

*Principles of jurisdictional activities of SAIs
EXPOSURE DRAFT : Comments and reply*

June 18th 2019

#	Origins of the comment	Paragraph #	Comments	Reply
1	CAS V Kurian Additional Deputy Comptroller & Auditor General & Chair CAS Secretariat Office of the Comptroller and Auditor General of India	1.3.1	A reference to a standard in an ISSAI which is dealing with principles of jurisdictional activities may be inappropriate and considering the different levels of the principles and of the standards in the hierarchy of ISSAI framework. It is suggested that reference to the ISSAI 400 and ISSAI 4000 may therefore be removed from the exposure draft. Instead, the special principles to govern difference kinds of audits i.e. compliance audit, performance audit and financial audit in SAIs with jurisdictional activities may be included therein.	Agreed. Text will be changed accordingly
2	Auditor general Rigsrevisionen Denmark	3.2	In the second section of Principle 2 on page 8, there is a reference to <i>“INTOSAI Code of Ethics (ISSAI 30)”</i> . Please observe that in the migration process from the old ISSAI Framework to the IFPP, this document has been renumbered and is now called <i>ISSAI 130</i> .	Agreed, text has been changed accordingly
3	Auditor general Rigsrevisionen Denmark	3.2	In the third section of principle 2, we find that the following paragraph should be modified: <i>“This principle is more demanding for jurisdictional activities than it is for audit activities”</i> .	Agreed with your comment. Our initial formulation may have been unfortunate. It was not our intention to suggest independence was of a lesser importance in non-jurisdictional SAIs. Our idea was to signify that Independence is essential to the proper

			<p>Independence of the SAI and the members/head of the SAI is essential for all SAIs irrespective of whether they perform jurisdictional activities or not. It is an essential foundational concept for the SAI's performance of its activities. The current formulation "more demanding" may lead to the misconception that independence is less important for SAIs without jurisdictional functions.</p> <p>We would thus suggest to modify the paragraph. You could consider applying the formulation used in Principle 11 with the following addition (under-scored):</p> <p><i>"This principle is common to both audits and jurisdictional activities; however, it must be adapted and suited for jurisdictional activities" to provide for <u>differentiated guarantees for the individual judges / members</u></i></p>	<p>exercise of justice, hence of jurisdictional activities. Text will be changed as followed: <i>This principle constitutes a binding obligation, particularly important for jurisdictional SAIs regarding the requiring of their procedures and the possible consequences of their decisions on individuals. Failure to ensure the independence of the members of the SAI can void the judgement.</i></p>
4	SAI Japan	General comments	<p>We think this draft pronouncement would better suit to a three-digit-number ISSAI rather than a two-digit-number INTOSAI-P. This is because, for example, jurisdictional activities seem to be regarded as one of the audit types in Principle 6 of INTOSAI-P 20.</p> <p>For your reference, let us quote the concerned sentence of Principle 6 of INTOSAI-P 20 below. <i>SAIs assess and report on their operations and performance in all areas, such as financial audit, compliance audit, jurisdictional activities (SAIs constituted as Courts), performance audit, programme evaluation and conclusions regarding government activities.</i></p>	<p>About the level of Jurisdictional principles (ISSAI or else) : it is not us, but the FIPP, who has decided that the suitable level for this professional pronouncement was higher than ISSAI and was corresponding to the level of INTOSAI principles. We do trust FIPP, as the best responsible body gathering experienced experts of the hierarchy and consistency of professional pronouncements. The INTOSAI P-50, which shows non contradiction with any other existing Principle or ISSAI, will have later to be completed at lower levels by ISSAI and Guideline.</p>

			<p>In addition, we believe that a pronouncement which requires more strict procedures should be placed in lower levels in the IFPP framework. That is, for example, Principle 10 of the draft pronouncement requires that the quality of the whole jurisdictional process has to be completely guaranteed. If it is the case, this draft pronouncement would need to be placed in the lower level than ISSAI 140 of Quality Control pronouncement.</p> <p>Taking into consideration these two factors, we think the draft pronouncement would be better placed in ISSAIs rather than INTOSAI-P.</p>	
5	SAI Japan	General comments	<p>We think it would be good to incorporate a definition of jurisdictional activities in the draft. We would like to propose that it is included anywhere around the definition of “jurisdictional competencies” to make clear what activities are expected under the jurisdictional competencies.</p>	<p>Disagreed. Para 1.1.2 already precise that: <i>“The jurisdictional activities of the SAIs consist in a control of regularity of the accounts and management operations of officials and other managers of public funds and considered as such. Said activities include the engagement of the personal liability and the sanctioning of those accountable in case of irregularities in the management of these funds and operations or of losses caused by these irregularities or mismanagement.”</i> We consider this explanation as being the definition of jurisdictional activities, which consist in the exercise of jurisdictional competencies.</p>
6	SAI Japan	General comments	<p>We have an impression that the overall picture of jurisdictional SAIs and their missions are not necessary clear enough by the draft pronouncement. For example, we wonder whether the activities of financial,</p>	<p>The jurisdictional activities are indeed different to financial, performance and compliance audits. This is clearly stated in the document. To make it better understood, please find here attached a scheme</p>

			<p>compliance, and performance audits are different between jurisdictional SAIs and other SAIs. We also wonder whether it is correct to understand that the main difference between SAIs with jurisdictional competences and other SAIs are the processes after audits activities and not audits themselves. In case audits activities themselves are different, it would be good to include such explanations including audit objectives and required professionalisms for jurisdictional SAIs.</p>	<p>explaining how jurisdictional activities come AFTER audit reports or WITHOUT ANY LINK with audit reports (when suspected irregularities are brought to the Courts by external authorities).</p>
7	SAI Japan	General comments	<p>Terms used in the draft pronouncement are not necessarily consistent. We believe that the term “should” need to be used instead of “must” and “shall” in accordance with ISSAI 200, 300 and 400 if the draft pronouncement is placed in a three-digit-number ISSAI as suggested in comment 1.</p>	<p>Disagreed. As this document is not intended to be classified under a 3 digit ISSAI, the terms “should” and “must” are used in accordance with the FIPP recommendations.</p>
8	SAI Japan	2.2	<p>Regarding the subtitle for para “2.2 Actors”, we think it would be better understood if the subtitle of 2.2.1 indicates the name of the actor similar to 2.2.2 and 2.2.3. For example, “2.2.1 Preliminary investigators” would be better replaced by “2.2.1 Those instructing”.</p>	<p>Agreed. Change will be made accordingly.</p>
9	SAI Japan	2.2.1 4.2	<p>In para 2.2.1, it says that “Ideally, they do not take part in the adaption of the decision.” On the other hand, Principle 7 of para 4.2 requires that “the rules and</p>	<p>Disagreed. The two mentions are consistent. They aim at requiring that the investigator who has prepared the jurisdictional report does not take</p>

			<p>procedures governing the jurisdictional activity of the SAI must ensure that the judge or the member of the jurisdictional collegial body have not participated in the investigation". Although we are not sure what "the adoption of decisions" exactly means, we think these two paras seem to be contradicting if "the adoption of decision" is a kind of judgement.</p>	<p>part in the decision of judgment, and reversely that the judge taking part in such a decision has not previously participated to the investigation.</p>
10	SAI Japan	4.2	<p>It appears that the word "the judge's impartiality" in the first sentence of para of Principle 7 would be better replaced by "the impartiality of judgements".</p>	<p>Agreed, change will be made accordingly.</p>
11	SAI Portugal	3.1	<p>the principle of legality of the SAI's jurisdiction on identifying and qualifying the offenses and on issuing the condemnations</p> <p>Suggestion to change to wording, since condemnation is too strict and restrictive.</p>	<p>Agreed. Wording will be changed to "judgement".</p>
12	SAI Peru	3.1	<ul style="list-style-type: none"> • Principle 1 conforms to the principles of legality and typification of the jurisdictional function of the SAI of Peru. The first of them establishes that the power to determine infractions, responsibilities and, consequently, impose sanctions, is foreseen by law. On the other hand, the typification determines the provision by law of a conduct as an infraction before sanctioning it as such, limiting the determination of functional administrative responsibility to said determination. 	<p>Noted. Thank you for your positive comment.</p>
13	SAI Peru	3.2	<ul style="list-style-type: none"> • Regarding principle 2, by Law, the SAI of Peru is recognized as the governing body of the National 	<p>Noted. Thank you for your positive comment.</p>

			Control System, endowed with autonomy to direct government control. The bodies in charge of carrying out the phases of the procedure (instruction, sanction and appeal) also enjoy functional independence, with the exercise of their jurisdictional function being directed the only by law.	
14	SAI Peru	3.3	<ul style="list-style-type: none"> • Within the audit function of the SAI of Peru we find the principle of access to information (Law 27785, article 9, paragraph m) is similar to principle 3 although to a lesser extent. Although the quoted statute establishes the power of the control bodies to require, know and examine information even when it is secret, the possibility of authorization of the collection of certain information deemed secret by law is reserved for the judiciary. This is because in our country, judicial orders cover the sphere of compliance of private entities, who, in most cases, have the information to be disclosed (such as telephone companies for communications, or banking entities for financial and banking information). Therefore, it is understood that the power of the SAI of Peru to authorize the gathering of secret information, would reinforce investigations in the matter of governmental control. 	Noted. Thank you for your positive comment.
15	SAI Peru	3.4	<ul style="list-style-type: none"> • With regards to principle 4, the legal insecurity of the accountable persons about the times of persecution and prosecution of irregular conducts, as well as its eventual sanction, is neutralized by the prescription and expiration times established in the administrative norms and regulations applied in Peru. The possibility that the irregular event cannot 	Noted. Thank you for your positive comment.

			<p>be prosecuted due to the passage of time (prescription) or that the time set for the sanctioning procedure has elapsed in excess and must be concluded (expiration), lead to the jurisdictional functions being carried out quickly, and invested with immediacy.</p>	
16	SAI Peru	3.5	<ul style="list-style-type: none"> As principle 5 clearly indicates, the right to a double instance is closely linked to the jurisdictional activity whose structure is based on the issuance of a final pronouncement that, in the second instance, can be reviewed for confirmation, revocation or annulment through a procedure that is established in the relevant law. 	Noted. Thank you for your positive comment.
17	SAI Peru	4.1	<ul style="list-style-type: none"> Principle 6 establishes the procedural rules to be applied in the course of the jurisdictional activity to determine the responsibility of a person. This is in line with our national legislation and legal construction of due process, which includes the principles of intimation (communication of charges must be timely, express, clear, comprehensive and sufficient), and transparency (access by the accountable person to the actions, documents and information generated or collected in the sanctioning procedure), as well as the right to due motivation of the resolutions issued by the decision-making bodies. 	Noted. Thank you for your positive comment.
18	SAI Peru	4.2	<ul style="list-style-type: none"> We find principle 7 in our country's principle of impartiality, since the sanctioning administrative procedure by which responsibility is determined and the possible sanction is imposed, is structured to avoid non-compliance withing the sanction in 	Noted. Thank you for your positive comment.

			different organs). It also incorporates procedural remedies so as not to damage the development of the procedure when causes that affect the impartiality of the decision-making bodies are presented (inhibition or abstention).	
19	SAI Peru	4.3	<ul style="list-style-type: none"> Regarding principle 8, the SAI of Peru has regulated the execution of the resolutions issued in the scope of the sanctioning procedure, establishing their immediate and mandatory compliance as soon as they are final, so that said enforceability is not conditioned to complementary measures. The imposed sanction must be registered in the corresponding registries, communicating it to the employer of the sanctioned person so that the necessary actions for its fulfillment are implemented (termination, dismissal, firing or termination of the work contract). Regarding the follow-up to the execution of the sanction, the SAI of Peru has the possibility of initiating a sanctioning procedure against those responsible for not complying with the provisions of the resolution imposing sanctions. 	Noted. Thank you for your positive comment.
20	SAI Peru	4.4	<ul style="list-style-type: none"> In our country, the principle of <i>Non-bis in Idem</i> applies, which is a simile of principle 9, since it is forbidden for a person to be sanctioned twice for the same act. Besides, given the autonomous and independent nature of the sanctioning power, the prosecution of an accountable person for the purpose of finding their functional responsibility, does not impede or influence the prosecution of the same conduct in different jurisdictions. As well, the prosecution of such behavior by the Judiciary does 	Noted. Thank you for your positive comment.

			not prevent the sanction of the accountable person by the SAI of Peru.	
21	SAI Peru	5.1	<ul style="list-style-type: none"> Regarding principle 10, the structure of the sanctioning administrative procedure that the SAI of Peru uses to exercise the governmental control it received, constitutes a series of guarantees and principles that allow it to verify that the exercise of the jurisdictional function is conducted under quality standards. Thus, for example, at the request of the accountable person and making use of the appeals that the law recognizes as a guarantee of the right to a double instance, the superior body has the power to review the legality of the decision issued by the first instance bodies. This superior instance is constituted by the Superior Tribunal of Administrative Responsibilities, which, being a collegiate body and having the faculty to review even <i>ex officio</i> the decisions that it knows, being able to validate or annul those resolutions, grants greater guarantee of the fulfillment of the rights that assist those involved in the stages of the sanctioning procedure. 	Noted. Thank you for your positive comment.
22	SAI Peru	5.2	<ul style="list-style-type: none"> In accordance with principle 4, in our country principle 11 is found in the principle of celerity, which outlines the achievement of procedural objectives in the shortest time possible, obviating bureaucratic controls under criteria of procedural economy, efficiency and effectiveness. This has the purpose of avoiding that the statutes of limitation and expiration end up producing the breaking of the sanctioning 	Noted. Thank you for your positive comment.

			procedure, and the persecution of the irregular act in general, causing a situation of impunity.	
23	SAI Peru	5.3	<ul style="list-style-type: none"> For principle 12 the SAI of Peru has established in regulations that the sanctions that put an end to the sanctioning procedure must be published on its website in order to ensure the predictability of the decisions, guide the conduct of the accountable persons and provide criteria for the performance of the organs involved in government control. 	Noted. Thank you for your positive comment.
24	SAI Portugal		The legislation of each country, <i>OR THE LEGISLATION REGULATING THE SAI</i> must therefore provide whether the accumulation of different sanctions for the same irregularity is authorized or prohibited (principle of non or ne bis in idem)	Agreed with your suggested inclusion.