



Royal University of Law and Economics

Final Report on

**A Dance of Integrity & Deviance:
Should Cambodia Embrace Special Prosecutor
System to Restore its Police Legitimacy?**

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ABSTRACT

This study takes a deep dive into the potential for Cambodia to adopt a special prosecutor model to address issues of police deviance and bolster the legitimacy of the country's political regime. By examining the various political, economic, and social factors at play, the analysis provides a nuanced and comprehensive assessment of the feasibility of implementing such a system.

The core premise is that a special prosecutor, operating independently from the regular judicial process, could offer impartiality and increased public confidence in handling high-profile cases of misconduct and corruption. However, the study also highlights the significant challenges that Cambodia would face in establishing this model. Political resistance from entrenched power structures, financial constraints, and public skepticism towards government institutions pose substantial barriers. Even though there may be some political will for reform due to public dissatisfaction, the study finds that the current low levels of trust in the government and consolidated power dynamics create formidable obstacles.

Ultimately, the analysis concludes that while a special prosecutor system could bring potential benefits in terms of impartiality and public trust, the high costs and risks of politicization make it a difficult option for Cambodia to implement effectively. Instead, the study recommends more practical and achievable approaches, such as strengthening existing legal mechanisms, enhancing transparency, and addressing the cultural issues within the police force. The study argues that these measures offer more viable pathways to improve governance and combat corruption in the country, without the complexities and uncertainties associated with establishing a standalone special prosecutor model.

Chapter I examines the legitimacy of police forces, starting with how public perception affects compliance with the law. It argues that legitimacy stems from the belief that police authority is morally justified, fostering cooperation and reducing crime. The chapter delves into factors that build legitimacy, emphasizing procedural justice and fair treatment, and concludes by addressing issues that erode legitimacy, such as corruption and misconduct, which diminish trust in the police and political system.

Chapter II examines the conflicts of interest inherent in local prosecutors handling cases involving police officers, advocating for independent special prosecutors to reduce these biases and ensure fairness. It underscores the importance of maintaining the justice system's appearance of fairness to enhance public trust. The chapter introduces the concept of special prosecutors—-independent figures appointed to manage criminal investigations outside the usual jurisdiction to prevent conflicts of interest or provide specialized expertise. It evaluates models such as South Korea's Corruption Investigation Office, the U.S. Special Counsel system, and Spain's Anti-Corruption Prosecutor's Office, focusing on how these models balance independence with accountability and their impact on public trust.

Finally, Chapter III reviews Cambodia's current frameworks for mitigating prosecutorial bias, assessing the effectiveness of existing controls and oversight. It then explores the potential benefits of implementing a special prosecutor system, including improved independence and accountability for sensitive cases, and evaluates the feasibility given Cambodia's political, economic, and social conditions. The chapter further examines the practical challenges of adoption and concludes by synthesizing insights, discussing benefits and drawbacks, and recommending improvements to existing mechanisms while considering alternative approaches to enhancing accountability and transparency.

Keywords: police legitimacy, police deviance, procedural justice, special prosecutor, appearance of justice, conflict of interest.

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LIST OF ABBREVIATIONS

ACPO	Anti-Corruption and Organized Crime Prosecutor's Office
ACU	Anti-Corruption Unit
ASEAN	Association of Southeast Asian Nations
CC	Control of Corruption
CIO	Corruption Investigation Office for High-ranking Officials
CNP	Cambodian National Police
CPC	Criminal Procedure Code
DOJ	Department of Justice
GCB	Global Corruption Barometer
GDP	Gross Domestic Product
GE	Government Effectiveness
KBA	Korean Bar Association
MOJ	Ministry of Justice
NCA	National Court Administration
OCM	Office of the Council of Ministers
OECD	Organization for Economic Co-operation and Development
OHCHR	Office of the High Commissioner for Human Rights
OROLSI	Office of Rule of Law and Security Institutions
PV	Political Stability and Absence of Violence/Terrorism
RL	Rule of Law
ROK	Republic of Korea
RQ	Regulatory Quality
SC	Supreme Court

SPO	Supreme Prosecutors' Office
SSRN	Social Science Research Network
TI	Transparency International
TI	Transparency International
UNAFEI	United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders
UNODC	United Nations Office on Drugs and Crime
VA	Voice and Accountability
WGI	Worldwide Governance Indicators

INTRODUCTION

A. Background of the Research

Maintaining the legitimacy of law enforcement authorities is crucial for their success. When citizens view these institutions as legitimate—recognizing their rightful power and authority—two significant effects ensue.¹ First, citizens become motivated to adhere to the rules issued by these authorities. They willingly comply with the law, seeing it as a legitimate and justified exercise of power. Second, citizens are more inclined to cooperate with the institution's objectives, such as reporting crimes, sharing information with the police, and providing evidence in court. This cooperation is essential for effective law enforcement and the administration of justice.

The importance of police legitimacy extends beyond just compliance and cooperation—it is intricately linked to the very character of government itself. Police actions serve as a highly visible reflection of how the state handles everyday issues and concerns.² As such, public perceptions of the police become a crucial factor in determining the overall legitimacy of the regime, sometimes even rivaling the impact of other political institutions.

When citizens view the police as fair, impartial, and trustworthy, it reinforces their confidence in the broader system of governance. Conversely, when police legitimacy is compromised, it sets off a chain of disastrous repercussions that ripple across society, affecting safety, justice, and the overall fabric of social cohesion. Citizens begin to question the very

¹ Jonathan Jackson, “Norms, Normativity and the Legitimacy of Justice Institutions: International Perspectives,” *Annual Review of Law and Social Science* 14 (2018): 145-165, 146.

² José Cruz, “Police Misconduct and Political Legitimacy in Central America,” *Journal of Latin American Studies* 47, no. 2 (2015): 283-256, 256.

foundation of law enforcement. Skepticism replaces confidence. Some may take matters into their own hands—seeking revenge or resorting to vigilantism.³

This dynamic is particularly apparent in the current situation in Cambodia, where the public's trust in law enforcement has been severely eroded. The high rate of traffic accidents and the prevalence of hit-and-run incidents have become a major source of concern. Despite a legal duty to stop and provide aid, many drivers choose to flee the scene, not out of guilt, but out of fear.⁴ Past incidents of public shaming and violence have instilled in them a "run first" mentality, as they fear the consequences of staying. Moreover, the perception that well-connected perpetrators often escape justice further undermines public confidence in the legal system.

As in 2023, road traffic accidents killed at least 4 persons and injure 12 others every day in Cambodia. The economic toll of these accidents is equally hefty, costing the country about US\$466.8 million a year, the equivalent of 1.7 per cent of the country's GDP, according to a 2019 report.⁵ In Cambodia, it is unusual for a year to slip by without a high-profile hit-and-run accident igniting nationwide outrage. Some of these cases have been so egregious that they have prompted the country's leadership to intervene in an effort to calm the public.

When citizens lose faith in the ability of the authorities to deliver justice through legitimate channels, they may resort to "mob justice."⁶ This phenomenon, known as "*Tolakar Prachechun*" in Khmer, involves crowds acting as judges, often resorting to violence in

³ Nicole Haasa, Jan De Keijser, and Gerben Bruinsma, "Public support for vigilantism, confidence in police and police responsiveness," *Policing & Society* 24, no. 2 (2014): 224-241, 224.

⁴ Sinorn Thang, "Strong Action Key to Curb Surge in Fatal Hit-and-Runs," *Kiripost*, last updated December 30, 2023, <https://kiripost.com/stories/strong-action-key-to-curb-surge-in-fatal-hit-and-runs>.

⁵ *Khmer Times*, "Road accidents kill 1,590 people in Cambodia in 2023, down 7 pct," January 19, 2024, <https://www.khmertimeskh.com/501425795/road-accidents-kill-1590-people-in-cambodia-in-2023-down-7-pct/>.

⁶ David Hutt, "Why Cambodia's Government Cannot Win Its Fight Against Corruption," *The Diplomat*, January 9, 2024, <https://thediplomat.com/2024/01/why-cambodias-government-cannot-win-its-fight-against-corruption/>.

retaliation for perceived crimes. Between 2010 and 2018, 73 people have been victims of extra-judicial violence, resulted in 22 deaths linked to accusations of social misconduct, such as traffic violations and other infractions.⁷ Actual figures are likely higher due to the lack of official comprehensive data. The frequency of these incidents has raised serious concerns about the rule of law and the administration of justice in Cambodia.

This rise in mob justice is attributed to the widespread perception of corruption within the criminal justice system, which has eroded the public's trust in the impartiality and fairness of the system.⁸ Crucially, this distrust is not unfounded, as the country scores poorly on global corruption rankings, scoring only 22 of a possible 100 in 2023.⁹ Within the region of ASEAN, Cambodia's ranking remains near the bottom, surpassing only Myanmar who, by the way, is under the rule of a military junta. Additionally, 14 per cent of Cambodians in 2020 believe that the police are the most corrupt, the highest percentage among all institutions.¹⁰

Currently, Cambodia finds itself trapped in a vicious, self-reinforcing cycle that threatens to unravel the very fabric of its society. At the heart of this dilemma lies the prevailing belief that corruption has permeated every level of the system, from law enforcement to the judicial process. This lack of faith in the system creates a troubling dynamic where the public's distrust fuels more instances of mob justice, which in turn emboldens drivers to evade accountability, leading to more distrust, and so on. This vicious cycle will continue unabated, with each incident feeding the next, unless Cambodia finds a way to break free from this downward spiral.

⁷ OHCHR, *People's Court, Preventing and Responding to "Popular Justice" in Cambodia* (OHCHR, 2019), 5.

⁸ Habeeb Salihu and Hossein Gholami, "Mob justice, corrupt and unproductive justice system in Nigeria: An empirical analysis," *International Journal of Law, Crime and Justice* 55 (2018): 40-51, 2.

⁹ TI, *Corruption Perceptions Index 2023* (Berlin: TI, 2024), 12.

¹⁰ Jon Vrush, *Global Corruption Barometer Asia 2020: Citizens' Views and Experiences of Corruption* (Berlin: Transparency International, 2020), 39.

It is believed that individuals who participate in corrupt behavior likely do so because they perceive the risk of punishment to be low compared to the potential rewards. As such, the practical solution would be to alter this risk-reward calculations, thereby disrupting the established corrupt equilibriums.¹¹ One effective approach to achieving this is through the implementation of repressive measures for corruption control. Successful repression of corruption serves a dual purpose: first, it punishes perpetrators (according to retribution theory); and second, it acts as a deterrent by sending a clear message that impunity will not be tolerated (utilitarianism theory).¹²

A significant challenge with this approach arises when the corrupt individual holds a position within law enforcement itself, particularly if they happen to be a police officer. Cases involving governmental corruption investigations and prosecutions raise valid concerns about potential conflicts of interest. According to the “distance imperative,” those responsible for corruption cases involving public officials should maintain sufficient distance from their targets to avoid any perception of bias or undue influence.¹³ Particularly, prosecutors—who are accustomed to working closely with law enforcement—face a delicate dilemma when their colleagues become suspects. Their reliance on positive relationships with the police for effective job performance clashes with the need for impartiality.¹⁴ Consequently, prosecuting fellow officers becomes a challenging task for local prosecutors due to the inherent conflict of interest, making them the least suitable candidate for the job.

¹¹ Robert Klitgaard, "On culture and corruption," *BSG Working Paper Series*, no. 20 (2017): 1-35, 18.

¹² Marina Bošković, "Results of Repressive Response to Corruption/Performance of Specialized Anticorruption Prosecution Departments," *Thematic conference proceedings of international significance / V International scientific thematic conference* (2020): 63-75, 65.

¹³ Norman Abrams, "The Distance Imperative: A Different Way of Thinking About Public Official Corruption Investigations/Prosecutions and the Federal Role," *Loyola University Chicago Law Journal* 42, no. 2 (2011): 207-253, 252.

¹⁴ Kate Levine, "Who Shouldn't Prosecute the Police," *Iowa Law Review* 101 (2015): 1447-1496, 1451.

To effectively combat corruption and break the cycle of impunity, it is crucial to reform the prosecutorial system to ensure that investigations and prosecutions are conducted impartially and independently. Given the inherent conflicts of interest, there has been a growing call for the appointment of “special prosecutors” to handle criminal cases involving police officers. This approach is becoming more common and has seen some success. These special prosecutors operate independently from the usual jurisdictional offices, specifically to avoid potential biases or to bring subject matter expertise to the table.¹⁵ The use of special prosecutors will therefore serve the important function of both preserving and restoring faith in the criminal justice system.

In the legal landscape of Cambodia, the notion of special prosecutors is akin to a rare migratory bird—one that has yet to find its nesting ground. Cambodia cannot simply leap into the abyss and adopt special prosecutors without due diligence. Here is why: First, special prosecutors come with their own playbook. But will this fit seamlessly into Cambodia’s existing framework? That is the million-dollar question. Before diving in, Cambodia must ensure that its infrastructure can accommodate these legal eagles without causing chaos. Second, special prosecutors, while promising, can be resource-intensive and require careful planning. Cambodia cannot afford to embark on a “wild goose chase” that would squander its limited resources.

Nonetheless, the potential benefits of special prosecutors in addressing the complex web of ethical dilemmas at the intersection of corruption and law enforcement cannot be overstated. By embracing this legal innovation, Cambodia can take a significant step towards restoring

¹⁵ Caleb Robertson, “Restoring Public Confidence in the Criminal Justice System: Policing Prosecutions When Prosecutors Prosecute Police,” *Emory Law Journal* 67, no. 4 (2018): 853-887, 879.

public trust, ensuring accountability, and upholding the principles of justice that are so vital for the well-being of its citizens and the stability of its society. It is definitely worth considering.

B. Statement of the Problem

The issue of integrity and impartiality within the criminal justice system is a complex and multifaceted challenge that has garnered significant scholarly attention. Prominent researchers like Norman Abrams (2011), Caleb Robertson (2018), and Sabrina Singer (2018) have each made valuable contributions to this critical discourse. Abrams, for instance, delves into the intricacies of tackling public official corruption, emphasizing the vital need for external investigative bodies to maintain impartiality. He introduces the concept of the "distance imperative," which posits that to prevent conflicts of interest and bias, investigative and prosecutorial agencies must be independent from those they are tasked with scrutinizing.¹⁶ This principle underscores the inherent risks associated with local authorities' proximity to corruption cases, as their close relationships and vested interests can potentially compromise the integrity of investigations and prosecutions.

In a similar vein, Robertson's work highlights the pivotal role of the appearance of justice in preserving public trust in the criminal justice system, particularly when local prosecutors handle cases involving law enforcement officers. Robertson argues that even the mere perception of bias, stemming from the inherent conflict of interest for prosecutors who routinely collaborate with the very law enforcement agencies they are expected to hold accountable, can significantly undermine public confidence in legal outcomes.¹⁷ This insight

¹⁶ Abrams, "Distance Imperative," 208.

¹⁷ Robertson, "Restoring Public Confidence," 857.

emphasizes the critical need to address not only actual instances of impropriety but also the public's perception of fairness and objectivity within the system.

Complementing these perspectives, Singer's research delves into the challenges of ensuring transparency and accountability in cases of police officer-involved deaths of unarmed civilians. She explores the potential benefits of specialized prosecution models that can provide a more objective perspective and reduce conflicts of interest.¹⁸ However, she also acknowledges the criticisms and practical difficulties associated with such models, such as limited resources and bureaucratic hurdles. Her work contributes to the ongoing debate by offering a framework for evaluating the effectiveness of various special prosecution approaches, with the aim of enhancing their ability to deliver fair and transparent processes.

All these bodies of literature share a common objective: to enhance public trust and cooperation within law enforcement and criminal justice systems. They aim to improve the relationship between the public and the authorities, fostering a more effective and transparent system. Despite the wealth of knowledge available, there are significant gaps when it comes to applying these findings to specific contexts, such as Cambodia. Research in this area reveals three key gaps: the need for context-specific studies that apply general principles to unique national settings like Cambodia, the requirement for longitudinal studies to track the long-term impacts of reforms, and a lack of detailed evaluations on the practical challenges of implementing reforms.

The scarcity of nuanced, applied research poses a significant problem in Cambodia, where corruption has long eroded public trust in government institutions and hindered economic and social progress. Despite numerous anti-corruption initiatives, their overall effectiveness

¹⁸ Sabrina Singer, "Embracing Federalism in Special Prosecution Models: An Analysis of Experimentation in the States," *Columbia Journal of Law and Social Problems* 51, no. 3 (2018): 431-477, 437.

remains questionable, primarily due to the absence of an independent specialized body with the authority to prosecute corruption cases. Although there is extensive discussion and debate about anti-corruption strategies, empirical research specifically focused on the impact and feasibility of specialized prosecution models in Cambodia is notably lacking. Most existing studies concentrate on general anti-corruption policies and frameworks rather than on the specifics of institutional approaches. There is a clear need for further research to tailor global knowledge to Cambodia's unique context, evaluate the effectiveness of specialized prosecution systems, and address the practical challenges of implementing such reforms in a meaningful and sustainable way.

C. Purpose of the Research

The purpose of this study is to evaluate the feasibility of implementing a special prosecutor system in Cambodia as a means to combat systemic corruption within law enforcement and restore public trust in the justice system. By examining the alignment of this model with Cambodia's political, economic, and social contexts, the study aims to determine whether such a reform could address the prevalent issues of corruption and mistrust, reduce the rise of mob justice, and ultimately strengthen the legitimacy and functionality of law enforcement institutions. This research will provide insights into whether adopting a special prosecutor system could be a viable strategy for enhancing governance and ensuring fair and impartial justice in Cambodia.

D. Significance of the Research

The significance of this study lies in its potential to address critical issues undermining law enforcement legitimacy and social stability in Cambodia. By exploring the feasibility of implementing a special prosecutor system, the study aims to offer a solution to the pervasive corruption within the Cambodian justice system that has eroded public trust and led to increased instances of vigilante justice. Understanding whether this model can effectively tackle corruption and restore confidence in law enforcement could provide a pathway to enhancing the rule of law, improving public safety, and fostering greater social cohesion. Moreover, the findings could inform broader discussions on governance reform and anti-corruption strategies, offering valuable lessons for other nations facing similar challenges. Ultimately, this study seeks to contribute to the development of more effective and trustworthy legal institutions, benefiting both the Cambodian society and its governance framework.

E. Limitation of the Research

The limitations of this study include several key factors. First, the assessment of the special prosecutor system's feasibility is constrained by the availability and reliability of data on corruption and law enforcement practices in Cambodia, which may be incomplete or biased. Second, the study may face challenges in accurately predicting how the introduction of special prosecutors would interact with existing political and institutional dynamics, as well as potential resistance from entrenched interests. Third, the generalizability of findings may be limited due to the unique socio-political context of Cambodia, making it difficult to apply conclusions universally across different settings.

F. Research Methodology

Research Design: This study employs a qualitative approach to delve into complex phenomena of special prosecutor and police legitimacy, uncover nuanced meanings, and obtain comprehensive insights from secondary sources. This approach is valuable when the goal is to gain a deeper, nuanced understanding of a subject.

Data Collection: Data were gathered from a range of secondary sources to ensure a thorough examination of the topic. This includes 24 academic manuscripts, 49 journal articles, and various government reports/documents, supplemented by numerous internet articles. Data are collected from academic databases such as Google Scholar, SSRN, Taylor & Francis, among others. Additionally, policy papers and reports are sourced from institutional websites and digital archives.

Data Evaluation: Sources are selected based on their alignment with key research topics such as police corruption, special prosecutors, conflict of interest, procedural justice, police legitimacy, mob justice, and impunity. Emphasis is placed on recent sources, with 58.33 per cent of manuscripts and 63.27 per cent of journal articles published within the last ten years to ensure up-to-date information. Priority is given to sources published by renowned institutions with established expertise in international relations, human rights, and legal reforms, including the OHCHR, UNODC, Transparency International, and esteemed law journals like the Loyola University Chicago Law Journal, Iowa Law Review, and Emory Law Journal, etc.

Data Analysis: In analyzing the data for this study, a multi-faceted approach is employed, incorporating thematic analysis and triangulation to ensure a thorough understanding. Thematic analysis uncovers recurring themes related to police corruption and the potential impact of a special prosecutor, such as procedural justice, conflict of interest, and

police legitimacy, providing a nuanced view of these issues. Triangulation enhances the credibility and validity of the findings by cross-verifying data from various sources to construct a comprehensive picture of the feasibility of the special prosecutor model.

Ethical Considerations: This study prioritizes ethical practices by ensuring all secondary sources are properly cited, thereby respecting intellectual property and preventing plagiarism. Furthermore, the analysis will be carried out with a firm commitment to scholarly integrity and objectivity.

G. Structure of the Research

This paper is divided into three chapters. Chapter I delves into the legitimacy of police forces, emphasizing that perceived legitimacy—shaped by procedural justice and fair treatment—affects public compliance and trust. It discusses how corruption and misconduct can erode this legitimacy, impacting overall trust in the police and political system.

Chapter II evaluates different special prosecutor models, including those from South Korea, the U.S., and Spain, assessing their effectiveness in handling corruption and high-profile cases. It explores their structural nuances, appointment processes, and operational hurdles, focusing on their balance between independence and accountability.

Chapter III reviews Cambodia's current frameworks for mitigating prosecutorial bias, assessing the potential benefits and challenges of adopting a special prosecutor system. It evaluates the political, economic, and social conditions influencing the feasibility of such a reform, considering legal, institutional, and resource-related obstacles. The study concludes by weighing the benefits and drawbacks of the special prosecutor model against alternative

reforms, recommending enhancements to existing mechanisms and addressing internal police cultural issues to improve accountability and transparency in a more pragmatic manner.

I. THE CONCEPT OF POLICE LEGITIMACY

The law enforcement system in Cambodia is composed of the Gendarmerie and the Cambodian National Police (CNP). The Gendarmerie is chiefly engaged in military police duties, tasked with preventing organized crime, terrorism, and actions by nefarious factions, whilst the CNP undertakes the enforcement of the law in more rural regions.

The national police are officially managed by the General Commissariat of Police, which falls under the Ministry of Interior's oversight. While the Interior Minister and Police Commissioner possess some degree of discretion in daily operations, major decisions require consultation with the Prime Minister. At the sub-national level, the police structure remains hierarchical. The Provincial Police Commissariat reports directly to the Provincial Governor, and district police officers operate under the technical guidance of the Provincial Police Commissariat. Commanders are responsible for ensuring that lower-ranking officers follow legal orders and address any disciplinary issues that arise. Subordinate police officers must adhere strictly to their superiors' directives, which stifles their independence due to the rigid institutional hierarchy.

Since the signing of the 1991 Peace Agreements, Cambodia has made notable development progress after decades of conflict. However, democracy remains constrained. The institutions essential for a democratic system lack the necessary capacity, resources, and expertise. In particular, law enforcement agencies are either unable or unwilling to operate at a level that effectively upholds the rule of law. Regrettably, Cambodia's law enforcement system

is widely known to suffer from significant deficiencies, including inadequate training, widespread corruption, and a lack of regulations governing recruitment and promotion.¹⁹

In the latest Global Corruption Barometer (GCB) Asia 2020, which is the other main global measurement tool of TI that captures the experience that ordinary people have of paying bribes for local services as well as their perceptions of corruption—Cambodian citizens are well aware of the corruption across the country: 33 per cent of the 1,000 survey participants believe that government corruption is a big problem, and 37 per cent of participants who used public services had paid a bribe in the previous 12 months. When it comes to the police, 14 per cent of participants also think that most or all members of the police are corrupt (the highest percentage by institutions), and 38 per cent of participants paid bribes to the police in the past 12 months (second only to identity documents service, at 40 per cent).²⁰ These bleak numbers illustrate a considerable lack of trust in government and a general deterioration of the national integrity system and institutions like the police that should be at the forefront of the fight against corruption.

This is not surprising, as the early architects of modern police organizations recognized that a public police agency could be either a blessing or a curse in a democracy.²¹ The police, due to their nature, could either protect liberty or oppress a free society. Their close contact with diverse actors, control over vice activities, discretion, and low-visibility decision-making—often with minimal supervision—along with the inherent power of the role, creates ample opportunities for engaging in various forms of deviant behavior, including corruption, making police work exceptionally "morally dangerous" compared to other professions.

¹⁹ Elizabeth Johnson, *Corruption, Violence and Gender: A critical look at police behaviour and a path to reform in Cambodia* (Phnom Penh: Heinrich Böll Foundation, 2014), 7.

²⁰ Vrushi, *Corruption Barometer*, 39.

²¹ Tom Barker, *Police Ethics: Crisis in Law Enforcement* (Illinois: Charles C Thomas Pub Ltd, 2011), 10.

It is important to note that the Cambodian government, international donors, and civil society organizations have invested substantial resources in improving the national police. Their efforts have involved establishing a Police Academy and regional training centers, which have contributed to improving officers' knowledge and skills. Despite these measures, corruption within the national police remains pervasive. This suggests that the current initiatives to reform and improve the police are insufficient.²² As long as the integrity and accountability of law enforcement agencies remain limited, Cambodia will continue to face challenges in developing a trustworthy and credible governance system.

1.1. Introduction of Police Legitimacy

The public's actions can significantly impact the functioning of the criminal justice system. Experts emphasize that the effectiveness and efficiency of justice institutions hinge on their capacity to foster cooperative behaviors.²³ Chaos would ensue in a justice system where people actively resist, evade, or undermine its processes. Previous studies indicate that the majority of individuals comply with the law because they perceive it as legitimate.²⁴ In line with the legitimacy or social norms model, law enforcement can enhance their ability to co-produce security by fostering a widespread belief that their actions and decisions are valid and acceptable.

When individuals follow an authority or institution not because of coercion, but because they genuinely believe that the authority's decisions and rules are morally correct and should

²² Johnson, *Corruption, Violence and Gender*, 8.

²³ Joseph Hamm, Rick Trinkner, and James Carr, "Fair Process, Trust, and Cooperation: Moving toward an integrated framework of police legitimacy," *SSRN* (2019): 1-42, 3.

²⁴ Tom Tyler and Jeffrey Fagan, "Legitimacy and Cooperation: Why Do People Help the Police Fight Crime in Their Communities?" *Ohio State Journal of Criminal Law* 6, no. 231 (2008): 231-275, 235.

be adhered to, that authority is considered legitimate.²⁵ In the context of law enforcement, legitimacy encompasses two key judgments. First, there is the concept of obligation to obey. When the police are seen as legitimate, individuals feel a sense of duty to defer to their decisions and rules. They willingly cooperate and follow these guidelines out of a genuine obligation, rather than merely fearing punishment or expecting rewards. The second aspect is public trust and confidence in the police. This revolves around the belief that the police carry out their duties effectively, maintain honesty, and can inspire public confidence in their competence.²⁶

Enhancing the perception of police legitimacy within a community can have dual benefits: it may decrease overall community crime levels and boost the community's proactive efforts to prevent and control crime. When citizens view the police as legitimate, they feel a sense of duty to willingly follow their instructions. Moreover, this legitimacy-driven cooperation seems to lead to indirect positive effects, including reduced crime rates, decreased reoffending, and less social disorder. Notably, studies indicate that areas where legitimacy policing is implemented experience a significant relative reduction of approximately 10% in overall crime and disorder.²⁷

However, across various contexts, police forces have typically aimed to maintain order primarily using a deterrence approach—the so-called “social control” or “instrumental model.” This model assumes that people act rationally and make calculated choices. Their avoidance of criminal behavior is rooted in the fear of being detected and punished by the criminal justice

²⁵ Tom Tyler et al., “Chapter 2. Legitimacy and Criminal Justice: International Perspectives,” in *Legitimacy and Criminal Justice: International Perspectives*, ed. Tom Tyler (New York: Russell Sage Foundation, 2007), 10.

²⁶ Elise Sargeant et al., “Chapter 2. Legitimacy and Policing,” in *Policing and Security in Practice: Challenges and Achievements*, ed. Tim Prenzler (Hampshire: Palgrave Macmillan, 2012), 21.

²⁷ Angela Higginson and Lorraine Mazerolle, “Legitimacy policing of places: The impact on crime and disorder,” *Journal of Experimental Criminology* 10, no. 4 (2014): 429-457.

system.²⁸ While it is true that police have the authority to use arrest, threats, and varying levels of force to ensure compliance, they also recognize the downsides of such approaches. These downsides include risks—both to officers and citizens—as well as the potential strain on police-community relations. As a result, police understand that maintaining order in society requires strategies beyond relying solely on their legal powers.²⁹

Moreover, trying to wield influence over others purely based on one's power is both expensive and ineffective.³⁰ Deploying power, especially coercive power, demands significant resources to achieve only modest and restricted influence over others. Moreover, this influence is effective only in contexts where robust surveillance mechanisms are in place. The impact of coercion does not endure beyond the immediate presence of a police officer. People who comply solely because an officer is nearby tend to revert to non-compliance once that officer departs.

1.2. How Police Legitimacy is Built

It is now painfully evident that the forceful and aggressive tactics that used to dominate policing actually backfire. Instead of promoting cooperation, they often lead to resentment and counterproductive behavior from the public.³¹ Numerous scholars provide evidence supporting the notion that perceptions of legitimacy play a more significant role in predicting compliance with the law than perceptions of deterrent risk.³² In other words, what society considers socially expected behavior matters more than mere calculations of risks and rewards. The implications

²⁸ Justice Tankebe, "Chapter 11. Police Legitimacy," in *The Oxford handbook of police and policing*, eds. Michael Reisig and Robert Kane (New York: Oxford University Press, 2014), 238.

²⁹ Sargeant et al., "Legitimacy and Policing," 20.

³⁰ Tyler et al., "Legitimacy and Criminal Justice," 10.

³¹ Hamm, Trinkner, and Carr, "Fair Process," 3.

³² Jonathan Jackson et al., "Policing by consent," *Topline Results (UK) from Round 5* (2012): 1-14, 10.

for criminal policy are crystal clear: Strategies for crime control should extend beyond mere deterrence—beyond increasing the threat of punishment. Instead, justice systems must actively convey their trustworthiness and assert their legitimate authority to govern.

Procedural justice theory offers a framework for understanding cooperation and compliance within group settings. This theory, originally developed in the context of criminal justice, is applicable to any group where individuals operate with distinct roles and power dynamics, such as workplaces. Scholars in this field examine how cooperation and compliance are motivated and sustained, focusing on the relationship between group authorities and members. A key factor in this relationship is the perceived fairness of the procedures through which authorities exercise their power.³³ When individuals feel treated equitably by those in positions of authority, they are more likely to view that authority as legitimate. This legitimacy, in turn, fosters cooperation and compliance.

Social identity plays a pivotal role in this process.³⁴ The behavior of authorities towards individuals has implications for their sense of belonging and value within the group. Fair procedures signal inclusion and status, conveying that individuals are valued members of the group. Moreover, such procedures reinforce the group's worthiness of membership. When individuals' identification with a group is activated and salient, and when they feel more included, they are motivated to act in ways that support the group and its authorities.

In accordance with the procedural justice model, the legitimacy of law enforcement is closely tied to how the public perceives the fairness of the decision-making processes and

³³ Ben Bradford, "Chapter 3. The Dog That Never Quite Barked: Social Identity and the Persistence of Police Legitimacy," in *Changing contours of criminal justice*, eds. Mary Bosworth, Carolyn Hoyle, Lucia Zedner (Oxford: Oxford University Press, 2016), 31.

³⁴ Bradford, "The Dog," 31.

exercise of authority by the police.³⁵ To be considered legitimate, police officers must not only adhere to established norms and legal frameworks but also conduct themselves ethically in the eyes of the public.³⁶

Procedural justice involves treating individuals with dignity and respect, providing them with an opportunity to explain their circumstances, and actively listening to their perspectives. It also entails transparent communication regarding police actions, ensuring that individuals understand how decisions are made and that their concerns are being considered. Research suggests that police performance can significantly influence public perceptions, including legitimacy and other attitudes towards the police: (1) individuals are more satisfied when they have the chance to present their side of the story, explaining their situation or behavior to authorities; (2) public satisfaction increases when individuals believe that authorities' decisions are grounded in facts and evidence; (3) treating individuals with dignity and respect fosters positive public attitudes towards the police; and (4) explaining actions in a way that demonstrates consideration of citizens' concerns and needs enhances trust in authorities.³⁷ Conversely, when individuals perceive procedural unfairness, they may feel excluded from the group, undervalued, and perceive authorities as acting inappropriately. This can undermine police legitimacy. Additionally, indirect experiences of policing, such as vicarious or mediated accounts, can have similar effects on public perceptions.

The inherent nature of police work often leads to a lack of trust among citizens. People are naturally self-interested and seek favorable outcomes when interacting with criminal justice authorities. However, when police officers must impose limits on citizens—whether by choice

³⁵ Sargeant et al., “Legitimacy and Policing,” 22.

³⁶ Sargeant et al., “Legitimacy and Policing,” 22.

³⁷ Robert Worden and Sarah McLean, eds., “Chapter 1. The Procedural Justice Model as Reform,” in *Mirage of Police Reform: Procedural Justice and Police Legitimacy* (California: University of California Press, 2017), 7.

or legal obligation—their authority can become unwelcome. Trust plays a pivotal role in the success of legal institutions, and fair procedural interactions with citizens foster public cooperation. These procedural practices are assessed as fair in ways that are distinct (though not entirely independent) from their outcomes. Unfortunately, when citizens lose trust in the police due to factors like corruption, police brutality, excessive force, or ineffective policing, their overall trust in the effectiveness of democracy diminishes.³⁸

1.3. How Police Legitimacy is Lost

Everyday interactions between the police and the public play a pivotal role in shaping confidence and legitimacy. Research consistently shows that positive experiences with law enforcement increase public confidence, while negative encounters erode it. Notably, instances of police corruption significantly impact perceptions of trustworthiness and effectiveness. Consequently, citizens may withhold trust from legal authorities, opting for alternative arrangements—sometimes even resorting to vigilantism. When perceived injustice prevails, it can trigger defiant reactions that may escalate to lawbreaking and vigilante violence.³⁹

The crux of the matter lies in this: Once police corruption, inefficiency, or procedural injustice erode public trust in law enforcement (and, by extension, the entire criminal justice system), it becomes exceedingly difficult to maintain or justify claims of police legitimacy.⁴⁰ Consequently, certain segments of society may feel emboldened to challenge these claims through acts of vigilante violence. When the public lacks trust in the police, they become

³⁸ Mahesh Nalla and Yongjae Nam, “Corruption and Trust in Police: Investigating the Moderating Effect of Procedural Justice,” *International Journal of Offender Therapy and Comparative Criminology* (2020): 1-26, 3.

³⁹ Justice Tankebe, “Public Confidence in the Police: Testing the Effects of Public Experiences of Police Corruption in Ghana,” *The British Journal of Criminology* 50, no. 2 (2010): 296-319, 300.

⁴⁰ Justice Tankebe, “Self-Help, Policing, and Procedural Justice: Ghanaian Vigilantism and the Rule of Law,” *Law & Society Review* 43, no. 2 (2009): 245-269, 252.

reluctant to defer to law enforcement and accept their assertions of exclusive authority in maintaining security and handling lawbreakers during peacetime.

Regardless of how it is defined, police corruption is always disastrous, often more so than other forms of public corruption. Police have unique powers that can be abused, such as the ability to arrest, use force, and selectively enforce laws. This discretionary power creates opportunities for corruption that are not present in other professions. When police abuse their power for personal gain, it can have far-reaching consequences beyond typical bureaucratic corruption. Few things undermine long-term trust and confidence more swiftly than a police officer who exploits their authority through corruption, criminal conduct, or administrative misbehavior, all to the detriment of the community.⁴¹ Such actions signal a departure from the rule of law and serve as indicators of broader illegitimacy and instability within the entire governance system.

Police corruption not only undermines public confidence in law enforcement but also disrupts collaboration with the criminal justice system. Beyond this immediate impact, it extends further, eroding support for the entire political order.⁴² The actions of the police are tightly woven into regime performance—they serve as a visible representation of the state's response to everyday issues. Interestingly, it is often the police, rather than congressmen or locally elected officials, who are the first public figures encountered by people when safety concerns arise. Consequently, citizens' perceptions of the police play a pivotal role in determining regime legitimacy, sometimes contributing as significantly as trust in other key political institutions.⁴³ Empirical data reveal a clear pattern: the more individuals witness or

⁴¹ Jeffrey Noble and Geoffrey Alpert, *Managing Accountability Systems for Police Conduct: Internal Affairs and External Oversight* (Illinois: Waveland Press, 2008), 1.

⁴² Cruz, "Political Legitimacy," 251.

⁴³ José Cruz, "Police misconduct and democracy in Latin America," *Americas barometer insights* 33 (2010): 1-5, 1.

experience police misconduct, the greater their erosion of trust in regime institutions and the overall political system. In essence, when police officers abuse their authority, it not only diminishes confidence in law enforcement but also casts doubt on the broader regime.⁴⁴

The implications drawn from these findings are unequivocal. Given the inherently coercive nature of police work and the moral risks it poses for officers, a steadfast commitment to controlling corruption becomes imperative. While complete eradication of police corruption remains an unattainable ideal, the manifold negative consequences associated with it underscore the need to actively prevent or manage corruption—even if the outcomes of such efforts occasionally disappoint. As the saying goes, ‘If a regime consistently turns a blind eye to corruption that is visible to most, if not all, citizens and officials, then respect for the regime’s authority—and perhaps even the entire system—will inevitably wane over time.’⁴⁵ Hence, effective control of corruption within the police force yields substantial implications for both the perpetuation and preservation of police legitimacy. By demonstrating that police authority is wielded practically in service of citizens’ interests, such efforts contribute to upholding the rule of law.

Throughout history, corruption has been addressed primarily through criminal law enforcement. When we talk about corruption, legal systems often view it as a specific offense. One common strategy to combat corruption is deterrence. This approach is rooted in models of rational criminal behavior. Essentially, these models assume that individuals will choose illegal acts—like corruption—if the expected benefit outweighs that of legal alternatives. To enhance

⁴⁴ Cruz, “Political Legitimacy,” 273.

⁴⁵ Tankebe, “Public Confidence in the Police,” 300.

compliance with the law, government authorities can increase the perceived risks (likelihood of detection) and/or the severity of sanctions associated with corrupt behavior.⁴⁶

From a deterrence standpoint, holding individuals accountable for criminal actions can play a multifaceted role in society. Firstly, it contributes to healing by prosecuting and penalizing past offenses, offering some semblance of justice to victims. Secondly, it acts as a deterrent against future crimes, discouraging potential wrongdoers. Thirdly, by addressing active spoilers—those who disrupt peace and stability—it directly contributes to conflict prevention. Additionally, criminal accountability helps reinforce societal norms by prosecuting wrongdoing and punishing perpetrators. Importantly, it provides a voice to victims, allowing them closure for past injustices and strengthening the social fabric. Lastly, effective prosecutions can restore public confidence in the state and reaffirm the social contract, ultimately bolstering legitimate state authority.⁴⁷

However, relying solely on criminalization as a strategy is considered inadequate for curbing corruption. Instead, there is a growing emphasis on implementing corruption prevention strategies that target not only the specific instances of corruption but also the underlying factors that facilitate its occurrence. This trend is gaining significant momentum in a comparative context.⁴⁸ Nevertheless, combating corruption through enforcement remains crucial. Successfully prosecuting and convicting wrongdoers serves a dual purpose: it not only punishes the perpetrators but also acts as a deterrent, sending a clear message that impunity will not be tolerated—particularly in cases of high-level corruption.

⁴⁶ Amadou Boly, Robert Gillanders, and Topi Miettinen, “Deterrence and legitimacy in anti-corruption policymaking,” *Working Paper Series N° 277* (2017): 1-53, 2.

⁴⁷ Justice and Corrections Service and OROLSI, *National Criminal Accountability Mechanisms and Their Contribution to the Peacebuilding Agenda*, 3.

⁴⁸ Enrico Carloni and Raffaele Cantone, “Chapter 2. Limits of Corruption Repression and New Prevention Policies,” in *Understanding and Fighting Corruption in Europe*, eds. Enrico Carloni and Michela Gnaldi (Switzerland: Springer, 2021), 9.

Crucially, empirical evidence indicates that having a chance of being detected and punished can effectively reduce corruption.⁴⁹ Studies demonstrate that even when law enforcement resources are limited and consistency is lacking, they can still make a difference in curbing corruption. Additionally, researchers highlight the symbolic significance of law enforcement's response to corruption, particularly in contexts where corrupt officials face neither shame nor rejection from their communities and peers. These findings underscore the importance of supporting even modest anti-corruption law enforcement efforts, particularly in cultural settings where corruption is tolerated.⁵⁰

⁴⁹ Boly, Gillanders, and Miettinen, "Deterrence and legitimacy," 2.

⁵⁰ Gerhard Anders, Fidelis Kanyongolo, and Brigitte Seim, "Corruption and the impact of law enforcement: insights from a mixed-methods study in Malawi," *The Journal of Modern African Studies* 58, no. 3 (2020): 315-336, 333.

II. THE ROLE OF SPECIAL PROSECUTOR IN LEGITIMACY RESTORATION

Due to the historical influence of the French protectorate, there exist several parallels between the prosecution of criminal cases in France and Cambodia. Specifically, just like France, Cambodia's criminal justice system traces its roots to the inquisitorial tradition. In this approach, a state official—either a prosecutor or an investigating judge—conducts an official inquiry, gathering both incriminating and exculpatory evidence. In contrast, the adversarial model of criminal procedure assigns the task of evidence collection to both the prosecution and the defense, each building their case independently.

In Cambodia's court system, there exists a three-tier structure. This includes 25 Municipal/Provincial Courts (at the first tier), 1 Military Court (also at the first tier), 1 Appeal Court (at the second tier), and 1 Supreme Court (at the third tier). Each court, regardless of level, is attached with a prosecution office. Within Cambodian criminal courts, the relationship between police and prosecutors follows a hierarchical arrangement. The Royal Prosecutor Departments primarily oversee cases brought before the judicial police.

In the legal context, the prosecutor, alongside the trial judge and the investigating judge, holds the role of a professional magistrate. However, the prosecutor is not considered a judicial officer in precisely the same manner as the trial judge or the investigating judge. While the latter two belong to what is known as the "sitting judiciary," the prosecutor is part of the "standing judiciary."⁵¹ While adjudicating judges and investigating judges enjoy independence, being accountable solely to the Supreme Council of the Magistracy— an autonomous body tasked with safeguarding judicial independence through the appointment and discipline of

⁵¹ Jacqueline Hodgson and Laurène Soubise, "Prosecution in France," Oxford Academic, November 2, 2016, <https://academic.oup.com/edited-volume/41333/chapter/352363260>.

judges—the role of prosecutors differs markedly. Prosecutors operate within a hierarchical structure, subject to the authority and control of superiors. At the apex of this hierarchy stands the Minister of Justice, who possesses the power to regulate prosecutorial conduct even during criminal proceedings.⁵² This subordination to political authority raises concerns about the prosecutor’s independence. However, it also serves as a mechanism to ensure that criminal justice policy remains squarely within the government’s purview, preventing undue discretion by individual prosecutors. Consequently, prosecutors find themselves navigating a hybrid role—one that straddles both executive and judicial functions.

While prosecutors can participate in various investigations, their role tends to be relatively passive.⁵³ This is because in Cambodia, akin to the legal framework in France, criminal prosecutions do not invariably proceed directly to trial court following a police investigation that was supervised by a prosecutor. Instead, an intermediary phase known as the judicial investigation exists. During this phase, investigating judges assume responsibility, particularly in cases involving serious offenses. The judicial investigation functions as a filtering mechanism: the investigating judge conducts a comprehensive examination of criminal complaints and prepares cases for trial. Importantly, their role transcends alignment with either the prosecution or the defense; rather, they operate in the interest of the state, seeking to uncover the truth behind criminal charges. While the prosecution authority wields coercive powers to bring the guilty before court, the investigating judge, focused on truth-seeking, ensures the preservation of fundamental rights.⁵⁴ In the inquisitorial system, the prosecutor is not entrusted

⁵² Jacqueline Hodgson, "The French Prosecutor in Question," *Washington and Lee Law Review* 67, no. 4 (2010): 1361-1411, 1368.

⁵³ Dae-Hyun Choe, "Prosecutors' role and their relationship with the police in South Korea: In a comparative perspective," *International Journal of Law, Crime and Justice* (2018): 1-9, 4.

⁵⁴ Akila Taleb and Thomas Ahlstrand, "The public prosecutor, its role, duties and powers in the pre-trial stage of the criminal justice process: a comparative study of the French and the Swedish legal systems," *International Review of Penal Law* 82 (2011): 523-540, 532.

with the authority to infringe upon rights; only a judge, who is independent from the executive branch, holds that power. Should any infringement of these rights become necessary for a specific period, only a judge, such as the investigating judge, is entitled to issue such an order.

Hence, in the Cambodian procedure, investigations are categorized into three groups. Firstly, serious crimes are primarily investigated by the investigating judges. Secondly, flagrant crimes fall within the purview of the police. This category encompasses situations where an offense is actively occurring or has just taken place, or where the suspect is promptly reported due to public outcry or possession of incriminating evidence. Finally, minor criminal cases are handled by the police under the supervision of prosecutors. These latter investigations are commonly referred to as preliminary investigations.

While public prosecutors possess statutory authority to guide police investigations, they refrain from excessive involvement due to systemic constraints. Notably, the pivotal role in investigations lies with the investigating judge rather than the prosecutor. When dealing with serious crimes, the investigating judge assumes control, overseeing the investigation. Furthermore, even in cases involving minor or flagrant offenses, the practical role of prosecutors primarily revolves around approving the measures taken by the police.⁵⁵ This tendency stems from the fact that prosecutors often avoid delving too deeply into what is colloquially termed “police work,” unless compelled to do so.⁵⁶ The disengagement of prosecutors from case investigations aligns with prevailing legal cultural norms regarding supervision and direction. In practice, there is a recognition that cooperation and trust are more conducive to fostering effective working relationships than rigid assertions of authority.

⁵⁵ Choe, “Prosecutors’ role,” 4.

⁵⁶ Jacqueline Hodgson, “The Police, the Prosecutor and the Juge D’Instruction: Judicial Supervision in France, Theory and Practice,” *The British Journal of Criminology* 41, no. 2 (2001): 342-361, 351.

The paradoxical relationship between prosecutors and law enforcement can pose significant risks to the administration of justice. Fraternalization between these two groups can create conflicts of interest, hindering the prosecutor's role as a neutral arbiter.⁵⁷ These conflicts can manifest in financial, political, or personal forms. Moreover, closer ties between prosecutors and law enforcement can lead to increased opacity in the criminal justice system, as both parties may protect each other, impeding efforts at reform.

As long as law enforcement power remains in the hands of individuals susceptible to corruption, the public interest is at risk. A viable solution involves granting investigative and prosecutorial authority to an independent body capable of conducting impartial inquiries. Strengthening the criminal justice process by ensuring that investigations and prosecutions are free from actual or perceived conflicts of interest is essential for enhancing public trust.

2.1. Introduction of Special Prosecutor

In general, our instincts guide us to steer clear of situations where there could be any link between defendants and the investigating or prosecuting agencies. Such connections might raise doubts about the impartiality and fairness of how a case is handled.⁵⁸ The public rightly expects investigators and prosecutors to assess potentially criminal behavior objectively, regardless of whether the individual involved is a perpetrator or a victim—upholding the principle of equality before the law.

In cases involving governmental corruption, particularly police corruption, a notable challenge arises: determining who should investigate and prosecute the matter. The standard

⁵⁷ Maybell Romero, "Prosecutors and police: An unholy union," *University of Richmond Law Review* 54, no. 4 (2020): 1097-1138, 1112.

⁵⁸ Abrams, "Distance Imperative," 208.

criminal process often involves both the suspect/accused and the investigator/prosecutor being employed by the same governmental entity. This situation creates a conflict of interest or, at the very least, the appearance of one. Typically, in any other context, it would necessitate selecting an external individual to handle the case.⁵⁹ Beyond the conflict-of-interest concerns, there is also the potential for bias or undue influence in such matters.

In many criminal justice systems, police suspects enjoy certain advantages that ordinary suspects do not. As central figures within this group of unchecked insiders, they wield influence over the entire system. Their insider status grants them knowledge about how the often opaque system operates. Even when they become criminal suspects themselves, they retain this insider knowledge and status. Paradoxically, their familiarity with the system and the relationships they've formed can sometimes make them seem immune to the law. Their crimes are rarely reported and even more rarely prosecuted.⁶⁰ Consequently, there has been widespread criticism regarding how police suspects are investigated (or not), charged (or not), convicted (or not), and ultimately punished (or not). As one author aptly put it, an officer is more likely to be "struck by lightning" than to face charges for a crime.⁶¹

Most importantly, the criminal justice system in most countries remains largely opaque to the public, accessible only to a select group of insiders—especially prosecutors and police officers. This exclusivity leaves the rest of us—defendants, victims, and ordinary citizens—on the outside, not just as participants but even as mere observers. The inherent opacity of the criminal justice machinery gives rise to two interconnected problems.⁶² First, it allows criminal justice professionals to operate within an unknown and unchecked sphere, dispensing justice

⁵⁹ Abrams, "Distance Imperative," 208.

⁶⁰ Kate Levine, "Police Suspects," *Columbia Law Review* 116 (2016): 1197-1258, 1208.

⁶¹ Kate Levine, "How we prosecute the police," *The Georgetown Law Journal* 104 (2015): 745- 776, 763.

⁶² Levine, "Police Suspects," 1206.

based on their own pressures and incentives, often without considering broader societal implications. Second, the veiled and seemingly arbitrary manner in which justice is meted out undermines the very purpose of our legal system: to encourage compliance with the law.

Current political attention to conflicts of interest arises from the understanding that such situations pose a heightened risk of corruption. While the mere existence of a conflict of interest is not inherently unfair, it does harbor the potential for biased or unjust behavior. Consequently, the failure to recognize, disclose, and appropriately manage conflicts of interest often serves as the starting point for serious corruption.⁶³ This underscores why effective conflict-of-interest management is a critical strategy in preventing corruption.

To address concerns about potential preferential treatment for government officials suspected of wrongdoing, special prosecutors are sometimes appointed to investigate such cases. A special prosecutor is an independent investigator who is not affiliated with the office that would typically handle the case, thereby avoiding potential conflicts of interest and ensuring subject matter expertise.⁶⁴ Special prosecutors play a crucial role in ensuring that no individual, including the highest government officials, is above the law. As a result, special prosecutors are typically reserved for exceptional circumstances where a crisis compromises the integrity of the ordinary legal process.

Historically, special prosecutors have been appointed to handle criminal cases in two primary scenarios: when a conflict of interest or other disqualification exists for the prosecutor, such as when they are themselves a defendant, and when the case involves politically sensitive

⁶³ Anne Peters, “Chapter 1. Conflict of interest as a cross-cutting problem of governance,” in *Conflict of Interest in Global, Public and Corporate Governance*, eds. Anne Peters and Lukas Handschin (Cambridge: Cambridge University Press, 2012), 28.

⁶⁴ Legal Information Institute, “special prosecutor,” last updated July 2021, https://www.law.cornell.edu/wex/special_prosecutor.

or controversial matters that government officials may hesitate to pursue.⁶⁵ Thus, a special prosecutor can be understood as an independent and impartial attorney, appointed from outside the normal prosecutorial hierarchy, to address specific deficiencies in the investigative or prosecutorial process.

Replacing the local prosecutor with an independent special prosecutor would address the perception problem related to conflicts of interest. The primary advantage lies in the special prosecutor's stronger incentive to exercise impartial discretion.⁶⁶ Freed from pre-existing relationships with local law enforcement, the special prosecutor could confidently pursue indictments when he genuinely believes charges are warranted. This approach removes any suspicion that he is merely using the system as a shield against public scrutiny.

The concept of a special prosecutor is rooted in the principles of conflict of interest and separation of powers. The lack of separation of powers often results in conflicts of interest, leading justice departments to neglect the investigation and prosecution of political actors and public officials with governmental ties who engage in misconduct.⁶⁷ This impunity can embolden others to engage in similar behavior.

To minimize political interference, special prosecutors are typically appointed from outside the government. Once appointed, they enjoy a degree of independence from the regular Justice Department hierarchy. While the extent of this independence may vary, most special prosecutors operate without direct, day-to-day oversight from the prosecutor general or the head

⁶⁵ Federation of American Scientists, "Special Prosecutors: Investigations and Prosecutions of Police Use of Deadly Force," December 12, 2014, <https://sgp.fas.org/crs/misc/specpro.pdf>.

⁶⁶ Robertson, "Restoring public confidence," 877.

⁶⁷ Moses Amagnya and Oluwagbenga Akinlabi, "Chapter 4. Can We Truly Find a Solution to Ghana's Corruption Problem? Assessing the Fight Against Corruption and the Effectiveness of the Office of the Special Prosecutor," in *Policing and the Rule of Law in Sub-Saharan Africa*, ed. Oluwagbenga Akinlabi (New York: Routledge, 2023), 72.

of government. Essentially, an independent special prosecutor would wield the same authority in charging decisions for police suspects as a local prosecutor does for civilian suspects.

Special prosecutors are granted the same formal powers as regular prosecutors, with one key distinction: their investigative and prosecutorial authority is limited to specific individuals or suspected crimes. In legal terms, special prosecutors possess limited jurisdiction rather than general jurisdiction.⁶⁸ In contrast to special prosecutors, ordinary prosecutors possess unrestricted or plenary authority to investigate and prosecute any crime within their geographical jurisdiction.

A significant challenge faced by special prosecutors is the intense public scrutiny they often operate under.⁶⁹ Public scrutiny often initiates the appointment of a special prosecutor. Even when this is not the case, the appointment typically generates significant media attention. This heightened visibility can make the job of a special prosecutor more complex than that of an ordinary prosecutor. Special prosecutors face intense political pressure to avoid any appearance of partisan bias or political motivation. However, this public scrutiny can also make it difficult for the government to interfere with their investigations or conceal wrongdoing.

Despite its advantages, the special prosecutor system is not without its flaws. Critics have argued that if a special prosecutor abuses their power, there may be no effective remedy, even at the political level. The special prosecutor's isolation from internal and external oversight can exacerbate the inherent risks associated with dedicated prosecution, such as a narrow focus, loss of perspective, and excessive preoccupation with a single suspect to the detriment of other interests.⁷⁰ Given the pressure to uphold their esteemed positions, special prosecutors may

⁶⁸ Andrew Coan, *Prosecuting the President: How Special Prosecutors Hold Presidents Accountable and Protect the Rule of Law* (New York: Oxford University Press, 2019), 8.

⁶⁹ Coan, *Prosecuting the President*, 19.

⁷⁰ Singer, "Embracing Federalism," 444.

exhibit a single-minded determination in their pursuit of targets, potentially bordering on obsession.⁷¹ Critics contended that special prosecutors may be unduly influenced by their own perceived moral superiority and a fervent, perhaps unrealistic, commitment to their desired outcome.⁷²

Although there are various methods to constrain the scope of special prosecutors' investigations, the risk of overreach is mitigated when their mandate is clearly defined and their authority is circumscribed. While governments should not unduly restrict the role of special prosecutors, carefully designed legislation can effectively address potential abuses of power.⁷³

While the potential for abuse of power by special prosecutors is a legitimate concern, it does not negate the need for their occasional appointment. The deterrent effect of the threat of such an investigation can be a valuable tool in upholding ethical standards within government. However, this deterrent power is only effective if the threat is credible, which requires the occasional exercise of this authority.⁷⁴

2.2. Rationale behind Special Prosecutor

2.2.1. Appearance of Justice

Historically, the responsibility for addressing corruption has been primarily delegated to local prosecutors. This approach often results in a fragmented response, with individual cases being handled independently rather than through a cohesive, nationwide strategy. In addition to this, several legal scholars have questioned the ethical implications of local prosecutors

⁷¹ Coan, *Prosecuting the President*, 19.

⁷² Singer, "Embracing Federalism," 444.

⁷³ Singer, "Embracing Federalism," 445.

⁷⁴ Coan, *Prosecuting the President*, 19.

pursuing charges against their closely affiliated police colleagues. These commentators have argued that the intimate relationship between police and prosecutors can compromise prosecutorial impartiality, potentially undermining public trust in the justice system.⁷⁵ While such concerns echo the principles governing lawyer and judge disqualification in conflict-of-interest cases, there has been limited scholarly exploration of how these principles apply specifically to the prosecution of police officers by local prosecutors.

The maxim "Justice should not only be done, but should manifestly and undoubtedly be seen to be done" underscores the ethical imperative that decision-makers must avoid deciding on cases where a reasonable and informed observer could reasonably question their impartiality.⁷⁶ This appearance standard ensures that public confidence in the fairness of the justice system is maintained. Justice systems prioritize the public perception of their actions because abstract truth alone does not confer legitimacy upon legal obligations. These obligations must be seen as authentic and justified by the public.

Empirical studies have demonstrated a correlation between public compliance with the law and perceived legitimacy of legal authorities.⁷⁷ A political institution is considered to possess strong legitimacy when it is widely accepted by the public as justified, appropriate, or deserving of support based on intrinsic moral, rather than merely out of fear of consequences or the hope of personal gain.⁷⁸

The unequal treatment of police officers in the criminal justice system can erode legitimacy in law enforcement. Research demonstrates that communities perceive law

⁷⁵ Levine, "Who Shouldn't," 1450.

⁷⁶ Anne Oakes and Haydn Davies, "Justice must be seen to be done: a contextual reappraisal," *Adelaide Law Review* 37, no. 2 (2016): 461-494, 461.

⁷⁷ Robertson, "Restoring public confidence," 857.

⁷⁸ Marc Bühlmann and Ruth Kunz, "Confidence in the judiciary: Comparing the independence and legitimacy of judicial systems," *West European Politics* 34, no. 2 (2011): 317-345, 319.

enforcement as less trustworthy when officers are not held accountable for their actions.⁷⁹ This lack of trust can have detrimental consequences for public safety, as law enforcement agencies depend on public cooperation for information and witness testimony. Progressive policymakers recognize that fostering public trust is essential for effective law enforcement and that accountability for all individuals, including police officers, is a crucial component of maintaining that trust.

It should be noted that while public confidence is a desirable outcome that supports the ends of justice, it is not intrinsically related to the nature of justice itself. This rationale assumes that a justice system could theoretically exist and function justly without public confidence, but it would be significantly less effective.⁸⁰ When discussing this rationale, scholars often differentiate between the actual substance of justice and its perceived appearance.

The primary purpose of legitimacy arguments in the prosecution of police officer is to enhance the credibility and authority of prosecutors, ultimately strengthening the functioning of the justice system. Legitimacy serves as an important metric for evaluating the effectiveness and credibility of an institution.⁸¹ Unfortunately, accusations of bias can often lead to claims of illegitimacy, which damage the credibility of the system.

Closely linked to the concept of legitimacy are notions of fairness and equity. Empirical studies demonstrate that a key factor influencing an individual's assessment of a legal authority's legitimacy is their perception of procedural justice. This refers to the subjective belief in the fairness of the processes involved, rather than objective fairness. Individuals are more likely to

⁷⁹ Somil Trivedi and Nicole Van Cleve, "To serve and protect each other: How police-prosecutor codependence enables police misconduct," *Boston University Law Review* 100 (2020): 895-933, 913.

⁸⁰ Frederick Schumann, "The Appearance of Justice: Public Justification in the Legal Relations," *University of Toronto Faculty of Law Review* 66, no. 2 (2008): 189-227, 203.

⁸¹ Jessica Peake, "Chapter 34. The Institutional Framework of the Office of the Prosecutor, Legitimacy, and Overcoming Bias Allegations," in *Contemporary Issues Facing the International Criminal Court*, ed. Richard Steinberg (The Netherlands: Brill Nijhoff, 2016), 354.

accept unfavorable outcomes of legal proceedings if they believe the procedures used were fair.⁸² Legal authorities can therefore enhance the perceived legitimacy of their actions by implementing procedures that are widely viewed as fair by the public. Ultimately, the enduring legitimacy of an institution hinges on its ability to convince the public that its use of power is in accordance with universally applicable principles.⁸³

Procedural justice is particularly critical in the prosecution and investigation of police-suspects. Any perceived bias in these processes can lead to public dissatisfaction with the outcome, regardless of its accuracy.⁸⁴ The issue of perceived bias remains prevalent even when local prosecutors successfully indict and prosecute police officers. If police are not charged, the process may seem biased in their favor. Conversely, when local prosecutors aggressively pursue charges against police in high-profile cases, they may be accused of over-prosecution for political gain. Thus, any message about acceptable police conduct conveyed through these charges can be undermined by the perception that they are politically motivated rather than based on substantive evidence.

2.2.2. Inherent Conflict of Interest

The notion of the appearance of justice is intrinsically tied to conflict-of-interest law. In fact, the principle that "justice must satisfy the appearance of justice" originated from conflict-of-interest rulings concerning judges.⁸⁵ This standard does not require a determination that the judge is actually biased towards one side of a dispute to warrant disqualification. Instead, it

⁸² Robertson, "Restoring public confidence," 858.

⁸³ Peake, "Office of the Prosecutor," 353.

⁸⁴ Robertson, "Restoring public confidence," 860.

⁸⁵ Robertson, "Restoring public confidence," 862.

reflects the crucial obligation of judges to maintain the appearance of justice and impartiality at all times.

Given their quasi-judicial role as decision-makers, prosecutors should be held to the same standard of impartiality as judges.⁸⁶ Like judges, prosecutors act as representatives of the government and wield considerable discretionary power in criminal prosecutions. Consequently, they bear a similar obligation to uphold public confidence in the justice system by steering clear of perceived improprieties. Additionally, the public within a prosecutor's jurisdiction has a vested interest in ensuring that the justice system is perceived as fair. Therefore, any factor that jeopardizes this perception should be regarded as a conflict of interest warranting the prosecutor's recusal.

Conflicts of interest, understood as any personal belief or interest that could compromise a prosecutor's ability to serve the public interest, threaten to undermine the effectiveness and legitimacy of the criminal justice system.⁸⁷ Prosecutors make discretionary decisions that have significant consequences for both criminal defendants and the criminal justice system as a whole. The law assumes that prosecutors make these decisions impartially, without being influenced by their own self-interest or the interests of others. Public confidence in the fairness of the criminal justice system depends on this assumption.

Cooperation between prosecutors and law enforcement is a critical aspect of any criminal case. Maintaining positive relationships with individual officers and the police department as a whole is essential for a prosecutor's success in securing convictions and advancing their professional career. However, the same skills and relationships that facilitate a

⁸⁶ Robertson, "Restoring public confidence," 864.

⁸⁷ Bruce Green and Rebecca Roiphe, "Rethinking Prosecutors' Conflicts of Interest," *Boston College Law Review* 58 (2017): 463-538, 464.

functioning system when prosecuting civilian defendants can make local prosecutors less objective adversaries when it comes to prosecuting law enforcement.⁸⁸ When prosecuting an officer, the prosecutor must transition from relying on the police as allies to assuming the role of an adversary. Even disregarding the obstacles that law enforcement may place in the prosecutor's way, it is unrealistic to expect a prosecutor to seamlessly switch roles from ally to adversary the moment an officer is accused of criminal wrongdoing.

The close working relationship with, and reliance on, police can create two potential grounds for perceiving a conflict when local prosecutors are tasked with prosecuting police-suspects: first, the close relationship may foster mutual respect and admiration, which could influence a prosecutor's decisions, and second, the reliance on police to achieve professional goals can create the risk of harm to a prosecutor's career if they cross paths with the police.⁸⁹ These factors are inherent in the criminal justice system and will inevitably occur.⁹⁰ Therefore, presumptive disqualification is the only effective way to address them.

While not formally stated policy, it is widely understood that promotions within prosecutor's offices are often influenced by successful conviction rates. A prosecutor who reports police misconduct or advocates for the zealous prosecution of police officers may alienate law enforcement, potentially impacting their conviction rates and career advancement.⁹¹ The desire to maintain positive working relationships between police and prosecutors is itself a reason to presumptively bar local prosecutors from handling cases involving police-suspects. By automatically removing a local prosecutor from these cases, we spare them from having to navigate the competing demands of public accountability for police

⁸⁸ Levine, "Who Shouldn't," 1470.

⁸⁹ Robertson, "Restoring public confidence," 866.

⁹⁰ Robertson, "Restoring public confidence," 865.

⁹¹ Levine, "Who Shouldn't," 1472.

misconduct and the police officers' resentment at being subjected to excessive scrutiny, thereby preserving the local prosecutor's relationships with both their constituency and law enforcement partners.

Additionally, local prosecutors are not immune from bias. Evidence suggests that the executive branch, to which the prosecutor's administration is directly subordinate, often exhibits a bias towards state actors, including the police.⁹² This bias can make it difficult for prosecutors to adopt a critical perspective. In practice, prosecutors tend to rely on the police and are hesitant to scrutinize them. Even when officers are implicated in criminal cases, they are rarely criminally prosecuted, let alone tried.

Even if the perception of local prosecutors' bias in favor of police-suspects is unfounded, police-suspects may still possess advantages over civilian suspects. First, police officers are insiders within the criminal justice system, granting them special knowledge about how the opaque system operates. This advantage significantly benefits police-suspects compared to civilian suspects and defendants from the outset. Second, police officers enjoy numerous formal procedural protections. These advantages further reinforce the perception that police-suspects are not prosecuted fairly, making it even more crucial to ensure that the prosecutor is free from any apparent conflict of interest.⁹³

While law enforcement officers are subject to the ordinary criminal processes, including prosecution by the public prosecutor, the widespread corruption within law enforcement agencies and the relatively lenient punishments imposed on convicted police officers raise questions about the effectiveness of existing criminal processes in addressing police corruption and bringing corrupt officers to justice. Given the potential for an apparent conflict of interest

⁹² UNODC, *Handbook on police accountability, oversight and integrity* (New York: UNODC, 2011), 13.

⁹³ Robertson, "Restoring public confidence," 869.

in cases involving police officer as suspect, local prosecutors should be presumptively barred from prosecuting police officers in their own locality. To address this issue, it is recommended that an independent prosecutor, completely independent of other law enforcement agencies, with a sole focus on combating corruption, and with a broader geographical jurisdiction, would be better equipped to tackle corruption in law enforcement than local prosecutors.⁹⁴

2.3. Selected Models of Special Prosecutor

The following analysis focuses on three specific models of special prosecution: South Korea's High Independence Model, the United States' Moderate Independence Model, and Spain's Intensive Oversight Model. Each model represents a distinct approach to balancing prosecutorial autonomy with oversight. South Korea's model prioritizes high independence to reduce executive interference. In contrast, the United States combines moderate independence with oversight mechanisms to ensure accountability. Spain's model emphasizes intensive oversight to align closely with democratic principles.

The selection of these models is driven by their core feature: the effort to balance impartiality with accountability in prosecutorial functions. But why? The role of the special prosecutor has evolved significantly across different legal jurisdictions, but it is generally characterized by a degree of separation from the traditional law enforcement hierarchy in order to facilitate more impartial investigations and prosecutions.

Fundamentally, the special prosecutor is intended to operate with a level of autonomy that insulates them from the conflicts of interest that can sometimes arise when local prosecutors

⁹⁴ Maurice Nadjari, "New York State's Office of the Special Prosecutor: A Creation Born of Necessity," *Hofstra Law Review* 2, no. 1 (1974): 97-128, 120.

are tasked with investigating and potentially charging members of the same law enforcement agencies they work with on a regular basis. This separation is crucial for upholding the impartiality that is essential for public trust in the integrity of such cases.

At the same time, the special prosecutor must also be accountable to the same constituencies as the local prosecutors they are intended to replace. This means not only ensuring rigorous and unbiased pursuit of charges when warranted, but also maintaining strong ties to the local community and representing their interests.⁹⁵ Accountability helps to guard against the risk of prosecutorial overreach, which can further undermine public confidence, and it reinforces the special prosecutor's role as an impartial arbiter rather than an unilateral actor.

The careful balance of impartiality and accountability is therefore a defining feature of the special prosecutor's office, as jurisdictions seek to leverage this unique model to facilitate thorough, fair, and trusted investigations and prosecutions, particularly in sensitive cases involving law enforcement. The fundamental question lies in achieving a balance between the competing values of independence and accountability at the operational level.

The question is whether the advantages of independent prosecutions outweigh the potential costs associated with a loss of accountability when a special prosecutor is appointed. On the one hand, several commentators have asserted that an independent prosecutor, operating outside the executive branch, would not only mitigate conflicts of interest but also enhance transparency in decision-making and accountability to voters. These observations are more than theoretical; recent empirical evidence corroborates the hypothesis that prosecutorial independence from executive control fosters greater public confidence and overall improved

⁹⁵ Robertson, "Restoring public confidence," 880.

governance.⁹⁶ Thus, to prevent the misuse of special prosecutorial powers for political discrimination, it is imperative to sever the traditional hierarchical linkage between public prosecutors and the executive branch.⁹⁷ A truly “independent” special prosecutor necessitates a system that precludes executive authority over appointment, removal, and jurisdictional definition.

On the other hand, extensive empirical studies on the practical functioning of the system have consistently indicates that a system of public prosecution that lacks democratic accountability often leads to prosecutors actively seeking to weaken the oversight of other institutions to protect prosecutorial independence. Any external guidance or instruction can be framed as an infringement upon prosecutorial autonomy. This can result in a situation where independent prosecutors feel empowered to initiate and conduct investigations of any nature, targeting any individual, and employing any means necessary to verify alleged offenses.⁹⁸ Under this system, prosecutors are often shielded from accountability for their investigative decisions, even when their allegations are proven to be baseless in court.

The primary safeguard against potential abuses within the prosecutorial discretion in the normal system lies in the political accountability of the executive branch, which appoints and removes prosecutors. When crimes are not investigated and prosecuted impartially, non-selectively, and with appropriate proportionality, the governing party risks incurring significant political damage to its administration.⁹⁹ However, the role of an independent prosecutor is designed to operate largely autonomously and uninfluenced by the executive, thus weakening

⁹⁶ Fran Quigley, "Torture, Impunity, and the Need for Independent Prosecutorial Oversight of the Executive Branch," *Cornell Journal of Law and Public Policy* 20 (2010): 271-311, 293.

⁹⁷ Quigley, "Torture," 304.

⁹⁸ Giuseppe Di Federico, "Prosecutorial independence and the democratic requirement of accountability in Italy," *Brit. J. Criminol* 38, no. 3 (1998): 371-387, 379.

⁹⁹ Donald Daugherty, "The Separation of Powers and Abuses in Prosecutorial Discretion," *The Journal of Criminal Law & Criminology* 79, no. 3 (1988): 953-996, 979.

this check. Consequently, individuals under investigation may face the daunting prospect of prolonged and relentless scrutiny, which could extend to matters considered inconsequential or insufficient to merit indictment by a conventional prosecutor.

Hence, it is generally believed that by placing the prosecutorial function solely within the purview of the Executive Branch, accountability for its exercise is ensured, as the head of that branch must justify any excessive or uneven enforcement or face the consequences of diminished political standing.¹⁰⁰ Executive appointment also appears to have prompted the legislature, judiciary, and press to assume more active oversight roles in investigations. These other actors seemed to provide potential sources of support for the prosecutors, enabling them to maintain their independence from the executive while engaging in essential and productive cooperative relationships with various stakeholders. This heightened oversight activity served as a check on the prosecutors, preventing potential abuses of prosecutorial discretion.¹⁰¹ Rather than allowing non-executive actors to remain passive while the independent investigator pursues the investigation, the inherent tensions within the executive appointment model necessitate these other actors to actively participate in order to safeguard their institutional prerogatives.

Thus far, when evaluating the various models of special prosecutor, policymakers must consider the cost of executive appointment in conjunction with the benefits derived from retaining this appointment power. If independent prosecutors were entirely unaccountable entities, one could reasonably argue that these costs were necessary. However, accountability is not significantly lacking in the independent arrangement. Similarly, independence is not seriously compromised in oversight appointments.

¹⁰⁰ Daugherty, "Separation of Powers," 995.

¹⁰¹ Katy Harriger, *The special prosecutor in American politics* (Kansas: University Press of Kansas, 2000), 39.

2.3.1. High Independence Model: South Korea

In South Korea, the permanent Corruption Investigation Office for High-ranking Officials (CIO) is an independent institution responsible for investigating and indicting cases of corruption perpetrated by high-level officials, with a particular emphasis on legal professionals, including judges, police, and prosecutors. The CIO concept integrates decentralization with a more bureaucratic form of accountability, building upon the established framework of permanent special prosecutors.¹⁰² The CIO's independent status is legally guaranteed. It operates beyond the executive, legislative, and judicial checks and balances structures.¹⁰³ This status is conferred with the intention of preventing potential issues of political interference.

The crimes that the CIO is tasked with investigating primarily involve the abuse of official power and corruption. The primary targets of CIO investigations are high-ranking officials, those who have attained positions of significant power, or their family members while the official holds office. In the case of family members, the crimes investigated must be directly related to the official's duties.

The CIO consists of a maximum of 85 permanent staff members, including 25 prosecutors and 40 investigators. The Chief Prosecutor and Deputy Chief Prosecutor are at the head of the organization, responsible for managing the CIO. Regular prosecutors within the CIO are tasked with supervising the 40 investigators.¹⁰⁴

¹⁰² Neil Chisholm, "Prosecution Reform in South Korea: Mixing the Continental and Anglo-American Styles," *SSRN* (2023): 1-31, 7.

¹⁰³ Gwendolyn Domning, "Challenging the Power of the Prosecution? The First Phase of the Establishment of the Corruption Investigation Office for High-ranking Officials (Kowigongjikchabömjoesusach'ō) in the Republic of Korea," *Verfassung und Recht in Übersee / Law and Politics in Africa, Asia and Latin America* 54, no. 2 (2021): 279-300, 289.

¹⁰⁴ Domning, "Challenging the Power of the Prosecution?" 290.

To select the CIO's Chief Prosecutor, a special committee is formed to nominate two candidates, from whom the President of the Republic of Korea (ROK) chooses one. This "Recommendation Committee" comprises seven members: the Minister of Justice, the head of the National Court Administration (NCA), the president of the Korean Bar Association (KBA), two individuals appointed by the parliamentary negotiating body of parties affiliated with the ROK President, and two individuals appointed by the parliamentary negotiating body of parties not affiliated with the President. It is probable that most appointees to the Recommendation Committee would be aligned with the President, thus proposing nominees favorable to his political interests.¹⁰⁵ The President would undoubtedly have three committee members in his favor: the Minister of Justice and the two partisan allies. The opposition would control the two non-presidential party nominees. The KBA selects its own president, so whether its leader would or would not support the executive cannot always be predicted. However, the NCA's head is likely to be a presidential ally because this officer is appointed by the Chief Justice of the Supreme Court, and each ROK President has the opportunity to appoint a Chief Justice.

Investigators are directly appointed by the Chief Prosecutor of the CIO. Regarding the remaining CIO prosecutors, the Chief Prosecutor selects the Deputy Chief Prosecutor, while the other 23 prosecutors are chosen by the CIO's "Personnel Committee." This committee consists of seven members: the Chief Prosecutor, the Deputy Chief Prosecutor, a member appointed by the Chief Prosecutor, two individuals nominated by the parliamentary negotiating body of parties affiliated with the ROK President, and two individuals nominated by the parliamentary negotiating body of parties not affiliated with the President.

¹⁰⁵ Chisholm, "Prosecution Reform," 8.

Significantly, no more than half of the CIO's prosecutors can be current or former members of the Prosecutors' Office. This stipulation explicitly seeks to curtail the influence of the regular Prosecutors' Office on the CIO. The CIO's intricate personnel policy system is designed to establish a second prosecutorial organization distinct from the Prosecutors' Office.¹⁰⁶ The CIO's independence is theoretically safeguarded by the selection of its chief by an independent Recommendation Committee and the choice of its operational-level prosecutors by a Personnel Committee with a degree of political balance. These personnel measures are intended to diminish the agency's allegiance to the executive.

As a fully staffed bureaucracy, the CIO serves as an effective "check and balance" against the Prosecutors' Office, a primary objective of reformers. The CIO would compete with the Prosecutors' Office to demonstrate its effectiveness to the public. Reformers argue that having two prosecution offices competing against each other would enhance their prosecutorial independence in political cases.¹⁰⁷ The concept of enhanced performance through competition has gained appeal due to Korea's experience with apex courts. Since the establishment of the Constitutional Court, it has rivaled the Supreme Court (SC) for institutional prestige by issuing bold decisions and acting where the SC has not. As the newer Court has challenged the older, the SC's jurisprudence has shifted, demonstrating the success of this judicial competition in the Korean cultural context. It is conceivable that if the CIO makes corrupt or seriously flawed indictment decisions, the Prosecutors' Office could indict its staff. The two prosecutorial hierarchies have jurisdiction over each other's members, enabling them to check each other's actions. Whether and to what extent this will occur remains to be seen.

¹⁰⁶ Chisholm, "Prosecution Reform," 8.

¹⁰⁷ Chisholm, "Prosecution Reform," 22.

It is noteworthy that evaluating the independence of the CIO is challenging due to its recent establishment. Nonetheless, the CIO remains awkwardly reliant on the main prosecution service for many cases it investigates.¹⁰⁸ The CIO must refer to the Supreme Prosecutors' Office (SPO) all cases that do not involve justice officials which it deems should be prosecuted, and it can only request rather than compel the referral of cases in which the SPO initiated an investigation that ultimately implicates high-level public officials within the CIO's purview.

2.3.2. Moderate Independence Model: The United States

In the United States, to safeguard the integrity of investigations into high-level officials, the executive branch employs special counsels. These individuals are experienced attorneys, brought in from outside the government and granted the authority and resources to conduct specific investigations. Initially, the process for conducting these investigations was informal. US Presidents would appoint "special prosecutors" primarily as a gesture of good faith. Without formal standards, there was no mechanism to prevent these investigations from being fired if the prosecutor proved too effective in uncovering misconduct within the government.

Most famously, the firing of the special prosecutor investigating the Watergate scandal by President Richard Nixon—an event widely known as the Saturday Night Massacre—prompted Congress to pass the Ethics in Government Act (Ethics Act) to address the issue. This law allowed the Attorney General to request that a Special Division of federal judges appoint a temporary "independent counsel" to conduct investigations. The rationale was that the President and other high-level executive officials should be investigated by someone not ultimately

¹⁰⁸ Jin-Wook Kim and Todd Foglesong, "Which Corruption Cases to Investigate? Case selection in the Corruption Investigation Office of Korea," *The Chandler Papers* 12 (2024): 1-24, 6.

accountable to the President.¹⁰⁹ The Division of the Court was responsible for defining the independent counsel's investigative jurisdiction. Removal of the independent counsel was restricted to cases of "extraordinary impropriety, physical disability, mental incapacity, or any other condition that substantially impaired" the special prosecutor's duties. If removed, the independent counsel could promptly seek a review of their dismissal by filing a civil action before the Division of the Court.

Nevertheless, the Ethics Act faced criticism following the Whitewater independent counsel investigation into President Bill Clinton. Many in Congress concluded that the legislation did not provide adequate safeguards against potential abuses of power by independent counsels. There was a growing sentiment that these investigators possessed excessive authority and had expended significant time and resources on politically motivated allegations without yielding substantial results.¹¹⁰ In response to concerns about the independent counsel system, Congress allowed the Ethics Act to expire. Consequently, the Department of Justice (DOJ) took the initiative to establish internal regulations empowering the Attorney General to appoint "special counsels." This action was permissible because of the Administrative Procedure Act, which grants federal agencies the authority to promulgate regulations, even in the absence of specific statutory authorization, as long as these regulations are consistent with existing laws and the Constitution.¹¹¹ It is crucial to note that only Congress possesses the power to repeal an enacted law; the President lacks the authority to do so. However, the President does have the authority to revoke agency regulations. Therefore, the Attorney General's Special Counsel Regulations can be rescinded by the President at any time.

¹⁰⁹ Julian Cook III, "Prosecuting Executive Branch Wrongdoing," *University of Michigan Journal of Law Reform* 54 (2021): 401-440, 409.

¹¹⁰ Adrienne Blake, "You're Fired! Special Counsel Removal Authority and the Separation of Powers," *University of Baltimore Law Review* 48, no. 1 (2018): 93-116, 102.

¹¹¹ Blake, "You're Fired!" 103.

The Special Counsel Regulations, which remain in force today, mandate that the Attorney General appoint a special prosecutor in situations where the DOJ faces a conflict of interest or when it is deemed to be in the public interest to do so.¹¹² The selected Special Counsel must not be employed by the federal government, and their investigative jurisdiction is determined solely by the Attorney General. While the Counsel can request an expansion of their jurisdictional authority, the ultimate decision rests exclusively with the Attorney General.

A Special Counsel, while granted significant autonomy, operates within a framework of oversight by the Attorney General.¹¹³ This oversight includes requiring the Counsel to submit a budget for approval and adhere to DOJ practices, policies, and procedures. Additionally, the Attorney General retains the authority to review and approve the Counsel's planned actions and, if necessary, to discharge responsibilities, impose discipline, or terminate the Counsel's appointment. The regulations governing these actions outline grounds for removal, such as misconduct, dereliction of duty, incapacity, conflict of interest, or violation of Departmental policies. Although a Special Counsel can only be removed for "good cause," the Attorney General's authority to direct specific prosecutorial actions can be a factor in determining whether such cause exists. If a Counsel fails to comply with a lawful order from the Attorney General, it could potentially be considered "good cause" for removal.¹¹⁴ In turn, the Attorney General is accountable to the US House of Representatives and the Senate Judiciary Committees, as they are required to report to them on the appointment and dismissal of special counsels, as well as the conclusions of their investigations.

¹¹² Cook III, "Executive Wrongdoing," 412.

¹¹³ Kiki Caruson, "Public Watchdogs or Imperial Pitbulls: An Evaluation of Special Prosecutor Investigations of Executive Branch Misconduct," *Congress & the Presidency* 36 (2009): 80-114, 87.

¹¹⁴ Bruce Ledewitz, "What Is the Best Model for Investigating Presidential Wrongdoing, Today?" *Duquesne Law Review* 57 (2019): 225-251, 232.

Given the complexity of the cases, a Special Counsel may hire investigators and lawyers to handle the various aspects of the case. Although the Counsel and their team may be housed within the DOJ, their independence from the Department's broader operations is crucial for ensuring an unbiased and impartial investigation. To maintain this independence, the Special Counsel is accountable only to the Attorney General.

Also, the flexibility inherent in the appointment of a Special Counsel offers a distinct advantage in terms of investigative scope. The mandate can be broadly defined, encompassing potential offenses without the need for specific charges or named individuals. For example, the appointment of Robert Mueller was justified by the necessity to investigate "Russian government's efforts to interfere in the 2016 presidential election." The scope of his investigation was subsequently defined as "any links and/or coordination between the Russian government and individuals associated with the campaign of President Donald Trump."¹¹⁵

Beyond investigations into criminal activity within the U.S. Executive Branch, there is limited precedent regarding the rank of individuals targeted by Special Counsel appointments. Given the extensive scope of authority granted to Special Counsel, including the power to assemble a dedicated staff and conduct investigations independently of the DOJ chain of command, such appointments should be reserved for the most egregious cases and initiated by high-level executive officials. Only those with extraordinary power, such as senior members of the Executive Branch, warrant the appointment of a Special Counsel because the potential for subversion of a standard federal prosecution by them is a significant concern. Furthermore, the inherent political and actual conflicts of interest among these officials necessitate the extraordinary measure of a Special Counsel appointment.¹¹⁶

¹¹⁵ Ledewitz, "Best Model," 233.

¹¹⁶ Tiffany Murphy, "Prosecuting the executive," *San Diego Law Review* 56 (2019): 105-160, 114.

The Attorney General's decision to initiate or decline the appointment of a Special Counsel is generally not subject to judicial review. Moreover, once the appointment process commences, the President, acting through the Attorney General, likely exerts some influence over the selection of the Counsel. The President could reasonably anticipate that a political adversary would not be chosen for this role.¹¹⁷ Additionally, even though Presidents cannot directly dismiss inferior officers, such as Special Counsels, whom they did not appoint, there are at least two avenues through which a President could potentially obstruct an investigation conducted by a Counsel appointed by the DOJ.¹¹⁸ Given the President's authority over principal officers, they could direct the Attorney General to remove a Counsel. Secondly, as previously noted, the President could rescind the existing DOJ regulations pertaining to special counsels, thereby enabling them to directly terminate a Special Counsel.

Therefore, despite numerous regulatory measures, there remains a lack of statutory protections against a recurrence of the “Saturday Night Massacre.” This deficiency becomes particularly important when a Special Counsel, empowered by agency regulations, is tasked with investigating potential misconduct within an incumbent administration. To ensure the integrity of investigations into the federal government, including the Executive Branch, it is imperative to grant Special Counsel independence and protection. The current reliance on DOJ regulations is insufficient to guarantee these safeguards.

2.3.3. Intensive Oversight Model: Spain

In Spain, the Special Prosecutor’s Office against Corruption and Organized Crime (commonly known as Anti-Corruption and Organized Crime Prosecutor’s Office “ACPO”)

¹¹⁷ Ledewitz, “Best Model,” 232.

¹¹⁸ Adrienne Blake, “You’re Fired!” 97.

operates as a distinct prosecutorial body within the State Prosecution Service. Its primary mandate is to investigate and prosecute cases related to bribery and corruption that are deemed of “special importance.” The ACPO’s assigned prosecutors directly oversee pre-trial investigations and lead criminal prosecutions in court. Beyond the prosecutorial team, the Office also employs a cadre of specialists and experts from various relevant fields to support its mission.

Formally, the ACPO operates as an integral part of the Spanish prosecution service, sharing several key characteristics with its parent organization. Although the legal framework does not explicitly grant ACPO formal independence, it enjoys informal autonomy and holds national jurisdiction within the prosecution service. Nonetheless, the broader prosecution service adheres to principles of unified action and hierarchical structure. Consequently, the Prosecutor-General wields authority to issue instructions to individual prosecutors, including those within ACPO.¹¹⁹ ACPO diligently reports on all cases it handles to the Prosecutor-General, promptly communicating any relevant developments or potential restitutions of competence.

The ACPO possesses expertise in two primary categories of offenses: economic crimes and those perpetrated by public officials while carrying out their official duties. Moreover, for a case to be eligible for ACPO's involvement, it must not only fall within these categories but also be deemed of exceptional significance. The ACPO will only assume responsibility for criminal proceedings when a specific case exhibits such gravity (in terms of complexity, importance, harm, or other relevant factors) that it warrants their jurisdiction.

¹¹⁹ OECD, *Specialised Anti-Corruption Institutions: Review of Models*, 2nd ed. (OECD Publishing, 2013), 106.

Notably, when an offense falls under ACPO's jurisdiction, there is no requirement for a decision from the Prosecutor-General to initiate investigations. In cases where the special significance of an offense needs clarification, the Chief Prosecutor of ACPO seeks authorization from the Prosecutor-General to proceed. Furthermore, ACPO does not maintain its own separate annual budget; instead, it relies on funding allocated from the State Prosecution Service's budget by the MOJ.

The ACPO is led by the Chief Prosecutor, a government appointee nominated by the Prosecutor-General following consultation with the Prosecutor-General Council, a representative body of all public prosecutors. In turn, the Prosecutor-General, who heads the prosecution service, is appointed and dismissed by the King upon the government's recommendation. This appointment is subject to consultation with the General Council of the Judiciary and a hearing before a parliamentary commission. This process aims to balance influence between the executive and legislative branches.

While all three branches of government participate in the appointment of the Prosecutor-General, the government's role is paramount, as it ultimately makes the final decision.¹²⁰ Although the General Council of the Judiciary is consulted, its independence may be compromised due to the political nature of its members' selection process. Additionally, the government's ability to dismiss the Prosecutor-General based on a change in administration underscores the potential for political influence over this critical position.

In addition to these factors, the government possesses the authority to alert the Prosecutor-General to pertinent legal actions necessary to safeguard public interests. This is typically facilitated through the MOJ, although the President of the Government may intervene

¹²⁰ Anna Fiodorova, "Independence of the Prosecution Service: European Approaches," *Białostockie Studia Prawnicze* 25, no. 3 (2020): 87-97, 95.

directly when circumstances warrant. It is important to note that while the government may initiate these requests, they do not constitute binding orders.¹²¹ The legal framework does not permit direct governmental instructions to prosecutors, thereby preventing direct executive interference in the operations of the prosecutor's office. Despite these safeguards, concerns remain regarding the potential for political influence on the instructions issued by the Prosecutor-General, particularly when considering the process of their appointment.

In addition to the Chief Prosecutor, the ACPO comprises approximately 100 members, including 33 prosecutors. ACPO prosecutors are appointed by the government upon the recommendation of the Prosecutor-General, following consultations with the Prosecutor General Council. Prosecutors may only be removed from their positions by the Prosecutor-General through disciplinary proceedings in cases of egregious misconduct while carrying out their official duties.

While ACPO exhibits some degree of operational autonomy, particularly in its focus on high-profile corruption cases, it remains integrated within the broader prosecution service structure, which is influenced by the executive branch. Its reliance on centralized funding, the involvement of political figures in the appointment process, and the reporting obligations to the Prosecutor-General all contribute to a framework where ACPO's independence is circumscribed by political and executive oversight. The safeguards against direct governmental interference are in place, but the overarching political context still presents challenges to achieving full independence.

¹²¹ Fiodorova, "Prosecution Service," 94.

III. A PERSPECTIVE ON POLICY FOR CAMBODIA

This Chapter delves into the concept of policy transfer, a dynamic process where knowledge about policies, administrative structures, and institutional practices from one context is leveraged to shape similar frameworks in a different setting.¹²² In exploring the potential for policy transfer, it is crucial to assess the feasibility of such a transfer. This Section will employ the evaluation framework refined by Williams & Dzhekova to guide the assessment of whether the policy model can be effectively implemented.

In practical terms, assessing feasibility involves determining if the policy can realistically be implemented given the local political and economic conditions. Questions such as whether the measure aligns with current political priorities, whether it will be socially accepted, and whether it will face opposition from key stakeholders must be addressed. Furthermore, the existing institutional infrastructure and resource availability are critical to ensure that the policy can be enforced effectively.

The forthcoming analysis will specifically address the potential adoption of a special prosecutor model in Cambodia, scrutinizing its alignment with Cambodia's socio-political and economic landscape. This includes evaluating the political acceptability of such a model, the economic constraints affecting its implementation, and the public's reception. By examining these factors, the analysis aims to determine whether a special prosecutor is a viable solution for enhancing governance and combating corruption in Cambodia or if alternative strategies might be more appropriate. This discussion aims to provide a well-rounded perspective on how best to strengthen governance and public trust in Cambodia.

¹²² Colin Williams and Rositsa Dzhekova, "Evaluating the cross-national transferability of policies: a conceptual framework," *Journal of Developmental Entrepreneurship* 19, no. 4 (2014): 1-18, 2.

3.1. Cambodia's Current System against Prosecutorial Bias

Cambodia has never had a special prosecutor solely dedicated to addressing police legitimacy. Moreover, while the country has taken steps to combat corruption at both national and international levels, a specific focus on police corruption is lacking. In 2003, the country endorsed the Anti-Corruption Action Plan for Asia and the Pacific, followed by ratification of the United Nations Convention against Corruption in 2007. The government's Pentagonal Strategy-Phase I, introduced in the 7th Legislature (2023-2028), outlines a comprehensive approach to combating corruption and promoting good governance. In alignment with these efforts, the Anti-Corruption Law was enacted in 2010, establishing the National Council Against Corruption and the Anti-Corruption Unit (ACU). However, despite the apparent comprehensiveness of this legislation, loopholes and ineffective enforcement continue to hinder its effectiveness. As a result, public officials, including law enforcement personnel, remain implicated in corrupt practices without facing adequate accountability.¹²³

The Cambodian anti-corruption framework adopts a clear separation of powers between investigation and prosecution. The ACU is solely responsible for conducting investigations into corruption offenses, operating independently from other government agencies.¹²⁴ The ACU controls the investigation through arrest, after which the state prosecutor controls the case.

During the final administration of former Prime Minister Hun Sen, who is now the President of the Senate of Cambodia, the ACU—Cambodia's independent agency responsible for investigating corruption cases—received a total of 2,571 corruption-related lawsuits. Of these, only 25 were forwarded to court, 1,410 were deemed non-corruption cases, 1,070 were

¹²³ Kaunain Rahman, "Cambodia: Overview of corruption and anti-corruption," *U4 Expert Answer*, no. 10 (2016): 1-14, 8.

¹²⁴ Oudom Im, "Best Practices in Anti-Corruption in the Kingdom of Cambodia," in *Best Practices in Anti-Corruption: A Decade of Institutional and Practical Development in Southeast Asia* (Tokyo: UNAFEI, 2018), 112.

archived, and 66 were still under investigation by the time the 2018-2022 Government Report of Key Achievements was published.¹²⁵ This suggests that while the large number of cases indicate some level of effort from the government, the low prosecution rate indicates issues with the investigation or prosecution processes, or potentially a lack of commitment to rigorously pursue these cases.

Within the Cambodian legal system, the Royal Public Prosecutor Departments hold exclusive authority over criminal prosecutions. When a prosecutor decides to pursue charges, they initiate proceedings by submitting an introductory requisition to the investigating judge. However, in cases of *flagrante delicto* or where the maximum potential imprisonment does not exceed one year, prosecutors may conduct the investigation themselves.

In Cambodia, each provincial or municipal court is staffed with at least one investigating judge responsible for criminal cases. While the prosecutor generally determines whether to proceed with a prosecution, even in cases where an investigating judge has been involved, the latter may still initiate trial proceedings against the prosecutor's wishes. Such decisions by the investigating judge are subject to appeal. However, it is important to note that an investigating judge cannot undertake investigative actions without receiving an introductory charge from the prosecutor. During an ongoing investigation, if a new potential criminal offense emerges, the investigating judge must obtain an additional introductory charge from the prosecutor before proceeding with further investigation into this new matter.

While this system incorporates several mechanisms to mitigate conflicts of interest, including separation of investigative and prosecutorial roles and the involvement of an

¹²⁵ OCM, របាយការណ៍សង្ខេបស្តីពីសមិទ្ធផលសំខាន់ៗនៃការអនុវត្តយុទ្ធសាស្ត្រចតុកោណដំណាក់កាលទី៤របស់រាជរដ្ឋាភិបាលនៃព្រះរាជាណាចក្រកម្ពុជា នីតិកាលទី៦នៃរដ្ឋសភា ឆ្នាំ២០១៨-២០២២ (Brief Report on the Main Achievements of the Implementation of the Rectangular Strategy Phase 4 of the Royal Government of the Kingdom of Cambodia, the 6th Legislature of the National Assembly 2018-2022) (Phnom Penh: OCM, 2023), 23.

independent investigating judge, challenges may still exist. The ability of an Investigating Judge to send a case to trial against the wishes of the Prosecutor, and the possibility to appeal such decisions, provides a check on the prosecutorial discretion. This mechanism can act as a safeguard against potential prosecutorial bias or reluctance to prosecute police officers. However, the fact that the Investigating Judge cannot initiate investigations without a charge from the prosecutor can limit their independence in initiating inquiries into potential police misconduct unless the prosecutor takes action. If the case has not reached the stage of a judicial investigation (i.e., there is no investigating judge involved), the prosecutor's decision not to press charges typically means that the case is closed without further action. In this scenario, the file may not be forwarded to an investigating judge, as there is no formal judicial oversight required.

Nevertheless, the prosecutor's decision not to press charges can be challenged through various channels, such as a formal complaint to the ACU or the MOJ, a request to the prosecutor's office for a review or reconsideration of the decision, or a petition with a higher court if the above steps do not yield results.

Pursuant to the Law on Anti-Corruption, if the decision not to prosecute involves issues of corruption or abuse of power, it is possible to file a formal complaint with the ACU. The ACU is responsible for investigating corruption and related offenses. The ACU will review the complaint to determine if it falls within their jurisdiction and if there is sufficient evidence to warrant an investigation. If the ACU finds merit in the complaint, they may initiate an investigation into the alleged corruption or misconduct. Based on their findings, the ACU may decide to pursue legal action, recommend prosecution, or, if they find no evidence of wrongdoing, close the case.

Furthermore, the Law on the Organization and Functioning of the Courts, which governs the functioning of the judicial system and the MOJ's oversight role, provides another approach to prosecutorial bias, which is to submit a formal complaint to the MOJ. The MOJ can review the case and potentially intervene if there are concerns about the legality or fairness of the prosecutor's decision. The MOJ will review the complaint to ensure that legal procedures were followed and that the decision not to press charges aligns with legal standards. The MOJ might intervene by instructing the prosecutor to review or reconsider the decision if they find procedural or legal errors. The MOJ may recommend further action or adjustments to the handling of the case. However, if the MOJ finds the prosecutor's decision to be legally sound, they may not take further action.

The Code of Criminal Procedure also provides that it is possible to request a review or reconsideration of the decision from the prosecutor's office itself. The prosecutor's office has an obligation to review cases that involve new evidence or significant legal errors. The prosecutor may decide to proceed with charges if the review uncovers new evidence or significant errors. If the prosecutor finds no basis for changing their decision, they will confirm their original stance.

If the previous steps do not lead to satisfactory results, the next step is to file a petition with a higher court. This can involve appealing to the Court of Appeal or the Supreme Court of Cambodia, depending on the nature of the case and the legal grounds. The higher court may overturn the prosecutor's decision and instruct the prosecutor to press charges if they find the decision legally unjustified. The court may uphold the prosecutor's decision if it finds that the decision was legally sound and properly justified.

In addition, the Supreme Council of the Magistracy plays a crucial role in overseeing the judiciary in Cambodia, including issues related to prosecutorial conduct. If there is evidence of prosecutorial bias or conflict of interest, the Council can take several actions: The Supreme Council of the Magistracy can review complaints or reports of prosecutorial bias or conflicts of interest. This includes assessing whether the complaints have merit and if there is a need for further investigation. If a prosecutor is found to have acted unethically or with bias, the Council has the authority to recommend or enforce disciplinary actions. This can range from reprimands to suspension or even dismissal from their position.

With the current state of Cambodia's legal framework, it is quite conceivable that it might succumb to the formidable burden of police misconduct and prosecutorial bias. The close affiliations between local prosecutors and the police introduce a considerable peril of conflicts of interest that can undermine accountability. While these approaches might be theoretically viable, the effectiveness of these methods is compromised because they may not fully resolve the core problem of perceived bias and systemic conflicts of interest. The effectiveness of any review mechanism depends heavily on public perception. If the public perceives that local prosecutors cannot impartially handle police misconduct cases, even a successful review may not restore trust in the justice system. In addition, the approach of challenging decisions might address specific cases but may not provide a long-term solution to the broader issue of prosecutorial bias and the systemic challenges in handling police misconduct.

3.2. Should Cambodia Adopt a Special Prosecutor System?

In considering the implementation of a special prosecutor system in Cambodia, it is crucial to understand both its potential benefits and drawbacks. Below is a detailed breakdown

of how a special prosecutor system could be beneficial, even while being mindful of its drawbacks. Special prosecutors are designed to operate independently of political influence, which can enhance the credibility and trust in the investigation of high-profile or sensitive cases. Special prosecutors often bring specialized skills and focus to complex cases, which might lead to more thorough investigations compared to regular prosecutors who might juggle multiple cases. While an independent prosecutor is expected to uphold impartiality and public trust, the question remains: at what cost? Is a special prosecutor truly a panacea, or does it come with its own set of drawbacks?

The efficacy of the special prosecutor process is often debated due to concerns about a lack of prosecutorial accountability, which can lead to excessively lengthy and costly investigations. Independent prosecutors have been accused of exploiting their access to unlimited resources and unconstrained timelines to expand their investigations into new areas, including targeting additional individuals and uncovering new allegations of wrongdoing—a practice commonly referred to as "branching."¹²⁶

The high public visibility of independent prosecutors may have incentivized them to continue their investigations until they uncovered evidence of wrongdoing that could justify the time and resources invested. As investigations prolonged, pressure to secure an indictment may have intensified. The combination of prosecutorial independence, a lack of accountability for time and expenses, and the high-profile nature of the office may have encouraged investigatory branching, leading to extended investigations and increased costs. By their very nature, independent prosecutor investigations are prone to being "unaccountable, uncontrollable, and unavoidably expensive."¹²⁷

¹²⁶ Caruson, "Watchdogs," 92.

¹²⁷ Caruson, "Watchdogs," 93.

Excessive investigation, or "branching," can also fuel allegations of politicization in independent prosecutor investigations. The perception of a relentless and overbearing pursuit of a target can easily be interpreted as a politically motivated attempt to discredit a high-ranking political official. Limiting investigatory branching not only strengthens accountability but also mitigates opportunities for critics to level credible accusations of politicization against individual prosecutors.¹²⁸

Supporters of independent prosecutors contend that, rather than lacking accountability, these prosecutors are often "overly constrained" by other actors within the system. Independent prosecutor investigations frequently encounter delay tactics employed by the administration and/or the targets of investigations. Legal challenges, administrative obstructionism, limited access to classified information, and claims of executive privilege can significantly prolong the duration of these investigations.¹²⁹

Despite the widespread criticism of independent prosecutor investigations for their perceived lack of accountability, particularly in terms of cost and duration, it is inaccurate to assume that all such investigations are inevitably lengthy and expensive. Exorbitant costs are not a foregone conclusion, and the duration of an investigation does not necessarily correlate with its cost.¹³⁰ While it is tempting to concentrate on high-profile investigations, it is crucial to acknowledge that the majority of independent prosecutor investigations were, on average, shorter in duration and less expensive. While even this relatively modest benchmark may be too stringent for some, characterizing independent prosecutors as operating without restraint is inaccurate.

¹²⁸ Caruson, "Watchdogs," 110.

¹²⁹ Caruson, "Watchdogs," 94.

¹³⁰ Caruson, "Watchdogs," 101.

Moreover, the length of investigations, often assumed to be correlated with higher costs, is significantly influenced by factors beyond the control of the independent prosecutor. Certain types of allegations, such as those involving "false statements" (lying, perjury, and obstruction of justice), are inherently more complex and challenging to investigate, requiring more time for analysis.¹³¹

Despite the existence of problematic cases, a significant number of independent prosecutors have conducted their investigations in a restrained and responsible manner. Many of the alleged abuses of prosecutorial power by independent prosecutors are not dissimilar to those exercised by regular prosecutors. The primary distinction lies in the heightened scrutiny applied to their actions, which allows for a more informed understanding of how their power has been wielded.¹³²

Another point to consider is that police culture is also in part responsible for the prevalence of police corruption and misconduct and impedes meaningful police reform. The insular nature of police institutions and the solidarity among rank-and-file officers create a protective barrier around these organizations. Experts in police practices have identified this code of silence, also known as the "blue wall of silence," as an unwritten rule that generally refers to a police officer's refusal to report the wrongdoing or misconduct of fellow officers, even when aware of such actions.¹³³

While not formally part of an officer's training, indoctrination into this code often begins at the outset of a police officer's career. Scholars examining the prevalence of the code of silence have observed that it is deeply rooted in a commitment to group loyalty. Drawing parallels to

¹³¹ Caruson, "Watchdogs," 94.

¹³² Harriger, *The special prosecutor*, 148.

¹³³ Kami Simmons, "New Governance and the "New Paradigm" of Police Accountability: A Democratic Approach to Police Reform," *Catholic University Law Review* 59 (2009): 373-426, 382.

military culture, scholars have noted that police officers perceive themselves as "us"—the brave warriors—against "them"—the rabble of the street. This cultural divide leads police officers to view themselves as "under siege" by the very communities they are sworn to protect, as well as by the political establishment, their own internal affairs unit, and any other entity perceived as an outsider's voice.¹³⁴

Loyalty, while often considered a desirable trait among police officers, can paradoxically facilitate the perpetuation of misconduct and corruption. While loyalty can foster a sense of camaraderie and shared purpose within police organizations, the 'code of silence' that often accompanies it can shield officers from accountability for their actions. This can create a culture of impunity, where misconduct and corruption can flourish unchecked, undermining public trust and hindering efforts to promote ethical policing practices.¹³⁵

The prevalence of the code of silence within law enforcement organizations presents a significant challenge to ethical conduct and accountability. This phenomenon not only shields corrupt officers from exposure but also impedes the efforts of honest officers to report misconduct. The fear of retribution dissuades both direct participants in wrongdoing and those who witness such actions from coming forward. This reluctance to disclose unethical behavior undermines the integrity of law enforcement agencies and hinders efforts to reform and discipline culpable individuals.¹³⁶ Whistleblowers often face severe consequences within their organizations. Retaliation can take many forms, including formal disciplinary actions and informal ostracization. Whistleblowers may be subjected to scorn, exclusion, harassment, and

¹³⁴ Simmons, "New Governance," 383.

¹³⁵ Simmons, "New Governance," 385.

¹³⁶ Simmons, "New Governance," 386.

even termination of employment. Such treatment can create a hostile work environment and deter others from reporting misconduct.¹³⁷

A special prosecutor may have limited impact on addressing the "blue wall of silence" because their role is usually confined to investigating and prosecuting specific cases of misconduct rather than enacting systemic reform. Their focus on individual cases does not directly challenge or change the deeply entrenched police culture or address internal resistance to reporting misconduct. Therefore, while a special prosecutor can address specific cases and provide accountability, it cannot work towards changing the underlying culture and preventing future misconduct. If the goal is immediate and impartial investigation into specific incidents of police misconduct, a special prosecutor might be the best option. They may address specific cases of misconduct but may not tackle broader cultural issues within the police force. Their involvement is typically limited to particular investigations or cases and might not lead to systemic reform. For addressing the systemic issues related to the "blue wall of silence" and implementing broad reforms, combining several measures (e.g., enhanced internal affairs, whistleblower protections, body-worn cameras, and civilian oversight) might be more effective.

Even with these drawbacks, special prosecutors can be particularly beneficial in cases involving high-ranking officials or sensitive matters due to their ability to provide impartiality and independence. Regular prosecutors might face pressure from political figures or other influential individuals. A special prosecutor is less susceptible to such pressures, thus reducing the risk of biased outcomes in high-stakes cases. High-profile cases involving top officials often come with added complexity, both legally and politically. A special prosecutor's role is crucial in managing these complexities by ensuring a rigorous and methodical investigation. When a

¹³⁷ Roberta Johnson, "Whistleblowing and the Police," *Rutgers University Journal of Law and Urban Policy* 1, no. 3 (2005): 74-83, 80.

special prosecutor takes on a high-profile case, it signals to the public that the investigation is being handled with a high degree of transparency and fairness. This can help rebuild and strengthen public trust in the legal system. Seeing a special prosecutor work on cases involving powerful figures can reassure the public that even the highest-ranking officials are not above the law, reinforcing the integrity of the legal system.

Overall, adopting a special prosecutor system in Cambodia could still be advantageous for ensuring impartial investigations in high-profile cases, provided its potential drawbacks are effectively managed. A well-crafted law is all that is needed to address these issues. If evidence shows that special prosecutors consistently deliver a level of impartiality and public trust unattainable through other means—such as in cases of corruption involving high-ranking officials—their use could be justified despite the system's challenges. By handling sensitive cases with impartiality, a special prosecutor can play a significant role in restoring public confidence in the legal system.

3.3. Would Cambodia Adopt a Special Prosecutor System?

Key factors contributing to policy transfer failure include "uninformed transfer," where the borrowing country lacks sufficient understanding of how the policy functions in the donor country. Another issue is "inappropriate transfer," which arises when there is a poor fit between the social, economic, political, and ideological contexts of the donor and borrowing settings.¹³⁸

To mitigate these challenges, policy assessment is a critical step in the policy transfer process. During this phase, it becomes essential to take into account the “differences in settings.” These differences encompass various contextual factors, including political, social,

¹³⁸ Williams and Dzhekova, "Transferability," 5.

and economic institutions, as well as elements like political culture, public opinion, available resources, and the presence of other policies that might impact the effectiveness of the proposed policy.¹³⁹ Recognizing the significance of these factors is crucial, as they can significantly influence both the practical success and the political feasibility of the intended policy.

This discussion considers Cambodia's socio-political and economic landscape, focusing on the feasibility and implications of adopting a special prosecutor model. First, the extent to which Cambodia's political environment supports or hinders the adoption of such reforms will be explored. Second, Cambodia's economic capacity will also be assessed, given its fiscal constraints and the need for strategic budget management. Third, the public's perspective will be examined to determine whether they would support the implementation of such a system. In examining these factors, we aim to provide a nuanced understanding of whether Cambodia would embrace a special prosecutor model as part of its efforts to enhance governance and public trust.

3.3.1. Political Factors

When thinking of adopting a special prosecution model, [the government] must consider their options based on the political support for such changes. The degree of political will can significantly influence the type of specialized prosecution model that is feasible. In contexts where a well-organized criminal justice reform movement is absent, there may be a corresponding lack of political will to implement any specialized prosecution model. Conversely, a high-profile incident can galvanize public opinion and pressure elected officials

¹³⁹ Williams and Dzhekova, "Transferability," 9.

to adopt more drastic measures, such as establishing a permanent specialized prosecution unit.¹⁴⁰

Given the current context in Cambodia—a high rate of traffic accidents, increasing hit-and-run incidents, widespread public outrage, and significant corruption—it appears that Cambodia has a partial political willingness for changes. This environment seems to create a backdrop where political leaders may be compelled to support changes to enhance credibility and address public frustration. However, this remains a scholarly assumption at this stage.

To evaluate whether Cambodia has the political will to adopt a special prosecution model, it is crucial to assess the level of trust the Cambodian people have in their government and evaluate the degree of power consolidation within the government. If power consolidation is significant and trust is low, Cambodia might opt for a more independent model or possibly none at all. This is where the World Bank's Worldwide Governance Indicators (WGI) ranking becomes relevant.

¹⁴⁰ Singer, "Embracing Federalism," 467.

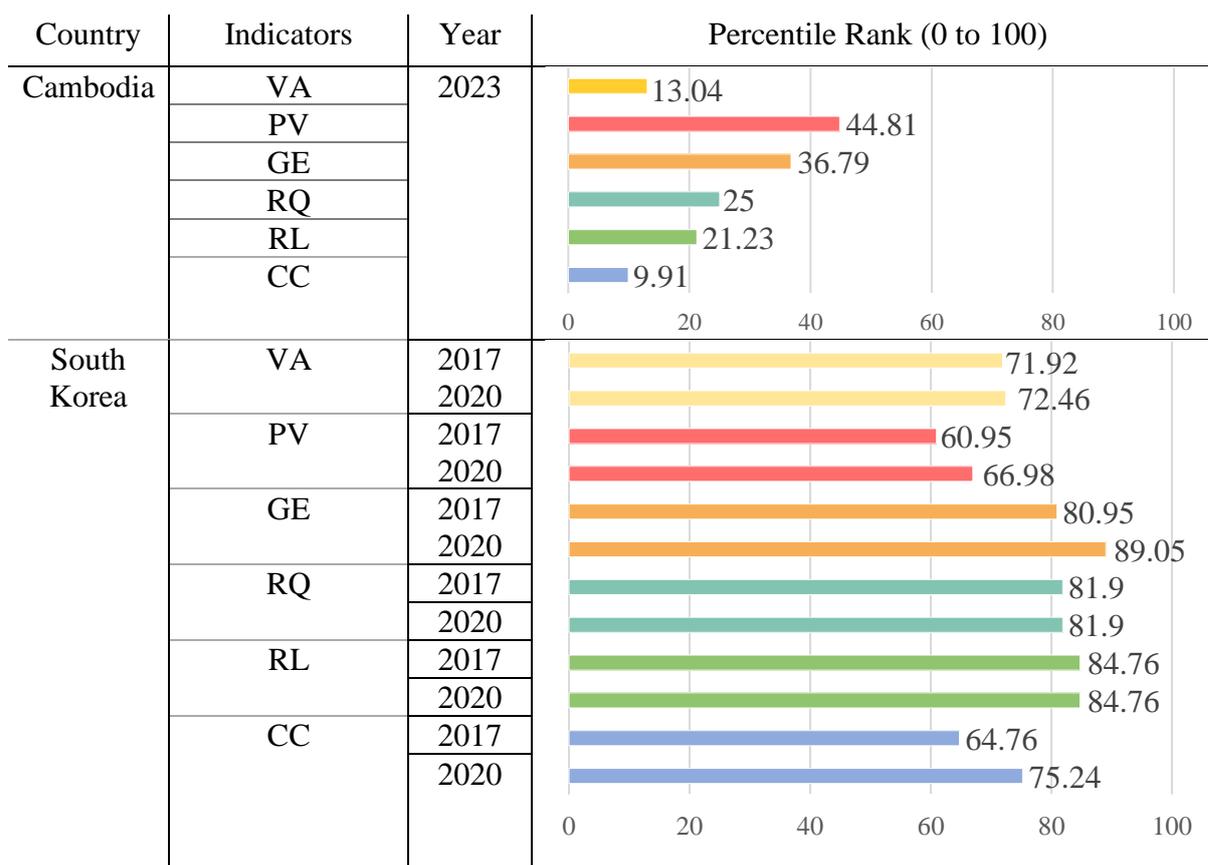


Figure 1. Governance Indicators of Cambodia and South Korea. World Bank.

The willingness of Cambodia’s leadership to support a special prosecutor model would depend on their assessment of the political benefits of such reforms versus potential risks. Given the public dissatisfaction, there might be some motivation to support changes that can improve public perception and address corruption. However, there may be resistance within existing institutions due to entrenched interests or fear of losing control—power consolidation. This situation affects which models of special prosecutor the government might consider, if any. When power consolidation is high, the government is more likely to favor a model that allows for greater oversight on its part, assuming it agrees to make any changes at all.

Using the WGI as the basis for our evaluation, we observe that Cambodia's low percentile ranking in Voice and Accountability (VA) (13.04) indicates significant concerns

about citizens' ability to freely express their opinions and participate in the political process, suggesting limited public trust in the government's responsiveness. Lower rankings in Government Effectiveness (GE) (36.79), Regulatory Quality (RQ) (25), and Rule of Law (RL) (21.23) imply that government services, regulatory policies, and legal processes may be inadequate or inconsistent, further undermining public trust. Moreover, the very low score in Control of Corruption (CC) (9.91) reveals high levels of perceived corruption, likely having a significant negative impact on trust in government institutions. Meanwhile, the Cambodian government's power consolidation is evident in several troubling indicators of governance. The low score for VA reveals weak democratic engagement and a possible increase in governmental control or suppression. The low RL score reflects weaknesses in legal enforcement and judicial independence, exacerbating governance challenges and potential power abuses. Most critically, the dangerously low CC score highlights severe corruption issues, eroding trust in government institutions and obstructing effective governance, meaning that decision-making authority and resources are tightly controlled by those in power, making it difficult for other branches or individuals to act independently or hold them accountable.

Based on the indicators of governance described, it seems unlikely that the Cambodian government currently possesses the political will to adopt a special prosecutor system, at least in the near term. Such a system would require a degree of political will and institutional strength that seems to be lacking based on the WGI scores. In comparison, the VA percentage for South Korea in 2017—when the concept of CIO was first introduced—was 58.88 percentage points higher than that of Cambodia in 2023. By 2020, when CIO was officially established, South Korea's VA percentage was 59.42 percentage points higher. For GE, the difference was 44.16 units in 2017 and 52.26 units in 2020. For RQ, the gap was 56.9 units in both years. For RL, it

was 63.53 units higher in both years as well. Finally, for CC, the difference was 54.85 units in 2017 and 65.33 units in 2020.

The WGI scores show that South Korea's higher rankings across all governance indicators provided a more favorable environment and created the necessary conditions for the successful establishment and functioning of the CIO. This comparison paints a picture of a governance system in Cambodia that is struggling with fundamental issues of accountability, effectiveness, and corruption, making substantial institutional reforms challenging in the current climate. The stark contrast with South Korea's governance indicators illustrates that Cambodia's current governance environment is significantly less conducive to implementing robust anti-corruption or institutional reforms.

Given that the U.S. and Spain established their special prosecutor offices prior to the World Bank's initiation of WGI database, only the data with South Korea can be compared. Data for the U.S. and Spain before the establishment of these bodies is not available for comparison.

Even in the presence of strong political will, the financial and logistical challenges associated with establishing a specialized prosecution model should not be underestimated. Adequate resource allocation and comprehensive training are essential for successful implementation.

3.3.2. Economic Factors

Sufficient funding and staffing are indispensable for the effective operation of a specialized prosecutor's office. This necessitates careful budgetary planning and may involve reallocating resources from other areas.

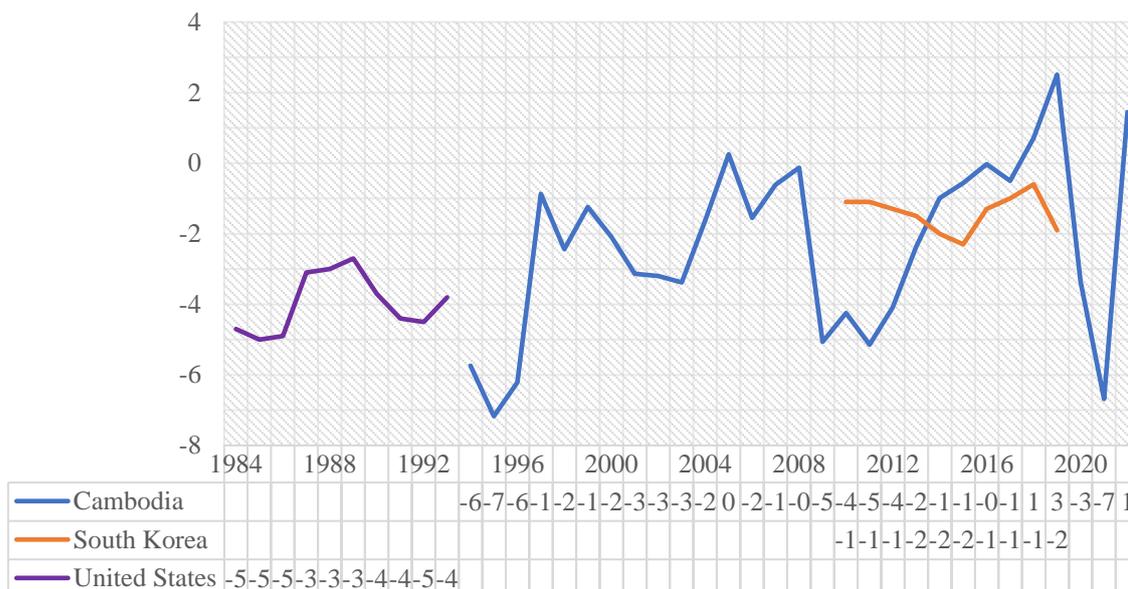


Figure 2. Government Budget Deficit of Cambodia, South Korea, and the United States. Trading Economics.

To determine if Cambodia has the budget for a special prosecutor, it is essential to first examine the country's economic strength carefully. GDP Annual Growth Rate in Cambodia averaged 6.91 per cent from 1994 until 2023. This sustained growth indicates a robust economy and potential for further development. While Government Budget averaged -2.33 per cent of GDP from 1994 until 2022 and Government Debt to GDP averaged 32.90 per cent of GDP from 1996 until 2023. A negative average suggests that the government often spent more than it collected in revenue. However, the relatively low ratio indicates that the country has managed its debt well compared to some other nations. Given the low debt-to-GDP ratio and strong GDP growth, Cambodia appears to be in a relatively good position to consider new expenditures, such as creating and funding new institutions, despite the historical budget deficit.

In comparison, the government budget in South Korea averaged -1.21 per cent of GDP over the 10 years before the creation of the CIO in 2020. While the average ratio for the U.S.

over the 10 years before the creation of the Special Counsel in 1994 is –4.04 per cent. For Spain, data starts in 1996, a year after the creation of the ACPO in 1995, so a direct comparison is not useful. While Cambodia has a higher deficit compared to South Korea, it is lower than the U.S. deficit during a similar period when the U.S. managed to establish the Special Counsel. Thus, based on these economic indicators, Cambodia has the potential financial capacity to afford a special prosecutor if it prioritizes this expenditure, but it would need to carefully assess its fiscal capacity and priorities. The U.S. can sustain a high budget deficit percentage because its large economic size provides a broad base of revenue generation and a stable financial environment. This enables the U.S. to manage and finance large expenditures, despite the high relative percentage of its deficit. Meanwhile, the situation in Cambodia is entirely different.

The US's GDP in 1994 when it first embraced the Special Counsel was 7.287 trillion USD, approximately 247 times larger than Cambodia's GDP in 2022, which was just 29.5 billion USD. The larger economic scale of the U.S. enables it to handle a higher nominal deficit more effectively than Cambodia. The U.S. economy is massive, so even though the deficit percentage is high, the actual dollar value of the deficit might still be manageable due to the large economic base. The U.S. economy's size means it can absorb larger deficits without immediate detrimental effects on economic stability, compared to smaller economies where even a small deficit can have more pronounced effects. Despite Cambodia's relatively better position, its deficit still reflects a negative balance. Thus, while it has some financial capacity for a special prosecutor, careful consideration of fiscal priorities is essential.

However, it can still be reasonable to consider new expenditures even if short-term feasibility is challenging, provided that the long-term outlook shows improvement and there are clear plans to manage the associated risks. While examining the Government Budget Deficit is useful for understanding the current fiscal space and immediate capability to fund new

initiatives, the Government Debt to GDP ratio is valuable for evaluating a country’s long-term ability to manage additional debt and expenditures while maintaining fiscal stability. The debt-to-GDP ratio for South Korea in the decade prior to the establishment of CIO was 39.57 per cent. For the US, it was 51.85 per cent before the appointment of the Special Counsel. Spain's ratio 10 years before ACPO was 41.44 per cent. In contrast, Cambodia’s 32.90 per cent ratio is considered favorable, suggesting the country is in a strong position to manage its debt and may have greater flexibility for future fiscal decisions. Hence, considering a special prosecutor for Cambodia remains a viable option, but it is a topic for another time.

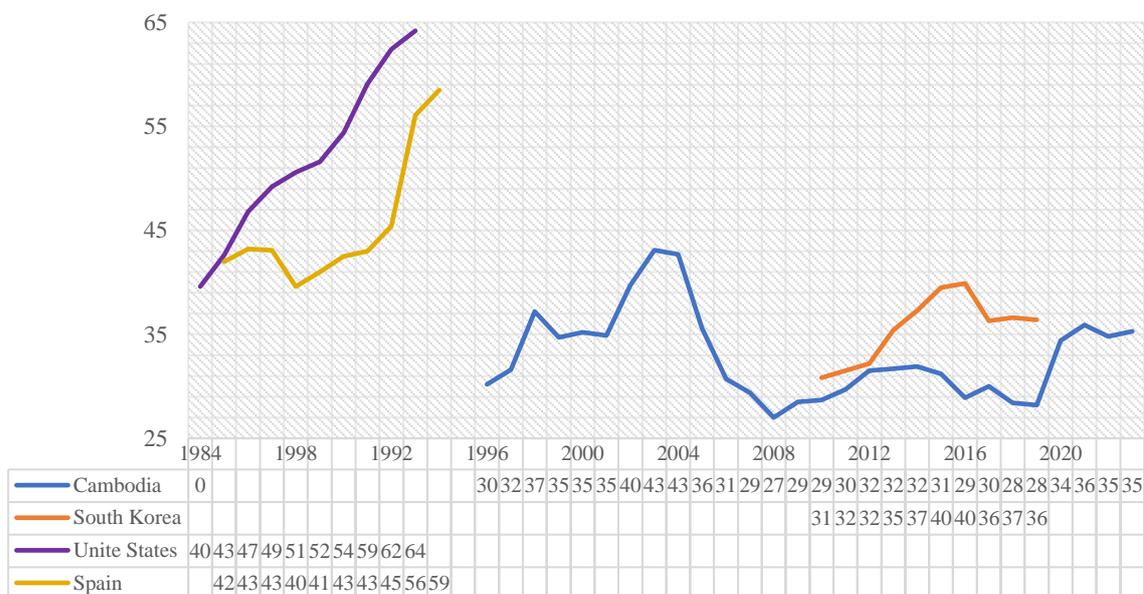


Figure 3. Government Debt-to-GDP of Cambodia, South Korea, the United States, and Spain. Trading Economics.

For now, despite the seemingly favorable financial position, it is crucial for Cambodia to exercise caution when contemplating significant new expenditures. While Cambodia appears financially capable of taking on new expenditures, it should carefully consider the potential impacts. The historical budget deficit suggests a need for cautious management of additional

spending. Implementing and maintaining a special prosecutor's office would require significant funding and staffing, potentially diverting resources from other critical areas. Given the ongoing need for careful fiscal management, the Cambodian government may be hesitant to commit to such an expenditure without clear, immediate benefits. Instead, Cambodia may prefer to focus on strengthening and reforming its existing anti-corruption framework to address these issues in a more controlled and economically feasible manner.

There is another dimension to consider: the potential economic consequences of not enacting procedures for a special prosecutor. For instance, protests and riots can disrupt the economy. Citizens' awareness of special prosecution procedures might influence their willingness to express frustrations in the streets.¹⁴¹ While the immediate costs of establishing and maintaining a special prosecutor's office are significant, they must be weighed against the potential long-term benefits. The economic costs of civil unrest and lost investor confidence could outweigh the initial expenditure on a special prosecutor. Cambodia should weigh these potential long-term benefits against its current budgetary constraints and economic health. The initial investment in a special prosecutor could be viewed as a proactive step towards safeguarding economic stability and fostering a healthier business environment, ultimately potentially avoiding more substantial economic disruptions and maintaining a favorable investment climate.

3.3.3. Social Factors

While a special prosecutor can play a critical role in addressing corruption, there are risks that such an office can heighten government ineffectiveness and exacerbate social tensions

¹⁴¹ Singer, "Embracing Federalism," 464.

if not managed carefully. If a special prosecutor's investigations lead to few or no significant outcomes, it may reinforce perceptions of government ineffectiveness. The inability to demonstrate tangible results from these investigations can undermine the credibility of the government and the special prosecutor's office, contributing to a sense of disillusionment among the public. If the special prosecutor's actions are perceived as exacerbating existing grievances or failing to deliver justice, it can lead to increased public discontent and social unrest.

The appointment of a special prosecutor often attracts significant public and media attention. This increased scrutiny can amplify criticisms of the government and existing institutions, focusing attention on their shortcomings and perceived failures in addressing corruption and ensuring justice. The very existence of a special prosecutor can suggest that there are deep-rooted issues within the government and existing systems. The need for a special prosecutor can be interpreted as an acknowledgment that the current system is unable to handle certain types of cases effectively. This implies that the existing legal and institutional frameworks are inadequate, suggesting systemic inefficiencies and failures in managing high-profile or complex cases.

Even with the challenges and potential pitfalls associated with appointing a special prosecutor, the Cambodian public still has the option to advocate for or choose such a role if they believe it would benefit their country. The real question, however, is whether they will exercise this option. According to the GCB results, 79 per cent of Cambodians believe the government is effectively addressing corruption risks. Meanwhile, 67 per cent feel that the anti-

corruption agency is performing well in combating corruption. Additionally, 55 per cent of Cambodian participants think that corruption has decreased.¹⁴²

Conversely, the situation in South Korea told a different story. In 2017, the year when the concept of creating the CIO was first introduced to the Korean public, the GCB results revealed that 76 per cent of Koreans believed the government was handling the fight against corruption badly.¹⁴³ This dissatisfaction explains why the Korean public pushed for political changes, a drive that Cambodia currently lacks.

Based on these results, the likelihood of Cambodians advocating for a special prosecutor might be lower than one might expect. The general belief is that the government is effectively addressing corruption risks, and there is a positive view of the performance of the anti-corruption agency. Additionally, many Cambodians feel that corruption has decreased, reflecting a level of confidence in the existing mechanisms. This optimism might lessen the perceived need for a special prosecutor, as the public may believe that the current system is functioning adequately. In light of these positive perceptions, it seems less likely that there will be a strong push for a special prosecutor unless significant new issues arise or perceptions change dramatically. The current trust in government efforts and anti-corruption measures suggests that there may not be an urgent demand for such a role at present.

However, the level of approval for the anti-corruption agency suggests there might be room for improvement. For instance, the approval rating might reflect a satisfaction with the agency's current operations, but it does not necessarily mean that all aspects are optimal or that every issue is being tackled effectively. For example, police corruption remains a case in point.

¹⁴² Vrushi, *Corruption Barometer*, 39.

¹⁴³ TI, *Global Corruption Barometer 2017 Global Results*, created February 17, 2017, https://files.transparencycdn.org/images/GCB-2017_Global-Results.xlsx, sheet "Q4", cell H60.

3.4. Could Cambodia Adopt a Special Prosecutor System?

Adopting a special prosecutor system in Cambodia would be challenging under the current conditions. The significant political and governance issues, combined with economic constraints and public perceptions, suggest that the government may not yet be prepared to implement such a system. While there is some potential for change, particularly if public dissatisfaction increases or if there are clear economic and political incentives, the current indicators suggest that Cambodia might not prioritize or be able to effectively implement a special prosecutor system in the near term.

For Cambodia to adopt a special prosecutor system, several factors would need to undergo significant changes in both political and social spheres, as well as economic conditions. There would need to be a substantial shift in the political landscape, possibly driven by a major anti-corruption movement or high-profile scandals that galvanize public and political support for significant reforms. Also, significant improvements in the WGI would be necessary to create a more conducive environment for establishing a special prosecutor. Political will ensures that the system is not only created but also adequately funded and supported. Without political will, the establishment of such an office could be undermined by lack of resources, political interference, or inadequate legislative support.

On top of that, establishing a special prosecutor system requires significant funding. Cambodia would need to achieve a more stable fiscal balance with a reduced budget deficit. This would involve effective management of public finances and possibly increased revenue generation. Continued robust economic growth would provide the financial capacity to support additional expenditures. Long-term economic stability and growth would make it more feasible to allocate resources for a special prosecutor without risking fiscal health. It also ensures long-term sustainability of the system.

Lastly, there would need to be a significant increase in public demand for a special prosecutor. This could result from widespread dissatisfaction with the existing anti-corruption mechanisms, high-profile corruption cases, or significant public protests; or simply because of an increased public awareness and advocacy regarding the benefits of a special prosecutor which could drive political leaders to consider its implementation. If the public perceives a significant problem with corruption or inefficiency in existing mechanisms, they are more likely to demand reforms.

Adapting a special prosecutor system would involve implementing significant reforms to ensure both the effectiveness and accountability of such an office. Cambodia's adoption of a special prosecutor system could potentially enhance its judicial system by promoting accountability, transparency, and the rule of law. However, careful consideration and planning are required to address the challenges and ensure the system's effectiveness. Here is an analysis of potential implications:

3.4.1. Legal Considerations

The introduction of a special prosecutor system would likely require substantial legal and structural reforms. Cambodia would need to enact or amend laws to establish the powers, jurisdiction, and oversight mechanisms for the special prosecutor. This could involve significant legislative work and negotiation among various political stakeholders.

It is crucial to ensure that this new model aligns with existing constitutional and legal frameworks. Firstly, the Cambodian Constitution emphasizes the separation of powers (Article 51). Introducing a special prosecutor system could blur these boundaries if not carefully integrated. A special prosecutor system could conflict with this principle if the role of the

special prosecutor overlaps or interferes with the functions of the judiciary or the executive. Specifically, the Constitution guarantees the independence of the judiciary (Article 128). Introducing a special prosecutor system could potentially raise concerns about maintaining this independence if the special prosecutor is perceived as influenced by political or executive powers, particularly if the model chosen for Cambodia involves the executive branch overseeing the system. Any new legislation must also explicitly define the role of the special prosecutor within the existing framework of the Royal Public Prosecutor Departments as mandated by Article 131 of the Constitution. The Constitution also provides for legal protections and due process rights for individuals (Articles 31-35). Any new system, including a special prosecutor, must ensure that it does not infringe upon these rights or due process.

Additionally, the new system must take the Cambodian Criminal Procedure Code (CPC) which designates the role of the prosecutor in criminal cases into consideration as well. Introducing a special prosecutor could lead to overlaps or conflicts in the existing prosecutorial system if not clearly delineated. A special prosecutor system would need to fit within or amend the CPC's existing frameworks, ensuring that the special prosecutor's powers do not exceed or conflict with those of existing prosecutors. The CPC also involves various judicial bodies, including courts and police. A special prosecutor system must be designed to work harmoniously with these bodies, avoiding jurisdictional conflicts or procedural issues. Also, the procedural rules set out how cases should be handled, including investigations and prosecutions. The introduction of a special prosecutor could necessitate changes in these procedures to accommodate new actors in the legal process.

Moreover, under the Law on the Statute of Judges and Prosecutors, which regulates the appointment, tenure, and conduct of judges and prosecutors, including their duties and ethical standards, prosecutors operate under the supervision of the Supreme Council of the Magistracy,

ensuring they follow legal procedures and maintain neutrality. If special prosecutors are appointed through a different mechanism or are subject to different oversight, it could undermine the uniformity of judicial appointments and supervision established by this law. A special prosecutor system could challenge the current prosecutorial hierarchy and supervision mechanisms. If special prosecutors operate independently or report to a different body, it may create conflicts regarding authority and oversight. Likewise, the law emphasizes the independence of judges and prosecutors, prohibiting interference from external bodies. It also sets out disciplinary procedures for misconduct. A special prosecutor system might introduce external influences or different standards for accountability, which could be seen as compromising the independence of the judiciary and undermining the established disciplinary frameworks.

A well-defined legal framework and institutional independence are crucial for the special prosecutor to perform its role effectively. Without these, the system may struggle with political interference or inefficiencies. Develop a robust legislation that outlines the appointment, powers, and oversight mechanisms for the special prosecutor can ensure that these guidelines prevent abuse while safeguarding the prosecutor's independence. The special prosecutor could promote a more robust system of checks and balances, but the independence of the special prosecutor must be managed to avoid potential manipulation by the Executive Branch. At the same time, it must be carefully balanced to avoid compromising the independence of investigations. There is a risk that an independent special prosecutor could be overzealous or biased. Effective safeguards are needed to ensure that investigations are fair and not politically motivated.

The perceived independence of the special prosecutor could be undermined if the public believes the process is manipulated or biased. This could reinforce existing skepticism about

the effectiveness of anti-corruption measures. Appointing a special prosecutor could heighten political tensions if the investigations are seen as targeting specific political factions or individuals, potentially leading to social unrest or accusations of political witch hunts. The solution is to ensure the special prosecutor's jurisdiction is well-defined to prevent overreach. Limit the scope of investigations to specific, legally defined areas. It is also important to create an oversight committee that monitor the activities of the special prosecutor, ensure transparency, and implement checks to prevent misuse of the special prosecutor's powers. For instance, require that significant investigative actions receive prior approval from the oversight committee. Also, mandate regular reports from the special prosecutor to the oversight committee and the public to maintain transparency and public confidence in the process.

3.4.2. Capacity Considerations

A special prosecutor must be effective to justify their creation; otherwise, it risks becoming merely another office that wastes taxpayer money. The creation of a special prosecutor is often justified by the need for impartiality and dedicated focus on specific high-stakes issues, such as corruption or conflicts of interest. If the special prosecutor fails to be effective, it undermines the rationale for their role, potentially eroding public trust in the system's ability to address critical issues effectively.

Moreover, the role of a special prosecutor typically involves considerable financial and administrative resources. If the office does not achieve its goals, the public may view it as a misuse of taxpayer money. This perception can arise if the special prosecutor fails to make significant progress or if their efforts are seen as ineffective compared to the costs involved.

The public's view of the justice system can become more cynical if a special prosecutor fails to deliver results. This can lead to decreased support for other reform measures, as people may doubt that any changes will produce tangible benefits. If a high-profile role meant to address critical issues is seen as ineffective, it might make stakeholders hesitant to support or implement similar roles or reforms in the future. Essentially, if one component of the system is seen as failing, it can cast a shadow on the entire reform effort. The issues faced by an ineffective special prosecutor can also distract from core systemic problems that need to be addressed. For example, instead of focusing on improving investigative processes or addressing corruption, the discourse might center around the failures of the special prosecutor. This can divert attention and resources away from more systemic reform efforts.

For a special prosecutor system to be effective, there needs to be an emphasis on training and capacity building for those involved. This includes recruiting skilled professionals, providing them with adequate training, and equipping them with the necessary resources. The office should have the ability to conduct thorough investigations, handle complex cases, and ensure effective prosecution. Capacity building should include: professional training and resource allocation.

Specialized training is vital for special prosecutors to handle complex and often high-stakes cases. This includes understanding intricate legal issues, navigating complex evidence, and using advanced investigative techniques. Invest in training programs to enhance the skills of the special prosecutors and their staff, ensuring they can handle sophisticated cases and conduct thorough investigations. Prosecutors need in-depth knowledge of specialized areas of law relevant to their cases, such as white-collar crime, public corruption, or national security issues. Additionally, special prosecutors must be adept at handling sophisticated financial records, digital evidence, and other specialized forms of evidence. Without proper training,

special prosecutors might struggle with sophisticated cases, leading to ineffective investigations and prosecutions. Skilled professionals can ensure that cases are handled with the necessary expertise, thereby enhancing the system's overall effectiveness.

Effective prosecution requires more than just skilled professionals; it also demands adequate resources to conduct comprehensive investigations and manage cases efficiently. Ensure that the office has access to necessary resources, including technology, investigative tools, and support services is very crucial. This includes the understanding of high-tech tools for cybersecurity, forensic analysis, and digital investigations.

Without adequate resources or authority, a special prosecutor might struggle to conduct thorough investigations or build strong cases, thereby undermining their purpose. If the public or stakeholders perceive the special prosecutor as ineffective, it can erode trust in the system and diminish the perceived legitimacy of efforts to combat corruption. For a special prosecutor to be effective, they must have the necessary capacity and resources. Otherwise, instead of addressing corruption, the special prosecutor could become an issue in itself.

3.5. Discussion

In light of the comprehensive examination of Cambodia's socio-political environment and economic factors, it would not be right to rush into making a decision on the adoption of the special prosecutor system. While the concept of a special prosecutor may seem appealing as a potential solution to police corruption, a deeper examination reveals that it is not necessarily the panacea and may come with significant drawbacks that Cambodia must weigh thoughtfully.

Politically, there are indications that the public is dissatisfied with the current state of affairs, creating an impetus for change. However, the low overall trust in the government and

the consolidation of power suggest that there may be a lack of sufficient political will to implement such a major reform. Introducing a special prosecutor system would represent a significant shift in the balance of power and could be met with resistance from entrenched interests. Cambodia must navigate these political sensitivities cautiously, ensuring that any proposed changes do not further exacerbate existing tensions or become politicized.

From an economic standpoint, Cambodia's history of budget deficits and financial constraints necessitate a prudent approach. While the country may have the means to support a special prosecutor system, the potential economic impact, including the substantial costs associated with its establishment and operation, must be weighed carefully against the expected benefits. Careful cost-benefit analysis and fiscal planning will be crucial to ensure the long-term sustainability of such a system.

Socially, the public's perception of the government's effectiveness and the positive view of the existing Anti-Corruption Unit suggest that there may not be an urgent, widespread demand for a special prosecutor at this time. Cambodians appear to have some faith in the current mechanisms, and introducing a new system could risk further eroding public confidence if not executed with utmost care and transparency.

The analysis also highlights that while a special prosecutor could offer a solution to some of the issues with police corruption in Cambodia, it is not necessarily the only or best approach. While a special prosecutor could offer benefits such as enhanced impartiality and potentially increased public confidence, it also comes with notable drawbacks that Cambodia would need to weigh carefully including high costs, extended investigation times, and potential politicization.

Given the substantial costs and the risk of politicization, it may be more prudent for Cambodia to focus on enhancing the current legal and prosecutorial mechanisms. Such reforms could potentially yield significant benefits without the high financial and operational costs associated with establishing a special prosecutor system. By carefully evaluating the political, economic, and social factors, Cambodia can explore more tailored and sustainable strategies to address police corruption and improve governance. Improving current systems to address corruption and accountability issues, particularly within law enforcement, could be more feasible and cost-effective than establishing a new special prosecutor office.

By focusing on enhancing current legal and prosecutorial mechanisms, Cambodia can work within the existing framework and avoid the upheaval associated with introducing a new system. This approach can be more politically feasible, avoiding significant shifts in power dynamics that could lead to instability. In addition, improving existing mechanisms could be more cost-effective. Upgrading current institutions like the ACU could potentially offer significant improvements without the high costs of a new system. This approach allows for targeted investments that could lead to more efficient use of limited resources. Also, by improving and expanding the capabilities of current mechanisms, Cambodia can build on existing trust and avoid the risks associated with introducing a new and potentially controversial institution. Incremental improvements can be more easily communicated and implemented, preserving public confidence. Lastly, enhancing existing mechanisms allows for a more controlled approach to reform. It enables Cambodia to address specific issues within the current framework and implement changes gradually, reducing the risk of operational challenges and ensuring that reforms are tailored to the actual needs of the system.

Before presenting recommendations, it is important to first acknowledge some limitations of the analysis. The analysis relies on available data and perceptions, which may not

fully capture the nuances of Cambodia's anti-corruption landscape. Public opinion surveys and governance indicators provide a snapshot but may not reflect underlying issues comprehensively. Additionally, political and economic conditions are subject to change, which may affect the feasibility of policy recommendations. Future shifts in these conditions could alter the effectiveness and applicability of proposed reforms.

Recommendations:

Given the challenges in establishing a special prosecutor, focus should shift to enhancing the existing anti-corruption framework. Incremental reforms aimed at improving the efficiency and transparency of the current anti-corruption mechanisms could potentially yield significant improvements in governance and public trust without the need for more drastic measures. This includes:

1. Addressing Prosecutorial Conflict of Interest:

Cambodia could focus on enhancing its current legal and institutional frameworks of the Royal Public Prosecutor Departments to address police corruption and ensure accountability. The following measures could be implemented: (a) allow investigating judges to initiate investigations into police misconduct autonomously, without requiring a formal complaint from the prosecutor, (b) improve transparency in the prosecution process by regularly publishing detailed information on cases under investigation, charges filed, and the outcomes of these cases, (c) establish stringent internal controls within the prosecution system to detect and address potential conflicts of interest. This includes creating comprehensive guidelines and oversight mechanisms for handling cases involving law enforcement personnel, and (d) for high-profile or sensitive cases involving police officers, consider involving external legal experts or consultants to provide impartial assessments and recommendations.

Addressing prosecutorial conflict of interest involves enhancing existing legal frameworks to allow investigating judges greater autonomy, which mitigates political interference and corruption concerns, thus tackling socio-political issues related to legal efficacy and impartiality. Economically, this approach is prudent as it optimizes current institutions and avoids the high costs associated with establishing a new system, while still improving prosecutorial independence. Socially, increasing transparency and involving external experts in high-profile cases directly address public concerns about the integrity of legal processes and help sustain trust in law enforcement.

2. Tackling Police Cultural Issues:

Addressing the "blue wall of silence" within the police force to foster a culture of accountability and transparency within the police force. Effective strategies for this include: (a) implementing robust whistleblower protection measures to encourage reporting of misconduct without fear of retaliation, revise existing sanctions that may deter whistleblowers, and (b) establishing civilian oversight mechanisms to provide an independent review of police actions and decisions.

Tackling police cultural issues by implementing robust whistleblower protections and civilian oversight addresses the entrenched "blue wall of silence" and fosters a culture of accountability, thereby tackling socio-political problems related to police corruption and resistance to reform. While there are initial costs associated with these measures, they are economically justified by the potential for long-term benefits through reduced inefficiencies and corruption. Socially, encouraging reporting and safeguarding whistleblowers directly responds to public dissatisfaction with police misconduct, thereby strengthening public confidence in law enforcement.

3. Improving Existing Anti-Corruption Mechanism:

To enhance the effectiveness of anti-corruption efforts, it is essential to implement key reforms aimed at increasing transparency and accountability within the Anti-Corruption Unit and promoting greater public access to information. This includes: (a) amend Article 13 of the Anti-Corruption Law to require the ACU Chairperson to present annual activity and financial reports to Parliament, with these reports made publicly available in the following fiscal year, and (b) promote public access to information: Enact and enforce effective access to information legislation that enables the public to obtain details about the organization, functioning, and decision-making processes of public administration in Cambodia.

Improving existing anti-corruption mechanisms by strengthening the accountability of the ACU and enhancing public access to information addresses political concerns about inefficiency and corruption, thus aiming to build trust and ensure responsiveness to public needs. Economically, these reforms are designed to enhance the effectiveness of the current anti-corruption framework without the high costs of establishing a new system. Socially, increasing transparency and access to information meets public demands for accountability and bolsters confidence in anti-corruption efforts.

4. Combating "Popular Justice":

When authorities fail or refuse to address acts of "popular justice," it can lead to impunity and increase the likelihood of future occurrences. To tackle this issue effectively, the following actions are crucial: (a) Ensure law enforcement officers receive comprehensive training on criminal investigations, that they have adequate human and financial resources to carry out prompt and effective investigations; (b) Include in police and judicial training the obligation to investigate all serious crimes regardless of complaints and uphold due process for

all suspects; (c) Consider forming specialized task forces in relevant provinces to investigate "popular justice" cases; and (d) Launch a public awareness campaign across various platforms to highlight the illegality of "popular justice," emphasize the right to a fair trial, and educate the public on discriminatory norms, human rights, and the rule of law.

Combating "popular justice" by training law enforcement and creating specialized task forces addresses the socio-political issue of impunity by ensuring proper investigation of vigilante actions, thereby reinforcing the rule of law and reducing social tensions. Economically, while these initiatives require investment, they aim to mitigate the long-term costs associated with unchecked "popular justice" and its detrimental effects on governance and stability. Socially, public awareness campaigns and education about legal rights challenge the acceptance of vigilante justice and promote a culture of respect for legal processes and human rights.

CONCLUSION

This study comprehensively examines the feasibility and implications of implementing a special prosecutor model in Cambodia, considering political, economic, and social dimensions. While the analysis indicates that a special prosecutor could potentially improve impartiality and boost public confidence in the legal system, it also identifies significant obstacles to its adoption, such as high costs and risks of politicization.

The research begins with an exploration of police legitimacy, which is essential for maintaining public trust and effective law enforcement. Police legitimacy is rooted in the belief that law enforcement actions are appropriate, justified, and aligned with community values. Enhancing perceptions of legitimacy through procedural justice, which emphasizes fair and respectful treatment, is critical for building trust and encouraging cooperation. In contrast, police corruption undermines legitimacy by fostering perceptions of bias and unfairness.

The study then highlights the importance of a special prosecutor—a neutral authority tasked with investigating and prosecuting misconduct and corruption—as a means to strengthen police legitimacy and restore faith in the legal system. By mitigating conflicts of interest in the police-prosecutor relationship, a special prosecutor could improve the fairness of legal proceedings. This study notes that the degree of independence granted to a special prosecutor has a significant impact on its effectiveness. It then reviews various models of special prosecutors, including South Korea's high level of independence, the U.S.'s moderate approach, and Spain's intensive oversight, to illustrate different levels of autonomy and oversight.

This study also examines Cambodia's current corruption challenges within the police force and evaluates the suitability of a special prosecutor system for addressing these issues. Nonetheless, evidence suggests that despite some political will for reform due to public

dissatisfaction, the lack of trust in government, entrenched power consolidation, and financial constraints pose substantial challenges. Additionally, positive public perceptions of current anti-corruption measures reduce the immediate demand for a special prosecutor.

Findings:

The examination reveals that, politically, low trust in the government and power consolidation could hinder effective implementation of any special prosecutor system. The entrenched political interests and vested powers that often shape the landscape of corruption may view a special prosecutor as a threat, potentially obstructing its efforts or seeking to subvert its mandate. Economically, while Cambodia could potentially afford such an initiative, the significant costs and potential economic impacts must be carefully weighed against the benefits to ensure sustainability. Given the initially low political will, it is unlikely that the government would invest in a new initiative. Socially, the public's current trust in existing anti-corruption mechanisms suggests there may not be an urgent need for this reform. The findings indicate that the public may be more receptive to enhancing the capacity and effectiveness of the existing legal frameworks and institutional mechanisms, rather than introducing a wholly new and potentially disruptive system.

As such, the study concludes that while a special prosecutor could address some corruption issues, the existing legal framework and institutional mechanisms might be more practical for immediate improvements. Findings suggest that addressing the internal culture within police forces and enhancing existing mechanisms could provide a more balanced and sustainable approach, aligning with the existing political, economic, and social context.

Recommendations:

To combat police corruption effectively, the study recommends enhancing current mechanisms by granting investigating judges greater autonomy, increasing transparency in the prosecution process, and improving internal controls within the prosecution system. Addressing cultural issues like the "blue wall of silence" through robust whistleblower protections and civilian oversight is crucial for fostering accountability. Additionally, improving existing anti-corruption measures—such as mandating annual reports from the ACU and enhancing public access to information—can bolster transparency and trust without incurring the costs of new systems. Concurrently, addressing "popular justice" through better law enforcement training, specialized task forces, and public awareness campaigns can reduce impunity and reinforce the rule of law. These targeted improvements, combined with enhancements to existing frameworks, offer a practical path forward for Cambodia to advance governance and effectively tackle corruption.

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