

Annual ACC Report 2015

Prepared by the Good Governance Committee

1. Introduction

As stipulated in Section 169 (1) of the Anti-Corruption Act of Bhutan 2011 and provided for in the Constitution, the Commission is mandated to submit an annual report on its policies and performance to the Druk Gyalpo, Prime Minister and Parliament. The Annual Report 2015 is the 9th Annual Report the ACC has submitted to the Parliament so far. It is also the first Annual Report to be submitted by the new Commission members. GGC would like to therefore, congratulate the new Commission members for producing the first comprehensive annual report.

In reviewing the Report, besides convening series of internal meetings within the GGC, separate consultative meetings were held with ACC, OAG, RAA, and Judicial personnel.

The report is structured in the following order: brief overview of Commission's policy priorities; performance of the ACC over the past nine months (April-December 2015); and issues for deliberation.

2. Commission's policy Priorities

Although the core functions of ACC are prevention, education and investigation, the general perception is that the ACC's function is more of investigation centric. In order to dispel this myth and to ensure balanced focus and attention to all elements of ACC functions the current Commission conducted a review of the strengths, weaknesses and strategic perspectives of the Organizational Structure. Further, given the high attrition rate of ACC employees, there was also a need for the Commission to focus on looking inwards and seeking solutions to stem this trend. Following the review and after interaction and consultation with the staff, the Commission has outlined its immediate and long term priorities as presented hereunder.

2.1.Immediate priorities(2015-2016)

2.1.1. Organizational Restructuring

On its establishment in December 2005, organizational structure of ACC was aligned along the three conventional core functions of investigation, prevention and public education. In 2013, it was restructured to comprehensively focus on vulnerable sectors and to build meaningful and effective synergy by merging the three primary functions. However, three years into implementation of this sector-based organizational structure and approach has resulted in ACC becoming more investigation-centric. The prevention and education functions were relegated to the Policy and Planning Section while Sectors were overwhelmed with investigation of cases. As such, the re-structuring neither enhanced the image of ACC as fighting corruption holistically

nor demystified the perception of ACC being focused only on investigations. Recognizing the implications of a misaligned organizational structure and the importance of prevention and education for sustaining anti-corruption measures, the Commission in consultation with its staff, initiated restructuring of ACC to make it more practical, effective and sustainable in carrying out its functions in October 2015.

In the new organizational structure, the departments and divisions are created along the functional lines so that no particular function takes precedence over the others. Among others, restructuring the organizational process is expected to enhance career paths, define roles and responsibilities and thereby help to alleviate HR issues to some extent.

2.1.2. Resolving the Human Resource (HR) issue

Despite ACC's continuous and conscious efforts to build a professional anti-corruption cadre with a high level of motivation, integrity and professionalism, attracting and retaining good professionals has been a biggest challenge since its establishment in 2006. Therefore, this Commission is committed to work towards resolving the Human Resource (HR) issue.

2.1.3. Operationalizing Investigation Management System

Designed to support the complaint management and investigative process in ACC, IMS consists of six modules – Complaint Registration, Complaint Evaluation, Discreet Enquiry, Investigation, Follow-up, Reports and Administration. Although the system was implemented since 2011, only the Complaint Registration and Complaint Evaluation modules are currently operational. The other modules could not be successfully deployed due to technical problems. Moreover, it is a standalone system and therefore not accessible to investigators in the field.

Considering that IMS is an important tool to enhance the management of complaints and cases in ACC, operationalization of a fully functional web-based system is one of the immediate priorities of the Commission.

2.1.4. Professionalizing Internal Operations of ACC

In efforts to make ACC a system-driven organization, many policies, procedures, protocols, standards, manuals and guidelines have been put in place. However, there is a need to review and revise these documents based on best practices gathered over the years and the recommendations made by users, evaluators, and ACC staff.

Further, initiatives are being taken to enhance integrity and transparency of seized property and evidence management functions to provide the necessary checks and balances and streamline control procedures.

2.1.5. Enhancing Coordination and Networking with Critical Key Partners

In order to strengthen its efforts towards fighting corruption, ACC's focus will be on enhancing coordination and networking with key partners such as RCSC, OAG, and CBI India.

2.2. Long term priorities

2.2.1. Branding ACC as an Employer of Choice

For ACC to be efficient and effective in fulfilling its mandate, it must have adequate HR. In order to attract and retain professionals with integrity who believe in and are committed to fighting corruption, the Commission will put in place a framework for recruiting, grooming talent and performance management based on the culture of learning.

2.2.2. Financial Security

ACC is highly dependent on external funds as 58% of its total annual budget is resourced by the development partners. With the major donor partner SDC phasing out in September 2016, RGoB has to devise ways to adequately fund mandatory HRD programmes for the ACC's staff, and the ethics and integrity programs both at ACC and agency level.

Therefore, the Commission considers it necessary to initiate and explore funding alternatives for ACC such as a guaranteed allocation of a minimum percentage of the total national budget from the government through legal provisions; charging of expenditure directly to the Consolidated Fund of the Royal Government, etc.

2.2.3. Reduce Backlog of Complaints

From the total of 677 complaints that qualified for investigation, 148 complaints were assigned for investigation, indicating a backlog of 529 complaints (78.1% of total cases that qualified for investigation) as of December 2015. One of the key priorities of the Commission is to reduce the backlog to at least 40% by July 2020.

2.2.4. Conflict of Interest (CoI) Management

While most of the existing regulations require declaration of CoI, there are no proper mechanisms to manage CoI effectively. Thus, the Commission plans to institutionalize management of CoI through integration with AD system and formulation of adequate measures to manage CoI in agencies.

2.2.5. Youth Engagement

With more than one sixth of the population comprising of students, the youth in schools, vocational and tertiary institutes provide a captive audience for imparting ethics and integrity education programs. Therefore, it is of paramount importance for ACC to develop a dedicated and concerted partnership with the Ministry of Education , Ministry of Labour and Human Resources and Royal University of Bhutan to this end. Similarly, ACC will collaborate with Youth Development Fund and relevant NGO for inclusion of the out-of-school youth in its ethics and integrity education programs.

2.2.6. Engagement with Media

Media has a critical role in raising awareness on anti-corruption measures and corruption issues and thereby building awakened citizenry to resist and act against corruption. Thus, one of the

Commission's priorities is to finalize the communication strategy for sustained engagement with media.

2.2.7. Professionalize and Enhance Management of Complaints and Investigations

ACC will continue to professionalize and enhance management of complaints and investigation system to proactively manage public's anticipation and confidence.

2.2.8. Enhance Prevention and Awareness Programs

Prevention and awareness programs will be enhanced to deepen institutionalization of ethics and integrity management in public, private and civil society sectors.

3. ANNUAL PERFORMANCE

The following paragraphs present summary of ACC's performance over the last nine months (April – December 2015) along the three core functions.

3.1. Public Education

Public education efforts are aimed towards building awakened citizenry through advocacy and behavioral change programs.

3.1.1. Education/Advocacy Programs

Activities undertaken under this programme include: engagement with local leaders, *Session on public procurement and contract administration* for 70 officials of dzong conservation and construction projects, *Sessions on Ethics, Integrity and Professionalism* for four batches of 140 staff of NLC during the Integrated Training Program in Tashigatshel, Chhukha.

ACC also observed the 12th IACD and NACW Commemoration 2015 by carrying out series of advocacy programmes on anticorruption

3.1.2. Behavioral Change Program

3.1.2.1. e-Learning program on Ethics and Integrity Management (EIM)

The e-learning courses on ethics and integrity were developed and implemented in collaboration with RIM, RCSC, Secretariats of NA and NC, and Royal Court of Justice. The courses have been developed with the aim of building clean public servants who uphold integrity, honesty, justice, and rule of law.

3.1.2.2. Embedding Ethics and Integrity in the Civil Service.

Initiatives have been made in embedding ethics and integrity in the civil service in close collaboration with the RCSC

3.2. Prevention

Together with public education and behavioral change programs, initiatives on systemic changes have been made to minimize opportunities for corruption. Such prevention programs

include research and systemic studies, implementation of anti-corruption measures such as judicial scan, social accountability, Corruption Risk Management (CRM) and Integrity Diagnostic Tool (IDT) in various agencies and the private sector integrity program.

3.2.1. Proactive studies

In collaboration with RIM, ACC has conducted empirical research on good governance and anti-corruption measures in Human Resource Management and Mining sectors. The studies were conducted to facilitate evidence based systemic improvement.

ACC will collaborate with the key stakeholders (the Cabinet, RCSC and DGM) to take forward the findings and recommendations for improvements at the strategic and operational levels. The reports will be published by June 2016.

3.2.2. Reactive Studies

Strengthening Systems Related to Trade, Tax and Customs

The purpose of the study is to streamline the governance of trade and commerce; customs and excise administration and address issues such as revenue leakage, entrenched corruption, fraud in tax and repatriation of INR. Implementation of the recommendations from this study as well as those that will emanate from the investigations in Phuentsholing is expected to enhance service delivery, revenue collection as well as reduce corruption opportunities. The report will be published by June 2016.

3.3. Implementation of National Integrity and Anti-Corruption Strategy

As a first step towards institutionalizing NIACS, ACC has developed prevention tools such as Corruption Risk Management, Judicial Integrity Scan, Corporate Integrity Pledge, Business Code of Conduct, etc. which are being introduced in various public and private agencies.

3.3.1. Enhancement of Judicial Integrity

The Commission in collaboration with Bhutan National Legal Institute (BNLI) and RCJ coordinated the conduct of the integrity scan in June 2015 as part of implementing NIACS. The integrity scan identified 10 recommendations most of which are being pursued either by the Supreme Court, BNLI or ACC.

3.3.2. Private Sector Integrity Program (PSIP)

In order to facilitate clean, profitable and trustworthy business, 17 business proprietors and managers were trained on Corporate Integrity Pledge and Business Code of Conduct. In addition, the Business Integrity Portal was launched at RIGSS in Phuentsholing.

3.3.3. Social Accountability (SAC)

SAC provides a platform for citizens to engage effectively in promoting accountability in policy prioritization, budget allocation, expenditure tracking and monitoring results. With active participation of citizens in decision making, the overall performance of the service provider will inevitably improve. ACC, therefore, initiated SAC in 2013. To date, SAC tools have been

implemented in 19 gewogs and awareness programs on SAc have been carried out in 78 gewogs.

3.4. Complaints and Investigations

During the reporting period, ACC received a total of 283 complaints. Out of those complaints, “*Abuse of Functions*” by public servants are predominant comprising 45.6% of the total. Allegations in this category pertain to public servants either performing or omitting to perform an act amounting to favoritism, nepotism or patronage.

Allegations of “*Embezzlement*” are the second highest at 20.8% while the lowest is “*Bribery*” with 2.5% of corruption offences. The category “*Others*” includes those complaints that were either grievances or those that did not constitute a corruption offence *per se* but were the means to corrupt acts such as deception, coercion, forgery, collusion, etc.

Maximum numbers of complaints are on misuse of resources followed by issues related to construction and land. Complaints lodged against Local Governments continue to be the highest comprising 27.9% of the total 283 complaints.

Actions on Complaints

Out of the 283 complaints received, 42 complaints (14.8%) qualified for investigation, 18 complaints (6.4%) qualified for discreet inquiry, 150 complaints (53%) were shared with agencies either for sensitization or administrative inquiry and 72 complaints (25.4%) were dropped or stored in database.

3.5. International standing on corruption

3.5.1. TI Corruption Perception Index

The TI CPI 2015 ranked Bhutan as the 27th least corrupt country with a score of 65, three ranks higher than TI CPI 2014. Since Bhutan’s inclusion by TI in CPI ranking in 2006, its rank and score have improved over the years.

In the Asia Pacific Region, Bhutan’s rank has sustained its 6th position from 2012 onwards.

4. Implementation status of the Resolutions of the NC’s 15th session

1. Establish an effective appellate system for cases investigated by the Dzongkhag investigation team in collaboration with the Royal Government.

As provided for in Sections 137, 138 and 139 of ACAB 2011, ACC refers the cases that are generally administrative in nature to the Dzongkhags/agencies concerned for investigations and/or administrative (disciplinary) action. A report in relation to the matter and on ATR is required to be submitted to ACC by the agency concerned. Based on the reports and after further clarification, where necessary, is obtained, the Commission may close the case or initiate necessary action on its own.

In those instances where the complainant is dissatisfied with the outcome(s) or the action(s) taken at the Dzongkhag level, ACC is prepared to provide the opportunity for the complainant

to be heard. However, at that point, he/she should be in a position to further substantiate the allegations and should also reveal his/ her identity to the Commission.

2. Annex the log sheet of complaints received and action taken in ACC's Annual Report.

Logsheet of complaints was shared separately.

3. Include in the annual report the status of implementation of administrative actions taken by agencies to whom cases have been referred by ACC.

In view of the confidential and sensitive nature of the information sought, ACC is unable to provide such information in a public document such as the Annual Report. Instead, ACC will make a presentation on the above (No.2 & 3) to the National Council.

4. Share report on systemic studies with the National Council.

ACC will be carrying out a review of the actions taken by agencies concerned on the recommendations made in the systemic studies. Thereafter as directed, a report on those areas which, in the opinion of ACC, have not been adequately addressed by the relevant agencies will accordingly be submitted to the National Council.

5. Committee's observation and recommendation

While reviewing the Report, the Committee conducted consultative meetings with various stakeholders to solicit feedback on the performance of the ACC. It was observed that most of the major challenges highlighted in the report are either already been addressed or are in the pipeline of addressing them. Recognizing the importance of combating corruption through systemic changes, the current Commission's focus is more on improving the internal operating system, and on upscaling the programmes on preventive measures. The ACC has already made a good headway in reviewing and making necessary adjustments to its organizational structure, and its working relation with key agencies like the RAA, OAG, and RCSC. In addition, its immediate and long term policy priorities are clearly laid down.

To further support the Commission's efforts on improving the internal operating system, the GG Committee would like to submit to the House the following two issues and corresponding recommendations.

5.1. Management of Complaints

Out of 283 complaints received by the ACC from April-December 2015, more than 25% of the complaints were dropped either due to lack of adequate information furnished by the complainant or the complaints had no element of corruption. The same pattern has been observed in the past reports as well. The complaints of such nature have no value addition as they neither address the problem of a complainant nor help the ACC in curbing corruption. Instead, it only adds on to the mere statistics of complaints received by the ACC every year.

Therefore, in order to improve the quality of complaints lodged, there is a need for the ACC to educate the public on the kind of information that are mandatorily required to be furnished while lodging a complaint, and the importance of it.

5.2. Procedure on seizure of moveable properties

As per the Sections 103 and 107 of the Anticorruption Act 2011, the ACC has the power to seize properties (both moveable and immovable) in the course of investigation into an offence. Although there is an established protocol followed by the ACC while seizing the properties, there is still a room for improvement. For example, there does not seem to be a practice of counter signatures on the documents seized apart from writing down the page numbers, and likewise, specifications and quantity of the valuable properties are not comprehensively recorded. This not only leaves room for potential tampering of the documents and misplacement of properties, but it can also lead to unnecessary false allegations against each other later on.

Therefore, there is a need for the ACC to strengthen its procedure for seizure of moveable properties for better transparency and accountability.

5.3. Implementation of the court's judgment

The issue of lack of judgment implementation was deliberated extensively during the 16th Session of the National Council and a resolution was passed recommending the government to institute a designated unit under the Office of Attorney General to follow up on the implementation of the judgments passed. To this effect, a judgment implementation cell has recently been established in the Office of Attorney General. Despite that, effective implementation of judgments of the courts is still a challenge. There are cases whereby the judgments although have long been pronounced by the courts but the proceeds of the crime are yet to be restituted or recovered.

Considering that restitution or recovery of proceeds of the crime is important to complete the accountability process in relation to the prosecution of corruption offences, it is recommended that henceforth, the OAG and ACC ensure effective implementation of court judgments.

5.4. Preventive strategies for Policy corruption

Policy corruption refers to authorities intentionally taking or not taking certain policy decision(s) to favor individual or a group of individuals at the cost of overall national interest. It is highly detrimental to good governance that can have a far reaching impact on our much desired fair and just society. Policy corruption is difficult to detect as it is more subtle and complex. The seed of policy corruption can potentially originate from political and electoral corruption during elections itself. Therefore, it is imperative to take measures to prevent potential sources that could give rise to policy corruption i.e right from the election period by collaborating with the relevant institution like ECB. Besides, identifying and highlighting potential areas for policy corruption will help create greater awareness and consequently call for greater accountability on all public offices holders. It is also an opportune moment to discuss such issue as we are in the formative year of democracy, when new precedence will have lasting impact on shaping the character of our democracy.

Therefore, NC resolves that ACC identify potential areas of policy corruption that could arise in our democratic set up and suggest measure to prevent such policy corruption and include it in the Annual ACC report next year.

6. Data mining system

Recommend the Anti Corruption Commission to adopt strategic approach towards integrating IT as an extension to its already existing online AD system; by enabling programmed monitoring that will automatically data mine across information systems maintained by agencies that record movable and immovable assets (property records including land, house, vehicle, capital, etc) and cross check and red flag conditions of irregularity in assets, liabilities and taxes contribution of entities. It will be very useful as strong deterrence to corruption, help in reducing seepage of government revenue as a result of tax evasion and also tackling money laundering. This would make it possible to trace proceeds of corruption that get transferred, converted or concealed and making it difficult to go unnoticed by authorities. It will require partnership between relevant agencies, like the many partnerships the Commission already has developed, in order to share information automatically without having to go through current practice of seeking information on a case by case basis based on complaints. The system will be important to the Department of Revenue and Customs and the Royal Audit Authority (electronic auditing) in addition to the Anti Corruption Commission. Concerns of privacy maybe addressed by considering the use of unique numbers generated by the system so that information is shared on a need-to-know basis for the system to redflag case(s) and when such case(s) do arise, more details could be sought immediately.

Sections 8 and 9 under article 8 of the Constitution of Bhutan and several provisions under the Anti Corruption Act 2010 provides basis for consideration of this intervention.

The Commission to report back to the National Council on the status during the next session.

Proposed resolutions for the Annual ACC Report 2015

The National Council,

Noting that out of 283 complaints received from April-December 2015, more than 25% of the complaints were dropped either due to lack of adequate information furnished by the complainant or the complaints had no element of corruption; and such type of complaint neither addresses the problem of a complainant nor helps the ACC in curbing corruption;

Further noting that although there is an established protocol for seizure of properties, the practice of recording specifications and quantity of the valuable properties, and putting counter signatures on the documents seized are not in place, which not only leaves room for potential tampering of the documents and misplacement of properties but could also result in unnecessary false allegations against each other later on;

Concerned that despite the establishment of Judgment Implementation Cell under the Office of Attorney General, effective implementation of the court's judgments is still a challenge as there are judgments although have long been pronounced by the courts but the proceeds of the crime are yet to be restituted or recovered;

Further concerned that owing to an electorate based election system, Bhutan is prone to policy corruption, which is not only subtle and complex to deal with but can have a far reaching detrimental effect on the socio-economic progress of the Country if left unchecked right from the beginning;

Considering that an IT based information sharing system among oversight institutions, tax authorities, and property registration authorities would enable ACC have a direct access to records of an individual's properties, liabilities, and tax contributions; and that the system can be programmed in such a way that will automatically red-flag on any irregularities detected on an individual's assets holdings, rather than seeking information on a case by case basis based on the complaints received;

Recognizing that ensuring adequate financial provision for the ACC at all times is essential for an effective functioning of the ACC, and that various funding options need to be carefully studied;

Deeply concerned that despite its potential to contribute substantially to the economic development and growth of the Country, the Mining Industry is highly prone to corruption due to weak and outdated laws, and inefficient management of the sector.

Hereby recommends the ACC to:

- a) Educate the public on the kind of information that are mandatorily required to be furnished while lodging a complaint, and the importance of substantiating the complaints with evidence;
- b) Strengthen the procedure for seizure of moveable properties for better transparency and accountability;
- c) Ensure effective implementation of the pending court judgments in collaboration with the OAG;
- d) Identify potential areas of policy corruption in our democratic set up and suggest measures to prevent it, and include it in the Annual ACC report next year; and

- e) As an extension to already existing online AD system, develop an integrated IT based information system that will facilitate automatic sharing of information on properties, liabilities and tax contributions, and a report on the status of it be submitted by the winter session of the Parliament.

Resolves that the National Council:

- a) Initiates an amendment of Mines and Minerals Act 1995, and
- b) Conducts a study on financial security strategies for the ACC.