



UNODC

United Nations Office on Drugs and Crime



**BHUTAN
CAPACITY ASSESSMENT
OF THE
ANTI-CORRUPTION COMMISSION**

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EXECUTIVE SUMMARY

Introduction

This report assesses the Anti-Corruption Commission of Bhutan (ACC) at three different levels of capacity: the enabling environment, the organizational level and the individual level. This capacity assessment was undertaken as part of the wider United Nations Convention against Corruption (UNCAC) Gap Analysis which has been initiated by the ACC in order to make the anti-corruption law comprehensive and effective, and as part of the ongoing ratification process (responsibility for which lies with the government). The UNCAC Gap Analysis is currently undertaken by a core team of national technical experts and the process is supported by the regional consortium on UNCAC Self-Assessments (UNDP, UNODC, Institute of Governance Studies and Basel Institute on Governance). This report is an assessment of the existing capacity of the ACC and makes recommendations that will progress its current structure and activities. The report is expected to feed into this overall UNCAC Gap Analysis to be completed by the third quarter of 2010.

Methodology

The Capacity Assessment was undertaken between 19 and 22 April 2010 by a joint UNODC/UNDP team in close collaboration with the ACC staff. The capacity assessment involved preliminary contacts with the ACC to agree upon the agenda of the mission, desk review of key documents and targeted interviews. The work involved desk reviews of ACC literature and manuals, interviews with senior management and interviewed-based questionnaires with staff from the Investigation and Prevention Divisions, and interviews with a number of agencies and individuals in the public service, Legislature and judiciary. No restriction was put on access to material or personnel; all cooperated fully in the mission.

The Assessment was undertaken in a short period, as part of a wider review. It should be seen as an initial assessment highlighting a number of significant issues that may affect the capacity of the ACC to sustain its current approach in terms of staffing establishment and investigation workload. As such the assessment has some limitations, and should be seen as the first-stage approach to a further in-depth analysis of the ACC and its place in the anti-corruption legislative, institutional and procedural landscape.

Country Context

Bhutan has begun a process of democratisation in a small country context, where hierarchy and contact have characterised inter-personal relations, and the relations between the citizen and the state. The inter-relationship between tradition and democratisation, and the time necessary to embed a public sector culture of accountability and public service, means that the potential for corruption does exist.

Corruption perceptions

The levels and volume of corruption is not significant in Bhutan but the potential exists, as democratisation, the development of Bhutan's natural resources, the lower ethical standards of neighbouring countries (and the possible effect on companies from those countries which operate in

Bhutan¹), and the potential for transit crimes, including financial crime through Bhutan's small and underdeveloped banking sector, combine to create opportunity and incentive for financial crime, including corruption, at a faster rate than the institutional arrangements to detect, investigate and sanction it.

Among citizens, a 2007 Corruption Perception Survey (CPS) noted that the trend of 'corruption over the last five years is perceived to be on the rise. Among the list of the possible forms of corruption, '55.5 % strongly agreed 'Nepotism and Favoritism' as the most prevalent form of corruption followed by 'misuse of public funds' (47%) and bribery (44%). Cases of corruption allegedly occur in the public service, where public servants embezzle public funds and other properties.

Overall, the levels and volume of corruption is not significant but the potential exists, as democratisation, the development of Bhutan's natural resources, the lower ethical standards of neighbouring countries (and the possible effect on companies from those countries which operate in Bhutan), and the potential for transit crimes, including financial crime through Bhutan's small and underdeveloped banking sector, combine to create opportunity and incentive for financial crime, including corruption, at a faster rate than the institutional arrangements to detect, investigate and sanction it. In terms of areas of concern, much of the risk of potential corruption lies in nepotism and favouritism and misappropriation – i.e., a reflection of a public official's failure to understand public service and the responsibilities of public office – as it does from the risk of bribery; this is confirmed both by the ACC's CPS and by its more recent Integrity Assessment reviews. This in turn points to the importance of prevention - reviewing the controls and ethical environments in public bodies - as much as for having a robust investigative response.

United Nations Convention against Corruption (UNCAC)

Bhutan has not yet acceded to the UNCAC, but the government may decide so in the future. As the most comprehensive global framework to fight corruption, the institutional requirements under UNCAC are relevant to take into consideration. The UNCAC specifies three types of agencies²: a body or bodies to support Article 5 implementation (Article 6), a body or bodies or persons addressing the investigation of corruption through law enforcement (Article 36), and a Financial Intelligence Unit (Article 58). The breadth of the responsibilities under Article 5 suggests that the body or bodies under Article 6 would not normally be solely an anti-corruption agency. It is preferable that wider ownership is sought, across ministries, legislature, state audit, civil society and private sector, although specific responsibilities could be delegated to such an agency. On the other hand, it is possible for an Anti-corruption Commission (ACC) to on Article 6 responsibilities as well as those proposed under Article 36. Furthermore, it could take on functions discussed in UNCAC that are complementary to investigative responsibilities, including: inspection of government departments, managing any asset declaration regime, and education and awareness.

Legal Framework

¹See Table 2, p10 below. Further, the 2008 Transparency Index Bribe Payers Index noted that 'Companies based in emerging economic giants, such as China, India and Russia, are perceived to routinely engage in

² The UNCAC often mentions 'body or bodies' indicating that certain duties could be undertaken in collaboration by multiple agencies.

Aware of the potential risks or threats for increasing corruption in the current development context, the government of Bhutan has taken a number of legal, institutional and procedural steps both to anticipate and address such issues by reforming existing institutions or establishing new laws and institutions. The 2008 Constitution specifically states in Article 8 that *'every person shall have a duty to uphold the law and to act against corruption'*.

Institutional Arrangements

The overall the anti-corruption environment has developed unevenly. While the RAA is effective, it is not integrated with a functioning internal audit service (IAS). An IAS is established by the management of any government ministry or public agency and, although operating independently, should be part of the overall management function of the organisation. The RCSC has yet to undertake its monitoring and evaluation role with respect to HR in ministries and agencies. The civil service as a whole is uneven in its approach to the establishment of a basic ethical framework and appears reluctant to integrate the increasing amount of information produced by the ACC on areas of vulnerability and risk into their work plans. The roles of parliamentary oversight and accountability are not yet developed in relation to the national anti-corruption strategy and ministry efforts to promote ethical environments. There is also still a learning process as to the exact relationship between the legislature and the civil service, and where the general responsibility for governance should lie. In terms of the strategy, shifting primary responsibility for prevention to ministries has not yet been achieved. In particular there is an absence of the development of an ethical environment in ministries, a controls framework and a structured ethics training programme.

The integration of the roles of various agencies and the use of the national anti-corruption strategy as a common focus has yet to be fully achieved and thus the work of the ACC is not yet fully mainstreamed.

A number of actions that are necessary to achieve this are largely outside the remit of the ACC by itself but there are five issues that would facilitate its work; the first concerns a more formal inter-agency relationship to ensure allegations of corruption are addressed, whether through the ACC or through disciplinary action by a ministry; the second concerns the introduction of an Internal Audit Strategy; the third relates to the integration of the ACC's work on Integrity Assessments and systems studies into the development of wider ethical environments; and fourthly all public sector agencies should be more engaged in the development and delivery of the National Anti-corruption Strategy. Overall, there will need to be a more coherent and coordinated approach to prevention.

The ACC

As an organisation the ACC is a well-organised agency, reflecting good practice approaches to management and delivery of its functions. It has determined its roles and responsibilities and established a strategy that integrates the three areas of activity – education, prevention and investigations – by improving the quality of complaints through education, investigating substantive complaints, and using the evidence from investigated cases to inform its review of systems weaknesses through its systems studies. It is developing its preventative responsibilities through the Integrity Assessment and systems reviews approaches.

Organisationally it has an accessible and open management approach, with detailed and documented procedures. It needs to review its approach to staff training, both for new recruits and for the development of specialist competences in both investigations and prevention.

The biggest staff issue related to the future of the organisation in terms of whether it remained part of the RCSC framework or whether it de-linked to become an independent agency. This was also the main management issue because the commissioners wish, in terms of capacity development, to be responsible for delivering a stable, trained and evolving institution. This in turn would mean having ownership of recruitment criteria, training and career and promotion prospects, and the continuing development of the current culture and ethos of the organisation.

Recommendations

The Report makes a number of recommendations, summarised as follows:

Main Enabling Environment Recommendations:

1. *Internal Audit*: the government needs to establish an internal audit framework, with a 3 year plan to recruit, train and operationalise internal audit. While a management function, internal audit should have formal reporting arrangements with the RAA.
2. *Inter-agency working*: there needs to be a more formal working relationship between agencies directly involved in the investigation of corruption in terms of shared information and investigations and to work on the revision of and delivery of the National Anti-corruption Strategy.
3. *Systems Studies and Ethical Environment Reviews*: together, the RAA and internal audit and the ACC need to agree the use of ACC-led Integrity Assessment and systems studies reviews as a risk- or case-based review procedure for all ministries as part of the latter's responsibilities under the strategy. This should be part of a formal requirement of a revised national anti-corruption strategy within which ministries devise and produce an ethical environment review, together with an annual action plan to address fraud and corruption on the basis of internal audit work, the ACC's systems studies and the RAA's reports.

While internal audit and the RAA are primarily responsible for the controls environment (and for which the Public Accounts Committee should take the lead in providing cross-ministry oversight for its implementation and effectiveness), the Prevention Division of the ACC should take lead responsibility in leading on systems studies, facilitating ethical environment reviews and leading on developing structured dilemma-based ethics training programmes.

4. *The National Anti-corruption Strategy*: to underpin these initiatives, the national anti-corruption strategy and associated action plans should be revised to provide specific guidance on responsibilities, on the documentation to be produced (and to whom) and, in the action plans, the specific, quantitative activities to be undertaken to what timeline.

Main ACC Organizational Recommendations:

1. *Staffing*: to develop as an organisation, and progress its capacity development, the ACC is significantly under-staffed, exacerbating issues relating to recruitment and retention, as well as specialisation of staff, and career progression. This will be worsened if staff turnover adversely

affects institutional memory, deployment of acquired specialist skills, and internal promotion of experienced staff. The establishment of the ACC should be at least 50% above current levels.

2. *Skills*: on-the-job training is no substitute for practitioner-led in-house training in the core skills for all new staff, allowing a degree of flexibility and cross-Division support. Specialised competences and training in management should be developed, possibly in conjunction with external providers. The ACC needs a more grounded training framework, with a better balance between in-house and overseas courses, and a more effective mentoring programme, through a TNA.

3. *Resources*: the move to new premises should coincide with dedicated interviewing rooms, evidence storage room and case management room (an investigations room where all the material and planning for a live case takes place). Furthermore, appropriate tape and video recording equipment are lacking, as well as forensic tools for interrogation of electronic devices, such as PCs. A dedicated server should be installed, preferably with a basic case management system that also includes software for, for example, charting.

4. *Establishment*: the longer-term issue, concerning the development of organisational capacity and stability, involves both the retention of existing staff and the recruitment of new staff. The possibility of building on its current complement, particularly its senior management, is also caught up in the independent agency and the delinking issue. This revolves around whether the independent agencies should be moved outside, and thus delinked from, the remit of the RCSC, setting their own terms and conditions of service and appointing their own staff.

It would, for an agency investigating wrongdoing across the political and administrative sectors, sensible to allow that agency, within agreed parameters, the authority to establish its own staffing establishment, recruit those staff it considers suitable for the agency, train and promote them, and ensure that it has the expertise, experience and management competencies necessary to deliver its mandate on a long-term basis. Internally, there are many positives about working for the ACC, which are articulated by staff and should provide the basis of recruitment (such as skills training, the work environment and the type of work). The question of the image of the ACC will change as its roles and responsibilities become accepted – and especially when the RCSC, public service agencies and ministries, and the Legislature begin mainstreaming its work and profile as important to the national interest and of value to the national good.

The commitment of the current leadership, and the potential pool of recruitment, as well as the benefits that could be promoted as part of a recruitment strategy, suggest that delinking would be the preferred way to allow it to continue its progress toward successful organisational development, capacity, stability and performance.

ACC Capacity Development

While responsibility for responding to or addressing a number of the issues noted above and in the report, such as an Internal Audit Strategy, lies elsewhere, most of the above issues and recommendations, from the role of the ACC in facilitating the development of ethical environment to managing its investigative workload come down to two matters.

First, the ACC's establishment is at least 50% below what it should be, for the management structure it should have, the type of work and staff competencies it needs to undertake to fulfil its mandate,

and the importance of developing and retaining a permanent cadre of qualified and committed staff for succession planning and for ensuring stable capacity development.

Second, this will not be placed on a certain basis until the question of delinking – operating as an independent agency responsible for its own staffing - or remaining within the remit of the RCSC – where the ACC will be another civil service body in terms of establishment, recruitment, and so on - is addressed. In terms of the Civil Service Bill, the ACC has 3 options:

1. stay within the remit of the RCSC.

Currently, this has consequences for staff establishment, staff turnover and commitment in terms of who is allocated to the ACC, terms and conditions of service, criteria for promotion, career development, how long the staff stay and how committed they are to the work and ethos of the ACC. If remaining within the remit of the RCSC was to be the outcome, it should be done so that the ACC could insist in terms of Chapter VIII of the proposed legislation that it retains its experienced and qualified staff. On the other hand, and in terms of the rights of the civil servant, it would find it difficult to retain staff against their preferences or expressed career development.

The ACC could seek to have its particular requirements recognised in the legislation or by the RCSC. While this may be unusual in the Bhutanese context, it is not unusual for such agencies, given their specific requirements, to have a degree of flexibility not generally available to other civil service departments to deliver their functions. This could provide the ACC with an increasing annual budget and the right to appoint its own staff, as well as establishing appropriate terms and conditions of service (already recognised by the enhanced salaries already being paid). Such an approach, including the more general benefit of ACC-trained staff taking up posts elsewhere in the civil service, would allow the ACC to then determine its approach to staffing in ways that sustaining its current successful organisational development and capacity.

2. become delinked.

In terms of the work of the ACC, delinking would allow full ownership of the capacity development to lie with the ACC leadership which would also be responsible for all recruitment criteria, training and career and promotion prospects. It would also allow the ACC leadership to continue the development of the current culture and ethos of the organisation.

On the other hand, delinking must not be implemented quickly, given the potential loss of staff noted above. It will require a 3-5 year disengagement process within which it could operate a 1-in, 1-out rolling replacement process of both management and staff. Once outside the remit of the ACC and responsible for its own staffing, the ACC could also seek, as do other agencies with high staff turnover, to offer further financial benefits to lock-in its existing senior staff for longer periods of time or until retirement until it can train up replacements. It can offer significant training opportunities for newly-recruited staff - drawn from the larger pool of graduates than those recruited into the civil service - who, in return, agree a contractual arrangement whereby they must stay for a number of years before seeking other career opportunities (which will emerge in due course in, for example, banking compliance, internal audit and other services). It could experiment in recruiting support,

police, customs and other staff for fixed term, full-time or part-time tasked work (such as interviewing or statement-taking or document-handling).

Again as noted above, the main issue related to the future of the ACC, career development and the question of delinking. The quicker this is addressed then the sooner can organisational stability be achieved and senior management can focus on continued capacity development with an expanding but stable staff base. To do so, delinking would provide a much more amenable framework than remaining within the remit of the RCSC and would be supported by this review.

INTRODUCTION

This report assesses the Anti-Corruption Commission of Bhutan at three different levels of capacity: the enabling environment, the organizational level and the individual level. This capacity assessment was undertaken in the month of April 2010 as part of the wider United Nations Convention against Corruption (UNCAC) Gap Analysis which has been initiated by the ACC in order to make the Anti-Corruption law comprehensive and effective. The UNCAC Gap Analysis is currently undertaken by a core team of national technical experts and the process is supported by the regional consortium on UNCAC Self-Assessments (UNDP, UNODC, Institute of Governance Studies and Basel Institute on Governance). This report is expected to feed into this overall UNCAC Gap Analysis to be completed by the third quarter of 2010.

I. METHODOLOGY

The Capacity Assessment was undertaken between 19 and 22 April 2010 by a joint UNODC/UNDP team in close collaboration with the ACC staff. The capacity assessment involved preliminary contacts with the ACC to agree upon the agenda of the mission, desk review of key documents and targeted interviews.

In terms of documentation, the team had access to: the 2009 ACC annual report; the ACC annual work plans; the National Anti-corruption Strategy Framework; the 2007 Corruption Perception Survey; a 2007 Appraisal commissioned by the ACC; the National Integrity Assessment Report; the Operations Manual; a 2007 Crown Agents consultancy report; Proceedings and Resolutions of the 3rd Session of the National Assembly; Proceedings and Resolutions of the 4th Session of the National Assembly.

In terms of interviews, the methodology essentially consisted of a quick 360-degree review involving interviewing ACC management, ACC staff, and stakeholder institutions within a desk review of the legislation, procedures and other material relating to the ACC. The interviews were based on 3 pre-determined questionnaires which addressed personnel competence, institutional capacity, and inter-institutional perceptions. The information elicited through those interviews is presented in the report, either as narrative or in tabular format.

The Terms of Reference and Timetable of the mission are attached in Annexes 1 and 2. The assessment team submitted a short questionnaire in advance on inter-institutional relations as annex to the TORs. Both the team and the ACC worked on a deliverable agenda and access to the relevant staff and agencies. During the assessment, there was full access to staff and documentation, as well as cooperation from relevant ministries and agencies (other than the Royal Bhutanese Police who were unable to offer up any member of staff during the visit because of a forthcoming international conference).

The caveat to the methodology was that the time for the assessment was limited but adequate for the purposes of the Gap Analysis. It was not, however, a substitute for a full organisational capacity assessment, which would have required a much more detailed analysis of all the institutions involved in anti-corruption work and of all the staff in the ACC, drawing upon several methodologies that would have allowed for a much full interrogation and stratification of the responses.

II. ENABLING ENVIRONMENT

1.1 Country Context

Bhutan is a landlocked country with nearly 700,000 inhabitants, bordered by India and China. Bhutanese society has been stratified along ethnic and class lines. It has a constitutional monarchy, and is governed by a democratically-elected government which holds 45 of the 47 seats in the National Assembly (although sharing 66% of the vote with the opposition party that holds the other 2 seats). The Assembly is one chamber of a 2-chamber legislature; the other chamber is the National Council. This comprises 20 elected posts, for which a university degree and no political party membership are constitutional requirements, and 5 posts nominated by the King. The administrative and judicial system is based on 20 Districts (Dzongkhags); the Dzongkhag governors are government appointees. The economy is dominated by agriculture and forestry on the one hand, and mining and hydroelectricity on the other; most businesses are micro-businesses or SMEs although a number are involved in external activities, including mining and tourism.

The developmental trajectory of the country has, as a 2007 Appraisal of the ACC noted, left a number of features that could allow corruption to occur:

- (i) concentration of powers
- (ii) weak or non-existent check and balance
- (iii) poor transparency;
- (iv) restricted access to information;
- (v) lack of accountability;
- (vi) undefined discretionary powers;
- (vii) unclear rules and procedures;
- (viii) elaborate regulatory systems;
- (ix) weak oversight and enforcement;
- (x) patronage, and
- (xi) high tolerance for corruption.

Bhutan has begun a process of democratisation in a small country context, where hierarchy and contact have characterised inter-personal relations, and the relations between the citizen and the state. The inter-relationship between tradition and democratisation, and the time necessary to embed a public sector culture of accountability and public service, means that the potential for corruption does exist.

1.2 Corruption Perceptions

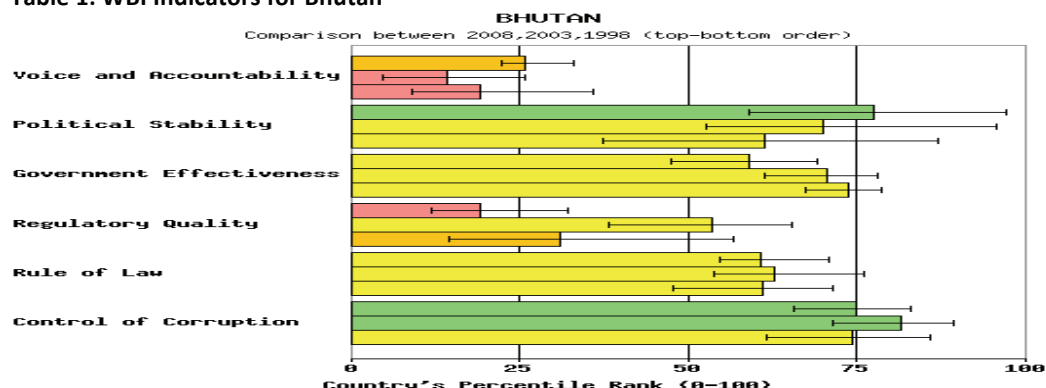
Among citizens, a 2007 Corruption Perception Survey noted (on the basis of a sample survey of over 6000 respondents) that the trend of 'corruption over the last five years is perceived to be on the rise. 43.8% of the respondents feel corruption in the last five years to have increased while 33.8 % perceive status quo'. Further, the survey noted that, among the list of the possible forms of corruption, '55.5 % strongly agreed 'Nepotism and Favoritism' as the most prevalent form of corruption followed by 'misuse of public funds' (47%) and bribery (44%). Conversely, only 4.4 % disagreed that nepotism and favoritism exist'.

Nevertheless, as democratisation has gradually been introduced, the general assessment was that corruption was not an issue: 'the cases of corruption is not very rampant in Bhutan. The small cases

of corruptions occur in the public service, where public servants embezzle the public funds and other properties³.

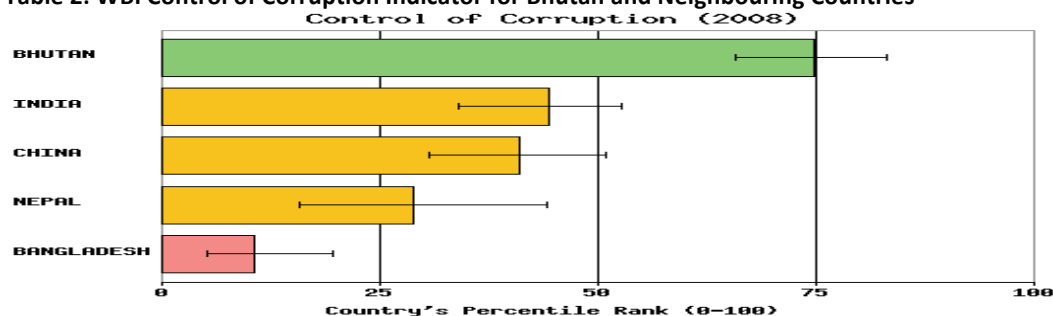
Similar perceptions occur both in terms of surveys of Bhutan and in terms of addressing corruption as compared to a number of neighbouring countries (Table 1 and Table 2):

Table 1: WBI Indicators for Bhutan



Source: Kaufmann D., A. Kraay, and M. Mastruzzi 2009: Governance Matters VIII: Governance Indicators for 1996-2008
 Note: The governance indicators presented here aggregate the views on the quality of governance provided by a large number of enterprise, citizen and expert survey respondents in industrial and developing countries. These data are gathered from a number of survey institutes, think tanks, non-governmental organizations, and international organizations. The WGI do not reflect the official views of the World Bank, its Executive Directors, or the countries they represent. The WGI are not used by the World Bank Group to allocate resources.

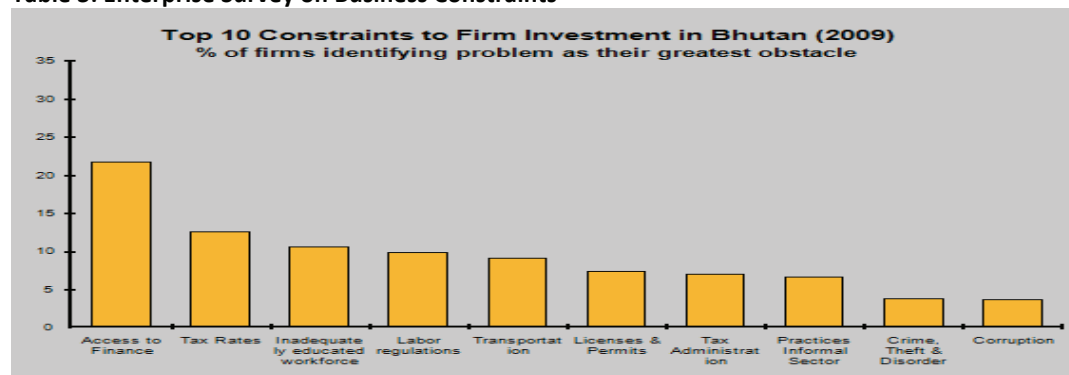
Table 2: WBI Control of Corruption Indicator for Bhutan and Neighbouring Countries



Source: Kaufmann D., A. Kraay, and M. Mastruzzi 2009: Governance Matters VIII: Governance Indicators for 1996-2008
 Note: The governance indicators presented here aggregate the views on the quality of governance provided by a large number of enterprise, citizen and expert survey respondents in industrial and developing countries. These data are gathered from a number of survey institutes, think tanks, non-governmental organizations, and international organizations. The WGI do not reflect the official views of the World Bank, its Executive Directors, or the countries they represent. The WGI are not used by the World Bank Group to allocate resources.

Furthermore, corruption is not the main issue facing businesses in Bhutan (Table 3) and certainly not as significant as it is regionally (Table 4):

³ (Wang, G. (2003). 'Bhutan/Bhutan: Corruption Control In Criminal Justice'. *Revue internationale de droit pénal*. Vol. 74. p483.

Table 3: Enterprise Survey on Business Constraints**Table 4: Business Perceptions of Illicit Payments**

	<i>Corruption</i>	<i>hutan</i>	<i>Region</i>	<i>All countries</i>
<i>% of Firms Expected to Pay Informal Payment to Public Officials (to Get Things Done)</i>		10.05	34.68	27.05
<i>% of Firms Expected to Give Gifts to Get an Operating License</i>		1.40	20.73	16.21
<i>% of Firms Expected to Give Gifts In Meetings With Tax Officials</i>		2.54	30.63	16.73
<i>% of Firms Expected to Give Gifts to Secure a Government Contract**</i>		6.96	31.39	28.55
<i>% of Firms Identifying Corruption as a Major Constraint***</i>		6.04	33.77	36.12

Source: www.enterprisesurveys.org

On the other hand, Bhutan may be at risk from ‘companies based in emerging economic giants, such as China, India and Russia, are perceived to routinely engage in bribery when doing business abroad’ – see Table 5.

Table 5: Rankings from the TI Bribe Payers Index (the higher the ranking the greater propensity to bribe by companies from the countries concerned; 22 is the worst ranking)

Rank	Country/Territory	BPI 2008 Score	Respondents	Standard Deviation	Confidence Interval 95%	
					Lower Bound	Upper Bound
5	Japan	8.6	316	2.11	8.3	8.8
8	Australia	8.5	240	2.23	8.2	8.7
9	Singapore	8.1	243	2.60	7.8	8.4
13	Hong Kong	7.6	288	2.67	7.3	7.9
14	South Korea	7.5	231	2.79	7.1	7.8
14	Taiwan	7.5	287	2.76	7.1	7.8

19	India	6.8	257	3.31	6.4	7.3
21	China	6.5	634	3.35	6.2	6.8

Source: Transparency International 2008

Nevertheless, as the 2007 Royal Audit Authority report noted: 'it is generally accepted that procurement and construction are the major areas which are highly susceptible to fraud and corruption. In Bhutan where private construction companies are still in developing stage and the government being the major consumer of goods and services, the risk is even greater' (2007 Audit Report: Summary of Audit Findings. p27 at www.bhutanaudit.gov.bt). The 2008 RAA report, however, noted reported that fraud and corruption were not identified as significant issues, especially when compared to losses from irregularities of payments and advances, and poor or absent record-keeping).

In summary, the levels and volume of corruption⁴ is not significant but the potential exists, as democratisation⁵, the development of Bhutan's natural resources, the lower ethical standards of neighbouring countries (and the possible effect on companies from those countries which operate in Bhutan), and the potential for transit crimes, including financial crime through Bhutan's small and underdeveloped banking sector⁶, combine to create opportunity and incentive for financial crime, including corruption, at a faster rate than the institutional arrangements to detect, investigate and sanction it. In terms of areas of concern, much of the risk of potential corruption lies in nepotism and favouritism and misappropriation – i.e., a reflection of a public official's failure to understand public service and the responsibilities of public office – as it does from the risk of bribery. This in turn points to the importance of prevention - reviewing the control environment in public bodies - as much as for having a robust investigative response.

1.3 United Nations Convention against Corruption

Bhutan has not yet acceded to the UNCAC, but is currently undertaking an UNCAC Gap Analysis in order to make the Anti-Corruption law comprehensive and effective. In this regard, the institutional requirements under UNCAC are relevant to take into consideration.

The UNCAC specifies three types of agencies⁷: a body or bodies to support Article 5 implementation (Article 6), a body or bodies or persons addressing the investigation of corruption through law enforcement (Article 36), and a Financial Intelligence Unit (Article 58).

The requirements of Article 6 are for a body or bodies responsible for:

⁴ For the purposes of this report, corruption relates to those offences covered by the Bhutanese 2006 Act that established the Anti-corruption Commission (ACC).

⁵ The National Council of Bhutan issued a report warning of the consequences of the National Assembly proposing an annual 2mNu (\$45,000) community development grant for its members, and the potential conflict between MPs' roles as providing impartial oversight of public expenditure, local government expenditure and electioneering.

⁶ Bhutan, for example, does not have an FIU and its money laundering enforcement regime is weak.

⁷ The UNCAC often mentions 'body or bodies' indicating that certain duties could be undertaken in collaboration by multiple agencies.

(a) Implementing the policies referred to in article 5 of the Convention and, where appropriate, overseeing and coordinating the implementation of those policies;

(b) Increasing and disseminating knowledge about the prevention of corruption.

The roles allocated to a body or bodies under Article 5 relate to the development of coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability. This breadth of the responsibilities under Article 5 suggests that the body or bodies under Article 6 would not normally be solely an anti-corruption agency. It is preferable that wider ownership is sought, across ministries, legislature, state audit, civil society and private sector, although specific responsibilities could be delegated to such an agency.

Under Article 36 no functions or responsibilities are specified by the UNCAC. However, it is clearly stated that the body, bodies or persons will be operating in a law enforcement context. In terms of analyzing what the responsibilities of such a body or persons might be, Chapters 3 and 5 on criminalization and asset recovery provide an extensive portfolio of offences to be addressed, including:

- *a series of specific criminal offences including not only long-established crimes such as various forms of bribery and embezzlement, but also conduct which may not already be criminalised in many States, such as illicit enrichment, trading in official influence and other abuses of official functions;*
- *a series of conduct offences intended to protect the investigation of corruption, including offences relating to obstruction of justice, protection of witnesses, experts and victims and others, use of specialist techniques, data sharing, joint operations;*
- *money-laundering, the seizing, freezing and confiscation of proceeds or other property, mechanisms for both civil and criminal recovery procedures, whereby assets can be traced, restrained or frozen, seized, confiscated or forfeited and returned.*

In practice, a number of anti-corruption agencies not only take on responsibilities for the anti-corruption policies under Article 5 but also other functions discussed in UNCAC that are complementary to investigative responsibilities, including: inspection of government departments, managing any asset declaration regime, and education and awareness.

These functions are often inter-connected but will clearly impact on an agency's appropriate resourcing and staffing capacity.

1.4 Legal framework

Aware of the potential risks or threats for increasing corruption in the current development context, the government of Bhutan has taken a number of legal, institutional and procedural steps both to anticipate and address such issues by reforming existing institutions or establishing new laws and institutions. The 2008 Constitution specifically states in Article 8 that '*every person shall have a duty to uphold the law and to act against corruption*'.

The Penal Code (Part Four) – Commercial Crime, Fraud, Corruption and Related Offences - covers a wide range of offences, including official misconduct, bribery, tampering with official documents, computer offences, money laundering. The 2005 Evidence Act and the 2001 Civil and Criminal

Procedures Code provide a procedural framework, including restraint, asset recovery, wiretap, evidence admissibility, and plea bargaining.

The ACC has responsibility for three areas, prevention, public education and investigation. The last of these, investigation, deals with the following offences defined in law:

- Unethical and dishonest act;
- Abuse of authority;
- Use of position of trust for dishonest gain;
- Giving or enabling a person to receive preferential treatment;
- Abuse and misuse of public resources;
- Committing fraud in public election;
- Leaking revenue, privileged information and knowledge;
- Abuse of privileged information;
- Acting with *malafide* intention to derive wrongful gain;
- Falsifying document;
- Tampering with or destroying public entity's document;
- Breaching of confidentiality of official duty or documents;
- Indulging in illegal commerce and business including fronting;
- Giving false report;
- Causing damage to public property;
- Retaining gift;
- Coercing a person to commit an offence of corruption;
- Acquiring property wrongfully;
- Evading tax;
- Delaying of decision and action deliberately for wrong motives; or
- Facilitation of payment.

1.5 Institutional Arrangements

1.5.1 Royal Audit Authority

The Royal Audit Authority (RAA) has been in existence since 1977; its current iteration as an independent agency was established by legislation in 2006. The authority has approximately 180 auditors and 50 support staff. Most of the auditors are not professionally-qualified and there is a lack of specialist expertise. Nevertheless, the responsibility of the RAA covers all agencies, including the armed forces, religious institutions, CSOs and any company in which there is 'public interest'. The RAA undertakes the full range of audit functions including value-for-money (VFM), performance, financial and systems audits. All institutions are audited at least once in 2 years; government ministries are audited annually and others on the basis of a risk assessment. The ACC has the prerogative to request the RAA to conduct an audit.

Most of the RAA's work is focused on the three audit Es – economy, efficiency and effectiveness and benefit to the public. Its instruction manual details what could be a fraud or a case of corruption. Although in the past the RAA could progress prosecutions, reports on potential fraud and corruption cases are now, by law, passed to the ACC. Where audit ends, ACC investigation begins. The Auditor-General informs the ACC Chairperson, both informally in person and through formal reports. These reports are also appended to the annual report RAA makes to the Public Accounts Committee, a joint committee of the National Council and National Assembly. The annual report includes names of civil

servants and the Public Accounts Committee has questioned these in some instances. Specific guidance on aspects of fraud and corruption is provided on the RAA website.

The RAA makes recommendations on procedural improvements which can be enforced by a parliamentary resolution. Failure to do so, including subsequent confirmation of the improvements by the RAA, can affect a public official's career where he or she has supervisory liability. The civil servant may be debarred from promotions, training opportunities and post-retirement benefits. The RAA can also apply 24% surcharges if its audit recommends repayment of public monies.

1.5.2 The Royal Monetary Authority

The Royal Monetary Authority (RMA) is the Central Bank. There are 4 banks operating in Bhutan (2 are state-owned; 2 are part-owned by Indian private sector companies). The RMA is responsible for issuing regulations to banks operating in Bhutan on prudential banking, including Know Your Customer (KYC) and other controls assurance requirements. From 2010 financial institutions are required to report Suspicious Transaction Reports (STRs), with no limits, to the RMA's Financial Institutions Supervision Division which will check and, where appropriate, pass through the board to the police, Attorney-General's Office or the ACC. Although a small number of STRs have been submitted to the Division, to date none have been considered worth passing over. The RMA is in the process of establishing an FIU through a Financial Services Act to be enacted later this year; support on its establishment is provided by the ADB. It is expected that appropriate anti-money laundering (AML) and proceeds of crime (POC) legislation will follow in due course. The amended Anti-Corruption Bill – in draft at the time of the assessment - addresses both issues (there are sections on money laundering and proceeds of crime although it would appear that the legislation is not clear about value-based confiscation, or issues of movement and co-mingling, and the money laundering sections need developing).

1.5.3 Office of the Attorney General (OAG)

The OAG was established in 2008; before that it was known as the Department of Legal Affairs, established in 2000. There are nine prosecutors in the OAG's office. They have a standard manual of guidance which is essentially based on an evidential test and a public interest test (the ACC includes a version of this for their investigators in the ACC Operations Manual). Although prosecutors can give advice on cases to the ACC, the OAG's office does not normally have any engagement in the investigative process and the ACC does not normally ask it for advice until the case file is submitted.

Of the 119 charge sheets submitted to the courts since 2008, 71 have related to ACC work. As a consequence of the 2009 Police Act, however, all felony cases will also come to the OAG and will substantially increase the workload of the office. Further many of the new cases will have to be prosecuted in district courts which could lead to the situation where the majority of prosecutors are not actually physically available in the capital.

In relation to ACC work, the OAG is generally satisfied with the constitution of the case files. Only in two cases did the OAG have some concerns over evidential sufficiency and over the level of the seriousness of the case (as administrative action seemed more appropriate than criminal action).

1.5.4 The Judicial System

The judicial system comprises a supreme court, high court, district courts and sub-district courts. There are four supreme court judges and five high court judges. The courts are courts of general jurisdiction and will deal with both criminal and civil cases. There is no jury trial.

The ACC has legal standing in court. On a number of occasions the High Court has backed the ACC in its interpretation of the law, for example, on the non retroactive application of the anti-corruption law and on the non double jeopardy for cases following parallel administrative proceedings. These favourable interpretations of the law have facilitated the anti-corruption work by the ACC.

The high court has a backlog of some 13-25 cases but, according to an interviewee, ACC cases were fast-tracked. There are specified deadlines on the opening and closing of cases as well as for providing judgements. The overall view of the work of the ACC, and cases progressed to court, is that both the OAG's prosecution guidelines and the ACC's referral guidelines are entirely suitable and that the cases received from the ACC are well documented and evidenced.

It is only in relation to sanctions that the courts feel that the ACC may be disposed to the maximum custodial sentence in each case when the court itself may prefer exercising a greater degree of leniency⁸. The role of confiscation and asset recovery is recognised by the ACC as an anti-corruption deterrent but it is accepted that the courts are not fully conversant with their use as an integral sanction. Proceeds of corruption may be retrieved by confiscation of property of the convicted, except for the ancestral home (which is exempt of confiscation under Bhutanese law).

The Judiciary and ACC exchange views and discuss anti-corruption matters during the Judiciary's annual conference and smaller bilateral fora. The Judiciary also extends its support to ACC, whenever requested, in building its legal capacity.

1.5.5 Legislature

The Parliament has two houses, the National Council and the National Assembly; elections to the former were held in 2007 and to the latter in 2008. The National Council has six committees, including the Good Governance Committee. This committee is responsible for reviewing legislation such as the Civil Service Act and the National Anti-corruption Strategy Framework. The committee reviews the annual report of the ACC and passes resolutions in relation to what should be done by whom in relation to anti-corruption work.

The National Assembly has 14 committees, including a Public Accounts Committee. Another is the Ethics and Credentials Committee. This has 5 members and also receives the ACC's annual reports via the speaker. The Committee will discuss the report with the ACC, and the Committee's report is presented to the National Assembly by the chair.

Its report to the second session of the National Assembly included some 13 recommendations which covered the role of internal audit, the need to sensitise local government to anti-corruption issues, the ownership of the national anti-corruption framework, the introduction of a civil service code of

⁸ In any case, up to a 3 year sentence may be commuted by payment of a stated fee per day of imprisonment. In relation to a public official receiving a sentence of 1 year or more, this may also be the case but the sentence carries mandatory dismissal which, if upheld on appeal, means the official can never again be appointed to a public post under the remit of the Royal Civil Service Commission.

conduct, the need to implement effectively the requirements on gifts and asset declaration and the strengthening of the auditor general's office. At its fourth session, the National Assembly, reviewed the 13 recommendations and found 8 to have been implemented.

The National Council's Good Governance Committee is supportive of the work of the ACC, believing it has the appropriate leadership and approach although sometimes it considers it is overly reactive in terms of its investigations and lacking engagement at the local level. The Ethics and Credentials Committee is supportive of the work of the ACC; its concerns lie more with the development of good governance arrangements with the civil service, including internal accountability of supervisors, and more shared information between the ACC, the Land Commission and the Tax Authority.

1.5.6 Civil Service

a) *The Royal Civil Service Commission*

Recruitment to the civil service is undertaken by the Royal Civil Service Commission (RCSC), an independent agency. There are 5 commissioners established under the Constitution who are responsible for the recruitment and placement of new public officials. Some 800 applications are received a year who are both required to attend for interview and examination. Generalist recruits get one year of training in development management at the only institute of management, Thimphu.

At this point, they are re-ranked according to their competence during training and their performance on recruitment and may choose available vacancies according to that rank. In-service recruitment is dealt with through advertisement and there is some decentralisation in allowing ministries to recruit directly up to a certain grade (the first 13 grades of the 17 graded in the public service). In 2006 all agencies were required to appoint an HR committee to manage the human resource more transparently and professionally and to promote training. The RCSC can check the minutes of such committees if there are any concerns but is aware that not all ministries or agencies are effective in their recruitment, appointment and promotion procedures. The RCSC in the future will have a greater focus on HR audit, monitoring, and evaluation with a focus on both the rules and their implementation.

A new Civil Service Bill is currently under review. The major issue concerns the desirability of "de-linking" independent agencies, such as the ACC, from the civil service. Current legislation, such as the Anti-Corruption Law, the Election Law and the Judicial Services Act, provide independent agencies with responsibility for their recruitment and terms and conditions of service which are largely in line with the civil service rules and regulation. However, the new Civil Service Bill would repeal those provisions under the existing legislation. As such, some argue, the Civil Service Bill would be unconstitutional.

The controversy relates to the level of autonomy an independent agency has over its financial and human resources, as guaranteed by the Constitution. An independent agency who remains part of the RCSC framework will receive its staff according to rankings and vacancies; it will not be able to recruit its own staff directly above grade 13 (for example, the ACC Secretariat Director) and nor will it be able to set its own terms and conditions of service. It will be able to do this if it delinks, but this raises 2 further issues.

For the ACC this would mean that it would not be able to draw on the pool of new recruits that come through the RCSC. Secondly, current staff, if they are interested in a general civil service career, would need to leave the ACC prior to delinking - but only if there was a vacancy for which they could apply. Those who do not wish to remain in a delinked ACC and who wish to move to another public agency also face the problem that if there is no vacancy they cannot move. If no vacancy arises in up to six months after delinking, they are deemed to have resigned from the civil service. Any public servant who resigns or retires from the civil service is debarred by law from ever applying for another civil service post. This is an issue for current ACC staff; it may be an issue for the future recruitment of staff. At present, of the approximately 1000 graduates that come out of colleges, the RCSC selects only about 200-300 annually. There is therefore, a larger pool outside the RCSC recruitment. The issue is discussed further below.

b) The Civil Service

The civil service has had a degree of autonomy in its operations, including recruitment and in-service appointments. The operating framework is the Improving Public Service Delivery System (IPSDS, now Good Governance Affairs (GGA), located in the Cabinet Office). This addresses standardisation of services, simplified procedures, decentralisation, one-stop shops and outsourcing.

Internal audit has been introduced in the Bhutanese public service from 2001, currently 9 ministries have a total of 17 auditors (from a proposed establishment of 25). The 2007 Public Finance Act places responsibility for internal audit with the Ministry of Finance which will have the coordinating role when they are able to appoint a suitable member of staff. At present there is no internal audit plan; it is up to each ministry to establish the work tasks of their audit staff although there are internal audit standards in most ministries. There is no working link between internal audit and the RAA, although there is a forum between the RAA, the ACC and internal audit units, established in April 2006 by the ACC.

The Ministry of Finance is also responsible for procurement laws and regulations through its public procurement policy Division. This Division has 4 staff who are responsible for maintaining procurement manuals and dealing with complaints. Currently the Division is about to undertake training with the UK Institute of Purchasing and Supply. In 2009, the government adopted new procurement rules and regulations, following extensive stakeholder consultations.

Despite the introduction of a number of oversight agencies (although there is no Ombudsman), the relationship with these agencies is a work in progress. The establishment of a post responsible for dealing with asset declarations and achieving 100% compliance as the first step toward a functioning system is uneven and, in relation to receipt of gifts (mandated by s.138 of the Ant-corruption Act), only one ministry – Economic Affairs – has set up appropriate procedures.

Conflict-of-interest, especially non-financial interests, has not been addressed. Despite a generic code of conduct, their adaptation for specific ministries and agencies has also been uneven. There is no new-recruit and in-service public ethics training. Both the Ministry of Education and the Royal University of Bhutan are slow to introduce such training in relation to education, despite the latter being the main source of civil service recruits. The Ministry of Education did suggest that the civic education module – currently under review at the Royal Education Council – could be peer-reviewed by the ACC to introduce ethics principles and awareness about anti-corruption. The Royal University of Bhutan also suggested that the “mindfulness education” or the “GNH Initiative” could be used as vehicles or entry points for ethics training.

The ACC has undertaken a version of the South Korean Integrity Assessment methodology which has identified issues of perceptions of corruption, gift-giving, using contacts, networking, and fairness as major areas of concern. The Integrity Assessment has been a useful platform for dialogue (and certainly the basis for ethics training; see below). ACC has met 6 agencies and will now monitor the ministries and agencies.

The Cabinet Office is interested in the role of good governance and, as noted above, now has a good governance affairs unit that is focused on improving service delivery and comprises 5 staff and 2 support staff although it has yet to begin work. Good governance is seen in terms of strengthening institutions, reviewing the size of institutions and their work activities with the intention of improving their performance.

The good governance framework, however, has not yet been articulated although the narrower National Ant-corruption Strategy Framework has been developed by the ACC for the government.

This has a number of strategic goals:

- Promote quality leadership
- Ensure sustained political will
- Review legal framework
- Review and strengthen institutional capacity
- Review and refine systems
- Review and reform public procurement system
- Strengthen public financial management system
- Simplify procedures and regulations
- Ministers discretionary powers in decision-making
- Establish clear and transparent protocol on police and rule-making
- Enforce code of conduct and ethics
- Enforce declaration of conflict of interest
- Develop long-term educational strategy in building an awakened citizenry
- Promote partnership

The objective and expected outcome for each goal is described, along with a timeframe. As a broad statement of intent (there are no measureable actions, activities or outputs) the document serves in many ways as a good governance framework (such as covering many of the GGA objectives. Indeed, of the 21 objectives only 7 involve the ACC and then only in conjunction with other institutions, while its implementation is formally the responsibility of the Committee of Secretaries. On the other hand, the ACC has noted that ‘fighting corruption is perceived as an ACC battle...without the concerted and conscious effort of all actors, the cadre’s lone battle against corruption will continue to remain an action of sorts at best and a mockery at worst’ (Annual Report, 2009).

In summary, the anti-corruption operating environment has developed unevenly. While the RAA is effective, it is not integrated with a functioning internal audit service (IAS). An IAS is established by the management of any government ministry or public agency and, although operating independently, should be part of the overall management function of the organisation. The RCSC has yet to undertake its monitoring and evaluation role with respect to HR in ministries and

agencies. The civil service as a whole is uneven in its approach to the establishment of a basic ethical framework and appears reluctant to integrate the increasing amount of information produced by the ACC on areas of vulnerability and risk into their work plans. The roles of parliamentary oversight and accountability are not yet developed. In terms of the strategy, shifting primary responsibility for prevention to ministries has not yet been achieved. In particular there is an absence of the development of an ethical environment in ministries, a controls framework and a structured ethics training programme. Part of this could be achieved by the systems study, part through the development of an internal audit structure and part by a training programme facilitated by the ACC. These issues are discussed below.

III. ORGANISATIONAL LEVEL

2.1 ACC Mandate

Specifically, under Article 27, the Constitution set up an Anti-corruption Commission (ACC) to 'prevent and combat corruption in the Kingdom'. The Article set up a Commission, required annual reporting to the King, the Prime Minister and Parliament, and gave it the power to initiate inquiries to lead to prosecutions by the Office of the Attorney-General. The 2006 Act gives substance to the Constitution.

The 2006 Act is a model Act, addressing the status of the ACC as an independent authority, with organizational and functional independence, including programming, investigation and reporting.

The Chairperson and members of the Commission are appointed by the King from a list of names recommended jointly by the Prime Minister, the Chief Justice of Bhutan, the Speaker, the Chairperson of the National Council and the Leader of the Opposition Party.

The budget is set as a discrete budget item by Parliament, to whom the ACC reports, along with the King and the Prime Minister. The Commissioner posts are for a fixed term of 5 years. The Commissioners are subject to a code of ethics, as well as rules on conflict of interest and asset disclosure.

The ACC functions are the investigation of corruption, attempts or conspiracy to commit corruption, conducting an inquiry to examine the legality of administrative acts and proceedings, the administrative correctness of acts which involve property entitlement, examining the system, practice and procedure of public entities in order to advise and revise corruption-prone procedures and practice, promoting education and awareness, preparing and monitoring the implementation of anti-corruption national strategy, plans and programmes of public and private entities, receiving asset declaration forms for a specified group of senior politicians and public officials, and investigating allegations of disproportionate wealth.

ACC staff, through the delegation of Commission powers, have police powers under the Civil and Criminal Procedure Code of Bhutan or any other law with regard to investigation, arrest, search and

seizure⁹. The law lays down procedures for investigation, including the right of access to documents and cooperation from any public entity or any person.

The Commission can request the Court for an order or judgment cancelling or revoking a right or document of title in respect of which a public servant has given approval or granted permission conferring rights or benefit or issued the document of title to a person in contravention of law or regulation or against the interest of the government, blacklist or debar any corrupt national or foreign firm from participating in government tenders, revoke any work order, license, lease and contract agreement, and freeze assets.

In relation to the private sector, the ACC can require measures to prevent corruption in the private sector through standards and procedures, including a code of conduct, as well as measures to prevent corruption in relation to privatization, subsidies and licenses granted by the government for commercial activity.

2.2 Previous Assessments of the ACC

The ACC and its working environment has been assessed twice; in 2006 and 2009. The first assessment was an internal appraisal and noted:

The ACC completes 8 months of its establishment on September 3, 2006. While it is premature to quantify any tangible impact, the modest efforts that the office has made in close concert with all agencies –public and private, it may not be wrong to say that corruption, as an issue, has gained currency, which hopefully will lend to the creation of a conducive ambience for combating corruption. If nothing at all, at least “people are talking about corruption” and there is a subtle discomfort for corrupt and pliable individuals (Appraisal, 2007).

The second assessment was undertaken by a Crown Agents consultant. He noted:

The ACC commenced operations in January 2006 and rapidly started to make a positive impact on the lives of the people of Bhutan. Since its creation, the ACC has enjoyed a high level of political commitment and support.

The first assessment was able to comment on the sensitisation, prevention and networking activities of the ACC; it could only note the number of complaints and beginning of the investigation work. The second assessment was able to undertake a much more detailed assessment of all aspects of the ACC’s work, including investigations¹⁰.

The second assessment argued that, to ensure public confidence, the ACC should investigate ‘every corruption report *capable of being investigated*’ because citizens ‘must not believe that the ACC picks and chooses who to investigate, that it targets certain people but not others, and that it does so for political or corrupt reasons. If that suspicion is allowed to develop and spread in the community, the ACC will fail because it will have lost the trust and support of the community’. It suggested that the

⁹ The ACC has the right of arrest and detention but no custody arrangements; these are available in conjunction with police stations.

¹⁰ This review noted that the ACC received over 800 complaints between January 2006 and October 2007, of which 21 fell within the ACC’s remit.

ACC needed to address the 'huge gap in the knowledge of the population as to what constitutes corruption and this is reflected in the type of complaints the ACC receives. The ACC must provide guidance to the community on how to report corruption'.

The report also proposed that the ACC's role within the National Anti Corruption Strategy would depend on it being 'organisationally mature with a clear policy of consistent and sustained organisational development'. This would be achieved by disengaging the Commissioners 'from being involved directly in the day to day operations of the Secretariat and should concentrate on management, supervisory and oversight matters' and setting up a formal ACC Management Board.

In noting staff concern about recruitment and staff retention, it suggested that the ACC should become 'entirely autonomous' with its own Conditions of Service. The report proposed 'the recruitment of a Human Resource Development Officer' and 'a comprehensive approach to staff development including both induction and in-service training. .. A Staff Development Plan will need to be developed subsequently, and a clear timeframe for its completion and implementation will need to be incorporated into the Strategic Plan. The Staff Development Plan will also need to address explicitly, issues of staff retention and motivation, and career progression'.

Operationally, the report proposed that the current arrangements for dealing complaints should be abolished in favour of a Tasking and Coordinating Committee (TCC) which would not only define what should be investigated but also 'examine the themes and patterns of complaints and decide how cases can be prioritised. Through this medium, Divisions can share knowledge, monitor performances and develop a unified strategy on the way that it handles complaints and coordinates its activities'. The TCC would also ensure that resources are devoted to addressing the issue of educating the public on what the ACC can and cannot do, improving the quality of complaints. The report argued for some means to ensure the Divisions achieved their outputs and targets that they have agreed in their work plans. It suggested this could be achieved by regular checks by the TCC with overall supervision by the ACC Management Board.

The report noted that none of the officers in the Investigations Division had 'received any formal training in investigations. There is an urgent need for officers to immediately receive training in the mandatory competencies'. Further it proposed that the Division shift its approach from re-active work to:

'a more pro-active approach that reflects and responds to the ACC's own understanding of where the body of corruption lies in Bhutan. This calls for closer relationships between the Investigations Division and the Prevention Division and stronger and improved training and capacity development in areas such as forensic investigation and other specialist areas of investigation. An Intelligence Section of the ACC remains unstaffed. The Section will need to be proactive in gathering intelligence pertaining to corruption and establish, manage and maintain an Intelligence Data Base which will be useful in profiling corruption and helping to drive investigations forward'.

It also proposed that 'there must be a positive relationship between the ACC, its Strategy and the wider governance programmes in Bhutan generally'.

Its specific recommendations are listed in Table 6:

Table 6: Crown Agents Report Recommendations

1. That the ACC develops a Single Internal Strategic Plan (ISP) which should be developed, completed and published on or before 31st January 2008. The ISP should cover a five year period (2008-2012) and contain a corresponding Business Plan.
2. That the Commission takes on responsibility to ensure that the NACS is developed, completed, published and delivered on or before 31st. March 2008 with implementation beginning 1st April 2008.
3. That as part of the NACS the Commission engages with the Prime Minister to discuss the creation of a National NACS Oversight Committee
4. That an ACC Management Board comprising the Chairperson, the two Commissioners and the Director, be created. This will be the Supreme Management Authority within the ACC.
5. That the Complaints Management Committee be dissolved immediately and replaced by a Tasking and Coordinating Committee comprising the Director as Chair, and the Heads of Divisions.
6. That both Commissioners disengage themselves as soon as it is practical to do so from direct involvement in the day to day activities of the Secretariat and concentrate on management issues including the development of the ISP and the NACS.
7. That as soon as it is practical to do so the Director assumes full line management for all operations within the Secretariat and reports directly to the Commission.
8. That the number of Divisions in the Secretariat is reduced from five to three to allow for better human and resource management and oversight. The three Divisions to be Administration Division, Enforcement Division (comprising Investigations, Intelligence and Legal Section) and Prevention and Education Division (comprising Prevention and Education Sections)
9. That a new Organisational Chart be approved to reflect the new structure of the ACC.
10. That the position of Human Resource Development Officer (HRDO) be filled immediately by the transfer of a qualified HRDO Officer from the Prevention Division to HRMD so that a Staff Development Policy can be developed leading to the filling of all vacant posts.
11. That all future recruiting of staff be merit based and by open competition.
12. That training henceforth be specifically allied to the training needs of personnel identified from a Training Needs Analysis
13. That all ACC operational staff undergo training in Mandatory Competencies, the course being a bespoke model designed specifically for ACC staff and officers drawn from the Chambers of the Attorney General and other interested parties, such as the Police, who may benefit from such a course.
14. That in order to improve on recruiting suitable staff to the ACC and to retain staff, the Commission opens a dialogue with the Royal Civil Service Commission to discuss the possibility of Government providing all ACC with a responsibility allowance and to consider the ACC being permitted to institute its own Conditions of Service.
15. That the present Planning and Coordinating Meeting be renamed the ACC Monthly Staff Meeting
16. That a Public Relations Officer be recruited urgently to develop and institute a clear communications strategy that will provide for a professional relationship and sound lines of communications with the Media
17. That the ACC liaises with the Chief Justice and the Attorney General in relation to Appeals currently on-going and that a dialogue is initiated to consider the merit of declaring an Amnesty for all crimes of corruption before the 3 July 2006.
18. That if an Amnesty is promulgated the public are made clear that there will be “zero tolerance to corruption” post 3rd. July 2006.
19. That the Commission becomes actively proactive in developing relationships with all its principal clients, partners and stakeholders
20. That the Commission coordinates with the Ministry of Finance in seeking continued donor support for continued technical assistance both directly to the ACC in regard to meet Staff Development Plans, but also to the implementation of the National Anti Corruption strategy, with special reference to providing support

to those particular stakeholders affected and part of NACS.

21. That the Commission promotes a “round table” Conference of Government and the donor Community to discuss support so that there is consensus on funding and application.

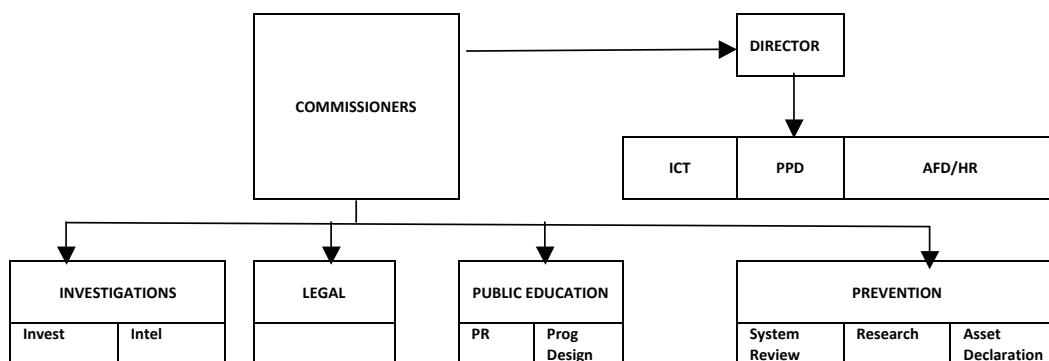
22. That the Commission ensures that the ISP pays particular attention to the need for the creation and deployment of an Oversight Committee drawn from all sectors of Bhutanese Society which can oversee, monitor and evaluate ACC performance.

The report’s comments and recommendations will be discussed within the context of this assessment’s analysis and recommendations.

2.3 Management¹¹

The ACC began work in 2006, with 3 Commissioners and 8 staff. The current strength of the ACC is 16 investigators, 5 prevention officers, 6 management staff (the Director [the Head of the Secretariat], the Head of Investigations, the Head of Prevention, the Chief Legal Officer, the Chief Planning Officer and the Head of Education who is also the only member of staff in that Division), and 3 Commissioners. The management staff and the Commissioner form the ACC’s management team. This meets weekly and addresses both policy¹², operational, and financial matters. There are also 12 support staff (see Table 7 for the current organogram):

Table 7: ACC Organogram



The ACC is responsible, in terms of its target audience, for misconduct among public officials, the police, armed forces, civil society organisations, candidates for political office, members of political parties, private sector employees, etc., including those in some 10 ministries (each of which is responsible for semi-independent agencies and parastatals), and public agencies, 20 districts, and 201 local assemblies. In addition to the offences listed above the ACC is also responsible for prevention and education activities, and asset declarations for some 500 senior appointed and elected public officials.

¹¹ The material for 2.3 and 2.4 is derived from open-ended interviews; the material for 3 is derived from interviews based on a per-determined questionnaire.

¹² For example, the internal policy processes now include risk-assessing the work of the ACC in terms of threats, conflict-of-interest and bias.

The ACC's strategy is to integrate the three areas of activity – education, prevention and investigations – by improving the quality of complaints through education, investigating substantive complaints, and using the evidence from investigated cases to inform its review of systems weaknesses through its systems studies.

Its work is conducted within the national anti-corruption strategy framework, delivered through a 5-year plan reviewed annually (a process common to all government bodies). In terms of distribution of responsibility 3 commissioners have lead responsibility for the agency itself, for investigations, and for prevention/education. The budget derives from an annual review of the workplan by all staff and a consensual decision-making process for future activities.

The 2010-2011 workplan is a generic document that essentially maps all the ACC activity, including completion of the new building, meetings to be held, human resource development and regional networking. In relation to its main functions, the proposed areas of activities, and measurable outputs include, for example (with the 2009-2010 equivalent noted alongside) the following:

Division	2010-2011	2009-2010
Prevention	Reactive system studies (20) Proactive system studies (2) formulation of anti-money laundering act organise RAA/IAU/ACC tripartite meeting	Reactive system studies (3) Proactive system studies (0)
Education	Workshops to be held (10) Broadcast of TV programmes (200 hours) Collaboration with media houses (1) Promotion of Island of Integrity (10)	Workshops to be held (6) Broadcast of TV programmes (200 hours) Promotion of Island of Integrity (4)
Investigation	Investigations (20) Discrete inquiries (20) Sharing complaints Establishing a Computer Forensics laboratory.	Investigations (20) Proactive investigations (3) Discrete inquiries (20) Sharing complaints Establishing a Computer Forensics laboratory.

2.5 Financial and Human Resources

The ACC has no problem with being allocated all its annual budget request¹³. ACC is not donor drive, but it receives support from a few partners such as the Swiss Development Cooperation and Government of India. In principle, it has no problems either with approval of vacancies or the allocation of civil servants. The issue lies with the recruitment and retention of those staff that

¹³ Its proposed annual operating budget for 2010-2011 is 22m Ngultrum, of which the three biggest areas of expenditure are salaries, in-country travel and vehicle maintenance. External sources fund training and new initiatives, such as the South Korean Integrity Assessment methodology (this source of funding is at some 40% of the government-funded budget).

exemplify those characteristics and expertise the ACC considers central to its work and development. In terms of running the ACC the organisation has clear goals. It has a management structure appropriate for the size of organisation and has a well-established and open organisational culture.

In seeking to progress organisational maturity and staff competences, however, the main management issue facing the ACC relates to staffing. First, it cannot develop as an organisation unless it achieves a stable staff complement to allow it to build up expertise and experience. In practice, the ACC started in 2006 with 3 Commissioners and 8 staff. In 2006, it advertised 10 posts twice, with a 'dismal' response on both occasions that resulted in 2 appointments. In 2007, when 3 existing staff resigned, 13 posts were advertised; 1 person was recruited. 13 in-service civil servants were allocated by the RCSC in 2007 on special grounds. 2 of these resigned in 2009, and ACC recruited a further 12 personnel. This can lead to a degree of institutional instability; of the 29 listed as staff by the 2007 Crown Agents report, 6 have left but 3 of those were support staff. While a 10% annual turnover of operational staff is not excessive, the cost (in training and experience terms) of replacing staff at an equivalent rate, as well as being able to have in place a robust recruitment, retention and replacement policy under the direction of the ACC will be essential to a predictable capacity development and turnover profile.

2.6 The Divisions

The Prevention Division is focused on work to improve service delivery in corruption prone areas through system studies, perception surveys, and integrity assessments. The Prevention Division is also responsible for managing the asset declaration system, where much of the ACC's work focuses on educating those concerned by system in order to promote compliance.

The Division had two staff in 2007, increased to four, and later to six staff in total. One of these six staff has been transferred to work permanently on the construction of the new premises of the ACC and another one is seconded to the Cabinet Secretariat to work on better service delivery through deregulation and development of service standards. As such, the Division has 4 active staff, including the head of Division. The Division has undertaken two systems studies, one deriving from investigations and the other a pro-active study based on complaints both from citizens and from the media. The approach is to use a team to analyse the rules and procedures, check the current approach and, through talking to staff and users or clients, make recommendations to the relevant ministry.

The Division has also undertaken a public opinion survey in 2007 (the Corruption Perception Survey) and has pilot tested a National Integrity Assessment model in 2009 developed together with the South Korean Anti-Corruption Agency (a structured quantitative interview-based assessment among public officials and citizens). The Division is responsible for considering questions of possible legislative reform and may support the Cabinet Secretariat to review the implementation of the national anti-corruption strategy framework. The division currently lacks research capacity.

The Division is also responsible for asset declarations of some 500 senior appointed and elected officials¹⁴. The remainder of asset declaration submissions is the responsibility of individual ministries

¹⁴ These are submitted 3 months after assumption of office and thereafter annually. The declaration covers, spouse and dependants, and includes assets, incomes and liabilities. The ACC checks compliance with the procedures, verifies for disproportionate change in assets. The RAA checks the compliance arrangements by

or agencies. Much of the work of the ACC in this area has involved sensitisation (explaining the why and how of submitting asset declaration forms) and developing an online system for submission. Currently the ACC achieves a 86% submission rate. It does some sampling on compliance with the procedural requirements, although it uses submitted forms in relation to investigations for which it also has access to the submissions held by individual ministries and agencies. The submissions to the ACC are not made public although citizens can ask to see the submissions with due cause; the Election Commission publishes on their website those submissions of those candidates seeking elected office. In the long-term, the Division envisages verifying the asset declarations with data from other databases, such as those on land registration, road service and transportation, and personal income tax. Already the system is automated, and all 21,000 civil servants and others can file their declaration online.

The Public Education Division has one manager; there are no longer any staff in the Division (in 2008 it had 3 staff, one of whom left in the same year to join the investigation Division. One then left to join UNICEF in 2009 and one resigned from the agency in 2010). It is considering the possibility of outsourcing its work to universities or other agencies.

It has achieved media visibility for the ACC. It has developed a programme intended to focus on advocacy and awareness, educating the public in the roles and requirements of the ACC. This work is considered to have raised the quality of the complaints submitted by the public, at least from those 8 dzongkhags that have been covered by these outreach programmes until now.

The Division is also developing programmes that focus on behavioural change. These are intended to be delivered in collaboration with educational institutions to introduce the concept of ethics into schools and university curricula (a related module is also proposed for new civil servants' training).

The Investigations Division has the most number of staff (16 investigators) and also involves one of the Commissioners on more complex cases. The process for managing the investigations is as follows. The ACC has a complaints unit which numbers and records the allegation on the complaint form. The ACC receives complaints through a number of sources, such as email, telephone, personal visit, or by letter. It also receives a number of complaints from the royal audit authority which is required by law to report incidences of possible corruption to the ACC. These complaints go to the complaints evaluation committee, which meets once per week, where the allegation is scored based on objective criteria ("pursuability score").

The Commission reviews the Evaluation Committee's recommendations and decides to investigate, enquire discreetly, share the complaint with responsible authority for awareness or action, archive in the ACC data base or drop the case. Until now, the Evaluation Committee's recommendations have generally been endorsed. If there does not appear to be sufficient evidence to substantiate the allegation for further investigation, and prior to a decision as to whether to investigate, a 'discreet' enquiry is authorised by the Commission and undertaken by the intelligence unit or other investigators. This follows the ACC's standard investigative procedures but is done as far as possible so as not to draw the possible suspect's attention to the enquiry by approaching individuals or accessing documents that would do so. The decision to investigate or not to investigate is taken by the Commission, with the Chairperson authorising the actual investigation.

ministries and agencies. Sanctions include impeachment, dismissal and fines. Illegally-obtained assets belong to the state.

All investigations are shaped by the 2006 Anti-Corruption Act, the 2001 Civil and Criminal Procedures Code, the 2004 Penal Code, the 2005 Evidence Act and the 2008 Constitution. The power to investigate comes from sections 45 and 46 of the 2006 Act and includes not only investigations into possible corruption but also suspected attempts or conspiracy.

Investigations are allocated by the Head of Investigations who is responsible for reviewing each case's investigation plan and, where necessary, any interview plan. The Head of Investigations is also responsible for reviewing the progress of cases and ensuring the relevant support.

In this he is supported by a detailed Operations Manual which not only addresses operational issues such as search and seize procedures, but also guidance issues, such as the rights of the person under investigation and also the ethical code under which all ACC staff must operate (this also includes the necessity in such a small country of avoiding any family conflict of interest during investigations).

The core of the Operations Manual is detailed guidance on: preliminary enquiries; case approval processes; investigation procedures; interviewing (including using the PEACE model); search and seize; freezing accounts and revoking licenses; computer forensics (the Division now has two trained staff for this); suspension of public official suspects and arrest and detention. The Operations Manual offers clear practitioner guidance on, for example in relation to searches, planning, photographing, and bagging-and-tagging, etc. It also provides guidance on both pitfalls and preferred ACC practice.

The Operations Manual contains some 40 template documents covering all aspects of investigation. For example, these include the investigation plan (which carries details of the case, background information, investigation scope and objectives, and resources), an investigation report at the end of the investigation (including a summary, investigation process, findings, conclusion and recommendation, together with appropriately numbered documentation) and, after a court case or other sanction, a closure file. All cases end with a case conference. During investigations all investigators are required to complete an investigations diary of all their actions based on the field book. The diary is later consolidated and becomes part of the case file.

In relation to the outcome of cases, the case will either go to the OAG for prosecution or may go to the relevant ministry or agency for disciplinary action. In some cases the ACC can let the ministry or agency prosecute but that leaves open the possibility of the ministry or agency choosing to go for an administrative sanction (in one case the ACC took over such a case, took it to court and won on the basis that the court recognised criminal actions should not be dealt with by administrative procedures). Although the ACC has used restraint and confiscation in relation to asset recovery this is not a well developed integrated sanction with a criminal conviction; the OAG has no capacity in asset recovery and asset recovery is not fully understood by the judges.

The possibility of an AML offence has been very limited and the draft AC law is revising its potential use. As noted above, custodial sentences can be bought out up to three years.

Table 8 lists the number of complaints received and cases investigated over a 4-year period.¹⁵

¹⁵ From its start in 2006, the ACC received 104 complaints; 51 against central agencies, 22 against districts; 16 against corporations and 13 against private organizations. The topics ranged from nepotism to contract corruption. About 35 fell within the ACC's remit.

Table 8: Case Load

	2006	2007	2008	2009
RECEIVED	498	791	366	418
MAIN SOURCES	WEB/POST	POST/WEB	POST/WALK-IN	WEB/POST
ANONYMOUS	83%	46%	44%	54%
MAIN TYPES	EMBEZZLEMENT/ COLLUSION	MISUSE OF AUTHORITY/ EMBEZZLEMENT	EMBEZZLEMENT/MISUSE OF AUTHORITY	MISUSE OF AUTHORITY/NEPOTISM
MAIN AREAS	CASH/PROCUREMENT /LAND	CASH/PROCUREMENT/ LAND	CASH/PROCUREMENT/ NATURAL RESOURCES	PROCUREMENT/CASH/ MISUSE OF PUBLIC PROPERTY
INVESTIGATED ¹⁶	9	20	34	15
NO. TO PROSECUTOR	8	10	14	3
ADJUDGED/IN TRIAL OR AWAITING JUDGMENT	6/2	6/3	0/4	0/1

The Planning Division is responsible for the internal planning processes. This coordinates the weekly workplan meeting, undertakes the quarterly review and the annual review of the workplan and prepares the next workplan. It is also responsible for donor coordination and institutional networking. The Division currently counts one staff member.

III. INDIVIDUAL LEVEL

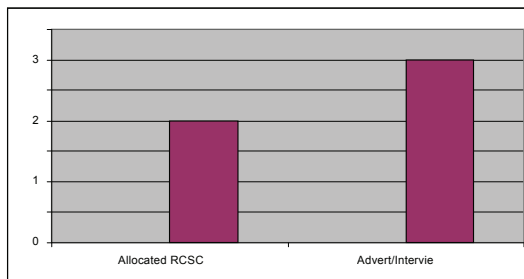
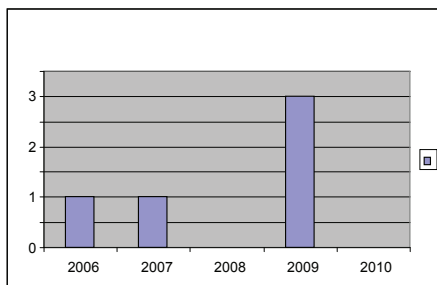
Open-ended interviews with Commissioners and senior management were undertaken during the assessment; the responses were used to inform sections 2.3-2.4 above and the analysis below in XXX. The focus of these interviews was on the management and organisational framework of the ACC. In addition, the report undertook a more prescriptive interview process, using a fixed set of questions, on operational staff to focus on their perceptions of their roles and work within the framework, their perceptions of their knowledge and skills base to undertake their work, and their perceptions on career development. Staff in the Investigations, Prevention and Public Education Divisions were interviewed; the presence of only one member of staff in the last of these meant that his responses could not be effectively quantified although they were borne in mind when compiling the report.

3.1 Staff Profile: Entry

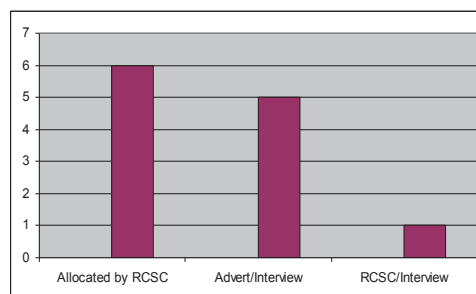
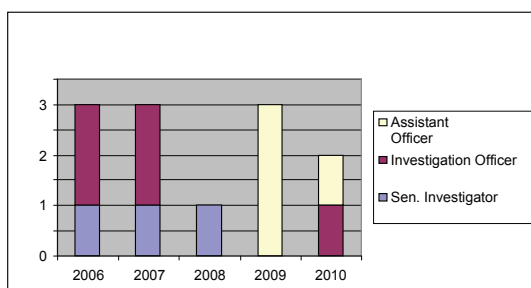
Staff in Investigations and Prevention Divisions were asked about their education, previous employment, reasons for joining the ACC, and method of recruitment.

Prevention Division: Year and Method of Recruitment

¹⁶ Of these cases, over the 4 years, 17 came from the 55 reports submitted to the ACC by the RAA.

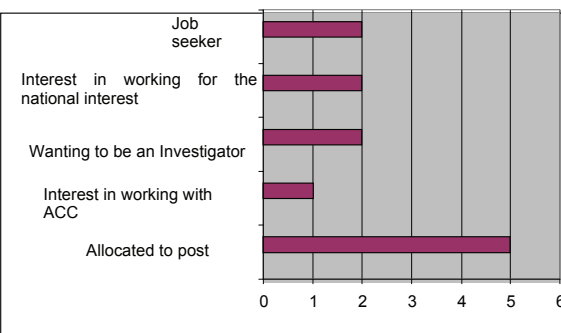
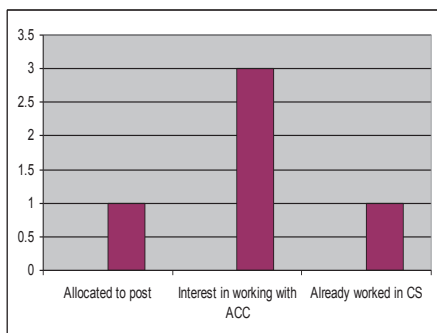


Investigation: Year and Method of Recruitment



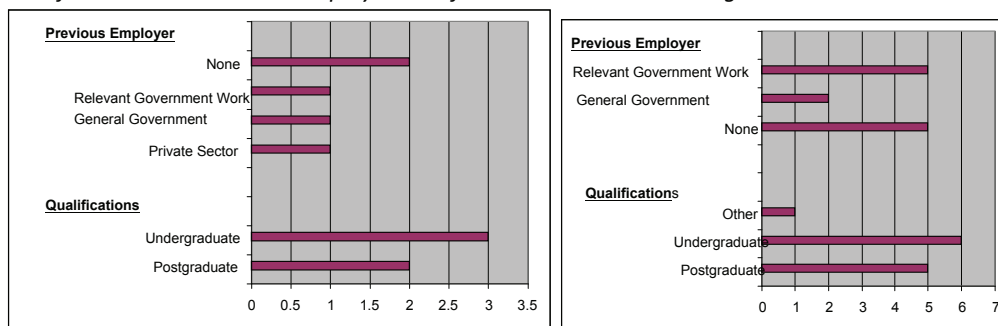
The two main routes for recruiting staff have been allocated by the RCSC and open advertisement, the latter to increase the number of staff and undertaken in 2009. One interesting feature elicited from the interviews was that recruitment to the ACC for prevention work was more attractive than recruitment for investigations. In other words, the ACC itself does not have a negative profile but some of its work, such as investigations, may because of a possible cultural reaction to such work.

Reason for joining: Prevention and Investigation



Those allocated to the ACC by the RCSC gave no other reason for joining or being interested in joining the ACC other than the formal allocation to the ACC. Those who applied to join did so either because they were simply seeking any post or – the majority – because they thought the work of the ACC would be interesting or because they considered that the work of the ACC was important for the country.

Qualifications and Previous Employment¹⁷ for Prevention and Investigation

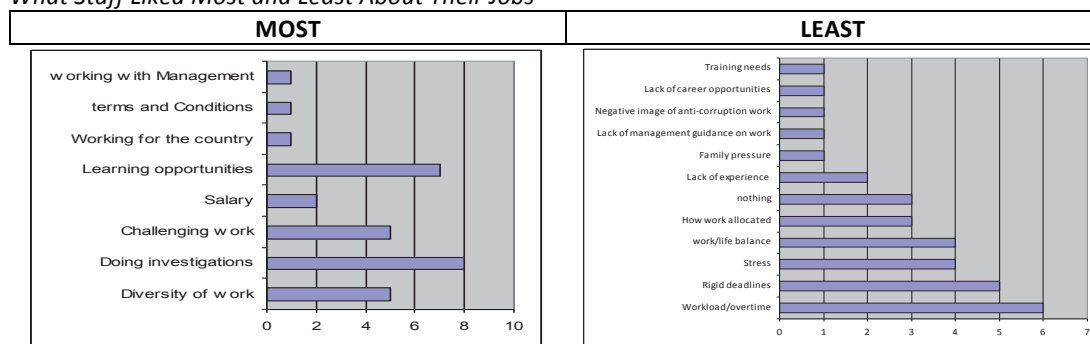


In general, the staff in the 2 Divisions are well-qualified in the sense of both academic qualifications and having experience that could be relevant to the work of the ACC either in terms of skills (such as finance) or experience in the workings of another government department. Investigators, who on average were recruited early in the life of the ACC, were partly allocated to the ACC by the RCSC but largely recruited by the ACC itself. In terms of organisational stability and development, the ACC is aware that such recruits, who are both experienced, have spent a number of years in the ACC and would be expected to mentor new recruits, include those likely to want to move elsewhere in the civil service. For a minority, primarily among those allocated to the ACC, the issue of delinking (and thus the possibility of not being able to seek another civil service post) was of concern and could encourage them to consider moving to another civil service post.

3.2 Staff Profile: Job Satisfaction

Staff were asked what they liked or disliked about their work so far, and the organisation.

What Staff Liked Most and Least About Their Jobs



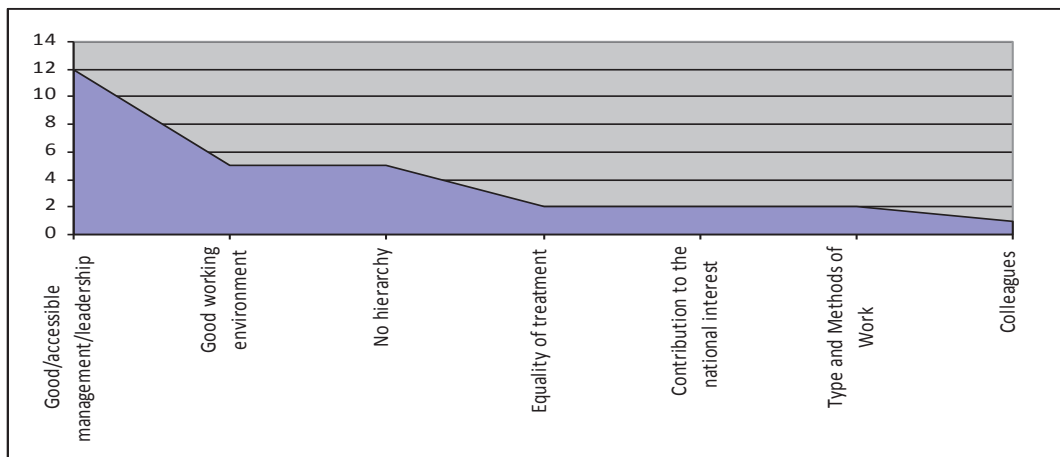
What staff most personally liked about working for the ACC was training and the mix of work. Investigators enjoyed doing investigations but were somewhat critical of the demands made of them and the effect the work and work deadlines had on their personal lives.

What Staff Liked Most and Least about Working for the ACC¹⁸

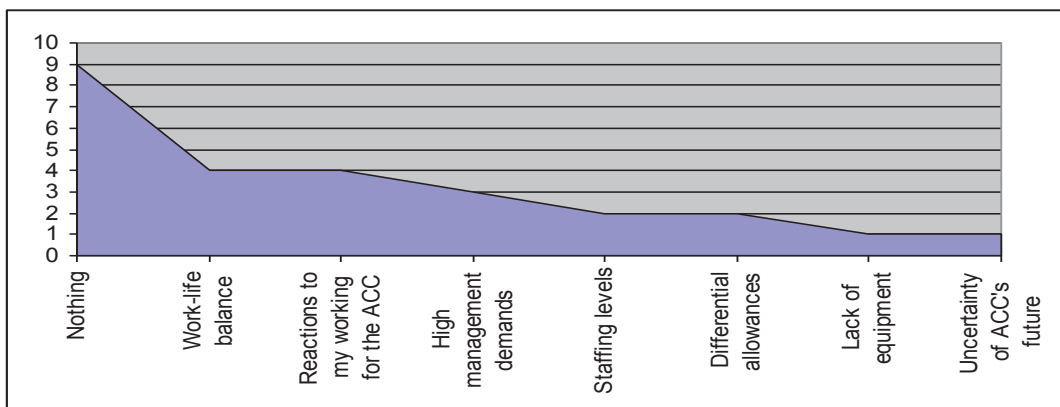
¹⁷ 'Relevant' applies to work in a previous government department useful to work in the ACC, such as finance or audit work. 'General' applies to generic civil service duties.

¹⁸ All variables in the tables below are based on spontaneous answers by staff, based on one generic question: "What do you like most and least about the ACC". The figures for each variable could be higher if put individually to each interviewee, with the question "do you agree or disagree".

MOST



LEAST

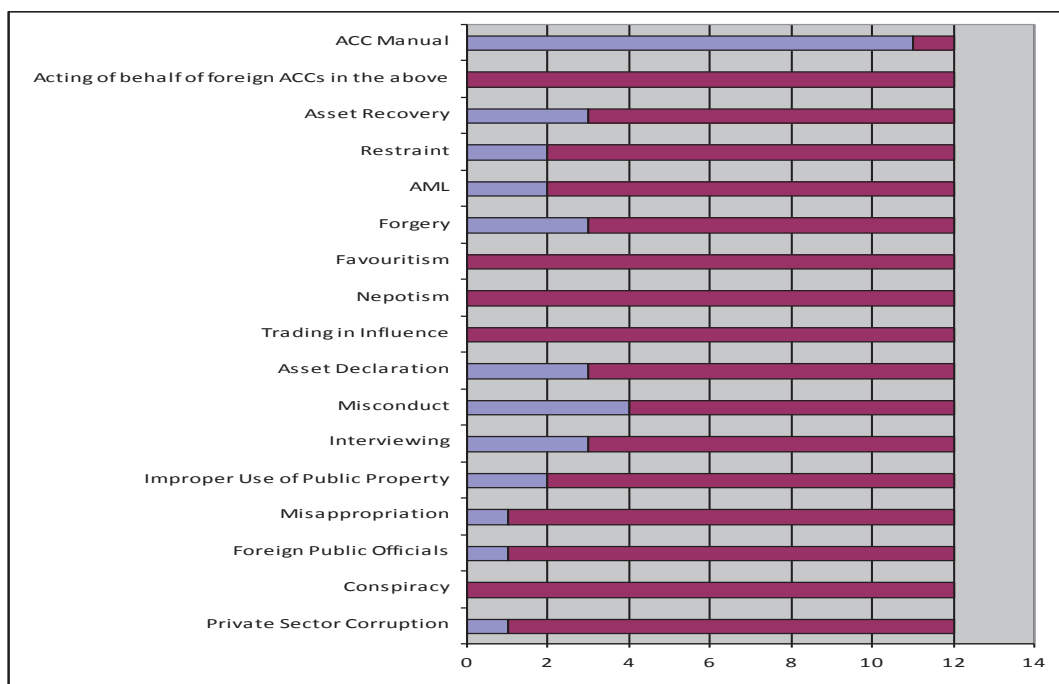


In terms of job satisfaction – why staff like working in the ACC – the main feature was the culture of the ACC and the quality of senior management. Certainly the accessibility of senior management appeared to be in contrast to what they knew about working environments elsewhere in the civil service. On the other hand, this as to be balanced by what staff did not like about working in the ACC - the volume of work (and thus the low number of staff) as well as the impact on their personal and social lives. These were concerns raised by a minority; most found little to dislike about working for the ACC as an organisation.

3.3 Staff Profile: Work Training and Responsibilities

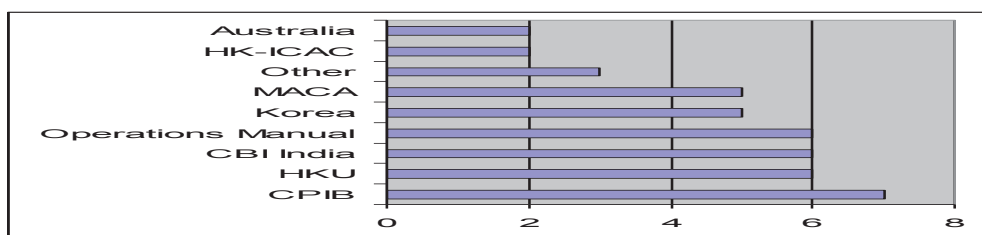
Staff in Investigations Division were asked if they had any substantive knowledge of or training in specific types of corruption-related offences, investigation techniques, or sanctions. This was then contrasted with what courses they had attended and what they had learned on the job.

Existing Competences through Experience or Training (blue = yes; purple = no)



On recruitment, few of new ACC staff had any substantive knowledge of the types of offences that they may be required to investigate – and most did not appear to have improved that during training (largely because, if the types of cases that are investigated fall within a limited range then investigators will not experience the full range of options available to them as offences. Learning on the job has practical advantages but it also has some drawbacks.

Training Courses Attended



Most of the staff were trained in the Operations Manual and went on courses organised by other ACCs. Those who were new to the ACC and the work of the ACC appreciated the courses for the knowledge and understanding of issues associated with corruption and its investigation. The minority of respondents who had more experience before they went on the courses found them too generic and general to be of significant benefit. All the respondents, however, appreciated both the exposure to the work of other ACCs and the opportunity to study abroad.

Development of Specific Competences through On-the-Job Experience



Working with a predetermined set of questions¹⁹, Staff in both Divisions were then asked what competences they felt they had developed to date and what competences they felt needed to be developed to better do their jobs. Again the learning experience was uneven, with the routine tasks of investigation learned on the job but without the rounded overview that should be, like the range of possible offences, part of the investigator’s knowledge portfolio.

When asked in more detail that unevenness was also identified.

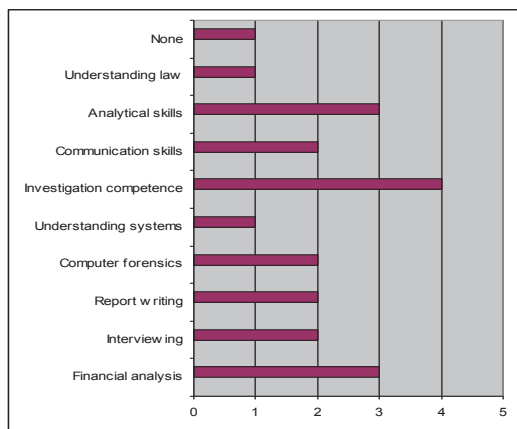
¹⁹ For investigators, for example, a predetermined set of questions was used, based both on UNCAC and standard anti-corruption raining courses as follows:

Knowledge of Offences: Private Sector Corruption; Conspiracy; Foreign Public Officials; Misappropriation; Improper Use of Public Property; Misconduct; Asset Declaration; Trading in Influence; Nepotism; Favouritism; Forgery; AML; Restraint; Asset Recovery

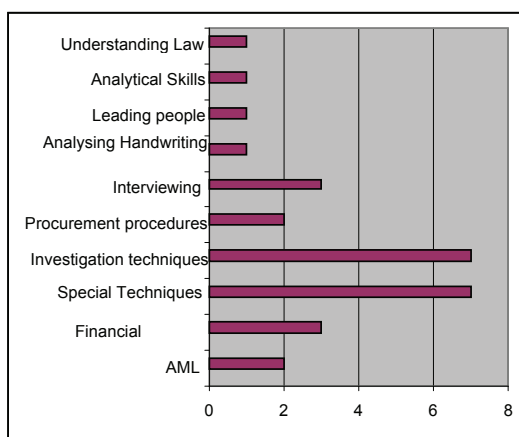
Investigative Skills: ACC Manual; Criminal Law/ Points to Prove; Work with Prosecutor's Office; Interviewing Techniques; Note-taking; File Management; Document Requests; Handwriting Analysis; Open Source Information Gathering; Communications; Financial/Intelligence Analysis; Reading Financial Information; Asset Restraint; Money Laundering; Search and Seize; Access/Search electronic devices; Surveillance; Using informants; Evidence Integrity; Trial files/giving evidence

Specialist Skills: Financial analysis; Interviewing; Report writing; Computer forensics; Understanding systems; Investigation competence; Procurement procedures

Competences Developed through Work



Competences Required for Work



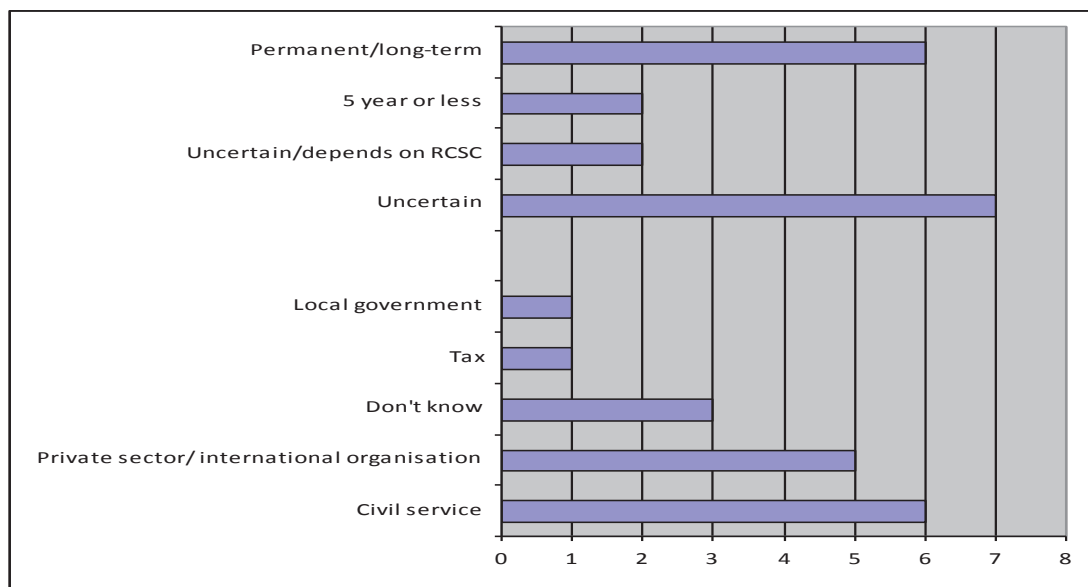
Overall, investigators are developing competences as investigators but are still developing both knowledge of the range of possible offences and investigative techniques. Most are sent on a number of courses at universities and equivalent agencies in the region but a number note that they are developing their competences through work experience and that the training they require is to enhance those competences – something the various training courses do not appear to provide.

The unevenness of the knowledge and competency portfolio, and the current reliance on a mix of in-house training, on-the-job training, and off-the shelf overseas training does not appear to be equipping investigators a cost-effective, coherent and incremental way. Training may need to be revisited to undertake a Training Needs Assessment (TNA), and a permutation of appropriate delivery approaches.

3.4 Staff Retention

Finally staff in both Divisions were asked about their personal plans.

How Long Would Staff (Investigation and Prevention) Stay and Where Would They Go



This confirms the general issue about career uncertainty and development. This affects existing staff and will be raised by potential recruits. Planning the ACC's capacity development and stability, retaining experience and paid-for expertise, promoting the staff with potential for future management roles, etc., will be adversely affected until the delinking issue is resolved. At the same time, the pressure caused by work load is a direct consequence of the staffing establishment of the ACC; this needs to be substantively increased.

3.5 Overall findings

Overall, most of the staff were well-educated, often with relevant qualifications and backgrounds, and able to work on their own initiative. They not only enjoyed their work but they also enjoyed the ACC's organisational culture and learning opportunities, contrasting both with what they had heard from colleagues and friends in other civil service ministries and agencies. They acknowledged the range of training opportunities, although the more experienced staff recognised the generic nature and basic level of many of the regional anti-corruption courses. Most found the work demanding, particularly among newer staff, and a lack of effective mentoring from more experienced staff who were also working under the same time constraints.

A number had applied to the civil service as a general career option and, given the status and benefits attached to a civil service career, were reluctant to commit to a longer-term future with the ACC if de-linked from the civil service. For a number of staff, this was also linked to the perceptions of their families and friends who not only had a general mistrust or wariness of the work of the ACC but also concern over longer-term career opportunities.

The review found that there is a distinction between those recruited to the ACC and those allocated. The former, the majority among the younger staff, see a career in the ACC and are keen to develop their expertise in, for example, specialised technical investigations or ethics training. The older staff allocated to the ACC are more concerned about the issue of career opportunities and the ability to

transfer to a more general civil service post in due course. In terms of the capacity development of the ACC, the core of its staff must be willingly recruited and see the work of the ACC as a longer-term career.

Certainly a majority of those recruited by open advertisement see the training opportunities and the work of the ACC as the two most positive aspects and saw the private sector or international agencies as a possible career move, suggesting that those recruited by this method recognise the acquisition of additional qualifications and the work experiences and are less concerned about a civil service career or being transferred. This would suggest that the ACC could sustain longer-term capacity development by being delinked but also accepting that well-trained staff would leave in due course (although this process could be managed in terms of fixed-period contracts, particularly linked to funding for overseas training or qualifications²⁰). The ACC could also usefully use such recruits for career talks to schools and universities, both to raise the profile of the ACC and promote its job opportunities.

All those recruited have no background in investigations or prevention work; most of the skills and competences are learned on the job. This suggests a TNA, followed by a more intensive in-house training programme, with less reliance on the overseas courses for basic training and more use of such courses for specialist skills (staff identified investigative techniques, and specialist techniques – such as surveillance, interrogation of devices, financial tracing and analysis – as specialist areas they would like to develop).

How in-house training is devised and delivered should recognise the third main issue – that of the management of the organisation. While all the staff in the Investigations and Prevention Divisions acknowledge the flat and accessible management structure they all had concerns about workload, pressure to complete operational tasks and achieving a satisfactory work/life balance. This in part raises issues about the levels of training before staff become involved in operational activities, about the effective use of the mentoring process, and of levels of staffing to undertake the work taken on by the ACC.

Such issues, while likely to be affected by the de-linking issue but which are also directly relevant to the question of the ACC's capacity development, can be managed in ways that seeks to recruit new staff, retain existing staff and develop the ACC's capacity. These are discussed below.

IV. ANALYSIS and RECOMMENDATIONS

4.1 Progress from Earlier Reviews

In terms of progress since the 2007 review the ACC has responded positively –see Table 9 – although where the ACC has not implemented a recommendation, there have been sensible operational and management reasons why not. Other recommendations are still under consideration or in progress of being implemented.

²⁰ The NACC in Thailand require staff fully-funded for overseas postgraduate programmes up to PhD to remain with the agency for agreed periods, up to 10 years.

Table 9. Review of Crown Agents Report Recommendations		
CA	Progress	Comments from Current Assessment
1. That the ACC develops a Single Internal Strategic Plan (ISP) which should be developed, completed and published on or before 31st January 2008. The ISP should cover a five year period (2008-2012) and contain a corresponding Business Plan.	The Plan is a mix of the National anti-corruption Strategy Framework (NACS) and the Workplan	A specific ACC Strategy and Action Plan should still be developed that focuses on delivery, by i
2. That the Commission takes on responsibility to ensure that the NACS is developed, completed, published and delivered on or before 31st. March 2008 with implementation beginning 1st April 2008.	The NACS is developed by the ACC.	NACS was submitted to the Parliament last year. Monitoring tool will be ACC's annual report & PM's annual report on the State of nation to the Parliament.
3. That as part of the NACS the Commission engages with the Prime Minister to discuss the creation of a National NACS Oversight Committee	Not done	Not necessary, if Cabinet Secretariat, ACC and parliament take up their respective oversight roles.
4. That an ACC Management Board comprising the Chairperson, the two Commissioners and the Director, be created. This will be the Supreme Management Authority within the ACC.	Completed in part	There are 2 distinct entities; the Commission and the Management Board; the latter comprises the Director and Heads of Division.
5. That the Complaints Management Committee be dissolved immediately and replaced by a Tasking and Coordinating Committee comprising the Director as Chair, and the Heads of Divisions.	Not done	Not necessary – too elaborate for a small agency
6. That both Commissioners disengage themselves as soon as it is practical to do so from direct involvement in the day to day activities of the Secretariat and concentrate on management issues including the development of the ISP and the NACS.	Not done	The ACC is aware that this needs to be done
7. That as soon as it is practical to do so the Director assumes full line	Not done	This is being considered for the longer-term management stability of the ACC. Needs to be

<p>management for all operations within the Secretariat and reports directly to the Commission.</p>		<p>implemented in terms of merging Education and Prevention, considering transferring asset declaration to Investigations and combining the various administrative and legal functions</p>
<p>8. That the number of Divisions in the Secretariat is reduced from five to three to allow for better human and resource management and oversight. The three Divisions to be Administration Division, Enforcement Division (comprising Investigations, Intelligence and Legal Section) and Prevention and Education Division (comprising Prevention and Education Sections)</p>	<p>Done in part</p>	
<p>9. That a new Organisational Chart be approved to reflect the new structure of the ACC.</p>	<p>-</p>	
<p>10. That the position of Human Resource Development Officer (HRDO) be filled immediately by the transfer of a qualified HRDO Officer from the Prevention Division to HRMD so that a Staff Development Policy can be developed leading to the filling of all vacant posts.</p>	<p>Not done</p>	<p>Not necessary for the size of organisation but the training function should be specified</p>
<p>11. That all future recruiting of staff be merit based and by open competition.</p>	<p>Not yet done</p>	<p>Depends on issue of delinking but should be seen as core ACC requirement</p>
<p>12. That training henceforth be specifically allied to the training needs of personnel identified from a Training Needs Analysis</p>	<p>Done in part</p>	<p>A full TNA should be undertaken</p>
<p>13. That all ACC operational staff undergo training in Mandatory Competencies, the course being a bespoke model designed specifically for ACC staff and officers drawn from the Chambers of the Attorney General and other interested parties, such as the Police, who may benefit from such a course.</p>	<p>Done in part</p>	<p>Process should be continued and developed as part of the TNA</p>

<p>14. That in order to improve on recruiting suitable staff to the ACC and to retain staff, the Commission opens a dialogue with the Royal Civil Service Commission to discuss the possibility of Government providing all ACC with a responsibility allowance and to consider the ACC being permitted to institute its own Conditions of Service.</p>	<p>Achieved in 2010; 45% for the Investigations Division and 20% for other staff</p>	<p>-</p>
<p>15. That the present Planning and Coordinating Meeting be renamed the ACC Monthly Staff Meeting</p>	<p>Done</p>	<p>-</p>
<p>16. That a Public Relations Officer be recruited urgently to develop and institute a clear communications strategy that will provide for a professional relationship and sound lines of communications with the Media</p>	<p>Undertaken by the Head of Education</p>	<p>A separate post is currently not necessary in an agency of this size. The commissioners undertake this role.</p>
<p>17. That the ACC liaises with the Chief Justice and the Attorney General in relation to Appeals currently on-going and that a dialogue is initiated to consider the merit of declaring an Amnesty for all crimes of corruption before the 3 July 2006.</p>	<p>Not done</p>	<p>This is not a good idea, and can be politically manipulated</p>
<p>18. That if an Amnesty is promulgated the public are made clear that there will be "zero tolerance to corruption" post 3rd. July 2006.</p>	<p>Not done</p>	<p>A zero tolerance approach is not a sensible basis for policy, given the levels of resources. The intake criteria implicitly require a selective approach, and cases not undertaken by the ACC may be handed over either to other agencies or to ministries for sensitisation or action.</p>
<p>19. That the Commission becomes actively proactive in developing relationships with all its principal clients, partners and stakeholders</p>	<p>Done</p>	<p>-</p>
<p>20. That the Commission coordinates with the Ministry of Finance in seeking continued donor support for continued technical assistance both directly to the ACC in regard to meet Staff Development Plans, but also to the implementation of the National Anti</p>	<p>Done; not an issue</p>	<p>-</p>

<p>Corruption strategy, with special reference to providing support to those particular stakeholders affected and part of NACS.</p> <p>21. That the Commission promotes a “round table” Conference of Government and the donor Community to discuss support so that there is consensus on funding and application.</p> <p>22. That the Commission ensures that the ISP pays particular attention to the need for the creation and deployment of an Oversight Committee drawn from all sectors of Bhutanese Society which can oversee, monitor and evaluate ACC performance.</p>	<p>Done</p> <p>Not done</p>	<p>-</p> <p>This may be a useful approach if the ACC is delinked and needs to develop its own stakeholder audience, particularly in terms of its performance.</p>
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A number of the recommendations – and comments on progress to date – are also discussed when looking at the environment in which the ACC works (4.2; 4.3), and when looking at the ACC itself (4.4).

4.2 The ACC’s Legal Environment

ACC’s mandate by law, as well as the wider legislative framework within which it works, generally seem to satisfy all the formal requirements and expectations proposed by the UNCAC. A team of national experts is currently undertaking an in-depth UNCAC Gap Analysis to ensure any shortcomings in the legal framework will be identified and included in the report for legislative reform. Additional legislation on AML is required to facilitate anti-corruption work in Bhutan.

4.3 The ACC’s Enabling Environment: the Stakeholders

In a pre-assessment the ACC was asked to identify those with whom they had good current working relationships, and those with whom the work was limited but where the ACC would wish to develop the cooperation. In the first category were: the Ministries of Finance and Home and Cultural Affairs, the Office of the Attorney General, Parliament, and the RAA; in the second were the Bhutan Chamber of Commerce and Industry, the RCSC, the Ministry of Education, the Royal University of Bhutan, the Cabinet and Committees of Secretaries, and civil society, media and religious organisations.

During the review it is clear that many of the issues facing the ACC derive from the fact that their approach and work is significantly in advance of other agencies, although excluding the RAA and the OAG.

There are four issues; the first concerns the introduction of internal audit; the second concerns the closer involvement of various agencies directly or indirectly involved in anti-corruption work; the third concerns the integration of the part of the work of the ACC – on prevention – on helping address these issues; and the fourth relates to the role of the National Anti-corruption Strategy to

formalise the integration and facilitate the work of the various institutions in the enabling environment in addressing corruption from their various perspectives.

4.3.1 Internal Audit

One clear absence is a functioning internal audit function. The core functions of internal audit should be broadly stratified as: a basic audit process reviewing the accuracy with which assets are controlled, income is accounted for and expenditure is disbursed; a system based audit, reviewing the adequacy and effectiveness of financial, operational and management control systems; a probity, economy, efficiency and effectiveness audit reviewing the legality of transactions and the safeguards against waste, extravagance, poor value for money, fraud and corruption; a full risk management based audit.

There needs to be, if not a draft law on Internal Audit, then a national Internal Audit Strategy (IAS) that stipulates the number of auditors by ministry, functions, operational independence, reporting arrangements, and liaison with the RAA and ACC. This should include a training strategy of internal auditors that is not specific to the state sector. Internal auditors need to be supported to take professional exams that would allow them to move freely between the state and private sectors, thus widening the pool of auditors and career opportunities. There should be a unified audit methodology for the government audit service to facilitate improved efficiency through better use of technology and enable employees to rotate to different Ministries or departments on a regular basis. Improved planning for the government audit service as a whole would also facilitate the reduction of the chance that certain government expenditures remain unaudited.

In doing this an IAS's focus on risk and internal controls and detailed knowledge of its organisation enables it to detect issues of propriety and work with the RAA on its audit work on controls procedures and the ACC on its Integrity Assessment and systems review work to achieve a thorough understanding of the business.

4.3.2 Other Agencies: the Civil Service and the Legislature

The ACC has established and working arrangements with the RAA and the prosecutors. This may be institutionalised through a joint vetting and tasking committee, a formal inter-institutional means to facilitate inter-institutional collaboration. Procedures should be established for formal information-sharing, sharing of cases, and joint investigation teams, in line with domestic legislation. Consideration should be given to seconded staff or exchange of staff in specific areas. Certainly the committee could monitor cases that the ACC hands over to ministries for disciplinary or other action or to the police to ensure that appropriate action is taken where there is evidence of possible wrongdoing or misconduct but which do not merit an ACC investigation. It could usefully also inform the work of the RAA and Internal Audit.

In terms of wider engagement, however, there is still a delay in the RCSC taking responsibility for reviewing and monitoring the HR processes in ministries. At the same time the RCSC should take a role in facilitating cross-ministry public ethics training with the ACC. There is also clear absence of progress by civil service departments in terms of promoting internal governance arrangements. The use of the Integrity Assessment methodology by the ACC, the development of asset declaration requirements to be reviewed by the RAA, the development of the roles and responsibilities of the IAS

by the Ministry of Finance, and the development of conflict-of-interest management and the development of codes of conduct by ministries, needs to be integrated into a wider governance approach. This needs to be owned by ministries through the promotion of an ethical environment, which will only be fulfilled if there is a parallel assessment and then development of an ethics environment (see 4.2.4).

There is a major educative role to be undertaken by the RCSC in relation to new recruits, to those being promoted to supervisory and management positions, and to those posts, such as procurement, where risk and vulnerability are an integral feature. At the same time, the Royal University of Bhutan and the Ministry of Education should be encouraged to engage more pro-actively in the general development of basic public ethics or civics education at secondary and university levels, as well as and more intensive modules on public ethics or corporate ethics in relevant courses, particularly those from which the RCSC recruits.

The role of Parliament and its relationship with the ACC, as well as its responsibilities to monitor and evaluate progress on both good governance arrangements and the national anti-corruption strategy framework, needs to be institutionalised.

Here the Public Accounts Committee, as a joint committee of Parliament, has a major role in using the reports of holding the civil service to account in terms of the public stewardship of public funds through the scrutiny of the reports from the ACC and the RAA. This process is underdeveloped and should be developed through the training of PAC members in working with the RAA in a programme of reporting, on appraising reports, in understanding financial information and undertaking public examinations of accountable ministry officials (by, for example, training from RAA, GOPAC and INTOSAI).

At the same time, the roles of the Ethics and Credentials Committee and the Good Governance Committee in relation to questions of organisational culture, in terms of the effectiveness of the RAA's responsibilities for HR, and the development of appropriate good governance arrangements in the public sector need to be clarified as the basis of ongoing scrutiny, review and accountability of governance arrangements, including the ACC's work on Integrity Assessment and systems reviews.

4.3.3 Integrating ACC work

As noted above, a number of areas of corruption do not involve bribery but other types of misuse of office, often as a consequence of not appreciating or accepting the centrality of public interest or the responsibilities of public office.

The ACC has established both the use of an Integrity Assessment tool to assess ethics failings and has drafted a systems study protocol which will further some of the objectives of a preventative strategy that seeks to address both these areas and the general development of a governance framework.

Integrity Assessment and systems reviews have a sustainable value if they are integrated into the promotion of an ethical environment in public sector organisations, and if the work is an integral requirement of the national anti-corruption strategy (see 4.3.4).

The ACC's work on prevention and the promotion of a governance framework, and the increasing engagement of the various stakeholders, is likely to become, as the ACC is aware, the significant function in the longer-term.

The ACC's role is expert facilitator, but the main responsibility rests with the ministries and public agencies. Their role in developing a governance framework will be achieved by the organisations undertaking its own risk assessment, validating its assessment against an external parallel assessment and then working toward the development of the ethical environment, i.e. the policies, procedures and practices required to strengthen the control systems that will serve to prevent corruption. Understanding the development of an ethics system will require:

- The implementation of a series of "ethics audits" of key mechanisms for regulating ethical standards and conduct within the public administration system to include:
 - Risk assessment.
 - Codes of conduct.
 - Staff recruitment and selection.
 - Procurement and contracting.
 - Performance management.
 - Discipline and grievance.
 - Staff promotion.
 - Interests and assets declaration.
 - Internal and external audit and inspection.

- The review of ethics audit findings and the formulation of proposals for systemic improvements, auditable by internal and external audit, as well as the ACC as part of the compliance process for the national strategy.

The initial work will assess the current levels of awareness of, and adherence to, ethical principles, procedures and controls within the organisation, based on discussions among senior managers of current staff attitudes and conduct, a review of past cases and staff disciplinary records, internal and public complaints, etc. This will then be assessed externally against lessons derived from cases involving similar activities in other organisations and from RAA reports on financial controls and procedures. As a consequence, each organisation would then produce an "ethics control system" that will address: procedures to promote transparency, fairness, timeliness and accessibility of decision-making; compliance with the legislation relating to public officials, including structured ethics training programmes; mechanisms for promoting awareness; measures to promote ethical conduct and reporting of violations; providing punitive and deterrent measures for unethical conduct; developing and applying internal policies, codes and procedures for guiding and requiring ethical standards.

Collectively, the RAA and internal audit and the ACC need to address possible joint reviews on the mechanisms above but the core responsibility should lie with ministries, on the resolution of Parliament to carry out an 'ethics/values audit', and an annual action plan to address fraud and corruption on the basis of internal audit work, the ACC's systems studies and the RAA's reports. The implementation and effectiveness of the audit and plan may be assessed through the ACC's Integrity Assessment methodology while the organisational policies, management procedures and practices that constitute the organisation's "ethics control system" including the existence and application of

internal policies, codes and procedures for guiding and requiring ethical standards, would be reviewed by Parliament (by both the PAC and other committees).

4.3.4 The National Anti-corruption Strategy: Formalising Responsibilities and Progress

A number of the issues raised in 4.3.1-4.3.3 above should be addressed within the National Anti-corruption Strategy. This could usefully be generally revised to establish risk, responses and action plans with quantitative indicators within specified timelines, identifying ownership, oversight and reporting arrangements.

The ACC has enough expertise and information to begin the revisions by undertaking a review which will:

- undertake the collection and collation of adequate information or statistical data concerning criminal convictions or disciplinary measures imposed on public officials for corruption offences or breaches of rules of professional conduct relating to such offences (e.g. failure to report accessory activities which are liable to cause a conflict of interests);
- undertake analysis of trends of causes and consequences of corruption and thus an objective assessment of risks;
- Undertake a systematic analysis of risk factors (e.g. conflicts of interest, securing of improper advantages, absence of rules on reporting of offences committed within the administration, etc.) and of the sectors exposed to corruption (e.g. public procurement, health care provision, issuance of permits and licences);
- Develop a better knowledge of the vulnerable sectors and develop relevant policies and practices for better prevention and detection of corruption.

On this basis it could revise the strategy and – in relation to 4.2.a and 4.2. – be specific about ownership, facilitation by the ACC, and reporting arrangements. In particular it needs to be able to help assess progress against the strategy, to provide periodic information about the implementation of strategic elements and their effects on corruption, and to help decide how strategic elements/priorities can be adapted in the face of strategic successes and failures (while there are a number of quantitative indicators of what is intended to be done, there is much less on what has been done).

Certainly the focus should be on prevention and the governance framework, and the various roles of the stakeholders such as Parliament, the RAA, RCSC and the IAS, and should be on the responsibilities of the ministries and public agencies. In particular, each public entity should be mandated to:

- Articulate a vision for organizational integrity, including a communications and training strategy and risk management
- Identify the major functional areas of the organisation.
- Identify the risks for each functional area and assess the extent of these risks (including the results of the work of the RAA and that of the ACC through the Integrity Assessment tool)

- Identify potential responses to risk areas (prevention or risk minimisation measures) and select the best
- Evaluate existing system controls through internal audit
- Develop risk management measures including setting up appropriate accountability systems
- Formalise and document a risk management plan based on the ACC systems review
- Educate staff and contractors about the objectives and content of the organizational integrity strategy and risk management plan
- Monitor and review the performance of the risk management system and the changes that might affect it
- Assess how new procedures and practices and/or new technology will change corruption risks
- Train the leadership and staff to identify ethical dilemmas and other corruption risks, including raising their ethical awareness
- Hold regular feedback and discussion sessions on the organizational ethical culture and review the risks and the strategies for addressing them
- Include corruption risks in the organisation’s risk management strategy
- Report to the ACC and to Parliament on progress under the National Anti-corruption Strategy.

This should be translated into an action plan which includes definite, measurable objectives. It must be ensured that they are implemented and periodically evaluated and adapted. Adopting detailed plans of action and having plans of action reviewed and implemented requires bodies vested with the authority and the appropriate level of resources for this task. The first step, however, is to ensure means to measure progress. For example, an action plan to take forward the promotion of ethical conduct among public officials could state:

AREA	STRATEGIC COMPONENT	ACTIVITY	ACTION TO DELIVER ACTIVITY	OUTPUT/ EVIDENCE	INSTITUTIONS INVOLVED IN DELIVERY	VERIFIER	REPORT
For each ministry	Improve ethics of civil servants and other officials	<input type="checkbox"/> developing ministry codes of ethics <input type="checkbox"/> identifying responsibility for the violation of the code of ethics <input type="checkbox"/> organization of trainings on issues related to code of ethics <input type="checkbox"/> increasing opportunities to file complaints on non-ethical conduct of the civil servants <input type="checkbox"/> informing public about the code of ethics	<input type="checkbox"/> Drafting a code <input type="checkbox"/> Publishing policy on assets, gifts, etc <input type="checkbox"/> Publishing procedure on compliance with code ensuring all <input type="checkbox"/> new recruits are trained in ethics and the Code <input type="checkbox"/> ensuring refresher training <input type="checkbox"/> publishing and disseminating a leaflet for public	<input type="checkbox"/> 1 code, policy and procedures, issued annually to each public official <input type="checkbox"/> Establishing complaints contact in Personnel <input type="checkbox"/> 50 new appointments receiving 3 days training as part of induction <input type="checkbox"/> 3 days ethics training for all promoted staff (approx 30 annually) <input type="checkbox"/> 5000 copies of the leaflet available at all office receptions dealing with public	Ministries; RCSC; ACC	ACC/ PARL	Regularly as of January each year

Second, there is a need for the existence of an effective and continuing means of monitoring, review, and revision. This will need to be institutionally organized and coordinated through the:

- Development of a complete inventory of institutions and agencies. The inventory would include a brief outline of the establishment and mandate of each institution and the responsibilities each has in corruption-related efforts. It would be used to make institutions aware of their mutual

existence and roles which, in turn, would facilitate cooperation and coordination of mandates and activities.

- An assessment of the mandates and activities of each institution to identify and to address gaps or inconsistencies. Consideration could then be given to enhancing mandates or resources in areas identified as weak or under-resourced.

While the ACC has a key facilitating role, the development of a more effective inter-institutional approach and a focus on the development of an ethical environment requires the allocation of responsibilities across institutions:

- Investigation – case review and outcome reviews: ACC; RAA; Police; RCSC
- Ethics training – ACC; RCSC
- Ethical Environments – ministries; Internal Audit; ACC
- Oversight - RAA; ACC; Parliament.

4.4 ACC Internal Environment

In order to take the lead or facilitate progress in a number of areas above, the ACC needs to consider the competencies of its staff, the quality of its management and the development of its organisational capacity to deliver its responsibilities.

4.4.1 Leadership and Management

The current legal and operational framework of the ACC puts all powers in the hands of the three commissioners who currently exercise both policy and operational responsibilities. This essentially means that commissioners are responsible for both policy and its implementation, acting both strategically and as senior managers. This shapes the roles of senior management toward administrative functions rather than executive responsibilities. While this may be understandable in terms of establishing and institutionalising the organisational culture of the ACC, the continued involvement of the commissioners in the day-to-day running of the ACC has two implications. First any changes to the tenure of the commissioners (who currently hold acting positions) and the staged replacement of the commissioners raises major questions about the maintenance of that culture, which should be part of the responsibilities of senior management.

Secondly, the maintenance of this culture will depend significantly on the future of the current Commissioners. While much of the current culture and approaches to work derives from the work of the commissioners, the sustainability should depend less on the commissioners than on senior management who, in other ACCs, would be expected to provide the longer-term operational leadership and act as a counter-balance to future commissioners who may well have different, and not always well-meaning, views on how the ACC should work, and what should be the focus of its investigations.

The issue is not a criticism of the roles of the current commissioners but it is a noticeable feature of ACCs, from Australia through Egypt to Sierra Leone, that, sooner or later, dynamic leadership attracts political resistance and the fixed-term nature of commissioner appointments allows governments to influence the work through appointments. This can be mitigated by embedded career senior management. In view of longer-term and succession planning, the current commissioners should disengage from the operational work of the ACC, and certainly from active investigations. They

should provide organisational space to allow senior management to take executive responsibility for delivery of the commissioners' vision for the ACC. The commissioners themselves should focus their attention on the strategic issues, such as reviewing the ACC strategy based on complaints analysis, partnership development, human resource mobilization, and communication strategy. In particular the Commissioners, while having some oversight management responsibility for the work of the Divisions, should focus their attention on their external environment and their stakeholders.

The senior management (heads of Divisions and Director) are experienced, competent and committed. In addition to the issue of the Commissioners, the retention of the level of experience and management is crucial.

4.4.2 Workplanning

There is no clear distinction between the policy roles and responsibilities of the Commissioners and their engagement in operational work. In particular the involvement of one Commissioner in both decisions on whether to investigate cases, and the outcomes of cases, while also being involved in live investigations, is not suitable in terms of Division responsibilities and the Commission's oversight role. The Commission as a whole is also engaged in the daily activities of the ACC, in part because of the staffing levels and in part because of the hands-on approach that has underpinned the culture that has developed within the ACC.

While the Director, and Heads of Divisions, manage the day-to-day operations of the ACC, they do not have executive responsibility. In terms of organisational development, the continued dependence on commissioner-led executive responsibility should be increasingly diminished, with the Commissioners focusing on reviewing the workplans against the national anti-corruption strategy framework and reviewing performance (none of the workplans nor the annual reports actually detail delivery of the activities in the workplan). Capacity is not always available to deliver the workplan which in any case addresses what will be delivered rather than what is delivered against the proposals.

4.4.3 Investigations

Despite the perception of the Commissioners that the work of investigations should feed into identifying procedural, cultural and systems weaknesses in the delivery of public functions and services, with the overall goal of the ACC to improve the work of the civil service, this is not articulated in the anti-corruption strategy framework.

The investigations work is at the moment reactive and covers a very wide spectrum of cases ranging from complex mining cases to illegal land transactions. The acceptance criteria, the lack of capacity (and the involvement in a complex case in the early days of the ACC) have conspired to lead to a case backlog. In terms of investigations most public sector bodies have poor record keeping procedures, while there are delays in accessing material from private sector institutions such as banks. There is a problem with staffing levels and building up the expertise and competences of investigators.

While the latter (but not the former) is being addressed within the ACC, the ACC has also been able to use staff from other agencies (for example from the Royal Audit Authority or specialists from the

Standards and Quality Control Authority (SQCA) in relation to building or road measurement). There is also a need to maintain updating competencies in such areas as analytical skills, the use of intelligence and the use of surveillance.

The ACC has a backlog of 200 cases which it is in the process of addressing. Given its prescriptive scoring criteria applied to allegations, and the work plans, the need to reduce the current backlog and manage the possibility of any future backlog is currently under review. This may be achieved through the current work on sensitising potential complainants. It could also be done in a number of ways: more staff; earlier engagement with the prosecutor at the onset, or at a mid-case review, to identify the charges more likely to be substantiated; planned case reviews; stricter case acceptance criteria to limit the number; use of the inter-agency vetting committee to formally pursue and monitor alternatives to a criminal investigation route.

In terms of approaches to investigations, the documented approach reflects a good practice framework, including the options of possible offences on which to focus (in terms of time and ease of collecting evidence), on review points, etc. However, there are three identified issues.

First, although the ACC is committed to team working on cases, and uses a mentoring approach for new recruits while working on cases, the team approach is not well-developed and newer recruits do not necessarily feel fully engaged in the case (often being used for specific tasks without understanding how these support the investigation of the case itself and what their tasks are intended to achieve). Mentoring is not used in the training sense of the word and ‘learning by doing’ is only one aspect of mentoring. Clearly time constraints and the high workloads are responsible but a better use of team investigations and more emphasis on lead investigator discretion on how the investigation is undertaken would be sensible, as would the full engagement of all investigators on a particular case). A dedicated case room and computerised case management system would facilitate this, although it is understood that the latter is in progress. The third issue is that individual investigations do not necessarily expose staff either to the range of techniques available to investigators, and nor do they provide staff with the knowledge of the range of likely offences.

The ACC needs a more balanced and planned approach to training. A revised training programme should be built round ‘golden thread’ scenarios and less experienced investigators should be mentored for 6 months within an investigative team until they have the confidence to operate increasingly independently with a team.

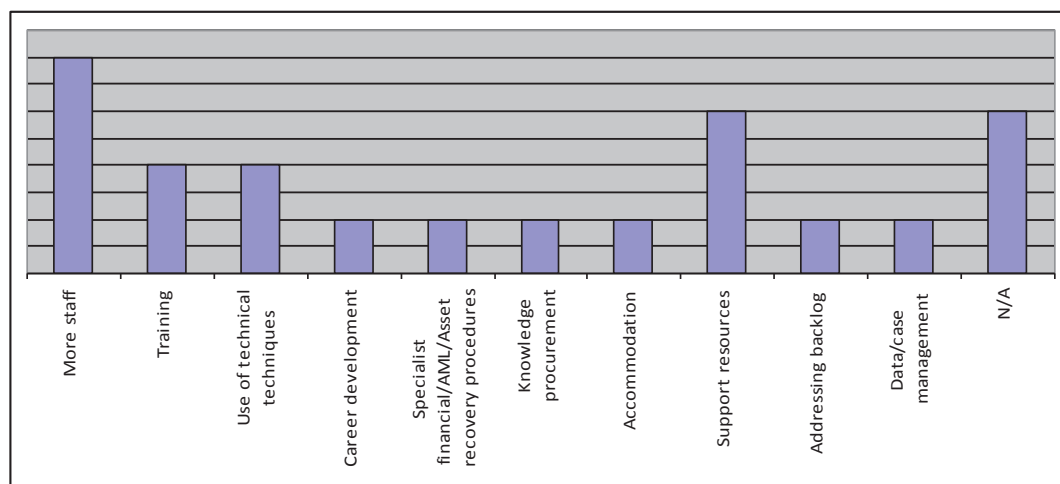
It would also appear that the use of technical skills is developing but there appears to be scope for a greater emphasis on financial analysis, on telephone and computer interrogations, on internet and database searching, and on money laundering and asset recovery offences. Indeed, the use of money laundering offences and of restraint and confiscation, and the possibility of plea negotiations, are approaches that are increasingly used as an alternative approach of building up a criminal case that is dependant on levels of proof and the timeliness of the court processes.

Investigation team leaders and senior managers would have further training in such areas as:

- alternative investigative tactics such as long term infiltration and informant recruitment, plea bargaining, financial profiling, and forfeiture and confiscation;
- developing operational databases that trawl past cases against current cases against intelligence against other agencies’ cases for proactive offender, network and risk activity profiling;

- resource, case and staff management;
- information security management;
- source, suspect and witness management.

Given that Investigations Division staff have been trained in the manual and do undertake investigations within the current framework, they were also asked in interviews how they would address improving the current approach to investigations:



While more staff is a constant throughout the interviews (which also links to comments about workloads and shortage of staff), there is scope, certainly with the move to the new building, to introduce new facilities and resources, such as case rooms and casework staff, for teams to manage the operational aspects of investigations, networked IT facilities, a technical unit to process electronic evidence, and a training room that incorporated computer-based and other training to develop the expertise of investigators. Revisions to the training are discussed in detail below.

4.4.4 Prevention and Public Education

The existence of 2 Divisions covering much the areas of responsibility and the commonality of background would suggest that Prevention and Education is merged. While the location of work on asset declaration may remain where it is so long as education in its completion is the main ACC activity, if the ACC moves to verifying the information – which is necessary to make the requirement to submit the relevant documentation meaningful - then it may usefully be located on a networked intranet where the information may be used for investigative purposes.

The Prevention Division has learned throughout its work on system studies and its joint work with the Investigations Division that the procedural weaknesses and loopholes in the public administration cannot be solved by ACC itself but only with collaboration from the other agencies. The ACC cannot do it alone:

‘at least every third case investigated is regarding embezzlement of funds and procurement. Institutionalisation of professional recruiting system and accountability tools and stringent compliance program of code of conduct and ethics and training in it, revamping internal

control systems including strengthening of the Internal Audit Units, aggressive exploitation of ICT to enhance efficiency and transparency, simplification of procedures and removal of obsolete and unnecessary conditions that engender unhealthy behaviour of public servants and private sector and institutionalisation of effective grievance redress mechanism are some measures to minimise such forms of corruption' (Annual Report, 2009, p29).

On the other hand, the ACC also recognises the constraints of the slowness of any control environment to incorporate behavioural change programmes and the means to assess initiatives taken by agencies following publication of the Integrity Assessment methodology results, systems studies, sensitisation or investigation. As the ACC notes in relation to approaching the prevention of corruption in 'a systematic and a phased manner':

'it has not been really able to make inroads into it firstly because of ACC's own limited capacity, secondly and more importantly because of the pervasive lethargy and indifference in the system'.

This has been discussed above in relation to stakeholders. The ACC Prevention Division has limited capacity to undertake system reviews, notably in terms of human resources and experience. The ACC should consider the best approach to pursue this type of work, whether to do it itself or to seek ways of outsourcing this to the ministries and civil society²¹, and effectively monitoring ministries compliance with regular review and improvement of their systems and procedures. The latter may be more effective and result in greater impact. Possibly, lessons could be learned from other ACC agencies in the region in this regard. For example, the work done by Integrity Watch Afghanistan on simplifying procedures may be a source of inspiration. Similarly the report templates for ministries developed by the Independent Authority Against Corruption in Mongolia or the experience of the Afghan High Office of Oversight monitoring compliance with priorities set by the Ministries may be relevant.

More generally, the systems study methodology, which reflects the procedural and controls aspects of the national strategy, requires a sustainable preventative context. Absent controls or non-compliance with procedures is both a systems issue, in terms of internal and external audit responsibilities, and a personnel issue in terms of an effective ethical environment. While the systems study can identify weaknesses and propose direct reforms, its work should also reflect the expectations on ministries in developing ethical environments as part of the National Anti-corruption Strategy and in particular on staffing ethics, providing guidance and support to assist public officials to 'do the right thing' in the conduct of their public duties.

This would require the ACC to facilitate with ministries after a system review a coherent approach on implementation (helping public sector organisations develop ethical environments, including training that connects directly with, and highlights, the key ethical issues faced by organisation), training approaches (the facilitation of learning and training illustrating the ethical dilemmas that any public official might face, advice on how to apply the values and principles of the law and regulations on ethics when making professional decisions), and documents (providing key facts and tips on the ethical values and principles, and practical tips on everyday activities that can guide conduct) and means of raising ethical issues and uncertainties as well as reporting continuing systems weaknesses.

²¹ The Tarayana Foundation, for example, suggested to train its field officers to work closely with public officials at the local level to improve government procedures and enhance ethics at the local level.

4.4.5 Training

The ACC already provides induction training to new recruits and operates to an agreed human resource development plan, but there are issues about both the use of academic training and regional practitioner training. There is a need for a TNA to be conducted to draw up a training plan. The plan should be developed to focus on:

- Ensuring that the level, cost and specialism of the training is linked to the longer-term retention and development of staff (e.g., as suggested above, longer-term contractual arrangements depending on the level of investment in training);
- Incrementally developing the competencies of staff;
- Training experienced staff as trainers and mentors²², with the possibility of establishing a small training unit within Prevention or Administration, and develop a longer-term training strategy based on whether the ACC is linked with or delinked from the RCSC.

For *all* new recruits the standard training programme – taught in-house and using the ‘golden thread’ approach’ - should include three areas. One relates to the law on corruption - key legal principles and offences; relevant institutions; evidence and admissibility, law governing investigations and prosecutions; the roles and uses of IT; witnesses, court systems and prosecutions; civil routes; overseas inquiries. The second provides a basic knowledge on managing investigations - the physical, financial and human resources required for and used in investigations; risk assessments; information and intelligence. The third covers core investigative techniques, including:

- *Search and Seize*: Search opportunities to locate and seize the evidence of corruption are of major importance. The initial search will be to gain evidence of the suspected criminal conduct. However the investigator must be aware that there may be evidence of further gifts or undue influence shown. All aspects of the suspect’s lifestyle should be considered and examined to try and ascertain the funding stream. All investigators should be competent in ensuring any search scene is photographed and/or videoed prior to the commencement of the search, how to identify and seize potentially-relevant material, including (1) financial records; (2) telephone records; (3) diaries, desk planners, personal organisers; (4) Computers and other electronic data.
- *Evidential Property Handling and Storage*: All property recovered during an investigation must be bagged, sealed, given a unique reference number, securely stored and documented. Use of a manual recording system to show how security is maintained and the movement of that property. A Premises Searched Book must be maintained and the procedure must also show that when a case is completed how long that property should be retained.
- *Accessing electronic equipment*: how to seize, store and access all electronic devices, including PCs, laptops, PDAs, and mobile phones. Accessing emails and other forms of electronic information.
- *Examination of Evidence*: In the examination of seized material, and its evidential value to the investigation, priority would be the forensic examination of information held on computers etc. If the seized computers are essential to the operation of an on-going business, it may be necessary to make a copy of the hard drive(s) and return them as soon as practicable. Evidence relating to

²² While this already happens within the ACC, the approach to mentoring needs developing. Mentoring is not supervision or coaching but, like training, is a specific technique whose choice depends on a number of factors. It would appear that the permutations of mentoring approaches – for example, normative, formative or supportive – are not fully understood in an ACC context.

the dishonest appropriation or receipt of money is usually at the core of many corruption investigations. Evidence held by banks and other financial institutions can provide documentary evidence in relation to the identification of the suspect(s), an audit trail of the movements of the suspect(s) through the plotting of the geographical use of cash cards, credits card and cheques, and the destinations of money transfers. Banks and financial institutions have policies in relation to the length of time that they retain this type of material. It is essential then to prioritise the obtaining of this type of evidential material.

- *Interviewing*: The careful planning of the interviews with suspects in a corruption case is essential if the appropriate questions are to be asked and the appropriate evidential exhibits are to be shown to the suspect. In practical terms, the interview plan should be drawn up in as clear and concise manner as possible, the questions should be unambiguous with the intention of testing the suspect(s) on specific allegations of criminal conduct. Likewise the evidential exhibits produced to the suspect(s) during the interview should be directly pertinent to specific allegations of criminal conduct.

The reason for training all new staff is simple. It will allow new staff to move between Divisions and, if there are a number of large cases, staff from other Divisions would be in a position to assist without the risk of affecting the progress of a case or the evidence.

Thereafter there should be specialist courses taught either by imported consultants or by seeking partnerships with relevant institutions to develop specialist courses that cover:

Information and Intelligence

- *Open Source Intelligence (OSINT)*: OSINT is an information processing discipline that involves finding, selecting, and acquiring information from publicly available sources and analyzing it to produce actionable intelligence.
- *Knowledge Management (KM)*: KM is analysing and assessing new intelligence, developing expertise in the nature and scale of the threats of corruption; disseminating information and assessments; securing analysis and feedback from operational activities and assessing the impact of work already undertaken;; assessing internally generated proposals and constructing multi-agency programmes of activity to address those priorities; supporting performance monitoring of operational activity and endorsing extensions or deviations to operational plans as appropriate.
- *Criminal Intelligence (CI)*: CI is involved with covert work, with information sources and informants; learning how to establish informants, understanding communicating with information sources and informants; ability to use grading criteria of the reliability of information received from information sources and informants (e.g. British 5x5x5, 4x4 of the Europol); reliability assessment of information sources and informants; understanding use of intelligence in criminal proceedings, legal regulation and tactics; what data are most often relied in courts to prove corruption and other criminal offences, their comparison and weight.
- *Charting*: learning how to create an Association Matrix and how it can be used to identify links between entities, learning how to create an Association Link Chart and will learn how an Association Link Chart can help identify links between persons, places and commodities, and learning how to create an Event Flow Chart and how to use it to reconstruct the sequence of events that have taken place and predict future activity.

Financial Investigations

In terms of advanced training, most investigators should seek to become competent in undertaking financial investigations as most of the offences relating to corruption and illicit assets involve acquisition, movement, spending and transfer of money and assets. Further, a focus on the recovery of the proceeds of corruption, with or without a predicate offence, is increasingly seen as more effective than traditional criminal sanction approaches (it is also in a number of countries incentivised by allowing the recovering agency to retain and re-invest some of the recovered assets).

Apart from the restitution of assets, it also allows investigators to use, subject to legal amendment, money laundering and other offences, as well as widening the scope of potential sources of information and evidence, and witnesses. The training would ensure investigators learn what money laundering is and why those involved in corruption need to launder money, the methods used, the nature and importance of domestic and international banking laws and regulations, the nature and value of financial records and the information that they can provide, the means used by money launderers to layer and integrate their illegal proceeds, the roles and responsibility of AMLO, how financial investigations are conducted, where and how to obtain financial records for use in a money laundering investigation, how to perform a net worth analysis in order to determine what assets were acquired through unknown or illegal sources, how to perform a search to obtain evidence in a money laundering investigation, and the role of asset seizure, and the seizing and processing of computer based evidence, and how to prepare for interviews and interrogations as follows:

- *Management of information and intelligence by financial investigators:* Collecting evidence, assessing and analysing it to presenting it in a format for used as evidence in court. Practical aspects of managing information as well as the legal and organisational responsibilities in relation to information management. Identifying areas for investigation; disclosure issues; analysing information and intelligence; reporting; internal and external resources; controlling and recording resources; key risks and issues; calculating benefits and realisable asset figures; suitability for prosecution; legislation relating to applications for restraint/orders/warrants; procedures and decisions in formal restraint; procedures and decisions for confiscation; enforcement procedures for confiscation; charges for money laundering.
- *Financial Investigations:* Analysing financial instruments, investments, businesses and trading entities where proceeds can be laundered. Understanding company law and accounts and issues which affect trading companies, types of financial instruments and specialist investigative techniques. Intelligence gathering; types of information; accessing information; tracing assets abroad; open source intelligence; intelligence from abroad; different jurisdictions; sensitivity (terrorist, corruption); dealing with overseas banks; repatriation of assets; cross border co-operation; internet skills; internet banking, gambling, stock-broking etc; searching techniques; internet footprints; forensic accounting; concealed income analysis; disclosure issues; immunity; undercover/covert policing.
- *Managing money-laundering investigations:* Compliance with legal and procedural requirements. Investigating Suspicious Activity Reports. Conducting inquiries in relation to money laundering activities. Preparing and presenting evidence for money-laundering prosecutions.
- *Managing restraints and confiscations.* Purpose of a Restraint Order; definition of confiscation; implications where suspect absconds; procedural rules and guidelines. Purpose of confiscation hearings; Processes of confiscation hearings (assessment of benefit by court, assessment of available amounts, making orders etc.); implications for hearing of absconding by defendant;

information requirements (benefit, assets available etc.); presenting evidence (paper and in person); definition and status of evidence; civil procedures; burden of proof.

- *Calculation of value of proceeds asset tracing:* Realisable assets – definition; identification of additional assets – timescales and action taken; using an analyst; analytical products including association charts, flow charts, schedules, timelines and reports; reading financial and company statements; financial profiling, including net worth analysis; methods of asset tracing and when they are appropriate; calculation of benefit.

For those recruited to work in Prevention or Education, specialist courses would also be developed with external providers on communications strategies, presentation skills, graphics and material design and those involved in prevention and systems studies on analytical techniques, risk assessment, approaches to prevention, management, organisational development, and research methods and ethics.

All new staff should be allocated to a senior member of staff (so long as they are trained as mentors; see footnote 23) for 6 months. The mentor should report on the level of competence and confidence before external training courses are then identified. In addition, the move to new premises should coincide with the provision of those resources that will underpin the delivery of the training and investigative work. This should include dedicated interviewing rooms, evidence storage room and case management room (an investigations room where all the material and planning for a live case takes place). Furthermore, appropriate tape and video recording equipment are lacking, as well as forensic tools for interrogation of electronic devices, such as PCs. A dedicated server should be installed, preferably with a basic case management system that also includes software for, for example, charting.

4.4.6 Staffing

The biggest investment in terms of knowledge and techniques for investigations is in staff, and the relevant training is likely to take place over a number of years. To be able to stay on top of the volume of cases for investigations and to be increasingly engaged in the facilitating the use of the Integrity Assessment tool and the systems reviews, as well as monitoring progress on the National Anti-corruption Strategy, the ACC needs to ensure that it secures the necessary staffing establishment. The ACC currently needs another 50% increase to its establishment.

To benefit from its investment in training, offer career development and create a pool of qualified staff suitable for promotion to management posts in due course, the ACC also has to be able to recruit and retention staff.

To improve its capacity, therefore, the ACC has three issues to address.

First, it must retain responsibility for, without normal processes, determining that level of establishment that allows it to do its job. For example, the proposed legislative reforms for the Lesotho ACC are standard practice in stating:

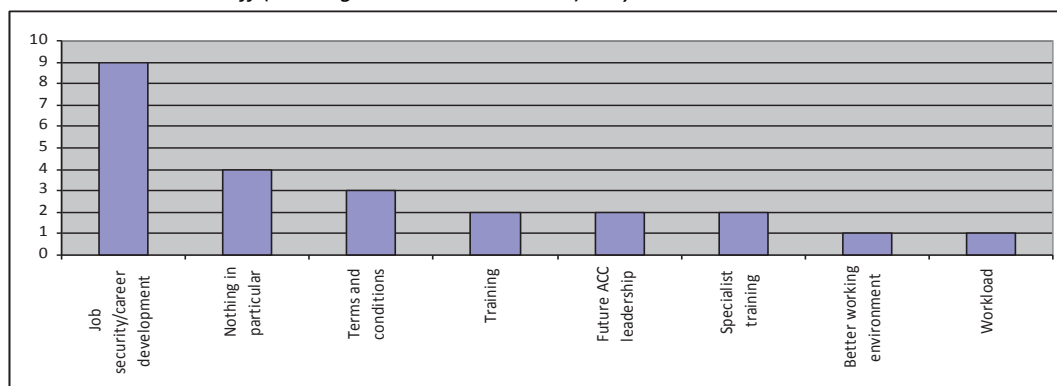
The Director-General shall appoint such staff for the Directorate as, with the approval of the Minister as to numbers, remuneration and other terms and conditions of service, he considers necessary for the discharge of his functions.

The ACC should be able to recruit at least 50% more than its current establishment to allow the issue of the division of responsibilities between commissioners and senior management to be resolved. It would also allow for the prospect of increased career development opportunities, and mixing longer-term recruitment with short-term appointments. One possible initiative would be the appointment of clerical or secretarial staff to take responsibility for case management, document and exhibit recording and, depending on qualifications, basic financial analysis.

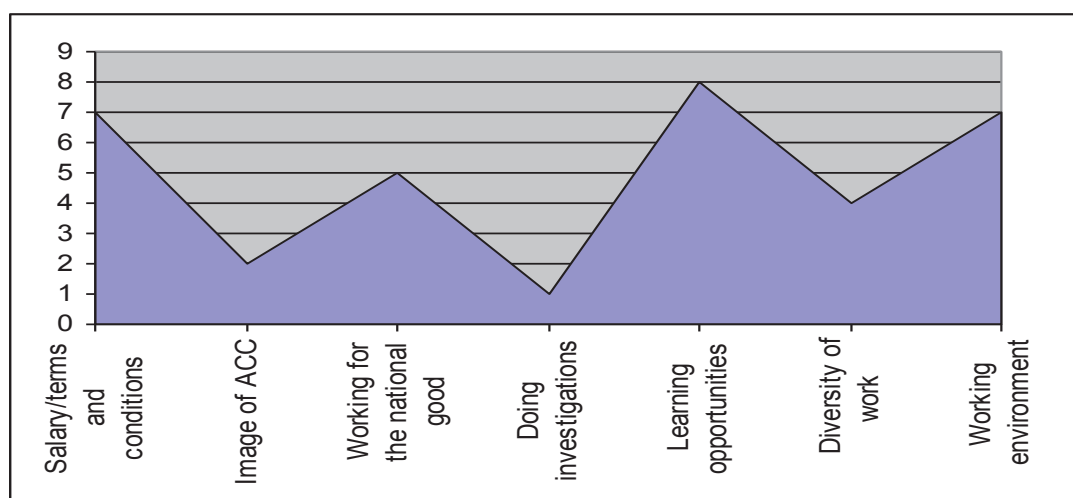
Second, the ACC needs to consider how to sell itself to the job market. Generally the staff recruited to the ACC are well-qualified and, once working within the ACC, well-motivated and acknowledge the learning opportunities the ACC provides. Most appreciate the working environment and particularly note the quality of the leadership and management styles.

From this review alone, the opportunities for training, for diverse and interesting work, and also working for the national good, provide the basis for recruitment. A number of these issues have been identified by staff who asked what would make them stay and what they thought would make joining the ACC attractive to their friends:

What Would Make Staff (Investigation and Prevention) Stay...



...and What Would Attract New Staff?



The enthusiasm of a number of new recruits makes them the right people to make presentations to schools and universities on the benefits of working in the ACC. Attracting ambitious young staff likely to seek to maximise training opportunities, however, should be managed within a TNA that recognises staff turnover and short-term appointments, thus establishing a contractual relationship between training, competencies acquired and length of service. This is a short-term solution that should only be available for a minority of staff.

Thirdly, however, is the key question - who owns responsibility for how it wishes the organisation to develop, ensure a well-motivated, permanent staff with career prospects, and develop a management cadre dedicated to the organisation.

The current mandated allocation of staff, as opposed to voluntary competency-based recruitment, creates a number of potentially negative issues, from the allocation of reluctant, or fixed-term or inappropriately-qualified staff, to the inability of the recipient agency to manage its staffing requirements and develop a longer-term organisational capacity building programme.

	2006	2007	2008	2009	2010
Commissioners	3	3	3	3	3
Professional Staff (exc. Support staff)	8	5	8	8	8
Left	-	3	-	2	4
Recruitment	+2	+1	-	+9	5
Total	11	11	11	20	21

The possibility of building on its current complement, particularly its senior management, is also caught up in the independent agency and the delinking issue. This revolves around whether the independent agencies should be moved outside, and thus delinked from, the remit of the RCSC, setting their own terms and conditions of service and appointing their own staff. This allows flexibility but it also, in a small organisation, offers limited career opportunities (for such staff, they would not be classed as civil servants and have to apply to the RCSC if they wanted another public sector post, other than in another delinked agency).

Remaining within the RCSC remit means responsibility for the size of agency establishment, recruitment, appointment, terms and conditions of service, promotion and transfer for executive level staff would lie with the RCSC (section 33 of the proposed Act; more junior appointments would devolve, as with all other public service agencies, to the agency itself which might allow for the recruitment of more support staff).

Obviously, the capacity of the ACC to fulfil its mandate will be affected by availability of sufficient, and appropriately-qualified, staff. The ACC will be constrained in organisational development terms in retaining and advancing its better-performing staff while there are employability implications of RCSC-appointed ACC staff investigating senior civil servants who then wish to further their careers elsewhere in the civil service. Certainly in terms of line-management responsibilities, permanent staff appointed by and responsible to the ACC is preferable.

Finally the ACC will always be subject to possible enforced movements of senior managers as career opportunities occur elsewhere in the civil service. Certainly this issue has particular relevance for existing staff. For those who are hand picked in 2007 on the understanding that the appointment to the ACC would be for a fixed period, there is the question of when they may return, if they wish, and to what posts. If the ACC becomes delinked those staff who stay with the agency will be classed as having resigned from the civil service and unable to reapply for a civil service post. It would appear that in the short term the ACC cannot delink without taking a potential risk of losing a number of trained and qualified staff at a number of levels, and unable to replace them with staff of an equivalent quality, to ensure continuity.

In terms of the Civil Service Bill, the ACC has 3 options:

1. stay within the remit of the RCSC.

Currently, this has consequences for staff establishment, staff turnover and commitment in terms of who is allocated to the ACC, terms and conditions of service, criteria for promotion, career development, how long the staff stay and how committed they are to the work and ethos of the ACC. If remaining within the remit of the RCSC was to be the outcome, it should be done so that the ACC could insist in terms of Chapter VIII of the proposed legislation that it retains its experienced and qualified staff. On the other hand, and in terms of the rights of the civil servant, it would find it difficult to retain staff against their preferences or expressed career development.

The ACC could seek to have its particular requirements recognised in the legislation or by the RCSC. While this may be unusual in the Bhutanese context, it is not unusual for such agencies, given their specific requirements, to have a degree of flexibility not generally available to other civil service departments to deliver their functions. This could provide the ACC with an increasing annual budget and the right to appoint its own staff, as well as establishing appropriate terms and conditions of service (already recognised by the enhanced salaries already being paid). Such an approach, including the more general benefit of ACC-trained staff taking up posts elsewhere in the civil service, would allow the ACC to then determine its approach to staffing in ways that sustaining its current successful organisational development and capacity.

3. become delinked.

In terms of the work of the ACC, delinking would allow full ownership of the capacity development to lie with the ACC leadership which would also be responsible for all recruitment criteria, training and career and promotion prospects. It would also allow the ACC leadership to continue the development of the current culture and ethos of the organisation.

On the other hand, delinking must not be implemented quickly, given the potential loss of staff noted above. It will require a 3-5 year disengagement process within which it could operate a 1-in, 1-out rolling replacement process of both management and staff. Once outside the remit of the ACC and responsible for its own staffing, the ACC could also seek, as do other agencies with high staff turnover, to offer further financial benefits to lock-in its existing senior staff for longer periods of time or until retirement until it can train up replacements. It can offer significant training opportunities for newly-recruited staff - drawn from the larger pool of graduates than those recruited into the civil service - who, in return, agree a contractual arrangement whereby they must stay for a number of years before seeking other career opportunities (which will emerge in due course in, for example, banking compliance, internal audit and other services). It could experiment in recruiting support, police, customs and other staff for fixed term, full-time or part-time tasked work (such as interviewing or statement-taking or document-handling).

Again as noted above, the main issue related to the future of the ACC, career development and the question of delinking. The quicker this is addressed then the sooner can organisational stability be achieved and senior management can focus on continued capacity development with an expanding but stable staff base. To do so, delinking would provide a much more amenable framework than remaining within the remit of the RCSC.

V. CONCLUSION and RECOMMENDATIONS

While much of the above report – or the identified issues - will come as no surprise to the ACC, it provides (i) part of the necessary factual review and analysis for the Gap Analysis and (ii) information about the ACC and its operating environment that would not be known by external and other agencies. As such it serves as a reference document for both purposes.

In addition, however, the report was also a capacity assessment of the ACC, intended to provide guidance to the ACC management about the development of the ACC as an organisation, with a focus on information relating to institutional status, service terms and conditions, professionalization of careers in terms of hierarchical career advancement and organisational culture. Below, the report notes a number of findings and recommendations that relate to the work of the ACC.

This section therefore summarises findings in relation to the current work of the ACC and makes recommendations as follows:

Main Enabling Environment Findings:

The levels and volume of corruption is not significant but the potential exists, as democratisation, the development of Bhutan's natural resources, the lower ethical standards of neighbouring countries (and the possible effect on companies from those countries which operate in Bhutan), and the potential for transit crimes, including financial crime through

Bhutan's small and underdeveloped banking sector, combine to create opportunity and incentive for financial crime, including corruption, at a faster rate than the institutional arrangements to detect, investigate and sanction it. In terms of areas of concern, much of the risk of potential corruption lies in nepotism and favouritism and misappropriation – i.e., a reflection of a public official's failure to understand public service and the responsibilities of public office – as it does from the risk of bribery; this is confirmed both by the ACC's CPS and by its more recent Integrity Assessment reviews. This in turn points to the importance of prevention - reviewing the controls and ethical environments in public bodies - as much as for having a robust investigative response.

The overall the anti-corruption environment has developed unevenly. While the RAA is effective, it is not integrated with a functioning internal audit service (IAS). An IAS is established by the management of any government ministry or public agency and, although operating independently, should be part of the overall management function of the organisation. The RCSC has yet to undertake its monitoring and evaluation role with respect to HR in ministries and agencies. The civil service as a whole is uneven in its approach to the establishment of a basic ethical framework and appears reluctant to integrate the increasing amount of information produced by the ACC on areas of vulnerability and risk into their work plans. The roles of parliamentary oversight and accountability are not yet developed in relation to the national anti-corruption strategy and ministry efforts to promote ethical environments There is also still a learning process as to the exact relationship between the legislature and the civil service, and where the general responsibility for governance should lie. In terms of the strategy, shifting primary responsibility for prevention to ministries has not yet been achieved. In particular there is an absence of the development of an ethical environment in ministries, a controls framework and a structured ethics training programme.

The integration of the roles of various agencies and the use of the national anti-corruption strategy as a common focus has yet to be fully achieved and thus the work of the ACC is not yet fully mainstreamed.

A number of actions that are necessary to achieve this are largely outside the remit of the ACC by itself but there are five issues that would facilitate its work; the first concerns a more formal inter-agency relationship to ensure allegations of corruption are addressed, whether through the ACC or through disciplinary action by a ministry; the second concerns the introduction of an Internal Audit Strategy; the third relates to the integration of the ACC's work on Integrity Assessments and systems studies into the development of wider ethical environments; and fourthly all public sector agencies should be more engaged in the development and delivery of the National Anti-corruption Strategy. Overall, there will need to be a more coherent and coordinated approach to prevention

Main Enabling Environment Recommendations:

1. *Internal Audit*: the government needs to establish an internal audit framework, with a 3 year plan to recruit, train and operationalise internal audit. While a management function, internal audit should have formal reporting arrangements with the RAA.
2. *Inter-agency working*: there needs to be a more formal working relationship between agencies directly involved in the investigation of corruption in terms of shared information and

investigations and to work on the revision of and delivery of the National Anti-corruption Strategy.

3. Systems Studies and Ethical Environment Reviews: together, the RAA and internal audit and the ACC need to agree the use of ACC-led Integrity Assessment and systems studies reviews as a risk- or case-based review procedure for all ministries as part of the latter's responsibilities under the strategy. This should be part of a formal requirement of a revised national anti-corruption strategy within which ministries devise and produce an ethical environment review, together with an annual action plan to address fraud and corruption on the basis of internal audit work, the ACC's systems studies and the RAA's reports.

While internal audit and the RAA are primarily responsible for the controls environment (and for which the Public Accounts Committee should take the lead in providing cross-ministry oversight for its implementation and effectiveness), the Prevention Division of the ACC should take lead responsibility in leading on systems studies, facilitating ethical environment reviews and leading on developing structured dilemma-based ethics training programmes.

4. The National Anti-corruption Strategy: to underpin these initiatives, the national anti-corruption strategy and associated action plans should be revised to provide specific guidance on responsibilities, on the documentation to be produced (and to whom) and, in the action plans, the specific, quantitative activities to be undertaken to what timeline.

Main ACC Organisational Findings:

As an organisation the ACC is a well-organised agency, reflecting good practice approaches to management and delivery of its functions. It has determined its roles and responsibilities and established a strategy that integrates the three areas of activity – education, prevention and investigations – by improving the quality of complaints through education, investigating substantive complaints, and using the evidence from investigated cases to inform its review of systems weaknesses through its systems studies. It is developing its preventative responsibilities through the Integrity Assessment and systems reviews approaches.

Organisationally it has an accessible and open management approach, with detailed and documented procedures. It needs to review its approach to staff training, both for new recruits and for the development of specialist competences in both investigations and prevention.

The biggest staff issue related to the future of the organisation in terms of whether it remained part of the RCSC framework or whether it de-linked to become an independent agency. This was also the main management issue because the commissioners wish, in terms of capacity development, to be responsible for delivering a stable, trained and evolving institution. This in turn would mean having ownership of recruitment criteria, training and career and promotion prospects, and the continuing development of the current culture and ethos of the organisation.

Main ACC Organisational Recommendations:

1. Staffing: to develop as an organisation, and progress its capacity development, the ACC is significantly under-staffed, exacerbating issues relating to recruitment and retention, as well as specialisation of staff, and career progression. This will be worsened if staff turnover adversely

affects institutional memory, deployment of acquired specialist skills, and internal promotion of experienced staff. The establishment of the ACC should be at least 50% above current levels.

2. *Skills*: on-the-job training is no substitute for practitioner-led in-house training in the core skills for all new staff, allowing a degree of flexibility and cross-Division support. Specialised competences and training in management should be developed, possibly in conjunction with external providers. The ACC needs a more grounded training framework, with a better balance between in-house and overseas courses, and a more effective mentoring programme, through a TNA.

3. *Resources*: the move to new premises should coincide with dedicated interviewing rooms, evidence storage room and case management room (an investigations room where all the material and planning for a live case takes place). Furthermore, appropriate tape and video recording equipment are lacking, as well as forensic tools for interrogation of electronic devices, such as PCs. A dedicated server should be installed, preferably with a basic case management system that also includes software for, for example, charting.

4. *Establishment*: the longer-term issue, concerning the development of organisational capacity and stability, involves both the retention of existing staff and the recruitment of new staff. The possibility of building on its current complement, particularly its senior management, is also caught up in the independent agency and the delinking issue. This revolves around whether the independent agencies should be moved outside, and thus delinked from, the remit of the RCSC, setting their own terms and conditions of service and appointing their own staff.

It would, for an agency investigating wrongdoing across the political and administrative sectors, sensible to allow that agency, within agreed parameters, the authority to establish its own staffing establishment, recruit those staff it considers suitable for the agency, train and promote them, and ensure that it has the expertise, experience and management competencies necessary to deliver its mandate on a long-term basis. Internally, there are many positives about working for the ACC, which are articulated by staff and should provide the basis of recruitment (such as skills training, the work environment and the type of work). The question of the image of the ACC will change as its roles and responsibilities become accepted – and especially when the RCSC, public service agencies and ministries, and the Legislature begin mainstreaming its work and profile as important to the national interest and of value to the national good.

The commitment of the current leadership, and the potential pool of recruitment, as well as the benefits that could be promoted as part of a recruitment strategy, suggest that delinking would be the preferred way to allow it to continue its progress toward successful organisational development, capacity, stability and performance.

ANNEX 1:

TERM OF REFERENCE: JOINT MISSION OF THE UNDP/UNODC REGIONAL CENTRE IN BANGKOK

Background

The Anti-Corruption Commission of Bhutan was established by Royal Decree on December 31st 2005. The Royal Decree states:

“With the rapid pace of economic development in our country, there have been changes in the thinking of the people with the influence of self-interest leading to corrupt practices taking place in both the government and the private sector. If appropriate steps are not taken now to stop this trend, it will lead very serious problems in the future, for both the government and the people, in our country with a very small population. In this regard, it is the responsibility of every Bhutanese to act against corruption in our country. At a time when we are establishing parliamentary democracy in the country, it is very important to curb and root out corruption from the very beginning. Therefore, it is imperative to establish the Office of the Anti-Corruption Commission before the adoption of the Constitution and build a strong foundation for the Commission to effectively carry out its functions and responsibilities.”

The Anti-Corruption Commission of Bhutan set itself the following vision, mission and values:

- **Vision:** To strive towards building a happy, harmonious and corruption free society.
- **Mission:** To eliminate corruption through leading by example, achieving excellence in partnerships, and mainstreaming anti-corruption strategies/measures in public/private organizations.
- **Values:** Leadership, teamwork, credibility, integrity, humility, transparency, fearlessness, impartiality, accountability, professionalism, expediency, creativity, tenacity of purpose and result-driven, empathy.

The Commission currently has four main Divisions: (i) the Investigation Division, (ii) the Legal Division; (iii) the Prevention Division, and (iv) the Public Education and Advocacy Division. During its initial 4 years of existence, it has undertaken broad-ranging activities to curb corruption, through public education, prevention and investigation work. The Anti-Corruption Commission has become the main institution to prevent and combat corruption in Bhutan.

In October 2009, a UNDP delegation from the Regional Centre in Bangkok visited the premises of the Anti-Corruption Commission of Bhutan following the Regional Democracy Conference hosted by the Government of Bhutan and organized jointly with CBS and UNDP Bhutan. At this meeting, the Head of the Anti-Corruption Commission expressed the need for a comprehensive assessment of Bhutan’s compliance with the requirements under UNCAC (in view of reviewing anti-corruption legislation and possible ratification of the UNCAC by the Government of Bhutan). Moreover, ACC felt it would be useful to assess its own current capacity to deliver its mandate effectively, to identify gaps and technical needs in order to strengthen the institution, as part of the overall comprehensive UNCAC self-assessment (or gap analysis).

The UNDP Bratislava Regional Centre has developed an assessment methodology for the preventive function of anti-corruption agencies, which has been piloted in two countries in the Eastern

European and CIS region. In addition, UNDP Regional Centre in Bangkok jointly with UNODC Office for Southeast Asia and the Pacific is currently piloting a methodology to assess the capacity of ACC investigation departments, as well as the ACC's working relations with other institutions. This latter methodology was successfully piloted in March 2010 in Mongolia to assess the capacity of the investigation department of the Independent Authority Against Corruption. UNDP is now considering the possibility of merging both methodologies to provide one comprehensive methodology to assess ACCs in various contexts.

Objective

To assess the functional capacities of the Anti-Corruption Commission of Bhutan at three levels:

- 1) The enabling environment
- 2) The organizational level
- 3) The individual level

Methodology

The Capacity Assessment of the Anti-Corruption Commission of Bhutan would draw upon the methodology developed by the UNDP Bratislava Regional Centre in 2009 and the newly developed methodology and tools in 2010 by the UNODC Regional Office for Southeast Asia and the Pacific (notably by Alan Doig).

The *Methodology for assessing capacities of anti-corruption agencies to perform preventive functions*, as developed by the UNDP Bratislava Regional Centre can be accessed at the following [link](#). The methodology provides insights in terms of assessing the most common corruption prevention functions, such as anti-corruption policy formulation, conducting diagnostics and research, legislative drafting, coordinating/monitoring/evaluating the implementation of anti-corruption policies, promoting international cooperation, disseminating knowledge on corruption prevention, enhancing civil society participation in the fight against corruption and enforcement of preventive anti-corruption measures.

In addition, another set of assessment tools have been developed to assess the investigation capacity of Anti-Corruption Agencies. Both the Bratislava methodology and the methodology developed by Alan Doig consider a set of similar issues and follow the UNDP corporate approach towards capacity development, by considering three different levels of capacity: the enabling environment, the organizational level and the individual level.

The enabling environment considers issues such as the political context, the constitution, the national institutional environment, and the operational independence of the ACC. The organizational level considers issues such as standard operating procedures, work planning, human resource management, etc. The individual level looks at technical background, training and skills by the agency's staff. All three levels are crucial to assess the capacity of the ACC.

Assessment Mission Work Plan

At the request of the ACC, the mission will conduct a comprehensive capacity assessment of the ACC at all levels, i.e. enabling environment, organizational level and individual level. The mission team members will therefore conduct preparatory desk analysis – prior to the mission – of the information available online (on the ACC website), notably in terms of the national anti-corruption strategy, anti-

corruption publication, rules on asset declarations, etc., i.e. all documentation on the anti-corruption enabling environment.

On the ground, the mission will start with a briefing to senior management about the scope and methodology of the assessment. The mission will then request to conduct one-on-one interviews with all professional staff from the investigation, legal, prevention and education/advocacy Divisions. Specific questionnaires will be administered in private sessions with each staff member (a room should be available for this purpose). The questionnaires will be standardized per Division and the answers will be kept anonymous. The aggregate answers/data will allow determining the level of skills of staff and the required training. In addition to these one-on-one interviews, consultations will be held with all heads of Divisions and senior management to assess the organizational capacity of the ACC.

Considering the number of professional staff²³ at the ACC of Bhutan and taking into account the average time per interview (45 min per professional staff member and 2 hours per head of Division / senior managers), all interviews could be conducted in three days (at best) if administered by one person. If administered by two persons, two days may suffice, although both team members may need to sit on the most important interviews with heads of Divisions and senior managers in order to ensure a common understanding of the major issues.

Aside these internal interviews within the agency, the ACC will also be requested to set up a number of targeted meetings with key national institutions. In preparation of these interviews and to select the most appropriate institutions, the ACC will be requested to fill out the form in annex to these TORs. On day three and four, the mission team will meet with these national institutions to discuss their working relationship with the ACC and to find out how they assess the ACC's performance. Another set of institution-specific questions will be administered for these interviews. Furthermore, it would be appropriate for the mission team to meet with a number of NGOs or civil society actors working on anti-corruption or democratic governance, to collect their views on the enabling environment of the ACC's work and its organizational capacity.

The ACC senior management or staff will be debriefed on the findings of the capacity assessment mission. Further, one mission team member could also provide some training to ACC staff, whilst another is conducting interviews with relevant national institutions.

Team composition:

Alan Doig, UNCAC Anti-Corruption Mentor, United Nations Office on Drugs and Crime Regional Centre for East Asia and the Pacific (Team Leader)

Samuel De Jaegere, Policy Analyst - Public Administration Reform and Anti-Corruption, UNDP Regional Centre in Bangkok (Team Member)

Expected Deliverables:

- Comprehensive capacity assessment report of the Anti-Corruption Commission of Bhutan with recommendations for training and technical assistance provision, as relevant.
- This capacity assessment report of the ACC will also feed into the on-going UNCAC gap analysis (or self-assessment) for Bhutan.

²³ 17 investigators, 5 prevention staff, 2 public education and advocacy staff, 1 legal officer and senior management

- Training conducted on issues of immediate concern to the Anti-Corruption Commission of Bhutan.

**ANNEX 2:
TIMETABLE**

Date	Time	Activity
April 19, 2010 (Day 1)	AM	Meeting with Commissioners and Senior Management
	PM	Meeting with Investigations Officers (IO) for face-to-face interviews
April 20, 2010 (Day 2)	AM	Meeting with Prevention and Education Officers/Heads of Divisions
	PM	Meeting with Commissioner in charge of investigations Meeting with Head of Investigations Meeting with Investigations Officers (IO) for face-to-face interviews
April 21, 2010 (Day 3)	AM	Interviews with: Justice, Supreme Court, MPs from both Houses serving on ethics committees President, Tarayanna Foundation
	PM	Interviews with: Auditor General, Royal Audit Authority Vice-Chancellor, Royal University of Bhutan Director Royal Monetary Authority (bank supervision), Secretary, Ministry of Education Cabinet Secretary, Royal Bhutanese Government, Chamber of Commerce Meeting with Investigations Officers (IO) for face-to-face interviews
April 22, 2010 (Day 4)	AM	Interviews with: Attorney General, Permanent Secretary, Ministry of Finance Director, ACA, Commissioner, Royal Civil Service Commission Secretary, Ministry of Health
	PM	Training to ACC staff: <input type="checkbox"/> Investigations <input type="checkbox"/> Case Management <input type="checkbox"/> Surveillance and Intelligence Meeting with Investigations Officers (IO) for face-to-face interviews Debrief ACC senior management or staff on the finding of the capacity Assessment.
April 23, 2010 PUBLIC HOLIDAY		

