

CORRUPTION: THE LAW AND CHALLENGES IN MALAYSIA

Muzaffar Syah MALLOW

Dr. Senior Lecturer, Faculty of Syariah & Law, Universiti Sains Islam Malaysia (USIM), Bandar Baru Nilai, Negeri Sembilan Darul Khusus, Malaysia Email: muzaffarsyah.mallow@yahoo.com

Abstract

Corruption is not only a serious problem affecting Malaysia but in all countries. Every country has to face with the problem concerning corruption whether they like it or not. The issue of corruption can be regarded as a universal issue and for the last many years, there have been many efforts taken at both international and national level to combat with the issue concerning corruption. Malaysia has also taken many steps to deal with the issue concerning corruption. In February 2018, Malaysian were concern over the released reports from the Transparency International's (TI) which has exposed the country dropped in two points in the Corruption Perception Index (CPI) for the year 2017. According to the reports, Malaysia, which scored 47 points, went down seven places in the overall ranking of 180 countries to 62 places. In 2016 Malaysia ranked 55 among 176 countries, with a score of 49 out of 100. In 2015, Malaysia was ranked 54 out of 168 countries, with a score of 50. The index ranks countries and territories by their perceived levels of public sector corruption according to experts and business people. It uses a scale of 0 to 100, where 0 is highly corrupt and 100 is very clean. Ever since the report been released, many peoples in the country have expressed their high concern and dissatisfaction at the government and various agencies for the continue drop in the country international level corruption index. The issue has also become hot issue during the country recent 14TH General Election which has resulted the drastic change in the country political landscape since the country gained its independence in 1957. The new government headed by the Pakatan Harapan (PH) has made many promises to combat corruption and has made pledges to combat with the issue at their very best. The new government has also invited Malaysian to assist them in combating corruption in the country. As such, it is the object of the paper to examine about the issue concerning corruption in the country by identifying the definition of corruption and forms it might take, analysing the causes and effects of corruption, examine all the relevant laws which are currently been used to deal with the issue of corruption, and find ways for improvement.

Keywords: Corruption, Law, Challenges

1. INTRODUCTION

Before going further discussing about corruption, it is very important for us to know the definition of corruption itself and the forms it might take. There is no single universal definition of corruption which can be located. The United Nations Convention against Corruption (UNCAC) 2003 which is consider by many as the only legally binding universal anti-corruption instrument and which Malaysia has become state party to in

2008 did not provide any clear definition on the word corruption. It has been argued that many writers of corruption avoided defining it (George Okaanu Tasie, 1997, p. 131). In order for us to understand the meaning of the word corruption, we need to refer to various sources like book, dictionary, cases and statute. Ian Senior in his book defines corruption as an action to (a) secretly provide (b) a good or a service to a third party (c) so that he or she can influence certain actions which (d) benefit the corrupt, a third party, or both (e) in which the corrupt agent has authority (Senior, I., 2006). According to Black's Law Dictionary, in general corruption can be regarded as a form of fraud, deceit or dishonesty which relates to activity undertaken by an individual or organization entrusted with a position of authority to acquire unlawful benefit. (Please refer to the following cases U.S. v Johnson (C. C.) 20 Fed. 082, State v Ragsdale. 59 Mo. App. 003, Wight v Rindskopf, 43 Wis. 351, Worsham v Murchison, 00 Ga. 719, and U.S. v Edwards (C. C.) 43 Fed. 07). While the definition of the word "corrupt", "corrupt practice" and "corruption" varied in their uses, they all have one similarity namely it carry negative implication to the people, organization and country. In Malay language, the term "rasuah" derives from the Arabic word "al-risywah" and is been regarded as a criminal act and thus prohibited by Allah SWT (Yusuf Al – Qardawi, 1995, pp. 329 – 330).

The most important piece of legislation on corruption in Malaysia namely the Malaysian Anti-Corruption Commission Act 2009 [Act 694] did not provides a definition for the word corruption, but it alludes at length to it under Section 16 of the act which provides for offence of accepting gratification. The section states that "Any person who by himself, or by or in conjunction with any other person (a) corruptly solicits or receives or agrees to receive for himself or for any other person; or (b) corruptly gives, promises or offers to any person whether for the benefit of that person or of another person, any gratification as an inducement to or reward for, or otherwise account of (A) any person doing or forbearing to do anything in respect of any matter or transaction, actual or propose or likely to take place; or (B) Any officer of a public body doing or forbearing to do anything in respect of any matter of transaction, actual or propose or likely to take place, in which the public body is concerned, commits an offence". From this particular section it specified the act of soliciting, giving, accepting, or receiving gratification directly or indirectly, to or from a person in authority either in the form of money, services or valuable goods as an inducement or reward to or not to do an act in relation to the person's principal affairs as undertaking the act of corruption. According to the Malaysian Anti-Corruption Commission (MACC), the act of bribery, fraud, abuse of power and even money laundering are all acts of corruption and any entity regardless whether it is an individual or organization caught for doing such acts can be charge accordingly under the existing law in the country for corruption.

From the definition given above, it is clear to us that the meaning of corruption. Generally speaking corruption can be regarded as the abuse of power which being entrusted for private benefit. It relates to the act of dishonesty, fraudulent and unprofessional behavior (Saadon Awang, 2012, p. 262). Corruption can occur on different scales or level. (Elliott, Kimberly Ann, 1997 and Hamilton, Alexander, 2017). According to the Transparency International, the Global Coalition against Corruption, corruption can happen between a small number of people and at government level on a larger scale. Corruption can be further classified into grand, systematic, petty and political, depending on the amounts of money lost and the sector where it occurs. Grand corruption consists of acts committed at a high level of government that distort policies or the central functioning of the state, enabling the country leaders to benefit at the expense of the public good. Systemic corruption is corruption which is primarily due to the weaknesses of an organization or process. It can be contrasted with individual officials or agents who act corruptly within the system. Petty corruption refers to everyday abuse of entrusted power by low and mid-level public officials in their interactions with ordinary citizens, who often are trying to access basic goods or services in places like hospitals, schools, police departments and other agencies. Political corruption is a manipulation of policies, institutions and rules of procedure in the allocation of resources and financing by political decision makers, who abuse their position to sustain their power, status and wealth (Morris, S.D., 1991).

Under the classification of grand and systemic corruption, multiple instruments of corruption can be used by the perpetrator like bribery, embezzlement, theft, fraud, graft, extortion and blackmail, influence peddling, networking, abuse of discretion, favoritism and nepotism. Whatever classification it might take or instruments it can used, corruption are often been regarded as endemic sociological occurrences which appear with regular frequency in virtually all countries on a global scale in varying degree and proportion. It is important to control corruption from being spread. Once widespread, corruption can hold of any country and may spread easily thus making the task to control corruption a difficult one (Ahmad Sarji, 2007, p. 255). In line with the spirit of the United Nations Convention against Corruption (UNCAC), all 186 state parties (As to September 2, 2018) to the convention including Malaysia will implement several anti - corruption measures which may affect their laws, institutions and practices. All the measures which will be taken aim at preventing corruption, including domestic and foreign bribery, embezzlement, trading in influence as well as money

laundering.

2. CAUSES AND EFFECTS OF CORRUPTION

There is no single causes which give rise to corruption. However, according to a 2017 survey study which being conducted (Dimant, Eugen; Tosato, Guglielmo, 2017-01-01) the following factors have been identified as the contributed causes which give rise to corruption. First is due to greed of money, power, luxury or any other materialistic desires. To certain individual, it is very difficult for them to control their lust. The desire to live in a life style which is beyond their means could force certain individual to get involve with corruption as it is the easiest way to get money and to use the money to fulfill their dream and illusion. Addicted to power also could influence certain individual to do anything including corruption with the objective to stay in power and be the leader. Second is due to higher levels of market and political monopolization. When people get the opportunity to monopolize certain matters or things, it would be easy for them to get involve with corruption as they are in control for the matter or things which they have and people will do anything to get those matter or things from these monopolize people including by way of corruption. Third is due to low levels of democracy, weak civil participation and low political transparency. When a country don't have democratic and transparent system or institution it will open itself to many kinds of problems and abuses including corruption. Democratic and transparency is very important components to any society so that they could be a proper check and balanced within the country administration and to prevent any abuse of power including corruption.

Fourthly is due to higher levels of bureaucracy and inefficient administrative structures. Having too many peoples in charge for the governing of the country could cause problem as it will become very difficult for the government or any organization to constantly monitor and control the people which they had employed. Every individual has their own personality and character, it would be hard to know which one a good one and bad one until they being exposed for the crime they did including corruption. Having a bad administrative structures will also open to corruption as people having no choice and will do anything to get their problem solve by undergoing such incompetent and inefficient administrative systems in place. Fifthly is due to low press freedom and internet access. Freedom of information is very important for any civilized society. Without having proper access to information, people will not know about corruption and how to deal with it. If journalist being suppressed to report any issue pertaining to corruption, society will unable to know about the issue, thus will make any efforts to combat corruption unsuccessful. Too much control over the internet could also create problem to the people. Internet access has become the most important medium of information in today modern society. With the creation of social media like Facebook, Twitter, Instagram, and others, people can get information's faster than it used to be decades or centuries ago. Without having access to the internet, people cannot get any information's about corruption and will make any tasks to increase the awareness over the issue to other people much harder.

Sixthly is due to poverty. Having no money and wealth of their own could influence them into corruption. Rich people might abuse their money and wealth power to influence poor people by way of corruption. Seventhly is due to low levels of education. Education is very important asset to all people. Without education, people cannot change their life and cannot live in a civilized society which value and uphold rules of law thus will exposed them to many crimes including corruption. Having no education could open them to exploitation by bad people who want to take advantage over them by way of corruption. Besides those mentioned above, the study conducted also reveals other contributing factors which give rise to corruption like low economic freedom, large ethnic divisions and high levels of in-group favoritism, gender inequality, low degree of integration in the world economy, large government size, low levels of government decentralization, former French, Portuguese, Belgian or Spanish colonies have been shown to have greater corruption than former British or Dutch colonies, resource wealth, political instability, weak property rights, and contagion from corrupt neighboring countries. Beside those mentioned causes above, another cause which might also give rise to the problem relates to low salary. If people being paid with the level of salary unequal to all the works they done, they can also be exposed to corruption (Harits Asyraf Hasnan, 2017).

Though it is tough to identify the exact cause for corruption, but it is not so when analyzing the impact or effects which corruption generates to individual, organization, society, economy and the country. As for the individual, those who involve with corruption will face justice after they being caught. Depends on jurisdiction, upon guilty verdict the perpetrator will face with severe punishment like heavy fines, caning and many years of imprisonment. Individual who involve with corruption will lose their dignity, reputation and self - respect. Besides being punished, the perpetrator will also face condemnation and repulsion not only from the society but from their own family and friends. The perpetrator will be isolated by the society and suffered emotional breakdown. In long term, the perpetrator will destroyed their own life and future career. Beside the

perpetrator, the organization which the perpetrator belong to will also be effected with the corruption committed if no concrete action is taken to deal with it. If the corruption goes unnoticed, it will disrupt the organization administration, the life and work of all workers in the organization and jeopardize their establishment in the eyes of the public.

As the effect it can bring to the society, when corruption become so rampant people will start to disregard the individual involved in corruption and started to talk negatively about the individual. This will become a serious problem when such individual involve happen to be a public official. Disregard towards public officials will also build distrust. Things will become worst when the corruptor is one of the country leaders or the country top leader themselves. People will lose their respect and trust towards such leader. Respect and trust is main criteria in social life in every civilized society. People go for voting during the election not only with the desire to improve their living standards by the election winner but also with respect and trust they have for the leader. If the politician's leaders are involved in corruption, people knowing this will lose respect and trust for them and will not like to cast their vote for such politicians during election, thus put an end to the political career of the leader.

As the effects corruption can bring to the nation economy includes a decrease in foreign investment into the country. There are many incidents where foreign investments who at the beginning willing to come to certain country but later have decided to move to other country due to heavy corruption that occur in that particular country. Corruption can also cause delay in the country economic growth. A work which can be done in few days may be done in a months' time or take several years to complete due to corruption involve. Once there is a decrease in the foreign investment and delay in the economic growth, the country development will be badly affected. At the end, corruption will hinders the economic progress of that country. If the country is not economically developed, it will give rise to many other problems and the most noticeable problem are social problems among its population especially the youth like crimes, unemployment and delinquencies. If corruption continue without stop, it will certainly effect the name of the country internationally thus give rise to many nick names associated with corruption towards those country from the international community like kleptocracies, oligarchies, narco-states and even mafia states.

3. EXISTENCE LAWS IN MALAYSIA

As a developing nation, Malaysia has the fastest economic growth within the region (Tan Xue Ying, 2018). The country leaders in the past and present have laid down many policies to make the country prosper and attain fully developed nation status like Vision 2020 and the National Transformation Plan 2050 (TN50). Alongside with these ambitious plans and to be part of the international community, emphasized has been given by the country leaders to have good governance, transparency and the eradication of corruption within the country. To show its commitment on this matter, Malaysia launched the National Integrity Plan in 2004 and the Government Transformation Programme (GTP) in 2010. Under the GTP, six National Key Results Areas have been identified, and fighting corruption is one of the key priority area which being highlighted in order to increase public trust in government, reduce fraud and waste in government procurement, and combat corruption regardless the scales or levels. In it, the government is also determined to improve its ranking in the Transparency International's Corruption Perception Index further by updating the relevant policies, procedures and enforcement activities. (The Sun Daily, 2009).

Crucial also to note, Malaysia has also become a signatory of the United Nations Convention against Corruption 2003 (UNCAC) on 9 December 2003 and successfully ratified it on 24 September 2008. The UNCAC is a multilateral convention negotiated by members of the United Nations. It is the first global legally binding international anti - corruption instrument. In its 71 Articles UNCAC requires that States Parties implement several anti-corruption measures which may affect their laws, institutions and practices. These measures aim at preventing corruption, including domestic and foreign bribery, embezzlement, trading in influence and money laundering. The UNCAC covers many different forms of corruption, such as trading in influence, abuse of power, and various acts of corruption in the private sector. In addition to its obligation under the UN Convention, Malaysia is also a member of the Asian Development Bank/Organisation for Economic Co -operation and Development Anti - Corruption Action Plan for Asia and the Pacific and the Asia/Pacific Group on Money Laundering. All these international entries clearly indicate Malaysia is serious with international community commitment and desire to combat corruption.

There are a number of pieces of legislation in Malaysia which deal with corruption namely Penal Code [Act 574], Election Offences Act 1954 [Act 5], Customs Act 1967 [Act 235], Emergency (Essential Powers Ordinance) No. 22 of 1970, Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 [Act 613], and Malaysian Anti-Corruption Commission Act 2009 [Act 694]. There are also various government directives and circulars produced by the Public Service Departments which can be

utilized to combat corruption especially among the public servant like Public Officers (Conduct and Discipline) Regulations 1993, Service Circular No. 12 of 1967 (Anti-Corruption Agency Director's Investigation Report), Service Circular No. 17 of 1975 (National Investigation Bureau Investigation Report), Confidential General Circular No. 1 of 1984 (Investigation of Corruption Cases against Government Departments), Confidential General Circular No. 1 of 1985 (Integrity Vetting by Anti-Corruption Agency Malaysia), and other Service Circulars currently enforced.

The Malaysian Anti-Corruption Commission Act 2009 [Act 694] (Hereinafter shall be known as MACC Act 2009) which repealed the Anti-Corruption Act 1997 [Act 575] is the principal legislation dealing with corruption in the country. According to the act, corruption is regarded as an act of giving or receiving of any gratification or reward in the form of cash or in-kind of high value for performing a task in relation to his or her job description. There are four (4) main offences stipulated under the MACC Act 2009 namely soliciting or receiving gratification (Bribe) [Section 16 & 17(a) of the MACC Act 2009], offering or giving gratification (Bribe) [Section 17(b) of the MACC Act 2009], intending to deceive (False Claim) [Section 18 of the MACC Act 2009] and using office or position for gratification (Bribe) (Abuse of power or position) [Section 23 of the MACC Act 2009]. The word 'corrupt' was explained by the Malaysian courts as 'doing an act knowing that the act done is wrong, doing so with evil feelings and evil intentions' and 'purposely doing an act which the law forbids'. The courts elaborated that "Corrupt is a question of intention. If the circumstances show that what a person has done or has omitted to do was moved by an evil intention or a guilty mind, then he is liable under the section. Thus if the accused used his position to solicit gratification with a guilty mind, he is caught within the ambit of the section. (In that case.) The real point is whether there is soliciting of a political donation with a corrupt intention". (Please refer to the case of Public Prosecutor v Datuk Haji Harun bin Haji Idris (No. 2) [1977] 1 MLJ 15). The MACC Act 2009 has the principal objective of promoting the integrity and accountability of public and private sector administration by constituting an independent and accountable anti-corruption body; and educating the public at large about corruption and its effects.

Section 5 of the MACC Act 2009 has expanded the definition of gratification to cover the following many corrupt acts namely a) money, donation, gift, loan, fee, reward, valuable security, property or interest in property being property of any description whether movable or immovable, financial benefit, or any other similar advantage, (b) any office, dignity, employment, contract of employment or services, and agreement to give employment or render services in any capacity, (c) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part, (d) any valuable consideration of any kind, any discount, commission, rebate, bonus, deduction or percentage, (e) any forbearance to demand any money or money's worth or valuable thing, (f) any other service or favour of any description, including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted, and including the exercise or the forbearance from the exercise of any right or any official power or duty; and (g) any offer, undertaking or promise, whether conditional or unconditional, of any gratification within the meaning of any of the preceding paragraphs (a) to (f). According to Section 24 of the MACC Act 2009 any person who commits an offence under sections 16, 17, 20, 21, 22 and 23 shall on conviction be liable to (a) imprisonment for a term not exceeding twenty years and (b) a fine of not less than five times the sum or value of the gratification which is the subject matter of the offence, where such gratification is capable of being valued or is of a pecuniary nature, or ten thousand ringgit, whichever is the higher. Under subsection (2) of the same section stipulates that any person who commits an offence under section 18 shall on conviction be liable to (a) imprisonment for a term not exceeding twenty years and (b) a fine of not less than five times the sum or value of the false or erroneous or defective material particular, where such false or erroneous or defective material particular is capable of being valued, or of a pecuniary nature, or ten thousand ringgit, whichever is the higher.

Any person who knows and fails to report an act of giving and offering of bribes is committing an offence under Section 25 (1) and (2) of the MACC Act 2009. Section 25 (1) and (2) of the MACC Act 2009 provide the punishment of fine not exceeding one hundred thousand ringgit and/or imprisonment not exceeding 10 years or to both. Meanwhile any person who knows and fails to report an act of soliciting and obtaining of bribes is committing an offence under Section 25 (3) and (4) of the MACC Act 2009. Section 25 (3) and (4) of the MACC Act 2009 provide the punishment for a fine not exceeding ten thousand ringgit and/or imprisonment not exceeding 2 years or to both.

In order to enforce the mentioned law above, a specialised law enforcement body was created known as the Malaysian Anti-Corruption Commission (MACC). MACC was established in line with the coming of the MACC Act 2009 [Section 4 of the MACC Act 2009]. The functions of MACC is clearly provided under Section 7 of the MACC Act 2009 as follows: (a) to receive and consider any report of the commission of an offence under this Act and investigate such of the reports as the Chief Commissioner or the officers consider practicable,

(b) to detect and investigate (i) any suspected offence under this Act, (ii) any suspected attempt to commit any offence under this Act; and (iii) any suspected conspiracy to commit any offence under this Act, (c) to examine the practices, systems and procedures of public bodies in order to facilitate the discovery of offences Malaysian Anti - Corruption Commission under this Act and to secure the revision of such practices, systems or procedures as in the opinion of the Chief Commissioner may be conducive to corruption, (d) to instruct, advise and assist any person, on the latter's request, on ways in which corruption may be eliminated by such person, (e) to advise heads of public bodies of any changes in practices, systems or procedures compatible with the effective discharge of the duties of the public bodies as the Chief Commissioner thinks necessary to reduce the likelihood of the occurrence of corruption, (f) to educate the public against corruption, and (g) to enlist and foster public support against corruption.

The MACC has extensive powers to investigate corruption and may order any person to appear before it to be examined. In addition, officers of the MACC are empowered by the MACC Act 2009 to have powers and immunity similar to that afforded to police officers in the performance of their duties; for example, powers of search and seizure of property. MACC has also been accorded powers of enforcement pursuant to 25 other pieces of legislation, which include the areas of banking and financial transactions [Section 115 of the Banking and Financial Institutions Act 1989 (Act 372) and Section 88 of the Central Bank of Malaysia Act 2009 (Act 701)], company or society dealings and transactions [Section 301 of the Companies Act 1965 (Act 125) and Section 46 of the Societies Act 1966 (Act 235)], customs and smuggling activities [Section 137 Customs Act 1967 (Act 235)], income tax [Section 118 of the Income Tax 1967 (Act 53)], prison [Section 54 of the Prison Act 1995 (Act 206)], and government supplies and election offences [Section 10 of the Election Offences Act 1954 (Act 5)]. MACC has also been given administrative powers to recommend disciplinary actions against public officials under various government directives and circulars highlighted above.

4. AREAS OF IMPROVEMENT

Beyond doubt, Malaysia is really serious in combating corruption. This can be seen from the explanation given above with all the international convention and treaties entered into by the country at global stage as well as the existence of many laws to deal with the issue of corruption. However, having a law is one thing, having a commitment is another thing. Strong commitment is needed if we really want to eradicate corruption in the country. (Noore Alam Siddiquee, 2013, p. 46). Without having a serious commitment, no point of having many laws to address the issue. Regardless the sectors, transparency is also important element to eradicate corruption (Ahmad Sarji, 1996, p. 14). Creating a more transparency, accountability and efficiency system can prevent corruption. If corruption not being stop and eradicate, it will destroy people trust and respect towards the authority (Syed Hussein Al – Atas, 1968, p. 23). Despite all this, there are still certain areas where the new government headed by Pakatan Harapan (PH) can seriously consider to combat corruption in the country. On 28 July 2015, the Malaysian Bar, in collaboration with the Institute for Democracy and Economic Affairs (IDEAS), the Centre to Combat Corruption and Cronyism (C4 Center), Citizens' Network for a Better Malaysia (CNBM), and Transparency International Malaysia (TI – M), submitted a memorandum for the reform of the Malaysian Anti-Corruption Commission (Known as "The Memorandum"). The memorandum is directed at strengthening the Malaysian Anti-Corruption Commission for it to comprehensively address and deal with corruption. There are four substantive parts in the memorandum namely (a) Constitutional amendments to establish a constitutional entity to be called the Independent Anti-Corruption Commission ("IACC"), (b) Amendments to the Malaysian Anti-Corruption Commission Act 2009, (c) Amendments to other related legislation; and (d) Prosecutorial powers. The new government should analyse the memorandum done by these groups and move forward with the suggestions proposed by them. Besides these proposals, the government should also strengthen the Malaysian Anti-Corruption Commission (MACC). MACC is the main agency in the country combating corruption, as such, MACC should be seen by many as a capable agency to carry out all their job without disturbance or being subjected to any influence. This can be done by making MACC a really independent entity and not have it under the Prime Minister's Department or any other ministry, department or agency. This is important to allow MACC to carry out all its responsibilities and more importantly to create public trust and positive perception towards the MACC.

Beside improving the existing legal system and strengthening the existed institution combating corruption, more should be done to deal with the issue of corruption. This can be carry out through education which can create awareness and consciousness among the public especially among the young people. All relevant agencies regardless whether is the government or non – government must work closely to find a way to combat with the issue of corruption in the country. They should initiated a project aim to deal with the issue more effectively and efficiently. The project should be aim at increasing anti-corruption awareness through education of the youth, dissemination of anti-corruption information to the public, expansion of sociological

basis and awareness-raising on the financing of political parties and campaigns, thus contributing to the development of civil society having a minimum problem with corruption. The project consisted of four independent but thematically-linked components namely 1) Introduction of the anti-corruption education course for schools (Both primary and secondary level); 2) Carrying out a long-term television and radio programme focusing on anti-corruption; 3) Using public opinion surveys from time to time to improve anti-corruption measures in the country; and 4) Having round-table discussion on the problems related to the financing of political parties and political campaigns. Intended outcomes from this proposal would be 1) Anti-corruption education to be introduced in school curriculum; 2) Anti-corruption information being disseminated through television and radio on a long-term and regular basis; 3) The public opinion surveys carried out and the input given should be immediately analyzed, published and put into action and; 4) Round-table discussion on topical issues related to the financing of political parties.

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