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# 1MDB: The Causes! Part I

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*Abstract-* On the basis of what various experts in their fields have pointed out as the causes for the 1MDB scandal, a total of nine is laid out in this first part of a series of writing on the causes for the 1MDB scandal. Sites where the nine 1MDB causes are raised include local news portals or freely accessible foreign based websites and these are in contrast to later parts of the series whereupon the causes are found to be elaborated upon in materials such as research papers. In rounding out the discussion of the various causes leading to the delineation of a total of five points that should be worth considering, China's Belt and Road Initative (BRI), public procurement process and the state of poverty in today's Malaysia are looked into. All in all, in the look out for the possible answers to the question on what causing the 1MDB scandal, several matters from local and international arenas appear relevant for considerations and those may go beyond the ones typically discussed under the different levels of governance ranging from individual to corporate to national and finally to international governance.

*Keywords: 1MDB, causes, governance, BRI, public procurement, poverty.*

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# 1MDB: The Causes! Part I

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## I. Introduction

Following several written pieces published over a number of years on the first series of writing on the 1MDB (Azham, 2015a; Azham, 2015b; Azham, 2016a; Azham, 2016b; Azham, 2018; Azham, 2019), and although that series of 1MDB writings which try to give answers to questions that begin with the word "What" could still be expanded with a number of other similar works and such works could be embarked upon again in the future, now is perhaps the right time to try to answer some other 1MDB questions that begin with the word "Why" or "How". Thus, the present piece of work is Part I of a second series of writing on 1MDB that is concerned with the answers that some parties have put forward in trying to answer the question why or how the 1MDB problems had come about.

To identify the 1MDB causes is important not just for curiosity's sake since with those answers it might be possible to move on to the next stage which is to identify the much needed measures to try to minimize the possibility of 1MDB kind of thing to recur in the future. Indeed, following the completion of the present series of writing on the causes of the 1MDB's problems that this very piece of work is part of, the subsequent third series should dwell upon possible solutions which interested parties may want to consider for implementation.

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To know exactly the debilitating goings on, to idenfify the causes, to decide on the solutions and finally to choose the right solution for implementation are all the steps which need to take place if one is focused on dealing appropriately with the 1MDB scandal and its kind. Without such systematic approach, it is afraid that whatever solution chosen to be implemented at the end of the process would not be the right one leading to the possibility that there shall be no end to the suffering that all must bear with the possible emergence of 1MDB 2.0, 1MDB 3.0 and so on and so forth.

Indeed, it can never be emphasized enough the destruction that has come about to present and future Malaysia and Malaysians with the perpetration of fraud using the 1MDB as the vehicle. The co-founder, president and chief executive offier of the NGO Better Markets Dennis M. Kelleher whose excellent piece of writing is quoted extensively in the next section of this work had depicted it quite well. Note what he wrote in the very last section of his excellent piece of work that was published in May 2019 at the Harvard Law School Forum on Corporate Governance (Kelleher, 2019):

> 1MDB was ostensibly set up to "improve Malaysians daily lives." Not only didn't that happen, but those very same Malaysians are now on the hook to repay more than $6.5 billion in bonds and apparently billions more in other 1MDB borrowings, even though more than half of that was reportedly looted and will never benefit anyone in Malaysia. Thus, the Malaysian people have been doubly victimized and will continue to be so for many years, if not decades, to come. That is wrong.

Earlier in the section that comes with the heading "Goldman's $6.5 Billion Role in Looting 1MDB and Reelecting a Corrupt Prime Minister", Kelleher first made it crytal clear as to who were the plundering perpetrators:

> With numerous red flags suggesting fraud if not criminal conduct, Goldman pocketed the exorbitant amount of $600 million for placing $6.5 billion in three no-bid bond offerings over ten months in 2012-2013 for 1MDB. Two "former top [Goldman] partners said the amount of money Goldman Sachs made from relatively plain bond deals [alone] should have been a bright warning to its highest executives." After Goldman's take (more than "two hundred times the typical fee" according to some), the then-prime minister of Malaysia and his mostly inexperienced, youthful co-conspirators allegedly looted "over half" of the remaining funds virtually immediately and, with the assistance of Goldman Sachs' partners, engaged in



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other crimes. That was done under the noses of "more than 30 Goldman Sachs executives," including the then-CEO, the then-COO and later President, the then co-head of investment banking and now current CEO, the then-Vice Chairman and many others, and reportedly after a rigorous review by no less than five internal Goldman committees.

As for the most harrowing wickednesses suffered by the people of Malaysia as a result, Kelleher had noted right after that very quotation the following:

> Most importantly, just two months after Goldman's third and largest 1MDB bond offering for $3 billion, the then-prime minister "won re-election by clinging to power with the most slender of margins," as detailed in the explosive book Billion Dollar Whale. That appears to have only been possible due to "hundreds of millions of dollars" from the Goldman offering being immediately diverted "to the prime minister's allies across the country" for bribes and other election-related fraud. Goldman's 1MDB bond offerings also funded an alleged corrupt, anti-democratic kleptocratic prime minister and enabled him to hold onto power. Goldman enriching itself at the expense of a very poor country is bad enough (apparently as part of a business line set up by Goldman's then-President Gary Cohn referred to as "monetizing the state"). However, Goldman's 1MDB bond offerings also funded an allegedly corrupt, anti-democratic kleptocratic prime minister *and* enabled him to *hold onto power for five additional years, during which time the prime minister's opponents were imprisoned and killed.* (Emphasis in the original.)

And finally in the very last paragraph of that very section, Kelleher who has held several senior staff positions in the United States Senate had noted among others: *Thus, 1MDB isn't just one of the biggest financial crimes of the century; it is a crime against an entire country and a catastrophic human, social and political tragedy.*" (Emphasis added.) Very strong words! And sadly it is the truth. But truth aside, what could have caused the 1MDB to lead to such devastating outcomes?

In trying to find the answers to that question, the present Part I is the first in a series of writing on the 1MDB causes to try to bring together what some parties have pointed out over the years. While the Part II in the series of writing shall be focusing on articles from widely available research journals, books and the like, this Part I gives focus to materials appearing in some freely accessible websites and news portals. The criterion used to decide whether a written piece to be included in either Part I or Part II of the series is whether it has undergone refereeing process or not before it goes for publication. If it has not, it will go to Part I. But if it has undergone such process, it will be included in Part II.

That said, this is in no way to cast aspersions on the quality of concerned written pieces or the credibility of parties whose quoted remarks are found in the present work. To be certain several of the written pieces are based upon works that came with rigourous research while so many of those whose remarks were quoted or whose works were referred to are prominent in their fields. Therefore, in perhaps just about every single case a reader can be rest assured of the concerned parties knowing very well what they were talking about – even if one may disagree for one reason or another with the views expressed!

Finally, it is notable that there have been more than a few causes for the 1MDB scandal being bandied around. These are pointed out inside the very lengthy next section to be followed right after with a discussion and conclusions section. Note that the laying out of the 1MDB causes in the next section is done in a straightforward manner with no intention whatsoever in showing preference to any of them. Perhaps that is the right move to take since whatever final conclusions to be made should only take place *after* Part II for the 1MDB causes' series has been completed. Such move befits what 1MDB is all about: it is not at all a simple everyday case of corruption or a straight out case of the so called kleptocracy. Instead, it is to be more exact a case of *grand* corruption reaching the status of a *global* kleptocracy!

## II. Causes Abound!

It seems that as soon as the 1MDB scandal entered into public knowledge in 2015 there have been much deliberations over the topic of what had caused it to take place. And it also seems that there are numerous causes put forward by the different parties over the years. It ranges from power concentration in the hands of a certain individual in the country to political interference in the way that businesses are being governed to the close relationship between politics and business field to… In total, there are nine possible causes laid out in this Part I. And it has to be admitted too that some of the causes appear to be ones and the same when one looks closely at them! The difference appears to come about when different terms are being used by different speakers or writers or in the different ways that the causes are being presented. The good examples at hand may be those causes discussed under the following headings: Political interference…, Corporate governance going haywire and Where public and regulatory governance affecting the corporate governance… The first is discussed as the second cause, the second as the fourth cause and the last as the very last cause.

But at this point for the Part 1 of the present series of writing on 1MDB causes the existence of much similarity over this and that is perhaps not important



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enough for consideration for what should be significant is having everything coming from diverse parties in one place so that later on with regard to the process of nailing down the causes it can take place more efficiently to lead to the identification of solution(s) for possible implementation by interested parties. All in all, in this current Part I there is in total nine possible causes leading to the 1MDB scandal laid out. The first cause discussed next is power concentration coming from the whitsle blower and independent journalist Clare Rewcastle Brown who has been well identified as the person breaking out the 1MDB debilitating story to the world and in the process saving Malaysia from further ruins!

a) *Concentration of power versus the lack of power and all that…*

In mid March 2015 in addressing a 1,000-plus audience at a forum via an online video conference on Skype, Clare Rewcastle Brown, the editor of a United Kingdom-based whistleblower site, *Sarawak Report*, said over-concentration of power in Malaysia, weak public institutions, the muzzled mainstream media and lack of transparency had allowed businessman Low Taek Jho to allegedly siphon billions of ringgit from 1MDB (Anisah, 2015). Specifically, she claimed that "… all these factors had prevented anyone from revealing more info on Jho Low, as he is better known, and his 1MDB dealings earlier on, despite the fact that he was just a '30-something businessman'".

In regard to the first factor over-concentration of power, she claimed that in the country there was much concentration of power with the then 1MDB protagonist Najib controlled two of the most important portfolios in the government. As a result, as she was quoted to say:

> The checks and balances are eroded to the extent that the prime minister is the finance minister. I mean, why do you think there are two positions? Why is it a good idea that the same person should occupy both? ...There seems to be an attitude that a strong government is a good thing, and that's why you have over-concentration of power and weak institutions. But I think it's a recipe for disaster. And that's what 1MDB is, a very big disaster for Malaysia.

And as far as the rest of the factors are concerned, the news report had this to say early on: "She added that there was a lack of robustness in Malaysia's institutions, despite the huge pool of talent and manpower the country has." Related to this she was quoted to say: "In a more open, strong, check-and-balance set up, he [Low Taek Jho] would have been flushed out, sorted and put in his place a long time previously." Next, in regard to the mainstream media, the news report mentioned: "… she said that the "muzzled media" was overly obedient and Malaysians could only rely on blogs and online news portals to objectively discuss politicians' actions…" It also claimed that "[s]he said it would take just a 'half-decent investigation' by authorities to discover 1MDB's financial irregularities and Low's role in it..."

Finally, when transparency in particular is the concern, she was quoted to say: "The other thing that struck me is the lack of transparency. Politicians like Tony Pua, Rafizi Ramli and Umno's Tun Dr Mahathir Mohamad have asked valid questions and those answers should be available in public paperwork." Next, the news report had this to say: "Instead, she said, the questions remained unanswered and anyone who digs deeper were treated as traitors."

In another news report on the same event the next day published by another news portal, it is worth notimg what was mentioned regarding the subject matter of power concentration (Fernandez, 2015):

> Power, or the lack of it, was the thrust of a public forum on Sunday which explored the 1MDB scandal. It was not so much about what happened… but rather why the scandal happened. Rewcastle… pointed out that there was over-concentration of power in Malaysia to the extent that the same person was Prime Minister and Finance Minister. … "The same person being both Prime Minister and Finance Minister indicates the extent to which checks-and-balances – inherent in a Federation – had been eroded," said the Sarawak-born Rewcastle… The over-concentration of power, agreed Rewcastle, allowed Penangite Jho Low to not only siphon out monies from 1MDB, it prevented more information from being made public. "He's just a thirty-something businessman. In a more open system, it would have not happened, and if it did, he would have been flushed out and put in place a long time ago."

And perhaps more to the point is what comes next:

> There appears to be a misconception that a strong government — in the manner it has developed in Malaysia – is a good thing, said Rewcastle, reiterating the fact that Najib Abdul Razak was both Prime Minister and Finance Minister, two full time jobs. … "Over-concentration of power – too much power — goes with the weak (lack of power) national institutions." The misconception, thinks Rewcastle, is why the over-concentration of power situation has developed to the extent that national institutions have been weakened.

All of this coming from independent journalist Claire Rewcastle Brown is worth taken seriously since it was she who first uncovers the illegal money trail at 1MDB (while going after the then Sarawak kleptocratic Chief Minister Taib Mahmud). She who is born in Sarawak is a sister-in-law of former British Prime Minister Gordon Brown and had an eye on 1MDB since 2010 (Fernandez, 2015). Later, in 2015, Xavier Justo, a whistleblower and former employee of PetroSaudi, gave her more than 90 gigabytes of data from PetroSaudi



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which included 227,000 emails related to the joint venture between PetroSaudi and 1MDB (Mui and Thye, 2019). She had subsequently published these 1MDB findings, and many others, in her online publication the *Sarawak Report*. In 2016 alone Rewcastle Brown published 199 articles in the *Sarawak Report* and brought her findings to major global newspapers.

*b) Political Interference…*

It was about a couple of months later in late May 2015, following all that coming from Rewcastle Brown as detailed out above, that the *Malaysiakini* journalist P. Gunasegaram (who was the author of the very first book explaining the 1MDB scandal) had come out with an incisive analysis explaining the 1MDB debacle. In his piece entitled "Why things like 1MDB happen", he started out talking about the Bumiputra Malaysia Finance (BMF) scandal in the late 1970s and early 1980s which revolved upon Bank Bumiputra's wholly-owned Hong Kong subsidiary the BMF, loaning money to George Tan's Carrian group, eventually amounting to RM2.5 billion in all (Gunasegaram, 2015).

And in the last few concluding lines regarding the BMF scandal, he had this to say:

> This was at that time, the largest banking scandal in the world and the interest in it spiked further when a Bank Bumiputra senior officer sent to Hong Kong to investigate was murdered and his body dumped in a banana plantation. The end-result of the entire hugely complicated affair was that few people were brought to account… BMF's then chairperson spent a long time fighting extradition to Hong Kong from the UK. Eventually he pleaded guilty in Hong Kong, but in an interview with Malaysia's *The Sun* in a pub in London, he disavowed any wrong-doing in 2008, saying he was the fall guy. According to Lorrain, Bank Bumiputra was getting deposits of RM50 million a month from national oil corporation Petronas and had nowhere to put it to use. Hence Hong Kong and the Carrian loans.

In linking that scandal to the 1MDB scandal, P. Gunasegaram wrote: "Much like 1MDB, it looks like a money-making scheme gone wrong. The underlying problem was a total lack of proper governance at the bank and the movement of money out of it. Was it a desire to make money for the bank and hence for the country or was it a plot to siphon out money for the benefit of individuals?" Next, revealingly, he pointed out the similarity that can be found involving a number of scandals that the country had to suffer from following the BMF scandal:

> There have been many other scandals since - too many to go into detail in this article. Bank Bumiputra's rescue several times in the billions of ringgit, Maminco, Perwaja Steel, Malaysia Airlines' sales and repurchase, the Renong debacle, the huge forex losses at Bank Negara Malaysia (BNM) in 1992/93 - *they all held one thing in common, the breakdown of corporate governance due to political interference*. (Emphasis added.)

Following all this, in the next part of his writing, he elaborated on that very last scandal he mentioned in the quotation above which is the so called BNM scandal where he claimed "[w]hile official accounts put it at around RM10 billion, other estimates place it at around RM30 billion, the actual figure masked by adjustments to reserves, accounting tricks and even the alleged depreciation of the ringgit to improve BNM's reserve position in ringgit terms."

Next, he talked about the interfering hand of the then prime minister in the central bank operations: "In BNM's case, it was a political decision - Mahathir gave the go ahead for BNM to take positions - speculate in other words - on the foreign exchange market, to obtain gains for the country. That's unheard of for a central bank, and BNM is probably the first and only central bank to have engaged in such activities on such a scale among the central banks of the world..."

With Mahathir leaving the post just a decade after what happened, P. Gunasegaram mentioned the following with regard to his successor: "Mahathir's successor Abdullah Ahmad Badawi had few such large scandals but there were many allegations of patronage made with respect to his son, son-in-law and brother, and also references made to the so-called fourth floor boys - a coterie of close advisers who were supposed to have great influence in decision-making."

Still, Abdullah, as he argued it, had made one quite positive action. As he put it:

> But to Abdullah's credit, it was under his tenure that the government-linked companies (GLCs) transformation programme was started, an ambitious attempt to reform GLCs many of which were being managed badly with former civil servants at the top. Khazanah Nasional, which is wholly-owned by the government, under Azman Mokhtar and which held many of the GLCs under its umbrella spearheaded the transformation, by bringing in professional managers as well as setting KPI targets, standards and rulebooks, amongst others.

Unfortunately, when Abdullah left the scene with Najib Abdul Razak taking over the prime minister post, the so called GLCs transformation programme was left in tatters as far as the 1MDB was concerned. As he put it:

> But his successor Najib Abdul Razak negated a huge part of the transformation when along came 1MDB, first formed as Terengganu Investment Authority or TIA, which in a space of five years had assets, many of them dubious and unverifiable, of RM51 billion and liabilities of RM48 billion. It was built on a towering edifice of debt never before seen in Malaysia, much of it guaranteed by the federal government.



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To be more exact, and as he explained next, the governance failure found in the 1MDB came about in the following forms: "1MDB is wholly-owned by the Minister of Finance Inc and is not subject at all to all the governance procedures required of other GLCs. It operates rather covertly, makes no public reports like Khazanah does yearly beyond what is required by statute and gives very little information of its operations."

Next, in concluding his delineation of the few scandals over the years, P. Gunasegaram had mentioned the following penetrating and most interesting question: "As we saw this is not the first time such a lack of governance has happened in Malaysia. The question is why does it continue to happen." And so in the very last part of his most useful analysis and under the heading "the root causes", he mentioned:

> One root cause is the continued abuse of the bumiputera agenda. Such was the case with Bank Bumiputra where others took advantage of the bank, set up to help bumiputeras gain access to funding, to channel funds into Hong Kong for their own purposes leading to massive losses of money. In subsequent years, Bank Bumiputra continued to lend money to well-connected bumiputra owners many of whom never repaid their loans, eventually making the bank bankrupt. … In the guise of helping bumiputeras, much money was siphoned off out of financial institutions but very few people were brought to book. Such practices were accepted as part of the ordinary course of business.

Next, in the form of another root cause, P. Gunasegaram said:

> Other reasons for such covert operations are to raise political slush funds which could be used during elections, although many suspect a huge part of these funds go into individual pockets where they are tacitly accepted as a part of patronage politics. Such reasoning and the channelling of funds into the pockets of party bigwigs around the country muffles criticism of the practices from within Umno.

And the very same political purposes could be detected taking place in *some other* debilitating practices conducted by the concerned parties. As he put it: "Also much of the public funds are wasted and lucrative contracts and concessions are awarded to privileged businessmen who contribute to party funds. Often, these businesses inflate construction prices to cream off profits while the inflated figures allow them to charge more for services they provide."

Finally, in the second last paragraph of his writing, he mentioned the power concentration factor that Rewcastle Brown earlier had pointed out. Apparently it is one of three factors forming a foundation of a system where 1MDB and other similar cases before and after originated from! As he put it: "The underlying problem is the system - as long as there is money politics and excessive powers vested in the hands of the executive it will continue to happen over and over again. As long as no one is brought to account for past transgressions, it will encourage more people to cheat; after all what do they have to lose?" But P. Gunasegaram was kind enough to do a bit more too compared to Rewcastle Brown: he spelt out the two alternative solutions moving forward. As he put it: "We simply need a commitment to cut corruption and patronage from the top downwards if things like 1MDB are not to happen again. If that's not forthcoming from the current government despite all the pressure put on it, the public needs to exercise its democratic rights."

*c) Politics & business – the twain shall never ever meet!*

On the very same date in May 2015 that the above lengthy explanation by P. Gunasegaram had come out, JD Lovrenciear who is a regular contributor to the letter section for the news portal the *Malaysiakini* had his too with the title "The 1MDB lessons for all" where he began with the following scathing remarks (Lovrenciear, 2015):

> Whichever way you look at it the 1MDB - whether it is going to sink, stay adrift for a longer indefinite period or rise and sail the high waves of objections and allegations and succeed as a miracle investment of the century - there are *two key lessons* for Malaysia. The learning opportunity that should not be squandered or muffled and buried or worse, taken for granted is that *governments - and especially elected politicians in power, should not dabble in business. They have no business to do business except the business of governing a nation.* (Emphasis added.)

In the next breath, he pointed out on the government's role in a society:

> Their focus and priority must always be operating as the vanguards of national welfare, be it politics, economics, social or the environmental well-being of Malaysia. There are enough engines of growth in the country that can venture into businesses and ensure healthy returns on investment. … The political leaders' job is to govern. Think policy. Walk the talk of good governance. Work hard at peace, democracy and justice. Their vocation must uphold the highest standards of ethics.

With all that to be the first lesson that all should learn from the 1MDB scandal, his writing moves on to the next lesson which Rewcastle Brown earlier had pointed out. As he put it:

> The second lesson is, the government of the day must make immediate corrective and long term effort to ensure that a prime minister of the country does not also wear the hat of finance minister. This is to ensure best practice standards in the management of public funds and government spending. Much of the current prime minister of Malaysia's woes somehow stems



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from the fact that he also has his fingers, palms and hands in the honey jar of the nation. That puts him in an extremely vulnerable position. Likewise, as a prime minister heading national or state investment arms adds to his perils and also compromises the country's ability to fight potential graft at an arm's length.

Apparently those two lessons as far as Lovrenciear was concerned were specifically for the politicians in power to learn. This is because at the end of his piece he had this to say:

> Meanwhile, citizens too have to learn from this 1MDB scandal of the century. They must either get their leaders to learn fast these two lessons and stick to them like leeches or they must initiate change in the best interest of nation-building. Either way, the price has to be paid. Now Malaysians must choose before they are left with the ultimate and only choice of a failed nation.

The following year in early August, Teck Chi Wong wrote a piece which was published in the website *East Asia Forum* with a title that says it all very clearly (Wong, 2016): "After IMDB, Malaysia must reform state's role in business." All in all, he had written out quite a good deliberation of the first of the two lessons that JD Lovrenciear mentioned earlier! Early on in his first paragraph, Wong pointed out among others the following: "The 1Malaysia Development Berhad (1MDB) scandal in Malaysia… highlights the problems with state-ownership in the Malaysian economy. To prevent such scandals from recurring in the future, Malaysia must define the role of the government in business and develop adequate institutional arrangements to counter potential abuse by politicians." Next he claimed: "Research into state ownership has long argued that GLCs are vulnerable to the problems of politicisation, corruption and rent-seeking, which can cause them to be inefficient and mired in scandal. In Malaysia, GLCs have been used as a tool for politicians to direct benefits to their political supporters or even themselves. The case of 1MDB illustrates the problem."

To put the state's extensive influence in business into context, Wong had pointed out the following:

> Underlying the 1MDB scandal is the problem of excessive state influence in business. It is estimated that GLCs account for approximately 36 per cent of the market capitalisation of Bursa Malaysia and 54 per cent of the benchmark Kuala Lumpur Composite Index. GLCs do not only participate in natural monopolies or strategic industries, but compete with the private sector in highly lucrative businesses such as retail, construction and property development.

When these facts and figures come together with the understanding that "[s]ix decades of rule by the United Malays National Organisation (UMNO), the main ruling party in Malaysia, has undermined Malaysia's democratic institutions" resulting with a situation where "[t]here are now no effective institutional checks and balances on the handling of GLCs by the state and politicians", it can be surmised that Malaysia certainly has quite a huge problem to deal with! In looking back at what had taken place over the years, Wong had pointed out the following: "Although the government embarked on a GLC transformation program in 2004 and committed to divest their non-core holdings and non-competitive assets in 2010, its influence in Malaysian business has never really faded. On the contrary, as argued by Malaysian economist Edmund Terence Gomez, there is increasingly an 'extreme concentration of powers by the executive'."

But it seems that hope springs eternal! Next, Wong argued: "To prevent future scandals, Malaysia should curb the excessive role of the state in business and put in place institutional mechanisms that subject politicians to proper checks and balances." And it seems the way forward as far as he was concerned involves importing ideas from the Organisation for Economic Co-operation and Development (OECD) regarding the institutional governance frameworks that can best regulate the state in its handling of GLCs while also improving their performance and accountability. He wrote:

> Malaysia should consider adopting the OECD guidelines on corporate governance of state-owned enterprises to benchmark itself against the world's best practices. The guidelines recommend a clear separation between the state's ownership function and regulatory function, which is currently lacking, particularly in the 1MDB case where the prime minister is the ultimate decision-maker.

He furthered argued that both the state and GLCs must observe a high level of transparency together with the presence of a clear and consistent ownership policy to define the overall objective of state ownership and the state's role in corporate governance.

Whatever all that means and having said all that, Teck Chi Wong who was then a masters student at the Crawford School of Public Policy at the Australian National University (ANU) was quite clear in one thing which should be considered a set of prime prerequisites to all that which he mentioned as the way forward. As he put it:

> This move must also be complemented by wider reform in Malaysia's democratic system. The problem goes beyond the current prime minister. Lasting reform will require ensuring free and fair elections and a true separation of powers between executive, legislative and judiciary branches as well as strengthening the independence of key institutions, including the central bank and the attorney general's office.



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And next in the two very last lines of his write up, knowing Malaysia, he seemed to know how difficult it would be to achieve all those prerequisites! He wrote: "Comprehensive institutional reform is necessary to restore public confidence. But this process is expected to be difficult given the deep influence that the ruling party holds within the different branches of government."

Approximately two years later another person who was also associated with the ANU had published another piece of fine work in the *East Asia Forum*. Jayant Menon, who was both the adjunct fellow of the University's Arndt–Corden Department of Economics and the lead economist in the Economic Research and Regional Cooperation Department at the Asian Development Bank, in a piece with the title "Taming Malaysia's GLC 'Monster'" had this to say early on (Menon, 2018):

> About a month before Malaysia's parliamentary election in May, then-opposition leader Mahathir Mohamad raised concerns over the role that government-linked companies (GLCs) were playing in the economy, being 'huge and rich' enough to be considered 'monsters'. Data support his description — GLCs account for about half of the benchmark Kuala Lumpur Composite Index, and they constitute seven out of the top-10 listed firms in 2018. They are present in almost every sector, sometimes in a towering way. Globally, Malaysia ranks fifth-highest in terms of GLC influence on the economy.

Next, Menon mentioned that following the defeat of the UMNO-BN political party in the 14th General Election after having been in power for over six decades, reports had come out that the previous government had been using Malaysia's central bank and Khazanah (a sovereign wealth fund) to service the debt obligations of the 1MDB! He also mentioned that over the years there had been a series of massive bailouts of GLCs that could go as high as RM85 billion (US$21 billion). But beyond all this tragic stories, there is one more debilitating outcome. This was how he put it:

> In Malaysia, GLCs were uniquely tasked to assist in the government's affirmative action program to improve the absolute and relative position of ethnic Malays and other indigenous people (*Bumiputera*). The intention was to help create a new class of *Bumiputera* entrepreneurs — first through the GLCs themselves and then through a process of divestment. Given the amounts of money involved and the cost of the distortions introduced, the benefits to *Bumiputera* were unjustifiably small and unequally distributed. The approach of using GLCs as instruments of affirmative action failed because it led to a rise in crony capitalism, state dependence, regulatory capture and grand corruption.

And for sure there had been other devastating series of outcome. He mentioned two of them: one (which he claimed was supported by empirical evidence) in the form of GLCs crowding out private investment and another in the form of huge debt amounts accumulated but hidden from public views. In regard to the latter, he disclosed:

> Additionally, recent revelations show Malaysia's debt position may be more precarious than first thought. The new government has correctly highlighted the need to include certain off-balance-sheet items and contingent liabilities such as government guarantees and public–private partnership lease payments in any complete assessment of debt outstanding, as the use of offshoot companies and special purpose vehicles in the deliberate reconfiguration of certain obligations mean that traditional debt calculations underestimate Malaysia's actual debt.

In the rest of his writing it is notable that Menon gave emphasis to the need for the new government following the defeat of UMNO-BN in the 14th General Election to consider divestment moving forward. And it is also noticeable that just before his dwelling on that very topic, as far as the government-linked investment companies (GLICs) – not the GLCs – in particular are concerned, this was what he said: "Some experts have proposed the formation of an independent body with operational oversight for GLICs after institutional autonomy is established and internal managerial reforms are introduced. Unlike most GLCs, GLICs are not publicly listed and face little scrutiny. The same applies to the various funds at the constituent state level."

It seems such idea would gain much approval from the then academic from the University of Malaya Professor Terence Gomez. He who is the author of among others *Politics in Business: Umno's Corporate Investments* and Malaysia's *Political Economy: Politics, Patronage and Profits* had published in the *Kinibiz* as early as July 2015 a piece with remarks pointing towards corporate governance going haywire as a result of political interference to be the reason for the 1MDB scandal. This is laid out next.

*d) Corporate Governance Going Haywire*

In *Kinibiz* in July 2015, Professor Terence Gomez had this to say early on (Gomez, 2015):

> As the core issues surrounding the 1Malaysia Development Bhd (1MDB) controversy came to the fore over the past months, a fundamental point became extremely clear. Inadequate reforms following previous controversies of a similar nature have contributed to the 1MDB crisis. One example was the Asian currency crisis of 1997 which drew attention to a key matter: the mode of corporate governance. Following this crisis, a slew of reforms were introduced to enhance corporate governance, primarily to determine how members of the boards of



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directors of public-listed companies and government-linked companies (GLCs) implemented their duties. These remedies, we then suspected but now know for certain from the 1MDB controversy, were ineffective, demanding major political reforms.

And so under a section with the heading "Learning from 1MDB" in the writing, he had suggested a couple of governance measures. The first was the following:

> … there is sufficient concern to insist on an arm's-length relationship between politicians in power and GLCs. Immediate reforms have to be instituted to ensure that all GLCs and their holding companies are led by an autonomous board of directors. These reforms include ensuring that these directors are accountable to an independent body, for example the legislature, but definitely not to the executive. The issue of the chain of command between GLCs and the government has to be reviewed to ensure decisions are taken in the interest of the company and the shareholders, in this case all Malaysians.

Note that he said so right after saying the following:

> When the 1MDB controversy broke, a key question that emerged was why its directors had allowed the company to land itself in a situation where it was left having to service a huge volume of loans. If the reports on this controversy are accurate, 1MDB's directors may not have had full control over decision making about these loans, having had to take the cue from those who had appointed them to the board. 1MDB is directly controlled by the Finance Ministry, headed also by Prime Minister Najib Abdul Razak.

And also note that right after making that very first suggestion mentioned above involving the presence of the so called arm's-length relationship between politicians in power and GLCs, Gomez had revealingly mentioned:

> Such reforms are imperative because one key allegation that has emerged from the 1MDB controversy is that funds from this enterprise have been used to finance election campaigns, including during the last general election, a serious matter as this raises concerns about the legitimacy of the electoral results. Similar allegations of GLCs and public-listed companies channelling funds into politics, particularly during party, federal, and state elections, have been prevalent in political discourse for over a long period of time.

As for the second suggestion, Gomez had written: "Another issue emerging from the 1MDB controversy has to be noted and addressed: the directors of GLCs have to be free of allegations of corporate malpractices. And, if allegations of financial impropriety are made against them, they have to relinquish their board appointments until a decision has been reached following an investigation."

Next, he disclosed the fact that in the 1MDB case, Lodin Kamaruddin, the chairman for the company's board of directors, had been implicated in another major scandal, involving the purchase of defence equipment from abroad. And when it concerns the 1MDB board of advisors' appointment, there was also an issue involving "[o]ne advisor, Nor Mohamed Yakcop, [who] was formerly a key figure at the central bank, Bank Negara. In that capacity, he was implicated in a currency speculation controversy that had resulted in a major financial loss for the government."

With all these ideas for governance improvement that Gomez had put forward, what did he himself think about putting them into practice? The following was what he mentioned:

> *Will genuine reforms be instituted where such issues will be considered when decisions about directorships in GLCs are being made? This is unlikely, but we have to insist on this. There won't be much political will to introduce meaningful reforms as this would entail the need to devolve power to independent oversight agencies.* Former prime minister Dr Mahathir Mohamad voiced a similar call for reforms when he made an astonish admission. According to Mahathir, too much power is concentrated in the office of the prime minister, a factor he claims that contributed to the problems now prevailing in 1MDB. (Emphasis added.)

And yet knowing the stark and debilitating realities of *political interference over companies' governance* at two different points in time which he himself had accounted for in this write up of his, Professor Gomez appeared to have insisted that the government had no other choices. As he put it: "As reluctant as Umno may be to institute meaningful corporate governance reforms, this is now imperative if the government hopes to renew confidence in public governance of GLCs."

Anyway and for the sake of making it clear what sorts of political interference over companies' governance at two different points in time that Gomez had raised in his writing, note that the first one that he mentioned took place following the Asian Financial Crisis 1997-98: "The outbreak of the 1997 crisis necessitated bailouts of some well-connected public-listed companies that were heavily burdened with loans, including from foreign financial institutions. The listed companies that were then taken over by GLCs included the Renong group, under the majority ownership of Halim Saad, and Malaysia Airlines, similarly owned by Tajudin Ramli."

Right after saying that, he mentioned that both Halim and Tajudin had alleged that their companies were mired in trouble due to the fact that previously they



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were not quite in control of these entities. He wrote: "They had to take instructions from their political masters while running these companies." He next disclosed that subsequent to the 1997-98 crisis, the government then had introduced "major corporate governance reforms" such as company directors undergoing training programmes to ensure that they were fully informed of their fiduciary duties to their shareholders – but none that was concerned with "political interference" which is the "… one major reason why these companies were in a financial mess…". And this very failure was "… a factor that left the door open for a controversy such as 1MDB to emerge."

As for the second case of political interference over companies' governance, Gomez wrote what had essentially provided the evidence that old habits die hard. He said: "Indeed, controversies of a similar nature have occurred in the recent past, where members of the boards of directors have played little or no role in checking misuse of company funds. One case when this was said to have occurred involved the National Feedlot Corp controversy which also implicated a sitting senior federal minister."

Professor Terence Gomez is not alone in seeing the 1MDB scandal was due to the corporate governance gone haywire. There are at least two other parties who have insisted on the same thing. And their ideas appear to be based upon some scholarly pursuits too – just like that of the Professor Terence Gomez. Nonetheless, one appeared to say that the so called external governance was working as expected while the other did not seem to think so. The former is described next while the latter comes right after.

In the case of the work with the title "Lessons from 1MDB", Grace P. Mui and Huat Lye Thye in March/April 2019 began their explanation over the 1MDB scandal by saying: "Members of the board of 1MDB — a Malaysian federal strategic investment fund — and top Malaysian government officials plus private citizens allegedly illegally syphoned and laundered billions from the fund. Here's how they escaped controls and lined their pockets." From the outset it seemed the 1MDB had an iron clad corporate governance, but as they had pointed out (Mui and Thye, 2019):

> 1MDB was structured like a typical Malaysian publicly listed company with a board of directors and was subject to domestic regulators such as the central bank and the securities commission. However, 1MDB wasn't a typical Malaysian publicly listed company. As a company wholly owned by the Ministry of Finance it was required to have a board of advisors chaired by the finance minister. Despite having more corporate governance mechanisms than publicly listed companies, the breakdown of these mechanisms contributed to *executive fraud* at 1MDB. (Emphasis added.)

Executive fraud, they say? Really? Anyway, in what way that such "breakdown" of the "corporate governance mechanism" had taken place? Pray tell? Well, this is how they put it at first:

> This article studies the 1MDB scandal from the perspective of the "Crime Triangle of Routine Activity Theory" — an environmental criminology theory — and focuses on its board of directors and board of advisors plus Malaysian regulators and law enforcement agencies. The underlying rationale of environmental criminology is that *the immediate environment is a key determinant of human behavior*. As such, each crime is a result of the interaction between people and the situations they're in.

And to be more exact, as they put it next:

> The central premise of the Crime Triangle of Routine Activity Theory is that a crime event occurs when a motivated perpetrator makes contact at a given time and place with a suitable target when a capable controller isn't present. The controller has an indirect influence on the crime occurrence and hence has the potential to prevent the crime. … A crime can occur when one or more controllers shirk their duties and fail in their roles. To ensure that controllers fulfill their roles, *super controllers* are needed to regulate the conduct of controllers.

And as far as the 1MDB was concerned, Mui and Thye claimed that the internal super controllers that came in the form of the board of directors playing the role of handler to prevent executives from perpetrating fraud had among them two who in the early days opposed executives' misconducts and who later resigned from their position. But none among the rest of the directors had later followed suit. And this, as they put it, "… could reflect that the revised board had no known objections to executive decisions. Over time, 1MDB executives engaged in riskier and more elaborate financial schemes." Next, they concluded with the following: "The board had shirked its duties, and hence failed in both its roles as the handler over the executives (perpetrator) and as super controller."

The same was also said regarding the other internal super controller: the board of advisors. As they mentioned it:

> As a company wholly owned by the Ministry of Finance, 1MDB had a board of advisors that was supposed to be an added internal corporate governance mechanism. This board would've been the super controller over the 1MDB executives and its board of directors. It could've minimized the potential for executive fraud, but it shirked its duties and failed in its oversight role.

In particular, note what they wrote right after they said all that: "The chair of the board of advisors was the then finance minister, Najib Razak, who at that



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time was also the prime minister. … In his three roles — prime minister, finance minister and chair of 1MDB's board of advisors — Najib should've had knowledge of 1MDB's dealings." Next, Mui and Thye had pointed out a number of arrangements which their readers may rightly think as strange as far as the board of advisors and related matters were concerned: "The effectiveness of the 1MDB board of advisors in curbing executive fraud is questionable because the board of advisors had never met… the 1MDB board of directors didn't seek advice from the board of advisors. Also, another member of this board resigned after 1MDB ignored his repeated requests over six months for details on 1MDB's state of affairs."

While the super controllers from the inside in the form of the board of directors and the board of advisors were total failures, it was the total opposite for the super controllers from the outside - as far as Mui and Thye were concerned! This was how they put it: "In contrast to the failure of 1MDB's internal super controllers to prevent executive fraud, its external super controllers — i.e. Malaysian regulators and law enforcement agencies — didn't shirk their duties but carried out their roles despite obstacles. Their collective efforts in raising red flags played a critical role in exposing the 1MDB fraud." And in the next few paragraphs they provided some details to support their claim.

At the end of their writing under the heading "Lessons from governance" that came before a section on what is titled "Epilogue", Mui and Thye delineated three lessons to be learned as far as the field of governance was concerned. They wrote:

> The primary lessons on governance from the 1MDB case relate to its board of directors and board of advisors. First, the chair of the board of advisors was a politically exposed person (PEP) who at that time held both the finance minister and prime minister portfolios. A PEP represents a greater risk of involvement in bribery and corruption. … Second, the resignation of individual members of both boards at different times were red flags, especially when these board members had raised concerns over 1MDB's dealings. Comparatively, the revised boards didn't seem to respond to the riskier and more elaborate schemes the executives engaged in over time. When board members shirk their duties to exercise oversight over executives, executive fraud will be easier to perpetrate, cover and hide. … Finally, external super controllers [in the form of "regulators and law enforcement agencies"] ensured that 1MDB adhered to relevant laws and regulations and penalized 1MDB when it failed to do so.

Now, though what was attempted by Mui and Thye with their use of the so called Crime Triangle of Routine Activity Theory to understand the 1MDB scandal seemed encouraging at first glance, deeper look into their efforts in looking at crime as "… the result of the interaction between people and the situations they're in" can easily tear down the reasonableness of some of the things that they put forward. First, as far as what they claimed regarding the company's executives. Second, when it concerns their claim of the successful roles played by the so called "regulators and law enforcement agencies".

In regard to the latter, as far as the success met by the so called "regulators and law enforcement agencies" in playing their roles, surely whatever accomplishments to date was nothing to be shout about in comparison to those of their counterparts in countries such as the United States, Switzerland and Singapore! Furthermore, it should be to everyone's notice that whatever success tasted by those "regulators and law enforcement agencies" owed much to the defeat faced by the Umno-BN government in the 14th General Election! In other words, if the very same political party were to continue to be in control of the federal government, hardly anything at all could be expected "… in exposing the 1MDB fraud." And such was proven to be the case during those few years prior to the 14th General Election that took place in May 2018 (see section 3.2 Obstruction of Justice is the Answer! in Azham, 2018).

As for what they alleged against the company executives, specifically the issue of concern is the outright blame that Mui and Thye had placed on them. On the basis of what they wrote they appeared to have relied *solely* on the audit report issued by the Office of the Auditor General in 2016 on the 1MDB leading to their mentioning at one point the following: "The audit report highlighted that 1MDB executives acted without board approval, misled the board with incomplete or inaccurate information, and didn't adhere to board decisions or acted contrary to board decisions." But by the time Mui and Thye had published their work and the fact that as time passes by more and more confirming facts are known about the scandal than ever before, surely they had come to know that there existed bigger – much, much bigger – culprits than the company executives? In other words, even if the 1MDB executives had profited from the scandal, the amount would be nothing compared to what these other parties had gained! And so how on earth the scandal could be described as down right executives' fraud in the first place?

All that said, Mui and Thye seemed to have got it right: to understand or draw lessons from the 1MDB scandal, there is a need to focus on both people and situation and the interactions between the two. It is just that it is not quite how they defined it! And how they had laid it all out seems to say that here is a case (never ever to be used as a model by readers!) where data was used to fit in with the theory! Surely that is not a smart thing to do? The denial of the truth is especially



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perplexing when at one point they themselves appeared to be aware that the theory could not easily be made applicable the way that it was being made use of and at another point even the dumbest could easily see that the opposite of what is stated is probably is the truth.

The former took place at the beginning of the writing where they mentioned: "1Malaysia Development Berhad (1MDB), the Malaysian sovereign wealth fund described by then-U.S. Attorney General Jeff Sessions in December 2017, as "kleptocracy at its worst,"…" With kleptocracy the word mentioned, surely to say the company executives (and not "some other more powerful figures") to be the protagonists just a little too far fetched?

As for the latter, it is mentioned at the end of the work: "When board members shirk their duties to exercise oversight over executives, executive fraud will be easier to perpetrate, cover and hide. Then the question arises as to whether board members, individually or collectively, benefited from executive decisions that were fraudulent in nature." With big names taking the seats on either one of the two boards of the 1MDB and where for the board of advisors in particular Mui and Thye had in fact identified almost all of them, surely no one in his or her right mind can say that the largely unheard of company executives had those boards' members on the take?

In case all that which is laid out in the previous few paragraphs are still not enough to support the idea *opposite* of what Mui and Thye had claimed as far as the 1MDB's executives (main culprits) and the nation's "regulators and law enforcement agencies" (successfully fulfilling their roles) were concerned, news report related to the fomer which came out in mid 2022 just before this very writing is sent out for publication was quite revealing (Singh, 2022):

> Former 1Malaysia Development Berhad (1MDB) chief executive Datuk Shahrol Azral Ibrahim Halmi, described as a criminal who conspired with fugitive financier Low Taek Jho @ Jho Low to defraud the wealth fund, had taken instructions from Datuk Seri Najib Razak. Former finance minister II Datuk Seri Ahmad Husni Hanadzlah said this at his former boss' trial involving the abuse of RM2.28 billion of 1MDB funds. Najib's defence has all this while argued that it was Shahrol who had worked in cahoots with Jho Low to rip off 1MDB and causing it to be in the pit it is in now. However, when questioned about the matter today by lead prosecutor Datuk Seri Gopal Sri Ram, Husni defended the former 1MDB CEO and said Shahrol had merely followed Najib's instructions.

As for the negation on the nation's "regulators and law enforcement agencies" successfully playing the role, a long time opposition MP Lim Kit Siang also in mid 2022 had made it all clear as far as the then Attorney General was concerned (Siang, 2022):

> It is a week since the 100-page judgement of Justice Azimah Omar in Apandi's defamation suit against me was made public last Thursday, and Apandi has failed to answer the four questions highlighted by the Azimah judgment at the defamation hearing. In fact, Apandi failed to answer these questions for the last two months since the judgement was announced on 23rd May 2022. The four questions which Apandi failed to explain, as highlighted by the Azimah judgement, were his failure to explain why; · he (Apandi, when he was Attorney-General) absolved and exonerated Najib Razak in the 1MDB scandal; · he accepted the "fantastical" donation narrative without evidence; · he closed investigations on the 1MDB scandal against advice of MACC and his own internal task force; · he refused either to accept or offer mutual legal assistance from the Swiss Attorney-General and the US Department of Justice to investigate the 1MDB scandal. When Apandi was the Attorney-General for 33 months from the Night of Long Knives in July 2015 when Gani Patail was sacked as Attorney-General because he wanted to charge Najib Razak for the 1MDB scandal, to the political miracle of the 14th General Election on 9th May 2018, Apandi played a critical role to cover up the 1MDB scandal. During 2016 and 2017, the United States Department of Justice (DoJ) commenced thirty related civil forfeiture cases against a wide variety of real and personal property derived from the billions of dollars of ill-gotten gains of 1MDB scandal, but Apandi did nothing. Can Apandi explain why? … But it is not only the Attorney-General who must answer for his role in covering up the 1MDB scandal, the 13th Parliament was prevented from exposing the 1MDB scandal and became a party to the "cover-up" of the "kleptocracy at its worst" scandal because of a very biased Speaker. Parliament should hold public hearings to determine how the 13th Parliament was prevented from exposing the 1MDB financial scandal – the "kleptocracy at its worst" scandal – and the role of the Speaker of the 13th Parliament, Pandikar Mulia Amin, and to ensure that Parliament will never be abused again to cover up financial scandals in Malaysia.

And if what is clearly reported or written by a journalist (Singh) and a politician are not good enough, check out the penetrating observations coming from a university lecturer. Indeed, while Mui and Thye seem to be quite happy to say that the company executives at the 1MDB were the culprits for the scandal and that Malaysia's "regulators and law enforcement agencies" had played their role successfully, another party in the form of Dr. Vivien Chen appears to have thought otherwise ("How Malaysian corporate laws can recover after corruption", 2018). Chen certainly had more to say too in regard to some other related matters. The writing



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of concern was published in November 2018 (just a few short months prior to the one authored by Mui and Thye described above) at a website associated with the Monash University and it had begun with the following remarks:

> For several years, Dr Vivien Chen worked as a solicitor in a law firm in Malaysia, drafting documents for corporate deals. It was a time of political unrest. Protestors were taking to the streets to demonstrate against the arrest of Dr Mahathir's former close ally and later his staunch critic, Anwar Ibrahim. At the same time, corporate scandals involving politically well-connected companies were the talk of the town. Many Malaysians wondered how these companies got away with transactions that benefitted the elite while ordinary investors lost out. Even so, when evidence emerged around 1Malaysia Development Berhad (1MDB), a state-owned corporation, it deeply shocked Malaysians, particularly because the nation's fortunes had been on the decline in recent years.

Right after saying all that, the piece had pointed out first on quite a large amount of money flowed into the then prime minister of Malaysia's local bank account and his failure to explain how was that possible and second on the police raids at his residence had uncovered "an extraordinary trove of luxury items and cash" valued at several hundred millions in Australian dollars. Next, just before the piece moved on to the next section of the writing that comes with the heading "Malaysian Corporate Law", it comes out with the following interesting remark related to the 1MDB: "Questions remain as to how a company, governed by seemingly strong laws, could be a vehicle for criminal activity of such proportions."

And the answer can be found from what it said within the next few lines:

> Dr Chen, from the Department of Business Law and Taxation at Monash Business School, does not take her research lightly. Her work as an academic examining shareholder protection law offers a critique of the effectiveness of the regulatory framework and examines underlying systemic weaknesses. … Dr Chen's research explores the comprehensiveness and strength of Malaysian laws which are aimed at safeguarding the company from managerial misconduct, measuring it against benchmarks of international standards. … It further reveals how corporate fraud may be camouflaged by *systems of governance beneath the veneer of impressive laws that approximate benchmarks of international standards*. … Malaysia has laws that resemble Anglo-Australian corporate law founded on English common law principles of equity. … On the face of it, Malaysian law looks similar to Australian corporate law *but the political and economic environment in Malaysia operates in a very different way – there is a strong nexus between politics and business.* (Emphasis added.)

Related to all that, and this would be most relevant in evaluating certain remarks earlier coming from Mui and Thye, she was quoted to say the following:

> I highlight the law's lack of effectiveness from a range of perspectives and how particular features of Malaysia's political economy lead to the law's lack of substantive effect. … It challenges assumptions which the World Bank has used as a basis for law reform in developing countries and is, therefore, relevant to law reformers and policymakers. … Those laws, specifying directors' duties and shareholder rights, are designed to protect investors and punish self-dealing or corrupt conduct. But in practice, enforcement is weak.

Later under the section that comes with the heading "Systemic Weaknesses" there is more devastating writing on the despicable goings on!

> Dr Chen's doctorate, awarded earlier this year, examined shareholder protection law in Malaysia, the efficacy of those protections, and the economic, political and cultural influences that come to bear on those laws. When compared internationally, Malaysia's shareholder protection laws are strong. If effectively enforced, they should safeguard shareholders from misappropriation of corporate assets by those who control companies. However, in practice, both private and public enforcement of these laws are significantly less robust compared with Australia.

And with the 1MDB scandal was of concern, the piece had this to say next:

> The lack of transparency surrounding the governance of 1MDB and the absence of accountability with the public funds that 1MDB purported to manage are also significant. *The lack of investigation and enforcement of Malaysia's existing laws have been highlighted by the 1MDB scandal, and it has cost the nation dearly, both in real-dollar terms and in terms of investor confidence.* Dr Chen notes foreign direct investment has been a big part of the Malaysian economy for decades, but the rorting of 1MDB "made a mockery of the laws". (Emphasis added.)

It should be worth noting too what she was quoted to say as found in the very same section of the writing.

> There are systemic issues that underpin the lack of effective enforcement. Corporate regulators need to take an active role in enforcing laws, such as directors' duties, that protect shareholders from embezzlement. The regulators must be independent of political influence. The rule of law and an independent judiciary need to be restored. Weak checks and balances, and suppression of civil



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> liberties and freedom of speech have contributed to the abuse of power epitomised in the 1MDB debacle. … I hope some of the people that are looking into it will try to address the systemic problems and really deal with them, and maybe foreigners will regain confidence to invest again.

It is notable that the very same piece had disclosed that at the end of April 2019 Chen published a journal paper with the title Enforcement of Directors' Duties in Malaysia and Australia: The Implications of Context comparing Malaysia's corporate law and its enforcement with those in Australia. Right after, it mentioned the following:

> Her study highlights the extent to which business and politics are inextricably related and how this affects enforcement. These are reflected in the ownership of companies and control over enforcement mechanisms. Her paper… also highlights the reticence of Malaysia's enforcement agencies over many years to either investigate corporate wrongdoing or prosecute it. She cites various sources indicating the nation's corporate regulators are more focused on enforcing rules on filing documents than they are about routing criminal wrongdoing by the people who control companies.

In the rest of the piece, some other interesting remarks can also be found comparing the regulators from Malaysia and Australia. These include the following:

> The Australian Securities and Investments Commission (ASIC) – despite its flaws – is far more independent, more willing to investigate wrongdoing, and better resourced than Malaysian regulators. Those laws, specifying directors' duties and shareholder rights, are designed to protect investors and punish self-dealing or corrupt conduct... ASIC's policy of bringing enforcement proceedings against directors of high-profile public companies contrasts with *the Malaysian corporate regulators who have been conspicuously silent on scandals involving high profile, politically well-connected companies*. (Emphasis added.)

And with the regulatory situation in Malaysia was far from being encouraging, perhaps it was to be expected what Chen had to say concerning the welfare of the so called minority shareholders: "At the same time, Dr Chen notes how minority shareholders in Malaysia face considerable challenges in enforcing their rights at general meetings, which are often dominated by controlling shareholders, and in getting courts to allow them to proceed with derivative actions (in which they seek leave of a court to sue errant directors)." And such was in contrast to what was found in Australia. As she put it: "Australian courts are more pragmatic in granting minority shareholders leave to proceed with derivative actions. Shareholding is less concentrated in Australia and mechanisms, such as the two-strikes rule, allow shareholders to have a say on pay at general meetings."

In the final analysis, would it be safe to say that in Malaysia what appear so beautifully in some official documents which of course are more often than not are imported from some developed western countries has no resemblance to the daily practice? In regard to the subject matter of Chen's PhD thesis which is the shareholder protection laws, she had made it quite clear that their lackadaisical enforcement is due to a surrounding marked by the existence of "a strong nexus between politics and business". But for some other subject matters such as the corporate governance and corporate financial reporting, could it still be the relevant factor? Or perhaps there is around some other factor(s) bringing the same negative quality of impact? For some parties it seems the answer to these questions is not much in doubt and is related to what is known as kleptocracy. See next.

*e) It is a Kleptocracy!*

It was a decade ago in late December 2012 that in his well written write up published in *The Edge Weekly* where he made comparison between democracy and kleptocracy that Syed Farid Alatas the then head of the Department of Malay Studies, National University of Singapore mentioned (The Editor, 2013a): "As we move forward as a nation, the greatest threat to the development of democracy in Malaysia is kleptocracy. The term is derived from the words "klepto" (thief) and "cracy" (rule) and refers to a government filled with those who use their office to seek status and personal gain at the expense of the governed." A few lines later, he had mentioned the following too:

> The question for Malaysians is, are we a country in which corruption is the dominant means of doing business and can be referred to as the fifth factor of production? *To the extent that kleptocratic rule develops and expands, whatever genuine democratic forces there are will recede into the background. This is because the kind of democracy that is based on good governance and accountability to the people is antithetical to the interests of the kleptocrats.* At most, a formal and limited form of democracy will survive. (Emphasis added.)

In the same write up he also mentioned that it was just in the previous month at a forum entitled "Eradicating Grand Corruption: How Successful Have We Been?" that was organised by the Institute for Democracy and Economic Affairs (IDEAS) and hosted by the Malaysian Anti-Corruption Commission (MACC) that he made the suggestion "… that Malaysia may descend into kleptocratic rule if steps are not taken to minimise the level of corruption in the country." The reason leading him to say so was simply that "[i]n



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Malaysia, corruption is not a random or occasional occurrence but tends to be systemic and cuts across authoritarian and democratic regimes. Kleptocrats are usually not merely mid-level officials who extort money or receive bribes as a means to make ends meet, but high-ranking officials and top-level politicians who engage in corrupt acts to do business and accumulate wealth." In short, what he was saying was that in Malaysia there was what is known as the grand corruption instead of the mere petty corruption!

On grand corruption, note the following coming some years later from an advocate and solicitor Hakimi Abdul Jabar in the news portal the *Free Malaysia Today* (Hakimi, 2017):

> Grand corruption is the abuse of high-level power that benefits the few at the expense of the many and causes serious and widespread harm to individuals and society. It often goes unpunished. … Grand corruption is a crime that violates human rights and deserves adjudication and punishment accordingly. This ranges from stealing from public budgets used to build hospitals and schools, to constructing dangerous facilities as the result of underfunding caused by corrupt actors.

It is notable that Hakimi had proposed the involvement of international community and civil parties in combating grand corruption. In relation to the former, he wrote early on the following: "Domestic authorities are often unable or unwilling to bring the grand corrupt to justice. In these cases, the international community has an obligation to act, collectively and through action by individual states." Later, he mentioned:

> *With its serious and often global effects, combatting grand corruption must be the responsibility of the international community. This is because grand corruption is a major obstacle to the achievement of sustainable development. It also undermines and distorts sound financial practice and clean business, both domestically and internationally. Furthermore, grand corruption deepens poverty, inequality and also increases exclusion. On a wider scale, grand corruption results in violations of human rights, and such a link is recognised by the United Nations High Commissioner for Human Rights.* (Emphasis added.)

As for the involvement of the so called civil parties in confronting grand corruption, Hakimi had first stated out:

> Grand corruption used to carry on unseen, with little publicity. Today, thanks to new possibilities opened up by globalisation, global communications and investigative reporting, the enablers of grand corruption are in the headlines every day. So too, is the inability of current laws to tackle this trans-national network of thievery and worse. This needs to change. People have had enough. There should be no impunity for the corrupt.

Next, in the very last line of his quite instructive piece, he mentioned: "Civil parties have major roles in criminal procedures under a grand corruption statute. In such legal systems, anti-corruption NGOs can take part in criminal procedures and represent a broad range of victims." But honestly to what extent that cases on grand corruption brought to courts in Malaysia (as opposed to those overseas or at the international level) could actually bring justice to the people? The reason that this is raised is concerned with the kind of democracy found in the country. In this regard, it was none other than the earlier mentioned academic Syed Farid himself early on in the very same write up referred to earlier who had pointed out about the kind of democracy found in the country. He wrote (The Editor, 2013a):

> Formally speaking, a democratic political system generally refers to one in which the posts of the executive branch are elective and members of political parties are elected to representative bodies such as Parliament. Furthermore, in a democratic system, there is a separation of powers, such that the executive branch itself is subject to the law. Perhaps a central feature of a democracy is the prominence of interest and pressure groups that seek to influence public policy by way of working closely with and on legislators. In a democratic state, it should be possible for the majority of the people to change their government should they so desire.

Next he pointed out:

> *The formal features of a democracy should be distinguished from its cultural dimension, which refers to the intellectual maturity of the population as far as understanding and believing in the values of democracy are concerned.* Democracy in the formal sense of the term has been in place in Malaysia since independence from the British in 1957. *Some have referred to the political system in Malaysia as a quasi or semi-democracy because of the presence of certain anti-democratic elements such as the abolition of local-level polls and the Internal Security Act (ISA).* (Emphasis added.)

And not long later, he had also argued:

> *A complete transition to genuine democracy, a system that is founded not just on the formal trappings of the democratic system such as regular elections, but one based on a culture that values and respects diversity and the rules of democratic procedures, is difficult to imagine for Malaysia. This would require fundamental changes in the political culture, economy and politics of the country.* What we have witnessed thus far are tendencies that create enclaves of democracy within the country, which may help men and women live in a



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> society that is more tolerant of differences and will, therefore, be freer. (Emphasis added.)

A few short years later, after the 1MDB scandal had become widely reported, Syed Farid in two separate articles published by *The Edge Weekly* had made some interesting remarks linking the 1MDB and the subject matter of Malaysia as a kleptocracy. For one of the two published in the late September/early October 2016, he (who now "…teaches at the National University of Singapore's Department of Sociology" as stated out in the piece's byline) began with the following remark (Syed Farid, 2016):

> The US Department of Justice's Kleptocracy Asset Recovery Initiative was tasked with identifying and recovering foreign assets held by corrupt foreign leaders and their accomplices in the US. An example of this is the US government's plan to seize more than US$1 billion in assets purchased with money that well-connected Malaysians are alleged to have illegally acquired from the strategic investment fund, 1Malaysia Development Bhd.

And right after saying that, he wrote:

> Many observers around the world would come to believe, should these allegations be true, that Malaysians were, in the words of US officials, defrauded on an enormous scale via a "scheme whose tentacles reached around the world". More and more Malaysians have come around to the view that not only is corruption rampant in the country but also we are becoming a kleptocracy.

A few months later in the second piece published in late February/early March 2017, Syed Farid (whose byline now says he is the head of the Department of Malay Studies and an associate professor in the Department of Sociology at the National University of Singapore) gave quite an elaboration over the topic of kleptocracy. He began by saying (Syed Farid, 2017):

> The state or government refers to those institutions that rule over a society. The modern state comprises institutions that are responsible for making and codifying law — the legislature; the executive — which is responsible for the effective implementation of the laws and policies passed by the legislature; and the judiciary — which is responsible for adjudication in the event that laws are violated.

He next moved into the discussion of state legitimacy where he among others said:

> Legitimacy refers to the acceptance and right of the authority of a government. When an authority is said to be legitimate, it means that it is seen to have the right to exercise power. Legitimacy is a basic requirement for smooth and efficient governance. Indeed, the lack of political legitimacy would mean that the government would have to resort to force and coercion. … A ruler who relies on authority generally uses his qualities of leadership and his ability to persuade and influence others. It is on that basis that he has authority. If the ruler lacks legitimacy, he would have to rely instead on the application of coercion, force and power.

In comparing the political developments in the advanced industrialized West to those in many Third World countries, Syed Farid mentioned that in the case of the former the states were widely seen to be legitimate and able to exercise legitimate authority whereas such could not be said for the latter. As he put it: "But, the conduct of the state in many Third World countries is not such that there is widespread perception on the part of the citizens that the state is legitimate. Such states often resort to coercion and force rather than rule through leadership, persuasion and influence." As to why that the states in "many Third World countries" had the opposing experience, he wrote: "The lack of legitimacy is often due to the fact and perception that the state is involved in criminal activities. An example is the kleptocratic state." As for what exactly is meant by the latter, Syed Farid, without mincing his words, had next pointed out:

> In his pioneering work, The African Predicament, published in 1968, sociologist Stanislav Andreski describes how corruption was so pervasive in African states such that "politics becomes a strictly money-making activity". Politics was basically the only game in town. Politicians and bureaucrats were the main accumulators of capital rather than the private sector. They accumulated capital through corrupt practices involving bribery, extortion and nepotism. *Such a polity was defined by Andreski as a kleptocracy. Kleptocracy is a system of government defined by corruption.* (Emphasis added.)

In the last few paragraphs of his fine write up, Syed Farid talked about the field of criminology and how it was the way forward in doing research over an array of state crimes. He wrote:

> Criminology is the scientific study of crime, including its nature, causes, consequences and methods of prevention. It looks at criminal behaviour at both the individual and societal levels. The field of criminology recognises the state or government as a criminal actor. … The field of criminology is very useful for the study of the kleptocratic or other kinds of criminal states. Criminological theories would help us to understand various facets of the kleptocratic state. … *To the extent that such criminal activities dominate and define our governments, it is vital that scholars study the state from the perspective of criminology in order to not just understand the criminal state but also to create public awareness and outrage.* (Emphasis added.)



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And just like the other piece published in late September/early October 2016 which was referred to earlier, Syed Farid raised the matter of 1MDB right after his discussion on kleptocracy and just before he moved on to the topic of criminology. He wrote:

> Although Andreski wrote decades ago about kleptocracy, it is only more recently that this type of polity has received serious attention. Of note is the US Department of Justice's Kleptocracy Asset Recovery Initiative. This is tasked with identifying and seizing foreign assets held by corrupt foreign leaders in the US. Last year, the DoJ filed a civil forfeiture complaint against assets that it alleged had been bought with money stolen from the sovereign wealth fund, 1Malaysia Development Bhd. The DoJ claimed that more than US$3.5 billion was misappropriated from the fund. It filed the 144-page complaint in federal court in Los Angeles targeting about US$1 billion in assets located in the US, the UK and Switzerland. The assets include mansions and penthouses, a US$35 million executive jet and artwork. The DoJ claimed the assets are "traceable to an international conspiracy to launder money misappropriated from 1MDB". This is said to be the biggest forfeiture action since the Kleptocracy Asset Recovery Initiative was set up by the DoJ in 2010.

Finally, a few years later in November 2020 in the news portal the *Free Malaysia Today*, Syed Farid for what appears to be quite a straight forward piece of writing on kleptocracy started out talking about the differences in meaning for the term "states". He who as stated out in the piece's byline was now a professor at the National University of Singapore's Department of Sociology had early on mentioned (Syed Farid, 2020): "Negara mempuyai makna dan peranan yang berbeza, berdasarkan pendekatan pengkaji dan pemerhati politik." (States have different meanings and functions on the basis of the approach taken up by the researcher and political observers.) And in the next several lines he pointed out as to what this would entail as far as the western context is concerned. Subsequently, he pointed that in the context of developing countries there is something else altogether that is found as far as the meaning of states is concerned!

> Pada pihak lain, di dunia sedang membangun kita dapati negara terlibat secara langsung dalam proses pengumpulan modal. Kepentingan peribadi elit-elit dan pegawai-pegawai negara dimajukan dengan menggunakan jawatan awam. Ini membawa kita kepada persoalan bahaya negara. Bidang sosiologi politik dan sains politik mempunyai kecenderungan menegaskan keabsahan negara sehingga mengetepikan pertimbangan tentang bahaya yang disebabkan oleh wujudnya anasir jenayah yang seringkali menghinggapi negara. Sepanjang yang menyangkut tingkah laku jenayah, yang sepatutnya diperhatikan adalah rasuah. (On the other hand, in the developing world the states are directly involved in the process of capital accumulation. The personal interest of the elites and civil servants is enhanced using the government posts. This leads us to the issue of countries going rogue. The field of political sociology and political science has the tendency to stress on state legitimacy to the point of putting aside the consideration over danger caused by criminal elements who often attached themselves to the states. As far as it involves criminal conducts, what is supposed to be noteworthy is corruption.)

Later, without mincing his words, he wrote:

> Terdapat kelaziman klientelisme dan nepotisme yang menyaksikan kepentingan peribadi diutamakan melalui rasuah, iaitu, dengan memperalatkan institusi-institusi negara. Rasuah terdapat di semua negara tetapi bukan semuanya negara dikuasai oleh daya rasuah sehingga kehidupan sehari penduduknya dipengaruhi secara negatif. Jenis negara dalam mana rasuah merupakan cara utama modal dikumpulkan digelar sebagai kleptokrasi (kleptomani bermaksud mempunyai tabiat suka mencuri). Dalam kleptokrasi, ramai pegawai negara berfungsi sebagai kleptokrat yang melibatkan diri mereka dalam pelbagai kegiatan penyuapan dan nepotisme. Apabila negara itu dihinggap rasuah sehingga gejala itu menjadi alat pengumpulan modal utama, ini mengisyaratkan kemunculan negara kleptokratis. Ini membawa kita kepada gagasan bahawa negara itu tidak semestinya menjadi sesuatu yang sah dan mendatangkan manfaat. (It is common for clientalism and nepotism to have one's personal interests being given the priority through making use of the country's institutions. Corruption exists in all countries but not all countries are being controlled by corruption to the point that the people's daily lives are being affected in a negative manner. The kind of countries where corruption is the primary manner of capital accumulation is called kleptocracy (kleptomani means possessing the habit of being fond of stealing). In a kleptocracy, there are many government officers functioning as kleptocrats who involve themselves in varied forms of bribery and nepotism. When a country is affected with corruption to the point that it becomes the primary form of capital accumulation, it signals the emergence of a kleptocratic country. This brings us to the idea that a country is not necessarily legitimate and shall bringforth benefits.)

And with all that mentioned, Syed Farid in the last few lines of his crystal clear write up has pointed out quite interestingly the direction to take as far as the discussion and analysis of "states" located in the Third World and Islamic countries are concerned. He wrote:

> Di kebanyakan ekonomi politik Asia Tenggara, bentuk kapitalisme yang wujud merupakan kapitalisme semu.



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Istilah semu itu membawa sama makna dengan "palsu", "tidak tulen" dan "tidak sejati". Kita dapat memahami kapitalisme semu sebagai kapitalisme yang tidak berasaskan kepada sifat keusahawanan. Seorang usahawan merupakan pemodal yang bukan hanya melabur kembali untung mereka, tetapi melihat dan mencari peluang seperti cara pengeluaran, pemasaran keluaran, dan sumber penawaran yang baru. Dalam kapitalisme semu, kelas pemodal bergantung pada negara untuk pelbagai bentuk bantuan seperti pemberian insentif, perlesenan, pelindungan, pembekalan dana bank kerajaan, dan usaha dengan perusahaan negara. Pemodal-pemodal seumpama ini menjadi klien kepada penaung negara. Hubungan antara penaung dan kliennya seringkali merupakan hubungan antara kleptokrat dan penerima bantuan atau pemburu rent. Bidang sosiologi politik dan ilmu politik bercirikan suatu kecenderungan terhadap menegaskan keabsahan negara sehingga pertimbangan sifat bahayanya disebabkan wujudnya anasir jenayah disingkirkan. Tetapi, dalam kes kebanyakan negara di Dunia Ketiga dan dunia Islam, bidang yang lebih sesuai untuk membincangkan dan menghuraikan negara adalah kriminologi dan bukan sosiologi atau ilmu politik. (In most of the South East Asia's political economy, the kind of capitalism found is ersatz capitalism. The term ersatz means "false", "not genuine" and "not real". We can understand ersatz capitalism as the kind of capitalism which is not based upon the elements of entrepreneurship. An entrepreneur is a capitalist who not only putting back his or her profit into the business, but also looking around for opportunities in regard to the mode of production, the marketing of products and the new source of supplies. But in the case of ersatz capitalisme, the capitalist group depends on the government itself for a variety of assistance such as the giving of incentives, licensing, protection, funding from government-owned banks and customers. This kind of capitalists is clients for the state which act as their patron. The relationship between a patron and clients is often that of kleptocrat and beneficiary or rent seekers. The field of political sociology and that of political science characterised by the inclination in affirming states' legitimacy has led to the removal of the consideration on state going rogue due to criminal elements. But, in the case of most Third World and Islamic countries, the field more appropriate to discuss and analyse states is criminology and not sociology or political science.)

For sure this latter 2020 write up by Professor Syed Farid is very much similar to that of his in 2017 raised earlier. But the difference that come in the inclusion of certain terms and their related interpretations which did not appear in the 2017 piece should make it worthy for inclusion in the present work. As for those terms of interest, there are of course nations going rogue and the so called ersatz capitalisme.

Now, with kleptocracy proposed by some to be the leading factor leading to the 1MDB scandal which without a doubt is not at all the case of everyday corruption but instead that of a grand corruption, the same expanding line of thought may perhaps be used in saying the scandal is not a run-of-the-mill kleptocracy for it is to be more exact a *global* kleptocracy. The fact that the latter is pretty much the case is evidenced by numerous write ups including the one referred to next which is concerned with a leading global investment banking, securities, and investment management firm founded in 1869 in New York City the Goldman Sachs.

## III. The International Dimension

In May 2019 Dennis M. Kelleher, who was referred to quite early on in this writing, had written early on in a damning piece of the Goldman Sachs' role in the 1MDB scandal the following (Kelleher, 2019):

> 1Malaysia Development Berhad (1MDB) was a Malaysian government owned and controlled investment fund created in 2009 by former Prime Minister Najib Razak. The professed purpose of 1MDB was to attract foreign investment and development in Malaysia to benefit all the people of Malaysia. Instead, it has been referred to as "kleptocracy at its worst" and potentially "one of the greatest financial heists in history," with possibly more than $10 billion looted. Worst of all, hundreds of millions of those looted dollars were allegedly used to steal an election and keep the corrupt prime minister in power for five additional years, when his opponents were crushed and at least one prosecutor was brutally murdered, suffering "a horrific death." … *Much of that appears to have only been made possible by 1MDB's banker, Goldman Sachs, which was involved with 1MDB from 2009 until late 2014.* In particular, in addition to advising 1MDB, Goldman managed three no-bid, privately placed bond issues from May 2012–March 2013 that raised about $6.5 billion from investors around the world. However, more than half of that was reportedly looted by the prime minister and his cronies. Goldman's take for the three offerings alone was reportedly an astonishing $600 million. (Emphasis added.)

But do not just take his words for it, for there are others saying the same thing that without the involvement of Goldman, the world probably would not get the chance to see the case of both a grand corruption and a global kleptocracy which the 1MDB scandal had depicted to a T! This is as Kelleher himself had noted right after all that above:



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> As reporter Matt Taibbi (who famously referred to Goldman as "a great vampire squid wrapped around the face of humanity, relentlessly jamming its blood funnel into anything that smells like money") observed, *while there is nothing new about corrupt politicians plundering their country for their personal benefit, that is usually done by exploiting the tangible assets of the country. Taibbi points out that Najib was different. He allegedly stole the money raised by Goldman's debt offerings and other borrowings. He did not and could not do that alone.* As John Pang, a former policy adviser to the prime minister's office in Malaysia and advisor on the bond offerings reportedly said, "This is something completely new. And he couldn't have done it without a bank the size of Goldman." In fact, Mr. Pang went so far as to say "All [Najib] needed was a signature and a couple of Goldman bankers." (Emphasis added.)

Indeed, for anyone to claim that the bank as a whole had played little role in the fraud perpetration with the 1MDB as the vehicle would clash with what was found to have happened on the ground as evidenced by the so called "public records". Related to this, note what Kelleher wrote regarding how he was able to come out with that very work of his: "This report is, of course, based solely on what is in the public record, including in particular from court filings, some fantastic investigative reporting and the terrific book Billion Dollar Whale." And when it concerns the so called red flags in particular that those in the investment bank were indifferent to, note the following that he mentioned early on in his incisive work:

> The highlights of the publicly reported story of Goldman's critical involvement with 1MDB are presented in this report. It also presents many of the reported red flags and warning signs about 1MDB, which makes Goldman's defense - that this was done by a rogue Goldman partner who has already pleaded guilty to criminal charges - implausible. Indeed, even many Goldman "veterans are disturbed that the firm allegedly ignored or missed red flags."

It is notable that in the section of his work that comes with the heading "The Rogue is Goldman", Kelleher had pointed out a total of nine red flags that the bank seemed to have chosen to ignore and which may be used to back up the argument that just about every part of the bank was very much working together in ensuring the 1MDB used as the vehicle for embezzlement and other forms of malevolent acts by parties coming from the various parts of the world. The first three of the total of nine red flags are laid out verbatim next:

> First, 1MDB itself was a huge red flag. Just a few examples (detailed in Billion Dollar Whale and elsewhere): there was significant staff and executive turnover; those working there had little or no experience; the Chairman of the Board of Directors resigned abruptly as did another director just weeks later; its first auditors, Ernst & Young, resigned as did its second auditors KPMG and its third auditors, Deloitte, was just fined by Malaysian authorities (although Deloitte is contesting that). Second, the primary conspirator, Jho Low, *was actually caught by Goldman's compliance system (known as the "business intelligence group*") not once, but *at least twice.* He was rejected as a client of the private bank because the origin of his wealth couldn't be determined (a huge red flag, as stated above) and "a few years later" was rejected as a direct client on a deal involving the Abu Dhabi state energy investment company IPIC in 2013. … Third, *after* Goldman's compliance department "repeatedly" flagged Jho Low as so much of a risk that they refused to let him become a client of the bank's private client group, he nonetheless had a personal private audience with then-CEO Blankfein… This was reportedly a "one-on-one sit-down" with Goldman's CEO, a rare and extremely difficult audience to get and presumably only after the person is subject to the most rigorous background checks and due diligence. Even if all the other red flags were somehow missed, it's inconceivable that the information in Goldman's own compliance system would not have been known. (Emphasis in the original.)

And the more harrowing red flags than those three come later and it begins in the form of the fourth red flag:

> Fourth, Leissner and the other criminals just weren't that smart and there were red flags waving all over the Malaysia relationship and Goldman's 1MDB offerings, which caught the attention of senior Goldman officers. For example, "David Ryan, President of Goldman in Asia [and Mr. Leissner's superior in Asia], was among those urging caution. He had visited 1MDB's staff in Malaysia and came away with concerns over its plans to take on so much debt, and the inexperience of its management, none of whom seemed to have overseen multi-billion-dollar investments before." He also "voiced concerns" about the unusual and incredibly lucrative no-bid contracts, which "struck" him "and other Goldman executives as possibly too good to be true." He went so far as to argue that "Goldman should reassess, and potentially end, its relationship with 1MDB." Those concerns were rejected by the very senior people and committees that reviewed and approved the 1MDB offerings (including reportedly some of Goldman's most senior officers). Mr. Ryan, a Goldman partner, was first "effectively sidelined" when another Goldman executive (a "proponent of the 1MDB business") was installed senior to him and then he left in 2014 "partly because he was frustrated that his concerns about the 1MDB deals were not heeded."



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Just as harrowing are the sixth and seventh red flags:

> Sixth, Goldman asked the investment banking firm Lazard to value the power plants that 1MDB was supposed to purchase with the proceeds from one of the offerings but it refused because it "believed the whole deal smelled of political corruption." Apparently lacking the same sense of smell, Goldman then assumed the additional role as an advisor to 1MDB and reportedly valued the power plants at a sufficiently high price to justify the purchase price. … Seventh, 1MDB used a "struggling Swiss bank called BSI," which Low picked because it "was a small bank, one that would be dependent on his business and took compliance even less seriously than Wall Street behemoths." As reported in Billion Dollar Whale, "BSI had thrived for generations in a similar fashion to all Swiss banks: aiding wealthy Europeans and Americans who wanted to hide their cash in private accounts and evade the payment of taxes at home." … Yet, for the largest of the three bond offerings (for $3 billion in March 2013 just before Malaysia's elections), 1MDB wanted Goldman to deposit the entire amount into its Swiss bank account at BSI. Seeing the red flags waving, even Goldman's lawyers in Singapore "pointed out in an email that it was unusual to use such a small private bank for a $3 billion deposit." However, "Goldman shrugged off" those concerns: "Only days later Goldman deposited the proceeds from the $3 billion bond with BSI, and $1.2 billion immediately was purloined," with $681 million reportedly moving into the prime minister's account. It would seem that much of this would have been discoverable with even minimal diligence. This is the money that enabled the then-prime minister to reportedly steal the election and remain in power for five more years…

But the most damaging of all are perhaps the last two red flags: the eight and the ninth. The eight red flag:

> Eighth, Leissner, Goldman's former Chairman of Southeast Asia, stated when pleading guilty: "During the course of the conspiracy, I conspired with other employees and agents of Goldman Sachs very much in line with the culture of Goldman Sachs to conceal facts from certain compliance and legal employees…" The criminal allegations include that Goldman's "system of internal accounting controls could be easily circumvented" and that the "business culture, particularly in southeast Asia, was highly focused on consummating deals, at times prioritized this goal ahead of the proper operation of its compliance functions." … It remains an open question whether these controls were evadable by design so that the bank could point to the appearance of compliance as a defense in the circumstances presented by the 1MDB case, even if in reality they lacked substance.

As for the ninth red flag:

> Finally, an advisor on the 1MDB offerings who worked for the former prime minister was quoted as saying there were red flags for anyone looking: "This fund was dodgy from the beginning. There is no excuse for not knowing this fund had to do with [the former Prime Minister's] political patronage and his election plans. This was an open secret." In fact, Lazard apparently quickly discovered this when it refused Goldman's requests for it to participate in 1MDB deals, not once, but twice. Additionally, the real-life criminal portrayed in the movie "Wolf of Wall Street" (about brazen Wall Street fraud that itself was allegedly financed with money stolen from the 1MDB bond offerings), Jordan Belfort, quickly saw in 2011 before a single bond offering that that "these guys are f—king criminals… It was so obvious." But, Goldman Sachs, the leading global bank that sells itself to clients, customers and governments worldwide as having unparalleled intelligence and due diligence capabilities, either didn't know this "open secret" or chose to ignore it, along with the many other red flags.

Indeed, aside from the section that comes with the heading "The Rogue is Goldman" which is concerned with red flags, the involvement of so many from just about every part of the international bank is also captured quite well in some other sections of the writing. And this is especially true as far as those from the very top of the banks were concerned. For example, in a section that comes with the heading "Goldman's Partners Are Criminally Charged for Looting $4+ Billion from 1MDB", Kelleher had mentioned among others the following:

> The seriousness of the crimes alleged and committed here cannot be overstated. Two former Goldman executives, who were the primary bankers on the 1MDB deals, have been criminally charged by the Department of Justice and a third even more senior executive has been placed on leave after being identified as an unindicted co-conspirator. All three people were or are Goldman partners. … It is not a surprise that the involvement of these three partners, however, is only the tip of the iceberg of Goldman staff, executives, officers and partners involved in Goldman's relationship with Malaysia and the 1MDB deals. Indeed, then-CEO Lloyd Blankfein "personally helped forge ties with the country and 1MDB years before Goldman ever arranged the bond deals at the heart of the probes. Blankfein attended a 2009 meeting with the former Malaysian prime minister that laid the groundwork for the relationship between the two entities," Bloomberg reported. … In addition, proving how extensive and important the relationship was, Goldman's then-CEO reportedly arranged a special private meeting of some of Goldman's top clients for the Prime Minister (and Jho Low?) to pitch:



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> "he gave a pitch about Malaysia to a high-powered client meeting put together by Blankfein. Malaysia was so important for Goldman that Blankfein had roped in some of the biggest names in U.S. finance to attend," including John Paulson and David Bonderman.

And in the section with heading "Goldman's "Four Monkeys" and Rogue Defenses" that comes just before the section where Kelleher laid out all the nine red flags including those quoted above, he had first pointed out:

> As the extent and details of the outlandish, multi-billion-dollar alleged crimes have come to light, including Goldman's far-reaching involvement with 1MDB, what has been Goldman's response? It's what we call *Goldman's "Four Monkeys" defense: see no evil, hear no evil, speak no evil and keep all the money.* The firm thus far is using the standard Wall Street playbook to deny all wrongdoing and proclaim total innocence, if not shamelessly suggesting that *they* are victims themselves. … The "we was wronged by a rogue employee" is a common defense. However, most rogue employee cases involve one or at most two usually low-to-mid level employees. That's why "rogue" is singular: it's a one-off individual who engages in an outsized financial crime, like Nick Leeson at Barings, Jerome Kerviel at Societe Generale, or Kweku Adoboli at UBS. (Emphasis in the original.)

And right after, Kelleher went for the kill:

> Here, however, Goldman is trying to force-fit multiple, longtime, senior officers who were or are partners (plus whoever else might be behind all the redactions in the transcript of the hearing for Leissner's plea agreement) into the "rogue" category. In addition, there were dozens of Goldman Sachs top bankers, partners and executives, including the then-CEO (Blankfein), the then-COO/later President (Gary Cohn), and the then-co-head of investment banking/now-CEO (Solomon), presumably flyspecking the 1MDB relationship, the bond offerings and the other deals. (And, don't forget that all these senior executives undoubtedly personally pocketed substantial bonuses from the $600 million or so Goldman made from the 1MDB offerings.) Nevertheless, Goldman wants the world to believe that no one at Goldman was smart enough to get a *hint* of one of the biggest frauds in the world happening right under their noses in a multi-year, multi-deal relationship that stretched from junior bankers to the most senior executives at the bank. (Emphasis in the original.)

Finally for what seems to be the most important point of the whole work signifying the *collusion* among many from inside the bank to look the other way so that both they and others from outside the bank were able to profit from the horrendous act perpetrated against Malaysia and its people present and future through the 1MDB, is the following which appears at the latter part of the very same section of the work:

> Yet, Goldman's position is that a "rogue" banker lied and fooled *all* of the smartest, highest paid bankers in the world, *all* of Goldman's risk, compliance, legal and audit systems and controls, and *all* of Goldman's management. That is exactly what Goldman is peddling and wants everyone to believe, as the New York Times reported: "Goldman executives and their lawyers have depicted Tim Leissner, a former top investment banker, as a master con man, someone so sneaky that even the retired military intelligence officers who work for the bank couldn't sniff him out." Doesn't Goldman brag about having the worlds' state-of-the-art, high-tech, comprehensive systems and multiple, robust layers of compliance, risk, legal, audit and management designed to ensure that something like this could never happen, even at fractions of the size of this fraud and these fraudulent activities? Aren't they supposed to be experts at due diligence? (Emphasis in the original.)

And perhaps more to the point is what Kelleher wrote right after:

> Given that Leissner was only one of many Goldman partners involved with 1MDB and not even the only one criminally charged so far, the bank's defense appears absurd. Moreover, neither Leissner nor his co-conspirators were "master con m[e]n." As detailed in Billion Dollar Whale and other impressive reporting, *this was a brazen, crude and massive fraud orchestrated by a bunch of youthful, inexperienced amateurs who were sloppy, careless and obvious in many ways. None of this required Sherlock Holmes or even a business degree to uncover; scratch almost any surface with the most basic questions and the fraud seemingly would have been visible for anyone to see and quickly unravel.* (Emphasis added.)

If all of that is not plain enough in directing one's attention to the investmen bank's undeniable complicity in the scandal, note what Kelleher wrote within the last two sections of his writing. From the penultimate section of this superb work:

> While it remains unclear exactly how much money 1MDB still has and how much money 1MDB will ultimately cost the people of Malaysia (60% of whom live on "less than $1,600 a month"), it reportedly amassed around $13 billion in debt as of April of 2016 from the Goldman bond offerings and other borrowings. Thus, Malaysia's criminal and civil proceedings seeking $7.5 billion from Goldman seems potentially reasonable… The key question remains: "How could so much money - originally meant to lift up a nation and improve the lives of its people - have been laundered and embezzled under



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everyone's noses?" After all, what else is Goldman's compliance division for? According to Goldman's website, "the global compliance division is dedicated to protecting the reputation of the firm and managing risk across all business areas." The compliance division is supposed to "ensure compliance with regulatory requirements and determine how the firm can appropriately pursue global market opportunities." … This report is, of course, based solely on what is in the public record… *Nevertheless, this public reporting raises a key question: if it wasn't just a rogue employee, but at least partly the fault of the bank itself, should the bank itself be held liable for any of the crimes committed by its executives and others as well as the systemic breakdown of what it claims was a compliance system?* (Emphasis added.)

As for what may be found in the final section:

> There appears little room for doubt that certain Goldman officers and partners committed crimes - Leissner at a minimum; allegedly Ng; and potentially the unindicted co-conspirator - and whoever or how many others there may be should suffer the full weight of the criminal law. There's also little room for doubt that, however many criminals there are, they lied to and misled lots of people, including at Goldman. That may have made it somewhat more difficult to uncover their criminal conduct, but despite Goldman's current posture, that didn't make it impossible. Any fair-minded review of the publicly known facts suggests that it shouldn't even have been *that* difficult. More importantly, it simply cannot be an excuse for *every* level of Goldman's management and *every* one of Goldman's systems of checks and balances to fail. At a minimum, "Goldman's internal committees, set up to catch fraud, had failed at their jobs." (Emphasis in the original.)

But in signifying that the blame for the 1MDB scandal can be placed squarely on Goldman Sachs as a whole in the sense that it was primarily due to the varied role played by the international bank that the evil that is the 1MDB scandal had come about, perhaps nothing can beat what Kelleher himself had succinctly raised as the very last paragraph for the section that comes with the heading "Goldman's $6.5 Billion Role in Looting 1MDB and Reelecting a Corrupt Prime Minister" (where parts of it were quoted earlier at the beginning of this work):

> *…1MDB isn't just one of the biggest financial crimes of the century; it is a crime against an entire country and a catastrophic human, social and political tragedy*. While there's plenty of blame to go around and plenty of criminals and enablers involved, including many much worse than Goldman, *it is difficult to see, based on the public record, how this tragedy would have been possible without Goldman's instrumental role in raising $6.5 billion for 1MDB, advising on other deals, and providing 1MDB with the credibility that comes from having Goldman Sachs as your banker.* (Emphasis added.)

With that remark and the various evidence laid out earlier showing that the cause of the 1MDB scandal has a crucial international dimension, it is time to dive into something more straight forward that so many would not have any problem to comprehend. And it concerns the matter of the hearts where everything or almost everything originates from! It seems there are those who are the true believers of this through and through. But then as what is perhaps to be expected there are also those who do not look at things that way. And one of them whose brilliant write up is also referred to next gives importance not just to individuals but also to what he calls the system.

## IV. Human Governance Versus the "System"!

In January 2017 in *The Edge Weekly*, an associate editor at The Edge Malaysia R. B. Bhattacharjee wrote early on the following (Bhattacharjee, 2017):

> The high-profile arrests of a string of senior government officials and top executives of government-linked companies in recent months have undoubtedly created a major blot on the image of the civil service. Such exposés of corruption, involving hundreds of millions of ringgit in some cases, naturally trigger a gamut of questions about how pervasive the scourge has become in Malaysian society. They certainly provide much food for thought about the direction in which the country is heading.

Next, he noted: "Various statements by the Malaysian Anti-Corruption Commission chief, his deputy and government leaders about civil servants, particularly high-ranking ones, who lead lavish lifestyles and associate with contractors and suppliers on overseas trips and golfing holidays, only confirm the perception that ethical conduct may be at risk in not a few situations." But, as he had argued over the next so many lines, the smorgasboard of remedial actions and whatnot taken thus far had failed to rectify the growing problems of corruption in the country which encompassed the 1MDB scandal. And the reason that that was the case as he put it: "In these measures, it is common to see an overemphasis on rule-based solutions rather than attempts to nurture ethical values, and this may be among the reasons why the desired transformation in society has not taken place." Next, he asserted: "As always, pervasive transformational change boils down to individual choices at a personal level. It is self-evident that people who are highly motivated to live by an ethical code of conduct, regardless of the methods that lead to the internalisation of those values,



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are less likely to break that code than those who do not put a premium on them."

Therefore, with the strong belief that ethical individuals can make the difference, in the last few lines of his piece, he belaboured on the subject matter of motivation. Among others, he mentioned that "… all actions have at least three dimensions - they affect the subject, object and the environment in which that action is taken." And with the "environment" understood to be the societal impact taken into consideration by the would-be wrong doers, they who were earlier tempted to be corrupt would not go ahead perpetrating the corrupt acts. As he put it: "From the street-level corruption of bribery among enforcement officers all the way up to abuse of power in high office, the realisation that not just are the bribe-giver and bribe-taker falling into error, but are also contributing to the decay of their society, can become a powerful motivational impulse if those involved tune in to their moral compass." Eventually when so many Malaysians have their societal concerns to be upmost in their minds, the country can reach the graft-free status! In this regard, he wrote:

> Applied to our own conduct in society, we have all the motivation we potentially need in this ethical principle to create a nation that is not only free of corruption, but one that is disciplined, productive, just and caring. If we can remember this idea whenever we are tempted to bend the rules, choose the path of least resistance, or cut corners when we think no one is looking, there is no doubt that we could soon become a society that is quite graft-free, and perhaps even exemplary.

Such views seem to find parallel with the views upheld by the former prime minister Tun Dr. Mahathir Mohamed. In late October 2021 in the *Malaysian Insight* news portal, the following was reported early on (Alfian, 2021):

> Working with Anwar Ibrahim was better than choosing to side with Najib Razak who had caused the country severe damage, Dr Mahathir Mohamad said in a television interview today. He acknowledged the problems he had with Anwar who was his deputy before he was sacked in 1998, but said overthrowing Najib's government in the 14th general election was a greater priority. As such, Dr Mahathir chose to back opposition bloc Pakatan Harapan (PH), which meant working with Anwar.

In this regard, he was quoted to say:

> We need to know our priority - which comes first in our effort to correct the things in our country. Najib had done so many bad things and at the same time, I had problems with Anwar who was in jail at that time. But I chose Anwar because Najib was the greater evil. To bring him down, I needed to work with Anwar and the opposition and if I didn't, it would be impossible to fight Najib because he had money and power.

And most interestingly at the end of the short but quite interesting news report, the following was mentioned: "Dr Mahathir also said a country's stability and progress is determined by its leader and not the system. He explained that if the leader fails to steer the country to progress, the country's political and economic system will also fail." Related to this, he was quoted to say: "It is not the system that fails, it is the leader. If the leader fails, the system will fail. *The problem is with the person in charge, not the system.*" (Emphasis added.)

This view of Tun Dr. Mahathir Mohamed does not seem to be in consonant with that coming from a *Malaysiakini* columnist Steve Oh in his piece published on Christmas Day 2019. For what seems to be quite a critical overview of Malaysia over the years where he touched a lot on "the [debilitating] system" found in the country, Oh had stated early on (Oh, 2019):

> Nation-building was a word in vogue, a good word when I was growing up in the 60s. Today it is hardly uttered. Development the nation-building concept has diminished and development projects connote a feeding trough for corrupt politicians with long snouts and unbridled appetite to corrupt the system. … Malaysia risks sliding down the slippery slope. It became "a den of thieving leaders" because the voters foolishly or naively supported the dishonest politicians who hid behind race and religion to cheat them and the nation. *Every nation has corrupt politicians, often acting individually but in Malaysia the system spawns politicians who collude so there is collective corruption in government.* (Emphasis added.)

And later under the section with the heading "Najib not the only alleged kleptocrat", he pointed out:

> … nation-building became a euphemism for corrupt politicians and their cronies to amass fortunes by cheating the government in all sorts of jacked-up infrastructure and other mega-projects. The politicians in power began wheeling and dealing and made fortunes by hook or by crook. … The New Economic Policy introduced after May 13… became a poisoned chalice. Easy money destroyed many enjoying political largesse. This sickness is still prevalent because *the system* where the winner takes all and dishes out projects perpetuates it. The Broken Bridge project, for example. *The system* creates dictators supported by dirty money. It's "bastardisation" as Nazir Razak, the brother of former premier Najib Abdul Razak, described the problem, saw many unaccounted public scandals, which culminated in the infamous 1MDB mother of scandals. The government itself, not just the NEP, was bastardised, sodomised, terrorised and the nation as a cash cow was milked by those in power for their personal profit. While many



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poor lived without the basics, without decent roads and infrastructure, the corrupt, greedy and heartless politicians luxuriated on public account. They fed on the sufferings of the rakyat. Najib is not the only alleged and charged kleptocrat or leader with a record of lost public money. (Emphasis added.)

Also, within the second half of the very same section of his write up, Oh had given further details on the debilitating system found in the country. He wrote:

*The root of the Malaysian malaise is the cancer in the system which allows the government, in particular, the supreme leader, to get away with anything, even murder, because he controls the police, media and public institutions. A politician, a nobody, can acquire political power and act as the overlord of the nation.* He alone can destroy a nation as the late Tunku warned. This rise of a dictator is, of course, utter nonsense in a democracy and a reflection of how far behind the nation has lagged in its political and democratic development. … Had democracy thrived, the 1MDB scandal might have been stopped. The government gave Najib the rope to hang himself. *A nation where politicians become rulers and act like feudal lords without public restraint is a seriously flawed nation. Make politicians your overlords at your peril. Give them the power to rule over you as they like is the sure route to eventual national implosion.* (Emphasis added.)

As for the final example of the significance role played by systems as far as Oh was concerned, it may be found within the very last section of the writing whereby Oh without mincing his words had pointed out:

*The system of governance needs a major overhaul*. No leader in government should hold so much power that he can hold the truth and justice to ransom. No leader should be allowed to bury scandals like what has happened for so long. *The system has perpetuated a culture of dishonesty that is translated into acts of murder, kleptocracy, corruption and cover-up.* … Until Malaysians reject the system that has resulted in Najib facing a barrage of charges and accusations from kleptocracy to alleged link to Altantuya's murder, Malaysia will stay vulnerable and pre-eminence of the rule of law across the board will be a big challenge and a pipedream. (Emphasis added.)

But if truth be told, Oh in his write up had appeared to have given much emphasis too on the role played by inviduals! Related to this, it is quite early on in the piece that Oh had actually began talking about a certain type of leaders that the country had been stucked with and which could at the end lead to national ruins. As he stated it:

Adolph Hitler rose to power because the German people supported him. They allowed themselves to be mesmerised, deceived and destroyed by a mentally sick and evil man. Germany became corrupt and exported the Nazi death culture. Is there a lesson for Malaysia in the wake of revived misplaced nationalism? … Besides corruption, the threat exists for Malaysia to be destroyed by modern-day "Nazis".

Not long after saying all that and in fact in several other places in the rest of his piece Oh had faulted the person Tun Dr. Mahathir Mohamed over the debilitating goings on in the country over so many decades! At the beginning of his piece, for example, right after his raising the matter of Hitler, Nazi, etc., he wrote:

The Harapan government remains the best means of thwarting the slide. They can do it by not interfering with the judiciary and bastardising Parliament. With a vibrant civil society and independent media together they remain the safeguard against a return of the flawed, defeated and futile BN regime. … Today the Pakatan Harapan government under Prime Minister Dr Mahathir Mohammed sends out mixed and confusing signals. It is the Jekyll and Hyde problem again, no thanks to the man at the helm. … Disillusionment may yet sink the Harapan government if it does not change course and retire a rather enigmatic, trying and uninspiring skipper. … How do you dignify or justify anyone who breaks promises and plays foul? Promise-breakers should be held to account for their betrayal. They discourage and disappoint the nation who trusted them. There is no dignity in letting down the nation with a play of words instead of keeping one's word.

Later, for another fine example, Oh had this to say too: “As a national leader Mahathir has failed to further the interests of all communities. Within months he has looked after the dignity of the Malays and the unity of Muslims. What about other races?” And still for one and final example, check out the following which appears at the end of the section that comes with the title “Najib not the only alleged kleptocrat”: “The Harapan government has yet to make radical changes because it lacks a solid nation-builder leader like the late [prime minister] Lee Kuan Yew [in the case of Singapore]. Mahathir complained about the "police state" not long ago when Najib was ensconced untouchable in the high seat of power. Has it changed?” And, at the end, in the final section of his write up, Oh had made it crystal clear of the need for another person to replace Tun Dr. Mahathir Mohamed. In this regard, he wrote: “There is hope for Malaysia but the need for a solid, inspiring and honest leader, is critical. … Mahathir should call it a day and let another take over in leading the country out of the confusion and conflict his leadership has caused.”

With all that in the background, it is surely not surprising to find that in some places of his write up, Oh seemed to say that the intermingling of persons and



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systems appeared to be *both* the cause and the solution of the country's problems! In the final section of his write up, in regard to the latter, he wrote: "Mahathir is an integral part of the system and will find it impossible to be the solution unless he makes some radical changes. I doubt he has the volition to rise to the challenge. … *A new leader, a new system, a nation of shared destiny, this is what Malaysia badly needs.*" As for the intermingling of persons and systems apparently being the cause, he had pointed out the following early on in his write up:

> Developing the nation was the thought that preoccupied our minds in the fledgling years of nationhood. Then the government spoke of practicable development plans during a time when the country's infrastructure was basic and lacking. People trusted the government and wholesale corruption by politicians was non-existent unlike in recent times since the Mahathir era. There was a strong expectation in the country, both for the government to lead and the people to do their part in advancing their newly independent nation.

And later in the following section, he had also mentioned:

> In the 80s and 90s, development reached dizzying heights. New roads and shopping malls - just about everything not seen before - cropped up all over the country but noticeably in Kuala Lumpur and major cities. Malaysia was on a roll with full employment. So were some other countries in the region. But the public coffers were leaking and the politicians and their cronies stole money meant for development. … Malaysia became a graveyard for scandals as the politically powerful perpetrators buried each new scandal exposed.

Now, before moving on to what others say on the 1MDB's causes, it may be important to note what Oh had stated out on the kind of democracy found in the country and what it had all entailed giving out the picture that in case at the end of the series on identifying the causes of the 1MDB scandal the form of Malaysia's democracy is found to be one of them, it should be a tremendous challenge to go about deciding the correct set of solutions to be implemented to ensure the very minimal possibility of 1MDB kind to recur! As Oh had written:

> *The different arms of government exist in a democracy to provide a check and balance on one another. Not in Malaysia though. The executive has twisted those arms until they are dysfunctional. Rule of law became selective* because despite Mahathir's proud reference to it some allegedly "big fish" are still untroubled by the MACC. Justice is not seen to be done. When I see all, not just a select few, of the super-rich politicians investigated, then I will believe Mahathir's rule of law. Until every politician who got super-rich while holding office is investigated, the MACC's job is not done, even after Najib is jailed. *Malaysia is not only a graveyard of scandals but a breeding ground for racketeering and dubious, dirty politics.* … Malaysia is fast becoming the new South Africa with its brand of apartheid and *the hidden deep state may yet become the visible state because the government is not building a nation for all but perpetuates a "they and us" national mindset*. (Emphasis added.)

All in all, as to whether systems or persons or the intermingling of both, doesn't it seem that the answer to the question of what had caused the 1MDB scandal become murkier and murkier…? And thus is it really possible to provide a definitive answer one way or another that just about anyone can agree with?

Perhaps there is no need to answer those questions for now – one should at least wait until he or she has gone through the next discussion of a possible 1MDB cause which also happens to be the very last one. It should be quite an eye opening and perhaps capable in clearing out some confusion, for unlike those causes discussed up to this point, the next one *uncompromisingly* links two levels of governance to explain how the 1MDB scandal had come about. Or perhaps another way of looking at that discussion is that the situation facing the so called governance at the level of corporation in the country is put within the broader context! And that context is none other than what may be called the country's public and regulatory governance or in short the national context.

*a) Where Public and Regulatory Governance Affecting the Corporate Governance…*

It was in early May 2019 in a keynote address by the then finance minister Lim Guan Eng from the PH (as opposed to the UMNO-BN federal government that he seemed to point out the close connection between corporate governance and public and regulatory governance (Eng, 2019):

> I commend the SC for their commitment and relentless efforts in promoting corporate governance in order to build an environment of trust, transparency and accountability in the capital market… *In order to ensure that the financial market continues to serve the real economy in terms of access to long term capital and investments, corporate governance must be complemented by good public governance.* (Emphasis added.)

Next, he claimed:

Public governance provides rules and stability needed for planning investment and facilitates a smooth and productive interaction between the Government and the general public. The new dawn in Malaysia after 9 May 2018 is an inflexion point, which brings good governance, key institutional, political and economic



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reforms to the fore to transform the nation, and take it forward.

And when it concerned the outrageous goings on in or through the 1MDB, this was what he said:

> There can be no better case study of *public* and *corporate* governance than the very scandal – 1MDB, which brought down a ruling government which has been in power for more than 60 years. The outrageous abuse of power by the then Finance and Prime Minister, the scale of embezzlement and misappropriation which took place involving tens of billions of ringgit have inflicted a heavy toll to the nation, making Malaysia the global capital of kleptocracy. (Emphasis added.)

Such strong remarks were followed right after with the following resolve:

> Hence, the new Government's top agenda is to restore credibility and trust in the Government and public institutions by upholding integrity and fighting corruption. We must ensure that there will be no opportunity for another 1MDB to rear its ugly head in this country, whether by the current leadership or any future leadership who become corrupt with power. To quote the Prime Minister Tun Dr Mahathir Mohamad himself, "never again".

And so the rest of the speech filled with the delineation of various efforts undertaken by the then federal government, the parliament and the securities commission to translate that resolve into action! With such to be the case, the speech had the following stated out in its second last paragraph:

> Upholding the rule of law, applying the principles of transparency, accountability, integrity and good governance is critical to ensure this nation prospers peacefully and harmoniously. I commend the companies, which make no compromises on business integrity and good governance – and those with gaps to bridge should do so urgently as good governance is not a nice-to-have but a must-have.

All that and more which could be gathered from the speech are not at all surprising! After all it was some years earlier in June 2015 at what seemed to be the very height of world wide reporting on the 1MDB that a much stronger speech was delivered by the very same personality who at that time was the chief minister of the Penang state. And the very gist of his speech was that there was nothing much regarding the nation's corporate governance that could be expected from the then federal government. The hard hitting speech that was delivered at the 7th Annual Corporate Governance Summit began with remarks on a couple of scandals in the United States (Enron and Bernie Madoff's Ponzi Scheme) and another two in Malaysia (Pan El and Sime Darby) and which ended with the following admittedly fine delineation of their similarities cutting across three levels of governance: individual, corporate and national (Eng, 2015):

> Whether in Malaysia or in the United States, these examples of corporate fraud and malfeasance have a few common threads running through them. Firstly, unscrupulous individuals took advantage of poor or inadequate legislation to exploit existing loopholes in the system. … Secondly, there were often poor internal governance structures where the presence of checks and balances were very weak or altogether not present. The phenomenon of board of directors being beholden to the chairman or CEO for their appointments, which is quite commonplace in the United States, calls into question the ability of the BoD to perform its internal governance role. Separately, the presence of many of the same individuals in the board of directors in various GLCs and sovereign wealth funds in Malaysia also raises questions about possible conflicts of interest. Thirdly, there is often poor external oversight. This could be in the form auditors who are complicit in covering the tracks of unscrupulous CEOs or the management team who book non-existing revenues or inflate sales or hide ballooning losses. Or it could be poor enforcement by external agencies such as the central bank, the securities commission, the companies' commission or other regulatory agencies.

Next, Lim Guan Eng had torn into what had happened in or as a result of the debilitating goings on in the 1MDB in several devastating paragraphs covering over the next one and a half page of his speech! This part of the speech started out with among others the following remark:

> I do not want to delve into how public listed companies can improve its corporate governance structure and in doing so improve investor confidence in the Malaysian market. … I do, however, want to raise certain questions about better corporate governance within the government and especially within government owned companies. … And nowhere do we see the failure of corporate governance demonstrated on a massive scale within a government owned company than what we have seen within 1MDB. The rot started right from the beginning in terms of corporate governance.

And after so many paragraphs that very part of the speech was ended with the following summary:

> Of course, there is much more about 1MDB which I could go into but I think that many of you are already up to speed with the news which seem to capture the headlines one day after another. *But the point of highlighting these details is to show that there was a systemic absence of proper corporate governance in 1MDB from regulatory oversight, to internal governance procedures and processes, to proper audit*



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*procedures, to the lack of scrutiny and possible conflict of interest among the board of directors, to the possible involvement or non-involvement of the Prime Minister himself…* This only shows how the lack of proper corporate governance can create an environment where all things which can go wrong does go wrong… and in the case of 1MDB, going wrong in a spectacular fashion. (Emphasis added.)

As perhaps to be expected, that remark of his was followed by several paragraphs delineating the excellent story of financial management coming out of the Penang state government. For that part of his speech, Lim Guan Eng had started out as follows:

> Our record in Penang in terms of financial management has been acknowledged by many including the Auditor General. In stark contrast to the usually abysmal findings in the audit of federal ministries and other states, Penang has maintained a stellar record. Commendations have been accorded to the state government for its clean, efficient and transparent governance – and not only by the Auditor-General's Report but also by international watchdogs such as Transparency International. We are proud to be lauded as amongst the best managed and most efficient state administrators in Malaysia yearly since 2008.

In case anyone could have missed what he intended to do in his speech which was simply to lay down the need for voters to go for a *new* federal government which shall ensure the emergence of strong corporate governance in government companies, Lim Guan Eng had made that crystal clear in the last two paragraphs of his speech:

> The question which Malaysians must ask ourselves is this: *Do we think that we can improve corporate governance in this country by slowly reforming existing practices under the current federal government or do we think that meaningful reform can only take place with a change in government?* For those who believe in the internal reform process, I would urge caution and even skepticism. The past record does not give us confidence that significant reforms will come under the present federal government. We have had strings of financial scandals in government owned and government linked companies including Perwaja, Renong, PKFZ and many others. 1MDB took this to a whole new level. It is more likely than not that more corporate governance best practices will be broken in the process of trying to 'fix' the 1MDB problem. With this in mind, how do we expect corporate governance to improve in this country under the present government?
>
> In contrast, the state governments in Penang as well as Selangor have shown that we can manage our resources much more transparently and efficiently. Of course, there is still a lot more room to improve but I think we have shown definite proof that *a new government can usher in better corporate governance practices and build a sustainable environment for investors*. To me, this is a no brainer. I hope I have convinced you that it is a no brainer as well. The harder challenge is to convince the larger public but it is a challenge which we must accept with open arms. (Emphasis added.)

And yet lo and behold it was not even a full year had passed after the federal government had safely changed hands from the political party Barisan Nasional to that of Pakatan Harapan that the debilitating past in regard to the public and regulatory governance appeared to have continued to take place! This was made crystal clear by the late Mudajaya Group Bhd's non-executive chairman Datuk Yusli Mohamed Yusoff (may God bless his soul!) who was at that time the president of Malaysia Institute of Corporate Governance (MICG) and formerly the Bursa Malaysia Bhd chief executive officer. In the March 2019 scathing news report published in *The Edge Financial Daily*, Tan Xue Ying had this to say early on (Ying, 2019b):

> The group's independent non-executive chairman Datuk Yusli Mohamed Yusoff - formerly Bursa Malaysia Bhd chief executive officer (CEO) - said the group is aggrieved at the outcome of the case of a former employee Michael Chua Khain Keng, who was caught stealing RM72 million from Mudajaya. Chua was arrested and charged under Section 403 of the Penal Code for Dishonest Misappropriation of Property amounting to RM800,000 last week. He has since been released on bail and the court hearing is set for April 5. *Mudajaya's top management and the board of directors are puzzled that Chua has been charged with misappropriating only RM800,000 - which is slightly more than 1% of the stolen sum.* The light charge seems to be encouraging, instead of penalising, white-collar crimes in Malaysia, said Yusli… (Emphasis added.)

Next, the news report had quoted Yusli as saying:

> We are pleased that the person was apprehended and brought back to Malaysia to face charges. But we were extremely surprised at the charge made by authorities against him, when we compared it to the amount of money that we know has been taken from the company, which he himself has admitted. It just does not seem to make sense. We are now trying to seek clarification from [the] authorities, and are awaiting their response. *If you are talking about a system that wants to penalise and deter criminals, I think we are doing the opposite. A major crime shouldn't be treated as a petty crime, and at the moment it appears to be something like that.* (Emphasis added.)



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Also notable was the revelation mentioned following the quotation:

> Group managing director and CEO James Wong Tet Foh, who was also present at the interview, commented that last week's charge sheet had deviated from the first police investigation paper. Wong was told by the police that it was an "open-and-shut case", and so the initial paper was working towards a much serious charge that could lead to a 20-year jail term under Section 408 of the Penal Code. Chua has been charged with misappropriation of funds from a power plant project, in which Mudajaya was the subcontractor for the civil and structural works, last week. The RM720 million contract was awarded in June 2011. Mudajaya's board smelled the rat when the project started showing an alarming profit deterioration. An internal investigation was launched and irregularities in payments and contract documents revealed were traced back to Chua. A follow-through forensic audit led by KPMG initiated confirmed in June 2015 the breach of duties and obligations and inappropriate conduct, and reports were lodged. Chua, who had then resigned after spending nine years with the company, admitted to his acts when confronted and agreed to return all monies taken out of the company, said Wong.

Unfortunately, no returning of "all monies taken out of the company" had taken place next. Wrote Ying: "However, Mudajaya said it has only been able to recover some RM16 million of the total sum, including cash of RM1 million and the transferred titles of Chua's 21 properties in Kota Damansara. The project suffered losses amounting to RM99 million, and has taken a toll on the group's financials."

With all this and more in the debilitating background of the case, Ying mentioned at least two very interesting results. The first that Mudajaya had written to several authorities, including the Attorney-General's Chambers and the Malaysian Anti-Corruption Commission (MACC) on the matter of the downgrading of the charge filed against the culprit and the second that Yusli had hoped "… that rightful measures can be taken when matters are brought to the light of enforcement institutions, especially after the government transition." On the second one as far as the so called government transition was concerned it referred to what happened after the May 8th 2018 General Election with the Umno-BN federal government replaced by that of the Pakatan Harapan.

Now, what is the most striking of all and is related to a close connection between public and corporate governance is found in the last one third of the eye opening news report. Noted Ying as far as Yusli was concerned: "He stressed *the need for an improved public governance system in Malaysia, for corporate governance to be effectively and properly practised at high standards*. Both the public and corporate [sectors] will need to work hand in hand to fight against a "corrupted system" which is still alive and well, said Yusli." (Emphasis added.) And note also the quotation coming from Yusli where he touched on the 1MDB scandal that came right after:

> There is no point in pretending that the system works, even in all the huge publicity about 1MDB (1Malaysia Development Bhd) and all other cases. If this is an example of how our public governance system works, I'm not surprised — and no one should be — at how slow these cases are moving. It appears that past practices are still continuing. You want to do the right thing, but the system seems to be working against you.

And following that quotation, Ying had written within the last few lines of the news report the following:

> Wong [the Mudajaya Group managing director and CEO] concurs that public governance is essential, pointing that foreign investors are watching closely at cases, like Mudajaya, as a yardstick to assess the country's legal system and protection of business interests. Wong observed many multinational corporations and companies in the past suffered similar setbacks as Mudajaya. *He said the frustration of these companies stem from the extensive amount of time police investigations needed — at an average timeframe of four to five years — and the bureaucracy of the judiciary if the matter is taken to court.* Having been through the gruelling process, Yusli said it bluntly that it raises concerns that the current system is "rotten". (Emphasis added.)

And if all that including the various quotations from Yusli have failed to make it clear enough what Yusli and Wong were extremely very concerned about, check out the quotation next coming from the former that appeared as the very last thing raised in Ying's penetrating news report: "If the new government is serious about implementing the rule of law, it seems that there is a lot of work that needs to be done. *We will do our part as a corporate citizen, but on our own we can't implement justice. We need the public governance system to work.*" (Emphasis added.)

It is notable that the late Yusli had raised the very same idea sometime earlier. To be more exact it was in the early May 2017 close to two years earlier in another news report that came out in *The Edge Financial Daily* that there were quite penetrating observations disclosed on Malaysia's public governance coming from three Malaysian personalities - Tan Sri Mohd Sheriff Mohd Kassim, Ho Kay Tat and Datuk Yusli Mohd Yusoff - with (the latter) two of the three had also touched on corporate governance (Toh, 2017). To be certain such insights as disclosed in the news report came about "in a roundtable discussion on the "Corporate Governance Watch 2016 — Ecosystems Matter" report released by



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the Asian Corporate Governance Association (ACGA) that took place the day before.

With regard to the first personality, early on in the news report, the journalist Billy Toh had written out the following: "A high level of accountability, freedom and access to information "is still very much lacking" in Malaysia compared with countries such as Australia, which has a more developed corporate governance regime, said former finance ministry secretary-general and Economic Planning Unit director-general Tan Sri Mohd Sheriff Mohd Kassim." Next, he quoted Mohd Sheriff who said: "If [the scandal involving] 1Malaysia Development Bhd (1MDB) were to happen in Australia, there will be a full-scale inquiry [by now]." And in the next few lines of the news report, Toh mentioned that in the ACGA report, Mohd Sheriff had also highlighted the need for Parliament to provide oversight of the functions of the government to prevent abuse of power and that there was the issue of the lack of independence that was a threat to public governance as seen in the Attorney-General's (AG) Office. Related to the latter, he had Mohd Sheriff quoted as follows: "The Attorney-General acts as both the adviser to the government as well as a public prosecutor. But how can he be independent if he is the public prosecutor and the adviser to the government?"

As for the second personality Ho Kay Tat who was and still is The Edge Media Group publisher and group chief executive officer, he claimed that the issue of governance had emerged following the 1MDB scandal. And to be more specific, it concerned the Auditor-General's report on 1MDB which was classified under the OSA since its publication in February 2016. In this regard, he was quoted to say: "It's just unacceptable that the board (government) has decided to classify a report done by its own Auditor-General under the OSA (Official Secrets Act 1972) on this big issue. How serious can we take the board of the government then if their own report is classified as OSA? I think that's where we have failed [in public governance]." But as far as the corporate governance was concerned he appeared to have a sanguine view. Related to this, Toh had him quoted to say: "There's no doubt since the 1997 Asian financial crisis, in terms of corporate governance of public listed companies, there has been tremendous improvement if not just the regulations and the enforcement by both the SC and Bursa Securities. There are still many miles to walk, but definitely there's been improvement."

The late Yusli referred to above who was the third and last personality whose views included in the news report seemed to be very much agreed with those views coming from Ho Kay Tat. As mentioned Toh: "Malaysian Institute of Corporate Governance president Datuk Yusli Mohd Yusoff said the progress made to strengthen corporate governance by regulators has been respectable such as the new Malaysia Code of Corporate Governance that was released by the SC and the strong corporate governance requirements by BNM." Next, Toh pointed out that Yusli had raised the issue of "the lack of accountability in the government" whereby as revealed in the ACGA report the score for the political and regulatory environment in the country had fallen to 48% in 2016 from 59% in 2014. Related to this, Yusli was quoted to say: "*You cannot expect to have a high standard of corporate governance if the public governance culture is* poor. *It's only going to be a matter of time before our corporate governance standards will fall down if we don't improve public governance."* (Emphasis added.)

Such remarks from Yusli and earlier from Lim Guan Eng have found much support later in a late September 2021 write up by (the earlier mentioned) Dr. Vivien Chen that comes with the title Kleptocracy Through Weak Governance at State-Owned Corporations and which was published at the Columbia Law School's Blog on Corporations and the Capital Markets (Chen, 2021).

(On the outset before readers go through the next few paragraphs it is perhaps worth noting that the following is found at the end of the piece: "This post comes to us from Vivien Chen, a senior lecturer at Monash Business School. It is based on her recent article, "Corporate Law and Political Economy in a Kleptocracy," forthcoming in the American Journal of Comparative Law…" Unfortunately, such publication is nowhere to be found in the journal mentioned -or for that matter, any other journal. What is found instead is this: the paper with such title and author is available at the following address: https:/papers.ssrn.com/sol3/papers.cfm?abstract_id=3924711 – and on top of the very first page of the paper just below the paper's title and author's name the following is mentioned: "Author's original submission to the *American Journal of Comparative Law* which was accepted for publication in June 2020 following revisions.")

Early in the piece Chen talked about Malaysian corporate law which was modeled "on international standards" which however had failed to stop the stealing of billions of dollars over a period of nine years through the government-owned company the 1MDB. Next, she raised the question as to how that could be possible. Note that as far as the meaning of the so called international standards, although she never seems to define it she had this mentioned early on in the piece:

> The Doing Business 2020 index ranks Malaysia as second highest in the world for the strength of its protections for minority shareholders. Likewise, an empirical measurement based on 60 shareholder protection variables using the Leximetric method from 1970 to 2005 found that Malaysian shareholder protection law was comparable in strength to that of



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the U.S. and other Western developed countries and improving.

As for the answer to the question why world class standards were powerless to stop the 1MDB fraud, she pointed out first the following: "… evidence indicates that enforcement of these protections is relatively weak, and political interference has impeded investigations involving several high-profile politically-linked corporations." Next, she stated out revealingly:

> Although Malaysian corporate law has been modeled on Anglo-Australian corporate law, Malaysia's corporate ownership structures and political economy are distinctly different. The state maintains extensive ownership and control of corporations, estimated at 42 percent of the total market capitalization of corporations listed on Bursa Malaysia, and political influence is strengthened through state-controlled institutional investors (Gomez et al., 2018). Studies have revealed the inextricable relationship between politics and business in Malaysia, where redistribution policies have resulted in widespread political patronage (Brown, 2006). Controlling shareholders frequently depend on political patrons for contracts, licences, and other business opportunities and, in return, provide undisclosed benefits to political patrons (Gomez and Jomo, 2000).

And with regard to the case of the 1MDB in particular, Chen had made it crystal clear the following:

> 1MDB was incorporated as an unlisted public company, a legal entity subject to minimal disclosure requirements. The company was wholly-owned by the Minister of Finance (Incorporated). As former Prime Minister Najib was also the minister of finance, he was able to control the boards of 1MDB and its subsidiary, SRC. In the absence of any legal requirements that unlisted companies should publicly disclose their financial affairs, there were few external checks on fraudulent transactions. Further, there were no requirements that the management of state-owned companies be accountable to Parliament or that their financial affairs be otherwise subject to public scrutiny.

And right after all that Chen had pointed out some of the horror that the country had to experience not long after the 1MDB fraud had come to public attention sometime in the middle of 2015 – such observation is certainly in contrast to the remarks made by Mui and Thye (2019) mentioned above regarding the country's "regulators and law enforcement agencies"! She wrote:

> The scandal precipitated investigations across several continents and civil and criminal proceedings in various countries. Nonetheless, political obstruction of domestic investigations and the use of repressive laws to silence critics ensured that the Malaysian authorities did not bring enforcement proceedings in relation to 1MDB until the Najib administration fell in the May 2018 general elections. In the preceding years, Najib dismissed the attorney-general as he was about to file proceedings, classified as an official secret the initial investigation report into 1MDB that the cabinet had requested following allegations of impropriety, and imprisoned an opposition leader who attempted to reveal part of the classified report. Public discussion of 1MDB was suppressed through legislation that included the *Communications and Multimedia Act 1998*, *Sedition Act 1948,* and *Anti-Fake News Act 2018*.

For a short piece of work, it is notable that it is replete with numerous ideas for reformation in its second half. And it is also in that part of the work where she had raised the matter of the close relationship between the goings on at the corporate level and those at national level – a la that of Lim Guan Eng and the late Yusli earlier! She wrote:

> The [1MDB] scandal also underscores the importance of strengthening regulatory enforcement and broader institutional reforms. These include ensuring that regulatory authorities are independent, free from political interference, and able to maintain an active role in enforcement proceedings. *Studies reveal the correlation between well-governed state-owned corporations in Singapore and Norway and their reputations for "clean government and the rule of law" (Milhaupt and Pargendler, 2017) and "strong law enforcement against graft and corruption" (Chen, 2016).* (Emphasis added.)

That this is a point worth taking seriously not just by the concerned parties inside Malaysia but also by others outside including the so called supranational bodies is made perfectly clear with what she wrote next:

> Concerns over potential corruption through state-owned corporations extend beyond Malaysia. Political and economic interests are often intertwined in Asian developmental states (Chu, 2016) and state ownership of corporations is found in various countries. In countries where corporations law permits such public funds to be managed in secrecy, the risks remain that such corporate entities will provide a cover for fraudulent transactions.

Finally, for what appears to be worth noting also by concerned parties the world over, Chen had appeared to save the best for last – literally her very last paragraph! But to understand what she was trying to say in her very last paragraph, it is perhaps necessary to go over what she points out in three prior paragraphs from a total of twelve paragraphs found in the write out. The fourth paragraph from the very top:

> *Though state-owned corporations are common around the world (De La Cruz et al., 2019), international*



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*corporate governance standards do not address agency conflicts that arise in this context. Influential global indices such as the World Bank's Doing Business rankings focus on the agency problems that arise in shareholding structures more commonly found in Western developed countries. Scholars highlight the greater risk of corruption in the governance of state-owned corporations (Milhaupt and Pargendler, 2017), but the governance of state-owned companies is the subject of separate, less prescriptive OECD guidelines. Importantly, the high-profile international rankings do not hold countries accountable for recommendations relating to state-owned corporations.*

The seventh paragraph from the very top:

The [1MDB] scandal highlights the failure of existing corporate regulatory frameworks to mitigate risks that arise in the context of state-owned corporations. Puchniak and Varottill (2019) similarly observe that current corporate governance prescriptions do not adequately address risks of abusive related-party transactions in state-owned corporations. Although the Santiago Principles are aimed at promoting better disclosure in sovereign wealth funds, the disclosure requirements are minimal, and compliance is voluntary. Khazanah Nasional Berhad, the state's flagship investment arm, issues annual consolidated financial statements without revealing details of each of the many corporations and subsidiaries it controls.

The eleventh paragraph from the very top or the second last paragraph:

*More can be done at an international level to reduce risks of kleptocracy through state-owned corporations. Stronger measures aimed at mitigating risks of abusive related party transactions in state-owned corporations should be incorporated as an integral part of international prescriptions for corporate governance.* (Emphasis added.)

And accordingly in her very last paragraph, she wrote:

*Empirical findings from my research indicate a gap between Malaysian shareholder protection law on the books and its effectiveness in practice, emphasizing the importance of incorporating evidence of effectiveness into the ranking methodologies. Reports indicate that formal Malaysian protections for minority shareholders are weakened by concentrated shareholding and the dominance of controlling shareholders over management, resulting in such protections being illusory at times. In addition to prescribing reforms through legislation and corporate governance codes, international rankings could make a significant difference by gauging the extent to which regulations have been effectively implemented and holding countries accountable for poor enforcement.* (Emphasis added.)

Before this very discussion is brought to an end, it is perhaps important to note that what all that which Chen mentioned and which gives support to remarks made earlier by the late Yusli Mohd Yusoff and Lim Guan Eng on the close relationship between corporate and the so called public and regulatory governance had been alluded to so many years earlier in a write up on internal audit in Malaysia's public sector published in a local accounting practioner's journal *Accountants Today* (Azham et al., 2008). The following is mentioned at the very end of the writing: "This paper is an extract of the paper "Internal Audit in the State and Local Governments of Malaysia" published in *The Southern African Journal of Accountability and Auditing Research (SAJAAR)* in 2007, vol. 7, pp. 25-57. This paper was also presented at the Asian Academic Accounting Association (AAAA) 6th Annual Conference from 15-17 November 2005 in Kuala Lumpur."

Both pieces – one from Chen and the other from Azham et al. – may be considered significant since both point out the debilitating issues found in the bigger national context within which their subject matters of interest – in the case of Chen, Malaysia's state-owned corporations and as for Azham et al., internal audit in Malaysia's state and local governmental entities - are found within and which could limit any efforts towards rehabilitations. For Chen, she specifically referred to kleptocracy as the bigger context (as can be detected from the use of that very word in the heading of the piece although that very word is not mentioned even once in the whole write up except in the very first paragraph in quoting the remark coming from the then-U.S. Attorney General Jeff Sessions that the 1MDB was the case of "kleptocracy at its worst"!). As for Azham et al., after saying among others at the beginning of the paper that "[t]here were many problems challenging the effective functioning of internal audit within SLoGBs [State and Local Governmental Bodies]", at the concluding end they simply wrote:

It is believed that one of the possible ways to improve the internal audit function is to begin by having the right kind of organisational heads in the organizations followed by the setting up of audit committees in the organisations and forming an internal audit monitoring body at either the state or the federal level. Improvement in the audit function may also come about with specific moves coming from the federal government, the institutions of higher learning and the internal auditors themselves. *For these different moves towards a well functioning internal audit department in SLoGBs to materialise, the prerequisite is that Malaysia should possess the right kind of social and and political environment — which until perhaps quite recently was still elusive!* (Emphasis added.)

But do not ever make a mistake about it for even though the word "kleptocracy" is not mentioned at



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all in the extract and also in the previous full versions of the paper, the section 7.I with the heading "Contextually wrong" found in the original paper published in 2007 had given *ample* instances of kleptocracy in action (signifying the presence of the *wrong* kind of social and political environment hindering the possible emergence of a well functioning internal audit in Malaysia's state and local governments)! This and more may be touched on in Part II (of the present series of work on the 1MDB causes) when the 2007 paper together with several others (by other researchers) that have undergone rigorous refereeing process prior to their publications are looked into in determining the causes for the 1MDB scandal.

One final note regarding Azham et al. (2008) which may be be worth mentioning is that its predecessor which is a 2004 work entitled "Internal Audit in the State and Local Governments of Malaysia" (and which happens to be the very first in a series of papers on internal audit in Malaysia's public sector covering a period of ten years) was later raised on pages 387-388 of the Chapter 10: Research Method and Literature Review for the volume *A Global Summary of the Common Body of Knowledge (CBOK) 2006* (ISBN: 978-0-89413-619-1) whose publisher is The Institute of Internal Auditors Research Foundation (IIARF). Also note that as stated out years ago at *www.theiia.org/bookstore/product/common-body-of-knowledge-2006-a-global-summary-of-the-1163.cfm* and in later years at *www.amazon.com/Global-Summary-Common-Body-Knowledge/dp/0894136194*, CBOK 2006 "... is the largest and most comprehensive global study ever conducted about the internal auditing profession." It also says that CBOK 2006 "… presents a rich database of knowledge that will be exploited over the next few years to shape the internal auditing profession."

## V. Discussion and Conclusions

As noted at the beginning of this work, the possible causes for the 1MDB scandal are plenty. Those discussed earlier together with their respective proponents are as follows:

- Over-concentration of power (together with weak public institutions, muzzled mainstream media and lack of transparency) – journalist Clare Rewcastle Brown (March 2015)
- Political interference (the outcome of ones' nefarious agenda and rotten system) – journalist P. Gunasegaram (May 2015)
- Government extensive involvement in business (together with the presence of inadequate institutional arrangements to counter potential abuse by politicians plus the kind of democracy going nowhere) - graduate student Teck Chi Wong (August 2016)
- Corporate governance going haywire – academic Terence Gomez (July 2015)
- Kleptocracy – academic Syed Farid Alatas (October 2016)
- Horrifying international dimension – NGO head and former senior staff of the United States Senate Dennis M. Kelleher (May 2019)
- Troubled human governance – newspaper editor R. B. Bhattacharjee (January 2017) and former prime minister Mahathir Mohamed (October 2021)
- Rotten systems & persons – columnist Steve Oh (December 2019)
- Vulnerable governance at the corporate level affected by the corrupt public and regulatory governance – state's chief minister (June 2015) and later federal's finance minister (May 2019) Lim Guan Eng, MICG president and former Bursa Malaysia CEO Yusli Mohamed Yusoff (May 2017; March 2019) and academic Vivien Chen (September 2021)

There are several interesting points which can be drawn from what various parties have said as the causes for the 1MDB scandal. First, from the very first 1MDB cause laid out that comes in the form of power concentration to the last one on corporate governance being affected by the bigger context public and regulatory governance that it is under, it appears that there is nothing simple and straight forward about what everyone had said regarding the IMDB causes. For instance, instead of some causes stated out to be operating on their own separately, there is the emphasis given to the interconnections among a handful of causes. In many cases, a reader does not need to read between the lines since those whose remarks or works are quoted have themselves pointed out this very thing. Among them is of course the journalist Claire Rewcastle Brown when she was talking about power concentration - and who recently in Brown (2021) has written a chapter on the decades-longth debilitating goings on in her birth place Sarawak signaling that she is a person of credibility to talk about the very topic of power concentration in Malaysia. This is perhaps to be expected since what one is dealing with is real life which is always complicated and what more when the subject matter of interest is the 1MDB scandal which for so many years now has been proclaimed by figures of authority from the world over as one of the worst cases of kleptocracy that the world has ever seen.

Following this line of thought, is there perhaps another way of looking at the interconnectedness of causes' phenomenon in the sense that maybe some of the causes are not quite the straight out 1MDB causes that one may think of them? To be more exact, the so called causes are pretty much the consequences or outcome of some other causes which may very well be labeled as the root causes? Also, could there still be another way of looking at what is going on regarding



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some of the 1MDB causes in the sense that that those causes represent both (immediate as opposed to root) causes and effects? So, as far as these causes are concerned, there is little difference between them and the 1MDB: there are just those things like so many other things which can be expected in the Malaysian context as a result of the all encroaching and suffocating root causes (whatever those may be at this point…)?

Second, it is notable that some of those who propound the idea of single and (perhaps) separate as opposed to the intermingling of causes have made it clear that their ideas of moving forward following their delineation of the possible causes would not be workable without the presence of the desperately needed pre requisites. In this regard, an excellent example is none other than the ANU graduate student Teck Chi Wong who was talking about the need for reform in not just the institutional governance frameworks that can best regulate the state in its handling of GLCs but also as far as the Malaysia's democratic system! And in case one does agree with Wong and others like him, it would just mean that it is not going to be easy to ensure no more cases as the 1MDB from recurring in the future? But then Wong and others like him may have actually underestimated the work which needs to be done, for it needs not just the revamping of the whole country for in fact it needs the whole civilized world to come together to improve upon the so called international governance…?

Third, there are some considered views that are quite exceptional while at the same time quite simple to understand by perhaps just about everybody. One of these views is concerned with the relevance of the bigger national context surrounding the debilitating goings on in cases such as the 1MDB in searching for a good understanding over how such things can take place. In this regard, Dr. Vivien Chen and the late Datuk Yusli Mohamed Yusoff have won hands down! Another exceptional but at the same time straightforward view is in regard to the close relationship between systems and persons as elaborated about by none other than Steve Oh in his brutal but brilliant piece!

Since persons need systems to be around to achieve whatever that is intended to be and the systems would not (perhaps?) be able to function without the active presence of those to maneuver them, it would be be hard to fathom a situation where it can be believed that persons without the systems or vice versa can function exclusively and therefore one or the other can be faulted exclusively when something goes wrong (unless of course if we are talking about the so called artificial intellingence ?). Surely if such were to exist, one needs to look into the possibility that one has been influenced by one's biases or some other selfish reasons? But then as far as the case of faulting the person (and never the system or both person *and* system), one may truly believe that "man is the measure of all things" or something and thus with the person playing the part of setting up a system and later on doing whatever else is necessary as far as the system is concerned, surely much or all of the faults can be placed upon that very person instead of the system or a combination of person and system when something goes wrong?

Fourth, it concerns the adage that everything has a past! Specifically, what P. Gunasegaram and Steve Oh did in their writings talking about the relevant past in order to help others to come to the understanding on how the 1MDB (and other related matters) had come about is worth adulating! With the past known while the present is always in one's considerable view, surely now one can predict what the future may be? And in case it is such a bleak future or a future that one does not wish to have, the necessary steps can be taken to chart for a new future?

Fifth, the last but certainly not the least point is that there are those whose remarks can never be easily rejected even when at first glance they seem to ignore in their discourse the presence of other possible factors leading to the 1MDB evils suffered by so many these days and also for so many more years to come. This is because those things which they put forward are simply down to earth and known by many deep in their hearts to be true. And of course the individuals of concern are the Professor Syed Farid on kleptocracy and the impressive Dennis M. Kelleher with the delirious Goldman Sachs' "Four Monkeys" defense: see no evil, hear no evil, speak no evil, and keep all the money"!

When it concerns the former, it would be today's Malaysians who would very much agree with him when they look around as to what has been going on in the country in recent time with more than a handful of corruption cases brought to court on a daily basis to the point that one may not be too far from the truth to think that the country is currently experiencing a tsunamy of corruptions! And when it concerns the latter, even those with just a bit of knowledge in investment banking either at local or international levels or both can see without much difficulty that if not everything it is just about everything that he claimed to be as far as the Goldman Sachs and its 1MDB heinous entanglement was concerned was completely true.

In short, there was bad intention and everything else that was not right that came with it which could be sensed coming from the global investment bank just like in the case of its partners in crime the Penang lad and other co conspirators from high places from different parts of the world. And such most probably went way, way beyond getting Malaysia to be their cash machine with no thoughts whatsoever that Malaysians were to suffer the consequences for years and years to come. In other words, to turn Malaysia as their cash cow through the 1MDB (or any other vehicle in case the 1MDB was not around) is not quite the ultimate goal all along.



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Instead, it is is just a pre requisite to ensure Malaysia and Malaysians to suffer and suffer tremendously as a result of having to carry the 1MDB mountainous debts for decades to come! And with such suffering Malaysia would then be brought to its knees to the point of no return allowing their patrons to get their way with the country…. In other words, could there be other players here who play the role of patrons who so far have not been identified and who are all along stay in the background but certainly conspiring with relish? Is this mere speculation?

For certain it is not something unheard of that some parties from overseas with or without the collusion with others from inside a country conspiring in achieving their nefarious goals. And as far as the 1MDB scandal is concerned, if it is accepted that it is not at all a simple case of money stolen to live the high life to no end, is it possible then that it is the case of financial ruins or perhaps economic collapse that some parties (foreigners largely?) might have wanted to see to happen to Malaysia? To those parties to do so would be the safest bet when other approaches are not practical! Assuming what is postulated here is more than possible, what could have precipitated it? In short, what made Malaysia to deserve or be in the position to receive such fate?

One of the tell-tale signs pointing to the existence of quite a wicked plot to do Malaysia in is concerned with the fact that even after the 1MDB had amassed around $13 billion in debt as of April of 2016 from the Goldman bond offerings plus other borrowings as noted Kelleher earlier, the culprits were still looking forward to issue another bond offering that would have the government-owned company to be saddled with so many more billions in dollars of additional debt burden ("Malaysia's 1MDB Said Planning", 2014). It was as if all the billions that ones had already stolen were still not enough. And it was as if this very thing they were doing using the 1MDB was a sacred mission to be completed no matter what! Granted, Mahatma Gandhi had once said the world is enough for everybody but never enough for the greedy ones, but still… Fortunately they did not get to complete the deal due to the fact that while they were working on it their lies and whatever else they had concocted for years and years had begun to unravel to the utter and complete shock of so many parties from inside and outside the country resulting with very little possibility that the fourth *bond* offering would be a successful one ("1MDB Criticised by Lawmakers", 2014; Jahabar & Goh, 2015).

Unfortunately however due to some deals concocted with certain parties from the United Arab Emirates (UAE) (The Edge Team, 2017) and the Mainland China (Abdul-Muein, 2022; see also Ahmad-Naqib, 2019; Ying and Nazuin Zulaikha, 2019; Tay, 2019; Adam, 2018a & b; Surendran, 2018; "Mahathir Says the ECRL Project", 2018; "'I am Trying to be'", 2018; and, Yeap and Tat, 2018) the culprits had caused the Malaysian government to be saddled with additional billions of dollars of debt *still* ("1MDB-Tanore Trial", 2019; Adam, 2019; and, Adam and Emir, 2018)! And with such, the conspiracy theory is in fact further strengthened…?

When it concerns the deals made with the latter party from the North East Asia in particular, note what Khairie Hisyam had mentioned in early January 2020 in the early part of his revealing write up (Khairie-Hisyam, 2020):

> As China sought to assert itself on the global stage in the past decade, Malaysia too was caught up in that country's emerging Belt and Road Initiative (BRI). In a nutshell, BRI is how China branded its avalanche of investments in various transport and logistics infrastructure projects across Asia, Europe and Africa. By the end of the decade, arguably the most significant impact of BRI locally was how it had been subverted for political purposes as the 1Malaysia Development Bhd (1MDB) scandal unfolded in the latter half of the decade.

And later in the piece, he had this explained as follows:

> And as Malaysia and China marked the 45th anniversary of bilateral relations in 2019, court proceedings over corruption charges against former prime minister Datuk Seri Najib Razak revealed, among others, that many of the mega projects under BRI in Malaysia were motivated by political survival. … In September 2019, the courts were told that Najib had offered a basket of mega projects to China's state-owned enterprises in 2016, including the ECRL, the MPP and TSGP. *The aim was to court Chinese funding for the mega projects and secretly use some of the money to rescue 1MDB from the debt pit that it had fallen into, according to the testimony of Najib's former special officer at the time, Datuk Amhari Efendi Nazaruddin, who was sent to Beijing in 2016 to negotiate the matter.* Other proposals had included a Bangkok-Kuala Lumpur high-speed rail, a petroleum pipeline from Port Klang to Kuala Kedah and the development of federal territory Labuan into an offshore banking and tourism hub. (Emphasis added.)

To read further on all that which Khairie had mentioned, check out the following: "1MDB-Tanore Trial" (2019); Adam (2019); "Malaysia Probing Whether China" (2019); Wright and Hope (2019); Parameswaran (2019); Adam and Emir (2018); "Govt Suspects Najib" (2018); and, "Mahathir Says the ECRL Project" (2018). Also, check out the denial made by the concerned parties as reported in Ying (2019a), Reuters (2019), Chua (2019) and Murugiah (2018).

All in all, it seems the new additional debts would not have been probably incurred assuming there were no 1MDB debts to be settled in the first place. In short, directly or indirectly, the 1MDB had caused a



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huge amount of debt incurrence for Malaysia with nothing good whatsoever to be seen by the country and its long suffering people in return. Hands down the 1MDB brings misery and more misery for years and years to come for generations of the Malaysian people who among them include those who are living in appaling poverty.

## VI. Poverty in Today's Malaysia

It should be quite outrageous that even after having tasted what is called independence more than six decades earlier in 1957, in Malaysia today there are still too many designated as the hard core poor while countless others struggling on a daily basis to bring enough food to the table and to keep a decent roof over their heads! And such is the reality that there should not be any surprise to find that some children living in urban centers have been found in 2017 to be more stunted than those in some African countries. As Ho (2018) put it:

> Despite Malaysia's gross domestic product per capita being six times higher than Ghana, the 20.7% level of stunting among Malaysian children is higher than Ghana's at 18.8%. The situation is even more alarming when data is broken down by state. More children in Kelantan are stunted (34%) compared to those in low income countries such as Zimbabwe (27.6%) and Swaziland (25.5%)... … Worryingly, the rate of stunting among underprivileged children in Kuala Lumpur of 22% is even higher than the national average of 20.7% in 2016, which is a concern in itself as it has risen from 17% in 2006. On top of that, many children living in low-cost flats in Kuala Lumpur are stunted, or shorter than the average of their peers in the city, showed the study.

The study which Ho had referred to was of course the one conducted by UNICEF and DM Analytics between 20 August and 30 September 2017 and which covered 966 heads of households and 2,142 children from 17 public housing flats in Kuala Lumpur and Petaling Jaya (UNICEF Malaysia and DM Analytics, 2018). Aside from those mentioned by Ho on stunting, the study had discovered among others the following:

- Almost all children, or 99.7 per cent lived in relative poverty while seven per cent lived in absolute poverty (Syed Jamal Zahiid, 2018).
- About 15% of the children below the age of five are underweight, almost two times higher compared to the KL average (8%), while about 22% of the children are stunted, two times higher than the KL average (Afiq, 2018).
- More Than one in 10 children have less than three meals a day, with 97% of households citing high food prices as the major issue, preventing them from preparing healthy meals for their children (Lau, 2018).
- Half of the respondents expressed they did not have enough money to buy food in recent months, with 15% experiencing this frequently (Lau, 2018).
- 1 in 3 of the households earn less than RM2,000 per month and 7% of households live below the poverty line, which officially is RM1,000. Out of these, Indians are at the greatest disadvantage, where 43% of them have a monthly household income below RM2,000, followed by Chinese at 34% and Malays at 30% (Jo-Lyn, 2018).
- 77% of the households do not even have savings. 12% have only between RM1-RM999 saved, while 9% have RM5,000 and above. All the money they've earned is spent on their children's needs – food and school fees/supplies mostly (Jo-Lyn, 2018).

But more harrowing details regarding poverty in Malaysia as a whole may be found in the more recent report issued by the so called United Nation's special rapporteur on extreme poverty and human rights Professor Philip Alston following his visit to Malaysia in August 2019 (United Nations Human Rights Council, 2020). But prior to the delineation of some parts of that eye revealing report, it should be worth looking into what was mentioned in three news reports. The first from a local organization Galen Centre for Health & Social Policy came out on the very last day of the special rapporteur's visit (Code Blue, 2019):

> A United Nations (UN) human rights expert has refuted Malaysia's claim of all but eradicating poverty, saying millions of families are scraping by on very low incomes. Philip Alston, the UN Special Rapporteur on extreme poverty and human rights, said at the end of his 11-day visit to Malaysia that the monthly RM980 poverty line underpinning Malaysia's official 0.4 per cent national poverty rate, or less than 25,000 households, was a "very low and highly unrealistic poverty line". … He said Malaysia's "extremely low" poverty line was inconsistent with the cost of living here. … He said independent analyses suggested a more realistic poverty rate of 16 to 20 per cent, rather than the official 2016 rate of 0.4 per cent, and about nine per cent of households survive on less than RM2,000 a month. … Alston also discounted the mainstream narrative that poverty in Malaysia was largely confined to small numbers in rural areas and in the indigenous population, pointing out that urban poverty was obvious.

And it is also noticeable that related to that very last line, Alston was quoted to say: "In contrast to the official 2016 poverty rate of 0.0 per cent for the capital Kuala Lumpur, a 2018 Unicef survey of low-income apartments in the city found seven per cent of people living below the national poverty line, 85 per cent in relative poverty, and 99.7 per cent of children living in relative poverty."



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Now for the second news report that came out on the very day that Alston's report on Malaysia was released and which was also the day before it was delivered to the United Nations Human Rights Council on July 7th, 2020 by Alston's successor Professor Olivier De Schutter, Bechtel (2020) from the online news service *BenarNews* which is based in the Washington DC had this to say:

> A move by Malaysia's new government [following the downfall of the Pakatan Harapan federal government in February 2020] to drop the previous administration's pledge to correct "misleadingly low" assessments of poverty is worrisome because it will make eradication efforts more difficult in the Southeast Asian country, a United Nations expert said Monday. Philip Alston, the outgoing U.N. special rapporteur on extreme poverty and human rights, expressed his concerns while releasing his final report about poverty in Malaysia that stemmed from his visit to the country last year. … Following his 11-day visit to Malaysia in August 2019, Alston challenged the then-government's claims that the poverty rate was 0.4 percent – saying it could be as much as 20 percent, based on independent analysis. With its population of 31.5 million people, a poverty rate of 0.4 percent would represent 126,000 people, while a rate of 20 percent would represent 6.3 million.

It is also worth nothing that in relation to that very last line, Alston was quoted to say: "The insistence that the line is 'derived from internationally accepted standards' is a smokescreen and ignores the blatant mismatch between reality and statistics. Pretending that almost no one in the entire country lives in poverty doesn't change the reality that millions are poor. Saving face is one thing, but distorting the facts is quite another."

As for the third news report by Corsi (2020) that came out within just over two weeks after Alston's report was delivered to the United Nations Human Rights Council, the following was mentioned early on:

> In August 2019, the United Nations sent its special rapporteur on extreme poverty and human rights Professor Philip Alston to Malaysia to investigate claims by the government that it had virtually eradicated poverty within its borders. Alston spent 11 days visiting a variety of areas nationwide, from urban Selangor and Kuala Lumpur to rural parts of Kelantan, Sabah and Sarawak. At the end of his visit, while acknowledging that Malaysia had made enormous strides towards elevating the net worth of society as a whole, he said the 0.4 percent poverty rate — the lowest of any country on Earth by a country mile — touted by the government was a fabrication.

It is notable that in the very same write up the following is also mentioned coming from Alston – and this was in response to the fact that the new Perikatan Nasional federal government had shown disregard to the positive things which its predecessor the so called New Malaysia Pakatan Harapan federal government (which earlier had defeated UMNO-BN political party in May 2018 General Election) had decided to do in its reaction to Alston's report:

> He accused the administration of "statistical sleight of hand" in its official poverty rate and noted that the new government had backtracked on the promises of its predecessor. Alston pointed to World Bank data showing that 30 percent of Malaysian households did not have enough money for food, while 23 percent did not have funds to provide adequate shelter. Meanwhile, he found that roughly half of Malaysians did not have the means to cope with a sudden financial shock… Furthermore, he attacked the Ministry of Economic Affairs for its new multidimensional poverty index of 0.86 percent, a rate that "beggars belief", despite supposedly taking into account his initial findings. … Again, the new government under Prime Minister Muhyiddin Yassin took the tried and trusted method of politicians past in Malaysia: deny, deny, deny.

And right after all that, interestingly the following was raised:

> Since achieving independence, the government has routinely refused to accept criticism of even the most obvious of blunders, while employing a variety of sweeping techniques to discredit and shout down the source. … Such is its disdain that, at parliamentary level — and despite the acknowledgement of the now opposition — there has been no attempt whatsoever to table the report for debate, lending more weight to the argument that the Malaysian people are governed by self-serving politicians on both sides of Parliament, more interested in their own advancement than that of the nation.

So, what exactly that the Alston's report has said about anything? Well, some of the devastating remarks include the following (United Nations Human Rights Council, 2020):

- Malaysia has achieved extraordinary economic growth over many years and made great strides in reducing poverty… But its official method of measuring poverty produces a national poverty rate of just 0.4 per cent, the lowest in the world, suggesting that less than 25,000 households are in poverty… the Special Rapporteur observed that this would make Malaysia the unrivalled world champion in conquering poverty. But he also noted that the claim reflected a statistical sleight of hand that has had extremely harmful consequences.
- The absolute poverty line in Malaysia is extremely low at just RM 980 (US$ 241) per month for a family of four. That bears no relation to the cost of living



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and would see an urban household surviving on RM 8, or less than US$ 2 per person per day – a tragically low line... The use of a very low and entirely unrealistic poverty line obscures the more troubling reality that millions of people, in both urban and rural areas across the country, scrape by on very low incomes with tenuous access to food, shelter, education and health care, and limited ability to exercise civil and political rights.

- A better understanding of poverty in Malaysia reveals the inaccuracy of the mainstream narrative that poverty is largely confined to small numbers in rural areas and indigenous peoples. While those groups face dire and unique challenges, urban poverty is significant. For example, the official 2016 poverty rate for Kuala Lumpur was 0 per cent, yet 27 per cent of households earned less than the Central Bank (Bank Negara) estimate of the living wage for the city in 2018. A survey of people living in low-income apartments, carried out in 2018, found 7 per cent of people living below the national poverty line, 85 per cent in relative poverty and 99.7 per cent of children in relative poverty. One soup kitchen director said she served up to 700 people a night, and that more than 40 soup kitchens operated in Kuala Lumpur. None of this points to a city that has eliminated poverty.
- A national poverty measure should enable a sober, contextualized assessment of the level and nature of poverty, but in Malaysia it has become a way for successive Governments to declare victory over poverty without having actually achieved it. The national poverty line bears no relationship to the cost of living, household incomes, or realities on the ground… The result is that "Malaysians feel a sense of disconnect with official poverty statistics. They feel that their incomes are barely enough to make ends meet and yet, by official count, we have almost no poverty in the country." In 2018, nearly 30 per cent of Malaysians felt that they did not have enough money for food (double the number in 2012) and 23 per cent reported having inadequate money for shelter. Roughly half of all households did not have sufficient savings to cope with an unforeseen financial shock in 2019 and as of 2013, 53 per cent of Malaysian households had no financial assets.
- The highly respected economist Martin Ravallion found that, compared to countries with a roughly similar average income, one would expect the poverty line in Malaysia to include around 20 per cent of the population. The Khazanah Research Institute found that a relative poverty measure of 60 per cent of median income would show 22.2 per cent of households in poverty as of 2016. In a submission to the Special Rapporteur in 2019, UNICEF said that a relative poverty measure, similar to that adopted by most countries in the Organization for Economic Cooperation and Development (OECD), would place around 16 per cent of the population in poverty.
- Poverty still keeps many children out of school, despite programmes to support very low-income students run by the Ministry of Education. According to UNICEF, school affordability is "consistently identified as a major cause of inadequate preschool and upper-secondary enrolment rates". The Government subsidizes school fees, but parents may not be able to afford school uniforms, books and supplies or the missed-opportunity cost of child labour. Low-income families repeatedly said that fees or costs associated with education, even as low as RM 1 (US$ 0.25), were enough to keep their children out of school.
- Adequate housing is unaffordable for many and housing costs rose 87 per cent between 2010 and 2018, outpacing the 59 per cent rise in wages. According to the World Bank, households with monthly incomes of less than RM 5,000 (US$ 1,229) experience "severe housing unaffordability", with more than half of those in Kuala Lumpur earning RM 3,000–5,000 having "no access to housing within their capacity-to-pay". Social housing programmes often do not benefit the intended target groups owing to the inability of people in the bottom 40 per cent to qualify for loans, a shortage of affordable units and inefficient low-cost housing distribution systems.
- The child poverty rate in Malaysia is three times the national poverty rate, yet there is no adequate support system for addressing the problem. The children's financial assistance scheme run by the Department of Social Welfare is particularly inadequate, with coverage declining since 2013 to just 69,000 children in 2019 out of 160,000 below the national poverty line and 1.8 million who would be considered poor under a contextually appropriate poverty line.
- Stunting is a key marker of malnutrition and a problem that has dramatic consequences, yet one in five Malaysian children under the age of five are stunted, a higher level than in countries with a similar GDP. Children born into lower-income families appear to have a higher likelihood of being underweight or stunted. A study in Kelantan found that children in food-insecure households were three times more likely to be stunted and a UNICEF survey of low-income flats in Kuala Lumpur and Selangor, carried out in 2018, found 15 per cent of children under 5 were underweight and 22 per cent were stunted.



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- Child labour is also a problem in Malaysia, including on palm oil plantations where an oppressive quota system drives families to bring their children to work as unpaid labourers.
- Malaysia has registered about 15,000 marriages involving children over the past decade, with Muslim girls allowed to marry before the age of 16 with permission from a syariah (sharia) court judge. Poverty is a widely recognized driver of child marriage…

But it seems there appears to be no end to the poverty questions in the country in the foreseeable future. And why that is the case may be found inside the report itself:

- A national poverty measure should enable a sober, contextualized assessment of the level and nature of poverty, but in Malaysia it has become a way for successive Governments to declare victory over poverty without having actually achieved it. The national poverty line bears no relationship to the cost of living, household incomes, or realities on the ground. It was meaningful in 1970 but real household income has increased fivefold since then and Malaysia has gone from being a low-income to an upper-middle- income country in that time. Apart from being inconsistent with almost all independent analysis, the artificially low measure has discouraged research on poverty and distorted the targeting of existing social support programmes.
- Malaysia stands out among its peers for its lack of transparency around publicly held data and other information. Unlike the great majority of similarly situated countries, Malaysia does not provide full access to key household survey microdata, stifling both governmental and independent research and analysis on poverty and inequality. When asked for data, State government officials often indicated they would need to make a request to the central Government. Researchers can apply to the Department of Statistics for select sets of data, but several said their requests were often not granted. International organizations and even State officials said they too had to make specific requests for information and that their access was essentially at the mercy of the Department of Statistics. Government officials bluntly contradicted these consistent reports from a variety of sources. A representative of the Department of Statistics said that the Department "makes the data available to all", while an official of the Ministry of Economic Affairs said the Government provides what it can, but must be careful with data owing to privacy concerns. Since many other countries provide anonymized data without compromising privacy, the policy seems more likely to be motivated by a desire to conceal from the public information that might not be favourable to the Government. In some cases, it appears that important data is not even being collected. And in others, existing data cannot be disaggregated to shed light on the situation of vulnerable target groups. Officials were consistently unable to provide key figures… The statistics that are available are carefully managed and presented in a way that often obscures crucial details.

And as perhaps as to be expected, each of those two points providing what appears to be the root causes for the various depressing findings on poverty in the country (which include those noted earlier) have led to the following immediate outcomes, respectively:

- Denying the scale of poverty has exacerbated the problem by justifying significant underinvestment in poverty reduction, stymying research into and analysis of the drivers of poverty, encouraging a widespread misunderstanding of who is poor and allowing a fragmented, poorly targeted and inadequately funded social protection system to limp haplessly along. Non-governmental organizations have stepped in to fill the gap and provide much needed services to low-income people, but these admirable efforts are no substitute for official policies and action.
- The Government should also improve access to data and other information on poverty. Its persistent refusal to provide effective access to such information, and in some cases the complete failure to even collect important data, significantly hampers research, policymaking and poverty alleviation.

As if all that from the UNICEF and UN Human Rights Council are not depressing and harrowing enough, note the following coming from domestic sources – where the first four came out recently in the year 2022 while the last one in May 2020:

- Poverty and absolute poverty continued to haunt us and we now refer to B60s as more fall under the poverty line. After more than two years of Covid-19, the poor have seen their income squeezed even further by lower/weaker purchasing power, and stagnant wages and to top it all, prices are not coming down despite subsidies. In 2019, the Department of Statistics (DOSM), revised the national poverty line income of RM980 to RM2,208 for the poor which totals 308,699 people and RM1,169 for the absolute poor, which covers 136,923 people. This amounts to 445,622 people – almost half a million lives in poverty and barely surviving. (Maria Chin, 2022)
- To put Malaysia's economic and social development into context, we have to acknowledge that 65 years after independence from the British, a typical Malaysian born at the time of Merdeka will retire into old age poverty. … As at June 30, 6.62 million, or 52% of the 12.78 million EPF members



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aged under 55 had savings below RM10,000, equivalent to RM42 per month in retirement. Almost five million members or 75% of these are Bumiputeras, the group Malaysia's development policy is supposed to have favoured most since 1957. There are 3.2 million members under the age of 55 whose savings are at a "very critical" level, that is, less than RM1,000, and 2.58 million or 81% of them are Bumiputeras. Of the 256,300 members currently aged 54, half have the equivalent of only RM154 per month in retirement. The household poverty line is RM2,208 per month, with RM1,169 for food. Among active contributors, 73% do not have adequate basic savings and 84% of all members are in this position. … Terrifying as these numbers are, they are the tip of the iceberg because EPF and other formal pension schemes cover only around 57% of the population. … Looking beyond EPF, around 16.43 million people, or 68.9% of the working age population, have no formal or regular pension cover. … Taken together, around 87% of the working age population have inadequate cover. Of course, there are already 3.6 million people over 60 years old, most in retirement, and an estimated 2.6 million with inadequate cover bringing a total of 69.4% of the adult population facing or living in poverty in old age. (Williams, 2022)

- PPKB [Urban Poverty Eradication Programme] is a programme implemented by the Housing and Local Government Ministry and involves several initiatives including Urban Community Economic Empowerment Programme (PEKB). The [Auditor-General's Report 2021 Series 1] report, released today, also said that the performance of the programme was not fully achieved because there were participants who did not generate income to get above the poverty line and did not benefit from the programme even though approval was given, because of the failure of the implementing agency to carry it out. The implementing agency failed to carry out repair work that was approved for 113 PPKB participants, in addition to the remaining allocation for 2016, amounting to RM1.08 million, returned to the Finance Ministry following the housing ministry's failure to implement the programme. … The findings were obtained as a result of the auditing programme for the 11th Malaysia Plan (11MP) and 12MP as of Dec 31, 2021. Apart from this, another weakness detected was that as many as 22 local authorities had PPKB account balances that were not spent to benefit the target groups. These balances ranged from RM11,808.43 to RM2.06 million, with a total balance of RM4.82 million. (Bernama, 2022a)
- The Special Committee to Combat Double Burden of Malnutrition Among Children in Malaysia approved the 2022-2030 National Strategic Plan to Address the Problem of Stunting in Children in its first meeting today. Health Minister Khairy Jamaluddin said the national strategic plan would be presented to the cabinet and the Finance Ministry so that the plan to combat malnutrition in children would be raised as a national agenda for the wellbeing of the Malaysian Family in the 2023 Budget. … According to Khairy, stunting among children recorded an increase from 17 percent in 2015 to 21.8 percent in 2019. He said the trend of nutritional deficiencies among children, especially those from low-income families, is expected to increase due to the protracted Covid-19 pandemic and its economic impact on the people. Khairy said stunting which is the inability of children to reach their ideal height is the result of chronic malnutrition where children do not have food of adequate quality and quantity over a long period of time. (Bernama, 2022b)
- About 60% of Malaysian workers will find it very challenging to survive for more than one week, let alone raise even RM1,000 in household expenses, if they suddenly lost their jobs due to the Covid-19 pandemic. This is based on a study by Bank Negara Malaysia (BNM) and the National Economic Action Council in 2017, which found that up to 60% of Malaysian households were surviving off less than the living wage, meaning they did not earn enough to have a normal standard of living, said Majlis Tindakan Ekonomi Melayu (MTEM) senior fellow Azlan Awang. … The central bank released its living wage concept in March 2018, which ranged from RM2,700 per month for a singleton living in Kuala Lumpur, to RM6,500 for a couple with two children, based on 2016 living estimates. After the release of its 2017 study, BNM categorised 75% of Malaysia's workforce as belonging to the country's most vulnerable group, and it is this group of workers who are currently the most affected by the economic crisis caused by the pandemic, added Azlan. … Even prior to the massive Covid-19 outbreak, Malaysia's wages were "something we cannot be proud of", said Azlan, adding that the wage share of gross domestic product (GDP) was only 35% with a median amount of RM2,300 a month. He said the impact of Covid-19 had revealed that the Malaysian economy was actually very fragile. ("60% of Malaysian Workers", 2020)

Prior to the coming to the end of the work, there is perhaps a need to point out that it may not be quite right to believe that the 1MDB on its own was all that was needed in causing the federal government of Malaysia to go ahead in incurring additional debts in the years following the public exposure of the 1MDB scandal. But such may have been the impression that

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one gets following what was laid out earlier. The truth however may just be the following: there are at least three possible reasons that some parties may argue to have nothing to do with the pre existing 1MDB debts causing the federal government of Malaysia to go ahead in incurring huge amount of additional debts in the years following the public exposure of the 1MDB scandal. In other words, on the basis of these reasons (associated with parties from either inside or outside the country or both), even if there is no huge amount of 1MDB debts to be settled, Malaysia would still incur huge amount of additional debts no matter what!

a) *Why Incurring More Debts – If Not to Settle the Huge Amount of the 1MDB Debts?*

To pay billions of dollars of the 1MDB debts may not be the reason or the sole reason why the then government of Malaysia seemed to be without any restraint in incurring billions more debts within the few years before it was replaced in May 2018. And those reasons are: (1) the Mainland China's Belt and Road Initiative (BRI), formerly known as One Belt One Road or OBOR for short, which is a global infrastructure development strategy adopted by the Chinese government in 2013 to invest in nearly 70 countries and international organizations leading to the accusation of China having countries ensnared into the so called debt trap; (2) Malaysia's public procurement process for decades is horribly littered with fraud, waste and abuse (FWA) instances; and (3) the person Jho Low. Related to the first two reasons, there are some great references which one may want to peruse.

On BRI (and its impact on Malaysia with or without touching on 1MDB to a limited extent) see for example Lim and Ng (2022), Freedman and Bekele (2022), Council on Foreign Relations (2021), Schneider (2021), Camba et al. (2021), Nambiar (2021), Chin (2021), Alden and Mendez (2021), Liow, Liu and Xue (2021), Sintusingha et al. (2021), Mishra et al. (2021), Dar and Seng (2021), Kuik (2021), Gerstl (2020), Hong and Guanie (2020), Noughton (2020), Wang and Zhao (2020), Yasmi and Wu (2020), Zaharul et al. (2020), Hernandez (2019) and Liu and Lim (2019). Also, it may be worthwhile to check West (2018) even when its BRI discussion is devoid in mentioning anything related to Malaysia.

As for the second reason that concerns Malaysia's public procurement process and its horror stories, see Lee (2021), Wei (2021), Siti Maryam (2021), Yeo (2020), National Audit Department (2019), Aida Maria et al. (2018), Xavier and Xavier (2017), Khairul Saidah (2016), Jones (2013), Hui et al. (2011) and Transparency International (2006). And in case one prefers rather brief news report on problems plaguing public procurement process in the country, see "Procurement Law Needed" (2022), "MACC Man Tells of 'Corrupt Cartel'" (2021) and The Editor (2013b, 2013c).

(It should be worth noting that in the case of two theses - Siti Maryam (2021) for master and Khairul Saidah (2016) for PhD – there appear to be the corresponding published journal papers on procurements avalaible in the internet. But strenuous efforts in locating them had got nowhere! And that is the reason why they are not included in the paragraph above. In the case of Siti Maryam, it is supposed to be around at *https://doi.org/10.1108/JFRA-05-2021-0132* and the journal concerned is the *Journal of Financial Reporting and Accounting*. As for Khairul Saidah, it is supposedly to be available at *10.1504/IJPM.2021.100415 19* with the journal concerned is the *International Journal of Procurement Management*. Also note that for the latter, the abstract among others says: "This paper examines procurement fraud in the Malaysian public sector. The study demonstrates how the institutional arrangements in Malaysia manufacture fraudulent practices within government purchasing. … Findings illustrate how public policy and development; state-business relations, and power relations in Malaysia manufacture fraud in public procurement. This paper provides evidence of collaboration in continued corruption and fraud within government purchasing through organised financial crime by Malaysia's ruling elites, politicians, and private capitalists, which is assisted by public officials and regulators.")

Note that the problems found in Malaysia's public procurement process are not at all unique! Evidence of such may be found in the following examples: for various countries from the South East Asia see Schoeberlein (2020), ASEANSAI (2016) and Jones (2009); for Nigeria see Bamidele (2019); and for Poland see World Bank (2013). Also see Hoffman and Konrad Adenauer Stiftung (2021), Transparency International (2018), (2017), (2016), (2014) and (2013) and Ferwerda et al. (2017) to find out the more interesting development in the field over the last one decade.

Now, when it concerns Malaysia's debilitating public procurement process and where the subject matter of the 1MDB was mentioned too in the very same piece of work, see the excellent write up by Amarthalingam (2018) and the section entitled lopsided contracts in the second part of an interview given by the then Attorney General Tommy Thomas to *The Edge Financial Daily* ("I Will Never Charge", 2018). As for the BRI and the 1MDB heavily mentioned in the very same work, see the following: Yeoh (2020), Dezenski (2020), Jones and Hameiri (2020), Malhi (2018), Fong (2017), "Malaysia and China to Meet" (2017), Mung and Fong (2016) and Mung (2016). And of course those are to be added to so many others mentioned in the two places earlier (just before the part that is concerned with the state of poverty in the country these days) – one in the very paragraph where Abdul Muein (2022) was



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mentioned and the other in the paragraph that comes *right after* the two quotations coming from Khairie-Hisyam (2020).

With two out of the three reasons for additional new debts incurrence explained, the third and last reason is concerned with one of the protagonists of the 1MDB scandal. In their excellent write up regarding that person's shenanigans over three time periods, Yeap and Tat (2018) had this to say over what took place for the third and last time period of 2017:

> When announcing two suspicious "red file" projects totalling RM9.4 billion under MoF's Suria Strategic Energy Resources Sdn Bhd (SSER) on June 5, Finance Minister Lim Guan Eng told reporters there was "strong suspicion" that they were "all part of the 1MDB scandal". Lim described the red files as documents pertaining to 1MDB and other sensitive matters that can be accessed by only former MoF secretary-general Tan Sri Irwan Serigar Abdullah and a few others. Even the auditor-general did not have access to the files. It is believed that Jho Low had a hand in the negotiations of SSER's projects with various Chinese companies as well as that of the RM60 billion East Coast Railway Line (ECRL). *The cost of both projects is said to be highly inflated in order for money to be siphoned out for 1MDB-related payments as well as for the benefit of Jho Low.* (Emphasis added.)

There certainly should not be any surprise whatsoever of what Yeap and Tat had mentioned at the end of that very quotation since the 1MDB and related entities had by a short few years earlier stopped being of much use for that concerned person and had to be replaced by some other rides so that Malaysia as his personal cash cow would continue to do so to support his decadent lifestyle…!

All in all, in this Part I of the causes' series for the 1MDB, there is the laying out of arguments coming from various parties whose remarks or write ups came out in publications that should be easily accessible and comprehensible to many. And so in the next Part II of the series the journey continues with the laying out of arguments coming from those whose publications have come out in the form of articles in refereed journals and the like. Are there going to be additional 1MDB causes to be considered? And in case more or less the same set of causes is found, are there new details emerging which one has not seen previously? Stay tuned for the answers to these and other questions!

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