

Annual ACC Report 2014

Prepared by the Good Governance Committee

1. Introduction

As stipulated in the Constitution of the Kingdom of Bhutan, the Anti-Corruption Commission (ACC) submits its annual report to the Parliament. In the National Council, the report is reviewed and presented to the House by the Good Governance Committee (GGC) during the National Council Session.

The Committee held a consultative meeting with the ACC followed by four rounds of in-house meeting within the Committee before this report was finalized.

It is noted that with the five year term of the incumbent ACC Chairperson and two Commission members ending by mid 2015, unlike the previous annual reports, the Annual Report 2014 takes stock of the ACC's achievements over the past nine years (2006-2014).

The report is presented to the House with two main objectives: i) To inform the House on the performance of the ACC, and ii) Highlight the issues that merit deliberation. Therefore, the report is structured in the following order: brief overview of performance of the ACC over the past nine years, followed by corruption scenario of the country, and issues for deliberation.

2. Performance of the ACC

Since its establishment in 2006, the ACC has made unprecedented efforts towards preventing and combating corruption through four broad categories of interventions: Institutional development; prevention; public education; and investigation. The following paragraphs present summary of ACC's performance over the last nine years.

2.1. Building ACC as a credible and trustworthy Institution

Given its mandate to oversee other entities on corruption related matters, building the image of the ACC as an incorruptible, credible and trustworthy institution is vital. The following are some of the major initiatives under taken by the ACC:

2.1.1. Organizational structure

The ACC initially started with the organizational structure aligned to conventional core functions of investigation, prevention and public education. However, drawing lessons from the past experience and with the desire to create greater impact through a wholesome approach, the institution was restructured into following thematic sectors in 2013:

- Human Resources Management and Development Sector;
- Procurement and Construction Sector
- Land and Natural Resources Sector
- Finance and Business Sector

Such organizational restructuring has enabled the ACC to proactively focus on sectors that were prone to corruption and more importantly those that had larger bearing on public good; it also has created the opportunity to proactively address emerging issues. Besides creating greater anti-corruption impact, the restructuring also facilitated in promoting greater professionalization, enhancing career opportunities and in addressing (partially) the perennial challenge of attracting and retaining staff.

2.1.2. Embedding Integrity

Recognizing the importance of regular organizational health checkup of its own, the ACC has adopted health or integrity promotion tools such as Corruption Risk Management (CRM) and Integrity Diagnostic Tool (IDT) for assessing as well as addressing integrity problems and corruption risks in the institution. So far the ACC has conducted 2 rounds of CRM and 4 rounds of IDT since their introduction in 2010 and 2012 respectively.

In order to institutionalize the tools, it will now be included as a regular function of the administration, which otherwise was administered by the policy and planning service. Reviews will be conducted biannually and manuals on CRM and IDT will be used as a guide.

2.1.3. ACC Ethical Code of Conduct

The ACC has adopted its Ethical Code of Conduct, which everyone joining the ACC has to sign and abide by it in both letter and spirit. Ethical Committee has also been established to monitor compliance of the ACC staff's behavior to the code of conduct.

2.1.4. Grievance Redressal Mechanism

The Grievance Redressal Mechanism (GRM) has been adopted to promote professional conduct of its staff for a fair, equitable and productive work environment. It provides a formal platform for the employees to express their grievances openly against anything and anyone without fear of retribution for timely, transparent, consistent and effective response.

2.1.5. Policies, Procedures and Manuals

In the ACC's continuing efforts to make itself a system-driven institution, many policies, procedures, protocols, standards, manuals and guidelines have been developed and implemented to streamline the delivery of the three core services of prevention, education and investigation.

2.1.6. Service Standards

A service standard is defined to serve service recipients in time with professionalism, respect, courtesy and impartiality and at the same time ensuring quality in content and delivery. It is an instrument generally designed and promulgated to enhance efficiency, transparency and accountability. Efficient and effective administration and financial services; speedy response to calls, visitors, complaints and investigation; and high level of cooperation and coordination with people and organizations are some of the important standards defined in the ACC's service standards 2014 (revision of 2006 standards).

2.1.7. ACC Employee of the Year Award

The Employee of the Year Award was launched on 31 December 2014, commemoration of the institution's 9th Foundation Day. This was instituted with an aim to reinforce stewardship of the Ethical Code of Conduct by all the employees; retain high performing employees, motivate them and through such recognition inspire others; encourage initiatives and inculcate leadership qualities in the members; and create young role models in the public service.

2.1.8. Auditing of the ACC

The ACC received a clean chit from the RAA for three consecutive years demonstrating not only the financial propriety of the institution but also judicious (a simple e.g. is pooling employees' private vehicles to reduce cost of mileage claims; over 9 percent of the annual budget is for in-country travel) and transparent management of resources, guided by value for money, discipline, due diligence and austerity measures.

2.2. Prevention of corruption

2.2.1. National Integrity and Anti-Corruption Strategies (NIACS)

Combating corruption calls for collective efforts from all quarters through systemic approach rather than leaving it to the lone institution like the ACC. In order to mainstream the anticorruption strategies into the system, for the first time the corruption indicators have been incorporated in the 11th FYP. The erstwhile National Anticorruption Strategies (NACS) has been reviewed and revised to National Integrity and Anti-Corruption Strategies (NIACS) 2013-2018, which adopted in 2014. The activities under the following four strategic objectives of the NIACS initiative are geared towards prevention and public education.

Strategic objective 1: Ensure Political Will and Promote Ethical Leadership and Integrity

Strategic Objective 2: Inculcate ethical behavior through education and awareness programme

Strategic Objective 3: Promote Cooperation and partnership for collective alliance against corruption

Strategic Objective 4: Strengthen systems to prevent and combat corruption

2.3. Combating corruption

As stipulated in the Anti-Corruption Act of Bhutan 2011, one of the principal functions of the ACC is to receive and consider any complaints lodged by a person or authority and investigate such complaints as the Commission deems it practicable. In order to ensure effective investigation, the ACC has managed complaints in accordance with the Complaints Management Policy and Procedures Manual. The following paragraphs give account of how the complaints were managed and what has been the outcome of the cases that were investigated.

2.3.1. Complaints

The ACC has received a total of 4050 complaints in the last nine years, highest being 791 in 2007 and lowest being 336 in 2014. The number of complaints over the years shows a declining trend.

2.3.2. Complaints by Type of Corruption

Biggest number of complaints (27 percent of the total complaints) was abuse of functions by public servants in positions of power followed by embezzlement (16 percent). Public servants are perceived to be performing or omitting to perform an act amounting to favoritism, nepotism or patronage in violation of laws, in discharging their functions to obtain advantage for themselves or for another person or entity.

2.3.3. Complaints by Area of Corruption

Maximum number of complaints received so far were on resources with a total of 960 complaints followed by land with a total of 481 complaints, personnel with a total of 434, construction with a total of 317, and procurement (goods & services) with a total of 216.

2.3.4. Complaints against agencies

The ACC received maximum complaints against local government (total 755,) followed by private sector (total 643) and corporations (total 558).

2.3.5. Complaints against Dzongkhags

Thimphu Dzongkhag has the highest number of complaints (total 1000) followed by Chukha (total 437) and Paro (total 253). Gasa and Lhuentse Dzongkhags had the least number of complaints (total 23, and 41 respectively).

2.4. Actions on complaints

Complaints are evaluated weekly by the Complaint Evaluation Committee (CEC) using a software system, which is based on the persuasibility evaluation factors (P-Value scoring). The P-Value scoring rates the complaints based on the available details, financial and social impact. The Commission reviews the CEC's recommendations; final decisions are taken and

documented. The actions are classified into 4 categories, namely (i) Investigate, (ii) Discreet Enquiry, (iii) Share with agencies, and (iv) Drop/Database.

In the past nine years about 16 percent of the total complaints qualified for investigation; 14 percent were shared with agencies; 34 percent needed discreet enquiry; and the remaining 36 percent had no element of corruption and were dropped or stored in database.

The purpose of an investigation is to obtain facts sufficient to (1) determine whether allegations are substantiated and (2) decide what action, if any, should be taken in response to substantiated allegations. As per the ACAB 2011, responsive action is divided into three broad categories of Prosecution referral, Disciplinary referral and Systemic recommendations.

2.4.1. Prosecution referral

After the completion of an investigation, the ACC, as per section 128 of the ACAB 2011 and the Prosecution Referral Guideline 2011, refers a case to OAG only when there is sufficient evidence and that the prosecution shall serve public interests. The referred cases are reviewed by OAG and those that merit prosecution are registered in courts.

Over the nine years ACC has undertaken investigation of 142 complaints (cases). Out of this, 112 have been completed and 30 are either pending or at various stages of completion. Out of the 112 completed investigations, 73 have been referred to OAG for prosecution.

2.4.2. Disciplinary referral

As per section 137 of the ACAB 2011, the ACC refers those cases to agencies for administrative actions where there is insufficient evidence for prosecution, but administrative lapses had occurred. Agencies must submit to the ACC a report on the actions taken on cases. Out of the 112 completed investigations, 45 cases (40 percent of the cases investigated) were referred to respective agencies. This is symptomatic of wider administrative problems in systems that would require strengthening public institutions to ensure efficiency, transparency and accountability.

2.4.3. Systemic recommendation

As mandated by section 25 of the ACAB 2011, the ACC, as a natural part of investigation, conducts review of policies, practices, procedures and systems which are vulnerable to corruption and recommends interventions to agencies to “fix the system” for corruption prevention, raising public awareness and creating deterrence.

Over the past nine years, the ACC has conducted systemic reviews on 12 areas and the reports have been shared with the concerned agencies.

2.4.4. Restitution

Proceeds of corruption, established during investigations are sought for restitution in the prosecution referrals. Till date, courts have ordered a total restitution amount of Nu. 139million out of which Nu. 87million still remains to be restituted. Apart from restitution of money, there is also restitution of land. Over the period of 9 years (2006 to 2014), investigation has established the restitution of about 178 acres of State land. Some of them have already been restituted while some are still under process.

2.5.Highlights of cases

Every year the ACC gives highlights of important cases investigated in its annual report. This year the following two cases are being highlighted.

2.5.1. Conflict of Interests case

Upon verbal request of the Prime Minister to the ACC followed by formal communication by the Cabinet to conduct a thorough investigation into the issue of conflict of interests in the Government’s initiative to import electric vehicles, the ACC has conducted review through an in-house complaint process mechanism. The review was undertaken in view of the imminent potential risks in a democracy. The primary objective of the review was to establish intention and identify red flags for the Government to make interventions in minimizing such risks in the future, which will predominate the country’s political economy and governance as is the experience in the region and beyond. The review could not establish direct conflict between the private interests of the Prime Minister and the Government’s actions on import of EVs in the

country. However, there is a differing public perception. Public perception cannot be dismissed but has to be managed because at the core is public trust in public offices, in the Government.

In order to address the problem at source, gift giving and taking has to be discouraged especially when there is a potential risk of either perceived or potential conflict of interest.

The ACC has submitted the investigation report to the Government but yet to receive the response.

2.5.2. Fraud and corruption in Thimphu land case

The ongoing investigation of Thimphu land case highlights the nexus between the land administration officials and local officials in corrupt practices. This calls for vigilance in the conduct of the public officials involved in land transaction. The Land Commission as the overall coordinating agency for the management of land resources must spearhead in ensuring robust check and balance at every stage of land transaction process.

The ACC has shared its interim findings with the NLCS and the NLCS has already started taking appropriate measures to address the issues.

3. International standing on corruption

3.1. TI Corruption Perception Index

The TI CPI 2014, released on 3 December 2014, ranked Bhutan as the 30th least corrupt country with a score of 65, one rank higher than TI CPI 2013 with two points higher in its score, the best till date. Since Bhutan's inclusion in the TI CPI ranking in 2006, its score has improved over the years.

In the Asia-Pacific region, Bhutan has maintained its 6th position since 2012.

3.2. Governance Indicators

The TI CPI ranking could be taken as a proxy indicator for control of corruption rather than as an absolute one. This proxy indicator gains more credibility with corroborating trends from other sources. One such corroborating indicator is provided by Trends in Governance Indicators (2002- 2012) for Bhutan from the World Bank. In this trend, "control of corruption" has been

making a steady progress over the years, supporting the trends indicated by TI CPI ranking. “Voice and accountability”, which is an important component in fighting corruption, has been growing from strength to strength according to World Bank data. However, other governance indicators like, “regulatory quality”, “rule of law”, and “government effectiveness” and “political stability and absence of violence” are not encouraging. These governance indicators are seen to be in deteriorating trends, eliciting weakness in proactive and coordinated systemic approach and a strong resolve to fight corruption.

3.3.Global Competiveness Index

The GCR featured Bhutan for the first time in its 2013-14 report. Bhutan which ranked 109th with a score of 3.73 out of 148 economies in 2013-14 report gained six places, ranking it 103 among 144 economies with a score of 3.80, a marginal increase, in the GCR 2014- 2015. The score is on a scale of 1 to 7, where 1 means extremely weak and 7 is extremely strong.

4. Issues for deliberation

Based on the review of the ACC’s Annual Reports including the past ones, the GGC found the following issues needed deliberation in the House.

4.1.Public procurement management

According to the TI, countries spend 15 to 30 percent of the GDP on public procurement. In the case of Bhutan, out of the total budget of Nu.213 billion for the 11th FYP, Nu.92 billion is for capital expenditure. Taking capital expenditure as the budget for procurement and GDP as Nu. 104.38 billion (2014), Bhutan may be spending around 17.6 percent of GDP on procurement annually.

In addition, if the four on-going mega power projects with the total cost of Nu.222.5 billion (which alone is more than double the country’s GDP in 2013)and other project tied budget are included procurement component could go up to more than 20 percent of the GDP.

Given the major chunk of budget allocated for procurement the risk of corruption, wastage, and lack of due diligence is correspondingly high. The probability of the risk is corroborated

with the number of complaints on public procurement received by the ACC, which is the third highest after resources and land.

The ACC has conducted systemic review on the public procurement in 2006 and recommendations were shared with the relevant agencies. The RAA has also conducted performance auditing on public procurement with the most recent one on the consultancy services. The performance audit report on consultancy services was deliberated in the Parliament during the 4th Session of the second Parliament. List of recommendations were submitted to the Government. The concerned ministries are currently in the process of acting on recommendations of the ACC, RAA and Parliament.

Pitfalls in the public procurement management system have direct impact on the poor quality of work, wastage of public resources, and delayed progress with development works. In view of such importance, the Parliament needs to strengthen its oversight role on the public procurement management. Despite concerned ministries/agencies continuously attempting to improve procurement management system based on recommendations coming from various quarters, there is an indication that the public procurement system needs to be reviewed from a much broader perspective taking into account of challenges/issues faced by various stakeholders.

In view of the aforementioned concerns, the GGC recommends the following:

- i) That the Government periodically submits to the Parliament the progress reports of the mega projects, and the budget allocated for these projects be reflected in the Annual Budget Report; and
- ii) That the National Council, as the House of Review carries out holistic review of the overall public procurement management system to identify the root cause of the problem.

4.2.ACC's independence

The ACC has repeatedly raised the issue of its status of independence. The Commission acknowledges that so far it has had no issues with regard to securing adequate financial resources and political will in carrying out its functions effectively. The impact of the work of

the ACC is highly visible to everyone. However, the ACC raises its concerns over limitations set by the current arrangement of functioning in the absence of total control over its financial and human resources. One of the challenges highlighted is the difficulty in retaining its staff that has implication on long term human resource development planning for the Commission. In addition, future risks such as rendering ACC ineffective due to politicization and deteriorating effort towards investigation aspect of the mandate are being repeatedly raised. Drawing lessons from its own experience from the past and from the experience of the countries elsewhere, the ACC feels strongly about the need to establish its full independence. The Chairperson of the ACC has submitted letter to the Speaker of the National Assembly with a copy served to the Chairperson of the National Council.

Discounting the arguments for and against granting of independence to the ACC, the GGC would like to report to the House that the ACC is inclined to seeking final judiciary interpretation of the Constitutional provision.

4.3. Administrative system deficiencies

In the last nine years, about 612 complaints out of the total of 4050 complaints received were referred back to the respective agencies for administrative actions at various stages of complaints scrutiny process. In other words, it is an indication that major administrative lapses exist in various agencies.

Strengthening of administration system in the agencies is therefore, seen as the key to effective and sustainable means of controlling corruption collectively in the long run. While the strategic programmes under the NIACS will attempt to address much of the administrative system deficiencies, an effective oversight role of the Parliament is found necessary to ensure such issues are adequately addressed.

One way to enhance the Parliament's effective oversight role is by promoting transparency and fixing accountability on the implementing agencies. However, for the Parliament to do so, it has to understand detailed nature of complaints received, actions taken against the complaint, and final outcome of the investigation. The "logsheet" of cases investigated in the past nine years which the ACC shared, helped the Committee in not only understanding the detailed nature of

the cases prosecuted in the court, but also in identifying areas of issues on which the National Council can render support to the ACC.

Therefore, the GGC recommends the following:

- i) That detailed information about the complaint management be reflected in the future ACC's Annual Report; and
- ii) That ACC continues to share copies of those cases referred to the agencies for administrative actions with the relevant controlling authorities (e.g: RCSC, DHI, etc.) for appropriate action that is deemed fit.

4.4.Lack of coordination among agencies

The investigation process has revealed that the agencies working in silos has offered opportunities for corrupt acts due to non-sharing of information and other services among inter-related agencies. Difficulty in access to information has also been a challenge in the investigation work of the ACC. In addition, lack of coordination among agencies has been the recurring findings of the RAA's numerous performance audit reports. The implication of it has been not only on brewing corruption but also on inefficient utilization of resources and risk of losing collective focus on the overall direction of the country's key policy areas.

The GGC therefore, recommends that the Government institute an effective system to ensure better coordination and collaboration among the agencies be it in combating corruption or in improving public service delivery system.

4.5.Follow up on systemic review reports

During the last nine years, the ACC has conducted systemic reviews on 12 areas involving 21 agencies and shared list of recommendations with the agencies for implementation. The recommendations included interventions ranging from simple operational procedures to formulation of new policies. Such systemic studies are carried out as part of outcome of the cases investigated. However, the ACC has neither been able to follow up on the implementation of the recommendations, nor conduct any impact assessment on them so far. Further, lack of commitment by the agencies in following up with recommendations has not made the situation any better. Recognizing that the areas of systemic studies conducted are

pertinent to services commonly availed by the public, it is important that the outcome of the system review studies is made effective.

GGC therefore, recommends that the National Council, as the House of Review could collaborate with the ACC to conduct impact assessment from time to time.

4.6.Lack of established system for judgment implementation

The report highlights on the lack of established system for judgment implementation except for the understanding that the judgments of the Judiciary must be executed by the Executive. Apparently past judgments have been implemented on a case by case basis with committees formed of concerned agencies. According to the record of adjudicated cases maintained by the ACC, judgment implementation of a few cases is still pending years after the pronouncement of verdicts from the Supreme Court of Bhutan. While the OAG is currently following up on one of the cases, the ACC is in the process of cross verifying with the NLCS on the land restitution.

As much as it is crucial to prosecute the case, it is only logical that the judgments of the courts are honored and implemented stringently. It is critical not only to serve as deterrence to future corrupt practices but also for building confidence of public in the system of combating corruption.

Therefore, the GGC recommends that the Government institute an effective system for judgment implementation.

4.7.Local government corruption

Out of the total of 4050 complaints received in the last nine years, 755 complaints were against local governments (topping the list of agencies against whom the complaints were lodged). The type of alleged corruption activities includes misuse of authorities, misuse of public fund, contractual work award, etc. With greater devolution of powers, responsibilities and resources to the local level, there is also corresponding devolution of corruption that is aggravated by passive citizens, weak internal governance system, poor transparency and accountability. Although the number of complaints received may not look disproportionately high vis-à-vis the number of gewogs that exist, the impact of corruption is huge as local governments directly

interface with the citizens for development programs and service delivery. It is the poorest who are being hit the hardest when corruption occurs and as a result local development and service delivery are compromised.

Furthermore, owing to shortage of human resources at the ACC office, those non criminal cases against local governments are referred back to the Dzongkhags to conduct the investigation. Currently, there seems to be no clear cut system of dealing with those cases wherein complainants are not satisfied with the outcome of the Dzongkhag investigation report. Absence of a third party's oversight role over the Dzongkhag investigation team could create room for biased judgment, thus failing to deliver justice to common people.

Recognizing the importance of curbing corruption at the grassroots, the ACC has conducted sensitization workshops on ills of corruption across 205 gewogs and concept of Social Accountability has been introduced to people in few gewogs. In the next financial year, the initiative on Social Accountability will be rolled out to rest of the gewogs, and capacity of investigation team in the local governments will be strengthened.

Taking note of the aforementioned issues, the GGC recommends the following:

- i) That the Government needs to strictly enforce the Code of Conduct and Conflict of Interest on officials of the local governments;
- ii) That the Government takes initiative to roll out social accountability programmes in the local governments;
- iii) That the National Council works closely with the ACC in advancing the social accountability initiative; and
- iv) That the ACC in collaboration with the Government establishes an effective appellate system for cases investigated by the Dzongkhag investigation team.

Proposed Resolution

The National Council,

Respectfully recalling the command of His Majesty the King during the 107th National Day Royal Address:

“The highest probable risk to development that I foresee is corruption. Our national development efforts will be hindered by unchecked corruption. Corruption is unambiguous – there is no great or small corruption. And no one can be above the law. But there is an even great threat – ignoring corruption”

Acknowledging that one of the five offerings Hon’ble Prime Minister made on the auspicious occasion of His Majesty’s 35th Birth Anniversary is “to eliminate corruption from its roots”;

Concerned that:

- a) Major portion of the budget is allocated for procurement, and there is corresponding risk of corruption, wastage and lack of due diligence in the public procurement management process;
- b) There has been lack of effective follow up on systemic studies conducted by the ACC due to shortage of human resources and weak commitment from the concerned agencies;
- c) There is no established system for the effective implementation of the judgments passed; and
- d) Complaints received against the local governments are the highest from among the total complaints lodged, which has direct impact on the effective delivery of services to the people.

Hereby, recommends:

1. The Government to:

- a) Periodically submit progress reports of the mega hydropower projects to the Parliament, and include the budget allocated for these projects in the Annual Budget Report;
 - b) Expedite enforcement of the Debarment Rules 2013;
 - c) Ensure strict enforcement of the Code of Conduct and declaration of Conflict of Interest on the officials of the local governments;
 - d) Promote social accountability programmes for the local governments; and
 - e) Institute a designated unit under the Office of Attorney General to follow up on the implementation of the judgments passed.
2. The ACC to:
- a) Establish an effective appellate system for cases investigated by the Dzongkhag investigation team in collaboration with the Government;
 - b) Annex the logsheet of complaints received and actions taken in the ACC's Annual Report;
 - c) Include implementation status report of the cases referred to the agencies for administrative actions in the Annual Report; and
 - d) Share report on systemic studies with the National Council.
3. The Royal Audit Authority to include reports on mega hydropower projects in its Annual Audit Report.
4. The National Council to:
- a) Review challenges faced by stakeholders in public procurement; and
 - b) Review the implementation of the systemic improvement recommendations made by the ACC to the concerned agencies;
 - c) **the OAG and ACC ensure effective implementation of court judgments**