

ANTI-CORRUPTION HELPDESK

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BEST PRACTICES FOR ANTI-CORRUPTION COMMISSIONS

QUERY

Could you please provide an overview of best practices for anti-corruption commissions?

PURPOSE

This paper will serve as a resource for a comparative assessment of anti-corruption commissions involving various countries.

CONTENT

1. General recommendations for anti-corruption commissions
2. Country examples of good practices
3. References

SUMMARY

Inspired by the well-known and well-documented success of the Hong Kong and Singapore experiences, anti-corruption commissions have mushroomed across the world since the 1990s. Despite their varying levels of success, they are often still considered by most stakeholders to be the ultimate response to corruption.

The structures and activities of anti-corruption commissions differ significantly from one country to another, affecting their respective effectiveness and independence. In spite of the fact that anti-corruption commissions have existed for several decades, common global principles for them were only agreed upon by representatives of anti-corruption commissions and international organisations in 2012, with the Jakarta Statement.

This paper provides an overview of the principles and standards endorsed in the Jakarta Statement, which can contribute to creating robust and independent anti-corruption commissions that inspire public confidence and effectively reduce corruption. The paper also points to a number of country examples to illustrate these “best practices.”

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1. GENERAL RECOMMENDATIONS FOR ANTI-CORRUPTION COMMISSIONS

A number of international conventions, both at global and regional levels, establish the international legal framework in which anti-corruption commissions operate. There is agreement among international legal instruments, such as the United Nations Convention against Corruption (UNCAC), that states ought to establish a body (or several bodies) to prevent and combat corruption through law enforcement. The international legal framework advises that such institutions be independent, protected from undue influence and have adequate training and resources to undertake their duties. Anti-corruption commissions or agencies (ACCs or ACAs) are one form of the above.

The first anti-corruption commission was set up in Singapore in 1952, followed by Malaysia, Hong Kong and others. Asia has even been nicknamed the “cradle of ACAs” (De Jaegere 2012). The explosion of the number of anti-corruption commissions worldwide happened later, in the 1990s; there are currently nearly 150 such entities throughout the world. ACAs often emerge in a context of corruption scandals, are formed through broad political consensus and are regarded by most stakeholders as the ultimate response to corruption (De Sousa 2009a).

ACCs or ACAs play a unique role in a country's institutional framework, complementing the role of traditional anti-corruption actors or law enforcement bodies. ACCs are publicly funded entities of a durable nature, whose specific mission is to fight corruption and reduce the opportunities for it to occur in a country. It is the only entity mandated exclusively to combat corruption through a combination of repressive, preventive and educational measures (De Sousa 2009a). Anti-corruption commissions often work closely with other state bodies, such as law enforcement agencies, supreme audit institutions and ministries of education, and usually have the responsibility of the coordination of anti-corruption efforts.

Anti-corruption commissions are mandated differently depending on country contexts; in 2008 the OECD developed a typology of the existing models:

- The multi-purpose agency represents the most common model of a single-agency approach, combining the aspects of repression and prevention of corruption. This is the model on which are shaped the Hong Kong Independent Commission against Corruption and the Singapore Corrupt Practices Investigation Bureau.
- The law enforcement agencies model either combines the three functions of detection, investigation and prosecution of corruption cases, or specialises in detection/ investigation or prosecution. This model is the most common in Western Europe.
- The preventive, policy development and co-ordination institutions focus more on corruption-related research, coordination of anti-corruption policies and action plans, monitoring conflict of interest regulations, elaboration of codes of conduct, facilitation of trainings, etc. This is a model that can be found in France, India, Albania and Montenegro, for example.

Despite their popularity, literature has become increasingly sceptical about the effectiveness of anti-corruption commissions (De Jaegere 2012). The impact of ACAs varies greatly from one context to another due to a number of key factors that condition their success, such as political will to effectively fight corruption, public support for the cause and the ACA, etc. De Jaegere states that many ACAs have suffered from their success, ending up failing their duties because their zealous leadership are dismissed, imprisoned or forced to resign when they start questioning the status quo.

The challenges that anti-corruption agencies face are both internal and external in nature. Some obstacles are linked to poor institutional design, lack of planning and lack of efficient management and qualified staff, whereas other challenges have to do with the environment in which these agencies operate, lack of political will, lack of public trust, etc. (De Sousa 2009a).

This paper lists some of the principles and standards that can contribute to creating solid anti-corruption commissions that inspire public trust and are sufficiently protected from external influences so that they can effectively reduce corruption.

Common principles and standards for anti-corruption agencies

In spite of the proliferation of anti-corruption agencies in the last decades, common global principles and standards were only developed and agreed upon in 2012, when anti-corruption practitioners, representatives from ACAs, from regional networks, and other stakeholders,¹ as well as a number of international organisations met in Jakarta at the invitation of the Corruption Eradication Commission Indonesia (KPK), the UNDP and the UN Office on Drugs and Crime (UNODC). The participants came up with a set of key requirements to ensure the independence, both formal and operational, and the effectiveness of anti-corruption agencies. The following draws on the 2012 Jakarta Statement, on the 2008 European Partners against Corruption, "Common Standards and Best Practice for Anti-Corruption Agencies" and on Samuel De Jaegere's 2012 "Principles for Anti-Corruption Agencies: A Game Changer."

A broad and clear mandate

ACAs should have a clear mandate to tackle corruption through prevention, education, awareness raising, investigation and prosecution (see typology above). According to De Jaegere, an ACA should ideally have the mandate of investigation, prevention and education, plus the ability to prosecute.

Legally guaranteed permanence

Anti-corruption commissions ought to be established by a proper and stable legal framework, such as a constitution or in a special law, to ensure the permanence of the institution. As De Jaegere says in

"Principles for Anti-Corruption Agencies", executive orders or decrees are too easily annulled.

Neutral appointment of ACA heads

Heads of anti-corruption commissions should be appointed through a process that ensures her/his independence, impartiality, neutrality, integrity, apolitical stance and competence.

A number of experts consider that the parliament should be involved in the recruitment of the heads of ACAs, which should ideally represent a consensus between the political majority and the opposition.

Removal of ACA heads and leadership continuity

It is essential for the independence of anti-corruption commissions that their heads have security of tenure and can only be dismissed through a procedure established by law. These processes need to be clear and transparent.

Experts tend to agree that a dismissal procedure involving only the judiciary and the executive powers is undesirable and that the parliament should have a say, through a two-thirds majority (IACC 2010).

If the ACA head were to be suspended, dismissed, to resign or retire, the authority of the ACA head should be delegated by law to an appropriate official from the ACA, within a reasonable timeframe until the appointment of a new head. Such a mechanism avoids ACAs becoming paralysed in the absence of a leader.

Ethical conduct and governance

ACAs ought to adopt codes of conduct that set high standards of ethical conduct for their employees and have a solid compliance regime.

In a 2012 report on anti-corruption commissions, KPMG states that ACCs ought to maintain a "stringent governance framework" to ensure that investigative units operate lawfully and follow due

¹ Such as the Network of National Anti-Corruption Institutions in West Africa, the Southeast Asian Parties against Corruption, the Arab Anti-Corruption and Integrity Network, the European Partners against Corruption, etc.

process.

The European Partners against Corruption point to the importance of preserving the confidentiality of investigations to protect the interests of all parties involved (whistleblowers, suspects, witnesses, etc.). This includes mechanisms to protect whistleblowers and witnesses; secrecy of investigations, etc.

Immunity

Heads and staff members of anti-corruption commissions should have immunity from civil and criminal proceedings for acts committed as part of the exercise of their mandate, in order to protect them from judicial manipulation and political interference. Immunity should be lifted only under exceptional circumstances, such as a two-thirds majority vote in parliament.

Adequate remuneration and ACA authority over human resources

To guarantee their effectiveness and independence, anti-corruption agencies should be able to set out the level of their salary scales themselves, and the employees of ACAs should be remunerated at a level that allows for the employment of sufficiently qualified staff. Working for an anti-corruption commission can, in some settings, present significant risks; therefore ACAs need to have control over the employment conditions in order to be competitive on the job market.

Anti-corruption commissions should have the power to recruit and dismiss their employees according to their own internal procedures, provided that these are clear and transparent.

ACA staff members are often part of the civil service and are thus subject to its rules and procedures. Experts highlight that civil service oversight bodies should have very limited control over recruitment for ACA positions, or that their role should be balanced by the involvement of ACAs. Also, secondments from other government units should be avoided in order not to challenge the anti-corruption commission's independence.

Adequate resources and financial independence

To be able to perform their functions in an effective manner, anti-corruption agencies must be allocated sufficient material and human resources. These obviously depend on the country's budgetary resources, but ACAs must receive timely, planned, reliable and adequate funding for gradual capacity development and improvement of the commission's operations.

The European Partners against Corruption state that the adequacy of resources can be assessed by qualitative indicators, such as regular increases in resources, stability of human resources, reliability and integrity of staff members, efficiency of recruitment procedures, etc. De Jaegere suggests that ACAs should have an annual budget guarantee to avoid any arbitrary downsizing of the agency's budget.

Anti-corruption commissions need to have full management rights and control over their budget, without prejudice to the appropriate accounting standards and auditing requirements.

Material resources include robust and appropriate systems and technologies to be able to identify and prosecute corruption cases. These technological tools need to be advanced enough to match the increasing sophistication of corruption and bribery methods; they range from email monitoring to financial surveillance and tracking (KMPG 2012).

Collaboration and coordination

Anti-corruption commissions cannot work properly in isolation and should therefore foster good working relations with state agencies, civil society, the private sector, etc. At the 15th International Anti-Corruption Conference (IACC) in 2012, a special session on the effectiveness of anti-corruption agencies pointed to the issue of the political isolation of ACAs, which can lead to a lack of understanding and collaboration with other state institutions. Anti-corruption commissions should work as coordinating bodies of a country's national anti-corruption efforts.

This includes international cooperation and mutual legal assistance with other ACAs to jointly address corruption as a global issue, launch international initiatives, exchange knowledge and experiences, and collaborate on a case-by-case basis.

Accountability

The accountability of ACAs is crucial to ensure their credibility and to build public trust. Anti-corruption commissions should have clear and standard operating procedures, including monitoring and disciplinary mechanisms, to reduce the risks of misconduct and abuse of power in the commissions.

Anti-corruption commissions must strictly adhere to the rule of law and be accountable to mechanisms established to prevent any abuse.

The accountability of ACAs also requires regular reporting to the public. Some anti-corruption commissions report to the parliament, while others report to the Government or to an independent monitoring body. It is essential that these reports are produced at least once a year and are made available to the public to justify efficiency and progress, and strengthen citizens' confidence in the anti-corruption agency. Public support is a strong counter-power against potential attacks from the government. Thus, fostering public support contributes to the sustainability of ACAs.

For more information, please read:

[The Jakarta Statement on Principles for Anti-Corruption Agencies](#) (2012)

[The EPAC Common Standards and Best Practices for Anti-Corruption Agencies](#) (2008)

2. COUNTRY EXAMPLES OF BEST PRACTICES

Comparing anti-corruption commissions is not an easy task since they operate in very different contexts and have not all existed for the same period of time. ACAs ought to fit their national context, as

repeatedly recommended in international conventions and working documents, which all emphasise that the existence of an anti-corruption body should be established "as in accordance with the fundamental principles of [the country's] legal system." (UNCAC). Therefore, none of the following country examples perfectly aligns with the international standards. They are, however, considered "best practices" because of their effectiveness in fighting corruption and due to the public confidence that they enjoy. Interestingly, even though they do not fully match the common standards, many recommendations can be identified in their structures.

The following instances all correspond to the "single-agency three-pronged approach", which best illustrates the full range of activities that can be undertaken by anti-corruption commissions. Moreover, a broad mandate allows ACAs not to rely on other law enforcement agencies to sanction the corrupt (De Jaegere 2012). Because of their mandate these agencies are also the most exposed to the risk of political interference and resistance.

Hong Kong's Independent Commission against Corruption (ICAC)

Hong Kong's Independent Commission against Corruption (ICAC) was one of the very first anti-corruption commissions and has been identified as a success story and seen as a model to follow by many governments setting up anti-corruption commissions. There is, however, a growing consensus in the literature that the Hong Kong experience is not replicable, as it benefited from a unique set of circumstances and favourable conditions.

Mandate, legal basis and accountability

The ICAC was set up by the Independent Commission against Corruption Ordinance in 1974, with the mandate to undertake educational, preventive and investigative tasks, making Hong Kong's ACA a multi-purpose agency. The independence of the ICAC is legally guaranteed by the Constitution.

Hong Kong's legal framework grants the ICAC the powers of arrest, detention and granting bail, as well as the powers of search and seizure, which includes searching bank accounts, seizing documents and

requiring suspects to provide details of their assets, income and expenditure. The ICAC has the powers to detain travel documents and restrain disposal of property to prevent suspects from fleeing the country. It also has the right to protect confidentiality of an investigation.

The ICAC reports to the head of government directly but is, additionally, scrutinised by four independent advisory committees composed of community leaders or citizens appointed by the Chief Executive. According to the OECD, the ICAC has always worked towards securing public confidence in the credibility and effectiveness of the institution. It produces annual reports to justify activities and progress, which are made available on the ICAC's website, along with statistics regarding corruption reports and prosecutions.

The ICAC has adopted a code of ethics that its employees all pledge to uphold.

Independence and resources

Hong Kong's Independent Commission against Corruption is one of the best funded anti-corruption commissions, with a budget of approximately US\$112 million in 2012. The ICAC is also very well staffed, with 1,300 permanent employees in 2012. The institution is in charge of the recruitment of its own staff members. According to the OECD, the ICAC is an attractive workplace that easily retains its employees thanks to strong public support for its work. Staff members receive in-depth training from the very start and continuous training throughout their employment, on matters both job-specific and more general (stress management, personnel management, etc.). The ICAC keeps pace with technology and provides ongoing IT training to staff (OECD 2008).

The head of the ICAC is appointed by the Chief Executive of the Hong Kong Special Administrative Region, who is also empowered to recommend the head's dismissal to the Central People's Government. The mandate of the head of the ICAC is unlimited.

Achievements

The ICAC receives corruption complaints and is responsible for analysing them and taking relevant

complaints forward by launching an investigation, transferring the complaint to another relevant authority etc. In recent years, the annual number of complaints ranged from 3,500 to 4,500; in 2012, for example, the ICAC received 3,932 corruption complaints. The Operations Department is in charge of the investigative tasks of the ICAC. In addition to investigating complaints it receives, the department uses proactive investigation methods to uncover corruption cases. These methods include undercover operations and use of advanced technologies.

The ICAC directs its investigations to the relevant authorities, prosecutions being the responsibility of the Department of Justice. In 2012, 196 persons were prosecuted on corruption charges, 175 were convicted and 127 civil servants were recommended for administrative sanctions.

The ICAC conducts hundreds of studies yearly to help the government identify institutional weaknesses and loopholes that create opportunities for corruption. It provides trainings to the public sector as well as to the business community. The ICAC also partnered with several youth organisations to educate younger generations about corruption and their rights.

Indonesia's Corruption Eradication Commission (KPK)

Another commonly cited "best practice" example is Indonesia's Corruption Eradication Commission (KPK). It is praised for having had exceptional results and reaching a "near to 100%" conviction rate against corrupt senior public officials, despite the low-governance environment in which this ACA was established (Schütte 2012).

Mandate, legal basis and accountability

The KPK was established by the 2002 Law (No. 30) on the Corruption Eradication Commission, which guarantees its independence from all branches of government. Similar to Hong Kong's ICAC, the KPK adopts a three-pronged strategy and is mandated to undertake investigative, preventive and monitoring tasks. Additionally, the KPK has the mandate to prosecute corruption cases and to take over cases being prosecuted by regular law enforcement agencies.

The Law on the Corruption Eradication Commission grants the KPK the authority to investigate and prosecute corruption cases, to request information from government bodies in order to uncover corruption, and to organise hearings and meetings with relevant authorities. The KPK has the right to conduct surveillance, research and studies on public sector institutions. It also has the right, as part of its investigation and prosecution responsibilities, to tap communication lines and record conversations, to ban individuals from leaving the country, to request information from financial institutions, and to order banks to freeze assets and block accounts. The KPK can conduct checks on the wealth of government executives and undertake reviews of all administrations' management systems. The Indonesian ACA has the right to conduct anti-corruption education programmes and campaigns in order to raise public awareness about the issue.

The KPK is accountable to the public for its activities, effectiveness and integrity, and has an obligation to undergo regular audits, to publish annual reports and to make its documents accessible to the public. The KPK also reports regularly to the Parliament, the President of the Republic and the State Auditor.

The KPK had established an internal whistleblower mechanism and adopted a code of conduct.

Independence and resources

Indonesia's anti-corruption commission is well funded. In 2010, the KPK had a budget of US\$35.2 million. Experts argue that, in terms of human resources, the KPK is more about quality than quantity (Bolongaita 2010); in 2010, the KPK had 650 employees. The ACA is responsible for the recruitment of its staff, through open and transparent processes. Bolongaita indicates that the KPK charges the recruitment tasks to a private HR management firm to ensure full integrity and professionalism. Contrary to generally accepted best practice, KPK investigators and prosecutors often come from other government agencies, such as the Ministry of Finance. The recruitment process is highly selective and candidates go through thorough background checks as well as technical and psychological tests (Bolongaita 2010).

The KPK offers attractive and competitive salaries compared to other government agencies, and

employment in the anti-corruption agency is highly sought-after (Bolongaita 2010). The KPK has a well-functioning performance measurement and evaluation system and financial rewards are based on performance (Asian Human Rights Commission 2009).

The head of the KPK is chosen through a transparent selection process by which the Parliament nominates and the President appoints, for a mandate of four years. Only the Parliament has the authority to dismiss the head of the KPK.

Achievements

As stated above, Indonesia's anti-corruption commission is known for its exceptional success rates, with a nearly 100 per cent conviction rate against corrupt officials. The KPK has investigated and prosecuted officials from all levels of the administration and has not retreated when faced with big cases. Over the years it has charged more than 40 members of Parliament, from all parties (De Jaegere 2012).

According to its website, in 2011, the KPK handled more than 20,000 complaints from citizens. In 2012, the anti-corruption commission investigated 48 cases and prosecuted 36, while 28 were still pending.

The KPK is regularly threatened to be weakened and to see its mandate shrunk. In 2011, an attempt by the government to amend the Anti-Graft Act would have reduced the legal penalties for corruption, threatened the protection of whistleblowers and undermined the confiscation of stolen assets. In addition, the relationship between the KPK and Indonesia's law enforcement agencies have deteriorated since the KPK started to investigate police officers and prosecutors. The police launched an anti-KPK campaign, in which many politicians and public officials have joined, depriving the commission of necessary resources and isolating it from other state bodies with which it needs to collaborate (Foreign Policy 2012).

Latvia's Corruption Prevention and Combating Bureau (KNAB)

In Latvia, efforts to set up an anti-corruption commission started in the mid-1990s, but concrete steps to establish an independent institution based

on the three-pronged Hong Kong model only came about in the context of the negotiations around Latvia's accession to the European Union. The Corruption Prevention and Combating Bureau is now seen as one of Europe's most efficient anti-corruption commissions (De Jaegere 2012).

Mandate, legal basis and accountability

The Corruption Prevention and Combating Bureau was set up by the 2002 Law on Corruption Prevention and Combating Bureau, prepared by a working group comprised of various government bodies, such as the Financial Intelligence Unit, the Police, the Prosecutor General's Office, the Ministry of Justice, as well as Transparency International Latvia. This law establishes the anti-corruption commission as an independent entity within Latvia's public administration.

The KNAB's activities include investigative, preventive and educational tasks. It coordinates the country's anti-corruption programme, receives and analyses citizens' complaints, educates the public on their rights, suggests improvements to the legal framework, and disseminates information about corruption. The KNAB has the powers to detect and investigate corruption-related offenses, to hold public officials administratively liable and to impose administrative sanctions.

The anti-corruption commission in Latvia also plays a significant role in overseeing political financing; it is in charge of controlling the implementation of relevant laws. It has the authority to conduct investigations related to violations of political financing regulations and to request information from relevant entities, including financial and classified information. Political parties need to submit financial declarations and reports regularly to the KNAB. This institution is also in charge of overseeing disputed public procurement tenders.

The KNAB is supervised by the Prime Minister but the latter does not have the authority to impose any decisions or orders to the commission. A parliamentary committee working on corruption issues oversees the work of the KNAB, playing an informative and liaison role. The anti-corruption commission submits regular reports to the Parliament and the Government and prepares activity and annual reports on preventive activities, detected

criminal offences and administrative violations. These reports are made available to the public.

Independence and resources

In 2011, the KNAB had a budget of approximately US\$2.5 million and 141 employees. The management of the KNAB is responsible for the recruitment of staff members. KNAB officials indicated to the European Partners against Corruption that previous experience and reliability are the main selection criteria and that many employees have previously worked with law enforcement or tax authorities (EPAC 2008). Candidates to the highest positions need to undergo a security clearance. The KNAB provides many training opportunities to its staff, including procurement procedures, techniques for questioning suspects and witnesses, accounting, administrative violations, criminal procedure legislation, effective communication, etc. (OECD 2008).

The director of the KNAB is appointed by the Parliament on recommendation of the Government, for a mandate of five years. The Parliament is the only entity with the authority to revoke the head of the anti-corruption commission.

Achievements

Thanks to the KNAB's efforts, between 2003 and 2012, 166 individuals were found guilty of corruption and were convicted (KNAB 2012). Experts state that the KNAB has been determined in investigating corruption cases at increasingly high levels of the administration and in political parties (De Jaegere 2012). The effectiveness of the KNAB is closely linked to Latvia's efficient prosecution and adjudication of corruption-related cases (OECD 2008).

The KNAB's preventive and educational work is seen as proactive and comprehensive (De Jaegere 2012).

The control of political financing is a key area of work of the anti-corruption commission. In 2011, more than US\$400,000 was returned to the state budget by political parties that had not correctly followed political financing rules. Moreover, during the first half of 2012, the KNAB imposed fines on 21 political parties. Control of public officials' activities as well as conflict of interest prevention is another important

task of the KNAB. In the first six months of 2012, the KNAB reviewed 88 cases, out of which 19 resulted in fines and 69 in verbal warnings.

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