

## Local Anti-Corruption Agencies: Pros and Cons

### Query:

***“What has been experience and lessons learned in setting up sub-national anti corruption agencies in other countries especially those that might be relevant to Vietnam context? If possible, in your answer, please also advise different models of operation of local anti corruption agencies in the world (including governance structure, independence, staffing, resources...).”***

### Purpose:

“To help inform the Government of Vietnam as they are considering establishing 64 provincial anti corruption agencies following the establishment of the Central Steering Committee on Anti Corruption. We want to understand the pros and cons of setting up local anti corruption agencies. We particularly welcome lessons learned from other countries. “

### Content:

- Part 1: Introduction
- Part 2: Lessons Learned: Donor Practices vis-à-vis Anti-Corruption Agencies; Effectiveness of Anti-Corruption Agencies
- Part 3: Anti-Corruption Agency Experience in Sub-National Contexts
- Part 4 : Further reading

### Part 1: Introduction

Anti-corruption agencies (ACAs) have, with a few exceptions, had mixed results at best. Much of the knowledge about ACAs (models of operation, their experience and key lessons learned) comes from analysis of *national* ACAs. *Sub-national* or *local* ACAs are not as common as national ACAs but many of the lessons learned about ACA success and failure are applicable to local as well as national contexts. The examples of local ACAs cited in this U4 Expert Answer indicate some promising evidence of their success. There is no concrete evidence that a local ACA may be more effective than a national ACA, although one commentator has suggested that the size of the geographic area that an ACA covers may have an influence on their effectiveness: ACAs that cover a smaller geographical area “may explain the effectiveness of anti-corruption efforts. Hong Kong and Singapore each have substantial populations living in a small geographic area. An argument that the geographic size of the country determines capacity to control venality has some credence.” (See John Heilbrunn “Anti-Corruption Commissions Panacea or Real Medicine to Fight Corruption?”, World Bank Institute (2004)

<http://siteresources.worldbank.org/WBI/Resources/wbi37234Heilbrunn.pdf>). In developing a plan for a series of local ACAs, some attention should be given to the role of the central steering committee in linking together anti-corruption efforts, particularly if the agencies have

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#### Authored by:

Victoria Jennett PhD  
U4 Helpdesk

Transparency International  
[vjennett@transparency.org](mailto:vjennett@transparency.org)

#### Reviewed by:

Robin Hodess PhD

Transparency International  
[rhodess@transparency.org](mailto:rhodess@transparency.org)

#### Date:

13 July, 2007



an investigative function. Indeed care should be taken to prevent competition between agencies from impeding anti-corruption efforts that cut across local boundaries.

As Heilbrunn has commented there are at least “four different models of anti-corruption agencies (ACAs) which have been tried and tested. First is the universal model with its investigative, preventative, and communicative functions. The universal model is typified by Hong Kong’s Independent Commission Against Corruption (ICAC). Second, the investigative model is characterized by a small and centralized investigative commission as operates in Singapore’s Corrupt Practices Investigation Bureau (CPIB). Both the universal and investigative models are organizationally accountable to the executive. Third, the parliamentary model includes commissions that report to parliamentary committees and are independent from the executive and judicial branches of state. The parliamentary model is epitomized by the New South Wales Independent Commission Against Corruption that takes a preventative approach to fighting corruption. Finally, the multi-agency model includes a number of offices that are individually distinct, but together weave a web of agencies to fight corruption. The United States Office of Government Ethics with its preventative approach complements the Justice Department’s investigative and prosecutorial powers in a concerted effort to reduce corruption.”

The models of ACAs described above encompass three kinds of functions 1) investigation and prosecution of high-level and other cases, 2) prevention work such as developing registers of interest for political classes, and 3) promoting anti-corruption public education programmes. A U4 Report that analysed five African ACAs (see “Measuring ‘Success’ in five African Anti-Corruption Commissions” at <http://www.u4.no/themes/aacc/finalreport.pdf> ) showed that donors are particularly keen to support these types of activities but often their enthusiasm for support wanes, leading to problems of sustainability for ACAs. Indeed the same report illustrates that ACAs are often given too broad a remit to carry out all of these functions and “mission overload” and lack of resources makes failure almost inevitable.

In this U4 Expert Answer we begin, in Part 2, by setting out a series of lessons learned that offers advice for donors considering supporting the development of ACAs. They include recommendations on planning for ACAs (or Anti-Corruption Commissions ‘ACCs’) as well as some key lessons learned about the elements necessary for effective ACAs including their governance and operational structures. Part 3 describes ACA experiences and lessons-learned in sub-national contexts as well as information about ACA coverage in South East Asia. Finally, in Part 4, we suggest some further reading.

## **Part 2: Lessons Learned: Donor Practices vis-à-vis Anti-Corruption Agencies; Effectiveness of Anti-Corruption Agencies**

### ***Donor Practices vis-à-vis Anti-Corruption Agencies***

The U4 Anti-Corruption Resource Centre has developed a U4 Brief that sets out specific advice for donors considering supporting ACAs, or, as stated in the U4 Brief, Anti-Corruption Commissions (ACCs). Please see: <http://partner.u4.no/pdf/?file=/document/u4-briefs/u4-brief-1-2007-anti-corruption-commissions.pdf>

The U4 Brief recommends that, for all future ACCs, and even for existing ACCs that are not performing effectively, donors should collectively, on a country-specific basis, undertake a review under three categories:

**1. Markets and Context:** Identifying what is the threat? What types and levels of corruption exist and what threats do they pose to politics, administration, public perceptions and democratization? These need to be identified, in order to develop the strategy and an institutional shape.

**2. Management and Managed Work:** The context should determine the institutional response, firstly in terms of the strategy proposed for that response which will, in turn, determine the organisational shape and secondly, the organisation of the work to be undertaken by the ACA.

**3. Measurement and Performance:** Strategy and organisational design is needed to ensure that focus and funding is fully translated into the anticipated delivery of, or improvement in, the organisation's performance. This involves measurement of both internal as well as external performance.

The U4 Brief also states that donors may wish to consider the application of the three categories above in terms of themselves. Too often donor support programmes for ACCs are unsuccessful because they are:

**Inappropriate** – as in support for most high-level investigations and prosecutions which are notoriously difficult and complex with a very high failure rate, even in developed countries.

**Impractical** – as in compiling extensive registers of interests which, as in the case of the Uganda Leadership Code, consume disproportionate resources, are impossible to maintain and are rarely enforced.

**Unmeasurable** – as with most public education programmes whose 'performance' is normally 'measured' by the number of events held rather than by changes in attitudes or behaviour.

**Distort or divert resource allocation** – as in donor support for anti-corruption activities which take resources away from ACCs: donor support for the Task Force in Zambia is a prominent example where results are negligible. The Zambian President has acknowledged (People's Daily 10 October 2006) that the Task Force has consumed a lot of money to little effect while the ACC has performed better and money needs to be re-allocated back.

In many donor countries there is no separate ACC, but the anti-corruption functions are located in law enforcement agencies. Indeed, it is interesting that the UNDP argues (2005) for the need to 'establish independent investigators, prosecutors, and adjudicators that ensure 'equal' enforcement of the laws and regulations and 'strengthen capacity and integrity of the police as the frontline investigative agency for criminal infractions'. At the same time, the forthcoming review of specialized agencies undertaken by the Organisation for Economic Co-operation and Development Anti-Corruption Network for Eastern Europe and Central Asia (2006), notes that the use of ACCs tend to be in transitional countries rather than established western democracies. In other words, an ACC is not a standard response to corruption in donors' own countries. Hence, we suggest that donors should present the same planning case for why they consider there should be an ACC in a specific country; the same management and managed work approach on how they intend to support an ACC; how this fits with their support to other activities and institutions; what certainties there are that this will

be supported by the other donors working in the same country; and finally, how they would want to be judged in terms of their performance in delivering the objectives of the ACC over a predetermined period.

### **Lessons Learned about Effectiveness of ACAs**

Lessons have been drawn from ACA experiences around the world as to what are the variables that influence ACA effectiveness. Here we set out some general lessons applicable to ACAs whether at national or local level and also detail some specific considerations for effectiveness of ACAs at local or municipal level. (For further information please see the UN Habitat Urban Governance Toolkit Series "Tools to Support Transparency in Local Government" at

[http://ww2.unhabitat.org/cdrom/TRANSPARENCY/html/2d\\_6.html](http://ww2.unhabitat.org/cdrom/TRANSPARENCY/html/2d_6.html) )

**Domestic demand for ACAs.** Successful anti-corruption commissions have developed in response to domestic demands for reform rather than international donor pressure. A broad domestic coalition that supports reform ensures that policymakers have an incentive to build a strong ACA which has effective powers and is adequately resourced.

**Independence from Executive.** The ACA is more likely to have teeth if it is independent from the executive and empowered to have the ability to investigate a country's government and leadership. At the same time, some experiences suggest that an ACA that is located in the executive can signal that the leadership is serious about anti-corruption reform.

**Independent and non-partisan ethics commissioners.** Independent and non-partisan ethics commissioners are necessary to ensure a high level of impartiality in investigating corruption cases. It is imperative that the influence of political affiliations and conflicts of interest be kept to an absolute minimum in such cases. Non-partisan individuals and organizations such as judges, universities/law schools and non-profit groups can thus form part of the anti-corruption agencies.

**Supportive legal framework.** ACAs need adequate laws to support their work. If they have an investigative function then they should have the appropriate powers and authority to carry out investigations. They should have a working relationship and appropriate procedures to interact with relevant police and judicial authorities.

**ACA is not a general panacea.** An ACA should not usurp anti-corruption reform efforts in other public sector institutions such as reforms in procurement practices, financial management systems, internal and external audits, conflict of interest and access to information reforms.

**Strong education and training unit.** Regular ethics education and training for government employees and elected and appointed officials is essential in maintaining a high ethical culture. As government grows and the bureaucracy becomes more complex, corruption also rises. Training provides a routine source for disseminating information about the new and changing laws and regulations, addressing ethics issues and reminding employees of the standards they must uphold. Essentially, strong training and education leaves little room for the "I didn't know the rules" excuse.

**Proactive community/grassroots outreach programme.** It is difficult to restore public trust or engage the community in the fight against corruption, if the general public is not aware that

anti-corruption agencies exist. Operating a proactive community and grassroots outreach programme, through a community affairs staff person, for example, is imperative in rebuilding community confidence in municipal government entities. Through such outreach programmes, effective collaborations can be made with community non-profit groups and business associations. These collaborations can increase citizen access to local government and encourage a wider network of individuals to share in municipal accountability measures.

**Staff and Commission representative of the community.** Anti-corruption agencies and ethics commissions must reflect the ethnic and racial diversity of the communities they serve. In light of the prosecutorial and sensitive investigative nature of the work, such diversity deflects accusations of selective prosecution or insensitivity toward particular community groups or elected leadership, to name a few. Besides, such diversity expands an agency's reach into a wider cross-section of the community and expands its capacity to obtain information about and expose government corruption.

**Enforcement capabilities and resources.** Directing appropriate levels of financial resources towards the enforcement function of anti-corruption agencies and ethics commissions are crucial for weeding-out and prosecuting corruption, fraud, mismanagement and violations of conflict of interest laws by government employees and officials. Qualified investigative and legal staff as well as advanced technological support systems are costly but necessary tools in combating local government corruption. In addition to the financial resources, broad enforcement capabilities strengthen credibility. These capabilities include: subpoena and audit power, jurisdiction over financial disclosure and lobbying registration reports, the authority to self-initiate complaints based upon anonymous tips and the authority to make recommendations and issue letters of instruction. Without resources, an anti-corruption agency is in danger of being ineffective and quickly losing the confidence of the residents of the local jurisdiction.

**Legal advisory unit.** A legal advisory unit placed within an independent anti-corruption agency can offer guidance to both municipal employees/officials and to businesses seeking to contract with local government on government ethics and conflict of interest laws.

The success in operation of an independent agency is dependent on the quality and determination of its staff, and of the legal framework that facilitates their work, and, very importantly, the concepts of both prevention and prosecution as its functions. Prevention through community education and awareness-raising needs to be a core activity of a commission/agency. It is also important, from the outset, to assess whether such a new body is necessary, and in particular whether the costs of running a properly-funded organization can be assured.

### **Part 3: Anti-Corruption Agency Experience in Sub-National Contexts**

In this section we provide detailed descriptions of two local ACAs in Miami-Dade, USA and New South Wales, Australia. This information has been extracted from the articles mentioned in Part 4. In earlier U4 Expert Answers you will also find information on design and functions of national ACAs. In a recent query on funding modalities of anti-corruption prosecutorial agencies the Helpdesk looked at anti-corruption prosecutorial agencies in Nigeria, Vietnam and Korea: <http://u4.no/pdf/?file=/helpdesk/helpdesk/queries/query121.pdf> .

In South East Asia several countries have opted for national ACAs (or ACCs) including Thailand, Malaysia and Indonesia.

### ***Miami-Dade, USA***

The Miami-Dade County Commission on Ethics and Public Trust and Office of the Inspector General were established in response to the myriad of corruption scandals that plagued the community and led to Miami being labelled a "banana republic." In 1996, the citizens of Miami-Dade County went to the polls and voted for the creation of an independent ethics commission, thereby giving life to Florida's first local ethics commission, officially named the Miami-Dade County Commission on Ethics and Public Trust ("Ethics Commission"). Additionally, an Office of the Inspector General ("OIG") was established to monitor and to expose fraud and financial mismanagement in local government contracts and programmes. Through a staff of auditors, attorneys and investigators, it randomly audits past and present County contracts, issues reports and makes recommendations to County officials regarding its findings. In addition, the OIG through memorandums of understanding, has established permanent investigative oversight offices at various government departments, including the airport and water and sewer. Both agencies work closely through shared resources including a joint hotline. Pursuant to its enabling ordinance, the Inspector General is appointed by and reports to the members of the Ethics Commission.

The Ethics Commission, similarly modelled after other local ethics commissions around the country, is a powerful local anti-corruption initiative. The Ethics Commission functions in the following capacities: advice giving, policy-making, enforcement and education and outreach and conducts such activities/programmes as ethics training programmes for elected officials, community-wide town hall meetings, policy initiatives including lobbying reform. Its five independent volunteer ethics commissioners, who reflect the diversity of the community, hear cases and render the agency's official advisory opinions. Additionally, the Commission's Advocate, who essentially serves as the prosecutor, brings cases before the Ethics Commission and oversees the investigation component. The Legal Unit renders conflict of interest opinions and works to develop good government policies with other local legislators. Finally, the Community Outreach staff work at the grassroots level raising awareness and building strategic community collaborations.

Since their creation, both agencies have attained various accomplishments. The OIG for example:

- Uncovered multimillion-dollar construction fraud.
- Exposed water theft with recovery of millions and a new anti-theft ordinance.
- Participated in the successful investigation of an insurance fraud scheme which targeted the County's health insurance programme.
- Uncovered a scandal involving over \$3 million in unpaid county loans resulting in the adoption of a new ordinance which prohibits vendors and contractors who owe money to local government from procuring new contracts.

Similarly, the Ethics Commission has attained various accomplishments as well:

- Participated in the investigation and subsequent removal of an elected official from office for exploiting his official position.
- Determined violations of the lobbyist registration and reporting ordinances resulting in new laws requiring lobbyists to submit detailed expenditure reports.
- Rendered more than 400 advisory opinions to government employees and elected officials.

- Uncovered false financial disclosure reports filed by an elected official.

There is a growing interest from other municipalities around the United States to establish local ethics commissions. Maintaining integrity in government decision-making structures requires municipalities to invest resources in such agencies. Furthermore, investing resources into research and evaluation studies in order to measure the effectiveness of local anti-corruption agencies and to benchmark and assess performance outcomes is equally important. Despite the fact that each state has an Ethics Commission, it cannot always effectively and efficiently address the interests and concerns at the local government level. Geographic proximity is crucial and allows for greater interaction and dialogue between municipal government officials and employees and anti-corruption agencies, while generating avenues for greater citizen access in the municipal governance arena.

### ***New South Wales, Australia***

In 1987, in response to scandals involving the police and narcotics money, political leaders in New South Wales (NSW) decided to establish an agency that would have many of the same core functions as the Hong Kong Independent Commission Against Corruption (ICAC), with a crucial difference of an emphasis on prevention. After protracted parliamentary discussion, in March 1989 the NSW ICAC commenced operations. Legislation governing the ICAC has been amended four times since March 1989. In 1990, the ICAC's methods and scope of investigation were clarified. An extension of the definition of corruption to include Members of Parliament was added to the law in 1994. Amendments inserted new language into the code of conduct for Members of both Houses of Parliament. Over the course of 1996, further amendments were passed to improve witness protection powers. Even with these changes that reinforced the NSW ICAC, a series of scandals in the police involving bribery and protection schemes again led to the establishment of an independent investigative agency called the Police Integrity Commission in 1997. Although the Police Integrity Commission is independent from the ICAC, the anti-corruption agency lends its expertise on prevention and public outreach.

The dual commissions attest to difficulties that anti-corruption agencies face in circumstances involving the large profits available from drug trafficking. Since the ICAC was established, it has effectively built public trust through its emphasis on leadership in government and the private sector. For example, the ICAC successfully broke up organized rings of car thieves who were active in the "rebirthing of automobiles" in which they bribed civil servants to help them change vehicle identification numbers. Another example of probity in the NSW ICAC was when it was revealed that the Premier who oversaw the agency's creation had offered a civil service job to a supporter of a rival politician as reward for ending obstruction to favoured legislation. The Premier was accused of corrupt patronage and subsequently forced to resign. Since its creation, the NSW-ICAC has adopted three principles as the basis of corruption prevention: First, prevention is better than the cure. Second, prevention is better than punishment. And third, prevention is better than management. To complement these principles, the NSW ICAC has published a series of Corruption Resistance Reviews that it disseminates on the internet and through government offices. These reviews help prevent corruption by giving advice to private and public sector actors about the costs of venality. In these reviews, the NSW ICAC has invested considerable effort and resources into improving public support for its duties.

The organizational hierarchy of the NSW-ICAC includes a Commissioner, an Assistant Commissioner, and directors of four operational units. Operational units include, first, the Investigation Unit that conducts investigation analysis and assessments of alleged incidents



of corruption. Second, the Legal Unit serves as a liaison to the Parliamentary oversight committees. It provides legal advice on operations, reviews on-going investigations, and drafts information for the Parliament Joint Committee. Third, the Corruption Prevention, Education, and Research Unit operates in areas of corruption prevention, education, research, and relations with the media. Finally, the Corporate and Commercial Services Unit provides private sector actors with information through its information technology, information services, records and property, and other branches.

Accountability in the NSW ICAC is imposed by a requirement that it submit annual reports and internal and external audits must be prepared on ICAC operations. This provision recognized that effective oversight is crucial if the commission is to be accountable for its actions. The NSW-ICAC operates under the supervision of two committees: a Parliamentary Joint Committee and an Operations Review Committee. Responsibilities of the 11 member Parliamentary Joint Committee include supervision and review of ICAC activities. Members of the Parliamentary Joint Committee represent the parties in Parliament and are selected from either House of Parliament. As part of its responsibilities, the Parliamentary Joint Committee submits regular reports on specific issues or sometimes in response to questions from either House. The Parliamentary Joint Committee is also responsible to answer to citizens' complaints that are made to the office of the Ombudsman or Parliament. While the Parliamentary Joint Committee responds to Parliamentary concerns, it is the Operations Review Committee that holds the ICAC accountable for its actions, investigations, and general comportment as a government agency.

The Operations Review Committee's eight members have a narrow task of advising the Commissioner whether to continue, suspend, or terminate an investigation. Any investigation must first be vetted by the Operations Review Committee after a review of written documentation of evidence. If the Committee finds merit with the evidence, it gives approval for an investigation to be launched. Follow-up on investigations comes in the form of oversight by this committee that is a critical source of accountability. Every three months it determines the appropriateness of on-going investigations; it reviews on-going investigations; and it communicates its findings regularly to the Commissioner. Other methods to enforce accountability include term limits for the Commissioner, budgetary accountability to the Treasury, privacy laws, and freedom of information laws. In addition, the Ombudsman inspects telephone intercepts and records of investigations to prevent any abuses of power. The effect is an agency operating in "the context of a vibrant Westminster-style democratic system" that ensures a high degree of integrity for New South Wales. Although the ICAC has had a mixed record of successful prosecutions, its major contribution has been as a prevention agency that changed the norms of how business is conducted in New South Wales.

#### **Part 4: Further Reading**

Doig, A., Watt, D., and Williams, R. (2005). 'Measuring "Success" in Five African Anti-Corruption Commissions. The cases of Ghana, Malawi, Tanzania, Uganda and Zambia'. U4 Research Report. Bergen: Chr. Michelsen Institute.

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John Heilbrunn "Anti-Corruption Commissions Panacea or Real Medicine to Fight Corruption?", World Bank Institute (2004)  
<http://siteresources.worldbank.org/WBI/Resources/wbi37234Heilbrunn.pdf>

UN Habitat Urban Governance Toolkit Series "Tools to Support Transparency in Local Government" at [http://ww2.unhabitat.org/cdrom/TRANSPARENCY/html/2d\\_6.html](http://ww2.unhabitat.org/cdrom/TRANSPARENCY/html/2d_6.html)