions (e.g., executive secretary, department secretaries) numbering 21,280 positions in 2005. Other permanent positions include technical, support to technical and administrative positions, part-time, positions exempt from the SSL,<sup>7</sup> and the uniformed personnel had a total of 1,129,086 filled positions in 2005 (DBM 2005).

These positions have salary grades (SG) and ranks, which follow 33 SG levels, each grade level with eight steps and equivalent monthly rate fees. The president has SG 33 with a monthly pay of PHP57,750 or roughly US\$1,200 (computed at 47 peso to a dollar).

Table 21.6 shows the equivalent SGs for constitutional positions, which range between 33 and 30 SGs. To illustrate the monthly compensation of civil servants in the Philippines, Table 21.7 indicates the pesos equivalent of the top and bottom five SGs. Annex 2 provides the complete SG list and the estimated number of positions on each level.

<sup>6</sup> The SSL schedule was adjusted in 1994. President Gloria Macapagal-Arroyo has signed Joint Resolution No. 4 Series of 2009 or the Salary Standardization Law III, which intends to raise salaries by 50%. It will be implemented in tranches between 2009 and 2012.

<sup>7</sup> Mostly, GFIs and confidential staff of Congress are not covered by the SSL.



**Table 21.6 Salary Grades of Key Government Officials**

<i>Position</i>	<i>SG</i>
President	33
Vice-president	32
President of the Senate	32
Speaker of the House of Representatives	32
Chief Justice of the Supreme Court	32
Senator	31
Member of the House of Representatives	31
Associate Justice of the Supreme Court	31
Chairman, Constitutional Commission	31
Commissioner, Constitutional Commission	30

Source: RA 6758 – Revised Compensation and Classification System (1984).

### **21.3.6 Training and Development**

Decentralized human resource management and development is the guiding principle of the civil service in the Philippines. To achieve this goal, the CSC issued Memorandum Circular (MC) No. 20 (1990) granting agencies authority to approve their own training and development plans. The program complemented MC No. 20 by conducting a training needs inventory in 1464 agencies. It also launched a mechanism for monitoring and evaluation of training programs called Program for Evaluation of Resources Maximization in Training (PERMIT) and conducted a seminar on government employee relations, leadership and organizing techniques through the Advanced Leadership and Employee Relations Training (ALERT) Program.

Other programs initiated by the CSC in the area of human resource development are Field Officers Legal Appreciation Seminar on Higher Results and Efficiency (FLASH), Program for Legal Experts Advancement (PLEA), and Work Improvement Schemes Effectiveness (WISE). In addition, it also extended scholarships to qualified government personnel and established a Personnel Development Committee (PDC) in government offices. The programs initiated by the government allowed civil servants to become more flexible for future tasks. The training programs also serve as an avenue for employees to share their experiences and provide vital contributions in further strengthening the civil service in the Philippines.

The CSC sponsors the Local Scholarship Program (LSP), which aims to provide educational opportunities, particularly in pursuing graduate studies, to qualified government employees in preparation for higher responsibilities. It seeks to enhance the knowledge, skills, attitude toward career, and personal growth and advancement (CSC 2010). Box 21.2 indicates the various components of the LSP. Table 21.8 indicates the number of beneficiaries and graduates of the LSP from 1993 to 2002.

Many of the scholarship programs are tied to the official development assistance (ODA) of donor countries like the United States, Japan, Australia, and the European Union, among others. Civil servants are allowed to pursue a degree program while retaining their positions and

**Table 21.7 Top and Bottom Five SG Levels**

<i>Salary Grade</i>	<i>Monthly rate (in Php)</i>	<i>No. of Positions</i>
33	57,750	1
32	46,200–54,917	4
31	40,425–48,052	355
30	28,875–34,323	412
29	25,333–30,113	2,999
5	7,043–8,375	10,765
4	6,522–7,751	32,198
3	6,039–7,177	21,635
2	5,540–6,585	6,764
1	5,082–6,041	23,677

Source: DBM (2005).

compensation on condition of returning to the service. With the above-mentioned programs, training in the civil service is supply driven. It is usually tied to the ODA or a meager training fund in the government budget. Owing to the limited fiscal space of the government over the past years, training receives the least priority.

Among the organizations involved in the conduct of training for civil servants are the Office of the Personnel Development and Services (OPDS) and the CESB for CES officers under the CSC; academic institutions like the National College of Public Administration and Governance of the University of the Philippines, the Development Academy of the Philippine (DAP), and the Local Government Academy (LGA) of the Department of the Interior and Local Government (DILG).

### **BOX 21.2 COMPONENT OF THE LOCAL SCHOLARSHIP PROGRAM**

The components of the Local Scholarship Program are: (1) LSP-Masteral Degree (LSP-MD), which was established in 1993 through CSC Resolution No. 93-299 to provide qualified government employees with a 1-year scholarship grant to pursue masteral or post graduate studies; (2) LSP-Bachelor's Degree Completion (LSP-BDC), started in 1996 by virtue of CSC Resolution No. 967300, which offers undergraduates in government a 2-year scholarship to complete their studies and earn a college diploma; and (3) LSP-Skilled Workers in Government (LSP-SWG), instituted in 1994 under CSC Resolution No. 94-2380, which offers a short term (not exceeding 6 months), continuing skills upgrading or enhancement training to first level government employees holding clerical, trades, crafts, and custodial service positions.

Source: CSC website at [www.csc.gov.ph/cscweb/scholarship.html](http://www.csc.gov.ph/cscweb/scholarship.html).

**Table 21.8 LSP Beneficiaries and Graduates, 2002**

<i>Program</i>	<i>No. of Beneficiaries</i>	<i>No. of Graduates</i>
LSP-MD	4,622	2,352
LSP-BDC	701	397
LSP-SWG	6,121	6,121
Total	11,444	8,870

Source: CSC (2010).

Note: LSP-SWG has been suspended since 2001.

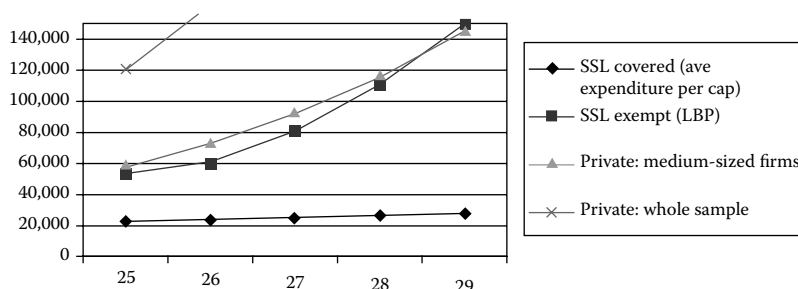
### 21.3.7 Incentive Structure in the Bureaucracy

Philippine public sector organizations—with some exempt GOCC and GFI entities—do not offer competitive compensation packages and incentives, unlike in developed countries in the West and other countries in Asia like Japan, South Korea, and even the Special Administrative Region of Hong Kong in China. Career growth in the public sector is rather slow compared to the private sector. Some positions in the government are considered “dead-end” with no opportunities for promotion, salary increase, or professional development.

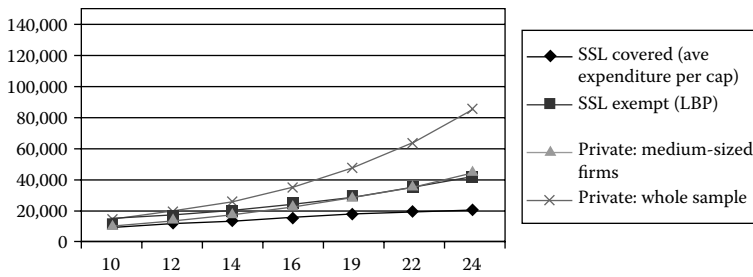
A study by the CSC in 2006 found that the salaries of third level or CES positions in the public sector are 74% lower, and professional and technical personnel are 40% lower compared to their counterparts in the private sector. The study used salaries of medium-sized business firms as a benchmark (PHDR 2008/2009). Figures 21.8, 21.9 and 21.10 show civil service officers not covered by the SSL, e.g., GFIs, have salaries that are comparable to those of managers in medium-sized private firms. However, the disparity or “inequity” becomes very wide for positions covered by the SLL at the CES and second levels, but there is not much difference in the salaries of first level civil servants with those in medium-sized private firms in the Philippines (CSC 2006).

### 21.3.8 Filipino Culture

It is important to appreciate the basic features of the Filipino culture; it would partly explain the way people think and respond to circumstances between the Philippine civil service and society.



**Figure 21.8 Comparison of salaries: Higher technical, supervisory, and executive position (SG 25 and above).** Source: Based on the CSC Compensation and Benefits Study from 2002–2006; Adapted from Monsod, T., HDN Discussion Paper Series, PHRD Issue 2008/2009, No. 4, 2009.



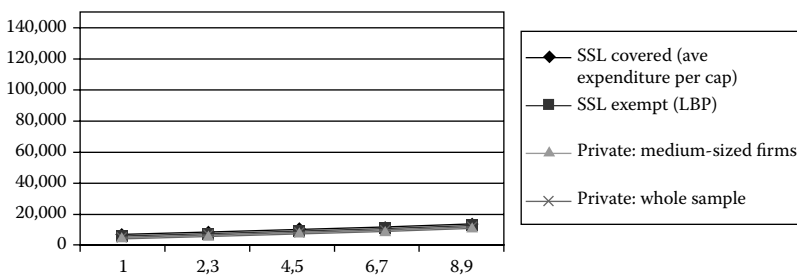
**Figure 21.9 Comparative of salaries: sub-professional and professional/technical positions (SG 10-24).** Source: Based on the CSC Compensation and Benefits Study from 2002–2006; Adapted from Monsod, T., HDN Discussion Paper Series, PHRD Issue 2008/2009, No. 4, 2009.

Generally, Filipino society is “collectivist, family-oriented, and personal-oriented.” Filipinos value their personal relationships above all else (Montiel 2002). They feel responsible and have emotional attachment to their family, kin, and close friends. Filipino culture is very unique and humane in nature. Annex 3 summarizes the apparent Filipino values, which have a great influence on their behavior and way of thinking. Evidently, these too have a significant effect or influence on public administration, policymaking processes, and public decisions.

### 21.3.9 Bureaucratic Values and Performance Culture

Generally, being a civil servant in the Philippines—career and non-career—does not translate into earning the highest respect in society. Aside from the low government salaries, they are oftentimes tainted by stereotypes of incompetence, political patronage, politicking, and elected officials are commonly branded as “traditional politicians.”

In a study on the early civil service system and Philippine administrative culture, Varela (1996) noted that the “practice of political partisanship and interference in public employment is ingrained in our administrative and political system.” Somehow, political recommendation for employment was a standard practice in the civil service then. Government employees felt their salaries would always lag behind counterparts in the private sector. They did not strive for high



**Figure 21.10 Comparison of salaries: Clerical and trade (SG 1-9).** Source: Based on the CSC Compensation and Benefits Study from 2002–2006; Adapted from Monsod, T., HDN Discussion Paper Series, PHRD Issue 2008/2009, No. 4, 2009.

performance since excellence or outstanding performance in government was not accompanied by rewards like promotion and/or a salary increase (p. 34).<sup>8</sup>

Many observers believe that the low salary is one cause for poor individual public performance, a good alibi to engage in corrupt practices, and contributory to the government's inability to hire and maintain the best workers in the civil service. Some perceive that personalistic values like *hiya* (shame), *pakikisama* (conformity), *utang na loob* (debt of gratitude), *kumpare* (padrino), *pakakipagkapwa* (human relations), and familial closeness of the Filipino culture "bring about organizational behaviors which may be considered negative and dysfunctional when viewed from the Weberian bureaucratic standards" (Varela 1996: 19).

Today, about 10,000 positions, including the CES, are subject to presidential prerogative—which has tended to deepen political patronage and undermine established CSC rules and qualification standards (PHDR 2008/2009: 19–24). Evidence indicates that the number of CES eligibles or officers holding career positions is declining; this means that either political appointments are increasing or CESOs are voluntarily leaving their posts (PHDN 2008/2009: 25).

On the other hand, the proliferation of graft and corruption in government has been attributed to collusion, personal favors, lack of moral hazard, low incentives in government service, and the inability to hold friends and family relations to account for their actions. The political institutions have likewise failed to elect leaders—with exceptions—who are responsible and accountable to the constituency. Political interference, political patronage, and governance issues are major stumbling blocks to government efficiency and effectiveness.

Over the years, qualification standards and performance measures have been put in place by the CSC. However, it remains difficult to measure the overall quality, effectiveness, and efficiency of the bureaucracy. For NGAs, the organizational performance indicator framework (OPIF) was established to provide a mechanism whereby programs and projects are ranked and funded in terms of their priority and relevance to the achievement of the desired outcomes. Two mechanisms for the review of government programs and projects have been established. One is the sector effectiveness and efficiency review (SEER), which is geared toward prioritization of broad sectoral programs. The other is the agency performance review (APR), which is concerned with measuring the extent to which the desired program results of specific government agencies have been accomplished. For LGUs, the Local Government Performance Measurement System (LGPMPMS) was introduced as a self-assessment tool to measure local government performance.

Alongside these review mechanisms, the executive department of the government advocated and implemented reforms in the procurement system. A new government accounting and auditing system (nGAS) has likewise been put in place to supplant a 50-year-old system, thus modernizing the financial recording and reporting of the entire public sector.

Some observers view the performance culture of the Philippine bureaucracy as frustrating. They stereotype the Philippine government as "big, slow and bumbling" (Mangahas 1993). The public often complain of government "inefficiency and ineffectiveness" in processing government documentary requirements, filing of or paying for income and property taxes, applying for land titles, or receiving public services, among others.

<sup>8</sup> This account relates to the Philippine civil service experience between 1961 and 1987, before the major overhaul of the Philippine civil service system.

Bringing about responsive and efficient delivery of public services has been the focus of public sector reform initiatives especially among the frontline agencies. There have been cases where national and local government institutions have improved the quality and timeliness of their services. Improvements have been instituted in the systems and procedures with the advent of information and communication technology (ICT) and paperless processes have been documented.

### **21.3.10 Grievance and Redress System**

RA 6743 sets the code of conduct and ethical standards for public officials and employees to uphold the time-honored principle of public office being a public trust. It grants incentives and rewards for exemplary service, and enumerates prohibited acts and transactions with corresponding penalties for violations. This policy framework, however, does not guarantee good behavior in the public service. All agencies within the civil service are required to set up mechanisms for grievances: a grievance committee is established within each agency. All grievances of civil service staff are to be resolved at the lowest level possible.

## **21.4 Development Performance of the Philippine Civil Service**

Measuring overall government performance is a daunting task. Economists Kaufman, Kray and Mastruzzi devised a governance performance measurement system based on six dimensions of governance, namely, voice and accountability (VA), political stability and absence of violence (PS), government effectiveness (GE), regulatory quality (RQ), rule of law (RL), and control of corruption (CC).<sup>9</sup> See Box 21.3 for details of each dimension.

Table 21.9 presents the governance performance of nine selected Asian countries from 1996 to 2006. Each country follows a color pattern illustrating a simple quartile distribution. The best quartile (over 75th percentile) is in green (with the top 10% colored in darker green), the second best quartile (over 50th) is in yellow, the third (over 25th) is in orange, and the fourth is in red (with bottom 10th in darker red) (Kaufmann, Kraay and Mastruzzi 2007).

In general, Singapore's performance in all six governance indicators was over the 50th percentile or belongs to the second-best quartile. A solid dark green color pattern is evident in Singapore's GE, RQ, RL, and CC. Likewise, South Korea belongs to the second-best quartile. On the other hand, Bangladesh, in general, belongs to the fourth quartile. Generally, the Philippines belongs to the lower 50th percentile. It can also be gleaned from Table 21.9 that the Philippines' ratings on all six governance indicators deteriorated from 1996 to 2006. The following section discusses the results comparing the nine countries on each dimension.

<sup>9</sup> The governance indicators presented here aggregate the views on the quality of governance provided by a large number of enterprise, citizen, and expert survey respondents in industrial and developing countries. These data are gathered from a number of survey institutes, think tanks, non-governmental organizations, and international organizations. The aggregate indicators do not reflect the official views of the World Bank, its executive directors, or the countries they represent. Countries' relative positions on these indicators are subject to indicated margins of error that should be taken into consideration when making comparisons across countries and over time.

**BOX 21.3 WORLD BANK'S SIX DIMENSION OF GOVERNANCE**

*Voice and accountability* measures the extent to which a country's citizens are able to participate in selecting their government, as well as freedom of expression, freedom of association, and a free media.

*Political stability and absence of violence* measures the perceptions of the likelihood that the government will be destabilized or overthrown by unconstitutional or violent means, including domestic violence and terrorism.

*Government effectiveness* measures the quality of public services, the quality of the civil service and the degree of its independence from political pressures, the quality of policy formulation and implementation, and the credibility of the government's commitment to such policies.

*Regulatory quality* measures the ability of the government to formulate and implement sound policies and regulations that permit and promote private sector development.

*Rule of law* measures the extent to which agents have confidence in and abide by the rules of society, in particular the quality of contract enforcement, the police, and the courts, as well as the likelihood of crime and violence.

*Control of corruption* measures the extent to which public power is exercised for private gain, including petty and grand forms of corruption, as well as "capture" of the state by elites and private interests.

*Source:* Kaufmann, Kraay and Mastruzzi, July 2007:3–4

## 21.5 Key Development Challenges

The country governance assessment of the Philippines<sup>10</sup> identifies the following issues and challenges confronting the civil service system: (1) planning mechanism; (2) performance measures; (3) government reorganization; (4) bureaucratic behavior; (5) political influence; (6) competencies, compensation, and morale; and (7) personnel distribution and representativeness (ADB 2005a). [Table 21.10](#) summarizes these challenges and the manifestations.

Former DBM secretary Emilia Boncodin (2004) noted that, from the operational and bureaucratic level, the key issues that undermine government efficiency and effectiveness are: (1) operational leakages, referring to perceived graft and corruption in the bureaucracy; (2) weak corporate and regulatory environment; (3) weak public institutions, particularly in the enforcement of laws; (4) poor incentive structure within the bureaucracy as well as in the private sector; and (5) the complaints against government's slow response capability to changing situations and needs of the public. These gaps have weighed down the government's ability to provide adequate and efficient basic services. In addition, these issues have contributed to the country's poor fiscal position and its slow and unstable growth, which eventually led to a poverty level that remains high among middle-income developing countries (Boncodin 2004).

ADB (2007) noted that the "weak institutional capacity" of the Philippine public sector—which is beset with inadequate incentives, absence of performance culture, lack of professionalism,

<sup>10</sup> The main author of this chapter prepared the assessment on general public administration and the civil service system.

**Table 21.9 Performance of Selected Countries on World Bank's Six Dimensions of Governance, 1996–2006 (percentiles)**

Country	Voice and Accountability				Political Stability				Government Effectiveness			
	1996	2002	2004	2006	1996	2002	2004	2006	1996	2002	2004	2006
Bangladesh	43.3	35.6	28.4	30.8	26.9	20.7	14.4	8.7	27.0	27.5	20.9	23.7
China	10.1	9.1	10.6	4.8	41.8	38.5	39.9	33.2	66.8	60.2	57.3	55.5
Indonesia	16.3	36.1	37.0	41.3	9.1	8.2	7.2	14.9	64.0	32.7	38.9	40.8
South Korea	66.8	71.2	74.0	70.7	47.6	55.8	62.5	60.1	80.6	81.0	78.7	82.9
Malaysia	43.8	38.0	45.7	38.0	48.1	59.1	56.7	58.7	79.6	75.8	79.1	80.6
Philippines	60.6	51.0	49.0	44.2	39.4	24.5	11.1	11.1	59.7	54.5	49.8	55.0
Singapore	57.2	54.8	57.2	46.6	82.7	97.1	87.5	94.7	99.5	97.6	98.6	99.5
Thailand	60.1	60.6	55.8	32.2	59.1	57.7	29.8	16.3	72.5	64.5	66.4	64.9
Vietnam	9.6	9.6	11.5	8.2	58.7	54.8	54.3	59.6	53.1	40.3	40.3	41.7
Country	Regulatory Quality				Rule of Law				Control of Corruption			
Bangladesh	36.1	17.6	15.1	20.0	24.3	25.7	18.6	22.9	35.0	13.1	4.9	4.9
China	54.1	31.7	42.0	46.3	48.1	43.8	42.4	45.2	56.3	42.7	35.4	37.9
Indonesia	63.9	25.4	34.1	43.4	39.5	17.6	21.9	23.3	31.1	6.8	17.0	23.3
South Korea	65.9	74.6	74.6	70.7	71.4	75.2	70.5	72.9	73.8	66.5	61.7	64.6

(continued)



**Table 21.9 (continued) Performance of Selected Countries on World Bank's Six Dimensions of Governance, 1996–2006 (percentiles)**

Country	Regulatory Quality				Rule of Law				Control of Corruption			
Malaysia	80.0	65.4	69.3	69.8	71.0	63.8	65.7	65.7	73.3	66.0	65.5	68.0
Philippines	72.2	50.7	43.4	52.2	54.3	34.3	31.4	41.9	35.4	36.9	35.9	27.2
Singapore	99.5	98.5	99.5	99.5	94.3	91.9	95.7	95.2	97.6	99.5	99.5	98.1
Thailand	69.8	59.5	59.0	62.4	68.1	59.0	55.2	55.2	38.3	45.6	50.0	50.5
Vietnam	35.1	24.4	32.2	31.2	30.0	32.4	38.6	44.8	27.7	32.5	24.8	29.1

Source: Adapted from Kaufmann, D. et al., *Governance Matters VI: Governance Indicators for 1996–2008*, World Bank, Washington, DC, 2009.

Legend:

	90th–100 Percentile		75th–90th Percentile		50th–75th Percentile		25th–50th Percentile		10th–25th Percentile
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**Table 21.10 Major Issues and Challenges of the Philippine Bureaucracy**

<i>Issues and challenges</i>	<i>Manifestation</i>
Planning mechanism	<ul style="list-style-type: none"> <li>• Ineffective mechanism for planning, agenda setting, and policymaking</li> <li>• Haphazardly prepared policies and poor use of relevant and accurate information</li> <li>• Insufficient, inconsistent, and unreliable sources of data/information</li> </ul>
Performance measures	<ul style="list-style-type: none"> <li>• Inadequate or unavailable performance management and measurement system</li> </ul>
Government reorganization	<ul style="list-style-type: none"> <li>• Unclear delineation of functions, responsibilities and system of accountability of government agencies and instrumentalities</li> <li>• Overlapping and duplication of programs, uncoordinated policy implementation</li> <li>• Wasteful utilization of resources</li> </ul>
Bureaucratic behavior	<ul style="list-style-type: none"> <li>• Tendency to be very hierarchical and rule bound rather than performance oriented</li> <li>• Predisposes red tape and opportunities for graft and corruption</li> </ul>
Political influence	<ul style="list-style-type: none"> <li>• Patronage politics and vulnerability to political influence in the appointments and promotion in the civil service—lowest to top level officials</li> </ul>
Competencies, compensation, and morale	<ul style="list-style-type: none"> <li>• Mismatch of managerial and technical competencies due to political patronage and accommodation</li> <li>• Uncompetitive compensation level makes public office unattractive compared to higher and more secure paying jobs in the private sector</li> <li>• Poor performance standards and appraisal system leading to poor rewards systems</li> <li>• Low incentive to work and perform better</li> </ul>
Personnel distribution and representativeness	<ul style="list-style-type: none"> <li>• Bureaucracy is top-heavy or concentrated at the central government level</li> </ul>

Source: Adapted from Asian Development Bank (ADB), *Country Governance Assessment: Philippines*, Asian Development, Manila, 2005.

low levels of competencies, poor management of hiring and promotion—represents a critical development constraint to competitiveness, economic development, and sustainable growth of the country.

### **21.5.1 Corruption**

This issue of corruption cuts across the problematic areas of the Philippine bureaucracy. It impedes government effectiveness in service delivery and undermines the country's ability to pursue development objectives. Efforts to combat corruption in government have been pursued, including a good number of anti-corruption legislations and given existing agencies with the authority to fight corruption like the CSC, Office of the Ombudsman, National Bureau of Investigation (NBI), COA, Sandiganbayan, the Judiciary, DBM, COMELEC, Banko Sentral ng Pilipinas (BSP), the creation of about 17 special bodies. However, these efforts have “remained futile in grappling the plague of corruption in the administrative system” (ADB 2005a).

There are numerous laws in the Philippines, dating back to 1955, which address the subject of graft and corruption. Currently, the main reference is the Revised Penal Code of 1960, referred to as the Anti-Graft and Corrupt Practices Act, and the 1987 Constitution (Article XI). Some of the notable anti-corruption initiatives are the public procurement reforms spearheaded by the DBM. These include the issuance of EOs to facilitate increased competition and reduce delays in bidding, the implementation of the electronic procurement system, and the creation of Procurement Watch, Inc. (PWI), a civil society-based monitoring body on procurement. In October 2001, EO No. 40 was issued to standardize government procurement procedures, shorten the time frame for bidding, provide the Bids and Awards Committee (BAAC) with a permanent secretariat, and institutionalize the representation of CSOs in the BAAC.<sup>11</sup> EO No. 40 also facilitated the functioning of Procurement Watch, Inc. (PWI). The passage of the Government Procurement Reform Act in 2002 has further strengthened the policy framework to reduce the opportunities for corruption as well as to increase the risks of getting caught (ADB 2005a).

Under the leadership of the COA, key financial management reforms were undertaken, including the simplification and computerization of the government accounting system, the shift from residency auditing to audit team approach, and the introduction of participatory audit with civil society organizations (CSOs). The fight against corruption is drawing increasing involvement from civil society, the private sector, and media. They have become noticeably more active in demanding public accountability and transparency from government. Critical alliances have been formed via projects that support anti-corruption programs, e.g., the Transparent and Accountable Governance (TAG) Project—between the private sector and civil society, the Government and Budget Watch Projects—between government and civil society, and the Transparency and Accountability Network (TAN)—among civil society, the private sector, and the academe (ADB 2005a).

The CSC plays a preventive role in the fight against corruption by setting standards for government appointments and a punitive role by meting out penalties for violations of civil service rules. Government efforts to promote corporate governance and prevent private sector corruption are further strengthened by the joint initiatives of the Securities and Exchange Commission, the *Banko Sentral ng Pilipinas*,<sup>12</sup> and the Anti-Money Laundering Council (ADB 2005a).

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<sup>11</sup> The Implementing Rules and Regulations of EO No. 40 was signed in February 2002.

<sup>12</sup> Central Bank of the Philippines.

Every political administration in the Philippines after the Second World War has attempted to carry out public sector reform. The results and outcomes have been uneven and, to a certain extent, many initiatives have fallen short of expectations. The Integrated Reorganization Plan (IRP) of 1972 under President Marcos promised the most extensive and wrenching effort at administrative reform in the history of the Philippine republic. It provided for decentralization, downsizing of the bureaucracy, and standardization of departmental organization. It also sought to introduce structural changes and reforms to strengthen the merit system as well as the professionalization of the civil service system. In retrospect, one could not really expect the landmark innovations of the IRP to take root since they unfolded in an environment of authoritarianism and oppression, where the interests of the rich and powerful few reigned over the welfare of the people (Brillantes and Mangahas 2006; ADB 2005a).

The bureaucracy under Marcos became more subservient than at any other time in its history (Endriga 2001). Under the guise of pursuing the objectives of nation-building and institutional strengthening, Marcos purged thousands of government employees and restructured the government as he deemed fit. The government was shielded from public scrutiny and criticism. To make matters worse, most of these irresponsible acts, if not all, were perpetuated, tolerated, and left unpunished (Brillantes and Mangahas 2006; ADB 2005a).

The Aquino Government (1987–1992) introduced another wave of administrative reforms. Aside from restoring democratic institutions and ratifying a new constitution, guidelines for promoting public participation and private initiative in the affairs of the state were established. Decentralization, accountability, efficiency of frontline services, and fiscal discipline were likewise pursued. Accountability institutions such as the *Tanodbayan*, the COA and the CSC established during the Marcos era were given expanded powers under the new constitution. Aquino also created the Presidential Committee on Public Ethics and Accountability and the Presidential Commission on Good Government to restore government integrity and public confidence. CSOs became more visible in government decision making and program implementation (Brillantes and Mangahas 2006; ADB 2005). These agencies were envisioned to strengthen government integrity and public confidence and to retrieve the so-called ill-gotten wealth of former dictator Marcos and his cronies.

The record of performance of all these initiatives did not meet expectations. Aiming to streamline the bureaucracy, thousands of civil servants were purged during the Aquino administration. Most of the vacancies were filled by new appointees—many of them from the private sector—who entered through the traditional career system. This even led to the tradition of creating new positions to accommodate political appointees. In the end, the Aquino government had more government employees than her predecessor (Brillantes and Mangahas 2006; ADB 2005a).

Reorganization under Aquino took place with minimal participation of those affected. Paradoxically, while lay-offs were justified in the name of downsizing a government, the number of civil servants as well as political appointees increased considerably. The proliferation of political appointees did not only blur the merit and career system in the civil service, but it also hindered, in many instances, the continuity and stability of policies and programs. The number of public agencies and offices likewise grew, resulting in an extended and fragmented government structure (Brillantes and Mangahas 2006; ADB 2005a).

President Fidel V. Ramos (1992–1998) pursued the new public management (NPM) paradigm by creating a blueprint for re-engineering the bureaucracy (DBM, 1995a). His administration set out a plan to re-engineer the bureaucracy, and laid down the guiding principles for reorganizing and improving government operations. He attuned civil service reform with the global trend of reinventing and re-engineering the bureaucracy popularized by Osborne and Gaebler in the

early 1990s. Among the themes then were de-bureaucratization, decentralization, devolution, and deregulation for development. Ramos extended local governance and decentralization, promoted the privatization program by divesting GOCCs, and continued to implement the attrition law for rightsizing the civil service (Brillantes and Mangahas 2006; ADB 2005a).

President Joseph Estrada (1998–2001) issued EO No. 165 directing the formulation of an institutional strengthening and streamlining program for the executive branch and introduced a program on Re-engineering the Bureaucracy for Better Governance Program. He formed the Presidential Committee on Executive Governance (PCEG) through EO No. 165 dated October 19, 1999, to formulate an institutional strengthening and streamlining program for the executive branch, including GOCCs and SUCs. The PCEG crafted the Integrated Administrative Reform Plan (IARP) to identify specific administrative reforms affecting the missions, functions, structures, systems and operations, staffing, training and development, and compensation and benefits packages for personnel of government agencies (Brillantes and Mangahas 2006; ADB 2005b).

PCEG is an inter-agency body mandated to oversee and coordinate the overall implementation of public sector reform programs. It is co-chaired by the executive secretary and the DBM secretary with the NEDA director-general, the chairperson of the CSC, and the head of the Presidential Management Staff (PMS) as members. The turbulent conditions led to the suspension of the PCEG's operations. The Estrada administration was cut short through massive protests, with the president implicated in grave abuse of authority and graft and corruption, which led to his prosecution for plunder.

President Gloria Macapagal-Arroyo (2001–2004; 2004–present) envisioned improving the civil service system by streamlining the bureaucracy. On President Arroyo's assumption into office, she reactivated the PCEG. She issued Memorandum Order (MO) No. 93 directing the creation of six sub-committees to assist the PCEG in (1) service delivery, (2) organizational structuring and staffing, (3) financial management, (4) personnel management, (5) change management, and (6) information technology. As the technical working groups of the PCEG, these sub-committees review government policies, structures, operations, and programs, and recommend solutions to identified gaps and weaknesses in government systems and practices.

The PCEG took the lead role in the implementation of EO No. 72 in February 2002, which sought to rationalize the organization and supervision of agencies under and/or attached to the Office of the President (OP). The PCEG oversaw the reorganization of the OP, which involved the transfer of 13 agencies from the OP to other government offices, the abolition of 61 agencies, and the possible abolition of 16 other agencies. On September 8, 2004, the PCEG was likewise abolished and its functions were transferred to the DBM. In September 2004, a total of 14 agencies were abolished through EO No. 357; four either merged with or their functions were transferred to other departments/agencies. It also commissioned the Development Academy of the Philippines (DAP) to review systems and procedures undertaken by key agencies in the issuance of business permits, passports, retirement benefits, veterans' claims, land registration certificates, and professional licenses.

The PCEG also approved the Public Sector Institutional Strengthening and Streamlining Agenda. It likewise advocated the passage of the Reengineering the Bureaucracy Bill, which authorizes the president to implement the re-engineering plan and to create the Commission on Government Re-engineering. This bill is now with the Committee on Appropriations for review. The PCEG also led a review of the Code of Conduct for Civil Servants (RA No. 6713). It drafted EO No. 20, which directed heads of GOCCs, GFIs, and subsidiaries exempted from or not following the SSL to implement pay rationalization in all senior positions, suspend the grant of any salary increase and new benefits not covered by the SSL, and reduce the actual compensation package of senior officials and members of the Board of Directors/Trustees of GOCCs and GFIs.

After her State of the Nation Address (SONA) in July 2001, President Arroyo tasked the PCGG, which was formed under the Aquino administration, with the primary function of recovering the ill-gotten wealth of the Marcos family, to undertake similar recovery efforts, this time, directed at the alleged ill-gotten assets of former President Estrada. The Medium Term Philippine Development Plan (MTPDP) under the Arroyo administration aims, in the same manner, to reorient government bureaucracy, minimize overlaps in public programs and projects, and check the expansion of government activities. Her second SONA in 2002 further called for building a strong republic capable of delivering a public service that is free from class and sectoral interests. She likewise stressed the importance of building strong institutions capable of implementing good policies and delivering responsive essential services. The MTPDP adopted the Re-engineering the Bureaucracy for Better Governance Program of the previous administration.

President Arroyo launched her administration's Ten Point Agenda, which provides the overall policy framework in managing for development results in the country. Her new program carried the slogan "BEAT THE ODDS"—which stands for: Balanced budget; Electric power and water to all *barangays*; Automated elections; Transport and digital infrastructure to link the country; Terminate hostilities in Mindanao; Heal the wounds of EDSA; Education for all; Opportunities for employment; Decongest Metro Manila; and Develop Subic-Clark as a development hub. The Ten Point Agenda served as the basis for the MTPDP 2004–2010, which in turn spells out the government's strategic framework for achieving economic and social development goals. The MTPDP's has been oriented toward reducing poverty and meeting the Millennium Development Goals (MDGs).

President Arroyo transformed the PCEG into an *ad hoc* body. She issued EO No. 366 instructing the DBM and the CSC to pursue a Rationalization Program for the executive branch. It also requires rationalizing functions to avoid duplication and overlaps in government agencies to ensure government efficiency. Special benefits and separation packages have been put forward for employees who would be affected. EO No. 444 was also issued directing the DILG "to conduct a strategic review on the continuing decentralization and devolution of the services and functions of the national Government to LGUs in support of the Rationalization Program of functions and agencies of the executive branch."

Since its inception, the CSC has been chaired by persons with unquestionable probity, competence, and dedication. Each of them endeavored to introduce and manage change in the civil service system to the best of their abilities. Annex 4 summarizes the major reform initiatives of former chairpersons of the CSC since 1987. They have likewise pursued paradigm shifts in managing the civil service (see Annex 5). Notwithstanding the CSC's powerful mandate, it requires a firm and sustained commitment from the political leadership; otherwise, it would render the CSC powerless and irrelevant.

## 21.6 Conclusion

The Philippines has pursued policy and institutional frameworks to promote professionalism, meritocracy, efficiency, and accountability in the civil service system. Since the 1900s, the country has instituted enabling laws and mechanisms to put in place professionalization standards in the government. The promulgation of the 1987 Constitution, the Administrative Code, EO issuances, and other enabling laws hoped to develop and strengthen public sector management.

The overall government performance and development results tell us otherwise. Today, the Philippines is now lagging behind its Asian neighbors where, economically, it was second to Japan

in the 1960s. Evidence suggests, “that after the momentous restoration of democracy in 1987 and the myriad of governance reforms as well as the pockets of successes in putting in place transparent and accountable administrative systems at different levels of government, the country as a whole remains to be in poor state of governance” (Mangahas 2008).

Largely, the quality of the Philippine bureaucracy reflects on the country’s development, competitiveness, and economic growth. Major issues pertain to uncoordinated planning mechanisms, lack of performance measures, need for continued government reorganization, poor bureaucratic behavior and performance culture, susceptibility to political influence on appointments, lack of competences and low incentive structure, and the uneven distribution of personnel.

Civil service reforms—through paradigm shifts, innovations, and building up of trust—pursued by the past chairs of the CSC were laudable. Indeed, significant strides have been made to professionalize the bureaucracy. The position classification, compensation structure, and entry requirements are not ill-structured. Entry to career positions of the civil service is highly competitive if we are to base it on the results of civil service examinations, and compensation packages are not as bad compared to medium-size firms, particularly at the first and second level civil service.

Despite the above, there remain key institutional reforms that need to be pursued. The highly politicized CES—where appointments of CES officials disregard CES eligibility rules and procedures of the Office of the President—has been seen as a key constraint in professionalizing the entire bureaucracy. The president has the ultimate power when it comes to appointments at the CES, where political favors are very apparent across high-level NGAs positions. Hence, a Civil Service Code remains wanting. It is specifically intended to professionalize the third level managers or the CES. There are high hopes that addressing the politicization of the CES would have a trickle-down effect to the entire bureaucracy.

Civil service reforms have to be coupled with efforts to improve accountability mechanisms, new systems and procedures, and development frameworks, including efforts to combat corruption in government; the public expenditure management (PEM) and the medium-term expenditure framework (MTEF); the OPIF, which is a results-based oriented approach to the delivery of government services and functions; the e-NGAS; and the harmonization for effectiveness and managing for development results framework.

Indeed, the public sector reforms offer opportunities toward government efficiency and effectiveness. The civil service or the bureaucracy remains the backbone of efforts to make the government work better. Still, improving the civil service as an institution—its basic systems and procedures, structures, administrative values and competences, including recruitment, entry, appointments, position classification, and compensation structure, human resource development, incentives, etc.—should not be overshadowed by encompassing public sector reforms advocated and supported by development organizations.

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# Annexes

## Annex 21.1 Administrative Map of the Philippines



**Annex 21.2 Salary Grading System and Month Rate**

<i>Salary Grade</i>	<i>Equivalent in Pesos</i>	<i>No. of Positions</i>
33	57,750	1
32	46,200–54,917	4
31	40,425–48,052	355
30	28,875–34,323	412
29	25,333–30,113	2,999
28	24,359–28,955	1,992
27	23,422–27,842	3,302
26	22,521–26,771	5,315
25	21,655–25,742	3,595
24	20,823–24,752	9,472
23	20,020–23,799	4,112
22	19,251–22,883	12,034
21	18,510–22,003	3,191
20	17,799–21,158	9,813
19	16,792–19,959	14,214
18	15,841–18,830	32,910
17	14,944–17,764	13,035
16	14,098–16,758	45,899
15	13,300–15,810	29,795
14	12,546–14,914	12,390
13	11,837–14,070	12,282
12	11,167–13,274	107,965
11	10,535–12,522	106,510
10	9,939–11,815	276,910
9	9,318–11,075	13,881
8	8,709–10,351	19,112
7	8,139–9,675	4,983
6	7,606–9,042	29,153
5	7,043–8,375	10,765

**Annex 21.2 (continued) Salary Grading System and Month Rate**

<i>Salary Grade</i>	<i>Equivalent in Pesos</i>	<i>No. of Positions</i>
4	6,522–7,751	32,198
3	6,039–7,177	21,635
2	5,540–6,585	6,764
1	5,082–6,041	23,677

Source: DBM 2005.

**Annex 21.3 Cultural Aspects of Philippine Society**

<i>Culture</i>	<i>Manifestation</i>
Personalistic politics	<ul style="list-style-type: none"> <li>• Family, relatives, and friends</li> <li>• <i>Kumpadres, kababayans, pradinós</i></li> </ul>
The ties that bind	<ul style="list-style-type: none"> <li>• <i>Kaibigan, kumpadre, kababayan, kakilala</i> (friend, countryman, someone you know)</li> </ul>
Personal approach to politics	<ul style="list-style-type: none"> <li>• Public officials seem to be approachable and sensitive</li> <li>• <i>Kamayan</i> (to shake hand)</li> <li>• <i>Tapik</i> (pat on the shoulder)</li> <li>• <i>Haplos</i> (to be stroked)</li> <li>• <i>Akbay</i> (put one arm to another's shoulder)</li> </ul>
Lack of professionalism	<ul style="list-style-type: none"> <li>• <i>Personalan</i> (personal level)</li> <li>• <i>Tampoham</i> (hurt)</li> <li>• <i>Hindindian ako</i> (I was turned down)</li> </ul>
Perceive political utility of shame	<ul style="list-style-type: none"> <li>• <i>Hiya</i> or shame</li> <li>• <i>Delicadeza</i></li> </ul>
Pakikisama (conformity to an individual or group)	<ul style="list-style-type: none"> <li>• Pressure of demands</li> <li>• Pleasure of fulfilling personal requests</li> <li>• Conformity to colleagues or superiors</li> </ul>
Utang the Loob (debt of gratitude)	<ul style="list-style-type: none"> <li>• Payback of favors received (political, financial, etc.)</li> </ul>
Power of personal connections	<ul style="list-style-type: none"> <li>• Dismissal of authority</li> <li>• Abuse of authority by virtue of personal connections</li> </ul>
Machismo	<ul style="list-style-type: none"> <li>• Dominance of male over females</li> <li>• "<i>hindi kaya yan ng babae. Babae lang sya eh</i>"</li> </ul>
Culture of dependence	<ul style="list-style-type: none"> <li>• Display of dependency and helplessness, especially the poor</li> <li>• Dependence on patron politicians</li> <li>• Dependence on the government</li> </ul>

Source: Based on Montiel, C., *Philippine Political Culture: View from Inside the Halls of Power*, Philippine Governance Forum, Quezon City, 2002.

#### Annex 21.4 CSC Chairpersons and Their Respective Programs

<i>Chairperson</i>	<i>Program/Project</i>	<i>Main Thrust</i>
Patricia Sto. Tomas	<ul style="list-style-type: none"> <li>• Walk-in and Dispersed Career Service Examination</li> <li>• Posting and publication of vacant positions</li> <li>• SWAP Work Assistance Program</li> <li>• Salary Standardization</li> <li>• Program for Evaluation of Resources Maximization in Training</li> <li>• The Panibagong Sigla 2000</li> <li>• Pssst...Panibagong Sigla Ngayon at sa Susunod na mga Taon</li> <li>• Local Scholarship Program</li> </ul>	<ul style="list-style-type: none"> <li>• To improve the examination process and push for merit protection and promotion</li> <li>• To promote efficiency in allocation of resources and provision of equal opportunity</li> <li>• To exchange post and items within government offices</li> <li>• To promote productivity and attract the best available pool of applicants to work as civil servants</li> <li>• To provide agencies with the power to develop their respective training and human resources development plans</li> <li>• To build a civil service system that is professional, highly motivated, efficient, innovative, and responsive to the clientele</li> <li>• To develop a feedback system that provides an avenue for the public to post comments on the quality of service in government agencies</li> <li>• To enhance the capabilities and value of public employees</li> </ul>
Corazon Alma de Leon	<ul style="list-style-type: none"> <li>• Mamamayan Muna Hindi Mamaya Na</li> <li>• Brightest for the Bureaucracy Program</li> <li>• Computerized systems</li> <li>• Breakthrough 21</li> <li>• Distance Learning Program (DLP)</li> <li>• Unionization</li> <li>• Awards Program</li> </ul>	<ul style="list-style-type: none"> <li>• To reduce and eventually eliminate discourtesy, arrogance, and inefficiency in public service</li> <li>• To attract the best talent and become part of the Philippine public service system</li> <li>• To improve the efforts of the Civil Service Commission in upgrading the examination and hiring process and increase the connectivity within government agencies</li> <li>• To develop activities that will prepare HRM officers representing all public instrumentalities</li> <li>• To provide access to training for public employees working in remote areas of the country</li> </ul>

(continued)

**Annex 21.4 (continued) CSC Chairpersons and Their Respective Programs**

<i>Chairperson</i>	<i>Program/Project</i>	<i>Main Thrust</i>
		<ul style="list-style-type: none"> <li>• To push for the accreditation and recognition of unions in government agencies</li> <li>• To reward and recognize civil servants who have rendered exemplary service and served as a model to other employees</li> </ul>
<p>Karina Constantino-David</p>	<ul style="list-style-type: none"> <li>• Personnel Information Database System</li> <li>• PASADA</li> <li>• Gender and Development</li> <li>• Performance Management System</li> </ul>	<ul style="list-style-type: none"> <li>• To create a database for storing and managing government personnel information</li> <li>• To measure the effectiveness and efficiency of government frontline service</li> <li>• To address the various gender needs and concerns of employees in the bureaucracy</li> <li>• To outline the process for work and financial planning, performance agreements, and monitoring and review of agreements</li> </ul>

**Annex 21.5 Required Shift in Paradigm**

<i>Area of Concern</i>	<i>Paradigm Shift</i>	
	<i>From</i>	<i>To</i>
1. Role of civil servants	Follower/ implementator	Source of expertise and institution memory
2. Recruitment of civil servants	Aptitudes/skills	Service value orientation and integrity of character
3. Role of third level officials	Administration/ managers	Visionaries/technocrats/experts
4. Appointment and promotion to third level	Bias for managerial skills	Competitive process/insulated from politics; major considerations are: character, competence, and potential; competence encompasses managerial and technical skills
5. Management styles	Subservience to hierarchy/ authoritarian	Participatory/consultative
6. Operating perspective of the government	Regulation	Assistance and service
7. Civil service relationship with other branches of the government	Being an adjunct of other branches	Autonomy from the will of political game

Source: Civil Service Commission Strategic Plan for 2002–2005, *Civil Service Commission*, October 27, 2009. <[www.csc.gov.ph/cscweb/CSCStratPlan.doc](http://www.csc.gov.ph/cscweb/CSCStratPlan.doc)>, undated.





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**MACAO**

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**V**

*Newman M.K. Lam*

Coordinator



## Chapter 22

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# History and Context of Public Administration in Macao

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Liu Bolong

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### 22.1 Introduction

It has been 10 years since Macao's return to China under the political framework of "One Country Two Systems." Macao was governed by Portugal for over 400 years and its citizens received mixed cultural heritage of both Chinese and Portuguese characteristics.<sup>1</sup> In the Macao government, the public administration has been heavily influenced by its Portuguese administrative culture, which has its own merits of easiness and relaxation, but lacks discipline and formalization as modern management science requires. In comparison with the Anglo-Saxon administrative culture, the Latin style represents intimate personal relations, a lax working attitude, and to some extent, it is easy to induce corruption. At the time of handover, the Macao civil service was mainly occupied by such a mixed administrative culture, which was strongly criticized by citizens and scholars. "Prior to the beginning of the transition period in 1987, Macao's civil service had several characteristics. These included inefficiency, insufficient training, low educational level, corruption, frequent reorganization, recruitment and promotion on the basis of political patronage rather than merit, and intense bureaucratic infighting among government departments. ... From a Weberian perspective, Macao's

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<sup>1</sup> Macao differed from Hong Kong as Hong Kong was under British colonial rule while Macao was administered by Portugal over the last 400 years without access to the sovereignty of the enclave.

bureaucracy arguably remains underdeveloped and backward.<sup>2</sup> Although the Portuguese government made efforts to improve the situation before the handover, things have remained more or less the same because of the low educational level of civil servants in general and the political sensitivity of handover on the part of the Portuguese high officials who have to train local Chinese to replace them after the handover. Who would be glad to train successors to replace themselves?

After the handover, the newly appointed Macao Special Administrative Region (SAR) chief executive, Edmund Ho, was reluctant to carry out major reform measures because he understood that at the beginning of SAR government, maintaining the morale of local civil servants was key to his governance as a new government. The civil service underwent several phenomenal reforms but remained largely intact. In 2002, with the opening of the gambling franchise, the economic transformation proved to be quicker than most people expected. Citizens and investors' expectations of public administration were higher than the reality could provide. Citizens complained about corruption practice, inefficiency, and policy incompetence on the part of major government officials. Recently, midway through the chief executive's second term, the Macao SAR government was determined to launch full-scale administrative reform and promulgated its roadmap in this respect. Why did the government decide to push forward major reforms 8 years after the handover? Will it succeed? The author discusses public administration in Macao, its strengths and weaknesses and analyzes major reforms necessary to ensure that the SAR government improves its governance capacity.

## 22.2 History

At the time of handover, the Macao public administration was characterized by the Portuguese administrative heritage of low efficiency and corruption. The preparatory work for the handover was not a success. The then-Portuguese Macao government concentrated its efforts on 'localization,' the training of Chinese civil servants to replace the leaving Portuguese expatriates. However, localization encountered many problems, including the questionable quality of some local bureaucrats and translators, opposition from the Portuguese on the measures facilitating localization, the half-hearted attempt at bilingualism, and losing quality engineers and technicians to the private sector, etc.<sup>3</sup> However, there are positive sides to Portuguese-style public administration in Macao. For example, in Portuguese culture, respect for the law is strong. Once a policy is formulated and becomes law, civil servants tend to follow the letter of the law and implement it. The rule of law remains at the center of European cultural tradition, which has substantial influence over Macao administrative culture.

The scale and structure of the Macao public administration was characterized as oversized and in urgent need of reform. In Macao, the total population of half a million needs to support a civil service of more than 18,000, a much higher ratio in comparison with neighboring areas of Hong Kong and Singapore. Also, public administration has been characterized by frequent organizational restructuring. As a practice, many Portuguese governors came to Macao and changed the structure of policy secretaries and bureaus casting to their own expectations. Before handover, each governor dispatched to Macau by Lisbon reshuffled his management team, arbitrarily adding or reducing the number of undersecretaries and bureaus, which caused chaos and dissatisfaction among Macau civil servants and citizens. To address this, the Basic Law of Macao restructured the

<sup>2</sup> Lo Shiu Hing, *Political Development in Macao*, Hong Kong: The China University Press, 1995. p. 116.

<sup>3</sup> *Ibid.*, p. 25.

newly born SAR government. The SAR established new institutions, such as the Public Security Police Force and the Macao Customs, merging the two city councils into a general one for the purpose of simplification and efficiency, and placing Macao's anti-corruption body under the direct leadership of the Macao chief executive, and changed the number of policy secretaries from seven (under the Portuguese government before handover) to five (Figure 22.1). Macao citizens at large welcomed some of the restructuring measures. However, some academics doubted the negative effectiveness of reduction at the policy secretary level.

### 22.3 Major Reform Measures since the Handover

Since the handover, the central government in Beijing has kept its promise of a high degree of autonomy for the Macao SAR.<sup>4</sup> The Macao SAR government has total autonomy concerning public administration reforms. The chief executive, Edmund Ho, decided to take a gradual attitude toward public administrative reform. For him, Macao needs to create a situation of stability to support his SAR government after its handover. He stressed that to put forward administrative reform, the SAR government needs to maintain stability of the society and the government as its first priority. He pointed out that Macao must take a prudent attitude and gradual approach in administrative reform.<sup>5</sup> In other words, the chief executive deeply understood the fundamental shortcomings of the present civil service regulations and felt reluctant to undertake drastic measures which could create chaotic situations that he would find difficult to control. Following this policy, the Macao SAR did create a stable civil service that could operate normally when Macao continued to tide over the economic difficulties at the beginning of the new SAR government.

The Macao SAR government did make several administrative reforms after the handover, e.g., the performance pledge and the 'one dragon' service.<sup>6</sup> Before the handover, the Macao civil service had an inefficient organizational culture, which was frequently complained about in the Macao media. For example, the civil servants never started work on time. They needed a cup of coffee and breakfast before work. The citizens had to wait half an hour, watching them finishing breakfast. The Macao media was full of stories of ill-treatment written by citizens who suffered such an ordeal. This has much improved since the handover.

Now all civil servants have to be at work on time and are no longer allowed to eat breakfast when it is time to go to work. All government employees must wear name badges at work. In this way, citizens can complain about them easily when they are treated impolitely, or praise them when they are greeted warmly. In the government, measures were taken to adopt the performance pledge as practiced in Hong Kong and elsewhere.<sup>7</sup> The government is pursuing a policy aimed at imposing government efficiency and providing greater convenience for investors and citizens in applying for procedures in the various organizations of the Macao government. According to government information, by the end of 2007, 44 government departments had practiced 990 items of the performance pledge.<sup>8</sup> Especially in important economic sectors, such as license approval in

<sup>4</sup> The stated policy is that China will never interfere in the internal affairs of Macao with the exception of national defense and diplomacy as stipulated in the Macao Basic Law.

<sup>5</sup> *Macao Justice Daily*, February 6, 2003, p. 1.

<sup>6</sup> The one dragon service refers to the government policy of one-window services for applications through government departments.

<sup>7</sup> In Macao, the performance pledge is a major reform measure that is widely welcomed by citizens.

<sup>8</sup> Macao Public Administration and Civil Service Bureau, file://c:DOCUMENT\BLW\LOCALS-1\TEMP\A68WR6NF.htm. January 18, 2008.

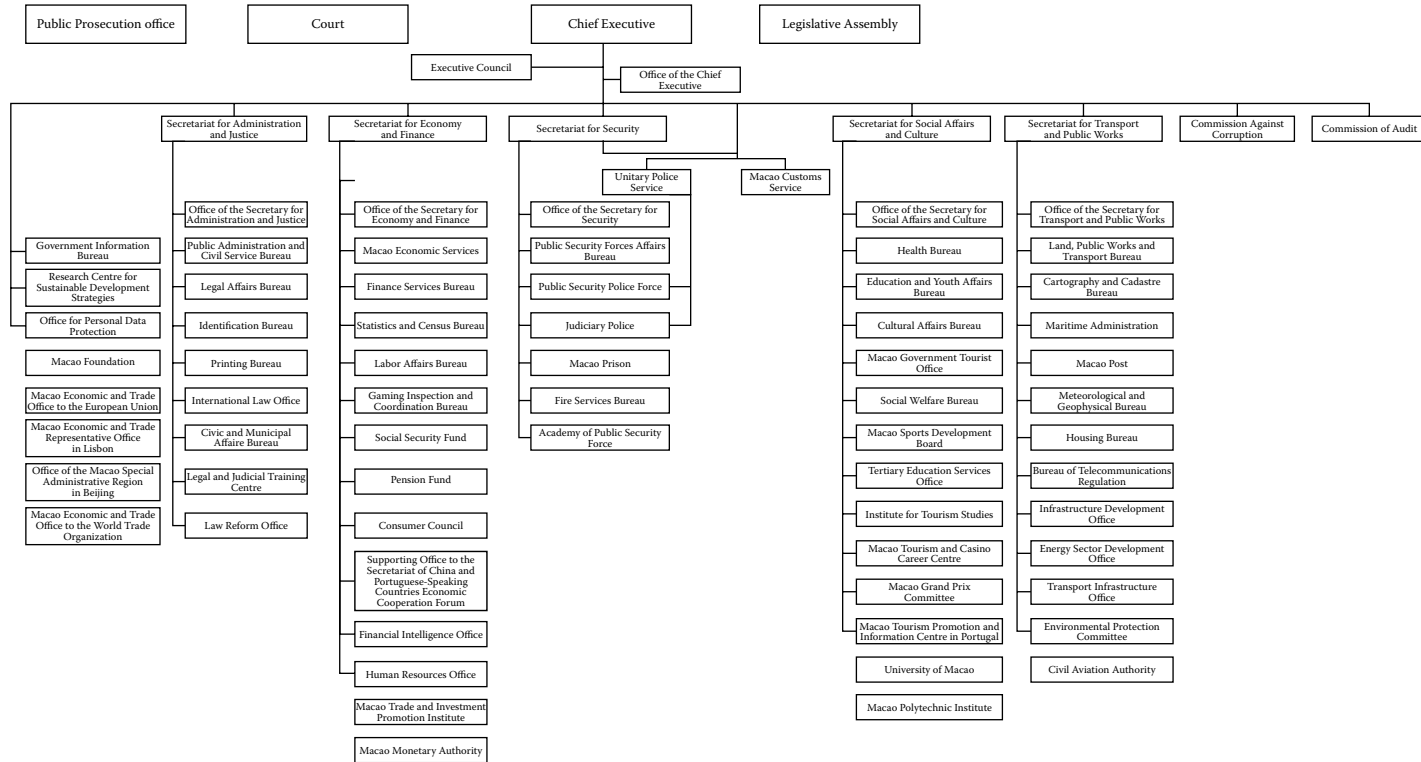


Figure 22.1 Macao government structure (2007). Source: Macao SAR Public Administration 2007.

the restaurant industry, Bureau for Foreign Investment, Tourism Bureau, Economic Department, etc., investors and citizens can go to various departments and get approval within the promised time. For example, in the Civic and Municipal Affairs Bureau, the renewal of licenses for street peddlers is completed within 10 working days.<sup>9</sup>

Another item is having “one-stop” procedures for running businesses in government. Before this policy, investors and citizens have to go to many government departments to get approval for one license. For example, before a person can open a restaurant legally, he/she must go to dozens of government departments to get licenses for fire prevention, sanitary conditions, tax bureau, etc., a process that could take months, not days. With one-stop service, one only needs to apply through one window to get all licenses approved if he/she is ready with all the documents. Owing to technical difficulties, by the end of 2006, only 10 departments accomplished 26 items in this report.<sup>10</sup> Today, procedures are clearer, more accurate and faster,<sup>11</sup> and comparable to those in Hong Kong, though Macao is still lagging behind Hong Kong in policy-making capabilities. Hong Kong is famous for its policy-making procedures and outcome while Macao is still addicted to the old practice of elite thinking and individual decision making. Macao law is old-fashioned, rough, and ambiguous, sometimes subject to the random decisions of major government officials. Macao has a long way to go as far as substantial reform measures are concerned, but these reforms greatly improved government efficiency and helped Macao in gaining necessary capital and expertise in its economic development. As one newspaper commented, “Many government bureaus have practiced ‘one-stop’ service and won the praise of Macao citizens. For example, in restaurant industry which is essential to Macao economy and tourism, the SAR Government intends to fulfill ‘one-stop’ procedure in the first half of this year, which will be considered good news for the whole industry and Macao.”<sup>12</sup>

Another achievement concerns the revision and modernization of the Macao Civil Service Charter, which was drafted long ago and many provisions need to be modernized to meet the need of civil servant management in contemporary Macao. The charter sets out the enrollment, internal management, and retirement policies for the civil service, but its obsolescence perpetuates ‘irrationality’ and low morale among civil servants. For example, employee recruitment is delegated to bureaus causing corruption, unfair competition, and favoritism. Macao media publishes this kind of story from time to time. The old regulation in this respect needs to be improved and revised to change the negative image of corruption and abuse of power.

Since the handover, especially in the second term of the present chief executive, some aspects of the civil service charter have been put under scrutiny and revision. The government began to revise the position and rank system, salary and welfare, retirement and early leave, and rewarding and punishment. A striking example is in the field of civil servant evaluation. This is an important policy item that could ensure a sense of justice among the staff and promote a spirit of hard work and dedication. The SAR government revised the general assessment policy and promoted a more regulated and justifiable system in 2005. Over the two years of the experiment, the new system is clearly much better than the old one. However, our investigation reflected that most civil servants do not think the new system is advantageous in promoting morale among the staff.<sup>13</sup> This

<sup>9</sup> Ibid., January 18, 2008.

<sup>10</sup> Ibid., January 18, 2008.

<sup>11</sup> Hong Kong was the first to practice the performance pledge with satisfactory results.

<sup>12</sup> *Macao Justice Daily*, February 6, 2003, p. 1.

<sup>13</sup> In a recent survey organized by the University of Macao, over 60% of the civil servants questioned believed that the new evaluation system does not progress substantially and needs to be further revised.



is because the law needs to implement further and detailed regulation, as the new system is more complicated and easy to cause complaints. For example, each bureau head has to write a detailed working plan for civil servants under his or her supervision and evaluate them twice every year. The bureau head spends the last month of each year writing detailed evaluation, and appeals can be long and result in legal processes. To avoid trouble, supervisors often write favorable remarks regardless of individuals' real performance. In general, the modernization of the civil service charter has not been systematic and has caused discontent and unease among staff. But apart from this, the SAR government has organized major reforms in the field of application of computer knowledge in applying for government licenses and practicing ISO quality management. Some forms of restructuring of government organizations after the handover. Also, the Macao SAR government adopted a new Provident Fund system under which more than 6,000 government employees who were excluded in the old retirement system have achieved a retirement guarantee under this new retirement scheme.<sup>14</sup> Before handover, two thirds of civil servants were contracted under the system and were not provided with a retirement scheme.

Have the piecemeal measures achieved satisfactory results? Media comments and citizens' opinions suggest that the answer is 'no'. On the one hand, citizens feel comfortable with the reform measures and phenomenal progress as discussed before. On the other hand, they know that many deep-rooted problems have not been solved and could cause grave concern and discontent in Macao society, especially under the context that Macao has opened its gambling franchise and the pace of economic development has been quickened. The citizens' opinions were reflected in call-in programs on Macao Radio from 8:00 to 10:00 a.m. every weekday. Most of the calls have complained about chaotic policy formulation and implementation, and inefficient bureaucratic processes. When the Macao gambling franchise was opened in 2002, the tranquil and backward situation was broken. Before the opening of the gambling franchise, Macao witnessed consecutive years of negative growth rate and economic recession. The opening of the gambling franchise was a successful process. Many international entertainment conglomerates successfully bid for gambling licenses and began to invest large amounts of money in Macao. Major Las Vegas players, like Wynn Cooperation, Las Vegas Sands, and MGM established hotel and casino businesses in Macao. The Macao economy witnessed double-digit growth for several years and Macao began to receive world attention with heavy American investment. Since the opening of the gambling franchise, CNN has reported many stories about Macao. The investment and leap forward of the Macao economy called for an early overhaul of administrative reforms, as investors expected a responsible and efficient government to support their business expansion and citizens raised their aspirations for the government because they hoped that the newly established SAR government could help them to confront the challenges bestowed on Macao local businesses. With accelerated growth and the need for human resources from the big investors, Macao local businesses felt the pain brought about by economic prosperity, which doubled property prices and employee salaries in a short time. They demand government help for survival. Many small family restaurants and shops have shut down because of the higher employee salaries and rental costs. Public transportation is congested, and taxis are difficult to find in the old town of Macao. Buses cannot cope with the large numbers of tourists and citizens. Employees find it difficult to get to work on time and students to get to school. Citizens have demanded help from Macau SAR government. It is the responsibility of the government to manage the situation and govern the city in an orderly way. However, because Macao's public administration did not carry out systematic reforms, the old administrative culture has remained and old regulations have not been revised substantially.

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<sup>14</sup> *Overseas Chinese Daily*, June 29, 2007, p. 1.

One can imagine the enormous pressure on the government. A visible example of social division in Macao was manifested by a mass protest on May 1, 2007. More than 6000 people marched through the streets of Macao, demanding the resignation of chief executive Edmund Ho and an end to the rampant corruption in the government that they believe has caused their plight in economic and social terms. “Political demonstrations of such magnitude have rarely been seen in Macao, where people generally prefer apolitical and non-confrontational approaches.”<sup>15</sup> Mass demonstrations have become routine in Macao, especially on October 1 (national day of the PRC) and December 20 (birthday of the Macao SAR).

## 22.4 Analysis of the Reform Roadmap

With a sense of urgency, the SAR government decided to push forward comprehensive administration reforms with the purpose of bringing about administrative efficiency and supporting the robust economic development. A roadmap for administrative reform was published in the Macao media in 2007, with the intention of substantial progress within a 2-year framework. This is a grandiose program with ambitious goals and rich contents. They include fundamental and structural reform measures:

### 1. Internal management:

- Establishing the organizational culture of law-abidingness and anti-corruption, and improving a forceful supervision system of public resources. The SAR government no longer tolerates public servants who are corrupt and show a tendency to abuse power.
- Comprehensively upgrading the quality and capacity of governance, under the supervision of society and the Macao citizens, to establish a highly efficient civil service system.
- Reforming the civil service charter systematically, pushing forward reform measures in the fields of central recruitment, position and rank classification, contract regulation, official responsibility system, subsidies and welfare, and resignation of civil servants to raise the morale of the civil service and provide positive prospects for civil servants.
- Clarifying the power and duties of each governmental department, and coordinate the functions of the departments concerned, and studying the SAR political and administrative structures for this purpose.

### 2. Policy making and policy implementations:

The SAR government understands the essential role of policy making in good governance and would enhance the policy-making capacities of main government officials through intensive training. Recently, a Master’s training class was started for bureau-level officials, a cooperative result between the Macao SAR government and the National Institute of Public Administration in Beijing.

### 3. The structured reforms:

The SAR government will begin to study and rationalize the political system and organizational structure so that the division of labor among government departments is clear and reasonable. So far, several new bureaus have been established to cope with major issues in Macao society: public transportation and environmental protection, etc.

<sup>15</sup> See *SCMP*, May 6, 2007, p. 11.

So far, the reform roadmap has only achieved limited results in the areas of government restructuring, policy-making training, and improvement in efficiency. Most of the reform goals are either postponed or completely ignored. As regarding SAR political and administrative restructuring, no actions are taken, and no timetable for restructuring, much to the chagrin of Macau citizens. Concerning major reform measures of anti-corruption and official responsibility systems, citizens witness no detailed regulations, only slogans. Right from the start, many citizens raised questions about this roadmap. Many observers have adopted a wait-and-see attitude as no concrete measures have been published yet. Some legislators are suspicious that the program seems to be just old wine in a new bottle. For example, over the last few years, the Macao SAR government hoped to establish an official responsibility system, but without a detailed plan to accomplish this task. However, this issue is again incorporated into the new roadmap and one legislator questioned whether it is a delaying technique.<sup>16</sup>

Many scholars question how these objectives can be reached without detailed measures, regulations, and priorities. The speed is slow and many reform measures have fallen to empty slogans. For example, there is no systematic search on institutional rearrangement in the Macao SAR government. Most civil servants complain of a grave disparity of workload between bureaus, or even within bureaus. Some civil servants work till midnight while others can be ready for home after 5:00 p.m. A major structural overhaul remains an urgent necessity. Owing to the enormity of the tasks ahead, it is an absolute necessity to have a strategic plan in this respect, figuring out the priority in major government reform measures. Some commentators raised the suggestion that reforms must be carried out in an orderly way. "Roadmap is a large-scale reform project with 34 items including many aspects of public administration. The working load in the future must be enormous. These reform measures are quite important. However, in consideration of Macao public administration, which is weak in education and poor in public policy capacities, it is difficult to image an all-round revolution in the Macao Government. To avoid chaos and low morale, it is logical that all reform items should be carried out in an orderly way, first core reform items, then peripheral reform measures, priority is key to this roadmap."<sup>17</sup> Citizens demand that anti-corruption measures have to be regulated in economic activity and there is an urgent need for civil servants to raise their policy-making capacities in a short time.

The main contents of the reform roadmap were professionally edited by civil servants in the bureau of civil service affairs who are determined to push forward the reform measures. Most of the reform measures are crucial to Macao and if reformed successfully, will impact positively on Macao economic development. However, the development in the last two years has shown that it is not possible to realize such a substantial reform program in a limited time. If the SAR government had been able to carry out the roadmap at the beginning of the chief executive's first term or at least at the beginning of his second term (2004), then the present situation in 2009 would have been more favorable. But 2009 is also the transitional year for the new Macao chief executive, and people seem to forget the existence of this extensive program. It is not possible to raise the policy-making capacities of high-level officials in such a short time, but structural reforms need careful thinking and evaluation. Many legislators and media commentators are correct in pointing out the reasons to implement these reforms in an orderly way. This author believes that several key issues in the Macao public administration must be given priority and their implementation could boost the morale of the local civil service and pave the way for further reforms in other areas. Actions speak louder than

<sup>16</sup> *Macao Daily*, July 27, 2007.

<sup>17</sup> New Youth Association, "Administrative reforms must be carried out in an orderly way," *Macao Daily*, July 16, 2007, p. 2.

words. Macao citizens hope to witness more real reform measures than beautiful slogans. Several key reform measures are needed in the processes of improving governance and efficiency.

First, concerns about anti-corruption and prevention of abuse of power remain important. In the third-term chief executive election, citizens have raised hope that the new chief executive will make all efforts to eradicate severe corruption, to eliminate the invisible links between government officials and local businesses. As a small enclave, a few major policies are to be considered extremely important. First, public policy on land sale in the Macao property market needs to be revised immediately. It is generally held that land acquisition in Macao is the biggest source of corruption in Macao. The former secretary for Transport and Public Works, Ao Man-long, acquired billions of patacas through land allocation. On May 1 and October 1 demonstrations from 2005 to 2010, all demonstrators, from construction workers to low-ranking civil servants, and children's right of abode seekers- people with various demands were all blaming corruption for their plight.<sup>18</sup> For example, construction workers blame that government officials, in collusion with big businesses, introduce too many Mainland workers at construction sites and that local workers lost their jobs. This is a key area of reform. If the present policy of land allocation continues to dominate the property market, citizens will further doubt the sincerity of the Macao government in promoting good governance, and other reform measures will lose their positive impact and will be considered camouflage for corruption plots within the government. If Macao continues this policy, anti-corruption could become a laughing stock again. As land prices rise sharply along with the property boom, the monetary values involved could be billions of US dollars and the temptation of official business collusion is mounting.

Macao's law on legislative elections will probably need to be revised systematically to prevent the serious corruption that erupted in the last legislative election, which tainted Macao's image of clean government and left citizens with an image of injustice and unfairness.<sup>19</sup> In the 2005 election, media revealed that a number of organizations hosted "private banquets" to entertain voters at some major restaurants and they transported the voters to the polling stations by buses.<sup>20</sup> A candidate (Lei Kin Ion) discovered that the staff of SJM (sociedade de Jogos de Macao, a major gambling company) were being brought to voting stations in a company bus. He intended to stop the bus by standing in its way, but he was dragged away.<sup>21</sup> In addition, a candidate named Wong Cheong Nam, was attacked because of his claim of suspected corruption. Police arrested three suspects in this case.<sup>22</sup> It was also reported that a journalist was hit while investigating a possibly corrupt candidate.<sup>23</sup> Macao's anti-corruption body, the Commission Against Corruption (CCAC), arrested over 700 suspects involved in numerous cases of electoral corruption, but less than 10 people were sent to prison. In general, the widespread corruption cases distorted Macao society and sent a very negative image of Macao worldwide. If detailed regulation could be framed to stem scandals of ballot buying and all kinds of bizarre behaviors leading to unfair ballot results, this could serve as a vivid example of Macao's determination in its anti-corruption campaign. The recent legislative election was held in 2009. The media reported less severe cases of ballot-buying thanks to the revision of election law in 2008. However, organized voting behavior by big businesses and social organizations is still prevalent in Macau society.

<sup>18</sup> *SCMP*, May 6, 2007, p. 11.

<sup>19</sup> In the last Legislative Council election, the Macao media reported many cases of serious corruption, including ballot buying and organized voting misbehavior.

<sup>20</sup> *Oriental Daily*, September 26, 2008, p. A28.

<sup>21</sup> *Sing Pao Daily News*, September 26, 2005, p. A09.

<sup>22</sup> *Sing Pao Daily News*, September 26, 2005, p. A09.

<sup>23</sup> *The Sun*, September 26, 2005, p. A08.

Other reforms concern the Civil Service Charter, especially recruitment policy. In the past, for historical reasons, bureau heads had the power to recruit new staff in government. As a practice, cases of abuse of power and nepotism often appeared in local newspapers, which aroused great dissatisfaction among civil servants and the citizens of Macao. Since the handover, cases of irregular recruitment methods and favoritism continue to be published in the Macao media. Citizens believe this is a major shortcoming of the Macao civil service system and needs to be addressed urgently. In Macao, recruitment of civil servants is still a major concern of citizens, especially young people who intend to apply for civil servant positions, as job security and salary level in the Macao government are still quite attractive to young people. In 2010, the Macao SAR government is still working on detailed regulation on centralized recruitment, no implementation yet.

Beyond this, government institutions are seen to require restructuring. Without rational division of labor within government bureaus, the Macao government lacks the means and determination to welcome the new challenges head-on, as it is bogged down in such common bureaucratic shackles as overlapping departmental functions, unclear division of duty and responsibility, and the disparity of the workload among bureaus and departments. When major challenges come to Macao, the SAR government lacks the structure and manpower to meet the challenges squarely and efficiently. The government lacks manpower and coordinated structure to cope with illegal workers at construction sites and officials find it hard to shut down illegal hotels as officials are not good at taking coordinated actions. In the future, the reform should be emphasized to layout a framework for institutional restructuring, so that the Macao SAR government is ready to welcome the new tasks caused by the rapidly changing world economic environment.

If key laws and regulations are revised satisfactorily, it seems likely that Macao citizens will support such reforms and comment favorably on this roadmap and its reform schedule. However, if concrete reform measures are not realized, citizens will regard these reform efforts as mere slogans and surely question the intentions and efficacy of the roadmap initiative.

## 22.5 Conclusion

Since the handover, the new Macao SAR government has taken some peripheral measures in administrative reform: departmental restructuring urged by the central government (initiated in the Basic Law drafting committee), performance pledge, and some aspects of civil service charter revision. However, in general, the reform measures are piecemeal, isolated, and phenomenal. The performance pledge has alleviated the relative inefficiency of the government procedures in policy implementation. In most bureaus, citizens get information on how to complete procedures in business and civil applications. However, it could not solve many problems in policy making and implementation qualities. Since the opening of the gambling franchise, pressure has been mounting on the part of the SAR government to carry out more substantial reforms and raise its governance capacity in many policy areas. When the former secretary of transportation and public works was arrested, people raised questions about the seriousness of the issue of corruption within the Macao government. Under enormous pressure, the government decided to push forward an all-round administrative reform under the name of the roadmap administrative reform with 34 reform items concerning all aspects of reform contents from anti-corruption, official responsibility system, policy making, government structural reform, etc. It hoped to complete the reforms within two years. But progress in two years indicates that little has been achieved. Development in two years has indicated that very limited progress has been achieved.

The new chief executive and his colleagues are now challenged to identify priorities and carry out core reform measures, such as developing a centralized recruitment system, revising laws for legislative elections, and the land auction policy. If some of the programs are carried out successfully, Macao citizens' level of satisfaction will probably increase and a good foundation will be laid for further reforms in other areas. To improve the policy-making capabilities of high-level civil servants, the Macao government recently opened a training class with the support of the National Institute of Public Administration in Beijing, where officials studied one week in Beijing and returned to Macao for a 9-week project-based training program when they resumed their work in Macao. However, since the handover, many officials have been dispatched to Beijing, Singapore, and Guangzhou for training, but with little or limited effect. Will this training class be different? Urged by local scholars, the Macao SAR government opened a master program in cooperation with the National Institute of Public Administration in Beijing with the purpose of training local high-level civil servants in 2009. This is in the right direction, but the results have yet to be proved. As human resources compose the foundation of efficient public administration, this is just one example of how the Macao government will probably need to select core reform areas carefully with the purpose of realizing an all-round roadmap to effectively reform Macao's public administration in the future.

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## Chapter 23

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# Intergovernmental Relations Between Mainland China and the Macao SAR

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Alex H. Choi

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Autonomy and decentralization are core principles in the reconstruction of Macao’s political system after the end of Portuguese colonial rule in 1999. Macao was allowed to preserve its gambling-dominated economy and was promised a high degree of autonomous rule in its domestic affairs. China assumed control on defense and foreign affairs, and undertook not to interfere in the domestic affairs of Macao. It has been more than 9 years since the transition. Scholars like Lo (2007: 760) and Lo and Yee (2005: 69) claim that Macao has developed a successful partnership with the central government and there has been no political crisis rocking the relations between the two levels of government. This partnership provided the necessary political stability and effective leadership to allow the indigenous political elite to concentrate on reviving the sagging economy in the aftermath



of the Asian financial crisis, on improving the effectiveness of the civil service, and on strengthening the social welfare system. This chapter is an attempt to scrutinize this claim of smooth relations through a revisiting of the meanings of decentralization, and then the examination of recent events through these lenses. The picture presented here is far more complicated and cannot be captured in words like “harmony” and “smooth.”

## 23.1 Decentralization, Autonomy, and Democracy

Post-transition Macao is a case of decentralization in the sense that Beijing transferred many powers and responsibilities to the local government. The Macao government was given high autonomy in managing its local affairs. This arrangement is popularized in the slogan “one country two systems” (hereinafter OCTS) and “Macao people rule Macao.” Decentralization and autonomy are given an institutional manifestation in which Macao was granted both the Macao Basic Law that lay out in detail the areas of local jurisdiction, and a status of “Special Administrative Region” in China’s territorial system. In this way, Macao appears to join the global trend to become an autonomous city that has benefited under a policy of decentralization.

However, devolution of power cannot automatically be equated with autonomy because it matters greatly the manner in which power is locally exercised. The discussion on the high autonomy attained by Macao, unfortunately, falls into this. Decentralization is largely restricted to an institutional demonstration of power and freedom offered to Macao under the Macao Basic Law. There is very little discussion linking decentralization with increased autonomy and democracy in Macao. More often the so-called “Macao people rule Macao” is merely referring to a government led by a chief executive who was born in or came from Macao. The institutional arrangement ensuring that the chief executive exercises power for local interests has been sidelined in these discussions. A more nuanced understanding of autonomy is required to scrutinize the practice of autonomy in Macao. Following Pratchett (2004), this chapter uses the concept of autonomy with the following three meanings.<sup>1</sup>

In the first meaning, local autonomy is conceptualized as the degree of power and discretion local authorities may reserve for themselves from higher authority. In Brown’s (1993: 258) words it means, “what the locality stands autonomous from.” This is the conventional definition of local autonomy, and it usually comes with two associated views. Firstly, it is a top-down perspective because its intention is to understand why and how the central government is prepared to devolve power and authority to the local governments. Secondly, it holds a concept of power as a corporeal, tangible asset that can be exchanged and passed down from one level of government to another (Brown 1993: 262; Lake 1994: 425). The study of local autonomy becomes the study of an institutional demarcation of the scope of power in fiscal, political, and legal fields between different levels of government.<sup>2</sup> Autonomy thus entails the concept of devolution.

The second meaning of local autonomy is the “freedom to” approach (Pratchett 2004: 366; Lake 1994: 426; DeFilippis 1999: 979). Unlike the previous approach, it does not fixate its attention

<sup>1</sup> See Brown (1993), DeFilippis (1999), and Lake (1994).

<sup>2</sup> A classic example of this approach is Clark’s (1984) conceptualization of local autonomy into two dimensions, namely, the power of initiation and the power of immunity. The former refers to the the local authorities to pursue autonomous action on its own behalf and for its own interests. The latter refers to the power to pursue actions free from the oversight and proscription from higher levels of government. Local autonomy is higher if the locality operates with more powers of initiation and immunity.

on the center-local power arrangement. Rather, local autonomy is interpreted as the ability of the local government to have independent impacts on improving people's well-being, given the constraint of power and resources allowed by the central government. In other words, it does not dispute the concept of power or how much power is granted to the local. It problematizes how this power is autonomously exercised by the local government to maximize the benefits to the local residents (Wolman and Goldsmith 1990: 24). Local well-being is measured in terms of job creation, economic development, environmental protection, and the provisioning of a whole range of public services. This conception of local autonomy fits into a long tradition of analysis assigning the local government with the primary role of providing municipal services. Delivering those services in an efficient and equitable manner becomes its prime responsibility (Goldsmith 1992: 395; Magnusson 1986: 4; Scott 1996: 8).<sup>3</sup>

The third meaning connects local autonomy with the ascendancy of social forces articulating the local identity. It is a bottom-up process of identity construction. Local autonomy emerges from social actors who attempt to constitute the locality as a legitimate autonomous political entity. Power in this approach is not treated as a tangible entity passed down from the top or exchanged between discreet entities, but rather is constructed through social interactions that define the local in relation to broader social and political forces (Lake 1994: 426; Brown 1993: 257). This, in turn, may result in resistance from hierarchical and other power holders who seek to deny their autonomous existence. Through these processes of domination and resistance, local autonomy is confirmed, undermined, or negated. A vibrant and autonomous civil society in the locality appears to be an indispensable element for local autonomy, which sometimes engenders a transformation of relations among local actors, such as the emergence of participatory and democratic practice. This, in turn, can also provide a mechanism for the political elite to reflect local aspirations in its relations with the central government (Heller 2001: 140) or through interweaving local networks with interests at the supra-local level (Greer 2007: 3).

Regional autonomy is a complex process. Its full meaning has to be explored from the aforementioned perspectives ("freedom from," "freedom to," and collective identity). This chapter is an attempted to use these meanings to examine the center-local relations in Macao. It will be argued that proponents of the so-called Macao success in the implementation of the one-country-two-systems formula are too narrowly focused on the first form of autonomy, assuming that the lack of crisis and incident in center-local relations implies a workable and appropriate autonomous arrangement. The aim here is to cast doubt on this simplistic formulation. This chapter will attempt to show that the lack of incidents in center-local relations, paradoxically, is an indication of the unfulfilled realization of the autonomous potentials promised in OCTS. The future of OCTS in Macao lies on the emergence in the locality of groups committed to defend local autonomy and to tackle the central government on unrealized autonomous promises. The chapter ends on a positive note by showing glances of these fledging groups taking roots in the society.

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<sup>3</sup> Local governments encounter a number of constraints in performing the role of service provider. One of the factors is fiscal resources. The width of the tax base and the level of taxation power are crucial considerations in affecting the amount of financial resources available for it to use in providing services. In addition, local government requires the skills and capacity to formulate and implement policies to meet the expectations of the citizens. This, in turn, implies an efficient bureaucracy and the political elite accountable for overseeing the long-term interests of the people in planning and policy making. In all, the capability of the local government to operate in an effective and efficient manner within the autonomous space assigned to it is a significant confidence booster for the devolution policy (Smith 1998: 89; Campos and Hellman 2005: 241). A poorly performing local government conversely induces popular disillusionment on autonomy, and may strengthen the call for more central involvement on local issues. A capable and accountable local government is crucial in actualizing and reinforcing local autonomy.

## 23.2 Autonomy as “Power From”

This approach treats power as a tangible entity passed down from the sovereign center of the state. The granting of this autonomy has been pre-determined in the sense that Macao's Basic Law is more or less a Hong Kong version adapted to Macao. It is true that a wide range of autonomies have been devolved to the local government under the Macao Basic Law. However, there has been much criticism that the structure of the local government ordained under the Macao Basic Law, is far from democratic, and has left a lot of room for central manipulation. Furthermore, legal experts from China have always insisted that Macao's autonomy originates from the central government, and maintains that this autonomy is subjected to the discretion of central government. All these have cast doubt on the degree of irreversibility on the promise of autonomy.

From the perspective of these legal experts, such as Xiao Weiyun (2005) and Yang Jinghui and Li Xiangqun (1995), the Macao Basic Law has promised self-rule and a high degree of autonomy. The range of powers devolved to the Macao SAR government is enumerated as evidence to support the claim that Macao indeed enjoys an unprecedented degree of autonomy for a local government.

- Macao can retain its capitalist system, as against China's socialist system, and its pre-existing way of life for 50 years. Beijing further promised that the Macao government runs its own affairs.<sup>4</sup>
- Macao can enact its own laws in areas of local autonomy. National laws are not applicable to the SAR with a few exceptions listed in Annex III of the Basic Law.<sup>5</sup>
- The Macao SAR is directly under the jurisdiction of the central government. Other provincial governments and departments of the central government cannot intervene with the administration of the SAR.<sup>6</sup>
- Macao can keep its own civil law tradition. It maintains an independent judiciary system, and the Court of Final Appeal, established in Macao, is the court of final adjudication.<sup>7</sup>
- Macao keeps its own currency, and makes its own economic and taxation policy. The central government will not levy taxes on nor will it receive financial contributions from the Macao SAR.<sup>8</sup>

These pro-Beijing experts always maintain that Macao is given a degree of autonomy even higher than sub-national governments in a federal system. They have insisted that not many federal systems would allow its sub-national state to have a different currency, a court of final appeal, and a different economic system (Yang and Li 1995: 36; Xiao 2005: 4).

The focus on the institutional arrangement on decentralization gives rise to an unfortunate assumption that once power is assigned to the local government on paper, it is being conferred, and really practiced by the people in the locality. Critics like Yash Ghai (1995b: 308) have, however, justifiably raised doubts on this scenario. One of the key concerns is the constraint imposed on the composition of the Macao SAR government. The Basic Law stipulates that the chief executive

<sup>4</sup> Articles 2 and 5, Macao Basic Law (hereinafter MBL, downloadable from [http://bo.io.gov.mo/bo/i/1999/leibassica/index\\_uk.asp](http://bo.io.gov.mo/bo/i/1999/leibassica/index_uk.asp), accessed May 2, 2008).

<sup>5</sup> Article 18 of the MBL. Those applicable national laws listed in Annex III deal with matters of very specific nature, such as the laws governing the national flag, national day and Chinese nationality.

<sup>6</sup> Article 22, MBL.

<sup>7</sup> Articles 83 and 84, MBL.

<sup>8</sup> Articles 104, 107, 118, MBL.

of the Macao government be elected by a 300-person electoral college that is dominated by local pro-Beijing elite (Lo 1995: 204). The elected candidate needs to obtain a final appointment from Beijing, and pro-Beijing legal experts have maintained that this is not a procedural, but a substantive, endorsement (Yang and Li 1995: 105; Xiao 2005: 35). Beijing reserved the power to remove the chief executive.<sup>9</sup> There is no promise on the eventual popular election of the chief executive and the Legislative Assembly (Fifoot 1994: 40, 43; Ghai 2000b: 191).<sup>10</sup> Furthermore, the Macao Basic Law invests the chief executive with an enormous amount of power<sup>11</sup> with minimal counterbalance from a legislative assembly dominated by largely appointed and indirectly elected members (Cardinal 2002: 301; Ghai 1995a: 274).<sup>12</sup> This arrangement is euphorically called an executive-led government. In reality, however, the power arrangement is designed to entrench an authoritarian local leader who is predisposed to the influence and control from the central government (Pereira 2001: 124–25; Ghai 1995b: 308).

Moreover, even though the Basic Law has given Macao a long list of powers, there are concerns that these powers are not entrenched in the constitution like those in a federal system (Grant 2002: 304). Subsequent statements made by Chinese legal experts add to the worry. For instance, Xiao Weiyun (2005: 1) maintained that, “Macao SAR is a form of local government... The central government’s relation with the local government is based on a rule and being ruled relationship. The local government is a subordinate unit of the central government, and is not hierarchically on an equal footing with the latter. So, the local government must obey the order from the central government. It cannot resist its wishes.”<sup>13</sup> This view of autonomy is congruent with the view of “freedom from” type of autonomy. Power is seen as a tangible entity transferred from a higher to a lower level of government. In this sense, it is comprehensible and logical to conceive autonomy as solely originating from the central government, and is equally validly can be removed at will by the latter. It is also expected that the center can impose various restrictions on it, such as the interpretation of the Basic Law is solely the prerogative of the central government, and there is no provision in the Basic Law allowing for an independent arbitration

<sup>9</sup> Article 15, MBL. See also Lo (1995: 203).

<sup>10</sup> The Macao Basic Law was modeled on the Hong Kong Basic Law (Wang 1999: 194; Luke 2000: 730). There are, however, important differences, some subtle, others more substantive. See Fifoot (1994) and Ghai (1995b) for careful studies of the differences. Much attention is on their democratic contents. Macao’s Basic Law is said to be less democratic than that in Hong Kong because it was created after the Tiananmen massacre. For instance, Hong Kong’s Basic Law has done away with appointed members in the Legislative Assembly, and it promises that both the elections of the chief executive and Legislative Assembly members will eventually be by direct popular vote. See also Yee (2001: 165).

<sup>11</sup> The chief executive holds a wide range of powers stipulated in Article 50 of the MBL. He appoints 7 members to the 29-person Legislative Assembly. Individual members of the Legislative Assembly are restricted in their power to introduce bills related to public expenditure, political structure, or the operation of the government. Written approval from the chief executive is required for the introduction of bills relating to government policies. The chief executive must sign all bills passed by the Legislative Assembly before they can take effect. If he refuses to sign the bill, he has to return the bill to the Legislative Assembly and give reasons. If the Legislative Assembly passes the bill again with a two-third majority, he must sign and promulgate the bill within 30 days, or dissolve the assembly. If the chief executive chooses to dissolve the assembly and the newly elected assembly passes the original bill again, then the chief executive has to sign the bill or he must resign. In all, the MBL has designed a political structure giving the executive significantly more power than the Legislative Assembly (Ghai 1995b: 298–99).

<sup>12</sup> Out of a total of 29 members in the Legislative Assembly, 7 are appointed members, 10 indirectly elected, and 12 popularly elected. See Annex II of the MBL.

<sup>13</sup> See also Pereira (2001: 113).

if disputes arise.<sup>14</sup> Thus, the high level of autonomy promised by the central government in the Basic Law is conditional on the sensitive and responsible exercise of restraint by the central government.

In conclusion, a mainstream view tends to see autonomy mainly from a top-down “power from” perspective. Autonomy is assumed to have been accomplished once it is laid down on paper. This is not a realistic assumption because the devolved powers are put into the hands of an unaccountable chief executive whose ascent and removal from power is largely dependent on the whims of the center. The repeated reminder that Macao’s autonomy is based on a grant from the center, and is not an inherent right, could only suggest that deliverance from central involvement is tenuous.

### **23.3 Autonomy as “Freedom to”**

The second dimension of autonomy is defined as the freedom to use devolved power in carrying out the functions of the government. It is assumed that the closer the locus of power to people, the more effective and responsive the government is in addressing people’s needs. In turn, an effective and responsive local government also reduces the need and excuse for central government’s meddling in local affairs. However, in Macao, the creation of an executive-led government did not improve the efficiency and effectiveness of the government. On the contrary, corruption, power abuse, and mismanagement become commonplace, and caused much social instability. When the Macao government shows increased signs of stasis in containing these crises, the central government has become more prone in dictating policies to the local government. All of these are signs indicating troubles in the operation of Macao’s autonomy. The remainder of this section provides a brief analysis of the exercise of autonomy by the Macao government.

#### **23.3.1 From Recession to Take Off**

The Macao SAR government inherited from the preceding colonial regime a defective administration plagued with a number of serious problems, such as corruption, red tape, overlapping of duties between departments, and poor policy formulation capacities. Portuguese foot-dragging in localization led to the promotion, just prior to the transition, of many young and inexperienced civil servants to senior positions with very little time for them to hone their skills and leadership to be effective.<sup>15</sup> On the economic front, Macao was plunged into a serious economic depression and an outbreak of gangland warfare between various triad groups operating in Stanley Ho’s casinos, just before the transition.<sup>16</sup> Apparently, it was a turf war fought over dwindling clientele in the wake of the Asian financial crisis and a battle for domination in preparation for the uncertainty over the

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<sup>14</sup> See Wang (1999: 193–204) for an insightful account on the restrictions that can be placed by the central government on the autonomy granted to Macao. Concerns on judicial independence in Macao have also been raised by Kerbs (2000) and Luke (2000: 746).

<sup>15</sup> These problems have been well studied in Lo (1995), Yee (2001), and Lam (1991). For the localization issue, see especially Yee (2001: 41) and Lam (1991: 349).

<sup>16</sup> Stanley Ho won the monopoly to operate Macao’s casinos in 1962. He is credited with modernizing Macao’s gambling business by bringing in Western-style games and attracting tourists into the enclave. His business empire stretched to cover almost every corner of the Macao economy. This grip was only slightly loosened in 2002 when casino liberalization brought in new competitors.

impending regime change. Bombs were thrown; machine guns were fired; hired gunmen riding on high-speed motorbikes raided the enclave. The first casualty in this episode was apparently Stanley Ho. The infiltration of organized crime into his casino empire was exposed, and even worse, the warfare demonstrated his inability to impose a modicum of control over those elements.<sup>17</sup> The popular despair on the law and order situation inspired the desire for a fundamental change to the *status quo*. It was generally believed that the decision to liberalize the casino monopoly in order to shake up established practices was made by Beijing well before the transition (Lo 1999: 61). Eventually, the gangland warfare died down ostensibly after the capture of a key triad leader, Wan Kuok-koi (alias Broken Tooth), in May 1998. But the real reason was said to be the placement of China's Public Security Bureau agents in Macao enforcing the peace among the triads, to be backed up by the presence of a garrison of the People's Liberation Army in the city.<sup>18</sup>

With China underwriting the law and order of Macao, transition was able to take place without hindrance. The first chief executive of the Macao SAR government, Edmund Ho Hau Wah, was presented as an effective leader, well honed for political leadership under the wing of his deceased father, Ho Yin. The elder Ho had been the leader of the Chinese community in Macao for a long time, and was a trusted political ally of Beijing. Some of the urgent tasks facing the Ho government were to revive the economy, to liberalize the gaming sector, and to reform the colonial bureaucracy in order to improve efficiency and to reduce popular alienation. Ho did introduce some public sector reforms to increase efficiency.<sup>19</sup> The economy also gradually emerged from a deep recession shortly after his assumption of power.<sup>20</sup> All these helped to project Ho as an effective leader. Unfortunately, this image was seriously tarnished because of his inability to handle the social problems that emerged from the gambling liberalization.

Many of the causes of the current problems facing the Ho government were laid in the early years of his government when he oversaw the process of the breaking up of the casino monopoly. Initially, three concessions were granted. But later, the government allowed each of the original concessionaires to sell a so-called sub-concession to another casino operator. Thus, the number of suppliers doubled overnight.<sup>21</sup> Its impact has to be examined together with the very lax and liberal regime of casino regulation (Ramirez and Pessanha 2008). There are very few restrictions on the

<sup>17</sup> Ho sub-contracted the operation of VIP rooms in his casinos to collaborators, thus opening the door for triad infiltration. For instance, the key 14k triad leader, Wan Kuok-kui, operated a VIP room (the Wan Hau VIP Club) in Hotel Lisboa. His opponent Ng Wai (alias Market Wai) operated the New Century Casino in another of Ho's facilities (see Booth 1999: 35–365). For a general discussion of the relations between the VIP room and organized crime, see Leong (2004), Lo (2005: 207–12), Viana (2000), Liu (2001: 193–210), and Pina-Cabral (2002: 205–21).

<sup>18</sup> Beijing claimed the stationing of a PLA garrison in Macao was a demonstration of Chinese sovereignty. But commentaries widely acknowledged that the presence of the PLA served to send a signal of China's determination to stabilize peace and order in Macao (Lo 1999: 62–63; Pina-Cabral 2005: 20–21). This announcement caused a row with Lisbon that claimed the stationing of troops was never a part in the discussion of the Macao settlement.

<sup>19</sup> Edmund Ho tried to restructure the departments and improve service qualities. However, according to a critical analyst (Chou 2004: 63), "Public Sector reform in Macao did not address core problems in the public sector in Macao, i.e., poor personnel practices, the inadequate strength of the Legislative Assembly and the Commission of Audit, and the overlapping rootles among government departments."

<sup>20</sup> Real GDP growth rate was in the negative range before Ho took over power. The economy started to take off after 2003. This trend can be gauged from the real GDP growth rates from 1998 to 2003: -4.6%, -2.4%, 5.7%, 2.9%, 10.1%, 14.2% (see [http://www.dsec.gov.mo/index.asp?src=chinese/indicator/c\\_pib\\_indicator.html](http://www.dsec.gov.mo/index.asp?src=chinese/indicator/c_pib_indicator.html), accessed July 4, 2008).

<sup>21</sup> See McCartney (2006: 49), Lo (2005), and especially MacDonald and Eadington (2006).

number of casinos and the number of gaming tables (and slot machines) each casino operator is allowed to run. Doubling the number of casino operators thus added to the craze of expansion as each operator scrambled to set up an operation and claim its share of the market. This expansion was further fueled by the practice of sub-contracting out VIP rooms, which is widely attributed to be a channel for the penetration of undesirable elements into the casino, and which is unfortunately allowed to continue in the post-liberalization era despite all the fanfare for the emergence of a more regulated and clean system.<sup>22</sup> China facilitated this expansion in 2003 by relaxing the exit restriction of its citizens to visit Macao in a policy known as Free Individual Tourism (Zhāng 2007: 657). Thus, thousands of Chinese residents flooded into Macao to enjoy the excitement of casino gambling, which is still illegal in the Mainland.

Statistics show that Macao has enjoyed spectacular economic growth since the gambling liberalization in 2002. For the 6 years between 2002 and 2007, average annual real GDP growth registers a stunning 17.3% increase. Gaming revenue shoots up from MOP23,496 million to MOP83,847 million,<sup>23</sup> representing a growth of 357% during the same period. The number of gaming tables increases 13 fold from 339 to 4375. The number of hotel rooms almost doubles from 8,954 to 16,148. Annual number of tourist visitation increases from 11.5 million to 27 million. Gambling tax as a percentage of total government income jumps from 51% in 2002 to 76% in 2007.<sup>24</sup>

### 23.3.2 *Politics of Growth*

Unfortunately, the government appeared to have paid very little attention to the negative consequences of an overheated economy, and was caught unprepared when these problems exploded into a series of demonstrations in 2006 and 2007. The huge influxes of tourists have overloaded the transportation system, aggravated by the procrastination in approving the construction of a mass transit system. Rapid urban development led to the contraction of urban green space. Crime data were said to be on the increase with the proliferation of casinos. Many crimes were committed by visitors from China.<sup>25</sup> The red-hot economy intensified inflation pressure already worsened by a weak US dollar and a strong Renminbi.<sup>26</sup> However, the most problematic of all must be reserved for the government's land and labor policies.

Since gambling liberalization, land has become a very valuable resource for the tiny island of Macao, flooded with casinos and other capital scrambling to find a place to build their grandiose resorts, entertainment and commercial facilities. However, the Macao government does not have a transparent and accountable sale system of public land. Land could be allocated by government

<sup>22</sup> There are a number of good studies on the VIP room system and its connection with organized crime. See Leonard (2006), Siu (2006, 2007), Godinho (2006), Eadington and Siu (2007), and Wang and Eadington (2007).

<sup>23</sup> The Macao Pataca (MOP) is pegged to the Hong Kong dollar at a fixed exchange rate MOP1.03 to HK1.0. The latter is pegged at a rate of HK\$7.8 to US\$1.0. Thus, US\$1 is equal to around MOP8.

<sup>24</sup> Gaming table figures come from the website of the Gaming Inspection and Coordination Bureau (<http://www.dicj.gov.mo/CH/Estat/DadosEstat/2007/estat.htm#n1>, accessed May 17, 2008). All other figures are from the *Macao Economic Bulletin*, various issues ([http://www.dsec.gov.mo/index.asp?src=/english/html/e\\_general.html](http://www.dsec.gov.mo/index.asp?src=/english/html/e_general.html), accessed May 17, 2008).

<sup>25</sup> See Zhāng (2007). See also the June 2008 special issue of *Macao Business* entitled "Boom City: the Good, Bad and Ugly." It gives a 4-year overview of the negative impacts of rapid economic growth.

<sup>26</sup> Many food items are imported from China, whose currency, Reminbi, has been on an appreciation spree since 2006. See *Macao Daily* 2/9/2007. The inflation rate increased from 1% in 2004, to 6.7% in the final quarter of 2007.

through deals struck with developers behind closed doors without much democratic oversight (see *South China Morning Post* 23/11/2005). During the colonial era, this had been pointed out as a major source of corruption (Lo: 1995: 179–180). The situation got out of hand after the transition. Government critics have repeatedly pointed out that politically connected developers have obtained land at unrealistically low prices, and have called for public auction in land sale.<sup>27</sup> Concomitantly, the government did nothing to curb speculation that sent real estate prices well beyond the reach of local residents, and generated an inflation spiral.<sup>28</sup>

The corruption in the land sale system was exposed when the secretary for land and transport, Ao Man Long, was arrested in December 2006, and subsequently put on trial in 2008. He was found to have received huge kickbacks from land developers in exchange for the approval of sales of public land at unrealistically low prices. The total amount of his illegally gotten money is said to be more than MOP800 million. His subsequent trial revealed widespread abuse of power and collusion with developers. It gave a rare glimpse of the arbitrariness and lack of internal discipline within the government machinery. In January 2008, Ao was convicted and sentenced to 27 years in prison.<sup>29</sup> The biggest damage, however, is on the integrity of the political leadership. The chief executive has always tried to project a strong leadership by scapegoating policy errors onto the civil service, which, most observers would probably agree, is in dire need of reform to rid it of the inept and inefficient practices inherited from the colonial era. The Ao case demonstrated that the political leadership was not exempt from its share of the problem. The lack of subsequent reform in the land sale system and the failure to deal with other corruption cases further eroded popular political confidence in the regime.<sup>30</sup>

<sup>27</sup> See the special issue on the land sale system of *New Macau*, (issue 32, July 2006) (see <http://www.newmacau.org/expired/32web.pdf>, accessed July 5, 2008). *New Macau* is the publication of the New Macao Association, whose two most well-known members are Legislative Assembly members Ng Kuok Cheong and Au Kam San.

<sup>28</sup> The government is accused of fueling the speculation by allowing the real estate residence scheme to be continued well after its function of reviving the depressed property market has expired. Under this scheme, any person who purchased real estate valued at more than one million Patacas qualified for a Macao residence status for the purchaser and his/her immediate families. This was considered a bargain deal considering the relatively small amount of investment, the number of beneficiaries of the residence status, and the prospect of making a fortune from a red-hot property market (see Choi 2006b).

<sup>29</sup> See Jesus (2008: 18) and Pinto (2008: 25) for post-mortem analysis of the Ao case.

<sup>30</sup> A committee was set up in the Legislative Assembly to study the land sale system (*Jornal Do Cidadao*, 6 January 2007). Minor procedural changes were recommended, but institutional change obligating the government to sell land through a more transparent system has not been put in place. The request for Legislative Assembly endorsement for land sale deals entered into between the government and developers has been strongly resisted. In effect, there is no major change to the land sale system after the Ao Man Long case. As late as June 2008, land was still assigned to private developers far below market price (*Macao Daily*, June 26 & 27, 2008). In November 2007, the government proposed to give a wider mandate to the CCAC to investigate corruption in the private sector (*Macao Daily*, November 14, 2007). But it has dodged the more fundamental issue of tightening the existing anti-corruption laws and imposing heavier penalties on bribery cases in the public sector. Moreover, although the Ao case concluded with a guilty verdict and a heavy jail sentence, public opinions found it hard to believe that Ao could spring such a huge corruption web without other well-connected political collaborators involved (*Jornal Cheang Pou*, October 2, 2007). At the same time, the Audit Commission released a series of damning reports on the over expenditure, wastefulness, and poor quality of the sports facilities built for the 2005 East Asian Game (*Macao Daily*, November 2, 2006). However, the chairperson of the East Asian Games and head of the Macao Sports Development Board (MSDB), Manuel Silverio, was not subject to any disciplinary action, let alone criminal prosecution. He was probably asked to resign and was let go in a low-key approach from his chairpersonship in the MSDB in 2008 (*Macao Daily*, March 4, 2008). It is quite clear that the government has every intention to treat the Ao case as an individual incident, if not an accident. There is no political will to deal with corruption in any systematic way.



The importation of migrant workers is another issue that has proven to be controversial and can galvanize into major social conflicts. Unfortunately, the government has never demonstrated the political will or the finesse to formulate a consistent policy that can balance various interests, thereby putting the issue to rest once and for all. The migrant worker program was decreed, in the late 1980s, in a rudimentary government order without clearly spelling out, for instance, the measures for protecting local workers from outside competition, though the decree stipulates that their interests should not be undermined by the program. The demand for protection (such as a maximum import quota, minimum wage, etc.) has become the key source of agitation from the workers ever since. But the government has never taken them seriously. Instead, it has resorted, from time to time, to making *ad hoc* concessions, such as temporary suspension of imports and the increasing of unemployment benefits, to soften demands. The migrant worker, as a primary source of grievance for the working class has become a perennial conflict in Macao politics. It has been allowed to drag on, thus turning it into a time bomb that could cause substantial damage to the reputation of the government at a time when it could hurt most. Employers maintain that Macao's workforce is too small, and cannot furnish the required labor power to drive the economic growth. Workers complain that migrant workers depress their wages and take away their jobs. They point their fingers at the government for not performing the role of a fair gatekeeper in allowing too many migrant workers into too many occupational sectors. Between 2001 and 2007, the number of migrant workers shot up from 25,925 to 85,207, representing a 340% increase. It is estimated that there is one migrant worker for every three local working people. This has not taken into account the prevalence of illegal workers in the economy due to relaxed law enforcement.<sup>31</sup>

The first mass demonstration against the migrant worker issue took place on May 7, 2000. It was then revived in 2006. Since then, May Day demonstrations appear to have been consolidated into an annual ritual to protest against the migrant worker issue. After the exposure of the Ao Man Long case, the themes of the 2007 May Day demonstration were broadened into anti-corruption, clean government, with open calls for the stepping down of Edmund Ho. The most politically damaging event during the demonstration, however, was the firing of five warning shots by a policeman in an essentially peaceful demonstration. World media attention was immediately drawn to the negative side of Macao's dramatic economic growth, and the inability of the Ho government to maintain social stability.<sup>32</sup> This demonstration was widely seen as the turning point for the Edmund Ho government whose popularity slipped precipitately. Since then, a number of demonstrations have been held, many of them linked to the migrant worker issue as organizers realize that this is the hot button issue that could bring the rank and file onto the streets.<sup>33</sup>

<sup>31</sup> See Choi (2006a) for an overview of the migrant worker issue in Macao.

<sup>32</sup> See for instance the report entitled "Macao: Success brings Its Problem," appeared in *Financial Times*, June 14, 2007 ([http://search.ft.com/ftArticle?queryText=Macao%3A+Success+brings+its+problem&aje=true&id=070614000085&ct=0&nlick\\_check=1](http://search.ft.com/ftArticle?queryText=Macao%3A+Success+brings+its+problem&aje=true&id=070614000085&ct=0&nlick_check=1), accessed May 6, 2008).

<sup>33</sup> The best attended was the demonstration held on October 1, 2007 (China's National Day) against the new traffic law. Demonstrators drove their motorcycles onto the street protesting against a poor traffic and public transportation policy and insufficient motorcycle parking spaces forcing them to park illegally (see *Jornal Va Kio*, October 2, 2007). The December 20, 2007, demonstration that coincided with the anniversary celebration of Macao's reversion to China was organized by the New Macao Society demanding political reform and democratization (*Jornal Va Kio*, December 21, 2007).

### 23.3.3 Government Inertia

Despite the threat to social instability, the government appears to be so preoccupied with vested interests that there is a lack of political will to fix the problem. Instead, it resorts to making *ad hoc*, improvised concessions, such as bolstering welfare benefits and other social provisions, to lure people away from attending the demonstration.<sup>34</sup> It appears that the government's tactic is to use the huge budget surplus to buy out opposition. The ultimate purchase appears to have been made just before the 2008 May Day demonstration. In a question and answer period of the Legislative Assembly on 22 April 2008, Edmund Ho announced that each permanent and temporary Macao resident would be given, respectively, MOP5000 and MOP3000 (*Jornal Va Kio*, April 23, 2008). Turnout for the demonstration was lower than expected.<sup>35</sup> However, this collective buyout is an indication that the government has lost the political will to undertake any major policy initiative in the remaining one and a half years of its term of office.<sup>36</sup> This government is taking a politically expedient tactic to soften political pressure in order to avoid undertaking any policy reforms that may be harmful to its cronies and that may stir up more controversies.

With the Ho government increasingly demonstrating inertia in policy making, the initiatives come from elsewhere. An example is the heritage conservation movement devoting itself to the protecting of the Guia Lighthouse. The lighthouse is the oldest lighthouse on the coast of China, and is one of the most important icons representing Macao to the world. In 2005, UNESCO approved Beijing's application to have the lighthouse together with a number of other sites in Macao enlisted in its World Heritage List. The Macao government was jubilant in securing this designation because it could mean a big boost for the tourism industry. However, it was soon revealed that land in close proximity to the lighthouse had been sold to developers in the red-hot property boom. Approval was given to build tall buildings on sites around the lighthouse, potentially blocking its beam from being seen by the approaching ships. The traditional lack of urban planning in Macao is surely to blame for this sad situation. However, the fact that Edmund Ho's government removed building height restrictions in the surrounding area in 2006, after the award of the World Heritage title, aggravated the situation (*Jornal do Cidadao*, December 5, 2007). A group of heritage conservationists was formed to raise public awareness on, and to petition the government to preserve the environment of the lighthouse. Implicit in their message was a critique of the Edmund Ho government allowing politically connected developers to damage Macao's heritage for private interests. When their efforts in Macao produced little result, they changed their strategy. They alerted the UNESCO World Heritage Centre, and petitioned it to pay closer attention to the danger facing the Macao heritage sites (*Jornal Va Kio*, December 3, 2007). UNESCO, in turn, issued a warning to Beijing. The secretary of cultural social affairs and culture, Chui Sai On, was summoned to Beijing for consultation in January 2008 (*Jornal Va Kio*, January 19, 2008). Three months later, the government re-imposed height restrictions on buildings near the Guia Lighthouse (*Macao Daily*,

<sup>34</sup> The most well known is perhaps the so-called "nine measures" proposed by Edmund Ho shortly before the 2007 May Day demonstrations. The nine measures were: (1) lowering pension payments to 60 years old; (2) suspending the real estate residency scheme; (3) increasing the supply of public housing; (4) fix the traffic congestion by building a mass transit system; (5) public auctioning of some residential land; (6) increase the benefits for civil servants; (7) launch a non-compulsory provident fund; (8) the proposal of an amendment to the Labour Relations Law and a migrant workers bill to the Legislative Assembly in 2007; and (9) the provision of a computer to each teacher and increase the student loans and grants (see *Jornal Va Kio*, April 9, 2007).

<sup>35</sup> Personal communication with Au Kam San (May 1, 2008), a key organizer of the 2008 May Day demonstration.

<sup>36</sup> The Macao Basic Law prescribes a maximum of two-consecutive terms of office for the chief executive. Thus, Edmund Ho cannot be re-elected when he finishes his second term in 2009.

April 17, 2008). The circumstances give strong credence to the argument that if Beijing did not intervene, it is unlikely that a restriction plan has been put in place again would be put in place.

Another bombshell was dropped a few days later on April 22, 2008, when Edmund Ho declared in a question and answer session in the Legislative Assembly that his government would freeze the scale of the casino industry by not granting any more casino concessions beyond the current six, by not making available any more land for casino development, and by not approving any more applications for operating new gaming tables, all based on an order from President Hu Jintao (*Apple Daily*, April 23, 2008: A2). The central government was clearly concerned that the rapid expansion of the gaming sector would worsen the structural imbalance of the Macao economy and intensify social conflicts.<sup>37</sup> Speculation had been floating around as to why Ho had to name names in announcing the new policy, not merely because it was not conforming to bureaucratic etiquette, but also because doing so would undermine the credibility of the OCTS formula. Nevertheless, this incident is clear evidence that the major policy initiatives of the Macao SAR have been taken from Beijing. While many local commentators called this instruction another demonstration of Beijing's caring concern on the well-being of Macao, Ramirez and Pessanha (2008) note that this is an infringement on the area of local autonomy under the OCTS formula.

The Ho government has avoided taking any policy initiatives on major issues of public concern. Even daily administrative functions apparently of a non-political and non-controversial nature require citizens to take extraordinary measures before they are resolved. One such incident is a public sanitary issue caused by a drainage pipe backup in a vacant neighboring unit or caused by the action of irresponsible and uncooperative neighbors. As is demonstrated by many cases, citizens left helpless after taking their cases of leaky roofs to various concerned bureaus (Land and Public Works, Health, Municipal Government, Police and Housing) to no avail, and eventually they had to resort to petitioning the chief executive and/or getting media exposure before administrative intervention was forthcoming.<sup>38</sup> The sad reality is that these are not isolated incidents. If the government allows mundane pipe backup stories repeatedly taking up media headlines, which exposes the maze of bureaucratic red tape that victims have to go through with no solution in sight, its credibility as a people-oriented and capable government will not escape unscathed.

After many complaints of bureaucratic incompetence, a roadmap for administrative reform was produced by the secretary for administration and justice, Ms. Florinda Chan, in June 2007 (*Macao Daily*, June 21, 2007). Commentators have pointed out that the roadmap lacks clear vision and priority. It looks more like an amalgamation of various activities the government has already said previously that it has planned to do. Moreover, there are important gaps. For instance, it does not handle the critical issue of departmental restructuring, which is seen as crucial to reducing

<sup>37</sup> The central government leaders have urged the Macao government to reduce the reliance on the gambling sector and to diversify its economy as early as March 2006. In reply, Edmund Ho ordered a comprehensive study of the situation, and said that he was confident that the goal of diversification could be achieved in 5–10 years' time (*Macao Daily*, April 5, 2006). One and a half years' later in November 2007, Ho was still talking of the need to carry out more studies and researches on the diversification issue (*Jornal San Wa Ou*, November 14, 2007). In a meeting with Premier Wen Jiabao, Edmund Ho was told to seriously deal with the "deep-seated structural issues in Macao" (*Macao Daily*, November 24, 2007). In March 2008, Hu Jintao urged Ho to handle new issues that emerged in the process of development in a prudent and cautious way.

<sup>38</sup> See, for instance, the case exposed in *Macao Daily* (May 7, 2008). Earlier in 2006, the Land and Public Transport Bureau, in response to a question by Ng Kuok Cheong made in the Legislative Assembly, promised to deal with a pipe backup issue within 7 days after receiving the complaint (see *Jornal Cheng Pou*, August 10, 2006). Apparently, the situation did not improve and prompted fellow assembly member Leong Iok Wa to urge the government to take swift action in 2008 (*Jornal Do Cidadao*, June 15, 2008). Newspaper editorials have made the same appeal (see *Macao Daily*, April 3 and May 11, 2008).

bureaucratic red tape. It has made no clear timetable on the program to increase the accountability of senior government officials, and the government has made no commitments on dealing with abuse of power of officials exposed in the trials of the Ao Man Long case.<sup>39</sup> The reform does lead to the setting up of a one-stop service center for government services, thus improving service delivery. But, it is later pointed out that the services available in these centers are restricted to the jurisdiction under Chan's purview. Issues such as pipe backup, which involves jurisdictions with other secretaries, could not be resolved there. Moreover, the integration of services is so minimal that the one-stop service center really means the placing of various services counters from different departments under one roof. It involves no re-engineering and re-integration of back-office functions (*Macao Daily*, May 11, 2008; *Jornal Da Cidadao*, May 7, 2008).

The experience of Macao's decentralization and autonomy could not be claimed to be a successful one. The responsiveness and efficiency that was supposed to spring from autonomy ended up in corruption, power abuse, and cronyism. The mismanagement of the economy caused inflation, speculation, traffic congestion, and intensified social agitation against migrant workers. One of the structural causes of these problems has to be found in the design of the Macao Basic Law, which allows very little democratic accountability. The incumbent elite feel so firmly ensconced in place and so insulated from public pressure that many criticisms remained unanswered and needed policies are simply not made. If the local government fails to take policy initiatives to address people's concerns, people may find it expedient to look for redress at higher level of government. If higher level of government perceives an impending crisis that the local government is too feeble to address, it may be tempted to use a direct way of ordering the local government to make policy adjustments. As these cases multiply, there will be less and less concern on local autonomy from all sides as long as the problems at issue are fixed. Local autonomy becomes less and less relevant to all concerned. Unfortunately, the Macao government's situation appears to have reached this stage.

### **23.4 Autonomy as Collective Identity**

This dimension perceives autonomy as a bottom-up process in which local forces play an important role in securing and defending an autonomous space. In this regard, autonomy can no longer be conceived as a tangible, transferable entity. Instead, autonomy can only be meaningfully discussed in relational terms within the context of power and social dynamics. This section argues that the poor performance of the local government is not only related to the unaccountable institutional arrangement prescribed by the Macao Basic Law, it also relates to the lack of powerful social forces in Macao consistently probing the government for more accountability, and demanding it to guard and to defend local interests. Obviously, one of the critical elements in the emergence of locally oriented social forces is the arrival of a self-conscious local identity. This is based on the awareness of the self-defined difference, and the desire to maintain it through engaging in collective efforts to manifest and assert it in meaningful ways. The post-Second World War history of Macao, however, is a history largely of the obliteration of the local in preference of the national. This job is carried out by the ubiquitous pro-China social groups enthusiastically propounding the nationalistic sentiment. By the time the Macao SAR was set up, the pro-China nationalist social

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<sup>39</sup> See the comments by former senior government official, Jorge Rangel, *Jornal Da Cidadao* (June 16, 2008), *Jornal Informacao* (March 28, 2008), and *Jornal San Wa Ou* (July 23, 2007).

force prevailed over the local society unopposed. Their mission is to provide stability to the Macao SAR and to make sure the OCTS works according to China's desire.

### **23.4.1 Rise of the Pro-China Social Forces**

The ascendancy of the pro-China nationalist force has to be traced to the "123 incident"<sup>40</sup> that took place in 1966. These social forces managed to lead a colony-wide mobilization and defeat the Portuguese colonial rule. What saved Portugal from being evicted from Macao was China's interest in seeing it to her advantage of maintaining the *status quo*. The ending of Macao's colonial status would jeopardize Britain's control of Hong Kong, which supplied China with precious foreign exchange through purchasing the bulk of food and other daily necessities from China. From then onward, Macao was turned into, in Tam's (1994: 252) words, a communist "semi-liberated zone." Pro-Taiwan KMT forces were expelled from the enclave. The pro-Beijing social forces expanded unopposed in the society.<sup>41</sup> By the 1990s, these groups managed to build an elaborate network of schools, community centers, hospital and clinics, trade unions, business associations, mass media, clan associations, etc. (Lou 2004: 126; Dicks 1984: 125; Lo 1995: 59). The pro-China nationalist ideology was ardently articulated and intimately meshed with almost every aspect of Macao's economic and social life. The colonial regime could not rule effectively without the cooperation and support of these groups (Yee 2001: 35; Ng 1990: 179).

There are various attempts to conceptualize this form of politics that emerged out of the unique historical incident since the 1960s. One scholar characterizes it as a form of "bi-polar politics," highlighting the fact that the colonial state could no longer rule according to its own wishes. Effective rule was shared between the colonial authority and the local Chinese groups (Lengxia 1999). However, many others call it a societal corporatism by virtue of the political potency of social groups and their being incorporated into the ruling coalition. The corporatist proponent, Lou Sheng Hua (2004), has offered a very benign and unproblematic interpretation of this form of Macao politics. He saw corporatism as a natural outcome of a weak colonial state leaving a vacuum to be filled by social groups. This arrangement served the interests of all concerned parties: The colonial state could dispense with messy interference to the Chinese society; Chinese residents got their needed services provided by an intermediaries; The social groups found their niche in serving both the rule and ruled, and thus improved social harmony. In so doing, Lou, unfortunately, depoliticizes these social groups and camouflages their very important connection with the communist regime in China. On the one hand, he tries to manufacture an unrealistic image of the emergence of an autonomous civil society in Macao without tracing China's instigation, concoction, and control on them. On the other hand, he has unproblematically conceived the nationalistic identity of these groups as the natural expression of their true Chineseness, neglecting its constructiveness and artificiality under the anti-colonial setting (see Lou 2004: 335). The contests

<sup>40</sup> The incident was triggered by pro-China groups in Taipa attempting to build a school without, allegedly, securing the necessary clearance from the colonial authority. The subsequent violent suppression sparked a city-wide anti-colonial mobilization with the tacit backing from Red Guards across the border in China. In the end, the colonial authority admitted a humiliating defeat by apologizing for using force. This victory earned the pro-China groups unchallengeable control of Macao society. For further discussions of the incident, see Dicks (1984), Share (2006: 52–54), and Fernandes (2007).

<sup>41</sup> Chinese agents penetrated and operated unhindered in Macao. According to a report, it even managed to infiltrate the Mozambique soldiers stationed by Portugal in the Macao garrison. Fearing the possible spread of anti-Portugal anti-colonial feelings when these soldiers returned home, Portugal decided to withdraw the Mozambique detachment in the 1960s (see Fernandes 1999: 1180).

and politics associated with the rise of this nationalism have been completely sanitized. The *status quo* is justified by a crude functionalism and a depoliticized national identification.

More critical scholars such as Herbert Yee (2001) and Chou (2004), are not as sanguine as Lou and his associates on the potentials of these social groups in the expansion of autonomous civil society. Chou (2005: 197) called this a patron-client network in which the local Chinese elite maintained their control on the population through the dispensing of favors and influence. Yee (2001: 17–18) recognizes that these pro-China Macao social groups are enmeshed in a hierarchical network. The top of this command structure was located at China's unofficial representative office in Macao, the Xinhua News Agency (NCNA).<sup>42</sup> This agency coordinated the vast pro-Beijing network in Macao, including its economic interests (the most important was undoubtedly the Nam Kwong Trading Company), the communist party cell, its media mouthpiece, the *Macao Daily*, which is the daily newspaper with the largest circulation in Macao, plus the network of pro-China social groups. NCNA's mission was to provide unified leadership to this massive network so that China's interests would be protected and pursued. Furthermore, Xinhua provided the authoritative channel to settle disputes that might arise out of conflicts of interests within this network, such as between the business associations and the trade unions, so that unity and stability could be maintained. This monolithic structure has almost attained domination in Macao society. Alternative voices were threatened with marginalization and exclusion. A unified ideology of nationalism and political unity has been aggressively promoted. In the words of Yee (2001: 165), "Beijing's influence is pervasive and present in all levels of Macao society."

More pertinent to our purpose here is that these social organizations helped to articulate a dogmatic version of nationalism that calls for an unconditional identification with Mainland China (Chou 2005: 196; Pereira 2001: 122). In their charters, almost all of these organizations distinguish themselves as *aiguo aiao* (literally, "love China love Macao") organizations. Their immediate goal is to promote the political stability of Macao, which is also a manifested goal of China. Working for the interests of their members is usually listed as their last objective.<sup>43</sup> Many of these groups are enmeshed in the corresponding networks in China, receiving training and ideological tutelage from the latter.<sup>44</sup> For instance, the Macao Federation of Trade Unions has strong connections with the All-China Federation of Trade Union in China. Based on an analysis of some key social groups, Li (2008: 170–172) comes to the conclusion that promoting national identification is a key part of their activities. They have been successful in promoting identification not only with "cultural China," but also with "political China," meaning China's ruling party and the political regime. This has distinguished Macao's social groups with their counterparts in Hong Kong.

Among the local actors within this pro-China network, the Macao Chamber of Commerce has emerged as the most important group with many of its directors, most prominently being its long-time leader Ho Yin and his successor Ma Man Kei, being given key political posts in China's

<sup>42</sup> China and Portugal did not normalize their relations until 1979. Prior to normalization, the Xinhua News Agency became the unofficial body representing Beijing's presence in Macao. In this sense, the news agency was a cover for China's operation in the colony.

<sup>43</sup> For instance, the objective of the Macao Chamber of Commerce is listed as follows: "To support the principle of 'one-country, two systems,' to be persistently devoted to the country and Macao, to united different entities and individuals in the industrial and commercial sectors in Macao, to server [sic] them and safeguard their legitimate rights and interests...." See their website (<http://www.acm.org.mo/en/main1.htm>, accessed September 4, 2008).

<sup>44</sup> See Tam (2008) for a discussion of how the leaders of the Macao Youth Federation are incorporated in the All-China Youth Federation.

political hierarchy (Chou 2005: 197; Afonso and Pereira 1986: 52).<sup>45</sup> Political commentators have pointed out that the Macao Chamber of Commerce has been dominated by a few major families since the 1950s. Some of them, like the Ho Yin, Ma Man Kei, and Chiu Tak Kei families, have taken a more politically visible approach (Lou 2004: 92; Yee 2001: 122–23). Others, such as Ng Fok, are not as visible, but politically and economically no less powerful. The political connection has served them well by bringing in many lucrative business opportunities with China and with the Macao government.<sup>46</sup> Such a connection could be critical for getting lucrative contracts from the colonial state, and for running business in an economy where bureaucratic red tape is rampant. More pertinent to our purpose here is that this economic significance is derived from the occupation of a political position in which loyalty and ideological belief plays a paramount role. The open manifestation of a true believer and an ardent defender of nationalism is thus closely linked to material interests.

The popular perception of a politically weak, incompetent, and economically backward colonial state among the Chinese population did not help to consolidate an alternative identity to challenge the dominant China-oriented nationalist discourse. The colonial regime never invested significant resources in the education system to promote the Portuguese language, thereby building up a direct channel of communication with colonial subjects (Fernandes 1997: 47). Instead, it relied on the Macanese, a creolized population of the Portuguese and Asian origin, as an intermediary because they speak both Portuguese and Cantonese, the lingua franca of the local population. They filled up the middle-stratum positions of the colonial bureaucracy. The abuse of power and condescending attitude of this middle stratum of the colonial state often alienated the Chinese population, and did not help to build an affection with the Portuguese regime (Yee 2001: 34).

The enforcement of this nationalist discourse serves a number of purposes. The most important, of course, is to prevent the emergence of a local identity that may counterbalance the nationalist ideology and thus complicate the national unification project. There has been a persistent effort to deny this local identity by exhorting the Macao people's proud nationalist aspiration, which was not difficult to be understood as an indirect reference to Hong Kong people's pro-British and pro-colonialism predilection. Occasionally, the elite also referred to Macao as the historical center of East and West exchange, and developed a unique cultural mix not found in other places (Cheng 2002). However, this uniqueness has never dared to be conceived and transformed into a political project by the local elite. It is merely celebrated in a historical and cultural direction with the overt motivation to advertise for tourist gratification. In a perceived zero sum situation, the promotion of a local-oriented political identity could be interpreted as an attempt to negate national identity. Even worse, it could be construed as an attempt to resist Beijing control or outright separatism. From this perspective, a local scholar, Gary Ngai (1999: 112), has aptly remarked that "discussing and defining Macau's identity had for a long time remained taboo."<sup>47</sup> The nationalist identification has achieved an unchallengeable position, which was clearly reflected in a 1999 survey indicating that 74% of Macao people were proud to be Chinese while only 38.8% were proud to be Macao citizens (Yee 2001: 71).

<sup>45</sup> For instance, Ma Man Kei was appointed to the vice-chairmanship of the National Committee of the Chinese People's Political Consultative Conference (see Chou 2005: 197).

<sup>46</sup> An example of the close relations between mainland and local Chinese capital was the injection of mainland China funds into the Ho Yin-owned Tai Fung Bank, when the bank faced a run in 1983. Kamm (1991: 233) has observed that the distributorship or agency of Chinese products and services tended to go to members of the Macao Chamber of Commerce.

<sup>47</sup> On this respect, Clayton (2001)'s thesis also offers very good insights.

Offering some feeble, but not insignificant resistance to this hegemonic nationalist discourse was the small democratic camp. Since the 1980s, a democratic force has emerged in Macao's political scene representing an alternative to the mainstream pro-China social forces. Its most important representatives are undoubtedly the democratic duo, Ng Kuo Cheong and Au Kam San. Both were active members of the Macao movement supporting the students in the Tiananmen massacre, and thus became a thorn in the side of the Chinese government. With regard to local Macao politics, they were critical of both the Portuguese regime and the pro-Chinese forces, accusing them of engaging in a "conspiracy politics" of maintaining authoritarian control and slowing down Macao's democratization (Yee 2001: 33). If the pro-China social forces have been asserting a nationalist project, the democratic duo is arguably insisting that this nationalist project should have a large localist component. In other words, they maintain that this has to be a bottom-up process with a strong element of popular participation. Of course, this idea was found to be too radical and was unacceptable to the Macao political elite and the pro-China social groups. Using their preponderance power in Macao's economy and society, the pro-China elite has managed to marginalize and intimidate members of the democratic camp. Ng and Au were fired from their jobs because of their political belief (Chou 2005: 201; Yee 2001: 166). They eventually turned themselves into full-time politicians, and have been continuously re-elected since the 1990s. Other members, many belonging to the fledgling Macao middle classes, found their career path blocked and chose to leave for fear of reprisal. The democratic force thus remained a tiny minority, and never became a significant force to be reckoned with, though from time to time, their critical voice has catalyzed public action, and played a role in changing policy direction.

### **23.4.2 Post-Transition Ruling Coalition**

Since the 1999 transition, the political role of the pro-China social groups has undergone a critical transformation. Previously, they largely exercised an informal influence over an alien regime. However, after the transition, institutional arrangement has entrenched their formal control over the political process. A clear indication can be gauged from the composition of the government's top advisory body, the Executive Council. It is an entirely appointed entity with 10 members: 5 are officials from the Macao Chamber of Commerce, 2 from the Macao Federation of Trade Unions, and 1 from the General Union of Neighbors Association of Macao (commonly known as the Kaifong Association).<sup>48</sup> In other words, 8 out of 10 are from the pro-China groups. In addition, it must be noted that their advisee, the chief executive, is a long-term member of the Macao Chamber of Commerce.

Their strong presence in the government is partly a reflection of the political structure that gives them the power to choose the chief executive and members of the Legislative Assembly.<sup>49</sup> The chief executive is elected by a 300-member electoral college ostensibly represented by different functional constituencies from business, cultural, education, professional, sports, labor, social services, religious, and other sectors. The unique aspect of this system is that only registered organizations, rather than individuals, within each constituency are allowed to nominate and elect electoral college members, who in turn nominate and elect the chief executive. It is beyond doubt that the pro-China social groups dominate the electoral college. They monopolized the nomination process and produced uncontested elections by fielding the same number of electoral

<sup>48</sup> The composition of the current members of the Executive Assembly can be found in *Jornal Cheang Pou* December 16, 2004. See also Chou (2005: 197–99).

<sup>49</sup> See Yu (2007: 420–23) for more details on the regulations of the indirect election.



candidates as the number of seats available in each of the constituencies. Moreover, a cross-checking of the associational background of the 300-electoral members identified that at least 183 of them belong to the four key pro-China associations, namely, the Macao Chamber of Commerce (106), the Macao Federation of Trade Unions (39), the Kaifong Association (17), the Women's General Association of Macao (10), and the Chinese Educators Association of Macao (11).<sup>50</sup> If other lesser known personalities and more peripheral pro-China organizations are counted, the percentage could be much higher. The figures also clearly demonstrate the influence of the Macao Chamber of Commerce, which alone accounted for more than one-third of the votes in the electoral college. The same collection of social groups are responsible for the selection of the 12 indirectly elected members in the 29-member Legislative council. Similarly, they made the 2005 and 2009 elections uncontested.

The institutionalization of these social groups in the ruling structure has brought forth a number of very profound implications. Firstly, the traditional role of these social groups has been changed. The leaders of these social groups have been invited to sit on various high-power government committees and bodies.<sup>51</sup> Huge amounts of government funding and resource have been extended to these social groups to expand their services and activities (Chou 2005: 200).<sup>52</sup> In exchange for these power and resources, these social groups are used to legitimize government policies. From time to time, they have been asked to defend unpopular government positions. In a candid interview, an insider and senior member of the pro-China social sector, Professor Ieong Wan Chong, has made a very precise and succinct analysis of their present condition. According to him, in the past, these social groups played a check and balance role outside the colonial government to restrain its excessiveness and abuse of power. After the transition, they entered and sided with the government and tried to defend all its policies and actions from social criticisms (*Jornal Va Kio*, October 4, 2007). In short, the economic wing of the pro-China elite was given real power in controlling the government without much democratic accountability. The social and labor wing of the pro-China groups are incorporated into the ruling coalition as instruments of social control. Once in a while, the latter groups may push for better governance on matters of a non-structural nature. But in matters affecting fundamental interests, such as land allocation and the freedom to import migrant workers, their maneuvering room is limited by their role as loyal supporters of the government, and, by their aversion to action remotely causing social and political instability to the regime. Given that these social groups dominated the civil society in Macao, their cozy relations with the government thus deprived the latter with a major source of vibrancy and critique.

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<sup>50</sup> The list of the Electoral College members of the 2004 chief executive election is available at <http://www.ce-election.gov.mo> (accessed May 4, 2008). Their associational background is identified by checking their names with the lists of officials put up by the key pro-China organizations in their websites. Their association identity is verified again through newspaper reports accessible in Wisenews.

<sup>51</sup> For instance, the Macao Federation of Trade Unions has one representative in the Executive Assembly, 4 Legislative Assembly members, and its members sit in 30 other consultative committees (see <http://www.faom.org.mo/web/?action-viewnews-itemid-236>, accessed May 12, 2008).

<sup>52</sup> For instance, the Macao Federation of Trade Unions has become a mammoth organization providing various social services, training and recreational activities. As listed in its website, the MFTU boasted of running a network of primary and secondary schools, a continual education centre, four clinics, three childcare facilities, four elderly centers, four recreational complexes, one fitness center, one rehabilitation centre, one sports stadium, one job training center, one job bank, and four branches and offices (see <http://www.faom.org.mo/web/?action-category-catid-221>, accessed May 12, 2008).

### 23.4.3 Social Group Dynamics

With rising social discontent against the government since 2006, these social groups play a central role in deflecting attack and absorbing challenges. For instance, the role of these social groups was put under intense public scrutiny after the 2006 May Day demonstrations. Mainstream opinions put the blame on these social groups, accusing them of failing to do their work in bringing the concerns of the people inside the government. These pro-China social groups have been criticized as being hierarchical, resistant to change, rampant nepotism, and even under feudalistic family control.<sup>53</sup> An opinion survey conducted by scholars from Hong Kong and Macao in 2006 revealed that public participation in the activities of these social groups was rather low and many considered these social groups dominated by a small circle of people.<sup>54</sup> The survey fueled more demands for reform and rejuvenation of the social groups. Privately, these social group leaders vented their anger on the government leaders accusing them of not accepting their opinions and suggestions. And when the government faced public challenges on poor policy formation, it conveniently found scapegoats in them. The important point is that amid these debates and accusations on the need for reform and rejuvenation of the social groups, the state itself largely escapes scrutiny. Indeed, the more attention and controversies that these social groups stir up, the better they are serving their role as a defender of the political regime.

Another dimension of the social group dynamics involved intra-elite contests. During the 1970s and 1980s, a group of entrepreneurs from Hong Kong and China started up business in the enclave. Herbert Yee (2001: 122, 158) called these new arrivals the *nouveau riche*, and gradually, they have become as rich, if not richer, than the old rich.<sup>55</sup> Some of its more prominent members are Chow Kam Fai, Fung Chi Keong, and Chan Meng Kam. Many of them got very rich by operating casino VIP rooms (Yu 2007: 428–30). They have joined the Macao Chamber of Commerce, but have found it difficult to be admitted into the inner core. Many of them have to fend for themselves in order to secure a place in the Macao political structure. They solicit the support of existing social groups often by making huge donations, if not bribery (Chou 2005: 201). Others embark on a spree of group creation, aiming to attain the numerical advantage to win in the indirect elections.<sup>56</sup> Only when these ways do not work out for them do they participate in direct election. These *nouveau riche* have been accused of extensive vote buying in the Legislative Assembly election (Yu 2007). The limited democratic space in the Legislative Assembly is thus further narrowed by the scrambling of political influence from the *nouveau riche*.

<sup>53</sup> Aomen fāzhǎn cèlùè yán jiū zhōng xīn (2000: 13). For instance, Ho Yin was the head of the Macao Chamber of Commerce for more than 30 years until his death in 1983. Since then, his deputy, Ma Man Kei succeeded him, and Ma is still its chairperson (see information on its website <http://www.acm.org.mo/main1.htm>, accessed May 12, 2008). See also Chou (2005: 203) and Ng (1990: 197).

<sup>54</sup> According to the survey, 76.6% of the respondents do not or rarely participate in social groups' activities; 40.3% of the respondents agree or very agree to the statement that social groups are control by a small circle of people, which is more than the 36.5% disagree or very disagree to the statement. See *Jornal Va Kio*, January 4, 2007.

<sup>55</sup> See also Ng (1990: 137).

<sup>56</sup> A social group can be formed with as few as three members. To qualify for elector status in the indirect elections, a group has to make the proper application proving that it has registered with the government for at least 3 years (see Yu 2007: 422). In the 2001 Legislative Assembly election, there were a total of 625 such groups. In May 2008, the number has increased to 923 (see [http://app.safp.gov.mo/re/zh/estat/RE\\_Estat080531\\_00c.pdf](http://app.safp.gov.mo/re/zh/estat/RE_Estat080531_00c.pdf), accessed September 5, 2008). The increases caused directly elected legislator, Jose Coutinho, to cry foul of a defective election mechanism allowing the wealthy elite to finance the setting up of new groups in order to control the indirect election. See his questioning to the government in the Legislative Assembly (<http://www.al.gov.mo/interpelacao/2006/06-161c.pdf>, accessed September 5, 2008).

This social group politics has tremendous implications for the central-local relations between China and Macao. They are a staunch voice to articulate the nationalist identity and an ardent defender of China's presence in Macao. It is through these social groups that China maintains its unchallenged control on Macao politics. For the pro-China elite, the stake is now even higher in the present rapid economic growth and gambling liberalization because China has become the preponderant source of Macao's present economic take off. The influxes of huge transnational gambling corporations and other regional economic interests into Macao have intensified the competition for businesses and demonstrated to the local economic elite that political connection remains vital to avoid being marginalized. Apparently, the basic requirement to get inside the circle is being accepted to be "nationalistic." Thus, the local elite, no matter old or new rich, sing in unison of the caring and kindness of the motherland. There has been very little political will to dispute with the central government on any issue remotely related to its intervention in the local affairs of the SAR. The central government has also realized that once its will is made known, usually indirectly but authoritatively, to the Macao society, the local pro-China forces can mobilize public opinion to foster an atmosphere that can make this will prevail and accepted as a genuine desire of the Macao society. The predominance of these social groups is thus the cornerstone of successful decentralization in Macao.

For instance, the Macao government has been obliged by the Macao Basic Law to review the election mechanism of the chief executive and the Legislative Assembly for the 2009 elections.<sup>57</sup> Shortly before the public consultation was launched, a well-known Tsinghua University law professor with close connections to the Beijing leadership, Wang Zhenmin, was invited to Macao to give a seminar. In his speech, he pointed out that the current priority of Macao's electoral reform should be on making the existing election system work better, rather than on making any significant changes to it, such as increasing its democratic elements (*Macao Daily*, December 15, 2007). This message was immediately picked up by the pro-China mass media and promoted as the direction for reform. The Macao government then produced a consultation paper aimed at closing the loopholes on vote buying by making minor procedural changes in conducting the election. Pro-China social groups endorsed this proposal in unison. Only Ng Kuok Cheong and Au Kam Sun persisted with their call for democratization, but their voices were safely ignored.<sup>58</sup> The political elite also managed, in the name of improving the administration of the election, to make it more difficult for newly formed social groups to obtain the voting franchise.<sup>59</sup> In all, the changes will likely tighten the old elite's grip on Macao politics.

This instance demonstrates that there is a lack of powerful locally oriented social forces to urge the central government to fulfill the promises made under the Macao Basic Law. The central-local relations between Macao and Beijing were very smooth, especially when compared with that of Hong Kong, only because there was a lack of political determination within the elite to stand up to China. China managed to put an elite in power whose interests and loyalty have long been

<sup>57</sup> See Annex I and II of the Macao Basic Law.

<sup>58</sup> As early as July 2007, the two legislators proposed a plan to increase the democratic elements of the elections of the chief executive and the Legislative Assembly, mainly by expanding popular participation in the electoral college and increasing the number of directly elected seats (see *Jornal do Cidadao*, July 2, 2007).

<sup>59</sup> Presently, any social groups can register to participate in the election after 3 years in existence. The proposed change requires a social group to wait a further 4 years after the 3-year qualification period before it can actually vote in the election. Moreover, after qualifying, each social group is required to submit annual activity reports and face regular evaluation to see if it meets the standard to vote. See the consultation document ([http://www.safp.gov.mo/apps/files/reform/Consulta\\_LeisEleitorais\\_cn.pdf](http://www.safp.gov.mo/apps/files/reform/Consulta_LeisEleitorais_cn.pdf), accessed August 20, 2008). These revisions are still under debate in the Legislative Assembly at the time of writing.

associated with it. The democratic force was muffled and marginalized. Without an indigenous force to balance China's influence, the casualty is likely to be Macao's autonomy.

## 23.5 Conclusion

Decentralization is a complex affair. The above study is an attempt to use a multi-dimensional approach to assess the conditions of decentralization of Macao. As this case has demonstrated, decentralization should not be confused with autonomy. Even though decentralization and autonomy are always discussed together, there is no automatic implication that the decentralized power will be genuinely exercised autonomously. Autonomy is more than an institutional arrangement that obligates the central government to grant a range of powers to the local government. Decentralization could mean the entrusting of power to the local elite whose loyalty and interests lie with the central government. Coupled with an undemocratic form of local governance and a subdued civil society, the outcome of decentralization could very well mean corruption and inefficiency with minimal accountability. In this sense, decentralization cannot be a panacea for improving the quality of government and people's livelihood.

Decentralization and autonomy is a profound political process that may affect the interests of actors in many different ways. Beijing may find decentralization working because it secures an overbearing influence on Macao without being openly challenged locally, and without being seen as damaging the autonomy promised. It also works very well for the local elite because the post-transition arrangement entrenches their political control on Macao politics. For the local people, the decentralization program may have given them a raw deal. The inefficient and unaccountable post-colonial government pursuing an unrelenting growth strategy aggravates inequalities and damages the standard of living for the common people.

It is not to dismiss all attempts of decentralization as futile. The point here is to underscore the argument that whether or not decentralization can achieve the claimed effects has to be analyzed from the configuration of social forces in the locality and their relations with the central government. Thus, a similar decentralization program offered by China to Hong Kong and Macao has produced quite divergent outcomes in the two SARs. This perspective may also help us gain better insight into the operation of autonomy. In particular, smooth central-local relations do not necessarily imply that autonomy is working. Conversely, rocky relations do not necessarily mean that autonomy faced with crises is unraveling. The more important criteria, however, is the consolidation of an accepted practice that local affairs have to be resolved in the locality. The best safeguard for this practice is the emergence of a vibrant and vociferous democratic force ready to take on an intrusive central state, and to turn local autonomy into a democratic exercise of the construction of common fate.

Long-time political observers like Sonny Lo (1995: 44) were rather pessimistic on the autonomous future of Macao before the 1999 transition. He was concerned that if China has already attained a high level of influence on Macao during the colonial period, Macao could not be more autonomous under China's direct sovereignty. This puzzle is obviously written from an "autonomy from" perspective, highlighting the source of power delegated from the top.<sup>60</sup> However, if autonomy is taken from a relational perspective, this pessimism is largely unwarranted. Optimists like Ng Kuok Cheong (n.d.: 15), Gary Ngai (2001: 150) and Clayton (2001: 25) argue that OCTS is the starting point of Macao's autonomy. The public outcry against corruption, mismanagement,

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<sup>60</sup> Other pessimists include Pereira (2001: 125). He writes, "the MSAR autonomy appears to be fully dependent on exogenous factors and, ultimately, on the sole political will of the Chinese leadership."

and abuse of power are indications that Macao people increasingly find the current political form unacceptable. These voices could become more vociferous because the gambling liberation opens up more economic space for dissent amid a more educated and self-confident Macao population. The OCTS has created a political promise of self-autonomy. Its future depends on the catalyzation and transformation of these forces to challenge the ideological straightjacket of nationalism imposed from above, and the articulation of a discourse of autonomy as not incompatible with a more democratic form of local governance.

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## Chapter 24

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# Public Ethics and Corruption in Macao

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Bruce K. K. Kwong

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### 24.1 Introduction

Ethical problems and corruption in the public sector are crucial issues in almost every country regardless of its political system. Public ethics and corruption can become a stumbling stone to governance and undermine government authority. A clean government becomes a prerequisite to good governance, including in tiny states like the Macao Special Administrative Region (MSAR).

Macao has been fighting corruption since the early 1990s when it was still under Portuguese governance [1]. The first anti-corruption body can be traced back to suggestions by Governor Jose Eduardo Garcia Leandro in 1975. The High Commission Against Corruption and Administrative Illegality (HCACAI) was, however, formally established in March 1991 after the Organizational

Law of the HCACAI was passed by the legislative assembly.<sup>1</sup> Notwithstanding, the HCACAI had its own innate defect, that its functions laid down by the Organization Law stipulated that it could not carry out criminal investigations on corruption matters but only on matters of an administrative nature because the legislature refused to vest any further power in it; the government failed to reform its maladministration legacy; the civil service did not cooperate with them; and its functions were curbed by the court's interpretation [2]. At that time, the HCACAI was set up to combat illegal behavior, including corruption and administrative wrongdoings in connection with civil servants.<sup>2</sup> However, its performance was described as merely bluff. When Macao became a Special Administration Region of the People's Republic of China (PRC) after the retrocession from Portuguese administration on December 20, 1999, the HCACAI was transited into the Macao Commission Against Corruption (CAC) in accordance with Articles 50 and 59 of the Basic Law of MSAR. In almost one decade of practice, the CAC had carried out many operations with successful trial result. Notwithstanding, the performance still could not satisfy the public's anticipation. The shocking scandal of the ex-secretary for Public Works and Transportation, Ao Man Long, showed the serious problems within the civil services, and that the monitoring mechanism on the civil servants seemed to lag behind.

This chapter intends to examine the functions of the anti-corruption body, and the internal and external limitations that may hinder it in combating corruption.

## 24.2 Functions and Performance of the Commission Against Corruption of Macao

### 24.2.1 Functions

The MSAR, established on December 20, 1999, provided an opportunity for structural reform to this former "Portuguese Colony." Eight months after the handover, the MSAR government rapidly announced an Organizational Law outlining the functions and powers of the CAC. The CAC adopts the dual functions of anti-corruption and ombudsman with an independent status and its commissioner is directly accountable to the chief executive. Edmond Ho, the first chief executive of MSAR, pointed out that the fundamental and crucial function of the CAC is to fight against the illegal behaviors within the civil service and investigation power should be vested on it [3]. According to Article 3 of the Organizational Law of Law number 10/2000,<sup>3</sup> the functions of the CAC are to:

- (1) Carry out preventive actions against acts of corruption or fraud
- (2) Investigate any crimes of corruption and fraud committed by civil servants in accordance with Criminal Justice Law
- (3) Investigate allegations of corruption and fraud in voter registration and related elections in the institutions in the MSAR in accordance with Criminal Justice Law

<sup>1</sup> Ibid., pp. 81–116 and 171–96. See also the *History of the Commission*, CAC of Macao website: <http://www.ccac.org.mo/en/subpage.php?cat=intro&page=history>.

<sup>2</sup> MSAR Commission Against Corruption website: <http://www.ccac.org.mo>.

<sup>3</sup> See MSAR government website: [http://bo.io.gov.mo/bo/i/2000/33/lei10\\_cn.asp](http://bo.io.gov.mo/bo/i/2000/33/lei10_cn.asp).

- (4) Promote the protection of human rights, freedom, security, and legitimate interests of individuals, and to ensure the fairness, lawfulness, and efficiency of the public administration through the clauses laid down in Article 4 of this law and other informal channels<sup>4</sup>

Notwithstanding, the term “civil servant” here refers to those working in the public departments or bodies in which half or more of the operation funding is sponsored by the government,<sup>5</sup> it is astonishing that the power of the anti-corruption body is limited to crimes related to civil servants as mentioned in section 2 of the Organizational Law. However, illegal behaviors or bribes, such as accepting bribes in personnel promotion or merchandizing, occurring in the private sector are excluded from the CAC’s investigation. Hence, employees in the private sectors can be immune from prosecution provided that those graft behaviors do not involve a public officer.

### **24.2.2 Guidelines on the Professional Ethics and Conduct of Public Servants**

The Macao administration enacted rules regulating the behaviors of public servants to maintain a high standard of ethics and clean government when it was still under the Portuguese rule. According to Article 279 of the General Regulations Governing the Staff of the Public Administration of Macao enacted in 1989,<sup>6</sup> public servants have a series of obligations, including:

- (1) Impartiality
- (2) Zeal
- (3) Obedience
- (4) Loyalty
- (5) Confidentiality
- (6) Courtesy
- (7) Assiduity
- (8) Punctuality
- (9) Not engaging in incompatible activities

Explanations of these obligations can be found in Clauses 3 to 11 in Article 279 of the same legislation (see [Table 24.1](#)). In addition to these regulations made decades ago, the CAC produced the *Guidelines on the Professional Ethics and Conduct of Public Servants* after the handover. These guidelines decode the definition of conflict of interest and other major ethical problems commonly found in Macao’s public service, including the handling of advantages received; outside employment; the recusal system; duty of confidentiality; use of department or institution property; legal liability; and duty to report and relevant channels.<sup>7</sup> (See [Appendix A](#) for abstracts of

<sup>4</sup> Translations of sections 1–3 can be found on the Macao Commission Against Corruption official website: <http://www.ccac.org.mo>; section 4 is translated by the author directly from the Chinese version of this legislation. For details of this legislation, see [http://bo.io.gov.mo/bo/i/2000/33/lei10\\_cn.asp](http://bo.io.gov.mo/bo/i/2000/33/lei10_cn.asp).

<sup>5</sup> See Panel Code, Article 364, MSAR Printing Bureau webpage: <http://bo.io.gov.mo/bo/i/95/46/codpencn/default.asp>.

<sup>6</sup> For details of this regulation, see: [http://bo.io.gov.mo/bo/i/89/51/estatuto\\_cn.asp](http://bo.io.gov.mo/bo/i/89/51/estatuto_cn.asp) (only Chinese and Portuguese versions are provided).

<sup>7</sup> A full version of the guidelines can be located on the CAC webpage: <http://www.ccac.org.mo>. For abstracts of these guidelines, see [Appendix A](#).

**Table 24.1 Obligations of Public Servants in MSAR**

<i>Obligations</i>	<i>Features</i>
Impartial	Not to accept money or other benefits that are not allowed by the laws directly or indirectly while carrying out duties, and to behave in a fair, impartial, and independent manner in handling any kind of private interest and pressure, so as to respect equality between people
Zealous	Carrying out duties in an effective way and wholehearted manner, especially in understanding the rules laid down by the laws and regulations, superiors' instructions, and possessing and enhancing technical knowledge, mastering, and improving the ways of carrying out the duties
Obedience	Respecting and abiding orders issued by the due superior under legalized ways and task oriented
Loyalty	Carrying out duties in accordance with a superior's instruction and doing so with the objective of the task itself in order to further public interests
Confidentiality	Keeping occupational secrets of 'non-open' facts acquired during the course of carrying out duties
Courtesy	Treating service users, colleagues, superiors, and subordinates in the public institutions with respect and in a well-bred manner
Assiduity	Working normally and continually in the department
Punctuality	Going to the department to work on time
Not engaging in incompatible activities	Ceasing from engaging or not taking on activities that are incompatible with current duties

Source: Article 279 (3)–(11), *General Regulations Governing the Staff of the Public Administration of Macao*, [http://bo.io.gov.mo/bo/i/89/51/estatuto\\_cn.asp](http://bo.io.gov.mo/bo/i/89/51/estatuto_cn.asp)

the guidelines.) It is remarkable to note that few codes in the guidelines involve the inter-personal relationship between superiors-subordinates, such as the recusal system, duty of confidentiality, and duty to report, signaling that patron-client relations under the Portuguese legacy is still happening in this post-colonial regime. Nevertheless, the CAC has made a lot of successful arrests in combating corruption cases since its setting up, whereas criticisms on its performance against heavy weight criminals can be heard from time to time (see [Table 24.2](#)).

### **24.2.3 Performance**

Table 24.2 shows the total number of cases reported to the CAC from 2000 to 2007. It is worth noting that the number of cases reported dropped in 2006 and 2007. However, the cases commenced in these 2 years do not record a clear improvement compared with 2003–2005, when more than 1000 or so reported cases were recorded. This can be explained that when the former secretary for public work and transportation, Ao Man Long, was arrested in December 2006

**Table 24.2 Comparison of Cases Recorded by Categories since the Handover**

Year	Case Commenced		Cases with Insufficient Evidence	Referred to Another Department to Follow	Handled through Informal Channels	Total
	Criminal Cases	Ombudsman Cases				
2000	83	52	783	60	–	978
2001	112	22	1062	64	5	1265
2002	115	16	917	59	9	1116
2003	85	5	333	28	626	1077
2004	75 <sup>a</sup>	1	708	81	362	1227
2005	69 <sup>a</sup>	1	714	39	286	1109
2006	54	3	460	31	292	840
2007	66	9	367	43	251	736

Source: Synthesizing various Annual Report of CAC from 2000 to 2007, website: <http://www.cacac.org.mo/en/subpage.php?cat=intro&page=report>.

<sup>a</sup> The CAC Annual Report did not categorize criminal case and ombudsman case under case commenced item. The Annual Report in 2004 and 2005 only mentioned the number of criminal cases commenced in the chapter entitled Anti-Corruption instead of the chapter entitled General Description with Statistics used to report figures. Figures for these 2 years are calculated along this logic.

after almost a year-long investigation, people are so interested to see whether the authority would carry out a just investigation and prosecution in this case, as an ordinary citizen would be treated. Further, it is interesting to see that the total number of cases reported in 2007 was relatively low. One may expect that complaints should be increased after the arrest of Ao as there would have no other reason left to question the decisiveness of the CAC in combating bribery. The most possible factor driving such a phenomenon is that Ao's case scares away those public servants who prefer to commit ethical crimes. Indeed, Ao's case did encourage people to take notice of the performance of the civil service as the number of cases commenced in the ombudsman category drastically increased in 2007 compared with the previous 4 years.

Apart from the case reports made to the CAC to indicate their performance, the CAC is concerned about their performance evaluation by international organizations. Transparency International (TI) is a worldwide anti-corruption survey organization, and the CAC would pay relatively high attention to the surveys made by TI. In fact, the TI did not include Macao in its survey targets before 2006. According to an email enquiry to Liao Ran, TI's senior program coordinator of South East Asia, made in early October 2006, "the countries which are listed on the CPI, they must be measured by three different surveys. Macao was not surveyed by three difference surveys, so it is not included."<sup>8</sup> Surprisingly, Macao was listed in the survey report by TI issued in November 2006 as there was a "small change to the methodology used

<sup>8</sup> Personal email enquiry made on October 5, 2006. I asked the TI why they did not include Macao in their survey because Macao was a place well known for gambling and corruption. Liao replied efficiently the next day.

**Table 24.3 CPI Scores and Rankings of Macao from 2006 to 2008**

Country/Region	World Rank			Asia-Pacific Rank			CPI Score <sup>a</sup>		
	2008	2007	2006	2008	2007	2006	2008	2007	2006
New Zealand	1	1	1	1	1	1	9.3	9.4	9.6
Singapore	4	4	5	2	2	2	9.2	9.3	9.4
Australia	9	11	9	3	3	3	8.7	8.6	8.7
Hong Kong	12	14	15	4	4	4	8.1	8.3	8.3
Japan	18	17	17	5	5	5	7.3	7.5	7.6
Taiwan	39	34	34	6	6	7	5.7	5.7	5.9
Macao	43	34	26	7	6	6	5.4	5.7	6.6

Source: Synthesizing various Annual Global Corruption Perceptions Index (CPI) surveys conducted by Transparency International from 2006 to 2008, website: [http://www.transparency.org/policy\\_research/surveys\\_indices/cpi](http://www.transparency.org/policy_research/surveys_indices/cpi).

<sup>a</sup> CPI measures the perceived levels of public sector corruption in a given country and it is a composite index that scores 180 countries (163 countries in 2006 surveys) on a scale from 0 to 10; 0=high levels of perceived corruption, 10=low levels of perceived corruption.

in 2006.”<sup>9</sup> The CPI report for Macao was good in 2006, but deteriorated in 2007 and 2008. Macao’s global ranking dropped in these 2 years, and was even overtaken by Taiwan in 2008. Obviously, the arrest of Ao cannot redeem the notorious image of this ex-Portuguese enclave. Hence, more remedies are needed for the sake of retrieving people’s faithful heart (Table 24.3).

#### 24.2.4 Structure

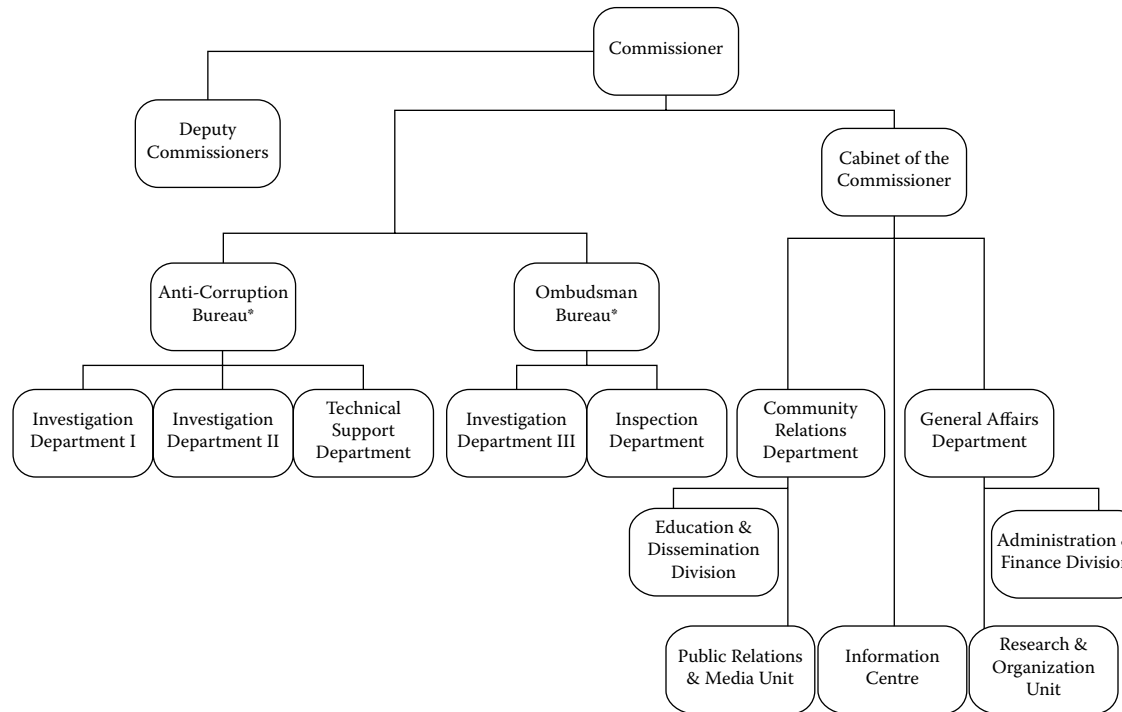
The Organizational Law has officially laid down the structure and establishment of the CAC’s daily operations. According to the Administrative Regulation number 31/2000, “Approval to the Departmental Structure and Operation System of the Commission Against Corruption of Macao,”<sup>10</sup> it concretely outlines the division of different departments. It is noteworthy that the CAC has to play two major roles to maintain higher standards of ethics to the public officers, namely, the Anti-Corruption Bureau and Ombudsman Bureau (see Figure 24.1). Further attention should be drawn to the number of investigation departments in these two major bureaus. It seems to be short of manpower as there are only two teams performing anti-corruption functions and one team for ombudsman functions, whereas the Cabinet of the Commissioner appears to be swollen impressing that the focus of the CAC has shifted to public relations as well as administration (see Figure 24.1).

#### 24.2.5 Personnel Establishment

According to Administrative Order number 28/2003, “Amendment of the Establishment Table of the Personnel of the Commission Against Corruption of Macao,” issued by the chief executive in

<sup>9</sup> Transparency International Corruption Perception Index 2006, p. 11. For more detail, see the TI website: [http://www.transparency.org/policy\\_research/surveys\\_indices/cpi/2006](http://www.transparency.org/policy_research/surveys_indices/cpi/2006).

<sup>10</sup> For detail of this regulation, see website: [http://bo.io.gov.mo/bo/i/2000/34/regadm31\\_cn.asp](http://bo.io.gov.mo/bo/i/2000/34/regadm31_cn.asp).



**Figure 24.1** Organizational chart of the Commission Against Corruption of Macao. \*The deputy commissioner is inherently designated as the director of the bureau. (The CAC website: [http://www.ccac.org.mo/en/intro/structure\\_details.htm#](http://www.ccac.org.mo/en/intro/structure_details.htm#).)



July 2003, the total number of personnel, including their ranks and posts, are regulated in this Order.<sup>11</sup> However, the CAC started to increase its personnel since 2004, thereby going beyond the 109 it is assigned (see Table 24.4). It is actually not an unusual arrangement for the CAC or any other government department to recruit extra staff over the assigned manpower indicated by the personnel establishment. But they cannot, of course, recruit as many staff as they require in as this would cause problems of over budgeting, bureaucratic accountability, public monitoring, bureaucratic imperialism, and playing down the sublime authority of the regulation itself. Many other countries would address this without too many difficulty, such as by amending the Administrative Order in good time to catch up with the rapid development in the community. It is unwise to leave such a personnel arrangement, which is clearly in contravention with the related administrative order, as it would enable the public to query the justice and neutrality status of this ethical watchdog.

**Table 24.4 Personnel Establishment of the Macao Commission Against Corruption**

<i>Personnel by Posts</i>	<i>Grades</i>	<i>Rank</i>	<i>Number of Positions</i>
Leadership and head	–	Chief of cabinet of the commissioner	1
Leadership and head	–	Advisor or expert	6
	–	Department head	2
	–	Chief investigation officer	5
	–	Division head	2
Senior officer	9	Senior officer	6
Senior information technology officer	9	Senior information technology officer	2
Interpreter	–	Interpreter	1
Personal secretary	–	Personal secretary	2
Office assistant	–	Office assistant	1
Office assistant	8	Office assistant	4
		Information technology officer	1
Investigator	–	Investigator	52
Professional officer	7	Assistant officer	13
		Public relations officer	1
		Information technology assistant	1
Administrative official	5	Auxiliary staff	6
		Administrative official	3
		Total	109

Source: Administrative Order 28/2003, MSAR Printing Bureau, website: [http://www.imprensa.macao.gov.mo/bo/i/2003/30/ordem28\\_cn.asp](http://www.imprensa.macao.gov.mo/bo/i/2003/30/ordem28_cn.asp).

<sup>11</sup> For more details of this regulation, see: [http://bo.io.gov.mo/bo/i/2003/30/ordem28\\_cn.asp](http://bo.io.gov.mo/bo/i/2003/30/ordem28_cn.asp).

Table 24.5 reveals the gradual increase of staff since the handover. The total number of staff has been exceeded since the official setup in 2004 and reached a record high in 2007. Although the Commission claimed that some staff are not employed by a permanent contract,<sup>12</sup> it did not change the personnel establishment limit. The total number of investigators in 2007 remains at a relatively low level, thereby worsening the shortage of manpower. Indeed, the Commission will find it very difficult to deploy such a small number of investigators to the three investigation departments in 2007 to make them work effectively and efficiently especially as the gaming franchise has expanded from one to six and the community is developing drastically. Yet, it would be reasonable to expand the personnel establishment.

## 24.3 New Challenges

The CAC had been enjoying a continual 7-year honeymoon because it had not been critically tested on its capacity to combat organized bribery crimes. The fallout from the case of the former secretary for public works and transportation, Ao Man Loon, as well as the chief executive's failing to report personal interest to the CAC together have made the anti-graft department face unprecedented challenges ever since.

### 24.3.1 The Case of Ao Man Long

Mr. Ao was the first civil servant at the secretarial level to be caught by the CAC in December 2006 after the handover. The public wanted to know whether Ao would be treated like every ordinary accused person or whether he would enjoy the advantages and protection that often exists among officials. It was soon found that actions taken against Ao were far from common fairness. First, one day after Ao's arrest the chief executive announced at a press conference that "quite substantial" evidence was found.<sup>13</sup> Second, Ao was escorted to a house search and the Public Prosecutions Office for further investigation, handcuffed without masking his face in a public place, which is not the usual practice in Macao CAC as well as the police. Although Ao's lawyer made a complaint, it was to no avail.<sup>14</sup> Third, although Edmond Ho had reiterated that there should be no open addresses or comments on Ao's case for the sake of maintaining the fundamental principle of legal justice,<sup>15</sup> the CAC disclosed a large volume of evidence including the ways that Ao exercised money laundering, and money, deeds and properties, etc., claiming Ao acquired this wealth through corruption.<sup>16</sup> Obviously, Ao was still an innocent person at that time as he was not on trial and had not been found guilty by a court of law. Those practices that made Ao appear like a criminal impressed the public, as they assumed that the presumption of innocence did not apply to Ao, and he was suspected of contravening Article 29 and 30 of the MSAR Basic

<sup>12</sup> The author presented this topic at the Conference of Public Governance: Theories and Practices, held in October 2007 at the University of Macau. A person claiming to be a middle-level official of the CAC stated that there were a number of staff employed on non-permanent contracts, and the Commission did not see these staff as members of the establishment so they would not be counted in the Annual Report. She was not willing to disclose the types of contract being used by the Commission while recruiting staff and also refused to give information on the number of staff in the three investigation departments

<sup>13</sup> *Shimin Daily*, December 8, 2006, p. 3.

<sup>14</sup> *Macao Daily*, December 11, 2006, p.2.

<sup>15</sup> *Va Kio Daily*, December 19, 2006, p. 11.

<sup>16</sup> *Macao Daily*, April 5, 2007, p. 2; *Apple Daily*, April 5, 2007, p. 13.

**Table 24.5 Total Number of Staff Employed by the Commission Against Corruption of Macao, 2000–2007**

<i>Position</i>	<i>31-12-2000</i>	<i>31-12-2001</i>	<i>31-12-2002</i>	<i>31-12-2003</i>	<i>31-12-2004</i>	<i>31-12-2005</i>	<i>31-12-2006</i>	<i>31-12-2007</i>
Commissioner	1	1	1	1	1	1	1	1
Deputy commissioner	2	2	2	2	2	2	2	2
Chief of cabinet of the commissioner	1	1	1	1	1	1	1	1
Advisor or expert	5	6	6	6	5	4	4	4
Department head	–	1	1	1	1	1	1	1
Chief investigation officer	–	2	2	3	3	2	2	3
Division head	1	1	–	1	1	1	1	1
Senior officer	5	4	6	4	3	3	4	5
Senior information technology officer	–	–	1	2	1	2	2	1
Interpreter	1	1	–	–	–	–	–	–
Personal secretary	1	2	2	1	1	2	2	2
Office assistant	–	–	–	1	1	1	1	1
Chinese expert	–	1	1	1	1	1	1	–
Officer	1	1	1	1	1	1	1	1
Information technology officer	–	–	–	1	1	2	2	2

Investigator	19	32	35	40	50	49	61	55
Assistant officer	7	6	8	18	16	15	13	18
Public relations officer	2	2	2	1	–	–	–	–
Auxiliary officer	–	6	7	6	6	6	7	11
Information technology assistant	1	1	1	1	1	–	–	–
Administrative official	3	3	3	3	5	6	6	6
Worker and auxiliary staff	12	11	11	11	11	11	11	11
Full-time temporary staff	–	–	–	–	–	1	2	2
Total	62	84	91	106	112	112	125	128 <sup>a</sup>

Source: *Annual Report 2007*, Commission Against Corruption of Macao (only Chinese and Portuguese), webpage: <http://www.cacac.org.mo/cn/intro/download/rep2007.pdf>.

<sup>a</sup> Excluding 13 investigator trainees.

Law.<sup>17</sup> This usual practice of the CAC was later criticized by the Law Society of Macao in a public announcement published in the newspaper, accusing the CAC's moves as contravening judicial secrecy and the principle of presumption of innocent.<sup>18</sup>

The court trials of Ao Man Long had also exposed the patron-client politics that existed in the civil service in Macao. These dyadic relations in the bureaucracy revealed that subordinates condescendingly followed or even conjectured their patron superiors' wishes, disregarding whether these actions might step on the brink of illegality.<sup>19</sup> For instance, Lou Chun Chon, a member of the Bidding Assessment Committee for Public Works, changed the scores of the assessed parties to make the lower score company get the contract as he realized it was Ao's wish;<sup>20</sup> Pun Pou Leng, deputy director of the Infrastructure Development Office, bypassed the formal procedures of calling for a public bidding and renewed a 7-year contract to Macao Hygiene Company and offered a contract to Macao Hydraulic Engineering Company Limited, obeying Ao's instructions as he was her boss.<sup>21</sup> Chow Wai Man, formerly the chair of the Bidding Assessment Committee for Public Works, signed offer document a supplementary construction works which was written in Portuguese on the request of Ao Man Long's office, but he did not know Portuguese.<sup>22</sup>

Clearly, the above examples may just expose part of the officialdom culture within the Macao civil service. Officials paid no attention to the instructions itself, but rather carried out or conjectured their superiors' wishes in order to display their loyalty and 'clientelist' attitudes. The MSAR government was compelled by Ao's case to set up the Provisional Committee for the Analysis of Lands and Public Concession System and the Provisional Committee for the Analysis of Public Finance System,<sup>23</sup> in response to the failure of the lands concession and public finance system as exposed by Ao' case.<sup>24</sup>

### **24.3.2 Dilemma of Sunshine Law**

To maintain a higher standard and requirement for a clean and ethical civil service, the MSAR government has introduced a new law entitled "Patrimonial Declaration of Incomes and Interests" (Law number 11.2003, also known as the Sunshine Law) to replace the old one passed under the Portuguese regime in 1998 regulating public servants to submit a declaration of incomes and interests.<sup>25</sup> According to Article 1 of the new Sunshine Law, all public servants including the chief executive are obliged to submit a declaration to report their incomes and interests.<sup>26</sup> Article 27 of the Sunshine Law clarifies the definitions of incorrect information and penalties:<sup>27</sup>

<sup>17</sup> For details of this legislation, see MSAR Printing Bureau website: [http://bo.io.gov.mo/bo/i/1999/leibasica/index\\_cn.asp#c3](http://bo.io.gov.mo/bo/i/1999/leibasica/index_cn.asp#c3).

<sup>18</sup> *Shimin Daily*, May 10, 2008, webpage: <http://www.shimindaily.com.mo/find.asp>.

<sup>19</sup> Legislator Au Kam Sang described it as "Hungry Wolf Effect," meaning that yes-man officials in the civil service obeyed their superiors for the sake of their career. *Shimin Daily*, November 20, 2007, p. 1.

<sup>20</sup> Oral statement given in the trial at the Court of Final Appeal. *Shimin Daily*, November 17, 2007, pp. 2–3.

<sup>21</sup> *Ibid.*

<sup>22</sup> Oral statement given in the trial at the Court of Final Appeal. *Shimin Daily*, November 20, 2007, p. 6.

<sup>23</sup> *Va Kio Daily*, January 6, 2007, p.1.

<sup>24</sup> The actual functions of these two committees were criticized by legislator Au Kam San as useless but served only as a political case. Personal interview, February 2, 2008.

<sup>25</sup> Details of this old law (number 3/98/M) can found at the MSAR government Printing Bureau webpage: [http://bo.io.gov.mo/bo/i/98/26/lei03\\_cn.asp](http://bo.io.gov.mo/bo/i/98/26/lei03_cn.asp).

<sup>26</sup> See MSAR Printing Bureau webpage: [http://www.imprensa.macao.gov.mo/bo/i/2003/30/lei11\\_cn.asp](http://www.imprensa.macao.gov.mo/bo/i/2003/30/lei11_cn.asp).

<sup>27</sup> Author's English translations, the official version provides only Chinese and Portuguese.

- (1) If the incorrect information in the declaration is made by inexcusable mistake, the offender shall be fined equivalent to remunerations ranging from 6 months to 1 year for the current position
- (2) If the information in the declaration is incorrect with intention, the offender as the litigant shall be punished for giving fraudulent address or declaration; if a fine is applicable to the punishment, it shall not be below the remuneration of 1 year for the offender's current position
- (3) For the purpose of starting criminal proceedings against the unlawful behavior laid down in the previous clause of this Article, the president of the Court of Final Appeal or the commissioner of the Commission Against Corruption shall forward the Certificate of Declaration with the incorrect information and other documents of information deemed appropriate to the Public Prosecutions Office

The critical challenge to the Sunshine Law since its enactment in 2003 was a constitutional dilemma when the chief executive, Edmond Ho, was disclosed by the Hong Kong *South China Morning Post* as being one of the shareholders of the listed company, Many Town Company Limited, which indirectly held about HKD100m share profit of casino tycoon Stanley Ho's company, the Sociedade de Turismo e Diversões de Macau (STDM),<sup>28</sup> but he failed to report this profit in the Declaration in accordance to the "Patrimonial Declaration of Incomes and Interests." He explained that he had given all the rights of the shares to his brother in exchange for shares in Tai Fung Bank of Macao, but he did not change the name on the shares, so he had the right to exercise the shares in terms of the law. Ho submitted an agreement of exchange of shares replacement to the Court of Final Appeal for their records,<sup>29</sup> the reason was that he wanted to "further actualize the spirit of the Declaration of Incomes and Interests system."<sup>30</sup> However, the CAC, which was responsible for monitoring and executing the law, did not express any opinion on the Ho case, so Ho also nominated the head of CAC, and sought to remain impartial. In fact, the key points of this incident are whether Ho had contravened the Sunshine Law and the incorrect information declaration was made by inexcusable mistake or not. The CAC bears sole responsibility to inform the public if they had carried out a preliminary investigation and found that it was not an inexcusable mistake. The CAC must also show the public that it is just and fair to all regardless of the identity of the accused person. Ho was innocent in this incident, as he was not investigated or charged, nor even invited for clarification by the CAC, but the way the CAC handled the case made Ho's actions seem very suspicious.

Furthermore, democrats Ng Kuok Cheong and Au Kam San, legislators representing the New Macao Association, tried to table an amendment to the Sunshine Law in February 2008, but they were opposed by the MSAR Legislative Assembly—15 opposed, 8 abstained, and 4 supported. The amendment suggested Part II of the Declaration recording the incomes and interests of the public servants, including the chief executive, principle officials, members of the Executive Council, leaderships and heads of the public departments, would be open to public for scrutiny.<sup>31</sup> The reasons that the legislators used to oppose or abstain from the amendment focused on maintaining personal privacy, rather than clean governance or threats to their personal security. However, it has long been recognized by public figures that they enjoy a lesser degree of privacy than ordinary

<sup>28</sup> *South Chinese Morning Post*, August 13, 2007, p. 1; *Apple Daily*, August 14, 2007, p. 4.

<sup>29</sup> *Macao Daily*, August 16, 2007, p. 2.

<sup>30</sup> *Shimin Daily*, August 16, 2007, p. 1.

<sup>31</sup> For a full version of the motion, see the Macao Legislative Assembly webpage: [http://www.al.gov.mo/proposta/alt\\_11-2003/nota\\_justificativa\\_cn.pdf](http://www.al.gov.mo/proposta/alt_11-2003/nota_justificativa_cn.pdf).

people, and it seems an inconceivable excuse that they place their private interests above those of the public.

## 24.4 Conclusion

Citizens may have hoped that the establishment of the CAC after the handover and the laws enacted to combat graft and corruption would relegate these notorious practices that were common under the Portuguese regime to a bygone chapter of Macao history. However, responses to ethical crimes since the handover have disappointed. The Ao Man Long case and other incidents reveal the insufficiency of a clear division of functions and job descriptions, institutional structures, political neutrality, ethical and disciplinary problems of officials and the concept of rule of law among the civil service. Civil servants are supposed to carry out their duties in accordance with the regulations, rules, instructions, and orders made by the administration given that they are legal and executable. In addition, those legal administrative instructions are expected to be executed in the absence of personal affections and gains. Notwithstanding, it is a duty of civil servants to work under due supervision, it is also a duty of civil servants to report illegal behaviors to the pertinent monitoring institutions irrespective of the rank and position of the accused officer. Obviously, some civil servants in Macao choose to tolerate and accept these administrative “deviations” as usual practices.

The chief executive incident may be an isolated case and made by excusable mistake, but a clarification or explanation by the CAC has yet to be made. The absence of such actions increase community concerns that patron-client politics and flattering culture at among civil service managers. Even worse, one may argue that such phenomena may be more prominent in disciplinary forces like the police force or Custom and Excise as these kinds of organizations emphasize the class system and obedience. All these elements, if applicable, diminish the success of the CAC and worsen the impartial reputation and credibility of this anti-corruption organ. Although the CAC has done a lot of promotion and drafted a series of anti-corruption publications to educate the public as well as civil servants on the importance of a clean society, it is regretful to observe that anti-corruption outcomes attain only a little public recognition. The CAC should carry out decisive and forceful steps to strengthen its effectiveness and rebuild its public image in wider ways, such as taking the initiative to investigate public rumors about major illegal behaviors in the public and private sectors; playing a leading role in civil servants training and refresher courses on public ethics education; prosecuting those witnesses who allegedly carried out illegal instructions in Ao’s case; enhancing transparency and attending Legislative Assembly Q&A sessions quarterly; and expanding its personnel establishment and functions through legal means. All in all, the performance of the CAC falls short of public’s expectations as well as objectives. In addition to the organizational and ethical issues discussed above, *quanxi* politics arising from patron-client relations may perhaps become another principal priority for the administration to solve so as to maintain a clean and institutionalized government.

## References

1. Lo, S.H., *Political Development in Macau* (Hong Kong: Chinese University Press, 1995).
2. Lo, *Political Development in Macau*, pp. 179–86.
3. *Policy Address for the Fiscal Year 2000* (MSAR Printing Bureau, 2000: 9).

## Appendix A

### Abstracts of the *General Regulations Governing the Staff of the Public Administration of Macao*

<i>Codes</i>	<i>Abstracts</i>
Conflict of interest	<ul style="list-style-type: none"> <li>• Referring to conflict between the personal interests of a public servant and the interests of the government and of the departments/institutions.</li> <li>• Personal interests include interests (both property and non-property interests) of a public servant, his family, relatives, friends, associations to which he belongs and those with whom he has either a hostile or an intimate relationship.</li> <li>• Conflict of interest may give rise to acts of corruption, fraud, and abuse of power. Public servants shall always stay alert and take precautions to prevent any situations that may lead to actual or predictable conflict of interest.</li> <li>• A public servant who abuses his power or violates the duties inherent in his functions, with the intent to seek illegitimate interests for himself or for a third party or to cause damage to another person, commits the crime of abuse of power.</li> </ul>
Handling of advantages received	<ul style="list-style-type: none"> <li>• A public servant who, personally or through an intermediary, solicits or accepts an undue advantage for himself or for another person as a reward for performing or refraining from performing an act, no matter how much the value is and whether the act or the omission is in breach of his official duties, commits the crime of passive corruption, which does not rule out his disciplinary liability.</li> <li>• Public servants shall not accept directly or indirectly any money or other advantages derived from the exercise of their official duties, which are undue according to the law. They should treat all citizens with objectivity and impartiality.</li> <li>• If a public servant (or his spouse, lineal relative by blood or affinity) has accepted gifts offered by an interested person before or after the commencement of an administrative procedure, he should recuse himself from that particular procedure. Failure to do so constitutes a breach of official duties.</li> <li>• Advantages include:             <ol style="list-style-type: none"> <li>1. Gifts</li> <li>2. Money</li> <li>3. Hospitality</li> <li>4. Rewards</li> <li>5. Commissions</li> </ol> </li> </ul>

(continued)



**Appendix A (continued) Abstracts of the General Regulations Governing the Staff of the Public Administration of Macao**

<i>Codes</i>	<i>Abstracts</i>
	<ul style="list-style-type: none"> <li>6. Special offers</li> <li>7. Discounts</li> <li>8. Services</li> <li>9. Transportation and accommodation</li> </ul>
Outside employment	<ul style="list-style-type: none"> <li>• Public servants perform their official duties on the “principle of exclusiveness.” This means that public servants “serve exclusively the public interest” and they have the duty of “not engaging in incompatible activities.” In other words, besides their official duties, they should not take up any other public positions or private practices without prior authorization.</li> <li>• Public servants are permitted to take up concurrent public offices or positions only in the following exceptional cases: <ul style="list-style-type: none"> <li>1. Inherent functions</li> <li>2. Professional training activities, which require prior authorization from the superior</li> <li>3. Teaching activities, which require prior authorization from the superior and shall not exceed the limit of 11 hours per week</li> <li>4. Other situations considered conducive to public interest</li> </ul> </li> <li>• Exceptions are made to public servants being permitted to engage in private practices when all the following requirements are met: <ul style="list-style-type: none"> <li>1. Previously authorized by the superior</li> <li>2. Not conflicting with the working hours of the public position</li> <li>3. Not compromising the duty of impartiality</li> <li>4. Not prohibited by special law</li> </ul> </li> <li>• Public servants are prohibited from engaging in private practices on a freelance basis unless otherwise permitted by special laws.</li> <li>• Directors and chiefs are absolutely prohibited from engaging in private practices.</li> <li>• According to the Law of Declaration of Incomes and Properties, public servants must declare all their outside positions, functions, and activities that are remunerated or rewarded with property advantages.</li> </ul>

**Appendix A (continued) Abstracts of the General Regulations Governing the Staff of the Public Administration of Macao**

<i>Codes</i>	<i>Abstracts</i>
Recusal system	<ul style="list-style-type: none"> <li>• Public servants are required not to participate in or handle administrative procedures or acts that may trap them in role conflicts. The objectives are to ensure that the administrative authorities and their staff carry out administrative activities with objectivity and impartiality and to avoid public servants falling into embarrassing and suspicious situations.</li> <li>• Mandatory recusal—a public servant is legally impeded and cannot participate in an administrative procedure in certain situations prescribed by law.</li> <li>• Self-recusal—when it happens that the situation may give rise to reasonable doubt about the impartiality and the integrity of a public servant in an administrative procedure, the public servant concerned should recuse himself from the procedure.</li> </ul>
Duty of confidentiality	<ul style="list-style-type: none"> <li>• Public servants should keep in professional confidence the non-public information acquired in the course of their official duties.</li> <li>• A public servant who, without being duly authorized, discloses secrets that come to his knowledge in the course of official duties, with the intent to seek benefit for himself or for another person, or knowingly causes damage to the public interest or to a third party, commits the crime of violation of secrecy.</li> </ul>
Use of department/ institution property and resources	<ul style="list-style-type: none"> <li>• Public servants should not, for their benefit or the benefit of another person, misappropriate public or private money or movable property entrusted to them, in their possession or to which they access by virtue of their positions, otherwise they commit the crime of embezzlement.</li> <li>• Public servants, when using or allowing the use of public or private vehicles or other movable property of considerable value entrusted to them, in their possession or to which they have access by virtue of their positions, should ensure that the property is used for the intended purposes. Failure to do so constitutes the crime of embezzlement by use.</li> <li>• Public servants should also use public money in accordance with the law. If public money is spent not on justifiable grounds of public interest and for a public purpose different from the one prescribed by law, it also constitutes the crime of embezzlement by use.</li> </ul>

*(continued)*

**Appendix A (continued) Abstracts of the General Regulations Governing the Staff of the Public Administration of Macao**

<i>Codes</i>	<i>Abstracts</i>
Legal liability	<ul style="list-style-type: none"> <li>• If a public servant performs an act in breach of his official duties, the department/institution may institute a disciplinary proceeding against him, hold him liable for the act, and apply a written reprimand, fine, suspension, compulsory retirement, and dismissal.</li> <li>• If a public servant commits a crime during the performance of his duties or by taking advantage of his official capacity, even though it does not involve any acceptance of advantages, he may be subject to disciplinary liability due to violation of such duties as zeal, loyalty, and confidentiality, etc.</li> <li>• If a public servant violates the criminal law, whether it is an occupational crime or a crime of other nature, he may be held criminally responsible.</li> <li>• Disciplinary proceedings and criminal proceedings are mutually independent. If a public servant performs an act that violates disciplinary and criminal provisions simultaneously, he shall be subject to both disciplinary and criminal liability.</li> </ul>
Duty to report and relevant channels	<ul style="list-style-type: none"> <li>• According to the General Regulations Governing the Staff of the Public Administration of Macao and the Panel Procedure Code, public servants should report all the offences that have come to their positions even though they may not know the identity of the offenders. If the offences involve the use of official positions for personal gain, particularly if it is related to the acceptance and solicitation of advantages, they should report immediately to their superiors or to other competent entities (such as the Commission Against Corruption.)</li> <li>• Those who fail to report the offences that they know, or they pretend that they do not know, are subject to disciplinary liability even though it does not involve an offer or acceptance of any advantage. Failure to report for the purpose of either benefiting or prejudicing someone leads to criminal liability.</li> <li>• “Ignorance of the law” is not an excuse for not fulfilling the duty to report since this act is in breach of the duty of “zeal” of public servants and leads to disciplinary liability.</li> </ul>

Source: *General Regulations Governing the Staff of the Public Administration of Macao* at “Publication” of Commission Against Corruption website: <http://www.ccac.org.mo>.

## Chapter 25

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# Performance Management Reform in Macao

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Newman M. K. Lam

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### 25.1 Introduction

Macao's<sup>1</sup> current reform in public sector performance management was initiated by chief executive Edmund Ho after the city's reunification with China in December 1999 (the Handover), as a part of a comprehensive civil service reform effort. Prior to the Handover, the colonial government had done very little to reform performance management in the civil service, although a number of decrees were passed after 1985 to strengthen the civil service regulations (e.g., Law no. 85/89/M,

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<sup>1</sup> The city Macao was officially named "Macao" during the colonial era. It was still called Macau in 2000, but was changed officially by the government to "Macao" in 2001. In this chapter, the name "Macao" will be used when referring to the city, unless in formal titles (e.g., document titles) or names (e.g., organization names).

86/89/M, and 87/89/M). These laws combined to form the civil service regulations prior to the Handover, in which Chapter 7 stipulates the rules and regulations for performance assessment. After the Handover, under the call of “Macao people governing Macao,” the government was facing an increasing public demand for a more accountable government.<sup>2</sup> This demand surfaced as a result of cumulative dissatisfaction toward a conservative and non-responsive government during the colonial rule. The problems with the Macao civil service were many-fold, including lacking transparency, corruption, and lacking meritocracy, which led to an unhealthy civil service culture. This chapter examines the problems in the Macao civil service, the efforts in performance management reform, how the problems in the civil service had hindered the reform, and future development.

## 25.2 Theoretical Basis of the Reform

The government’s reform strategy was based on the reform experiences in other countries, including: the United States, Canada, the UK, Portugal, France, Germany, Mainland China, Hong Kong, Taiwan, Singapore, Japan, and New Zealand.<sup>3</sup> The reform, including performance management, was based on some well-known theories and concepts originated from these countries, including New Public Management, Citizen’s Charter, re-inventing government, and Total Quality Management (TQM).

Macao’s reform strategy has evolved since its inception after the Handover. To begin with, it adopted an approach similar to the performance pledges in Hong Kong, which was modeled on the UK’s Citizen Charter. The reform emphasized the importance of forming a client culture, with the slogan of “putting the people’s interest first,”<sup>4</sup> and incorporated many features of the British reform, such as using performance indicators, program performance review and evaluation, performance-based rewards for staff,<sup>5</sup> and output and outcome emphases.<sup>6</sup> The need for new concepts and a new system of management was recognized<sup>7</sup> and heavy emphasis was placed on core, consequences, customer, and culture strategies (Lam, 2005). The government revised the system for employee performance assessment. Performance incentives were introduced. Recently, the reform effort has stressed a holistic approach, emphasizing improving management process as much as program results, hence moving toward TQM (see later analysis). So far, the reform has not linked budget to program performance or used the market as a benchmark for performance comparison. The government is still executive led and decentralization has not occurred on any significant scale (Lam, 2005).

<sup>2</sup> See <http://www.gov.mo>, “Government Policy Plan for the Year 2000: Financial Year of the Macau Special Administrative Region of the People’s Republic of China” (English translated version), March 29, 2000, p. 2.

<sup>3</sup> A study of the reforms in these 12 countries, entitled “A Comparison Analysis of Civil Service Systems, 2003,” was conducted by the University of Macau for the Macao government.

<sup>4</sup> See <http://www.gov.mo>, “Policy Address for the Fiscal Year 2002 of the Government of the Macau Special Administrative Region (MSAR) of the People’s Republic of China” (English translated version), November 20, 2001, p. 18.

<sup>5</sup> Macao’s civil service executives are already on fixed-term contracts.

<sup>6</sup> For example, public opinion surveys would be used in 2008 to assess the performance of all government departments with external services.

<sup>7</sup> As indicated in the chief executive’s inaugural policy address, it was the government’s prime concern to introduce a new culture with a new model for public services. See <http://www.gov.mo>, “Government Policy Plan for the Year 2000: Financial Year of the Macau Special Administrative Region of the People’s Republic of China” (English translated version), March 29, 2000, pp. 11–12.

Numerous scholars have indicated that hasty reform without adequate consideration for the impacts on employees and civil service culture would bring opposite effects. Boston (1999) warns that constant restructuring would subject employees to a long period of uncertainty, consequently damaging morale, commitment, and productivity. Kernaghan and Siegel (1999: 554–574) indicate that reforms can have adverse effects since employees frequently view performance assessment with trepidation. Hughes (2004: 149–164) points out the difficulties in designing adequate, meaningful, and parsimonious performance indicators, and warns that reforms can damage morale as employees might consider job security to have been eroded. Metcalf (2004), in a study of police management, found 45% of the study respondents disagreed with a new performance improvement scheme because it subjected the employees to increasing monitoring, surveillance, and control. Chief executive Edmund Ho was obviously aware of the potential downfall of reform and frequently urged caution in the reform process. For example, in his policy address for 2001, he indicated that ideal should not be expected to be realized overnight<sup>8</sup> and, in his policy address for 2003, he said, “Haste makes waste,”<sup>9</sup> when referring to civil service reform. However, despite his cautiousness, the reform still encountered serious resistance (Lam, 2006), as the following analysis indicates.

## 25.3 Historical Background

Ever since the Handover, the Macao Special Administrative Region (SAR) government has emphasized improving performance management as a significant part of its civil service reform. Shortly after the Handover, the government issued a dispatch (Despacho da Secretária para a Administração e Justiça no. 1/2000) requiring civil servants to identify themselves in dealing with the public in order to improve public relations. In October 2000, the government issued another dispatch (Despacho da Secretária para a Administração e Justiça no. 13/2000) requiring all government departments to improve their administrative systems, including collecting suggestions from the public and handling complaints and disputes. These changes started Macao’s civil service reform.<sup>10</sup>

In his policy address for 2001, the chief executive emphasized that “serving the people” as not only “a basic concept in international public administration,” but also “the essence of traditional Chinese administrative culture.”<sup>11</sup> He stated that the morale of civil servants should be boosted through objective and scientific performance assessment and a corresponding reward and punishment system. He emphasized the need for service commitment and that government departments should seek ISO9000 quality management certification. This certificate, issued by the International Organization for Standardization (ISO), is granted only to organizations having

<sup>8</sup> See <http://www.gov.mo>, “Policy Address for the Fiscal Year 2001 of the Government of the Macao Special Administrative Region (MSAR) of the People’s Republic of China” (English translated version), November 9, 2000, p. 3.

<sup>9</sup> See <http://www.gov.mo>, “Policy Address for the Fiscal Year 2003 of the Government of the Macao Special Administrative Region (MSAR) of the People’s Republic of China” (English translated version), November 20, 2002, p. 15.

<sup>10</sup> See <http://app.safp.gov.mo/qs>.

<sup>11</sup> See <http://www.gov.mo>, “Policy Address for the Fiscal Year 2001 of the Government of the Macao Special Administrative Region (MSAR) of the People’s Republic of China” (English translated version), November 9, 2000, p. 12.

met the international consensus on good quality management practices.<sup>12</sup> The certificate is issued only after detailed examination of the applying organization's performance management system and practices. Furthermore, the chief executive emphasized the importance of fighting corruption and promoting value-for-money auditing.<sup>13</sup> Performance pledges were introduced subsequently, and the government indicated that the implementation should be comprehensive and include all government departments.<sup>14</sup> In the policy address for 2002, he advocated "putting the people's interest first" as the principle for performance improvement and stated that civil service laws and regulations would be reviewed to improve the mechanism for evaluating, promoting, and rewarding civil servants. He also warned that, once the review was completed, "action will be taken against personnel who underperformed," so that the reward and disciplinary system would help Macao's civil service culture to keep pace with best international practice.<sup>15</sup>

In 2003, the government commissioned a study by an academic institute to examine the international practices in civil service reform, in particular in the recruitment, career development and promotion, retrenchment, and retirement of civil servants.<sup>16</sup> The study examined civil service personnel systems in twelve governments, including some countries well known for their reform strategies, such as the United States, the UK, and New Zealand. The report of this study presents a number of recommendations for improving Macao's civil service, including improving civil service performance incentives.<sup>17</sup>

In the policy address for 2005, chief executive Edmund Ho indicated that conservative bureaucratic culture still stubbornly existed in some government departments and that their service delivery had derailed from the concept of putting people first. Furthermore, he indicated that "Certain undesirable and bad administrative problems have resurfaced."<sup>18</sup> Subsequently, the government revamped the civil servant performance assessment system.

In the policy address for 2006, he indicated that "the enthusiasm and fighting spirit of some Government officials... has begun to wane."<sup>19</sup> In the policy address for 2007, he criticized civil servants for working "mechanically without self-revaluation or reflection," and indicated that certain government officials neglected their duties and cared only about self-interests.<sup>20</sup> In the policy address for 2008, he emphasized the importance of performance assessment and personnel man-

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<sup>12</sup> See [http://www.iso.org/iso/catalogue/management\\_standards/iso\\_9000\\_iso\\_14000/iso\\_9000\\_essentials.htm](http://www.iso.org/iso/catalogue/management_standards/iso_9000_iso_14000/iso_9000_essentials.htm).

<sup>13</sup> *Ibid.*, pp. 13–14.

<sup>14</sup> See [http://app.safp.gov.mo/qs/pledge\\_intro](http://app.safp.gov.mo/qs/pledge_intro).

<sup>15</sup> See <http://www.gov.mo>, "Policy Address for the Fiscal Year 2002 of the Government of the Macao Special Administrative Region (MSAR) of the People's Republic of China" (English translated version), November 20, 2001, p. 18.

<sup>16</sup> The study, entitled "A Comparison Analysis of Civil Service Systems, 2003," was conducted by the University of Macau.

<sup>17</sup> This study report was classified as confidential at the time of writing this chapter.

<sup>18</sup> See <http://www.gov.mo>, "Policy Address for the Fiscal Year 2005 of the Government of the Macao Special Administrative Region (MSAR) of the People's Republic of China" (English translated version), November 16, 2004, p. 5.

<sup>19</sup> See <http://www.gov.mo>, "Policy Address for the Fiscal Year 2006 of the Government of the Macao Special Administrative Region (MSAR) of the People's Republic of China" (English translated version), November 15, 2005, p. 5.

<sup>20</sup> See <http://www.gov.mo>, "Policy Address for the Fiscal Year 2007 of the Government of the Macao Special Administrative Region (MSAR) of the People's Republic of China" (English translated version), November 16, 2006, p. 6.

agement, as well as strengthening interaction with the public, including using public opinion surveys for assessing the quality of civil services.<sup>21</sup>

The facts presented above clearly indicate that the Macao government had placed a heavy emphasis on performance improvement. The results, obviously, had not been satisfactory and old undesirable habits were resurfacing. An important reason for the unsatisfactory results is a stubborn conservative civil service culture.

## 25.4 Problems in the Civil Service Culture

The Macao civil service was found to be lethargic, non-responsive, and lacking meritocracy under colonial rule in the findings of numerous studies.

- (1) Lethargy: Under colonial rule, the civil service was plagued by small-group politics. This could partly be a result of the Chinese emphasis on personal connections and partly a result of the colonial government treating civil servants of Portuguese descent favorably. Staff promotions in the civil service were based heavily on political factors and personal connections. This culture had led to civil servants refraining from making their opinions known (Lu, 2000). In addition, the civil service had problems of unclear jurisdictions and ambiguous responsibilities among government departments, leading to overlapping services, ambiguous jurisdictions, organizational redundancy, ineffective coordination, inefficient operation, and over-bureaucratic behavior (Yu & Lu, 2000; Ao Men Fa Zhan Ce Lue Yan Jiu Zhong Xin, 1999), resulting in a situation described as: “those mobilizing people had no authority and those having the authority did not mobilize people” (Ho, 2000). In such a situation, it is difficult to expect government departments to be proactive and enterprising.
- (2) Lacking meritocracy/small-group politics: The recruitment and promotion systems in the civil service were merit-based on paper, but not in practice. The colonial government lacked a standardized system or a set of standardized criteria for recruitment in the civil service. This led to a common practice of people using the “backdoor” to get recruited into the civil service. Once in the civil service, civil servants had the habit of playing small-group politics, resulting in an organizational culture that marginalized talent and favored unfair competition in staff promotion (Yu & Lu, 2000).
- (3) Corruption: The colonial government was also hampered by a serious problem of corruption within the civil service. Although this problem might be attributed partly to the gambling businesses in Macao, which provided temptations for corruption, the Macao government had to bear the responsibility for its “black box” operations (Yu & Lu, 2000). Government officials were given a lot of power without sufficient monitoring. With a lethargic and non-meritocratic culture, corruptive behaviors were largely ignored and rarely reported. Furthermore, the auditing and anti-corruption agencies in Macao at the time lacked sufficient authority to monitor government operations, hence limiting its ability to curtail corruption activities (Ao Men Fa Zhan Ce Lue Yan Jiu Zhong Xin, 1999; Luo, 2003). In December 2006, the arrest of Ao Man-long,<sup>22</sup> then Secretary of Transport and Public Works,

<sup>21</sup> See <http://www.gov.mo>, “Policy Address for the Fiscal Year 2008 of the Government of the Macao Special Administrative Region (MSAR) of the People’s Republic of China” (Chinese version), November 13, 2007, pp. 15, 42–43, 45, 48.

<sup>22</sup> *South China Morning Post*, January 31, pp. A1, A3, A14.



in a gigantic corruption case, gradually revealed the seriousness of the problems mentioned above. This caused the chief executive to promise in November 2007 to expand the resources and authority of the Commission Against Corruption and also to review the Commission's organizational structure.<sup>23</sup>

- (4) Non-responsiveness: Under colonial rule, communication between the government and the public was also a problem, partly because the official language of Macao was Portuguese while most Macao people were Chinese speaking (Yu & Lu, 2000). During this era, governors of Macao were not elected. Consequently, the government lacked political accountability and did not feel the pressure to be responsive to the public (Xin Ao Men Xue She, 1999). A historical study found that Macao people had a low rate of political participation (Yu, 1999). Furthermore, Macao also lacked a high-quality civic society (Yu & Lu, 2000). The lack of pressure from the public further induced the government to become non-responsive.

As indicated in the above discussion, the unhealthy culture was induced by systemic problems that undermined meritocracy and encouraged small-group politics in the civil service. These problems are further examined below.

## 25.5 Systemic Problems

Prior to 2009, Macao's civil service system was unnecessarily complex. The complexity created different classes of employees and differential treatment among them, leading to inequity and low morale. Furthermore, the system lacked performance incentives to motivate employees to do better. Chapter 24 presents a detailed account of Macao's civil service system.

The civil service system was established in the 1980s through a number of decrees. Due to rapid social changes, parts of the system were considered by a consultation report in 2006 to be incapable of adapting to the need for administrative reform (SAFP et al., 2006: 3). The system was revamped in July 2009.

In the old system, civil servants were divided into two career tracks and seven categories of appointment. The promotion arrangement for the two tracks could be different, thereby providing room for unequal treatment. The system was also very rigid and did not allow employees to change career track easily. The terms of employment and benefits were also different for some of the categories, thereby providing more room for unequal treatment. The unequal treatment would be justifiable if employees in different categories performed different duties. However, employees in different categories were frequently doing similar jobs.

Furthermore, civil servants were divided into two main types: vertical and horizontal. The vertical type allows promotion in rank (*categoria*) as well as in level (*escalão*). The horizontal type allows only promotion in level. In accordance with Decreto-Lei no. 86/89/M, promotion in either rank or level has to meet seniority (years of service) and performance requirements. The promotion scheme, however, did not apply to all civil servants. In principle, the promotion scheme was designed for staff employees only, although two types of contracted employees could also use this scheme as reference for promotion. There was, however, no promotion scheme for those in other categories (SAFP et al., 2006: 5–6).

<sup>23</sup> See <http://www.gov.mo>, "Policy Address for the Fiscal Year 2008 of the Government of the Macao Special Administrative Region (MSAR) of the People's Republic of China" (Chinese version), November 13, 2007, pp. 86–88.

In general, contracted employees did not enjoy the same benefits, did not have the same promotion opportunities, and did not have the same job security as those hired as staff. The inequality created low morale and made it difficult to motivate the contracted employees. It was also difficult to motivate the staff employees to perform better, since they enjoyed a high level of job security and better benefits and promotion opportunities regardless of their performance.

In addition, the 2006 consultation report (SAFP et al., 2006: 6) indicates that civil servants could generally reach the topmost rank and level of their career tracks in about 15–21 years, whereas a civil servant's career lifespan is usually 30–36 years. It is obviously difficult to motivate civil servants to seek continuous improvement when there is no further reward in sight.

This complex and unfair system had undermined effective performance management before and after the Handover. The government recognized the problems of this system and organized two rounds of consultation with civil servants (SAFP et al., 2006: 9). In July 2009, the government revamped the civil service system to simplify the career track and employment arrangements as well as to improve equity among civil servants of all types. The new system also expanded the number of intermediate ranks and levels to provide more steps for promotion throughout the civil service career span.<sup>24</sup> The new system put contracted employees and staff employees, more or less, on equal footing. A government news release emphasized that the objectives of introducing the new system were to motivate civil servants, improve morale, and unify the rights and duties of contracted and staff employees.<sup>25</sup>

Retirement pensions had also been a topic of inequity in the civil service. In the old system, staff employees were entitled to join a civil service pension scheme, which was enormously better than the public social security scheme available to those on contracts. This problem, to a large extent, was addressed by the introduction of the Provident Fund Scheme for Workers in the Public Services under Law no. 8/2006,<sup>26</sup> which provides a financially viable and equitable pension scheme for all civil service employees. Those under the old lucrative system were allowed to stay in the old system under a so-called one-cut grandfather clause.

The new civil service system and the civil service provident fund were aimed at correcting the systemic problems in the civil service that had been hampering morale and undermining reform efforts. Obviously, it is too early to know whether these efforts can contribute significantly to changing the minds of the civil servants and the civil service culture.

## 25.6 Performance Management Reform

After the Handover, the government introduced a number of reform initiatives to improve the civil service. The early efforts were in streamlining the structure of the government in order to reduce redundancy and to improve efficiency. Under Law no. 17/2001, the government structure was reduced from two levels to one by combining two municipal councils into a municipal affairs bureau (Instituto para os Assuntos Cívicos e Municipais). The Macao Foundation was established in 2001 under Law no. 7/2001 to promote cultural, social, economic, educational, scientific, academic, and philanthropic activities. Under Article 60 of the Basic Law of the Special Administrative Region of Macao, the Commission of Audit was formed on the Handover. It

<sup>24</sup> See *Macao Daily News*, July 23, 2009, p. A3.

<sup>25</sup> See <http://www.gov.mo/egi/Portal/rkw/public/view/showcomp/jsp?id=InfoShowTemp&docid=c373e921a5c5549>.

<sup>26</sup> For details, see [http://www2.fp.gov.mo/RP/PDF/RP-Regime\\_English\\_Final.pdf](http://www2.fp.gov.mo/RP/PDF/RP-Regime_English_Final.pdf).

was restructured in 2007 under Administrative Regulation no. 12/2007. In recent years, the commission has been active in criticizing unnecessary wastage of public resources.<sup>27</sup> The High Commissioner Against Corruption and Administrative Illegality was reorganized in 2000 under Law no. 10/2000 to become the Commission Against Corruption. The police and custom agencies were also reformed, among other reorganization initiatives (Lam, 2009). Some new departments were formed owing to increasing needs. For example, under Administrative Regulation no. 2/2008, a traffic affairs bureau (Direcção dos Serviços para os Assuntos de Tráfego) was formed to deal with increasing traffic problems.

Privatization, decentralization, and budget reform were not major emphases in Macao's civil service reform. Traditionally, the Macao government provides certain services through public bodies (officially autonomous organizations), such as advanced education and sports events. The operation and budget execution of these public bodies are less transparent than that of government departments and have been severely criticized.<sup>28</sup> Many legislators had urged the government to reform the budgetary system and process. The reform emphasis was not on linking performance to budgeting, but on modernizing the system, increasing transparency, and meeting future challenges.<sup>29</sup> In August 2009, the Executive Council indicated that the public financial management system was to be reformed and ten reform recommendations were proposed to increase transparency, strengthen monitoring, and improve the budget approval process.<sup>30</sup>

Until 2009, privatization of public services was not high on the government's reform agenda. Nevertheless, public utilities, such as electricity and water supply, have been provided by private companies with some level of government ownership. For example, the government currently owns 8% of the electricity company (Companhia de Electricidade de Macau).<sup>31</sup> Some services are contracted out, such as waste treatment.<sup>32</sup> In delivering the policy address for 2009, the chief executive emphasized developing community enterprises to complement the government in providing public services (Lam, 2009). This might be a signal that certain public services might be privatized to community organizations. The united neighborhood association of Macao (União Geral das Associações dos Mordores de Macau), the Macao Federation of Trade Unions, and the Cáritas de Macau, which have already been providing various types of community and social services, are most likely to develop into service providers for the government. In early September 2009, a group of 30 business persons formed a non-profit community enterprise for the construction industry, proposing to offer training courses for upgrading construction personnel.<sup>33</sup> Whether public funds should be used for industrial training is obviously a debatable issue.

Regarding performance management, two schemes were introduced as the corner stone for reform: performance pledges and a new employee performance assessment scheme. Against a conservative culture, these two new schemes alone could only serve as a starting point and would be inadequate to overcome the aforementioned problems.

<sup>27</sup> See *Macao Daily News*, September 8, 2009, p. A3, and September 25, 2009, p. A6, for recent examples.

<sup>28</sup> See *Macao Daily News*, February 22, 2008, p. B3, and March 15, 2009, p. A1 for examples.

<sup>29</sup> See *Journal Va Kio*, December 4, 2006, p. 13, December 19, 2007, p. 14, and December 19, 2008, p. 14, as well as *Macao Daily News*, March 20, 2009, p. A3 for the various concerns.

<sup>30</sup> See *Macao Daily News*, August 6, 2009, p. B7, and August 7, 2009, p. B5.

<sup>31</sup> See <http://www.cem-macau.com/-rubrique217->.

<sup>32</sup> See <http://www.suez-environment.cn/en/suez-environment-in-china/waste/ssws/csr/csr/>.

<sup>33</sup> See *Macao Daily News*, September 7, 2009, p. A1.

### 25.6.1 Performance Pledges

In the policy address for 2001, the chief executive introduced a performance pledge plan to increase the accountability and efficiency of government departments. In the policy address for 2002, the chief executive announced that the implementation of the performance pledge should be comprehensive and include all government departments.<sup>34</sup>

The aims of the performance pledge, as stated by the government, are “putting people first” and “sustainable improvement.” In “putting people first,” government departments are required to be more transparent, including providing a simple and unambiguous explanation of the performance pledges, and to set up performance monitoring systems.<sup>35</sup> The chief executive, in his policy address for 2005, indicated that the government would promote using public satisfaction surveys to help assess public service performances. In the 1996 policy address, the chief executive encouraged clients of public services to use public service counters and government e-mail addresses to give their feedback on service performance.<sup>36</sup>

The government stated two sets of objectives for using public satisfaction surveys.<sup>37</sup> First, the government, through the surveys, would like to improve (1) civic quality, (2) communication between government and the people, (3) quality of public services, and (4) the legitimacy of the government and people’s sense of belonging to Macao. Second, the government aims at obtaining public feedback in the following areas in order to set improvement priorities: (1) the future direction for resources allocation, (2) the service quality required, (3) the awareness training needed for civil servants, (4) the improvement needed for existing operations, and (5) the potential changes in public demands.

Prior to the Handover, the government had already put in place a system for handling public complaints. In accordance with Article 21 of Decree 5/98/M (Decreto-Lei no. 5/98/M), all complaints or disputes made by identifiable individuals must be replied to within 45 days, and cross-departmental committees should be formed to deal with complaints involving two or more departments. However, there is no mandatory requirement to respond to suggestions made by the public.<sup>38</sup> Due to the political apathy of the people, this system might not have been used adequately. The performance pledge plan, therefore, contains not only performance targets, but also a monitoring system.

As mentioned earlier, government departments were advised by the chief executive to become more transparent. The performance pledge plan was followed up by requiring government departments to effectively convey the following to the public: (1) services provided and the accessing venues, (2) service evaluation criteria, (3) venues for public feedback, and (4) current status in fulfilling performance pledges. Mandatory explanation and operation review are required for unmet pledges.<sup>39</sup>

Internal communication is also emphasized. An internal service review must be conducted before finalizing performance pledges. Operation handbooks and guidelines on performance pledges must be provided to new and existing staff, and form the basis for staff performance assessment,<sup>40</sup> with the aim of unifying program targets and individual performance goals.

<sup>34</sup> See [http://app.safp.gov.mo/qs/pledge\\_intro](http://app.safp.gov.mo/qs/pledge_intro).

<sup>35</sup> See <http://app.safp.gov.mo/cms/view?aid=89&mid=741>.

<sup>36</sup> See [http://app.safp.gov.mo/qs/satisfaction\\_intro](http://app.safp.gov.mo/qs/satisfaction_intro).

<sup>37</sup> See <http://app.safp.gov.mo/cms/view?aid=99&mid=747>.

<sup>38</sup> See <http://app.safp.gov.mo/cma/view?aid=107&mid=758>.

<sup>39</sup> See <http://app.safp.gov.mo/cms/view&aid=89&mid=742>.

<sup>40</sup> See <http://app.safp.gov.mo/cms/view?aid=89&mid=743>.

Furthermore, SAFP published a document in 2003, clearly stating the following (2003a): (1) performance targets must be clearly set and all civil servants must participate in achieving them; (2) performance indicators must be clearly specified; (3) transparency must be ensured; (4) cooperation with business partners is encouraged, if applicable, to achieve targets; (5) error prevention and correction systems must be set up; and (6) increasing public satisfaction must be achieved.

SAFP also provided a guidebook that stipulates a long list of responsibilities for department heads (2003b): (1) clarifying the vision, mission, and beliefs of their departments; (2) setting long-term and short-term performance targets; (3) assessing and approving performance pledge implementation plans; (4) conducting regular progress reviews; (5) maintaining good communication with subordinates; (6) assessing and approving performance pledge handbooks/guidebooks for their units; (7) assessing and approving services requiring business partners; (8) assessing and approving publication materials for performance pledges; (9) actualizing the staff training required for service improvement; (10) monitoring the management of public feedback; (11) ensuring the public release of public satisfaction survey reports and other related reports; (12) examining review reports to raise the level of or expand the scope of performance targets; (13) monitoring staff attitudes; (14) continuous improvement to raise public satisfaction; and (15) cooperating with SAFP in implementing performance pledge plans.

The whole performance pledge system, therefore, is quite comprehensive, involving a total system covering from leadership responsibilities to individual duties, from internal communication to external relations, from clarifying visions to obtaining feedback, from stand-alone services to cooperation with business partners, from monitoring individuals to monitoring organizations. This approach bears many features of TQM. TQ, as defined by J. Rampey and H. Roberts, “is a total system approach... across functions and departments, involving all employees, top to bottom, and extends backwards and forwards to include the supply chain and the customer chain...” (Bounds et al., 1994: 4).

In order to ensure the quality of performance management, all government departments with external services are required to have their performance pledge systems certified by a designated commission by the end of 2008. The government also encouraged its departments and public bodies to seek ISO9001:2000 certification of quality management system.<sup>41</sup> In 2007, the public service performance assessment commission (Comissão De Avaliação Dos Serviços Públicos) was set up in accordance with Despacho da Secretária para a Administração e Justiça no. 22/2007. The commission, chaired by the director of SAFP, consists of four external professionals.<sup>42</sup> The commission completed on schedule the assessment of all government departments and public bodies with external services, except newly formed agencies and the University of Macau, which had successfully been granted exemption due to its ISO9000 certification. In a press briefing on September 9, 2009, the commission indicated that it had provided 196 items of advice to various government departments for system improvement and these advices were expected to be followed. Although all departments and agencies had eventually passed the assessment and obtained the performance pledge certification, four of them failed initially and required additional work to pass the assessment. The commission stressed that recertification was required once every 2 years and higher requirements would be imposed to ensure continuous improvement.<sup>43</sup>

<sup>41</sup> See [http://app.safp.gov.mo/qs/iso\\_intro](http://app.safp.gov.mo/qs/iso_intro).

<sup>42</sup> The author of this article is one of four professionals.

<sup>43</sup> See *Macau Daily News*, September 10, 2009, p. B6.

### 25.6.2 Employee Performance Assessment

The Macao government revamped its employee performance assessment system in 1995. Prior to that, employee performance was assessed on 11 criteria: (1) quality of work, (2) quantity of work, (3) self-improvement, (4) sense of responsibility, (5) collegiality, (6) absenteeism and timeliness, (7) pro-activeness and creativity, (8) storage of materials (if applicable), (9) attention to safety (if applicable), (10) public relations (if applicable), and (11) leadership ability (if applicable). Assessment results fall into four categories: “excellent,” “good,” “average,” and “poor.” The assessment scheme was not applicable to the chief executive, executives and managers, and officers in the chief executive’s office and secretariats. An employee rated “poor” would have their contracts terminated if they were hired under provisional appointment, non-staff contract, or salaried contract; while those in other categories would be disciplined. For those with an “average” rating, provisional appointments would be terminated, and non-staff contracts and salaried contracts would not be renewed, while those in other employment categories would have a year of seniority deducted (Chen, 2007: 36).

The punishments for an “average” or “poor” performance were quite harsh. Since “average” employees were also disciplined, this rating category was not accurately named. Harsh punishment, however, did not lead to better performance, because, in practice, assessors became lenient, consequently undermining the purpose of the assessment. As a result, civil servants were criticized by legislators and scholars for covering up poor performance<sup>44</sup> and giving out “good” or “excellent” ratings as a norm. The system was also criticized for the following problems: (1) too few rating categories for distinguishing true excellence, (2) lacking sufficient quantifiable criteria, (3) assessment process over-controlled by immediate superiors, (4) assessment results not indicative of actual performance, (5) lacking reward schemes to motivate employees, and (6) lacking sufficient communication between employees and assessors. These problems led to small-group politics, favor trading between superiors and subordinates, and a passive attitude (Chen, 2007: 37–38), resulting in the unhealthy organizational culture mentioned earlier.

In January 2005, a new employee performance assessment scheme was launched in accordance with Law no. 8/2004 (Lei no. 8/2004) and Administrative Regulation no. 31/2004 (Regulamento Administrativo no. 31/2004). The new system aims at solving some of the problems and addresses individual as well as organizational concerns. As stated in Article 2 of Law no. 8/2004, the new system’s objectives are to (1) motivate employees, (2) improve employee performance, (3) enhance communication between superiors and subordinates, (4) improve the consolidated management of human resources, and (6) promote service excellence.

Chapter 1 Article 5 of Administrative Regulation no. 31/2004 states the assessment criteria under the new system, which consist of (1) work effectiveness, (2) sense of responsibility, (3) continuous improvement, (4) adaptability and flexibility, (5) collegiality, (6) industriousness, and (7) time management. This article of the law specifies an additional set of criteria, consisting of (1) attitude for taking initiatives, (2) creativity and the ability for reform, (3) resources management, (4) team work, (5) public relations, (6) team management and leadership, (7) coordinating interested parties to make complex decisions, and (8) sense of mission. Article 7 stipulates that, among the two sets of criteria, “work effectiveness” and “sense of responsibility” are to be given twice the weight of other criteria. Among the above, adaptability and flexibility, time management, team work, coordinating interested parties to make complex decisions, and sense of mission are new criteria.

<sup>44</sup> See *Macau Daily News*, April 5, 2002, p. A6 and *Journal Va Kio*, August 4, 2000, p. 4.

Article 4 of Law no. 8/2004 stipulates five rating categories: “excellent,” “very satisfactory,” “satisfactory,” “slightly dissatisfactory,” and “dissatisfactory.” Article 8 maps the old ratings to the new ones and stipulates that “very satisfactory” in the new system equals “excellent” in the old system, “satisfactory” equals “good,” “slightly dissatisfactory” equals “average,” and “dissatisfied” equals “poor.” The changes open up a new top category for recognizing exemplary employees. In May 2007, the government passed Administrative Regulation no. 11/2007, which rewards employees obtaining the “excellent” rating with a performance excellence certificate and either a 10-day paid vacation or prize money equivalent to half a month of pay. The old category “average” is now appropriately named “slightly dissatisfactory.”

Article 5 of Law no. 8/2004 stipulates the performance consequences. Those receiving the “excellent” or “very satisfactory” ratings will have their contract renewed. Those rated “slightly dissatisfactory” will have to go through a performance improvement process, including retraining, job redefinition or job reallocation, and potential internal transfer or transfer out. Those rated “dissatisfactory,” disregarding contract type, will be investigated and those creating difficulties during the investigation will be terminated for pre-emptive reasons. Hence, the new system emphasizes constructive disciplinary actions, such as training, reassignment, and job redesign. This is certainly a move in the right direction, since performance assessment should be a feedback process to help employees improve. In addition, the new system is more equitable as the disciplinary actions are the same regardless of contract types.

As far as promotion is concerned, not much has been changed. Those with 3 years of “satisfactory” rating or above, or 2 years of “very satisfactory” or above, would receive a promotion in level. Rank promotion requires ratings in all years to be at least “satisfactory” (Articles 10 and 11 of Decree 86/89/M; Chen, 2007: 36, 48–49). There are, however, major changes in the assessment process. Chapter 4 Article 12 of Administrative Regulation no. 31/2004 stipulates a five-step process: (1) appointing assessors, (2) meeting of assessors, (3) assessment meeting, (4) optional self-assessment, and (5) determining final rating. The meeting of assessors serves the purpose of ensuring all assessors have the same understanding of the assessment system and process, as well as limiting the liberty that individual supervisors have in interpreting system details. Article 15 requires that the meeting is held in the presence of an independent assessment consultation committee. This adds an additional monitoring process to ensure fairness and avoids further potential system abuses.

An independent assessment consultation committee (*Comissão Paritária independente e autónoma*), in accordance with Chapter 1 Article 2 of Administrative Regulation no. 31/2004, must be set up in every government department with equal representation from management and workers to ensure objectivity, fairness, impartiality, and adequate privacy protection. Article 4 ensures privacy protection in the assessment process, in particular with reference to the proper conduct expected of the personnel involved in performance assessment. Although the assessors are very often the immediate supervisors of the assessed, Chapter 3 Article 13 allows an assessor to be someone other than the immediate supervisor.

Chapter 3 Article 16 of the administrative regulation requires three meetings a year between the assessor and the assessed. The first meeting is to be held at the beginning of the assessment period for clarifying and setting the performance objectives of the employees, planning the work to be done by the employee in the assessment period, setting performance targets and expected results, and confirming assessment criteria. The second meeting is to be held midyear for clarifying any ambiguity about the priority of the objectives, reviewing progress, and making adjustments if necessary. A final meeting is required at year end for finalizing the assessment and giving performance ratings. This arrangement aims at improving communication between the assessors and the assessed, and helping the assessed to improve.

In accordance with Article 17, self-assessment is optional and will not be included in the official assessment. Assessors, however, should take self-assessment results, if available, into consideration before determining the final performance ratings. The optional arrangement limits the effectiveness of using self-assessment to cross-examine assessment results for improving communication and objectivity. However, there are also logical reasons to question the validity of self-assessment results.

Article 20 provides a process for employees to dispute their performance ratings. It requires the assessment consultation committee of the concerned department to give opinions on the dispute, which must be considered in seeking resolutions. Article 23 provides an additional grievance procedure for employees to appeal their performance assessment results.

According to Circular no. 060317001/DT, the government had organized a large number of activities and provided venues for civil servants to get information on the new performance assessment scheme, including one forum, nine workshops, and sixty-five Q&A sessions. All government departments were provided with a practitioner manual for performance assessment (*Manual Prático da Avaliação do Desempenho*) and an information Q&A website was set up to answer queries (<http://www.safp.gov.mo/desmpenho>).

Although the new system addresses many concerns, it had been criticized for not covering the executives and for offering differential treatment to executives and managers. Article 5 of Law no. 8/2004 states that the performance assessment results of those in managerial positions (*chefia*) will not affect their rank or level promotion in their original career tracks. This clause undermines the consequential effect of performance assessment. Chapter 1 Article 1 of Administrative Regulation 31/2004 also indicates that all civil servants in government departments and public bodies, including those in the judicial system, are bounded by the new law, except those in executive (*directção*) or equivalent positions, those in the chief executive's office and secretariats, consultants to the police and customs, and temporary fixed-term positions. However, in the chief executive's policy address for 2003 (p. 22), it is mentioned that the assessment scheme should be expanded to cover the executives. In a consultation document prepared by SAFP and Gabinete para a Reforma Jurídica (2007: 12), the government addressed this issue and recommended setting up an assessment scheme for executives. Furthermore, in July 2003, the government announced a new scheme for employees to give anonymous assessments of their superiors. However, the assessment results are not to be used, but should logically be considered, in the official assessment of the superiors.<sup>45</sup>

In July 2009, the Legislative Council passed new general regulations on civil service managers and executives. The new regulations cover rules on the following aspects: accountability, job transfer, performance assessment, and a restriction on business affairs after termination of employment. The new regulations stipulate that civil service executives and managers can be publicly reprimanded for misconduct.<sup>46</sup> The new regulations help to eliminate the concern of differential treatment for high-ranking civil servants. However, there were still worries that the lack of transparency would compromise executive accountability.<sup>47</sup>

## 25.7 Results and Problems

Very rarely would new initiatives be totally successful. The performance pledge and the revamped employee assessment system are no exceptions, as indicated below.

<sup>45</sup> Ibid., July 23, 2007, p. B1.

<sup>46</sup> See *Macao Daily News*, July 24, 2009, p. B5.

<sup>47</sup> See *Macao Daily News*, August 10, 2009, p. B6.



### 25.7.1 Performance Pledge

As of June 2007, 44 government departments and agencies had participated in the performance pledge plan and published 975 pledges.<sup>48</sup> Among them, 963 of the pledges are for external services. Among 963 pledges, 454 have been implemented. In addition, as of April 2007, ten government departments and agencies out of the 44 had obtained ISO certification.<sup>49</sup> By the end of 2008, with the exception of newly formed agencies and the University of Macau, which obtained exemption because of its ISO9000 certification, all government departments and agencies, forty-three in total, had successfully passed the performance pledge system assessment and obtained certification.

Despite the apparent success, a study had observed evidence of government officials making easy-to-meet pledges only and avoiding challenging but needed pledges, leading to the pledges lacking relevance, comprehensiveness, and meaningfulness in some cases (Lin, 2004:44–54). Government officials were aware of the problems, but emphasized encouragement in the initial stage rather than substantial improvement.<sup>50</sup> This point was also heavily emphasized by the Comissão De Avaliação Dos Serviços Públicos in briefing the media on the results of the performance pledge assessment. While this cautious approach is justifiable, there is ambiguity on the consequences of non-compliance, failure to meet targets, or, conversely, excellent performance. Without clear consequences, success would obviously be limited and even short lived.

### 25.7.2 Employee Performance Assessment

Although the new employee performance assessment scheme had been generally accepted as the right move, concerns were expressed about the pressure on civil servants,<sup>51</sup> potential increase in internal bickering and office politics,<sup>52</sup> abusive use of the anonymous assessment of superiors,<sup>53</sup> and employees not daring to be truthful in assessing superiors or, worse still, using this to gain favors from superiors.<sup>54</sup> Considering the conservative culture of the Macao civil service, especially the problem of small-group politics, these concerns are legitimate despite the lack of solid evidence.

In a study (Chen, 2007: 65–84), the following concerns were documented from interviewing civil servants: (1) doubts expressed on the effectiveness of self-assessment and anonymous assessment of superiors, (2) lacking clear criteria for determining “excellent” performance, (3) lacking an effective performance-based reward and disciplinary scheme, (4) lacking sufficient independent authority for assessment consultation committees to serve effectively as a monitoring body, (5) lacking an overall monitoring authority to prevent departments from misinterpreting system details or applying rules and criteria inconsistently, (6) doubts about accuracy and validity of assessment results if the assessors were not the immediate supervisors, and (7) concerns about inadequate support for the system from managers and employees.

These concerns highlight the difficulties of ensuring proper implementation of the new scheme, obviously with challenges to overcome in the years to come.

<sup>48</sup> See <http://www.informac.gov.mo/ppledge/chin/status/status.asp?portal=1>.

<sup>49</sup> See [http://app.safp.gov.mo/qs/iso\\_status](http://app.safp.gov.mo/qs/iso_status)

<sup>50</sup> This information was obtained from discussions with civil service executives.

<sup>51</sup> See *Macau Daily News*, March 24, 2002, p. A7.

<sup>52</sup> See *Journal Va Kio*, March 31, 2002, p. 1.

<sup>53</sup> See *Macau Daily News*, August 13, 2003, p. B10.

<sup>54</sup> *Ibid.*, August 3, 2003, p. B6.

## 25.8 Conclusion and Future Development

The introduction of performance pledges and a new employee assessment system is a strategic move in the right direction. However, as indicated in the above analysis, these two initiatives are inadequate to bring continuous improvement against a conservative culture and systemic problems. Although the systemic problems have, to a certain extent, been addressed by a new civil service system, a major problem remains that the government has not yet put enough effort into linking consequences to performance, whether at the program or individual level. Only recently has the government introduced rewards for employees getting the “excellent” rating. This reward may not be enough to motivate employees, as some advocated that an advantage in promotion would be more effective.<sup>55</sup> It is also unclear how programs or departments would be rewarded for excellent performance. Furthermore, disciplinary actions have not been introduced to deter undesirable behavior. It is obvious that successful performance management requires a comprehensive and holistic approach. The two initiatives will only become more effective if the government makes major changes to the civil service system in the areas of job classification and design, recruitment, promotion, demotion, reward and punishment, career development, and retirement. Some of these issues have been addressed by the new civil service system. It is highly likely that a centralized recruitment system will be introduced in 2010.<sup>56</sup> Centralized recruitment is expected to eliminate “backdoor” recruitment, which has perpetuated an unhealthy, non-meritocratic, connection-based civil service. New blood is badly needed to reinvigorate the civil service. Early retirement should be considered in order to open up promotion blockage and encourage young talent to join or stay in the civil service.<sup>57</sup> Career development programs should also be set up to help junior employees improve and realize their potentials.

Among the improvement areas mentioned above, more changes may come in the near future. In September 2006, a consultation document (SAFP et al., 2006: 10) mentions a number of recommendations that would have the effect of motivating employees to perform better, including (1) comprehensive consideration of seniority, performance assessment results, professional conduct, work ability and experience in promotion assessment; (2) gradual introduction of pre-promotion training and examination; (3) establishing a central promotion committee for pre-promotion qualification assessment, including the provision of promotion guidelines and advice, and for handling complaints and appeals in order to ensure fairness; (4) setting up an effective system for promoting promising and dedicated low-ranking civil servants to higher ranks through competition; (5) conducting a comprehensive review to re-examine every rank and level in every career track in order to improve the career prospects of civil servants; (6) setting up a special reward system, linking it to performance assessment, in order to motivate civil servants at the top ranks. Effective performance management hinges on whether these recommendations would be adopted and implemented.

In June 2007, the government announced a road map for civil service reform, which emphasizes balance development, re-establishing civil service values, strengthening the interaction between the government and the public, and solidifying the inter-related responsibilities among the government, civil servants, and the public. The road map places much emphasis on building up social capital as well as cultivating constructive and productive civil service values

<sup>55</sup> Ibid., July 30th, 2003, p. A6.

<sup>56</sup> See *Macao Daily News*, July 23, 2009, p. A3.

<sup>57</sup> The booming economy in Macao is causing young people to prefer jobs in the private sector. The government needs to find ways to attract young talent and exemplary employees to stay.

and beliefs. The road map, if successful, would have the effect of overhauling the current civil service culture.

In the least 10 years, some major changes had been made, but their effects might not be enough to bring in quality performance management. The objectives of Macao's civil service reform are "putting people first" and "sustainable improvement." Whether these objectives can be achieved depends heavily on whether the reform road map and new initiatives can conquer a very stubborn and conservative culture. This, however, is a battle of uncertain outcome.

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## Chapter 26

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# Civil Service System in Macao

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Eilo YU Wing-yat

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### 26.1 Introduction

Bureaucratic performance is problematic in many former colonies (Adamolekun 1999, 11). However, civil service reform often accompanies decolonization and aims to improve the efficiency of government administration, thereby legitimizing the postcolonial regime. Although decolonization in Macao did not lead to independence of the polity, rather the establishment of a Special Administrative Region (SAR) of the People's Republic of China (PRC), still civil service reform in Macao is no exception. Like many former Portuguese colonies, an inefficient civil service was a Portuguese legacy in Macao (Saldanha 1994, 43–53; Lo 1995, 117–49; Chou 2005, 63–86). The local community has criticized the performance of the bureaucracy since the colonial era. This chapter discusses the features and problems of Macao's civil service system and the reform carried out by the Macao Special Administrative Region (MSAR) government after the handover. It introduces Macao's civil service system, delineates the problems in the bureaucracy, and, finally, discusses civil service reform as well as the obstacles faced by the MSAR.

## 26.2 Civil Service System

Before the 1980s, there was no legal document for the establishment of Macao's own administration; instead, the civil service system was based on the legislation in Lisbon. The civil service system in colonial Macao was based on the Overseas Civil Servants Charter, which was implemented by the Portuguese government in her colonies. The 1974 revolution in Portugal resulted in decolonization and independence of her colonies (Macqueen 1997, 88–89). In the case of Macao, the Portuguese tried to return sovereignty to the PRC. However, the Chinese government was apprehensive that the status of Hong Kong might be affected if she reincorporated Macao without resolving the Hong Kong problem with the British (Wong 1997, 7–8; see also, Yee 2001, 7–9). Therefore, the PRC decided to resume sovereignty of Macao after resolution of the Hong Kong problem and allowed the Portuguese to continue to “administrate” Macao until 1999. At the same time, the Portuguese government abolished the various laws for her rule in former colonies and undertook to reform Macao's government.

In 1976, the Portuguese promulgated the Organic Law of Macao and began to legislate laws to establish Macao's civil service system. Article 65 of the Organic Law stated that Macao had its own administration and that management of the civil service should be based on local legislation. In the 1980s, the Macao government promulgated various laws to establish the civil service system: (1) the Organic Law of Macao Administration's Organizational Structure, (2) the General Regulation for the Appointment of Civil Servants, (3) the Public Servants Recruitment Law, and (4) the Leaders and Director Charter. In 1989, the Portuguese officially abolished the Overseas Civil Servants Charter and introduced various laws for the consolidation of Macao's civil service system: (1) the Charter for Macao Civil and Public Servants Discipline, (2) the General Principle for Leaders and Directors, (3) the General Principle for Expatriates, (4) the General and Special Career Track System of Macao Public Administration, and (5) the General Principle for Macao Public Servants (Huang 2004, 125). These legal documents shaped the civil service and defined the principles of personnel management within the government. They have been adopted by the MSAR since the handover.

### 26.2.1 *Types of Civil Servants*

There are three major categories of civil servant appointments as specified by the General Principle for Macao Public Servants (Huang 2004, 128–29):

- (1) **Tenure Track:** The number of personnel at each rank, the recruitment and appointment processes, the salary, and other fringe benefits are determined by corresponding laws that regulate the organization of individual departments. The size of tenure-track civil servants in each government department is regulated by a corresponding law. For a department to legally exceed the quota of tenure-track civil servants, it must first propose an amendment and then receive an endorsement by the Legislative Assembly. In other words, the bureaucracy cannot recruit as many tenure-track civil servants as it pleases without the approval of the legislature. An appointment under this category cannot be dismissed unless a civil servant commits a serious legal violation. Civil servants also enjoyed an attractive pension scheme that ensured a monthly government subsidy for the entire period of retirement. In 2005, however, the MSAR government replaced the old pension scheme with a provident fund system.

- (2) **Contractual Term—Fixed-Term Appointment:** Government departments may recruit a greater number of civil servants than the legal quota without an amendment to the law. Departments may recruit non-tenure-track civil servants with a contracted term. The appointment period should be equal to or less than 2 years; but the contract is renewable. The pay scheme is identical to the one in the tenure-track system, and the fringe benefits are comparable to those in the tenure-track system. Previously, the major difference was the pension scheme. However, the 2005 provident fund system, which is applicable to all civil servants, minimizes that distinction. This contractual appointment permits departments to enlarge their workforce capacity without entering into a lengthy legal amendment process. Departments may terminate the contract by giving a 60-day advance notice to the employee (the General Principle for Macao Public Servants, Article 26, Decree 87/89/M).
- (3) **Contractual Term—Temporary Appointment:** Government departments may make short-term appointments. The contract period should be within 1 year. However, it is not mandatory that the service period be specified in the contract; departments may terminate employment with a 30-day advance notice (the General Principle for Macao Public Servants, Article 28, Decree 87/89/M). In other words, an employee will serve the department until the contract is terminated by either side. Salaries may be paid weekly, fortnightly, or monthly (the General Principle for Macao Public Servants, Article 27, Decree 87/89/M). There is no pension scheme for employees, and the fringe benefits are unlike those in the other two categories. However, the 2005 provident fund scheme encompassed this category of civil servants.

According to the General Principle for Macao Public Servants (Article 16, Decree 87/89/M), the recruitment of civil servants must proceed through open and fair competition. Examination is essential for recruitment and promotion of civil servants (Article 47, Decree 87/89/M). However, there are many charges of unfairness and irregularities in the recruitment and promotion processes from both inside and outside the civil service. The problem of nepotism—a legacy of Portuguese patronage—has persisted in the MSAR.

The personnel system in Macao's government was regulated by Portuguese patronage. In principle, Macao's civil service system is flexible in terms of human resources management. On the one hand, it restricts the unregulated growth of tenure-track civil servants by imposing a legal amendment process that must be approved by the legislature. On the other hand, departments may meet the demand for greater human resources by hiring short-term or temporary employees through a contract system. However, in practice, the system malfunctions. Departments typically renew civil servants' contracts; very few contracts are terminated unless civil servants resign. So, most contract-term civil servants continue to serve inside the government for many years. Arguably, the contract system may be abused because management avoids amendments to increase tenure-track civil servants although there is a long-term demand for human resources. Instead, they recruit personnel through the contract system as they can do so without legislative approval. The Portuguese legacy of patronage and nepotism also plays a part. In the colonial era, the Portuguese authorities appointed their friends and political supporters through the contract system. In this way, they neither increased the size of the tenure-track system nor needed to get legislative approval (Lo 1995, 117:50). According to Lo, the Portuguese frequently appointed new governors. Each new governor would recruit his friends and supporters into the Macao administration. When the governor was replaced, his band of supporters would leave with him. Thus, the contract system was a means to continue the Portuguese system of political patronage that conscripted supporters into the colonial administration.



To distance itself from its colonial past, the MSAR encouraged the use of labor and service contracts to meet personnel demand. In 2000, the municipal branch<sup>1</sup> promoted a new contract system in which employees were not designated civil servants. The contracts were treated as private agreements between government and employees, as were labor and service contracts in the private sector. The labor and service contracts may be negotiated between government departments and employees; however, terms are typically less attractive than those for civil servants. Departments use service contracts to recruit low-skilled labor. The worker is a service provider not an integral part of an employee-employer relationship. A department agrees to a certain payment for a fixed period; there are no fringe benefits for the worker unless specified in the contract. Government agencies, conversely, use labor contracts to recruit middle- to upper-level personnel. These recruits do enter an employment relationship. Their salaries and fringe benefits are more attractive than service contractors' and may be comparable to civil servants'. Using this contract system, MSAR hires personnel for the short term (usually a month or quarter term for service contracts; 2-year term for labor contracts), at lower cost (less pay and benefits than for civil servants). Since its introduction, this appointment practice has been widely adopted by many government departments.

However, the new contract system does not solve the problems of the old system, nepotism and long-term appointments persist under the new practice. Since they are not required to report the hiring of service providers to the central personnel agency (while they must do so for civil servants), departments misuse the new contract system. Once departments have sufficient financial resources, they can employ personnel with labor and service contracts. A department must report to the Public Administration and Civil Service Bureau (SAFP), which serves as the central personnel unit of the MSAR government, for the employment of civil servants but not for labor and service contract employment. Although there has not been an immense increase in the number of civil servants since the transfer of sovereignty in 1999, there has been an increasing number of workers employed under the labor and service contract system. The number of employees in the service contract system has risen from 30% to 50% of the total number of civil servants (including tenure track, contractual term, and temporary contractual term).<sup>2</sup> Thus, the new contract system has not regulated the growth of employees inside the MSAR government. Rather, it generates disparity within the personnel system: it divides government workers so that employees may work in similar jobs but their pay and benefits vary because of different appointment methods (Table 26.1).

### **26.2.2 Bureaucratic Structure**

MSAR adopts a rank-in-person approach (Daley 2002, 75–76) for its bureaucratic structure, which stipulates a separation in the rank and position of civil servants. According to the Legal Framework of Public Service (Decree 86/89/M), there were nine tiers in civil servant ranking. In ranks 5 to 9, each rank was divided into four grades. In principle, higher-ranking civil servants were responsible for policy making and implementation while the middle and lower ranks supplied clerical support and manual labor. However, as there was no official guideline for job assignments,

<sup>1</sup> Before 2001, there were two municipal councils, which consisted of directly elected members and were responsible for environmental hygiene, food safety, and cultural affairs. However, the MSAR government argued that the establishment of municipal councils violated the Basic Law of Macao, which is the mini-constitution of the MSAR. Therefore, it abolished them and founded the Civic and Municipal Affairs Bureau (IACM) as a substitute.

<sup>2</sup> Many civil servants from different government departments told the author that the number of service contract employees was huge after the handover. Some indicated that the size was about 30% to 50% of the regular civil servant appointment.

**Table 26.1** Number of Macao's Civil Servants

Year	Number of Civil Servants <sup>a</sup>	Growth (%)
1996	16,992	–
1997	17,589	3.5
1998	17,307	–1.6
1999	17,239	–0.4
2000	17,412	1.0
2001	17,533	0.7
2002	17,368	–0.9
2003	17,496	0.7
2004	17,778	1.6
2005	18,250	2.7
2006	18,958	3.9
2007	19,629	3.5
2008	20,653	5.2
2009	21,420 <sup>b</sup>	3.7

Source: Figures for 1996–2005 are taken from SAFF, *Macau Special Administration Region Public Administration Human Resources Report 2005* (Macau: 2006), 150; figures for 2006–2008 are from SAFF, *Macau Special Administration Region Public Administration Human Resources Report 2008* (Macau: 2009), 149; the 2009 figure is from SAFF's website, [www.saff.gov.mo/external/chin/info/statistics/showdata.asp?table=1](http://www.saff.gov.mo/external/chin/info/statistics/showdata.asp?table=1) (accessed September 14, 2009).

<sup>a</sup> Figures do not include labor/service contract employment.

<sup>b</sup> Figure from June 30, 2009.

decisions are at the discretion of agency heads. As a result, some senior-ranking officials may do clerical work while middle-ranking officers participate in planning and policy making.<sup>3</sup> The system does not possess a career development mechanism to train and promote civil servants through job assignments. Instead, it is arbitrary and personal relationships may be involved.

In order to improve the quality of officials, the MSAR government proposed a reform of the civil service structure, which was passed by the legislature in July 2009. The government indicated that the ranking system did not match the new socio-political situations and some positions seemed to be redundant (No. 2/III/2009 Recommendation, Bill Committee on Legal Framework of Public Service, Legislative Assembly, 2009:3). The reform streamlines the bureaucratic structure by cutting the number of tiers to six. In particular, the first and second tiers as well as the third and fourth ranks in the old system were merged. The sixth tier was canceled. Moreover, the reform tightens the entry requirement of each rank in order to improve the quality of civil servants.

<sup>3</sup> The author talked to some government officials about the prevalence of mismatch between the nature of the job and an official's rank in job assignments in the government.

However, morality and motivation are also concerned in the reform plan. A grade is added in each rank from the third to the sixth tier of the new structure. Some argued that many civil servants lacked motivation for performance improvement because they had been promoted to the top grade of their rank while they were not qualified for promotion to a higher rank but would have to stay in the government for many years before their retirement (Lo 2008, 18–26). Therefore, some of them lacked motivation for performance excellence. The structural reform aims at motivating this group of civil servants by increasing the number of grades for their promotion. In the new system, officials will take a longer period for their promotion to the top grade at the same rank. Thus, civil servants will be continuously motivated to maintain their quality of work in order to seize on promotion to a higher grade. Nevertheless, the new structure does not change the nature of the bureaucratic structure and the rank-in-person approach persists (Tables 26.2 and 26.3).

The appointment of an agency head, however, is not based on personnel ranking but determined by the higher authorities. In the Macao government hierarchy, the chief executive is the

**Table 26.2 Ranking System of Macao's Civil Service**

<i>Rank</i>		<i>Grade</i>		<i>Job Nature</i>	<i>Qualification</i>
Superior technician	6	5	Assessor principal	Policy analysis and suggestion	University education
		4	Assessor		
		3	Principal		
		2	I		
		1	II		
Technician	5	5	Specialist principal	Planning the details of policy implementation	College education
		4	Specialist		
		3	Principal		
		2	I		
		1	II		
Technician administration assistant	4	5	Specialist principal	Policy implementation	Post-secondary school education
		4	Specialist		
		3	Principal		
		2	I		
		1	II		
	3	5	Specialist principal	Administrative and clerical support	Secondary school education
		4	Specialist		
		3	Principal		
		2	I		
		1	II		

**Table 26.2 (continued) Ranking System of Macao's Civil Service**

Rank		Grade	Job Nature	Qualification
Skillful labor	2		Mechanical operation	Primary school education, plus professional training or working experience
Labor/assistant	1		Manual labor	Primary school education

Source: The Legal Framework of Public Service (Law 14/2009), Appendix I, Table 2, available at the Government Printing Bureau website, [http://bo.io.gov.mo/bo/i/2009/31/lei14\\_cn.asp](http://bo.io.gov.mo/bo/i/2009/31/lei14_cn.asp) (accessed September 16, 2009).

head of the Executive Branch; five chief secretaries assist him. These are: (1) secretary for administration and justice, (2) secretary for economy and finance, (3) secretary for security, (4) secretary for social affairs and culture, and (5) secretary for transport and public works. The five chief secretaries are responsible for specific policy areas. Each supervises a five-tier bureaucracy, including (1) bureau, (2) department, (3) division, (4) sector, and (5) section (General Principle for Leaders and Directors, Article 5, Decree 84/85/M).<sup>4</sup> They appoint the directors or heads of these units. Wu and Chen (2000, 39) argue that the postcolonial government has adopted a ministerial system of bureaucracy in that political leaders appoint heads of government agencies. Since heads of government agencies are not necessarily from the civil service, secretaries may select non-civil servants to leading bureaucratic positions. If a civil servant is assigned as head of an agency, he or she may return to the original serving unit at the termination of the leadership appointment. Authorities may also choose middle-ranking officials to fill leadership positions. For instance, civil servants at the clerical rank were appointed as heads of departments and divisions in the Finance

**Table 26.3 The Change of Bureaucratic Structure in the 2009 Reform**

<i>Old Structure (before July 2009)</i>		<i>New Structure (after July 2009)</i>
1st and 2nd tiers	→	1st tier
3rd and 4th tiers	→	2nd tier
5th tier	→	3rd tier
6th tier is cancelled	→	–
7th tier	→	4th tier
8th tier	→	5th tier
9th tier	→	6th tier

<sup>4</sup> It is noteworthy that the government reformed the hierarchy of a bureau. Sector and section will be cancelled in most bureaus, except those with special approval by the authorities. See Stipulation on General Principle for Leaders and Directors (Law 15/2009), available at the Government Printing Bureau web site, [http://bo.io.gov.mo/bo/i/2009/31/lei15\\_cn.asp](http://bo.io.gov.mo/bo/i/2009/31/lei15_cn.asp) (accessed September 16, 2009).

Bureau (*Journal Informacao*, August 19, 2006, 3). There are no strict guidelines for the appointment of agency heads, but appointees are required to possess either a university degree or relevant experience (General Principle for Leaders and Director, Article 6, Decree 84/85/M). Arguably, the separation in rank and position of civil servants is a legacy of Portuguese patronage: Portuguese authorities recruited their supporters and friends to high-level posts within the colonial administrations with few institutional restrictions.

### 26.2.3 *Pay and Fringe Benefits*

The Macao government uses a point-scale system for the pay scheme of civil servants. The salary of a civil servant at a particular rank and grade is marked by a point size. Before the civil service reform in 2009, the point scale varied from 100 to 650. In order to motivate the civil service, the government increased the point scale to all ranks of civil servants in the 2009 reform plan, ranging from 110 to 735 (see [Table 26.4](#)). Each point was valued MOP\$59 or US\$7.375 (the exchange rate is fixed at US\$1 to MOP\$8) in 2009. At the same time, there are several grade steps at each grade level. If individuals receive a satisfactory performance appraisal in two consecutive years, they receive a pay increase and a rise in grade step. Their points will stop if they reach the highest grade. The pay scheme for directors and department or unit heads also uses the point-scale system (see [Table 26.5](#)). In order to deal with the brain-drain problem at management level, the government also proposed salary increases for leaders and managers of government offices in the 2009 reform, varying from 10% to 15% growth. For instance, the salary point of a section head is increased from 430 to 495 while a director is raised from 1000 to 1100 at the highest after the 2009 reform. There is no grade step from the rank of department head to section head, but there is one increment for directors and deputy directors.

Comparing with the private section, the salary of Macao civil servants is relatively high. For instance, the median monthly income of a Macao employee was MOP\$8000 or US\$1000 in 2008 (DSEC 2009, 97). Almost all civil servants' monthly earning was higher than the median monthly income, except the lowest three tiers of official—labor/assistant rank from grade step 1 to 3. However, the pay gap between the private and public market has been narrowing since the handover. In 1999, the median monthly income was MOP\$4899 or US\$612.4. All civil servants were at the 50-percentile of the working population in terms of monthly income. The salary of civil servants at the lowest rank was MOP\$5000 or US\$625.<sup>5</sup> Nevertheless, the pay of Macao civil servants is very competitive and attracts many citizens applying for a position in government. For example, out of 2098 applicants for the position of police constable in 2009, 39 were recruited (website of Macao Security Forces: [www.fsm.gov.mo/cfi](http://www.fsm.gov.mo/cfi), accessed December 10, 2009). Out of 6731 applications, the SAFP recruited 40 technician administration assistants (Grade 5) as receptionists in its public information centers in 2009.<sup>6</sup> Obviously, a government job is still very attractive to many Macao residents, mainly because of the relatively high pay.

The Macao civil service system is egalitarian in its distribution of fringe benefits. Types of benefits are listed in [Table 26.6](#). All civil servants as well as heads of agencies are entitled to these benefits: there is no variation between individuals at different ranks and grades. Civil servants also receive Christmas and holiday subsidies, which are payable every November and June, respec-

<sup>5</sup> In 1999, the salary point of the lowest ranking civil servant was 100 instead of 110 and each point was valued at MOP\$100 or US\$12.5.

<sup>6</sup> The information was provided by the SAFP.

**Table 26.4 Pay Scheme for Macao's Civil Service**

Rank	Grade		Point Scale											
			Grade Steps											
			1	2	3	4	5	6	7	8	9	10		
Superior technician	6	5	Assessor principal	660	685	710	735							
		4	Assessor	600	625	650								
		3	Principal	540	565	590								
		2	I	485	510	535								
		1	II	430	455	480								
Technician	5	5	Specialist principal	560	580	600	620							
		4	Specialist	505	525	545								
		3	Principal	450	470	490								
		2	I	400	420	440								
		1	II	350	370	390								
Technician administration assistant	4	5	Specialist principal	450	465	480	495							
		4	Specialist	400	415	430								
		3	Principal	350	365	380								
		2	I	305	320	335								
		1	II	260	275	290								

(continued)

**Table 26.4 (continued) Pay Scheme for Macao's Civil Service**

Rank	Grade		Point Scale										
			Grade Steps										
			1	2	3	4	5	6	7	8	9	10	
	3	5	Specialist principal	345	355	370	385						
		4	Specialist	305	315	330							
		3	Principal	265	275	290							
		2	I	230	240	255							
		1	II	195	205	220							
Skillful labor	2			150	160	170	180	200	220	240	260	280	300
Labor/assistant	1			110	120	130	140	150	160	180	200	220	240

Source: The Legal Framework of Public Service (Law 14/2009), Appendix I, Table 2, available at the Government Printing Bureau website, [http://bo.io.gov.mo/bo/i/2009/31/lei14\\_cn.asp](http://bo.io.gov.mo/bo/i/2009/31/lei14_cn.asp) (accessed September 16, 2009).

**Table 26.5 Pay Scale for Macau's Leaders and Directors**

Title	Grade			
	Before the 2009 Reform		After the 2009 Reform	
	1	2	1	2
Director	920	1000	1015	1100
Deputy director	820	870	905	960
Department head	770	–	850	–
Division head	700	–	770	–
Sector head	650	–	735	–
Section head	430	–	495	–

Source: The Legal Framework of Public Service (Decree 86/89/M), Appendix I, Table 3, available at the Government Printing Bureau website, [http://www.imprensa.macao.gov.mo/bo/i/89/51/decllei86\\_cn.asp](http://www.imprensa.macao.gov.mo/bo/i/89/51/decllei86_cn.asp) (accessed January 10, 2008); Decree 25/97, available at the Government Printing Bureau website, [http://www.imprensa.macao.gov.mo/bo/i/97/25/decllei25\\_cn.asp](http://www.imprensa.macao.gov.mo/bo/i/97/25/decllei25_cn.asp) (accessed January 10, 2008); Stipulation on General Principle for Leaders and Directors (Law 15/2009), Appendix I, available at the Government Printing Bureau website, [http://bo.io.gov.mo/bo/i/2009/31/lei15\\_cn.asp](http://bo.io.gov.mo/bo/i/2009/31/lei15_cn.asp) (accessed September 16, 2009).

tively. Each of these subsidies is equal to a month's salary; in other words, civil servants receive a salary for 14 months each year.

#### **26.2.4 Personnel Management**

The government's personnel management is decentralized. Bureaus and departments are responsible for the recruitment and promotion of civil servants. Prior to 1983, there was no central agency coordinating civil servants' affairs. The Macao government established the SAFP to reform the civil service in 1983 (Decree 42/83M). The SAFP formulates civil service policy, coordinates personnel affairs of departments, and organizes training programs for civil servants. However, individual departments manage their own personnel affairs although they are expected to abide by the relevant rules and regulations. For instance, the departments administer the recruitment and promotion examinations: they publicize the event, establish the examination committee, and conduct the examination. They seek assistance from the SAFP when necessary; for example, the SAFP may conduct psychological testing for recruitment to the security branch. Each department must also inform the SAFP of its personnel situation (detailed information is required for each civil servant, but is voluntary for non-civil servants from labor/service contracts). In other words, the SAFP maintains information on all civil servants, but it does not have complete records of workers under labor and service contracts.

Unlike many Organization for Economic Cooperation and Development (OECD) countries, Macao has not set up an independent commission to review the civil service system. For example, the British Civil Service Commission is an independent agency that reviews the civil service system; the Civil Service Commission and Merit System Protection Board are responsible for reviewing and suggesting personnel policy for the US government (OECD 1995; OECD 1996). The



**Table 26.6 Fringe Benefits for Macao's Civil Servants**

<i>Item</i>	<i>Content</i>
Annual leave	22 days per year
Maternity leave	Female: 90 days (at least 60 days after the birth of baby) Male: 15 days (after the birth of baby)
Marriage leave for those who are going to marry	10 days
Marriage subsidy for those who are going to marry	MOP\$2300
Leave for bereavement for those whose parents pass away	7 days
Christmas subsidy	One extra month salary payable in November each year
Holiday subsidy	One extra month salary payable in June each year
Family subsidy (spouse and parent)	MOP\$170 per spouse/parent per month
Family subsidy (offspring)	MOP\$220 per child per month
Housing subsidy	MOP\$1000 per month
Baby-born subsidy	MOP\$2300 per baby born
Funeral subsidy for those whose family member passes away	MOP\$2700
Medical care	Free of charge for medical services from government hospital

*Source:* General Principle for Macau Public Servants (Decree 87/89/M), Sector 3, Chapters 2–6, and Appendix I, Table 2, available at the Government Printing Bureau website, [http://www.imprensa.macao.gov.mo/bo/i/89/51/estatuto\\_cn.asp](http://www.imprensa.macao.gov.mo/bo/i/89/51/estatuto_cn.asp) (accessed January 10, 2008).

Japanese National Personnel Authority is responsible for the recruitment examinations of civil servants (Nakamura 2005). South Korea established an independent Civil Service Commission to make civil service policy in 1999 (Pan 2005, 69). The government of Hong Kong, another SAR of the PRC, inaugurated many committees to revise the civil service system in various areas (Burns 2004). Certainly, the MSAR government has also set up consultative bodies with members outside the administration for civil service reform. In 2002, the government inaugurated the Public Administration Observatory: the elite were appointed to the commission to make suggestions for reform of the civil service. In January 2008, the government abolished the Public Administration Observatory and launched a new Public Administration Reform Consultative Commission. However, MSAR has not yet institutionalized the role and function of an independent commission to revise the civil service system. For example, no agency exists to revise the salary of civil servants regularly; instead, the adjustment is rather arbitrary. In 1989, the Macao Legislative Assembly suggested an annual adjustment to the salary of civil servants in accordance

with the inflation rate (Tang 2005, 49). However, to stabilize the administration during transition, the government increased salaries at a higher percentage than the inflation rate (see [Table 26.7](#)). In the late 1990s, the domestic economic downturn necessitated that the government froze the pay rate. In 2005, the MSAR government raised the salary of civil servants. Arguably, the adjustment compensated civil servants as they had been required to pay income tax since October 2003. The adjustments in 2007 and 2008 were due mainly to the relatively high inflation in Macao and to pressure from civil servants. Indeed, Macao has not yet established an independent commission for the regular review of the civil service.

### 26.3 Problems in Macao's Bureaucracy

During the colonial era, Macao's civil service was harshly criticized for its inefficiency and poor quality of service. The MSAR chief executive, Edmund Ho, made the following remark while conducting the Chief Executive Election in 1999:

It is no doubt that residents, tourists and foreign investors in Macau have many opinions against the efficiency of Macau's public administration, the quality of civil servants as well as their working attitude. Indeed, the administration's low efficiency and bureaucratic attitude have brought inconvenience to residents and hindered the economic development for a long time. (Ho 1999, 16)

Ho's remark recalls the deep-rooted problems in the civil service that the Portuguese left behind.

The inefficiency of the civil service is partly due to the poor quality of personnel. First, many civil servants received inadequate education. Before the handover, nearly half of Macao's civil servants received only a secondary school education or below (see [Table 26.8](#)). The lack of education may account for their poor work ethic (tardiness, insolence, and disrespect) (Lo 1995, 120; Choy 1993, 59). The Macao Civil Servant Association, a labor union of civil servants, publicly stated that the civil service has a poor attitude (Choy 1993, 59). Further, the colonial government did not conduct sufficient training to improve the quality of civil servants. The colonial government did improve the language capacity of civil servants in preparation for the handover, so that civil servants could use both Chinese and Portuguese in the MSAR era (see [Table 26.9](#)). However, the Portuguese did less to enhance the working capacity of the civil service through training. Since most colonial civil servants had the "through train" of automatic transfer to the MSAR administration, their attitude problems were simultaneously passed on to the newly established SAR administration.

The Portuguese also conducted a very slow localization of the Macao administration, causing performance problems for the MSAR administration. In the colonial government, all senior positions were occupied by Portuguese. The middle-ranking posts were filled by Macanese, who are hybrids of Portuguese and Chinese. Local Chinese worked at the street level inside the government (Yee 2001, 41–56). The Portuguese accelerated the localization of the civil service and promoted more local Chinese to higher ranks late in the transition. As a result, many low-ranking Chinese officials were promoted to senior positions to fill up the vacancies left by the Portuguese. However, many of them did not possess sufficient management experience. The MSAR government was further weakened by this cadre of inexperienced officials. For instance, the Audit Commission of the MSAR investigated the financial account and management of the Organizing

**Table 26.7 Adjustment of Civil Service Salary**

<i>Year</i>	<i>Value of Each Salary Point</i>	<i>Growth (%)</i>	<i>Inflation Rate (%)</i>
1985	20	11.5	–
1986	22	10.0	+10.0
1987	24	9.1	+9.1
1988	24	0.0	+8.8
1989	26	8.3	+8.3
1990	29	11.5	+8.0
1991	32	10.3	+9.6
1992	35	9.4	+7.7
1993	38	8.6	+6.7
1994	41	7.9	+6.3
1995	44	7.3	+8.6
1996	47	6.8	+4.8
1997	50	6.4	+3.5
1998	50	0.0	+0.2
1999	50	0.0	–3.2
2000	50	0.0	–1.6
2001	50	0.0	–2.0
2002	50	0.0	–2.6
2003	50	0.0	–1.6
2004	50	0.0	+1.0
2005	52.5	5.0	+4.4
2006	52.5	0.0	+5.2
2007	55	4.8	+5.6
2008	59	7.3	+8.6
2009	59	0.0	+3.3a

*Source:* Figures between 1985 and 1988 are from Tang On Ki, “Dui Aopu Guanzhi Houqi Aomen Gongwuyuan Xinchou Zhidu de Huigu” [Revisit the Pay Scheme of Macau Civil Servants in the Portuguese Colonial Era], *Aumen Yanjiu* [Macau Studies], December 2005, 31(48); data for 1999 onward are from newspapers and are available from the Statistics and Census Bureau website, <http://www.dsec.gov.mo/Statistic.aspx> (accessed September 16, 2009).

<sup>a</sup> Figure is for the first quarter of 2009.

**Table 26.8 Education Background of Macao's Civil Servants**

Year	Primary School Level (%)	Secondary School Level (%)	Postsecondary/ Vocational Training (%)	College/ University Level (%)	Postgraduate Level (%)	Others (%)	Total Number of Civil Servants
1996	27.8	21.4	31.9	15.8	0.0	3.0	16,992
1997	28.0	21.5	31.4	17.4	0.1	1.6	17,589
1998	28.0	20.7	31.2	17.6	0.1	2.4	17,037
1999	27.7	19.3	30.7	19.6	0.4	2.3	17,239
2000	27.5	17.5	30.1	21.8	0.6	2.6	17,412
2001	26.7	16.3	28.1	24.8	0.7	3.5	17,533
2002	25.4	18.6	25.8	26.0	1.0	3.2	17,368
2003	24.3	18.2	25.6	27.3	1.8	2.8	17,496
2004	22.9	16.7	26.0	28.9	2.9	2.6	17,778
2005	21.4	15.9	25.8	30.4	3.9	2.7	18,250
2006	19.0	14.9	26.0	33.1	4.8	2.3	18,958
2007	17.7	13.6	24.8	36.2	5.5	2.2	19,629
2008	16.4	13.2	24.0	38.6	6.1	1.7	20,653

Source: Figures for 1996–2005 are from SAFP, *Macau Special Administration Region Public Administration Human Resources Report 2005* (Macau: 2006), 159. The 2006–2008 figures are from SAFP, *Macau Special Administration Region Public Administration Human Resources Report 2008* (Macau: 2009), 163.

**Table 26.9** Number of Training Courses Organized by the SAFP for Civil Servants

<i>Courses</i>		1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Special training	No. of courses	12	23	25	9	10	126	259	290	267	186	154	150	193
	No. of participants	261	475	636	209	182	3,709	7,973	8,326	8,696	4,202	3,110	4,240	5,548
Language training	No. of courses	100	143	121	109	103	90	69	45	85	65	83	90	98
	No. of participants	1,951	2,487	2,273	1,964	1,798	1,175	1,201	826	1,268	859	1,164	1,205	1,529
Professional/vocational training	No. of courses	81	171	210	83	102	96	117	105	57	104	62	56	107
	No. of participants	1,305	2,870	3,521	1,413	2,167	2,951	2,499	2,038	1,294	2,241	1,127	1,050	2,133
Total	No. of courses	193	337	356	201	215	312	445	440	409	355	299	296	398
	(Growth in %)	–	(74.6)	(5.6)	(–43.5)	(7.0)	(45.1)	(42.6)	(–1.1)	(–7.0)	(–13.2)	(–15.8)	(–1.0)	(34.5)
	No. of participants	3,517	5,832	6,430	3,586	4,147	7,835	11,673	11,190	11,258	7,302	5,401	6,495	9,210
	(Growth in %)	–	(65.8)	(10.3)	(–44.2)	(15.6)	(88.9)	(49.0)	(–4.1)	(0.6)	(–35.1)	(–26.0)	(20.3)	(41.8)

Source: Figures for 1996–2005 are from SAFP, *Macau Special Administration Region Public Administration Human Resources Report 2005* (Macau: 2006), 164. The 2006–2008 figures are from SAFP, *Macau Special Administration Region Public Administration Human Resources Report 2008* (Macau: 2009), 163.

Commission of the East Asian Games, which was fully funded by the MSAR government for the 2005 East Asian Games in Macao (Yu 2007, 437). The Audit Commission alleged that various malpractices by the Games' organizer had resulted in serious over-budgeting problems. According to the Commission's report, the overall expenditure for the Games was MOP\$4.4 billion, 50.6% over the budget. Moreover, the Games' organizer had squandered government resources. Many facilities for the Games had to be reconstructed due to defective designs. Such mistakes not only wasted government funds, but also delayed the completion of facilities. The authorities attributed the malpractice to the inexperience of officials. Indeed, the MSAR administration encountered a civil service that was inexperienced and often poorly educated and trained.

Second, bureaucratic irregularities are another source of administrative ineffectiveness and inefficiency. Corruption as well as nepotism in personnel appointments is obvious in the Macao civil service. Bureaucratic corruption had been very serious since the colonial era. There have been several corruption cases involving senior officials (Lo 1995, 171–96). Choy (1993, 59) argued that corruption had become part of the daily activity in the colonial Macao bureaucracy. Although the Macao government took various measures to control bureaucratic corruption after the handover, irregularities could not be suppressed. The Ao Man-long case demonstrated that the Macao administration was still at high risk for corruption because of the wide discretionary powers that individual officials held. Ao was the former secretary for transportation and public works who was bribed by land developers and government project contractors. During the court trials, officials who were responsible for land projects and government project tenders indicated that they were required by their superiors, who were instructed by Ao, to adjust the grading of particular bidders so that these bidders would win government contracts. As a result, the government contracted out projects with higher cost while lands were sold to developers at lower prices. Ao's case demonstrated that authorities could easily change the criteria and grading standards without checks from other agencies. Indeed, Ao's case illuminated the immense discretionary powers within the bureaucracy.

Macao's personnel management is always criticized for nepotism and irregularities. In the colonial era, nepotism was prevalent in personnel appointments. As indicated above, the Portuguese appointed their friends and supporters to the government (Lo 1995, 120–27; Wu and Chen 2000, 41–42). Whenever the Portuguese appointed a new governor, he would substitute the existing officials with his own supporters. In turn, the newly appointed leaders would recruit their own friends into their divisions. Although open examination was essential for the recruitment and promotion of civil servants, the public would not be informed of the examinations. Additionally, the examinations were tailor-made for the candidates identified by the authorities. These irregularities continued in the MSAR. For instance, there were allegations that leaders from the Identification Affairs Bureau, Cultural Affairs Bureau, Labor Affairs Bureau, Finance Services Bureau, and Housing Bureau appointed their friends and relatives to senior positions (*Journal Informacao*, September 7, 2007, 1). In addition, the Macao prison was charged for failing to have open recruitment for clerks. Lee Kam-cheong, director of Macao prison, explained that open recruitment would involve a great deal of administrative work as well as an increase in government expenditure. Therefore, instead of using open recruitment, the department adopted internal promotions to fill vacancies (*Journal Informacao*, January 28, 2006, 1). The former director of the Finance Services Bureau, Carlos Fernando de Abreu Ávila, warned openly that some agency heads had recruited and promoted their friends and relatives in the civil service, and such phenomena had already altered the government administration (*Journal Informacao*, April 24, 2004, 1). Although civil service laws include principles for fair and open recruitment (Wu and Chen 2000, 26), there are no formal institutions to guide and regulate the bureaucracy to fulfill these principles. Lo (1995, 120–22) explained

that the poor quality of Macao civil servants was due partly to nepotism and personal networks in the recruitment process in which candidates with higher qualifications were usually excluded. Although there was a mechanism for evaluating the performance of civil servants, it was not practiced in a rigorous way. To maintain good relationships with subordinates, many office supervisors over-graded the latter (Chan 2007, 38–42). Some appraisees were expected to “shine the shoes” of their superiors for their excellence in performance appraisal. Macao’s civil service has not yet established Weberian bureaucracy, which adheres to strict rules and regulations (Choy 1993, 63).

Third, the MSAR government is not internally coherent nor does it possess the capacity for interdepartmental cooperation and coordination. In the colonial era, the economic coordination and administration sub-secretary and the statistics and census sub-secretary in customs service (Macao Development Strategy Research Center 1996, 37) shared an overlapping responsibility. The Identification Bureau and the Security Branch were responsible for residents’ identification affairs (ibid). However, there was a lack of coordination among the police units on security affairs. This overlap of function and responsibility between departments may delay service delivery, as administrative procedures must go through various departments. Further, the overlap also allows departments to shift responsibility away from themselves. The lack of coordination among government departments persisted into the SAR era. The protection of sight lines around the Guia Fortress is an example. There was simply no communication between the Cultural Affairs Bureau and the Land, Public Works and Transport Bureau to balance land development initiatives with the protection of Macao’s World Heritage sites. The latter approved a project to build skyscrapers that would block the sight line of Guia Lighthouse, part of Macao’s World Heritage Program. The Cultural Affairs Bureau, which watches over the World Heritage sites, did not interfere until civil society protested and launched a complaint with the United Nations. The event demonstrated the lack of coordination between the two departments. In another instance, the Labor Affairs Bureau, Judiciary Police, and Gaming Inspection and Coordination Bureau failed to cooperate in a conflict over illegal workers in casinos. While each of the three departments had jurisdiction, they passively resisted enforcing the law in the casinos; instead, each tried to shift responsibility to the others. In another instance, transportation issues continue to worsen while three departments: the Civic and Municipal Affairs Bureau, the Land, Public Works and Transport Bureau, and the Public Security Police Force take no steps to cooperate and correct the problem. While the government does plan to establish a new bureau for traffic and transportation, there is no indication that coordination between departments will be enhanced. Organizational disarticulation is rampant within the government. Departments ignore existing regulations and develop their own administrative practices. The government suffers from parochialism and ethnocentricity, which prevent communication and cooperation among departments and inhibit performance.

## 26.4 Civil Service Reform

Like many governments, the MSAR government adopted the principles of the new public management (NPM) to improve the performance of the civil service. These efforts commenced after the handover. In his first policy address, the chief executive, Edmund Ho suggested a reform of the bureaucracy through four major strategies: (1) departmental restructuring, (2) establishment of a customer-oriented culture, (3) the use of technology, and (4) strengthening the training program for civil servants (*Government Policy Plan for the Year 2000 Financial Year of the Macau Special Administrative Region of the People’s Republic of China* 2000, 6; see also Chou 2005, 73–75).

The MSAR government emphasized the customer-oriented principle of NPM to change the attitude of civil servants and to improve bureaucratic performance. In 2001, 16 departments launched a performance pledge system that promised high quality service to the public (*Macau Yearbook* 2002, 65), and all government departments established their performance pledge program at the end of 2003 (Lam 2005, 33). Government agencies were also encouraged to adopt the International Organization for Standardization (ISO) system to guarantee their performance by constructing a standardized work procedure. By 2007, 60 public agencies had acquired ISO certification (*Government Policy Plan for the Year 2008 Financial Year of the Macau Special Administrative Region of the People's Republic of China* 2007, 1013). Departments conducted opinion surveys on the public's attitude toward public services, and those with poor results were pressured to improve their services. Also, one-stop service centers were introduced so that residents could apply through a single gateway for services that involved multi-departments (Reschenthaler and Thompson 1996).<sup>7</sup> Finally, the MSAR authorities developed e-government applications, including an Intranet in 2004 and a website for civil servants in 2007 to improve communication among departments as well as with civil servants (*Government Policy Plan for the Year 2004 Financial Year of the Macau Special Administrative Region of the People's Republic of China* 2005, 1011; *Government Policy Plan for the Year 2008 Financial Year of the Macau Special Administrative Region of the People's Republic of China* 2007, 1010). Specific details of these efforts are discussed in the chapter on performance management reform.

From the perspective of civil service reform, the importance of these efforts has been in training, rather than reward structures. Although the MSAR government adjusted the pay scale of civil servants in the 2009 reform, it emphasized the training of civil servants. Before the handover, the training of bureaucrats focused mainly on language, but this may have been insufficient to enhance managerial and administrative capacity. After the handover, the MSAR government launched different programs to train middle- and upper-ranking officials for leadership advancement. For instance, the Management and Development Program for Middle and Upper Rank Civil Servants was initiated in 2001; 255 officials were sent to Singapore and Beijing to study (*Macau Yearbook* 2001 2002, 66). In 2007, over 500 middle- and upper-ranking officials were invited to study in Beijing. The SAFP also organized various annual conferences and seminars for all civil servants to enhance their knowledge of public administration. Indeed, the MSAR authorities launched training programs to improve attitude as well as managerial capacity of civil servants and thus improve the performance of the administration. Some street-level bureaucrats told the author that their attitude toward the public had changed since the handover. They admitted that they had been unreceptive to public demands in the colonial era; whereas under the MSAR regime they were encouraged to be responsive and polite to residents. Indeed, the authorities trained civil servants to treat residents as customers, to be receptive and accommodating to their demands.

The customer-oriented reform changed the layout of government services and improved the public image of civil servants to an extent. MSAR's various initiatives won some public recognition

<sup>7</sup> For instance, receiving a restaurant license application involved many departments: the Civil and Municipal Affairs Bureau; the Fire Services Bureau; Land, Public Works and Transport Bureau; Labor Affairs Bureau; Macao Economic Services; Macau Government Tourist Office; the Public Administration and Civil Service Bureau; and the Health Bureau (*Government Policy Plan for the Year 2004 Financial Year of the Macau Special Administrative Region of the People's Republic of China* 2003, 1005–6). In the past, businessmen applying for restaurant licenses had to visit the above-mentioned departments and submit documents to individual offices for license approval. In 2003, these government agencies inaugurated a one-stop service gateway. Various one-stop service gateways have been established for 26 services, involving 11 departments (*Macau Yearbook* 2005, 67).



of the civil service reform. The average mark on government performance was 3.28 on the 5-point scale; only 13.7% of respondents were dissatisfied and very dissatisfied with the performance. However, those measures did not greatly enhance government efficiency and performance; they aimed to change the public perception of public authorities.<sup>8</sup> Like the puzzle of reform contended by Osborne and Gaebler (1992), the authorities introduced various reform plans and projects but failed to recognize objectives. The emphasis on the use of labor and service contracts is a good example. As discussed above, the civil service system allowed departments to use contractual terms to hire civil servants. However, the system was misused so that most civil servants on contractual terms were employed in the bureaucracy for many years. A new contract system that used labor and service contracts was favored after the handover. Labor and service contracts allowed officials to circumvent the personnel system, which had become complicated and triggered division among government workers. Departments were encouraged to initiate reform programs but many lost sight of the goals of reform.

In a nutshell, after the handover, the government's reform focused on enhancing the caliber and attitude of the civil servant. The MSAR authorities sought to legitimize themselves through various reforms in the new political era. Therefore, they favored programs that were easy to achieve. In this way, they sought to win public support and to stabilize the MSAR regime (Leng 2002, 6). Reforming the attitude of civil servants as well as the organization of public services was undertaken with few difficulties (Tian and Leong 2009), while the rooted irregularities of the bureaucracy and the problems of parochialism went unheeded. Chief executive Edmund Ho seldom criticized Macao's civil service. Rather, he recognized its contribution to society in the early years after the handover. However, he did mark the various bureaucratic problems that plagued the civil service in his platform during the 1999 election. The Hong Kong SAR's experience suggested that bureaucratic reform immediately after the handover might antagonize civil servants, thereby triggering instability in the administration (Scott 2005, 29–62). Not until various government scandals (the Ao Man-long case and overspending in the East Asian Games) caused a public outcry did the government initiate reform of bureaucratic irregularities. Indeed, these events compromised the legitimacy of MSAR's authorities.

To tighten bureaucratic controls, the government revised and improved the civil service appraisal system, which was implemented in 2005. The old appraisal system was seen as unfair as the appraiser may have been biased toward individual subordinates due to a personal relationship (Chan 2007, 37–46). The new system aimed at: (1) motivation, (2) improving performance, (3) improving communication between managers and subordinates, (4) improving human resources management, and (5) advocating good public services (Appraisal System for Public Servants, Article 2, Law 8/2004). It introduced various elements to reduce the influence of preferential treatment and motivated officials to improve their performance by using the carrot and stick approach. It is noteworthy that the old appraisal method adopted a 4-point scale (excellent, good, fair, and poor). If a civil servant received a fair or poor grade in his/her

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<sup>8</sup> For instance, Long (2004) illustrated that e-government development had not yet facilitated interdepartmental cooperation in Macao. José Maria Pereira Coutinho, a legislator and the president of the Macao Civil Servant's Association, indicated that one-stop service gateway had failed to improve interdepartmental cooperation (Personal Interview with José Maria Pereira Coutinho, November 8, 2007). Departments still examined each application on an individual basis. There was no interdepartmental communication even when problems arose. Kwan Tsui Hang, another legislator, argued that the government established a company to organize the Games and aimed to allow flexibility for the management, but, in reality, the company abused its autonomy, resulting in serious overspending. The government failed and lacked capability to check and balance the public corporations.

evaluation, disciplinary action would have to be initiated. Those with a poor evaluation would be dismissed immediately. As a result, most appraisers tried to give good and excellent evaluation to their subordinates in order to maintain harmony in the office while some might abuse their authority and threaten their subordinates for cooperation in possible irregularities in the office. By contrast, the new system adopts a 5-point scale (excellent, very satisfied, satisfied, dissatisfied, very dissatisfied). A retraining program as well as job reassignment will be given to improve civil servants with performance problems. No disciplinary action will be taken immediately unless an official continues his/her poor performance over several years. Yet, poor performance does not necessarily mean the dismissal of officials while they will have chances for improvement.

Furthermore, the principle of management by objective was absorbed into the new appraisal system. There will be three meetings between appraiser and appraisees each year. The work plan of subordinates will be discussed in the first meeting at the beginning of each year. The second meeting, in the middle of the year, will assess work progress. Finally, there will be a year-end evaluation. Appraisal advisory committees are installed in bureaus and are responsible for complaints of unfair treatment in the evaluation.

Second, the government published a *Consultative Paper for the Amendment of General Principle for Leaders and Director* (September 2007), which recommended various measures to restrict the power of the agency head. A job rotation system was recommended for all agency heads so that they could explore the work in various units at 3- to 5-year intervals and enrich their experience within the administration (*Consultative Paper for the Amendment of General Principle for Leaders and Director* 2007, 14). It was also reasoned that job rotation would decrease bureaucratic corruption as individuals would be less able to find loopholes and build a personal network in the shorter tenure. Third, a *Roadmap for Public Sector Reform* (2007) was also proposed, and various reform items were listed for bureaucratic enhancement. For example, a centralized recruitment process was advocated to undermine nepotism and personal networks in personnel management. Fourth, to promote interdepartmental cooperation, Residents Service Centers were installed in some districts in Macao so residents could receive services from locally based departments. In August 2007, the Commission Against Corruption, which is the anti-corruption agency of the MSAR government, initiated measures helping 50 government departments design internal regulations and mechanism against bureaucratic bribery. Indeed, in his second term, chief executive Edmund Ho focused efforts to remedying officials' methods and conduct.

Unfortunately, these measures have not yet yielded fruitful result. Chen's study (2007) on the new appraisal system indicated that many civil servants said the system remained unfair; they perceived the persistence of personal relationships. Moreover, sanctions have not yet been detailed for the punishment of officials who continue their poor performance over years. The new appraisal system is practiced as a formality by officials. The *Roadmap for Public Sector Reform* was criticized as substandard in mapping out the reform plan. Although the document identified many items targeted for reform, neither the plan nor the schedule was detailed or elaborated. The various reforms are a far cry from what was expected.

## 26.5 Conclusion

In many former colonies, reform of government administration was essential and inevitable after decolonization. In the case of Macao, the MSAR authorities have sought the advancement of the civil service after the handover. The civil service has been underdeveloped since the colonial era. Weber's model of bureaucracy, stipulating checks and controls on officials as well as career

planning for civil servants was not established. Not until Lisbon's 1974 decolonization policy did the Portuguese authorities begin to institute the Macao civil service system with its own domestic rules and laws. However, the Portuguese authorities tried to shape the Macao administration in a way favorable to their own political patronage and thus undermined the checks and balances mechanism that guarded against bureaucratic irregularities. After the handover, the various reform programs based on NPM principles improved the public image of the civil service. However administrative inefficiencies and bureaucratic irregularities triggered problems of both legitimacy and governability of the MSAR government. The problem with Macao's civil service is not that it is a rigid and inflexible bureaucracy as it may be improved through the NPM approach (managerial devolution, performance and productivity measurement, and alternation of service delivery mechanisms). Rather, the root of the problem lies in the lack of checks and balance. Indeed, civil service reform in Macao may be most effective with the establishment of a tight bureaucratic system with strict rules and regulations to control officials' behavior. A determined leadership and external pressure are the pillars for sustainable reform of Macao's civil service.

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