REVIEW OF THE ETHICS AND INTEGRITY INFRASTRUCTURE IN BHUTAN

Codes of Conduct

Conflict of Interest Declaration

Integrity Trainings

INTEGRITY TOOLS

Gift Rules

Integrity Pact

Declaration of Asset

ABBREVIATIONS

ACC:	Anti-Corruption Commission
ACA:	The Anti-Corruption Act of Bhutan 2011
ACRC:	Anti-Corruption and Civil Rights Commission
APRC:	Asia Pacific Regional Centre
BIG:	Basel Institute on Governance
BNLI:	Bhutan National Legal Institute
DHI:	Druk Holding and Investments
ECB:	Election Commission of Bhutan
E&II:	Ethics and Integrity Infrastructure
EFYP:	Eleventh Five Year Plan
GNHC:	Gross National Happiness Commission
GPMS:	Government Performance Management System
HDI:	Human Development Index
HDR:	Human Development Report
KRA:	Key Results Area
NA:	National Assembly of Bhutan
NC:	National Council of Bhutan
NIACS:	National Integrity and Anti-Corruption Strategy
NKRA:	National Key Results Area
OAG:	Office of Attorney General
OGE:	Office of Government Ethics
PRMAI:	Public Resource Management Accountability Index
RAA:	Royal Audit Authority
RCSC:	Royal Civil Service Commission
RIM:	Royal Institute of Management, Semtokha

RTI: Right to Information

SAARC: South Asian Association for Regional Co-operation

TI: Transparency International

UNCAC: United Nations Convention Against Corruption

UNDP: United Nations Development Programme

TABLE OF CONTENTS

དཔལ་ལྡན་འབྲུག་གཞུང་། ད�န་ལྗང་བཀག་སྡོམ་ལྷན་ཚོགས།

ROYAL GOVERNMENT OF BHUTAN
ANTI-CORRUPTION COMMISSION
·NATION'S CONSCIENCE·

"LEAD BY EXAMPLE"
"If you care, you will dare"

PREFACE

"Commit not a single unwholesome action; cultivate a wealth of virtue; to tame this mind of ours completely; this is the teaching of the Buddha".

"But there is an even greater threat– ignoring corruption. When the corrupt are not held to account, those who observe due diligence, work hard and professionally are most likely to be discouraged. [...] That is why, corruption must be curtailed and, more than ever before, extraordinary service must be recognized and rewarded."

His Majesty the King's Address to the Nation on 107th National Day celebration

Fostering a culture of integrity in our society is the result of our collective action. We, as legislators, judges, bureaucrats, elected public officials, corporate employees, private sector, civil society and media representatives have significant roles to play. This is particularly true in the context of a young democracy such as ours to reinforce public trust in the Government and create a culture that is conducive to happiness.

The Anti-Corruption Commission (Commission), since its establishment on 31 December 2005, has been working hard towards building itself into a strong, credible and effective institution to promote a culture of integrity within the governance system and the society at large. Identifying integrity and anti-corruption as one of the National Key Result Areas in the eleventh five year plan and also as an indicator in the Government's Performance Management System are milestones in mainstreaming the important issues in the development agenda. This underpins the important fact that ethics and integrity is a key pre-condition for the sustainability of the overall economic and social development of our small nation.

Promoting a culture of integrity is not a simple task. It requires strong examples and commitment from the leadership, mechanisms and tools in all branches of the Government to promote integrity and prevent misconduct, adequate capacities for implementation as well as engagement of all major stakeholders.

We have a range of integrity instruments to curb corruption and promote integrity in the

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institutions, including model public service code of conduct, conflict of interest disclosure, asset & liability declaration, gift & corruption risk management, integrity diagnostic tool, national integrity assessment survey as well as e-learning courses on ethics and integrity in the three arms of the Government.

In this context, the Commission requested the UNDP to review our "Ethics and Integrity Infrastructure" and provide recommendations for improvement based on international good practices. A number of entry points for reform have been identified, and accordingly we are working with all stakeholders to make this change happen on the ground using the National Integrity & Anti-Corruption Strategy as a platform.

The Government's decision to ratify the United Nations Convention Against Corruption (UNCAC) is also an important step in ensuring that our anti-corruption legal frameworks are in line with international good practice. However, having a strong legal framework is one thing but enforcing it quite another. Ultimately, making sure that legal and other policy reforms translate into visible behavioural change at all levels of the Government and society and effective delivery of quality services to the public is what will lend legitimacy to strong statements and systems.

Leaders have to set the tone and lead the way!

Neten Zangmo
Chairperson

"Gross National Happiness is development with values" His Majesty the King

Phil Matsheza
Elodie Beth[1]

INTRODUCTION

In preparation for the historic parliamentary elections, the Fourth King decreed on 31st December 2005 that the ACCin Bhutan be established, confirmed later by Article 27(1) of the Constitution of the Kingdom of Bhutan as an independent authority with the powers and mandate to prevent and combat corruption in the Kingdom. The ACC has a dual mandate with both prevention and deterrence functions that complement each other. This requires reviewing system procedures and system studies to plug loop-holes that are prone to corruption, as part of the prevention and deterrence measures implemented by the ACC.

It is within this context that the ACC approached UNDP to conduct a high level field mission to review the E& II in Bhutan, and make recommendations on the implementation of its programs. The Government of Bhutan has developed a range of integrity instruments to curb corruption and promote integrity among institutions and the public, including code of conduct, conflict of interest disclosure, asset declaration, gift rules, corruption risk management, integrity diagnosis, as well as e-learning courses on ethics and integrity. A key challenge is now to assess their implementation in practice.

The mission team assessed the E&II in the context of global good practices and experiences. In this context the report aims to:

i.   Review the usefulness and effectiveness of existing anti-corruption programmes and integrity tools in the three branches of government (executive, legislative and judiciary);

ii.   Determine adequacy of institutional capacities (regulations, policies, procedures) and the approach (whether rule based or value based);

iii. Provide time-bound recommendations for the improvement of above programmes over short, mid and long-term periods based on international good practices;

iv.   Help evaluate and monitor their impact.

The mission team was composed of Phil Matsheza, Governance Practice Team Leader for UNDP at the Asia Pacific Regional Centre(APRC), and Elodie Beth, UNDP Regional Anti-Corruption Advisor also based at the APRC in Bangkok.

This project is a continuity of previous work from UNDP Bhutan that has been supporting the development of governance and anti-corruption mechanisms in Bhutan for almost 10 years. The Anti-Corruption Act, 2006, Anti-Corruption Strategy, 2009, Audit Act and Auditing Guidelines, OAG Prosecution Rules and Procedures, were developed with the support of UNDP in the past. More recently,

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1   The report was prepared with the research assistance of LivianaZorzi, United Nations Volunteer at the UNDP Asia-Pacific Regional Centre.

UNDP has partnered with the Ministry of Finance and the RAA to prevent corruption, culminating in 2013 with the finalization of the National Internal Control Framework by Ministry of Finance. RAA is continuing to develop the PRMAI to consolidate and implement consistent ways of monitoring public administration and financing, with UNDP support. In 2014-18 UNDP Bhutan's efforts will focus for example on strengthening civic education on the role of active citizens, and strengthening the role of media and civil society in enabling people's participation.

Further, the Cabinet has now decided to ratify the UNCAC. This is a key milestone in ensuring that Bhutan's anti-corruption legal frameworks are in line with international good practice.

The main findings of the report are organized in four sections:

i. **A general context and situation analysis, showing how anti-corruption is integrated into the Gross National Happiness development strategy of Bhutan;**

ii. **A brief overview of the methodology for conducting the review of the E& II;**

iii. **The main findings and recommendations from the review focusing on existing integrity tools;**

These provide choice of options for the ACC to address existing and emerging integrity risks in Bhutan against international good practices, in relation to:

- *The enabling environment – leadership, legal frameworks, anti-corruption strategy, norms and values*

- *The organizational and individual capacities for implementing existing integrity and corruption prevention tools*

iv. **A summary of the main recommendations for the improvement of above programs over short and mid -term periods in order to promote a culture of integrity in the Government.**

CONTEXT AND SITUATION ANALYSIS

The Kingdom of Bhutan is a very **young democracy**, instated in 2008 with the enactment of the Constitution and the first national democratic elections, when the King as part of continuing decentralization and devolution process voluntarily relinquished his power.[2] Other recent important democratic developments included the establishment of constitutional bodies like the ECB and the ACC.

The King remains the head of state and appoints members of the Supreme Court in consultation with the National Judicial Commission, the attorney general on the recommendation of the Prime Minister, and the heads of constitutional bodies on the joint recommendation of the Prime Minister, Chief Justice of Bhutan, Speaker, Chairperson of the NC and Leader of the Opposition Party. The King nominates 5 members of the NC, and the remaining 20 are elected; the NA, the lower house, is entirely elected, and the head of the majority party is appointed by the King to serve as prime minister.

These historic changes in the political structure were introduced at a time of unprecedented peace and economic prosperity for the improved social conditions and general well-being of the nation and the people. Till the 1960s the country had no national currency, and very limited public services such as schools, hospitals, or postal services. Bhutan ended its self-imposed isolation in 1961 when the late King His Majesty Jigme Dorji Wangchuck launched Bhutan on the path to modernization.

When comparing with other countries in South Asia, Bhutan experienced much faster progress toward increasing their Human Development Index[3] compared to Pakistan and Bangladesh during the period between 2010 and 2012 (please see figure 2 extracted from the UNDP HDR 2013). The Gross National Index per capita increased by about 467 percent between 1985 and 2012.

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2   By 2008, Bhutan's democracy was formally established with two political parties, the Druk PhuensumTshogpa (DPT) and the People's Democratic Party (PDP) contesting the first historic general elections to the NA.

3   The HDI is a summary measure for assessing long-term progress in three basic dimensions of human development: a long and healthy life, access to knowledge and a decent standard of living. As in the 2011 HDR a long and healthy life is measured by life expectancy. Access to knowledge is measured by: i) mean years of schooling for the adult population, which is the average number of years of education received in a life-time by people aged 25 years and older; and ii) expected years of schooling for children of school-entrance age, which is the total number of years of schooling a child of school-entrance age can expect to receive if prevailing patterns of age-specific enrolment rates stay the same throughout the child's life. Standard of living is measured by Gross National Income (GNI) per capita expressed in constant 2005 international dollars converted using purchasing power parity (PPP) rates.

Fig 1. Bhutan's HDI 2010-12 Fig 2. Comparing Bhutan's HDI with countries inSouth Asia
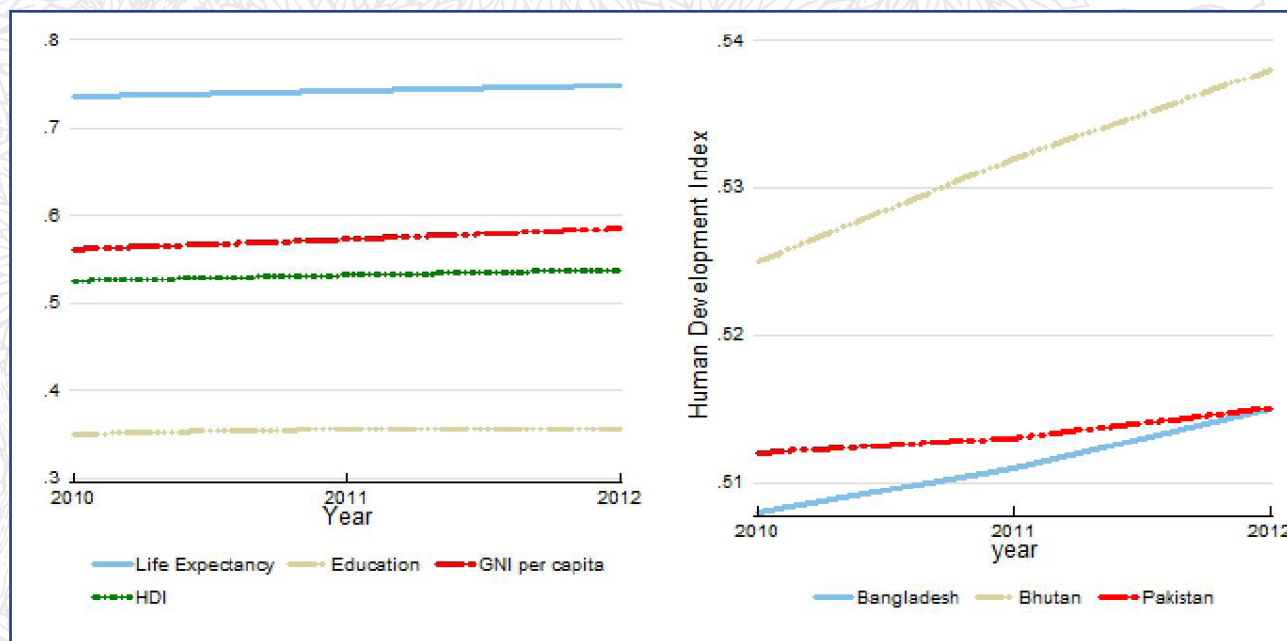
Source: UNDP, HDR 2013

Bhutan's rapidity in achieving most of its development goals moved the country to middle-income level, according to HDI, since 2006. Although Bhutan has experienced positive economic growth, the country is dependent on aid to achieve its development targets. Inflation remains high due to its landlocked geography and the country imports food products and fuel. Poverty continues to be a rural phenomenon in this Himalayan country with a population of 750,000 (SAARC Development Goals, Country report 2013, GNHC, Royal Government of Bhutan). In Bhutan 12% of the population lives in poverty, and life expectancy is 67 years. About 95% percent of the poor population lived in rural areas. Among the extremely poor97% of them live in rural areas.

Good governance is one of the pillars of "Gross National Happiness"[4], a development strategy that Bhutan is internationally renowned for. The outcomes are defined as KRAs at the national, sectoral, and dzongkhag level and categorized under each of the four pillars of Gross National Happiness (Executive Summary of the EFYP: Towards Self-reliance and Inclusive Green Socio-economic Development, December 2013). For 2013-2018, the EFYP stipulates six NKRAs under the good governance pillar, namely "Improved Public Service Delivery; Democracy and Governance Strengthened; Gender Friendly Environment for Women's Participation; *Corruption Reduced*; Safe Society; and Needs of Vulnerable Group Addressed". The strategies for implementation include a "GPMS, NIACS, Improving Public Service Delivery, capacity building and awareness campaigns to enhance transparency, accountability, efficiency and effectiveness in governance".

In terms of corruption perception Bhutan is currently **31st position in the TI Corruption Perception**

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4   The GNH is upheld by four pillars that aspire to achieve: Pillar 1: Sustainable and Equitable Socio- Economic Development; Pillar 2: Conservation of the Environment; Pillar 3: Preservation and Promotion of Culture; Pillar 4: Good Governance

Index(CPI) among 177 countries, two steps above the 2012 ranking, that is the 6th in Asia Pacific[5]. Bhutan has shown slight improvement in the ranking between 2012 and 2013. **Bhutan ranks no 6 in Asia Pacific in TI Corruption Perception Index.** During the mission interviewees showed pride in the positive results achieved by Bhutan against corruption.

Table 1: Asia Pacific TI CPI ranking, 2011-2013

Asia Pacific Country	2013 Rank	2012 Rank	2011 rank	Difference '12-'13	2013 Score	2012 Score
New Zealand	1	1	1	0	91	90
Singapore	5	5	5	0	86	87
Australia	9	7	8	-2	81	85
Hong Kong	15	14	12	-1	75	77
Japan	18	17	14	-1	74	74
Bhutan	31	33	38	+2	63	63
Taiwan	36	37	32	+1	61	61
Brunei	38	46	44	+8	60	55
South Korea	46	45	43	-1	55	56
Malaysia	53	54	60	+1	50	49
China	80	80	75	0	40	39
Mongolia	83	94	120	+11	38	36
Sri Lanka	91	79	86	-12	37	40
India	94	94	95	0	36	36
Philippines	94	105	129	+11	36	34
Thailand	102	88	80	-14	35	37
Indonesia	114	118	100	+4	32	32
Vietnam	116	123	112	+7	31	31
Nepal	116	139	154	+23	31	27
Pakistan	127	139	134	+12	28	27
Bangladesh	136	144	120	+8	27	26
Papua New Guinea	144	150	154	+6	25	25
Laos	140	160	154	+20	26	21
Myanmar	157	172	170	+15	21	15
Cambodia	160	157	164	-3	20	22
Afghanistan	175	174	180	-1	8	8
North Korea	175	174	182	-1	8	8

Source: TI Corruption Perception Index, 2013

The success of the ACC in promoting the integrity and anti-corruption agenda in Bhutan has been unanimously acknowledged by the respondents to the mission team[6]. The operational capacity of the ACC was acknowledged by all interviewees while it is also evidenced by the financial resources allocated to it. This is consistent with the findings from the BIG that confirmed that ACC benefits

5   Bhutan is in the 6th position in the Asia Pacific region, after New Zealand, Singapore, Australia, Hong Kong, and Japan.
6   The Anti-corruption Commission of Bhutan is tasked with undertaking preventive and educational integrity measures and with investigating (and under exceptional circumstances prosecuting) cases of corruption as defined in the Anti-corruption Act of Bhutan 2011. It is set up as an independent institution as per its status as a constitutional body. It has gained international recognition for its anti-corruption efforts in many international fora. For example the ACC of Bhutan previously participated in a UNDP project to encourage south-to-south cooperation among anti-corruption agencies.

from operational autonomy with a clear mandate, while structural autonomy needs review. While the principle of independence is guaranteed by the Constitution, the report from the BIG identified 6 areas for improvement[7]. Credibility of the ACC is enhanced by its objective analysis of performance.

The ACC's work is evidence-based and continuously monitors the global ratings of its performance such as by TI's Corruption Perception Index, Global Competitiveness report carried out by the World Economic Forum, and UNDP's HDR. It has gone further to institute its own self assessments and evaluations such as the national integrity system survey, and study on ACC's independence.
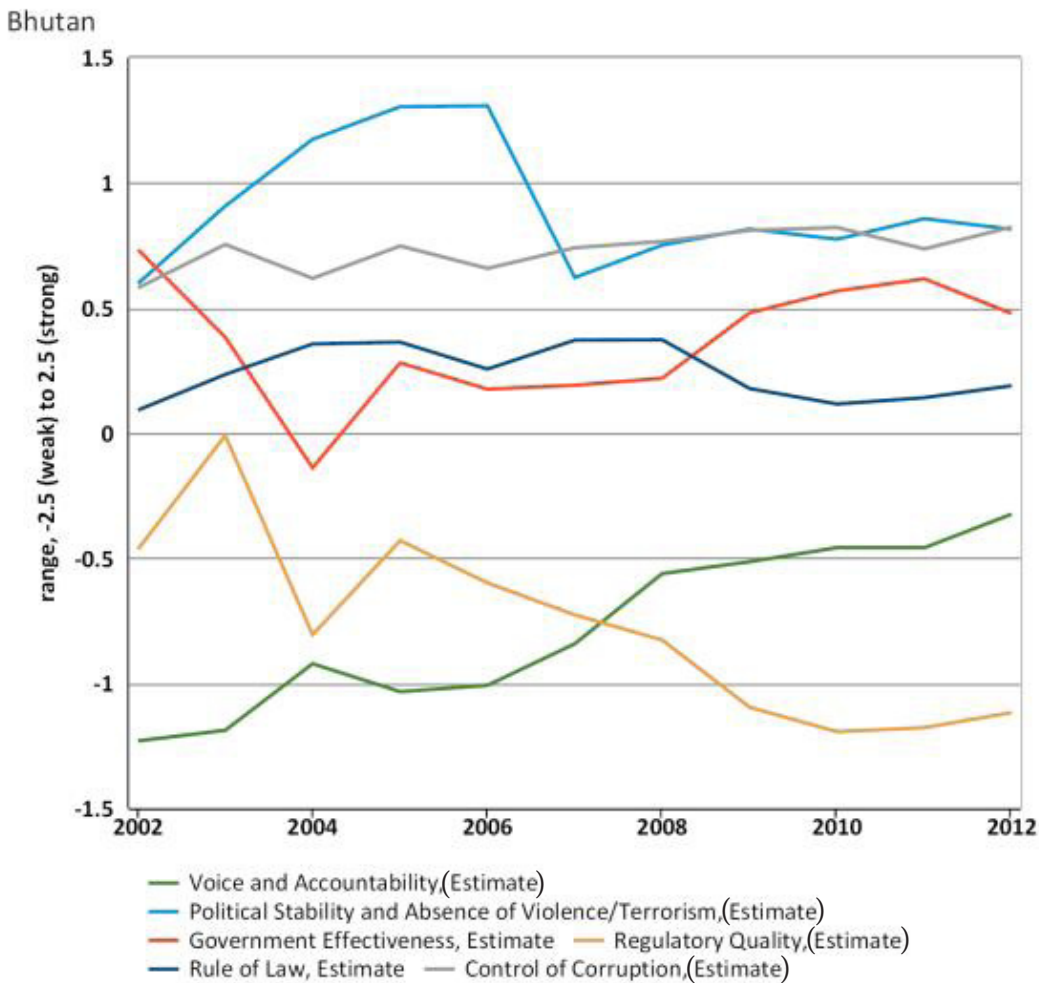

Source: UNDP

It is commendable to see that **integrity and anti-corruption has been mainstreamed as one of the NKRAs in the EFYP.** The TI Corruption Perception Index ranking is a key performance indicator of the EFYP under its NKRA "corruption reduced". The target is (i) to attain the 20th position by the end of the EFYP, as well as (ii) all agencies and local government reporting on implementation of the NIACS. This will provide a coherent framework for engaging the whole government in promoting a culture of integrity in Bhutan as part of the country's overall development strategy.

Despite the significant improvements on many fronts, "**voice and accountability" remains an area where progress has been slow** in Bhutan according the World Bank Governance Indicators(see figure 3). One of the limitations is the absence of RTI law in Bhutan, which does not create an enabling environment for civil society, media and the public to keep the government accountable or voice their concerns. While the number of media outlets has multiplied in the last years, media is rather inexperienced and financially weak, which makes it susceptible to influence and self-censorship. With 12 media outlets in 2013 compared to 3 in 2006, the media in Bhutan faces an issue of sustainability because of its reliance on state budget that has remained the same during this period. Also, in a coun-

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7   The 6 area of improvement include: (i) the processes for the appointment and the early removal of the Chairperson of the ACC; (ii) the ACC's autonomy to decide on operational and organisational structure; (iii) the management of financial resources; (iv) the management of human resources (urged delinking of the ACA from the RCSC; (v) checks and balances integrated with existing internal control mechanisms; (vi) external oversight strengthening (Parliament's external oversight function and audit procedures with the RAA). For more details, see the Study on Measures to Safeguard the Constitutional Role of the Anti-corruption Commission of Bhutan on http://www.baselgovernance.org/fileadmin/docs/pdfs/Publications/Delinking_Report.pdf.

try with limited media coverage, reaching rural communities is a challenge, particularly to engage people in democratic discourse. It is, therefore, essential to strengthen support and engagement with civil society-including the media and civil society organisations (Facilitating People's Participation in Democratic Governance: Role, Challenges and Opportunities For Civil Society And Media in Bhutan, UNDP Bhutan 2014). This is an area in which UNDP has invested efforts to support the government in fostering social accountability as part of its support in Bhutan.

Figure 3: Bhutan progress according to the World Bank Governance Indicators

Bhutan

Legend:
- Voice and Accountability,(Estimate)
- Political Stability and Absence of Violence/Terrorism,(Estimate)
- Government Effectiveness, Estimate
- Regulatory Quality,(Estimate)
- Rule of Law, Estimate
- Control of Corruption,(Estimate)

Source: Adapted from the World Bank

METHODOLOGY

The mission reviewed the institutional capacities in the Government to promote a culture of integrity while taking into account Bhutan's political, social and cultural context.

Particular attention was given to understand the approach followed in Bhutan to promote a culture of integrity compared to other countries -- whether rule based or value based -- and make recommendations of improvement in this context.

The assessment of capacities was designed and implemented following UNDP's *Methodology for Assessing the Capacities of Anti-Corruption Agencies to Perform Preventive Functions* and challenges confronting prevention of corruption agencies in performing their tasks[8].

For that purpose the Review of E& II analysed the integrity instruments used by the ACC at three levels:
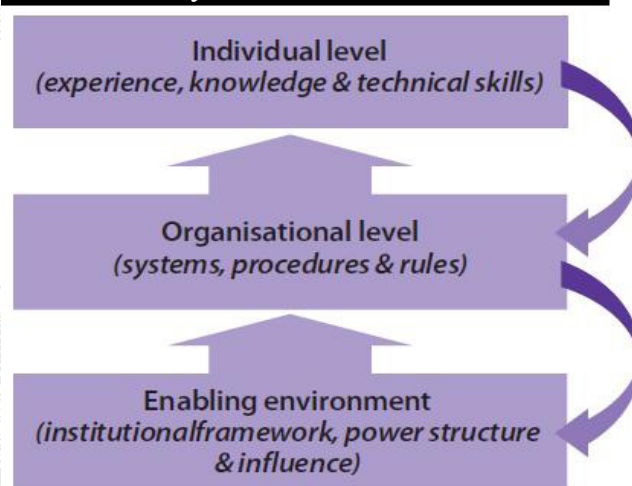

Figure 4: Capacity Development Levels – Entry Points

1) **Enabling environment**: which refers to the broader system within which individuals and organizations function; it includes: policies, rules and norms, values, governing mandates, priorities, modes of operation, and civic engagement across different parts of society; in short, the 'rules of the game' for interaction between and among organizations.

2) **Organizational level**: which comprises the internal policies, arrangements, procedures and frameworks that allow an organization to operate and deliver on its mandate, and that enable the coming together of individual capacities to work together and achieve goals.

3) **Individual level**: This refers to the moral ethos, skills, experience, knowledge that are vested in people to ensure that capacity to uphold the moral high ground.

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8 UNDP defines capacity as "The ability of individuals, organizations and societies to perform functions, solve problems, and set and achieve objectives in a sustainable manner". Capacity Development (CD) is thereby the process through which such abilities are obtained, strengthened, adapted and maintained over time. The process entails 5 steps, namely: (i) engage stakeholders on CD process; (ii) assess capacity assets and needs; (iii) formulate CD strategies; (iv) implement CD strategies; and (v) evaluate CD. Capacity Assessment is the second step of this process and it can be defined as the analysis of desired future capacities against current capacities for the formulation of development strategies.

UNDP Practice Note on Capacity Development can be downloaded at:http://www.capacity.undp.org/index.cfm?module=Library&page=Document&DocumentID=5599

UNDP Practice Note on Capacity Assessment can be downloaded at:http://www.capacity.undp.org/index.cfm?module=Library&page=Document&DocumentID=5510

The mission looked at the drivers of capacity namely: institutional arrangements, leadership, knowledge and accountability while providing recommendations for short and medium term interventions based on the findings of the assessment. Also the mission analyzed the extent to which the integrity management instruments are embedded in the wider processes of the government and how they complement each other, and whether they are consistently applied across government institutions.

To facilitate the review, the team carried out desk reviews of relevant laws, policies, and reports related to integrity and anti-corruption in Bhutan and held 19 dialogues and consultations with high-level government officials, members of civil society, parliamentarians, and civil servants and focal points for institutionalization of the on-line course on Ethics and integrity. Specifically the team:

- Carried out a desk review of relevant laws, policies, and documents/reports in Bhutan.

- Consulted with a wide range of stakeholders from the government ministries, Speaker of the NA, Justice of the Supreme Court, members of the Good Governance Committees of both the NA and NC, Professors/Lecturers of the RIM who participated in a training in Malaysia, representatives of media, RAA, representatives of business, Registrar General of the Supreme Court, as well as President of the Construction Association of Bhutan.

- Held a dialogue with 12 representatives of ministries who serve as focal points for the online ethics and integrity course. The meeting aimed at analyzing functional capacities, which are cross-cutting capacities needed to formulate, implement and review related policies, procedures and projects.

- Based on the feedback received during the mission, drafted a report with an analysis of the relevance of existing tools, practices and recommending possible interventions where appropriate.

- Presented the draft report to the ACC with recommendation on the way forward as well as to the UNDP management.

FINDINGS AND RECOMMENDATIONS

During the mission it was generally acknowledged that **the enabling environment in Bhutan is supportive to a culture of integrity in government and the wider society**. Political will against corruption is considered strong. In December 2005 the King underlined the importance of promoting integrity and curbing corruption from the very beginning of the establishment of parliamentary democracy in the country, and issued a Royal Decree for the establishment of the ACC. The importance of the "tone from the top" is also the first objective of the 2014-18 NIACS - namely "Ensuring political will, promote leadership and integrity".

Elected officials in Bhutan, because of their high-level position, were recognized during the mission as particularly vulnerable to integrity risks. Emerging risks range from conflict of interest to influence peddling in law-making ("policy corruption") or even vote-buying. Some of the interviewees pointed out that **efforts need to be invested to ensure that Parliament** (that is the 72 members of the NA and the NC) **is perceived by the public as a corrupt free institution in order to maintain public trust.** Also officials at the local level were identified at risk during the mission. Experience in other countries has shown that as power is decentralized to the lower levels of government, new opportunities for rent-seeking and corruption flourish at the level of sub-districts.

During the interviews with elected officials they usually expressed limited concern about risks to integrity emerging as the Government is opening up its political system to democracy. Interviewees tended to highlight that corruption is limited in Bhutan, which is consistent with international and national assessments. At the same time foresight, especially from political leaders, is essential to mitigate emerging risks to integrity in order to maintain public trust in the young democratic system. Since elected officials and candidates to public office are rather new to democratic electoral processes, this creates opportunities for integrity violations if mechanisms are not in place to close off these risks.

> *Proposal:*
>
> *Invest efforts in raising awareness about integrity risks among elected officials. Close cooperation between the ACC and the ECB would be essential to prevent risks to integrity in the preparation of the next elections.*

UNCAC: ALIGNING LAWS WITH INTERNATIONAL STANDARDS

In Bhutan **the legal and regulatory frameworks are generally considered to be consistent with international standards.** Bhutan has voluntarily conducted a comprehensive self- assessment in 2010 of its level of compliance with UNCAC and taken measures to meet these requirements. The results from the UNCAC Self-Assessment were used as the main source of information for amending the Anti-Corruption Act 2006. Accordingly the act was revised in 2011 and is effectively enforced by the ACC and other concerned agencies.

Strengthening legislative frameworks

The strengthening of legal and regulatory frameworks is one of the priorities under the 2014-18 NI-ACS, in continuity of the previous strategy:

·   **There is still no RTI Act in Bhutan.** Some respondents pointed out to the need for this act to promote transparency in government operations and prevent corruption. The NA deliberated the RTI bill in its first and second sessions and is yet to be discussed in the NC.

·   **Considering the continuous opening up of Bhutan to Foreign Direct Investments and the increase in commercial ties with other countries, an International Cooperation Law** would also help ACC and other law enforcement agencies deal effectively with crossborder issues which are increasingly emerging in practice.

·   While Sections 115 to 119 of the ACA protectswhistleblower of corruption, there is no general Whistle blower Protection Law. There was a general consensus among interviewees that such a legal framework would face much resistance in the context of a small country like Bhutan.

·   Finally, the anti-money laundering rules and regulations must be reviewed against applicable international standards according to the assessment from the Basel Institute on Governance, and more efforts could be put into enforcing them through the financial institutions and work done by the regulator.

Ratifying the UNCAC

Bhutan signed the UNCAC on 15/09/2005 but **has not ratified it**. Bhutan is one of the few countries in the Asia Pacific region that has not ratified the Convention[9]. UNCAC is widely accepted as the comprehensive international governance framework that seeks to address corruption, not only through law enforcement, but also through prevention, international cooperation and asset recovery. Also the ACC has managed to build recognition of its efforts in different international for a, including UN events as well as the ADB/OECD Initiative against Corruption.

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9   In the Asia Pacific region only the following countries have not yet ratified the UNCAC: Bhutan, Japan, and New Zealand. Also few countries, namely Kiribati, Tuvalu, Samoa, North Korea have neither signed nor ratified the UN-CAC.

Implementation of the UNCAC through technical assistance

Article 62 of UNCAC:

1. States parties shall take measures conducive to the optimal implementation of this Convention to the extent possible, through international cooperation, taking into account the negative effects of corruption on society in general, in particular on sustainable development.

2. States parties shall make concrete efforts to the extent possible and in coordination with each other, as well as with international and regional organizations:

(a) To **enhance their cooperation** at various levels with developing countries, with a view to strengthening the capacity of the latter to prevent and combat corruption;

(b) To enhance **financial and material assistance** to support the efforts of developing countries to prevent and fight corruption effectively and to help them implement this Convention successfully;

(c) To provide **technical assistance** to developing countries and countries with economies in transition to assist them in meeting their needs for the implementation of this Convention.

The ACC has written to the Cabinet and the Ministry of Foreign Affairs to initiate the process for the ratification of the UNCAC. It would be essential to **finalize shortly the process for ratification so that Bhutan can benefit from knowledge sharing and UNCAC peer reviews (as a reviewer and reviewee), as well as the technical assistance** provided in the framework of the UNCAC (see box above). This would be important in the perspective of the visit from high-level officials from the UNODC Secretariat in the coming months in Bhutan.

Proposal:

i. *Ratify the UNCAC before the end of the year to benefit from knowledge from other countries through peer reviews as well as technical assistance*

ii. *Strengthen legal and regulatory frameworks, in particular introduce laws on Access to information as well as on International Cooperation*

MONITORING THE NKRA ON CORRUPTION

Since its establishment in 2005 the ACC has provided leadership in the fight against corruption and in the promotion of integrity. **A key achievement of the ACC has been to integrate integrity and anti-corruption as a core element of the development strategy of the country** for Gross National Happiness. "Corruption reduction" is a NKRA in the EFYP (for more details see the previous section on context and situation analysis).

The EFYP includes a Results Based Planning framework that articulates outcomes and outputs that need to be achieved in order to realize the overall objective of "Self-reliance and Inclusive Green Socio-Economic Development". Also, the implementation of NIACS 2014-18 has been integrated into the GPMS. A specific quarterly meeting on NIACS is conducted in the Cabinet to monitor and assess its implementation. It is also planned for the Government to meet with the ACC quarterly to promote overall ethics and integrity in the system.

In order to make this an effective framework the mission team recommends that **the authority is clearly delegated to the ACC to monitor NKRAs on corruption reduction and that line ministries are kept accountable for results** under the overall umbrella of the GNHC. International experience with anti-corruption strategies has shown that it is important to have a high-level authority to steer the overall process while the anti-corruption agency coordinates with line ministries on a daily basis.
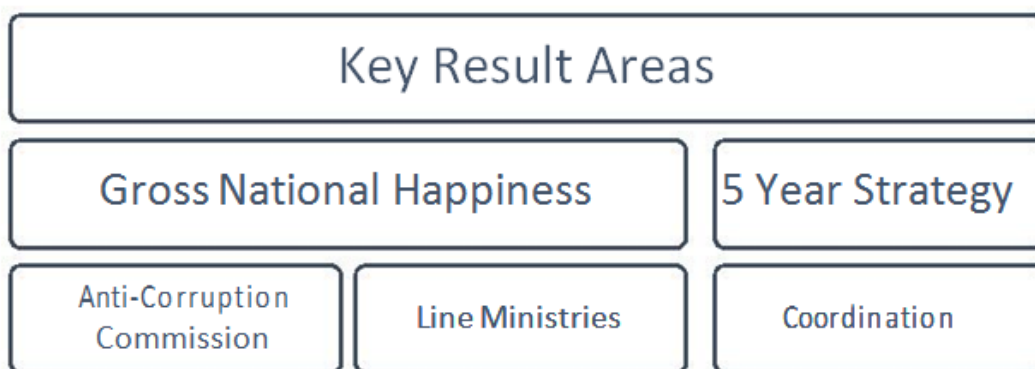
The example of Malaysia illustrates how to set up an effective mechanism for monitoring the implementation of the anti-corruption strategy as part of the development strategy while **promoting accountability for results on the part of individual ministries**. Similar to Bhutan anti-corruption in Malaysia is one of the NKRAs pursued through the Government Transformation Program, which aims to contribute in making the country a high-income nation as per its Vision 2020. "Fighting Corruption" is one of the NKRAs of the Government Transformation Program.

The **NKRAs are collectively owned by the Cabinet, with accountability for delivery resting on a Lead Minister, appointed and formally monitored by the Prime Minister.** Four work streams were prioritized based on survey results that showed key areas for concern. These include strengthening the enforcement agency, tackling grand corruption, and improving government procurement (see table 2). Data feeds into monitoring and evaluating the anti-corruption strategy. For further guidance

on how to successfully monitor its anti-corruption strategy the government of Bhutan could refer to the *UNDP report on Anti-Corruption Strategies in Asia-Pacific* (forthcoming 2014)[10].

Table 2: National Key Performance Index for Fighting Corruption, Malaysia.

Sub-NKRA	Key Performance Indicators	Baseline (2009)	Achievement (2010)	Target (2011)
Public Perception	1.1 CPI Score	4.5	4.4	4.9
	1.2 GCB survey results on government effectiveness to fight corruption -% responding government effectiveness	28%	48%	50%
	1.3 TNS Perception survey on how much enforcement agencies are perceived to be affected by corruption	*New NKPI	*New NKPI	3.5
Regulatory and Enforcement Agencies	2.1 Nr of cases charged vs. Nr of investigation paper	*New NKPI	*New NKPI	20%
	2.2 Nr of summons settled vs. Nr of summons issued for JPJ	50%	47%	50%
	2.3 Nr of summons issued vs total hours of operation (PDRM Traffic)	0	10.5	12
	2.4 *Produce a clear and agreed procedure for effective implementation of Whistleblowers Act	*New NKPI	*New NKPI	*Nov
	2.5 *Begin the process of reporting of actual number of whistleblower case	*New NKPI	*New NKPI	*Dec
	2.6 *Percentage of completion of compliance unit activities	*New NKPI	*New NKPI	60%
Government Procurement	3.1 Nr of Ministries scoring above 90% on the Procurement Accountability Index	0	14	19
	3.2 Percentage of government procurement with integrity Pact	*New NKPI	*New NKPI	80%
	3.3 70% f EPP stakeholders announced have signed up to Corporate Integrity Pledge (CIP)	*New NKPI	*New NKPI	70%
Grand Corruption	Percentage of Trials completed:			
	4.1 Within a year	8.5%	36.8%	70%
	4.2 Nr of people in the database of convicted offenders	0	284	100

Source: http://www.pemandu.gov.my/gtp/annualreport2012/upload/Eng_GTP2012_AR_05_Fighting_Corruption.pdf

> *Proposal:*
>
> ***Keep senior representatives of line ministries accountable for the achievement of integrity and anti-corruption targets as part of the EFYP with the help of the GNHC***

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10 The report describes efforts from countries in the Asia Pacific region in developing, implementing and monitoring anti-corruption strategies. It also includes the *Kuala Lumpur Statement on Anti-Corruption Strategies*, which was endorsed as part of the Preventive Resolution adopted at the 2013 Conference of States Parties to the UN Convention against Corruption.

PARTNERSHIPS AND APPROACHES TO PROMOTE A CULTURE OF INTEGRITY

A culture of integrity is the result of various factors that contribute to the integrity of a system – such as the quality of governance in the country, the existing checks and balances, as well as the ethical values foundation in the society. It is **important to recognize the importance of these various factors when investing efforts to prevent violations to integrity.** During the mission interviewees tended to refer to the individual breaches to ethical values and morality. However, violations to integrity have both an individual and institutional component – it is not only about an individual breaching an anti-corruption act and committing a crime. It is also about loopholes and opportunities in the system that provide a conducive environment for integrity violations – ranging from conflict of interest, nepotism, collusion, abuse and manipulation of information, to the wastage of organizational resources.
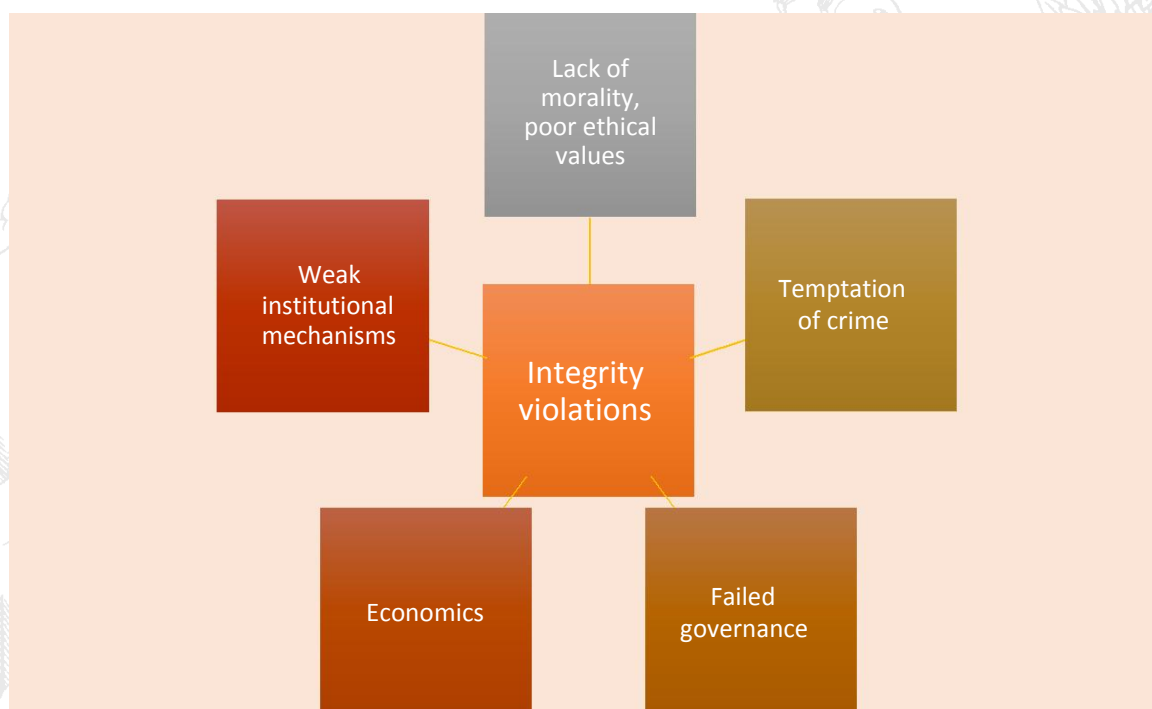
Source: UNDP

The consequences of integrity violations on the national economic and social growth as well on the management of natural resources should not be underestimated in the context of a small country like Bhutan. Violations to integrity, whether they take the form of conflict of interest, nepotism, embezzlement of public funds or fraud can have major economic and development consequences. Also they can fuel inequalities and reinforce poverty in rural areas by impacting on public services. Corruption is estimated to raise household price of water by as much as 30% and general price of goods by 20% on average (TI 2008).

Interviewees highlighted during the mission that **Buddhist values are strongly embedded in the Bhutanese society and provide an ethical reference for officials in their daily work**. At several points of the mission officials quoted Buddhist values as a key element of guidance for their professional conduct. One interviewee pointed out that compliance systems introduced through oversight authorities (such as the ACC and RAA) are not well adapted to the Bhutanese context because ethical values provide the main foundation for the integrity system.

However relying only on individual values is not sufficient to mitigate risks to integrity at the country level. Experience at the international level shows that a system can be driven by integrity values to the extent that there are checks and balances to limit the opportunities for abuse. The box below illustrates the importance of both ethical values and compliance mechanisms for an effective integrity system.

Ethics-based vs. compliance-based approaches: Finding the right balance

The experience in other countries has shown that a balanced approach is essential to embed a culture of integrity in society. Solely relying on integrity values is not sufficient because the system will lack teeth in case of breach of conduct. On the other hand an approach focused on compliance will lead to the multiplication of checks and balances and an environment that is not conducive to trust. Embedding a culture of integrity requires a mix of:

1. Strong ethical values at the individual level and public education to disseminate these values;

2. Risk management and other preventive mechanisms to limit loopholes in the system and deter misconduct as well as;

3. Enforcement to apply sanctions where necessary.
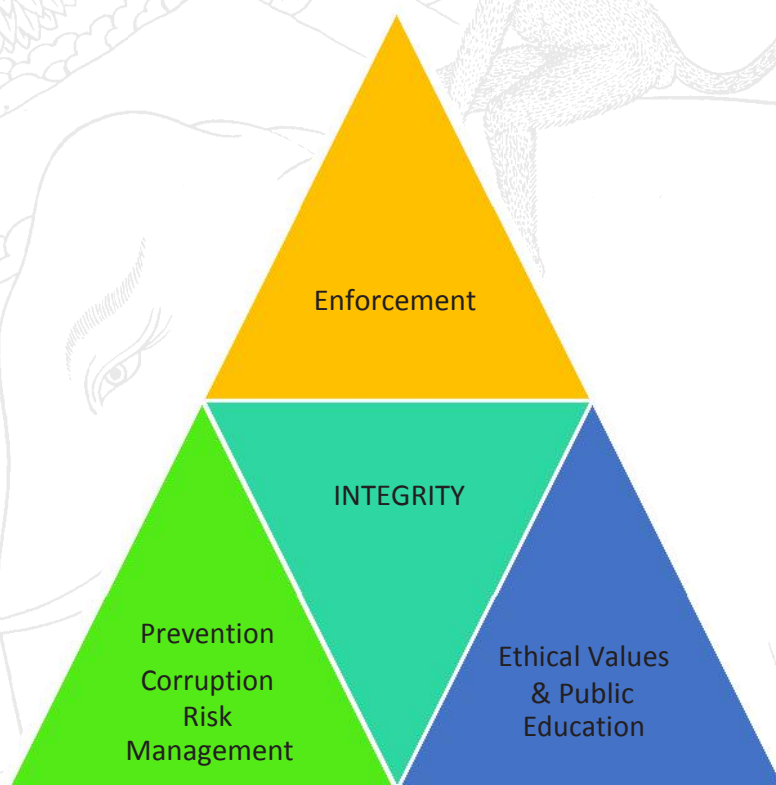
Sources: UNDP and *Towards a Sound Integrity Framework: Instruments, Processes, Structures and Conditions for Implementation*, OECD 2009

Furthermore talking about integrity exclusively in terms of ethics without connecting this to organizational effectiveness has proven to be a mistake in other countries. **The challenge in Bhutan is, therefore, to embed these ethical values into organizational systems that promote a culture of integrity and prevent misconduct.** This point is further discussed in relation to the individual integrity tools described in the following sections.

To embed ethical values within the wider society it is also essential that the ACC continues to play its educational role in partnering with other influential institutions in society, such as parliament, media, NGOs (e.g. Bhutan Transparency Initiative), schools and religious organizations. This could be done for example by:

·   *Partnering with the media*: One of the functional capacities missing is the existence of a focal point for media relations in the ACC, recruitment of which is planned based on Public Communication and Media Strategy of the Change Management Plan. During the interviews with the media, it was suggested that a media focal point is established in the ACC's to provide a counterpart for media so that the media is kept informed on a regular basis on the progress of the ACC work, to which, the ACC has explained that it had to discontinue its quarterly engagement with the media as the latter remained focused on information related to investigation and not in changing perception and behavior and promoting ethical societal values. Also the media could become involved in awareness-raising activities of the ACC on ethical values in the context of the Buddhist culture in Bhutan. For example the ACC could work with the Journalist Association of Bhutan in the development of a code of conduct for journalists.

·   *Organising public consultations on the findings from the ACC report*: At the moment the Good Governance Committee in the NC and the NA review the reports generated by the ACC and identify issues that need to be brought to the national debate. The findings can be disseminated by several communication channels, including briefing to the public (e.g. on radio), by informing the Parliament as a whole, or by bringing key issues for deliberation to the Parliament in the form of a resolution. However, there is no consultation of the public around the ACC report. The key findings from the ACC annual report could be discussed with the public through various communication channels such as the radio or television.

> *Proposal:*
>
> *Develop a culture of integrity within society: Introduce a focal point in the ACC to raise awareness about the importance of ethics and integrity and provide a focal point for media and other educational institutions*

INTEGRITY TOOLS: EMBEDDING THEM IN AN INSTITUTIONAL FABRIC

Strong systems of integrity can be built through the institutionalization of integrity promotion tools to guide officials in their daily conduct. Citizens expect public officials to serve the public interest with integrity. Core values guide the judgment of officials on how to perform their tasks in daily operations. Codes of conduct are a tool to articulate these values and guide officials on how to apply them in daily practice.

In addition to the codes of conduct the ACC has supported the development of several tools, including the **declaration of conflict of interest obligation, the asset declaration obligation and the gifts rules for public officials.** It has also used Integrity Pacts to promote integrity in public procurement, which is a key interface of the public and private sectors.

Source: UNDP

The challenge facing all branches of the government in Bhutan is how to most effectively **make the transition from integrity programs and tools to lived values in daily work**. The establishment of an institutional fabric for implementing some of these tools and linking their implementation could provide a significant opportunity to promote ethics and integrity in the public service.

An institutional fabric means that the integrity tools are supported by a number of mechanisms for their implementation, including:

Leadership: managers lead by example by demonstrating integrity in daily conduct

Counseling: officials are provided with a clear contact point that they can turn to if they have ethical dilemmas.

Mentoring: counselors have adequate capacity to respond to their questions through regular training of the trainers, and

Monitoring of impact: getting regular feedback from end-users on the effectiveness of integrity tools

To create this institutional fabric the ACC should invest in providing guidance and mentoring to those officials who help in the promotion of integrity within government agencies. The mission recommends in particular that:

- **Human resource officers in line ministries are provided with a clear responsibility for the promotion of integrity and ethics among their duties. This should be integrated as part of their terms of reference and in their annual performance management**. At the moment there is no dedicated officer who can train public servants face-to-face on a regular basis or guide officials when faced with ethical dilemmas. These contact points for the ACC in line ministries could provide a network that would help promote the code of conduct, as well as be accountable for the development of integrity action plans as a result of a corruption risk assessment.

- ACC sets up a **training of the trainers program for those officials in different branches of government who are responsible for implementing the individual integrity tools within government agencies.** This program should provide a way to coach on a regular basis these officials so that they play an effective role in raising awareness about expected standards of conduct as well as provide advisory functions for officials that face ethical dilemmas.

- To do this a pre-condition is that the ACC has itself the adequate capacities to mentor those officials over time. **It is recommended that the ACC prepares a succession plan for the leadership of the Commission while investing recruitment and retention efforts targeted at key officials, especially middle managers**. A challenge for the ACC is the recruitment and retention of sound professionals, and this will become more critical as the leadership of the ACC will change next year. As a result of high turnover, the middle-management in the ACC is weak. This could become a critical problem for knowledge management once the leadership of the Commission (the 3 Commissioners) finish their mandate at the same time in 10 months. For the middle-level management ACC considered the establishment of an incentive fund as a scheme for staff attraction, retention, and motivation but it has not been able to establish and finance it. Urgent efforts need to be invested to recruit or promote middle managers who can ensure the

sustainability of such efforts. For example, contracts between the ACC and individuals could be a way of employing specialized expertise from the private sector and non-governmental organizations for a short period of time. This would also be beneficial to build the sectoral approach of the Commission, whose key functions are organized around key sectors/areas such as land, procurement and human resource management.

-   **The ACC monitors the effectiveness of its integrity tools by organizing yearly surveys to collect the feedback from end-users or reviews amongst ministries**. Although the ACC uses several survey and other assessments to assess the level of corruption in Bhutan, it does not collect feedback on the usefulness of its integrity tools. Many countries use surveys or sometimes reviews to assess the integrity culture within public organizations. For example in the United States, the OGE, which has the overall responsibility for ethics programs within the executive branch, carries out annual reviews to periodically analyze the effectiveness of integrity trainings, advice and counseling given to employees, asset disclosure systems and other programs. After review the OGE sends a report to agencies with recommendations for improving the program. The agencies must respond to the OGE program within 60 days regarding the actions taken or plans to. A Congressional Committee can request a report by an agency under its jurisdiction. In addition periodically the OGE releases these reports to the public. OGE carries a follow-up review six months after the report to assess whether the recommendations have been implemented.

> *Proposal:*
>
> *Create a network of human resource officers to promote a culture of ethics and integrity within line ministries with the support and training of the ACC.*

The following section provides more specific analysis of each individual tool based on the feedback provided during the mission.

TOOL #1: CODES OF CONDUCT

The UNCAC, under its article 8, requires that each State Party shall endeavor to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honorable and proper performance of public functions.

ACC code of conduct
The ACC had consensually developed its Ethical Code of Conduct that was launched on July 11, 2008 during which all ACC staff pledged to follow it in letter and spirit. The Ethical Code of Conduct, which is being reviewed, is regarded as a fundamental step in building corruption resistance, integrity and professionalism. The ACC's Code clearly defines the responsibilities of the management and employees. Most importantly an ethics committee has been established to oversee its implementation with clear process for monitoring, reporting, penalizing and appealing.

Codes of conduct in the Government
In Bhutan codes of conduct exist for public servants, parliamentarians, judiciary, as well as for specific professions such as engineers and doctors. There is a legal basis for the implementation of codes of conduct for public officials. In particular the Bhutan Civil Service Rules and Regulations, the Judicial Service Act and other regulations include specific and detailed provisions on expected standards of conduct for public officials.

Despite this legal basis interviewees demonstrated limited knowledge about expected standards of conduct. The reason for this implementation gap is the lack of institutional fabric for implementing the codes of conduct. The feedback from interviewees showed that this is an issue in all three branches of government:

- **In the executive**: There is low awareness about the Civil Service Code of Conduct and Ethics because civil servants are not required to sign the code upon induction, and ethics trainings have been only recently introduced, and there are low capacities among those officers in ministries who help promote the code. **The RCSC suggested during the mission that the codes of conduct are integrated within the checklist that civil servants have to comply with when joining the civil service so that this becomes an integral part of human resource management processes.**

- **In the Parliament**: A House Committee handles issues of misconduct from parliamentarians in practice. However, this is not part of the Rules of Procedures of the parliament. This committee can provide reminders to parliamentarians about expected standards under the code of conduct as well as apply sanctions if necessary. In the NC sanctions may range from a simple warning to loss to membership. However, some interviewees pointed that sanctions are not clearly articulated in the case of the National Assembly. It would be important to ensure that a range of sanctions are defined in the Rules of Procedures for both the upper and the lower chambers, as well as applied in a fair and proportional way in case of misconduct (in proportion to the offence, and consistently across institutions).

- **<u>In the justice sector</u>**: Although there is a judicial code, some interviewees pointed out the lack of clear articulation between the judicial code and the integrity course that was recently developed for judges. During the mission the BNLI welcomed the possibility of partnering with the ACC in developing a specific training module for judges on integrity (covering issues such as expected standards of conduct under the code) that would be integrated as part of the existing curricula for judges.

In Bhutan codes of conduct are not yet part of the overall management structure to remind individuals of the expected standards. Also sanctions remain rare, and are not necessarilyproportional to the breach of conduct according to some interviewees.

Standards of conduct for public-owned enterprises and private sector
The mandate and powers of the ACC, as per Anti-Corruption Act, include "publishing manuals of guidance and developing model codes of conduct and advising public **or private bodies** as to adoption of such codes as may be suited to such bodies" (Art.24). **However, while the ACC has drafted a model code, most of its efforts have focused on promoting integrity standards in the government.**

In public enterprises there are a number of integrity initiatives under the umbrella of the DHI. DHI, which is wholly owned by the government of Bhutan, is the only Holding Company in Bhutan with shares in 17 companies of which 10 are subsidiary companies. Part of the mandate of DHI includes the support to private sector development and the improvement of corporate practices, including the prevention of corruption and the promotion of integrity.

DHI implemented the DHI Ownership Policy 2010 according to Prime Minister's 2013 Annual Report on State of the Nation to the Tenth Session of the First Parliament. The Ownership Policy provides an overall framework for the governance of the DHI companies and was developed in line with good corporate governance practices to ensure transparency, accountability, and responsibility in the DHI group.

With the support of the World Bank, DHI trained board directors on board directorship, and developed a corporate governance code, board charter, audit charter, and improved performance management and target-setting framework for the companies. Also it introduced GPMS with Annual Compacts targets linked to salaries and bonuses in order to create a performance based-culture in its subsidiary companies – where 10% of the salaries depend on achieving these targets. DHI is currently working on the development of a code of conduct for its subsidiaries companies, with support from World Bank.

On the other hand, other parts of the private sector are resisting the introduction of similar integrity initiatives according to some interviewees. For example, the ACC worked with the Bhutan Chamber of Commerce and Industry to develop a code of conduct for the tourism industry in 2008. However, there has not been much progress in other sectors. The NIACS foresees efforts in this area, by making integrity pledges a pre-condition for the registration of businesses. Also in some procurement projects, Integrity Pacts are used to remind the representatives from public and private sector about the integrity standards to be respected and the sanctions involved in case of breach.

To strengthen the effectiveness of Integrity Pacts, the ACC may consider including in big projects with high financial stakes **an independent monitor who can testify on the effectiveness and integrity of the procurement project[11]**. This is a practice that has been institutionalized in some countries, for example in Mexico these are referred to as Social Witnesses in the procurement process. Their function is to propose strategies for improving transparency, impartiality and compliance with the legal framework, and must issue an alert if they detect any irregularities in the course of the procurement. At the conclusion of the procurement proceedings, the social witness issues a publicly available statement including observations and, as appropriate, recommendations. The statement is posted on the government's central procurement website.

> *Proposal:*
>
> I. *Make the Civil service Code of Conduct an integral part of human resource management and train human resource officers in ministries to administer the code*
>
> II. *To strengthen the effectiveness of Integrity Pacts, consider including in big projects an independent monitor who can testify on the effectiveness and integrity of the procurement project*

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11 For more information on the independent monitor used in Transparency International Integrity Pacts, please refer to: http://archive.transparency.org/global_priorities/public_contracting/integrity_pacts

TOOL #2: CONFLICT OF INTEREST DISCLOSURE AND MANAGEMENT

Article 7 of the UNCAC requires states, in accordance with the fundamental principles of their domestic law, to adopt, maintain and strengthen systems to promote transparency and prevent conflict of interest. "A 'conflict of interest' involves a conflict between the public duty and private interests of a public official, in which the public official has private interests which could improperly influence the performance of their official duties and responsibilities" (OECD, 2003).

In Bhutan public officials who are vulnerable to conflict of interest because of their position are required to declare conflict of interest in relation to key decision-making processes. These include officials working in both the executive and parliament branches - in particular parliamentarians, as well as human resource management, audit and procurement officers. On the other hand Judges are not required to declare conflict of interest.

Parliament
Before a debate in Parliament, members are asked to declare if they have a conflict of interest with the issue under discussion. Parliamentarians with a conflict of interest are expected to recuse from the discussion at stake. This is required under the Rules of Procedures of the Parliament.

In addition to this system of conflict of interest declaration, parliamentarians are restricted to undertake certain activities that could lead to conflict of interest. Incompatibilities with the position of parliamentarians include for example having a part time job or sitting on the board of company.

During the interviews some high-level officials seemed unaware about the variety of conflict-of-interest situations and the related management mechanisms to help manage and resolve these situations. The box below provides examples of sources of conflict of interest and solutions to manage them.

Identifying and managing conflicts of interest: What management solutions?

In addition to gifts or hospitality offered to public officials, and personal or family relationships, there are a number of potential sources for conflicts of interest, such as:

- A public official having private business interests in the form of partnerships, shareholdings, board memberships, investments, government contracts, etc.

- A public official having affiliations with other organizations (e.g. a public official sits on the board of a non-profit organisation that receives funding from the official's agency).

- A public official leaving to work for a regulated private company or a chief executive taking up a key position in a government

To resolve conflict of interest situations public officials are expected to dispose of, or restrict the operation of private interests that could compromise official decisions in which they are involved. Where this is not feasible – an official can hardly be expected to abandon her relationship with her husband or children in the interests of her job – a public official should abstain from involvement in official decisions.

In addition, public officials must not misuse their position and government resources for private gain, such as awarding a contract to a firm in the hope of obtaining a job with that firm on leaving public office.

In case of financial interests public officials should not engage in a private financial transaction which involves using confidential information obtained. Alternatively "blind trusts" can be established to ensure that the financial assets are managed independently without the possibility for the official to influence investment decisions.

Source: Managing Conflict of Interest in the Public Service, OECD, 2003

Judges

In the case of judges, a number of integrity mechanisms helps prevent the emergence of conflict of interest. There is a system in place whereby cases are distributed on a random basis by the Chief Judge/Justice. If a judge has a conflict of interest with the case to be examined, he/she is expected to recuse him/herself from the case under the Judicial Code of Conduct. Also there are a number of incompatibilities that apply to judges – for example judges cannot practice after retiring from Court.

However, judges are not required to declare conflict of interest contrary to other high-level officials in Bhutan. This is consistent with the practice of some countries at the international level where disclosures are more often required from the executive and legislative branches than in the judiciary. For example, among OECD countries disclosure is not required for judges and prosecutors in the Czech Republic, France, Luxemburg and New Zealand. The respect for judicial independence and *a priori* trust in the integrity of judges, together with the fact that judges are not subject to popular elections, are among the factors that explain this exemption. In other countries where declaration systems cover a broad range of officials, judges are usually covered as well (Asset Declarations for Public Officials: A Tool to Prevent Corruption, OECD).

For benchmarks and data comparison, please, refer to the 2013 edition of Government at a Glance, OECD. The information can be accessed at: http://www.keepeek.com/Digital-Asset-Management/oecd/governance/government-at-a-glance-2013/conflict-of-interest-and-asset-disclosure_gov_glance-2013-49-en#page1).

Also the interviewees indicated that the ACC could also help the Supreme Court in setting up a grievance/feedback mechanism for the judiciary while special attention should be taken to preserving judiciary independence.

Guidance for managing conflict of interest

Some interviewees during the mission pointed out that the **management of conflict of interest can become a challenge in practice because Bhutan is a small society** where conflicts of interest are likely to arise based on personal relationships, while the number of officials is limited. Therefore, guidance on how to manage specific conflict-of-interest situations to find realistic management solutions would be beneficial, including for judges and parliamentarians.

A good example of useful guidance in this area is the **Toolkit for managing conflict of interest in the public service developed by the Crime and Misconduct Commission and the Independent Commission against Corruption in New South Wales**[12]. The responses might range from formal declaration of the conflict of interest in a register to the resignation of the public official concerned from their position depending on the seriousness of the conflict of interest. The table below provides guidance on how to define a management strategy depending on the circumstances. Annex 2 of this report includes the tool used by the ICAC to train public officials on how to respond to different conflict-of-interest situations.

Table 3. Toolkit from ICAC New South Wales: Options for managing conflict of interest

Management Strategy	When most suitable	When least suitable
Register *Where details of the existence of a possible or potential conflict of interest are formally registered.*	• for very low-risk conflicts of interest and potential conflicts of interest • where the act of transparency through recording the conflict of interest is sufficient	• the conflict of interest is more significant or of higher risk • the potential or perceived effects of a conflict of interest on the proper performance of the public employee's duties require more proactive management
Restrict *Where restrictions are placed on the public employee's involvement in the matter.*	• the public employee can be effectively separated from parts of the activity or process • the conflict of interest is not likely to arise frequently	• the conflict is likely to arise more frequently • the public employee is constantly unable to perform a number of their regular duties because of conflict of interest issues

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12 The Toolkit can be accessed on this web link: http://www.google.co.th/url?url=http://www.icac. nsw.gov.au/documents/doc_download/3323-managing-conflicts-of-interest-in-the-public-sector-toolkit&rct=j&frm=1&q=&esrc=s&sa=U&ei=GUH8U724HZC3uASsz4CwBw&ved=0CBMQ FjAA&sig2=XARDjseFN6NnJ Xc8P8kHhw&usg=AFQjCNF7jE9nMXccjGOcUO8JotK1U7y UVA

Recruit *Where a disinterested third party is used to oversee part or all of the process that deals with the matter.*	• it is not feasible or desirable for the public employee to remove themselves from the decision making process • in small or isolated communities where the particular expertise of the public employee is necessary and genuinely not easily replaced	• the conflict is serious and ongoing rendering ad hoc recruitment of others unworkable • recruitment of a third party is not appropriate for the proper handling of the matter • a suitable third party is unable to be sourced
Remove *Where a public employee chooses to be removed from the matter.*	• for ongoing serious conflicts of interest where ad hoc restriction or recruitment of others is not appropriate	• the conflict of interest and its perceived or potential effects are of low risk or low significance • the public employee is prepared to relinquish the relevant private interest rather than radically change their work responsibilities or environment
Relinquish *Where the public employee relinquishes the private interest that is creating the conflict.*	• the public employee's commitment to public duty outweighs their attachment to their private interest	• the public employee is unable or unwilling, for various reasons, to relinquish the relevant private interest
Resign *Where the public employee resigns from their position with the agency.*	• no other options are workable • the public employee cannot or will not relinquish their conflicting private interest and changes to their work responsibilities or environment are not feasible • the public employee prefers this course as a matter of personal principle.	• the conflict of interest and its potential or perceived effects are of low risk or low significance • other options exist that are workable for the public employee and the agency.

Source: Toolkit for managing conflicts of interest in the public service developed by the Independent Commission against Corruption in New South Wales

> *Proposal:*
>
> i. *Develop a toolkit with case studies to illustrate how to manage conflict-of-interest situations*
>
> ii. *Develop grievance/feedback mechanisms for the judiciary taking cognizance of their independence*

TOOL #3: ASSET DISCLOSURE

In Bhutan the asset disclosure system primarily aims at:
- Detecting illicit enrichment by verifying the legitimacy of income and wealth.
- Promoting transparency and accountability for high-level officials during election.

In other countries asset disclosure systems are also often used to **prevent conflict of interest**, in addition to the two objectives mentioned above. Of the private interests covered, countries usually give the highest attention to paid outside positions as well as the receipt of gifts. Although there is no "one-size fit all model" in this area countries increasingly tend to include conflict of interest prevention as part of the objectives of the system[13].

The mission recommends that Bhutan **organizes a national policy debate to discuss the objectives to be achieved by the system.** It would be worth considering whether it would be useful to modify the asset disclosure rules to include conflict of interest prevention among its objectives, in addition to wealth monitoring and transparency. This would help provide a coherent legal basis to the various integrity tools used in Bhutan to promote integrity and prevent corruption.

Asset disclosures for high-level officials:
In Bhutan high-level officials ("scheduled public servants" as referred under the Asset Declaration Rules, 2012)[14] are required to disclose their assets on an annual basis to the ACC in order to detect illicit enrichment. The public can access this information only upon request, although this is rarely done in practice. Also these declarations are made public by the Election Commission during election times so that the public is able to monitor them[15].

There is a high-level compliance among these officials to submit the declarations (100% compliance for the year 2013). Officials generally comply with the rules because of the sanctions associated to the failure to declare (e.g. fine, possibility to make the seat of parliamentarians vacant). However, there are a number of limitations under the current system:

- The asset declaration is generally perceived as a mere formality by high-level officials who are not aware of its importance for detecting illicit enrichment. **There is limited awareness among officials that the ACC verifies the accuracy of the information submitted to detect potential illicit enrichment**, in cooperation with other government agencies, such as the Revenue Authority, the National Land Commission Secretariat, the Road Safety and Transport Authority and Banks.

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13 See Asset declarations for public officials: A tool to prevent corruption. OECD, 2011.

14 High-level officials required to declare their assets include: the Speaker and members of the NA, Chairperson and members of NC, constitutional post holders, ambassadors and consul generals, heads of armed forces, Dzongkhag Tshogdu chairpersons, dzongdags, heads of financial institutions and the chairpersons of Thromde Tshogdes.

15 This is consistent with the international principle that the higher the position is, the more transparency the system should promote to maintain public trust. In some countries the information for the prime minister, cabinet members and parliamentarians are available to the public on-line at all times.

- **Under the asset disclosure legislation the objective of the system is primarily to detect illicit enrichment and does not cover related issues of conflict of interest**. In other countries with advanced integrity systems it is generally common to find disclosure systems that also include conflict of interest. A conflict of interest arises when a public official's private interest could potentially influence the impartiality of the decision of a public official in his official duties.

Declarations of assets for "non scheduled" public servants
To ensure public accountability and efficient use of public resources, a system of asset declaration has been in place ever since the establishment of the ACC. The **asset declaration rules were revised at several occasions to strengthen their effectiveness, most recently in 2012.**

In addition to high-level public officials ("scheduled public servants" as described in a previous section) and public servants in the ACC, non-scheduled public servants are required to declare their assets and liabilities annually.

The scope of the declaration focuses on public servants and employees of corporations that are above position level 8, as well as all public servants (working in corporations, financial institutions and civil society organizations) working in risk areas such as engineering, finance, custom, forest, procurement, human resource management, legal services, trade, transportation, religious organizations as well as law enforcement. This is **consistent with international good practice to focus the declaration requirement on officials who are most vulnerable** to illicit enrichment because of their positions.

Compliance with filing declarations is rather high. Out of 428 Schedule I covered persons identified for 2013, 366 filed their declaration, bringing the compliance rate to 85.5% as against 85.98% last year (325 declared out of 378), a mere decline of 0.28% (ACC Annual Report). While high level officials declare their assets directly to the ACC through an online system as well as hard copy, other officials are expected to file their declaration to their respective asset declaration administrators (ADAs). In 2013 twelve agencies failed to submit the report, which is a breach of responsibility by the head of the agency and the asset declaration administrator. The RAA carries out the compliance auditing of the asset declaration in agencies.

However, the interviewees indicated that the verification of the asset declaration submitted remains a challenge in many agencies. The Asset Declaration Administrator shall examine the declaration of non-scheduled public servants and submit the report of any disproportionate assets to the head of the agency. In case of complaint concerning an allegation or suspected contravention of the provisions of the Asset Declaration Rules, complaints can be lodged to the head of agency for non-scheduled public servants[16].

The asset declaration is essentially seen as a compliance exercise while administrators in line ministries are not necessarily well-prepared to verify non-disproportionate assets. It was men

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16 Any person may lodge a complaint to: (a) The Ethics and Credential Committee of the NA, if a complaint is against the Commission; (b) The Commission, if a complaint is against a covered person under Schedule I; and (c) The head of agency, if a complaint is against a covered person under Schedule II.

tioned during the mission that the ACC carries out targeted audits for public officials. The mission recommends that the ACC works closely with Administrators in line ministries to verify the assets disclosed by public servants through systematic random audits based on a sample of assets' declaration. The decentralization of the management of asset declarations to line ministries should be accompanied by strong checks by the ACC to ensure the effectiveness of the system.

Monitoring the effectiveness of the asset declaration system

There is limited evidence at the international level on the effectiveness of asset disclosure systems in detecting illicit enrichment. For that purpose Bhutan could consider using indicators to assess the effectiveness of its system. Indicators would include not only the level of compliance with requirements to submit asset disclosure but also the types and number of proceedings (e.g. disciplinary actions or criminal proceedings) prompted by information provided in the asset declarations as well as the number of requests from the public to access to asset declarations. Also other indicators may be used to measure the efficiency of the system by looking at the human and financial resources spent on operating the system.

> *Proposal:*
>
> i.   *Ensure that the ACC works closely with Administrators in line ministries to verify assets disclosed by public servants, for example through random audits*
>
> ii.   *Organize a policy debate on the International Day against Corruption to:*
>
>   a) *review the objectives of the asset disclosure system*
>
>   b) *raise awareness about requirements under asset disclosure systems*
>
>   c) *consider revising the legislation to include the prevention of conflict of interest as an objective of the system*
>
>   d) *discuss practical solutions for resolving conflict- of-interest situations*

TOOL #4: GIFT RULES

The 2008 Gift Rules were revised in 2014 in the follow-up of multi-stakeholder consultations. Considering the novelty of these rules there was little awareness among interviewees about the content of the new rules. However, there is a plan of the ACC to conduct dissemination sessions to educate the public on the rules before their enforcement.

A desk review of the revised gift rules raises a number of concerns regarding their implementation:

Scope of application: The gift rules apply to "a public servant of any entity using public resources except as otherwise provided by the Commission" (as well as their dependents through indirect gifts). On the other hand interviewees during the mission indicated that gifts and other types of hospitality are not explicitly prohibited under the Rules and Procedures of the Parliament. **It would be essential that such gift rules are targeted at officials whose function makes them vulnerable to tentative of influence.** These include in particular high-level officials as well as public servants working in at-risk functions such as procurement, finance, legal services and law enforcement, forestry and engineering.

Types of gift: The gift rules specify in details the situations under which a gift may be acceptable or not, and under what circumstances. However, the complexity of the rules makes it difficult for public servants to recall how they should behave in specific situations. There should be a **clear and reasonable differentiation between gifts that are customary or of low value compared to those that could be associated to a tentative to influence an official's decision**. It would be helpful if the ACC developed a specific toolkit with case studies to illustrate how the public servants shall behave in concrete situations of gift receipt**.**

Disclosure of gifts: Also the public servants are required to disclose all gifts, including a permissible gift, within a specific period of time. **This requirement is rather burdensome considering that many gifts in Bhutanese culture are customary**. Such a disclosure shall include for each gift reported: the name and position of the recipient public servant; a brief description of the gift; date of acceptance; estimated fair market value; current disposition or location; the identity of the giver and the name and position of the individual who presented the gift; the circumstances justifying acceptance; and whether the gift is being returned to the giver or retained for official or personal use. The ACC may consider simplifying these requirements to encourage compliance.

In other countries only "reportable gifts" are disclosed – these are to be distinguished from those gifts which are not required to be reported by the officials who receive them. What gifts are reportable is a policy decision to be made by each organization. However, many countries use minimum value thresholds for that purpose. The ACC could review its gift rules compared to international good practice in this area. It could use as a reference the ***generic model law on gifts*** included in Annex III, and adapt it to the Bhutanese context. This tool "generic model law on gifts" is extracted from the OECD Toolkit on Managing Conflict of Interest in the Public Service, 2005, which was developed on the basis of good practices in OECD and non-member countries.

During the mission some interviewees pointed out that the rules on gifts are too complex and not

adapted to daily reality. They also explained the **risk to focus on petty issues such as gifts instead of addressing more important sources for integrity violations in Bhutan**.

> *Proposal:*
>
> *Consider simplifying the newly approved gift rules based on international good practice*

TOOL #5: CORRUPTION RISK MANAGEMENT (CRM)

CRM is a process used by the ACC to identify potential corruption risks in an organization, assess those identified risks in terms of severity to the organizational performance, goal and image, analyze its causes and ultimately help in bringing about corrective measures to minimize those risks. It is an in-house tool adapted from South Korea for identifying and managing corruption related risks in an organization. CRM has been applied to ACC itself, before being used by other agencies

Corruption risk management (CRM):

During the review mission excellent feedback was provided by interviewees on the usefulness of the corruption risk management tool. The CRM is a self-assessment by the representatives of organization concerned, which is facilitated by the ACC. Interviewees all acknowledged that the CRM helped raise awareness about potential loopholes in the system while providing entry points to better mitigate these risks at the organizational level. As a result of the CRM the organization is expected to develop an integrity action plan and to report on follow-up after 6 months.

Corruption Risk Management Tool

Source: ACC Bhutan

The approach taken by the ACC has been to build the ownership from the organisation undertaking the corruption risk management to increase its capacity to handle these risks in the future and therefore, it is done primarily on a voluntary basis. In some cases, as a follow-up to an investigation in a specific organization, the ACC will request the organization to undertake CRM.

So far CRM workshops have taken place in 21 organizations, including those at district level.

Also the ACC has organized workshops to train internal auditors in ministries. Internal audit plays a

key role in providing assurance that the organisation's financial and operational controls are operating effectively to manage corruption risks, and assist management in improving business performance.

However, some interviewees pointed out that one of the limitations for the CRM is that it is **carried out on an *ad hoc* basis instead of being part of overall risk management processes in government**. Furthermore, the ACC has **little enforcement power in case line ministries do not implement the recommended risk mitigation measures as a follow-up to the CRM**. Therefore, the ACC should:

Ensure that **all organizations working in high-risk and exposed sectors** – e.g. procurement, construction, land and forestry, mining and customs – as well as governments at the local level **develop integrity action plans** as a result of the CRM. Integrity plans are an instrument for raising awareness about weaknesses in an institution's operations or about the vulnerability and exposure of an institution's operations with the aim of preventing violations to integrity. This is one of planned outputs under the NIACS for which progress should be monitored and reported so that organizations are kept accountable on progress.

Make sure that the integrity action plan developed as a result of the CRM **systematically specifies the baseline, proposed/target measures, the person/unit responsible as well as a timeframe for implementation.** For example, in the case of the 2013 CRM workshop carried out with the NC, the timeline for the implementation of the measures is not specified.

Explore ways to **ensure that the CRM becomesan integral part of the institutions' overall institutional risk management strategy and audit processes**. It is essential that the ACC develop partnership with line ministries to implement corruption risk management and develop integrity plans whose implementation could be periodically reviewed by the ACC or the RAA. For example, the ACC could explore how this approach could be embedded within internal audits in line ministries so that CRM workshops are carried out on a regular basis and become part of the internal risk management process of the organizations. Alternatively, the ACC could explore the possibility with the RAA to help verify compliance with the integrity action plan/recommendations as part of its external performance audits.

As a follow-up to the report UNDP could facilitate cooperation between the ACC in Bhutan and selected governments that have a sound experience with integrity risk management and the development of action plans, such as Slovenia, Estonia, South Korea or Austria.

Integrity diagnostics
In addition to CRM the ACC has also developed another tool with the support of the ADB – the Integrity Diagnostic Tool, IDT(see annex 1). It is a tool to assess organizational integrity practices based on 20 questions looking at the vision, character, conscience and controls within an organization. This questionnaire has been piloted in 13 organizations so far.

During the mission some interviewees pointed out the **multiplication of risk management tools** used by the ACC, although the feedback on this tool was limited. While the ACC has been successful in developing and adapting these tools, it should avoid having too many tools that are not adding value but instead leverage on the successful ones.

The ACC could integrate tools that have a similar impact such as CRM and IDT to make the CRM process effective. The mission team **recommends suppressing the IDT or integrating it with the CRM tool.**

Proposal:

i. *Ensure that the CRM becomes an integral part of the organizations' overall risk management strategy and internal audit processes.*

ii. *Specify systematically the baseline, target measures, the person/unit responsible as well as a timeframe for implementation in the integrity action plan developed as a result of the CRM to monitor progress.*

TOOL #6: ETHICS AND INTEGRITY TRAININGS

The UNCAC requires that the State Parties "promote education and training programs to enable public officials to meet the requirements for the correct, honorable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions."

Public sector integrity management has been high on the agenda in Bhutan. There is a growing understanding among the public that integrity is a keystone of good governance, a condition for activities of government not only to be legitimate and trusted, but also effective. The ACC in collaboration with the Royal Court of Justice, the NA, the NC, the RCSC and the RIM developed three online courses on ethics and integrity management.

Ethics and integrity course for civil servants
The ethics and integrity course for civil servants was introduced in December 2011 by the Task Force on Ethics and Integrity, with the support of DANIDA. In February 2014 the RCSC made the training mandatory for public officials above level S5.

So far 18.000 officials attended the online course while 13.000 completed the integrity test. So far no survey was carried out with the participants of the course to gather feedback and suggestions.

Since the Task Force plans to update the ethics and management online course, it was timely for the mission to meet with the 12 focal points for the online course from line ministries. They pointed out to the following issues related to:

Technical limitations:

1. Lack of infrastructure (computers, internet services) in remote areas of Bhutan. It can be challenging to undertake the course when lacking a strong Internet connection. **For those offices in remote areas with limited internet access it would be preferable to provide an option for an offline course or providing the course on a CD-Rom.**

2. Group work: Several focal points mentioned the difficulty of doing the group exercise in remote areas.

3. Language and literacy barriers since the courses are only available in English. It would be strongly recommended to translate the course into Dzongkha language.

4. User-friendliness: It would be important to provide the possibility to interrupt the course, save the information entered up to that point and then start from the same point (as provided for the Parliamentarians and Judiciary courses). A page number at each stage of the course could be useful, as well as a line/summary showing the trainee's progress throughout the sessions. Also the ACC may want to delete some questions and quotes that are repeated more than two times in a course (not only twice, for example in the pre-test and after the module, but more than 2-3 times).

Audience: **Adaptability of the content** may need to be reviewed depending on the target audience (low-level vs more senior officials) to ensure that all officials are able to understand the training.

Content: Specific suggestions include **dedicating more time to the content on the tools such as asset disclosure and gift rules so that public officials understand fully what action is required from them under existing rules**. Also there are some elements of the course that are not update or could be misleading. For example, in the course reference is made to Gift Rules 2009, while there is a new version since 2014. Also for asset declarations, it is stated that they are "publicly available" whereas this only applies to high-level public officials, and not public servants.

One of the functions of the course is to clarify to public servants how they should behave in specific situations, including when faced with a conflict of interest. However, some of the **expectations seem rather unrealistic**. For example in module 1 on conflict of interest prevention (step 4-4) it is written: "You have to declare potential conflict of interest: when you seek employment you should provide a list of interests and persons who can put you in a situation where you have a conflict of interest in the future" Is this rule feasible in a small society like Bhutan? To whom should the list be presented?

Balancing theory and practice: **It would be preferable to have less theory and develop further practical examples**, in particular in relation to the gift and asset declaration rules(in addition to providing the link to the rules). It is important to clarify for public servants how they can handle situations in practice as part of the course.

Case studies: The **case studies should be improved and used as a basis for face-to-face discussions**. They require adjustment both in terms of content (e.g. review of situations that are relevant to the audience) as well as in terms of interactivity and **feedback to the course-taker**.

Interactive feedback: More generally the current mechanism for providing feedback in relation to group work on case studies is limiting[17]. **Making the discussion and feedback face-to-face is essential for learning purposes.**

Other resource materials: The courses provide links to several resources such as the recently approved gift rules. **However, almost all the web links do not function** except the asset disclosure rules and the ACC complaints management. Also the option is not always offered to report the error to the Course Technical Administrator.

Incentives: The Commission has the advantage of a positive enabling environment as well as active support and the goodwill of the public. Moving forward, the Commission should ensure that the incentives for undertaking the course are clearly spelt out. The mission recommends for example **including a legislative or other official requirement to provide integrity training for public officials upon induction established in the regulatory framework in Bhutan. Also passing the test of the ethics and integrity training could be a requirement before promoting public officials.**

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17   At the end of the course there is a document available for download, presenting some case studies to be discussed in group (please note that case study 1 is the same as case study 7).

Institutionalization of the course: **Training of focal points is highly recommended** to ensure the sustainability of the course. Human resource officers could include the course as part of the induction for new officials, or make it a requirement before a promotion. Also the RIM may consider introducing a system of certification in future.

Interactivity: There was a general consensus that one of the key limitations is that the trainings were online. The trainings can be useful to gain an understanding of general integrity rules and tools, however **face-to-face interactions are necessary to discuss how to apply them in practice, especially for the case studies**. A specific suggestion was to use the opportunity of 9 December to organize interactive trainings.

Measurement of impact: So far the compliance rate for undertaking the course has been high. However, it is more meaningful to measure the level of officials who completed the whole test and passed the integrity test (13.000). Also **conducting a quick survey with end-users would provide more detailed feedback on areas for improvement of the course.**

The recent mission to Malaysia from representatives of the Task Force also provided insights on how to develop and upgrade the online course on ethics and integrity based on international good practice. As part of the upgrade of the course**, the Task Force may want to compare with examples of online courses that the UNDP has developed**. These provide a basis to think about the new features of the e-course, to be adapted to the specific needs and requirements of users in Bhutan:

*   UNDP course on [Basics on anti-corruption](#)

*   UNDP course on [Corruption Prevention in Public Administration](#)

Also examples of case studies can be found in the OECD Toolkit for Managing Conflict of Interest, which could be adapted to the Bhutanese context.

New courses for parliamentarians and judges
In addition, the Task Force just launched **two new courses targeted at the judiciary and parliamentarians.** Because of the novelty of the courses there was no awareness among high-level officials about the courses. Based on a desk review of these courses, it appears that these courses are more hands-on and focus on concrete examples and case studies that are relevant in the context of Bhutan. However, feedback seems to be lacking as part of the course:

For example: While the course taker is invited to reflect on which is the right behavior when facing conflict situations and dilemmas, he/she is requested to indicate its response to the situation. However, no solution is then given. There is only a message reminding the fact that why in some cases the conflict is evident, in other cases it is difficult to decide which is the right behavior. "As you can see, some scenarios are easy to categorize, while for others it is not so easy". Although this is an important point to make, public officials should be able to understand what is the most adapted management solution to the specific situation.

In addition to on-line courses, **high-level roundtables would be a more adapted format to discuss integrity issues with parliamentarians considering the seniority of their positions**. These discus-

sions could focus on how to manage and resolve specific conflict of interest situations based on existing case studies.

For judges it would be essential that the newly developed ethics and integrity training becomes part of the curriculum for judges. The BNLI offered the possibility of partnering with ACC in developing a specific module for judges on integrity that would be integrated as part of the existing curricula for judges. Also, the ACC may also consider partnering with the BNLI to develop specialized trainings for prosecutors, for example in relation to economic crimes or sectors requiring specific expertise.

Ethics training is a useful tool for strengthening integrity and preventing corruption if applied together with other tools as part of a comprehensive integrity policy. **Therefore, the mission recommends that the upgrade of the ethics and integrity training is closely linked to existing integrity tools and that adequate incentives are set up to produce sustainable results.**

Proposal:

i.   *Upgrade the ethics and integrity course based on the feedback from end-users and international good practice*

ii. *Training of focal points is highly recommended while an incentives system should be set up to ensure the sustainability of the course*

iii. *Combine the online course with face-to-face trainings, especially for high-level officials*

WAY FORWARD

Building on the findings from the review of the E& II in Bhutan, the mission identified short-term and mid-term recommendations for the improvement of integrity and anti-corruption programmes based on international good practice.

Short-term Recommendations: 2014-15

PARTNERSHIPS

- International cooperation: Ratify the UNCAC to benefit from knowledge sharing with other countries through peer reviews as well as technical assistance

- Introduce a focal point in the ACC to raise awareness about the importance of ethics and integrity within society and provide a focal point for media and other educational institutions

INSTITUTIONALIZE CAPACITIES FOR INTEGRITY

- Institutionalize integrity by assigning responsibility to human resource officers in ministries in providing guidance to officials on how to use ethics and integrity tools (e.g. codes of conduct, integrity trainings, CRM) and developing a training of the trainers program for these officials to build their capacity with the support of ACC

- Make the Civil Service Code of Conduct an integral part of human resource management processes and checklist

- CRM: Ensure that corruption risk management becomes an integral part of organizations' overall risk management strategy and internal audit processes

TRAINING

- *Conflict of interest management: Organize roundtables during the International Day against Corruption with high-level officials to raise awareness about requirements under asset disclosure systems as well as discuss practical solutions for resolving conflict- of-interest situations*

- *Online ethics and integrity course: Upgrade the ethics and integrity course and combine it with face-to-face training*

- *Set up an incentives system to ensure the sustainability of the integrity training course*

LEGAL AND REGULATORY FRAMEWORKS

- Organize a national policy debate to discuss the objectives of the asset disclosure system and consider the possibility of revising the asset disclosure rules to include the prevention of conflict of interest as an additional objective

- Introduce laws on access to information as well as on international cooperation

INSTITUTIONAL CAPACITIES FOR INTEGRITY

- Cooperation with judiciary: Support the development of a complaint mechanism for the judiciary taking cognizance of their independence

TRAINING

- Develop a toolkit with case studies to illustrate how to manage gifts and other conflict-of-interest situations, and consider simplifying the newly approved gift rules

ANNEX I. INTEGRITY DIAGNOSTIC TOOL

No	Statements about the Organization	Strongly Agree	Moderately Agree	Unsure or Indifferent	Moderately Disagree	Strongly Disagree
A	**COMPASS**					
A 1	The organization has a clearly defined vision and mission that is well understood throughout the organization.					
A 2	The leaders and members of the organization share/follow core values that guide actions and behavior.					
A 3	The management of the organization sets direction, priorities, and implements activities in ways that are consistent with the mission and values.					
A 4	Members of the organization have a culture that encourages them to consider the ethical consequences of their actions					
A 5	The stakeholders of the organization have the right attitude and ability to address problems and perform their duty with a high standard of integrity.					
B	**CHARACTER**					
B 1	The organization is a workplace where decisions and tasks are transparent, fair and open.					
B 2	The leaders of the organization are accountable for their decisions and actions, and set a positive example for the rest of the organization.					
B 3	The management of the organization involve and consults the members of the organization in its plans and decisions.					
B 4	Members of the organization have a sense of responsibility and can be trusted to deal professionally with clients/citizens and fellow colleagues.					
B 5	The stakeholders are honest and truthful in their dealings with clients/citizens and fellow colleagues.					

C	**CONSCIENCE**					
C 1	The organization gives importance to respecting the rights of others, regardless of their position or identity.					
C 2	The leaders of the organization treat its members with professionalism and respect.					
C 3	The management of the organization can be trusted to keep its promises and honor its commitments.					
C 4	The members obey the rules and regulations of the organizations and laws of the land.					
C 5	Stakeholders of the organization respect and are responsive to the people they serve.					
D	**CONTROLS**					
D 1	There are effective policies, rules, procedures and systems to prevent and identify abuse and corruption within the organization.					
D 2	Both the leaders and members in the organization practices a code of conduct that ensures ethical behavior and professional conduct.					
D 3	The management of the organization has established checks and balances to prevent misconduct and unlawful behavior.					
D 4	The members of the organization are guided by policies (such as conflict of interest policies) that differentiate between official and personal interests and responsibilities in the use of the organization's resources and powers.					

ANNEX II.

Options for managing conflicts of interest: tool from New South Wales

This tool provides an overview of the main options available to effectively manage a conflict of interest – whether actual, perceived or potential. These options range from formal registration of the conflict to the resignation of the public official concerned from their position.

The entire toolkit can be accessed on this web link: http://www.google.co.th/url?url=http://www.icac.nsw.gov.au/documents/doc_download/3323-managing-conflicts-of-interest-in-the-public-sector-toolkit&rct=j&frm=1&q=&esrc=s&sa=U&ei=GUH8U724HZC3uASsz4CwBw&ved=0CBMQFjAA&si g2=XARDjseFN6NnJXc8P8kHhw&usg=AFQjCNF7jE9nMXccjGOcUO8JotK1U7yUVA

- **REGISTER**
The register is where details of the existence of possible or potential conflicts of interest are formally registered.

When this option is suitable:
Recording the disclosure of conflicts of interest in a formal register is an appropriate management strategy for dealing with very low-risk and potential conflicts of interest. It is also an adequate response where the act of transparency through recording conflicts of interest is sufficient.

However, the registration or declaration of conflicts of interest does not in itself necessarily resolve the conflict. Additional measures to positively resolve or manage conflicts of interest should also be considered.

Strategies:

- ensuring your supervisor or manager is aware of the conflict so that effective supervision can be carried out

- informing likely affected persons that a disclosure has been made providing appropriate details and the agency's view that there is no actual conflict of interest, or that the potential for conflict is minimal, or that it is being managed to the agency's satisfaction.

When this option is not suitable:

- when continued participation would create a perception that your private interests may affect the performance of your public duty

- the conflict of interest is more significant or of higher risk

- the potential or perceived effects of a conflict of interest on the proper performance of your duties require more proactive management.

All conflicts of interest should be registered regardless of what additional management strategies are adopted.

- **RESTRICT**

Where restrictions are placed on the public employee's involvement in the matter.

When this option is suitable:

Restriction is often the most appropriate management strategy when:

a) you, as the public employee concerned, can be effectively separated from parts of the activity or process

b) the conflict of interest is not likely to arise frequently.

Strategies:

- non-involvement in any critical criteria setting or decision-making role in the process concerned

- refraining from taking part in any debate about the issue abstaining from voting on decision proposals

- withdrawing from discussion of affected proposals and plans

- having restricted access to information relating to the conflict of interest

- being denied access to sensitive documents or confidential information relating to the conflict of interest.

When you use any of the above strategies to separate yourself from the decision-making process you should take particular care to ensure all affected parties to the decision know what management strategy was adopted and why.

When this option is not suitable:

- the conflict of interest is likely to arise frequently causing ad hoc restriction to be an unworkable option

- you are constantly unable to perform a number of your regular duties because of conflict of interest issues.

An ongoing conflict of interest is likely to indicate a problem that requires more serious attention in its management. In this situation one of the strategies outlined in the next three sections might be more appropriate.

- **RECRUIT**

A disinterested third party is used to oversee part or all of the process that deals with the matter.

When this option is suitable:

Recruiting others into the management and decision-making process is a useful strategy where the potential effects (or perceived effects) of a conflict of interest on the proper performance of your duties are more significant and require more proactive management.

Recruiting strategies are most useful where it is not appropriate or desirable for you, as the individual with the conflict of interest, to remove yourself from the decision-making process. This is particularly relevant if you work in a small or isolated community where your particular expertise is necessary and genuinely not easily replaced.

Strategies:

- arranging for the affected decision to be made by an independent third party

- engaging an independent third party or probity auditor to oversee or review the integrity of the decision-making process – this strategy is particularly appropriate where there is a reasonably perceived, but not actual, conflict of interest or the conflict of interest is only identified at or near the conclusion of the process or after decisions are made

- is this a separate point??

- increasing the number of people sitting on decision-making committees to balance the influence of a single member who may have a conflict of interest but who has some special reason to remain on the committee

- seeking the views of those likely to be concerned about a potential, actual or reasonably perceived conflict of interest about whether they object to you having any, or any further, involvement in the matter.

When this option is not suitable:

- the conflict is serious and ongoing, rendering ad hoc recruitment of others unworkable

- recruitment of a third party is not appropriate for the proper handling of the matter

- a suitable third party is unable to be sourced.

- **REMOVE**

Where a public employee chooses to be removed from the matter.

When this option is suitable:

Removal strategies will be most appropriate for ongoing serious conflicts of interest where ad hoc restriction or recruitment of others are not feasible or appropriate.

Such strategies aim to remove you, as the individual with the conflict of interest, from all duties related to the conflict of interest for as long as the conflict of interest exists.

Strategies:

- removing yourself from any involvement in the matter

- abstaining from any formal or informal discussion about the matter

- removing yourself from the situation where you may still exert, or be perceived to exert, a covert influence on decisions or actions taken in the matter

- re-arranging your duties and responsibilities to a non-conflicting function

- transferring you to another project

- transferring you to another area of the organisation

- transferring you to another organisation

- ensuring that the duties in which the conflict of interest had arisen are not reallocated to another officer who is supervised by you, the individual with the conflict.

Given the effect such major changes may have on you as the individual concerned, it is extremely important that this management strategy be developed in an ongoing dialogue that includes you, the affected employee.

When this option is not suitable:

- the conflict of interest and its potential or perceived effects are of low risk or low significance

- you are prepared to relinquish the relevant private interests rather than radically change your work responsibilities or environment.

Where possible, removal strategies should be considered in tandem with relinquishment.

- **RELINQUISH**
Where the public employee relinquishes the private interest that is creating the conflict.

When this option is suitable:

Instead of managing the public duties involved in a conflict of interest, relinquishing the private interests giving rise to the conflict is often an equally valid alternative strategy.

There may be occasions when your commitment to public duty outweighs your attachment to your private interest. Alternatively you may prefer to relinquish the relevant private interest rather than radically change your work responsibilities or environment.

Where relinquishing is considered the most appropriate strategy you, as the individual affected, should be involved in the final decision-making process that concerns relinquishment.

Strategies:

- liquidating your private interest in an arm's-length transaction

- divesting yourself of or withdrawing your support for your private interest – the one case where divestment may not be appropriate is if the interest is an essential part of your qualifications for a position, such as membership of a professional body

- assigning your conflicting interest to a genuinely 'blind trust' or 'blind management' arrangement for at least the duration of the conflict.

Such arrangements place the assets causing your conflict of interest in the hands of a trustee or manager who is at arm's length from you. You may not have any power of management or control over assets held and managed in trust. The trustee or manager, likewise, may not seek or accept any instruction or advice from you concerning the management or the administration of the assets. You are entitled however, throughout the duration of the agreement, to be kept informed of the basic value of your assets. In making such arrangements, your organisation may need to receive legal advice to properly evaluate the effectiveness of any 'blind trust' arrangement entered into by you.

When this option is not suitable:

- you are unable or unwilling, for various reasons, to relinquish the relevant private interest

- the conflict of interest and its potential or perceived effects are of low risk or low significance.

- **RESIGN**
Where the public employee resigns from their position with the agency.

When this option is suitable:
Resignation is the most extreme solution to a serious conflict of interest. Although extreme, resignation should be a strategy available for consideration if the conflict of interest cannot be resolved in any other workable way. In short, public sector employees should be required to resolve a conflict of interest they may have or, if managerial remedial action is not effective, they may have no other choice than to resign from their public position.

There may be a situation in which you, as the individual affected, can not or will not relinquish your conflicting private interest when changes to your work responsibilities or environment are not feasible and the conflict of interest and its potential or perceived effects are of high risk or high significance.

Alternatively, you may choose to resign as a matter of personal principle when your private interest conflicts with a proposed action or position taken by your agency.

Strategies:

- resignation from your position with the agency

- request for transfer to another agency or jurisdiction

- early retirement if the option is feasible and available

When this option is not suitable:

- the conflict of interest and its potential or perceived effects are of low risk or low significance

- other options exist that are workable for you and your agency.

Any action under this strategy must take into account natural justice, procedural fairness, relevant employment law and any contractual provisions.

The agency's conflict of interest policy and employment contract provisions should state that an official position can be terminated in accordance with a defined procedure in such circumstances.

ANNEX III.

<u>**Tool: Gifts for Officials – Model generic law, for adaptation**</u>

SOURCE: OECD Toolkit for Managing Conflict of Interest in the Public Service

APPLICATION: Incorporation (after adaptation/redrafting as appropriate) in new orrevised ethics laws/codes.

Comments

1. "Reportable gifts" are distinguished from those gifts which are not required to be reported by the officials who receive them. What gifts are reportable is a policy decision to be made by each organisation.

2. An organisation's ethics manual or conflict-of-interest policy should outline situations which officials should avoid, and actions to be taken if a problematic situation does arise. Prohibitions, for example, a provision that monetary gifts should not be accepted in any circumstance, should be clearly stated.

3. In developing systems, an agency should consider other relevant matters, including, for example, the Criminal Code, and any law or policy about ethics, corruption, misconduct, and conflict of interest applicable in the public sector.

4. Because of the nature of the reportable gifts, the details and circumstances of the gift should be recorded and documented to form an official record of the gift. This should discourage officials from acting unethically.

5. Finally, it is not the value of the gift that is the main policy issue in most cases: it is the question of how to deal appropriately with the actual or presumed relationship between giver and receiver that matters most. Gifts to public officials in their private capacity (as opposed to official gifts to the official's organisation), should raise the question of whether there is a relationship between the giver and the receiver which could constitute a serious risk to the integrity of the individual official, or to the organisation. LINK: See *Guidelines*, Sections 1.1; 1.2; 2.3.

Gifts for Officials – Generic Law

Definitions

"Code of ethics", of a public body, means the approved code of ethics of the ministry, department or agency concerned.

"Current market value", of a gift, means the real market value of the gift on the day it is received.
"Gift" includes:

a) a gift of entertainment, hospitality, travel or other form of benefit of significant value; and

b) a gift of any item of property of significant value, whether of a consumable nature or otherwise, including, for example, display item, watch, clocks, book, furniture, figurine, work of art, jewellery, equipment, clothing, wine/spirits, or personal item containing precious metal or stones.

Meaning of "reportable gift"

1. A "reportable gift" is:

   a) Any gift made to an official by an organisation, agency or private sector entity, or

   b) Any gift made to an official by a private individual.

   c) Where the current market value of the gift exceeds the "reportable gift threshold"* as determined by regulation (*Amount of limit to be selected according to policy intention).

2. A gift received by an official from a relative, personal friend, or family member in a private capacity and in accordance with normal social custom (such as at a birthday, marriage, religious festival, etc.), or a gift from any source in recognition of service, professional achievement, or retirement), is not a reportable gift. This does not limit the operation of the code of ethics of a public body to the extent the code provides for reporting a gift of a value less than the reportable gift threshold.

3. Where an official receives more than one gift from the same person in any financial year, and the current market value of all the gifts so received exceeds the reportable gift threshold applicable at the end of the year, each of the gifts so received are reportable gifts.

4. If an agency makes more than one gift to the same official, etc. in a financial year, and the current market value of all gifts exceeds the reportable gift threshold, each of the gifts so received are reportable gifts. Reportable gifts to be dealt with as a physical or material asset

5. A reportable gift received by the official must be dealt with as the public body's accountable asset.

6. A public body may dispose of reportable gifts, after registration, as it determines.

Reportable gift to be declared and accounted for

7. An official who receives a reportable gift must complete a declaration:

   a) Within 14 days after the gift becomes a reportable gift because it exceeds the "reportable gift threshold", or

   b) For another reportable gift within 14 days after receiving the gift.

8. In the case of reportable gifts, the official must, as soon as practicable:

   a) Transfer the gift into the control of the official's public body; and by consent, may.

   b) Pay to the body:

      i) for gifts that are reportable gifts because they exceed the threshold, an amount equal to the difference between the total current market value of the gifts and the reportable gift threshold for each gift, or

ii) For any other reportable gift an amount equal to the difference between the current market value of the gift and the reportable gift threshold.

9. Paragraph 1 above does not limit the operation of the code of ethics of a public body to the extent the code provides for reporting the receipt of a reportable gift within a period of less than 14 days.

Register of reportable gifts

10. The public body must keep a register of reportable gifts received by any official of the body.

11. The register must include information about each of the following matters:

a) The date the reportable gift was received by the official.

b) The persons and circumstances involved in making and receiving the gift.

c) A detailed description of the gift, including its current market value and the basis for the valuation.

d) The approval for receiving the gift, if relevant, and

e) The date the gift was transferred to the control of the body and the present location of the gift, or

f) If the official is permitted to retain the gift:

i) The date and amount of the payment made under paragraph 8 (b), for the gift.

g) If the gift is disposed of:

i) The authority for disposal;

ii) The date and method of disposal;

iii) The name and location of the beneficiary; and

iv) The proceeds, if any, arising from the disposal.