

# CHAPTER 1

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## *Anti-Corruption Strategies of Asian and Pacific Countries*

- A. Australia's Approach to Combating Corruption
- B. Combating Corruption in the Philippines
- C. Nepal's Efforts to Control Corruption
- D. Anti-Corruption Strategy of the Hong Kong  
Special Administrative Region of the People's  
Republic of China

# A. Australia's Approach to Combating Corruption

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Corruption presents a challenge for all countries. It must be fought with a holistic approach. No single agency, and no single country, can tackle it alone. Australia is committed to fighting corruption at all levels. Continual reform in all sections of society and government strengthens Australia's defenses against domestic corruption. Australia strongly supports key regional and international anti-corruption instruments and activities. Australia is also active in assisting neighboring developing countries with their efforts to combat corruption.

Part I of this paper outlines elements and examples of Australia's domestic anti-corruption framework corresponding to the principles enshrined in the ADB/OECD Anti-Corruption Action Plan for Asia and the Pacific. Part II discusses Australia's contribution to the fight against corruption at the regional and international levels. It provides a short introduction on Australia's support for regional and international anti-corruption instruments and highlights Australia's direct efforts to assist developing countries in the Asia and Pacific region to combat corruption.

## Part 1: Australia's Domestic Anti-Corruption Framework

### PILLAR 1: DEVELOPING EFFECTIVE AND TRANSPARENT SYSTEMS FOR PUBLIC SERVICE

Australia has developed detailed systems for ensuring a transparent and effective public service. The Public Service Act 1999<sup>1</sup> and the Financial Management and Accountability Act 1997<sup>2</sup> are particularly notable.

#### Integrity in public service

In recent years, Australia has undertaken a series of reforms to the Australian Public Service (APS) to ensure that it is effective and transparent. The Public Service Act 1999 establishes the APS Values<sup>3</sup> and the Code of Conduct<sup>4</sup>. All APS employees are required to uphold the APS Values and are bound by the Code of Conduct. These constitute the central rules governing APS employee behavior. For example, the APS Values specify certain requirements for hiring employees in the APS, including the basing of employment decisions on merit; the equitability of employment; the diversity and freedom from discrimination of workplaces; and provision of a reasonable opportunity for all eligible members of the community to apply for an APS position. The Public Service Act 1999 also provides that ministers cannot direct the exercise of an agency head's employment powers.

The Code of Conduct also specifies certain requirements to prevent corruption, including the stipulation that APS employees disclose, and take reasonable steps to avoid, any conflict of interest (whether real or apparent) in connection with APS employment. Agency heads, statutory office holders and Senior Executive Service employees in the APS are also required to declare their private interests. A number of other statutes supplement the Code, including the Australian Securities and Investment Commission Act 2001<sup>5</sup> and the Commonwealth Authorities and Companies Act 1997<sup>6</sup>, which include additional requirements for disclosing conflicts of interest.

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<sup>1</sup> <http://scaleplus.law.gov.au/html/pasteact/3/3322/rtf/PublicService1999.rtf>

<sup>2</sup> <http://scaleplus.law.gov.au/html/pasteact/2/3068/rtf/FinManAcc97.rtf>

<sup>3</sup> The APS Values are available online at [www.apsc.gov.au/values](http://www.apsc.gov.au/values)

<sup>4</sup> The APS Code of Conduct are available online at [www.apsc.gov.au/conduct](http://www.apsc.gov.au/conduct)

<sup>5</sup> <http://scaleplus.law.gov.au/html/pasteact/3/3449/rtf/ASIC2001.rtf>

<sup>6</sup> <http://scaleplus.law.gov.au/html/pasteact/2/3067/rtf/CwlthAuthComp1997.rtf>

Sanctions are imposed for breaches of the Code of Conduct, including termination of employment, reduction in classification, re-assignment of duties, reduction in salary, deductions from salary (by way of fine) and reprimand. Each agency head must establish procedures to determine a breach of the Code of Conduct. The Public Service Act 1999 also protects whistleblowers (considered further below).

Discretionary decision-making powers in the APS are guided by the APS Values and Code of Conduct. In addition, some specific statutory oversight mechanisms apply to certain employees with discretionary authority. For example, the Australian Securities and Investment Commission (ASIC) Act 2001 regulates the structure, appointment and termination of ASIC staff with discretionary authority, including a limitation of their term of office to five years.

APS employee remuneration is determined through a classification structure and agency bargaining arrangements. More information on public service salaries can be found on the Department of Employment and Workplace Relations website: [www.dewr.gov.au](http://www.dewr.gov.au).

Oversight of the Public Service at the Commonwealth level is provided by a range of agencies and processes, including the Commonwealth Ombudsman, the Auditor-General, the judicial review process, and the Australian Federal Police (AFP).

## **Accountability and transparency**

The Financial Management and Accountability Act 1997 sets out requirements for agencies for the management and accountability of government funds. Australia has detailed transparency and reporting requirements for the budget, taxation and government expenditure. Australia has implemented a freedom of information scheme that ensures the highest level of public access to government decision-making processes, which is supplemented by extensive government information available on the Internet.

The Commonwealth Procurement Guidelines<sup>7</sup> detail the reporting of publicly available business opportunities and contracts, agency agreements and standing offers to the value of AUD2,000 (USD1,400) or more. The Department of Finance and Administration is reviewing the Guidelines to update and more clearly articulate the procurement framework. Implementation of any changes is subject to ministerial agreement.

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<sup>7</sup> The Guidelines are available online at [www.finance.gov.au/ctc/publications/purchasing/cpg/commonwealth\\_procurement\\_guide.html](http://www.finance.gov.au/ctc/publications/purchasing/cpg/commonwealth_procurement_guide.html).

The Corporate Law Economic Reform Program (CLERP) was initiated in 1997 by the Australian Government to provide for ongoing review and reform of Australia's corporate and business regulation. CLERP is aimed at ensuring that corporate and business regulation is modern and responsive, and promotes business activity.

## **PILLAR 2: STRENGTHENING ANTI-BRIBERY ACTIONS AND PROMOTING INTEGRITY IN BUSINESS OPERATIONS**

Australia has a wide range of anti-bribery and money-laundering initiatives in place. These initiatives are actively investigated and enforced. Australia has also undertaken a number of measures to promote corporate responsibility and accountability on the basis of international standards.

### **Effective prevention, investigation and prosecution**

All Australian jurisdictions have criminalized bribery and money laundering. The Commonwealth Criminal Code<sup>8</sup> also includes an extraterritorial offense of bribing a foreign public official, with a penalty of up to ten years' imprisonment. This offense applies where the conduct occurs wholly or partly in Australia, or wholly or partly on board an Australian aircraft or ship, or wholly outside Australia, and where the person committing the offense is an Australian citizen or resident, or a corporate body incorporated under Australian law.

In most cases, Australia's corruption offenses are supported by extradition and mutual assistance arrangements, which Australia has in place with a wide range of countries. Australia is also able to consider requests for mutual assistance from all countries.

Australia is a founding and active member of the Financial Action Task Force on Money Laundering and played a major role in drafting the 40 Recommendations (which form the basis of internationally accepted anti-money laundering standards). Australia was among the first countries to enact comprehensive anti-money laundering legislation and to put in place a robust

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<sup>8</sup> <http://scaleplus.law.gov.au/html/pasteact/1/686/rtf/CriminalCode1995.rtf>

regulatory framework (through the Financial Transactions Reports Act 1988<sup>9</sup> and the Proceeds of Crime Act 2002<sup>10</sup>).

Australia has a specialized financial intelligence unit, the Australian Transaction Reports and Analysis Centre (AUSTRAC), which provides extensive advice to regional countries, and which maintains an excellent reputation internationally. AUSTRAC has a regulatory and an intelligence role ensuring that a range of bodies complies with the reporting requirements of the Financial Transaction Reports Act 1988. It also collects and analyzes information, which may be provided by AUSTRAC to Australian law enforcement agencies and the Australian Taxation Officer.

ASIC is responsible for the enforcement and regulation of company and financial services laws. It has significant powers to investigate and obtain evidence and to compel assistance or evidence to be provided under the Australian Securities and Investment Commission Act 2001. State and Territory police services and the AFP are also closely involved in investigating corruption-related offenses. In some cases, a witness protection program may be available.

The Commonwealth Director of Public Prosecutions, which is responsible for all prosecutions at the Commonwealth level, is independent, well resourced and staffed by trained and experienced prosecutors. This is similarly the case for state and territory public prosecution bodies. A number of national and international inter-agency cooperation agreements (for example, on police-to-police cooperation) have been developed to enhance investigations and prosecutions.

## **Corporate responsibility and accountability**

A number of Australian instruments and bodies promote, govern and enforce corporate responsibility and accountability to ensure integrity in business operations. Relevant statutes include the Trade Practices Act 1974<sup>11</sup>; the Corporations Act 2001<sup>12</sup>; and the Income Tax Assessment Act 1997<sup>13</sup>.

The Trade Practices Act 1974 addresses anti-competitive and unfair market practices and is monitored and enforced by the Australian Consumer and Competition Commission and ASIC. The Corporations Act 2001 governs the operations of companies in Australia from inception to insolvency. It requires

<sup>9</sup> <http://scaleplus.law.gov.au/html/pasteact/0/59/rtf/FTR1988.rtf>

<sup>10</sup> <http://scaleplus.law.gov.au/html/pasteact/3/3552/rtf/ProceedsCrime2002.rtf>

<sup>11</sup> <http://scaleplus.law.gov.au/cgi-bin/download.pl?/scale/data/pasteact/0/115>

<sup>12</sup> <http://scaleplus.law.gov.au/cgi-bin/download.pl?/scale/data/pasteact/3/3448>

<sup>13</sup> <http://scaleplus.law.gov.au/cgi-bin/download.pl?/scale/data/pasteact/2/3036>

companies to prepare, publish and independently audit company accounts, in accordance with detailed accounting standards; disclose financial and directors' reports; and lodge annual returns. Significant penalties are imposed for failing to comply with these reporting requirements. The Income Tax Assessment Act 1997, by disallowing tax deductibility of bribes, ensures that bribery receives no indirect support.

Relevant bodies that regulate the behavior of companies include ASIC, the Australian Stock Exchange (ASX), and the Financial Reporting Council. ASIC promotes good corporate governance through monitoring, enforcing and administering compliance with the Corporations Act 2001. ASIC oversees the operations of listed companies and can investigate and prosecute companies for breaches of the Corporations Act 2001; ASIC also contributes to the reform of law on corporate governance. The ASX has issued Corporate Governance Guidelines, which are best practices to which listed companies should adhere. While the Corporate Governance Guidelines are non-binding, companies must explain to ASX any failures to comply with the Guidelines.<sup>14</sup> The Financial Reporting Council is an independent authority with responsibility for policy and direction setting for accounting standards in Australia. The Financial Reporting Council has responsibility for the Australian Accounting Standards Board and the Auditing and Assurance Standards Board.

### **PILLAR 3: SUPPORTING ACTIVE PUBLIC INVOLVEMENT IN ANTI-CORRUPTION EFFORTS**

Australia supports active public involvement in anti-corruption efforts. Non-governmental Organizations (NGOs) are involved in a range of activities addressing corruption in Australia, and independent government bodies provide further opportunities for public involvement.

#### **Public discussion and participation and access to information**

Non-government organizations and Australian companies are actively involved in parliamentary inquiries and committees in Australia. For example, one of the current inquiries of a Committee called the Parliamentary Joint Committee on Corporations and Financial Services concerns some proposed amendments to the CLERP. As of 28 April 2004, 64 people, companies and

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<sup>14</sup> The Guidelines can be found at the ASX website: [www.asx.com.au](http://www.asx.com.au).

organizations had provided submissions to the Committee on the issue. Twice each year, a consultation and discussion session is held with NGOs on the OECD Guidelines for Multinational Enterprises.

ASIC conducts consumer protection work with community and industry groups to raise awareness of the integrity of financial services in Australia. ASIC's website on financial tips and safety checks for consumers<sup>15</sup> makes information available to the community, including news for investors and consumers, warnings, resources and information about ASIC. ASIC also publishes general company information. ASIC's database contains extensive company search-type information about Australia's 1.2 million registered companies. This is publicly available, and includes company, directors' and shareholders' names, charges, annual returns, details of incorporation and the registered office of the company.

Whistleblowers in Australia are protected by the Public Service Act 1999 and regulations that require procedures to be established for investigating reports by whistleblowers. This ensures that allegations are investigated promptly and fairly, and aims to protect whistleblowers from victimization and discrimination. Whistleblowers Australia, a national NGO, also provides support and conducts campaigns on the issue of whistleblowing.

## Part 2: Australia's International and Regional Efforts

### International instruments

Australia dedicates significant resources to the international and regional anti-corruption architecture. Australia signed the United Nations (UN) Convention Against Corruption on 9 December 2003, after playing an active role in negotiations. Australia is now reviewing its compliance with the Convention, with the intention of ratifying as soon as possible.

Australia ratified the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions on 18 October 1999. Australia received a positive response to its Phase I review, which took place in December 1999. The Phase II review is due to take place in 2005.

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<sup>15</sup> <http://fido.asic.gov.au/fido/fido.nsf>. ASIC also provides information to the public on its website [www.asic.gov.au](http://www.asic.gov.au).



On 31 October 2003, Australia endorsed the ADB/OECD Anti-Corruption Action Plan for Asia and the Pacific, formally announcing this at the Steering Group meeting in Kuala Lumpur, in December 2003. Australia is now formulating its first projects under the Action Plan.

### **The role of Australia's overseas aid program**

Corruption affects all countries. Developing countries are least able to bear its costs. Corruption can affect a development program by distorting the use of development aid (diverting the use of funds intended for development); placing a disproportionate burden on the poor and creating or perpetuating inequity in human, social and/or economic rights (particularly for women); impacting on growth; and/or undermining stability and security of the country and/or region.

Of these, the negative impact of corruption on sustainable economic growth and on stability and security are the most significant for a developing country. This is why helping developing countries in the Asian and Pacific region to improve governance and combat corruption is a high priority for Australia. The overseas aid program, complemented by activities undertaken by a range of other federal government departments and agencies, is a key tool Australia can use to achieve these objectives.

Supporting good governance in Australia's partner countries is one of five guiding themes for the Australian aid program established by Foreign Affairs Minister Mr. Downer in 2002<sup>16</sup>. By June 2004, Australia will have spent approximately AUD1.9 billion in overseas aid during the 2003–2004 financial year. Around 21% of this amount has been allocated to promoting improved governance. Much of this expenditure will both directly and indirectly assist Australia's partner countries to combat corruption more effectively. For example, Australia has provided funding through its overseas aid program to Transparency International to undertake a series of 12 "national integrity system" studies throughout the Pacific.<sup>17</sup> The results of these studies (completed in the first half of 2004) should strengthen the diagnostic basis for future anti-corruption efforts in Pacific island countries.

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<sup>16</sup> AusAID, 2002: Australian Aid: Investing in Growth, Stability and Prosperity ([www.ausaid.gov.au](http://www.ausaid.gov.au))

<sup>17</sup> Refer to Transparency International's website for further information about the NIS concept and to read NIS studies already completed for other countries ([www.transparency.org](http://www.transparency.org)).

## Other regional efforts

Australia is also involved in some efforts to assist regional countries facing economic challenges. At the Australia-Papua New Guinea (PNG) Ministerial Forum in Adelaide last year the Australian and PNG Governments agreed to a number of collaborative initiatives to address the core economic and development challenges facing PNG. These initiatives have been brought together under the Enhanced Cooperation Package. This package aims to strengthen PNG's ability to manage its finances, maintain law and order, tackle corruption and improve border security through the placement of a substantial number of Australian officials and police in line and advisory positions in key PNG agencies. The assistance being provided has been divided into three sectors: economic management and public sector reform, border security, and law and justice.

## Conclusion

Australia adopts a comprehensive approach to combating corruption domestically through Commonwealth, state and territory legislation and operational agencies, and through independent bodies such as ASIC and non-governmental involvement. Future domestic priorities for Australia include ratification of the UN Convention against Corruption; preparation for its Phase II review under the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; and the development of a project under the ADB/OECD Anti-Corruption Action Plan for Asia and the Pacific. Australia will also continue to monitor and evaluate the effectiveness of its current domestic efforts to combat corruption.

Strengthening Australia's regional neighbors in their fight against corruption is a major priority for Australia's overseas aid program. Australia views transparent and accountable government as an important building block for growth, poverty reduction and security.

Australia is committed to continuing its fight against corruption in all its forms and on all levels through a comprehensive anti-corruption strategy.

## B. Combating Corruption in the Philippines

■ Simeon V. Marcelo

Ombudsman of the Republic of the Philippines

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The fight against corruption begins with the humility to recognize that it is a daunting task. Alone, the Government cannot wage a successful war against it. Governments desperately need the help of other sectors of society. The fight against corruption also begins with the realization that, in this fight, one cannot be lukewarm or stand on neutral ground. One is either part of the solution, or part of the problem.

As a long-term approach to the problem of corruption, the Office of the Ombudsman of the Republic of the Philippines invests in youth and value formation programs under the Corruption Prevention Units and Junior Graftwatch Unit Programs. These programs are composed of students and community volunteers who serve as active collaborators of the Ombudsman down to the local *barangay* (administrative village) level—involving the community, as it were, in the fight against graft and corruption in the hope of creating a graft-intolerant culture in the future.

However, the results of value formation programs, information campaigns and education curriculum revisions may not be immediately forthcoming. Thus, considering that corruption is, now more than ever, also an immediate problem, posing a clear and present danger to the very fragile fabric that binds us as a civilized society, the Office also embarks on immediate, time-bound and determinable programs.

Unfortunately, the prosecution of offenders has not served as an effective deterrent. The conviction rate of the Office of the Special Prosecutor (OSP) at the Sandiganbayan (the Anti-Graft Court) is a dismal 6%. Put differently, this means that a high-ranking government official accused of graft and corruption has a 94% chance of walking away scot-free.

The reasons for this shortfall are practical ones, foremost of which is the disabling lack of personnel at the OSP. In 2002, the OSP only had 32 full-time public prosecutors, who handled about 2,500 cases. Further, no training program whatsoever existed for the prosecutors to improve their skills. We have to contend with the reality that many of the accused in the cases before the Sandiganbayan are powerful public officials who have at their disposal the services of highly paid private lawyers. Pitted against them are our prosecutors, who, though not outmatched in dedication, are probably put at a disadvantage by the simple fact that they have to handle so many cases due to lack of personnel. Against this backdrop, therefore, the Office opted to approach the problem of corruption on three fronts:

### **Building up institutional resources**

Early in 2003, lawyers at the Bureau of the Resident Ombudsmen were re-assigned to various offices in order to allow the assignment of eight additional trial prosecutors to the OSP's complement of 32.

In addition, during the Budget Hearings for 2003, the Office made no small matter of its needs before Congress. The Office likewise requested an additional allocation for its current budget from the Chief Executive. Fortunately, President Gloria Macapagal-Arroyo guaranteed and caused the release of additional funds in 2003 to create additional positions for prosecutors.

It must be emphasized that at least three years of relevant experience is required for lawyers to qualify as entry-level prosecutors or investigators. With this requirement and with low government compensation, recruitment of new personnel is all the more difficult. However, with aggressive recruitment, the OSP as of November 2003, has increased the number of its full-time prosecutors to 47. This represents a 46% increase in the Office's prosecutorial complement. In this connection, the Office has also requested the Civil Service Commission to allow, in the absence of qualified applicants, the temporary appointment as investigators or prosecutors of lawyers who lack the required period of relevant experience.

The Office of the Ombudsman's severe lack of field investigators is another problem. Its Fact-Finding Bureau, which is responsible for evidence-gathering, has only 17 investigators. The area offices in Luzon, Visayas and Mindanao have a total of only 12 field investigators and the Office of the Deputy Ombudsman for the Military has only eight. The current lifestyle probe project focuses only on 39 officials of the Bureau of Customs, the Department of Public Works and Highways and the Bureau of Internal Revenue. However, this probe already requires the full-time work of those 17 investigators, leaving

them without any available time to devote to evidence-gathering in the other numerous cases pending with our Office. Fortunately, also in November 2003, the President had also caused the creation of 56 additional positions for field investigators.

## **Strengthening individual and institutional competence**

The Office has coupled the ongoing staff augmentation with personnel training and development for our incumbent prosecutors and investigators. For this purpose, the Office enlisted the help of noted private litigators and retired justices to serve as lecturers. We also asked incumbent justices of the Sandiganbayan to serve as lecturers and also as “judges” in our practice court trials during the training programs.

Institutional reforms and restructuring have also commenced at the OSP to ensure accountability and supervision. At the time I assumed office in October 2002, we had no training program, no system of lawyer supervision and no cases or records. Five prosecution bureaus of 8 to 10 lawyers each have since been formed, each headed by a director. Each prosecution bureau corresponds to a Division of the Anti-Graft Court. The intention is to ensure that each case is handled by a team. Records management as well as routing and docketing systems have also been put in place and strengthened; an administrative office has been created to service the needs of the OSP and enhance its administrative and operational efficiency and independence.

As for our investigators, the indispensability of adequate and well-trained field investigators cannot be overly emphasized. Conviction and effective prosecution begins with fact-finding, evidence gathering and investigation. Thus, the Office of the Ombudsman intends to train its investigators in the latest skills and techniques in field investigation and evidence gathering through cooperative undertakings and seminars with international partner agencies such as Hong Kong, China’s Independent Commission Against Corruption (ICAC). In January 2003, for instance, the Office sent two representatives to a conference sponsored by ICAC and the International Criminal Police Organization (Interpol).

Based on available information, Hong Kong, China’s ICAC has 1,326 personnel for a population of about 6.8 million and maintains eight satellite offices with 18 district offices where the public can report incidents of corruption. In comparison, the Philippines’ Office of the Ombudsman has only 1,141 staff for a population of 82 million with only four satellite offices situated in three major cities. At ICAC, 838 field investigators are tasked exclusively with gathering evidence; this translates to a ratio of one investigator

to every 8,114 citizens. In comparison, the Office of the Ombudsman's 89 investigators provide a ratio of one investigator to 921,348 Filipinos. Further, ICAC's ratio of investigators to Hong Kong's 174,175 public sector employees is 1 : 207, while the Office of the Ombudsman's ratio is 1 : 16,686.

We would like, therefore, to provide training and development opportunities to help our investigators maintain the highest professional standard. The Office of the Ombudsman intends to replicate the training provided by ICAC for its own investigators. If similar facilities cannot be accessed in the short run, we will engage in workshops, training seminars and educational exchanges in the meantime. Indeed, this is a most opportune time, since the Office is in the middle of very promising negotiations with foreign funding agencies—the United Nations Development Programme, the Asian Development Bank, the United States Agency for International Development, the Australian Agency for International Development, and the Asia Foundation—as possible sources of funding for in-house training programs. On December 11–12, 2003, for example, in partnership with the American Bar Association, the Office will hold its first training seminar on financial investigation. This seminar constitutes the first major step toward building and enhancing our technical competence in field investigation.

The Office of the Ombudsman has also strengthened and enhanced its administrative adjudicatory functions. The trials of erring public officials often take so long that the public interest, concern and knowledge is lost and the cases are therefore relegated to history and become—like old news buried in the sands of time—irrelevant and inconsequential to people's everyday lives. Our current efforts intend to remedy this situation. Thus, the Office of the Ombudsman has strengthened, streamlined and rationalized its administrative adjudication procedures, powers and functions. In administrative adjudication, retribution, if warranted, is swift; the effects are immediate; and deterrence is ensured. Furthermore, retribution measures such as suspension from office (even preventive), have high visibility and are therefore immediately noticed and attentively observed by all those concerned. A suspended incumbent immediately feels and experiences the repercussions of his or her illegal act, and those around him or her become privy to the fact that corruption is a high-risk and low-reward undertaking.

Thus, the direction taken by the Office of the Ombudsman would be that all criminal complaints should also be docketed as administrative cases. Then suspension or dismissal from government service, if warranted, can immediately be imposed and implemented.

## Strategic and enhanced private and public sector involvement

Government resources are far too limited compared to the arsenals of combined public and private sector initiatives. The Office of the Ombudsman, therefore, tries as much as possible to involve other offices of the Government and the various sectors of society in its anti-corruption programs. It has become part of the Office's advocacy to make the other branches of government aware of their responsibilities to fight corruption, as well as to challenge them to strengthen the Office as the Constitutional Office primarily tasked to address the problem of corruption.

For example, in trying to generate support for additional funding to augment the number of its prosecutors and investigators, the Office lobbied before Congress and wrote to the President. The Office has also engaged in law reform initiatives and campaigned before the leaders of Congress for the passage of legislation allowing private practitioners to appear as prosecutors before the Sandiganbayan. This would help remedy the Office's severe current lack of prosecutors.

Likewise, the Office has expressed support for the passage of Senate Bill No. 2530, which seeks to upgrade the salaries of its prosecutors and graft investigators. A more competitive salary scale would enable the Office to recruit from the best law schools and hire more competent legal personnel. It is disheartening that the yearly salary of our senior prosecutors, who have about ten years of experience as lawyers, is no more than PHP500,000 (less than USD9,000). First-year lawyers at major Metro Manila law firms earn the same sum.

The Office has also taken steps toward collaborating with the Judiciary. The Office has requested the Supreme Court to consider the feasibility of designating, among the regular courts, Special Courts that will try graft and corruption cases committed by low-ranking officials. It is to be hoped that proper training would be given to the presiding judges of these special courts and the prosecutors handling graft cases. This endeavor would provide the necessary focus, emphasis and specialization and, thus, ensure more competence, expertise and efficiency in the handling of such cases.

Finally, private sector involvement is seen to be indispensable in anti-graft campaigns like the life-style probe program. Community-, school-, and church-based organizations are in the best positions to observe the conduct and indiscretions of public officials. The public will be expected to provide the network of community-based organizations that will gather data provide information, evidence and leads that will permit the identification of potentially corrupt public servants and their ill-gotten wealth and assets.

The Office has endorsed the conduct of the lifestyle probe to the Inter-Agency Anti-Graft Coordinating Council to be one of its priority projects. The said council, composed of representatives of the Civil Service Commission, the Commission on Audit, the Department of Justice, the Office of the Ombudsman, the Presidential Anti-Graft Commission and the National Bureau of Investigation, has agreed to adopt the same approach and has for this purpose coalesced with civil society organizations and other law enforcement agencies.<sup>18</sup>

Another area of strategic collaboration is assuring transparency and accountability in government procurement. The Government Procurement Reform Act requires two representatives from the non-public sector to sit in the Bids and Awards Committee. The Transparency and Accountability Network, a partner of the Office of the Ombudsman, has agreed to provide, through its member organization, Procurement Watch, the necessary training for the volunteers who would sit in these committees. In this connection, the Office is considering another strategic partnership with employers and professionals<sup>19</sup> on the issue of corporate responsibility. The first training seminar for the initial 25 volunteers has already been conducted.

In the area of fostering a deeper awareness and concern for the problem of graft and corruption and of generating a counter-corruption culture, the Office of the Ombudsman and the Philippine Province of the Society of Jesus entered into a Memorandum of Agreement on 13 October 2003 adopting the “Ehem! Aha!” program, a culture-based sensitivity and teaching module and anti-corruption manual.

Such strategic collaboration with both the public and private sectors extends and multiplies the otherwise limited resources of the Office of the Ombudsman. It further exposes, educates and emboldens those committed to dedicating more of their time and resources to the fight against corruption. After all—to quote Ashleigh Brilliant, an English writer, cartoonist and columnist—either one wants less corruption, or more chance to participate in it.

It should be noted that the costs of the aforementioned initiatives against corruption are minimal compared to the ultimate benefits that may be derived

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<sup>18</sup> The expanded group: the Catholic Bishops Conference of the Philippines-National Secretariat for Social Action, Transparency and Accountability Network, Citizens National Network Against Poverty and Corruption, United People's Against Crime, Citizens Battle Against Corruption, Philippine Government Employees Association, National Association of Corruption Prevention Units, National Youth Commission, Philippine National Police, Intelligence Service of the Armed Forces of the Philippines and the Presidential Anti-Organized Crime Commission. The expanded group executed a Memorandum of Agreement on 20 March 2003.

<sup>19</sup> Among them the Makati Business Club, the Management Association of the Philippines and the Ateneo Alumni Association.



from an effective anti-corruption campaign of deterrence and savings through reduced budget waste or leakage. Containing corruption translates directly to economic development. Containing the leakage and waste, estimated at billions of pesos, directly translates to national savings, which, in turn, translate to more viable economic opportunities and investments. Thus, government should approach expenditures for anti-corruption efforts as wise and solid investments that would yield long-term returns.

## C. Nepal's Efforts to Control Corruption

■ Surya Nath Upadhyay

Chief Commissioner

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The understanding of the term “corruption” varies between societies and over time. Corruption may for instance be regarded as any act of vice or misdeed that violates the social norms and legal provisions and results in harassment, loss, and deprivation to a person, society, or country. All immoral, unethical, and unlawful acts lead to corruption. Corruption is also defined as the sale of power for personal gain at the expense of the society's larger interests. An economist would tend to define corruption as an informal process of exchanges involving the manipulation of public resources for private gain. The World Bank defines corruption as the misuse of public services for private gain. In Nepal, corruption is considered a form of abuse of authority, which is classified into two categories: “improper conduct” and “corruption”. In this paper, corruption and abuse of authority are used synonymously.

Nepal is a developing country 147,109 square kilometers in size and with a population of 23 million. As with many poor developing countries, Nepal bears the burden of wide-ranging corruption and inefficient governance. Poor economic development, poverty and economic disparity, deprivation of opportunities, cronyism, favoritism, and corruption in all its manifestations have frustrated the Nepali society to an extent that seriously challenges the country's socio-economic fabric and security. Corruption and mismanagement of the Government are the problem's root causes. Although Nepal is not ranked in Transparency International's Corruption Perception Index, it is presumably among the worst performing in South Asia. Given the extent of the problem, an all-out war against the menace of corruption is today the only option.

## History of Nepal's anti-corruption agencies and laws

Anti-corruption activities in Nepal go back several centuries. About 230 years ago, King Prithvi Narayan Shah the Great declared that “those who take bribes and offer bribes are both enemies of the State.” Several legal and institutional provisions have been established since the very inception of the country. Already in 1851, the general code of the country, known as *Muluki Ain*, included some provisions for controlling corruption. Later, such provisions were incorporated in the sector laws that replaced the general code. It was only in 1953 that the Prevention of Corruption Act consolidated the provisions on the prevention of corruption in the government bureaucracy. The law was superseded in 1960 by a new act, which established the Special Police Department. This Department worked as an anti-corruption body and had a special cadre of officers. As time went by, however, it became evident that this institution could not work effectively, because its placement under the authority of the Ministry of Home Affairs limited its independence. Any attempt to instill ethical behavior was compromised, as political influence was coupled with corrupt bureaucracy, impunity for corruption, favoritism and mediocrity. The department turned out to be a burden rather than an effective government department.

In 1978, the Second Amendment to the constitution established the Commission for the Prevention of Abuse of Authority as a constitutional body, thereby guaranteeing its independence. The Commission had wide ranging authority and numerous tasks: it was an advisor, investigator, prosecutor, and decision maker at the same time. Eventually, it crumbled under this heavy burden, weakened by the lack of reforms in the bureaucracy. In 1990, the restoration of a multiparty democracy entailed the framing of the present Constitution of the Kingdom of Nepal and established the Commission for the Investigation of Abuse of Authority (CIAA). While also a constitutional body, the CIAA differs from its predecessor in many ways: in particular, its tasks are limited to investigation and prosecution and no longer include participation in policy decision-making processes.

## The Commission for the Investigation of Abuse of Authority

The Constitution empowers the CIAA to investigate and prosecute abuse of authority by individuals holding public office. The term “abuse of authority” includes both “improper conduct” and “corruption”. While improper conduct results in departmental or other action such as a warning, calling attention to the conduct, or admonishment for the concerned public official, cases of

corruption are brought before the Court of Law. The CIAA may also suggest the rectification of damages caused by abuse of authority. Furthermore, it may recommend amendments to relevant laws and procedures with a view to preventing abuse of authority in the future.

The CIAA is composed of a Chief Commissioner and a number of commissioners as needed. They are appointed by the Constitutional Council and may be removed only by a two-thirds majority in the House of Representatives, this provision ensuring the independence of the institution.

In addition to the constitutional provision establishing the CIAA, several laws and regulations govern the institution's operation and provide it with wide authority. In particular, they empower the CIAA with extensive access to information, including details about assets and bank accounts of public officials and associates; they also allow the CIAA to ask for bail or, with the permission of the Court, to withhold assets or to suspend or put the concerned official in custody for up to six months during the period of investigation. The CIAA may also request departmental action against the concerned official and ask for the recovery of the damages and lost revenue. The legal regime also includes the establishment of a Special Court dealing uniquely with corruption cases.

## CIAA in action

Twenty-six cases, amounting to a total claim of NPR826 million (more than USD11 million), were filed in the year 2000–2001. Ten of these cases related to the financial sector and amounted to a claim of NPR420 million (USD5.4 million), and a single case relating to aircraft leasing amounted to NPR389 million. The new legislation, in particular the amended Act of 2002, having extended its mandate, the CIAA intensified its activities in 2001 and 2002, investigating, *inter alia*, several cases in the revenue and public works sectors and in the police and other branches of the Ministry of Home Affairs. Investigations also targeted high-level officials, including former ministers.

The workload and output of the CIAA has increased dramatically over the past two years, the number of complaints received and handled has tripled and in three years' time, the number of prosecution cases has multiplied by five. During 2002–2003, 147 court cases were filed, compared to only 61 in 2001–2002; in 2002–03, CIAA's prosecution was successful in 47 out of 55 cases and reclaimed USD9.6 million in total. Forty-nine persons were warned, departmental action was recommended against 35 persons, attention was drawn in 9 cases and suggestions were made in 22 cases. The number of complaints filed with the CIAA also increased significantly, from 2,522 in 2001–2002 to 3,687 in 2002–2003. In 2002–2003, 2,206 cases were disposed of, marking a

10% increase in one year. Last year, CIAA raided the houses of 22 revenue officials and two public works officials and charge-sheeted them in the Special Court for accumulation of assets disproportionate to their incomes. It has recently conducted similar investigations against a number of politicians who previously held public positions; several former ministers were detained in police custody for investigations. The CIAA has thereby demonstrated that it investigates and prosecutes corruption and improper conduct impartially, whether committed by low ranking officials or a former Prime Minister.

The clear improvement of the Commission's performance is essentially due to a number of legal reforms. The new 2002 act has shifted the burden of proof against charges of acquisition of illegal property to the accused; amendments to the CIAA Act extend the Commission's powers of investigation and establish a special court. Other factors contributing to the CIAA's enhanced performance include the CIAA staff's high level of commitment, cooperation from the Government and various sectors of society and the CIAA's efforts to strengthen its institutional capacity

## **Institutional strengthening of the CIAA**

In order to cope with its increasing challenges, the CIAA reviewed its overall organizational capacity and in 2003 prepared a long-term strategy and a five-year action plan. This strategy focuses on preventive action through cooperation and networking with sector agencies, media and civil society, and on intensifying investigation and prosecution and enhancing corresponding capacities. In this respect, the CIAA has published manuals on prosecution procedures and investigation techniques; similar manuals for the revenue and service delivery sectors are under way.

In this effort to continuously train its staff, the CIAA takes advantage of international cooperation and of seminars and workshops held abroad. International cooperation, in fact, becomes ever more important as international trade, investments and technology transfer increase. To this end, the Commission also maintains close ties to anticorruption agencies in other countries.

As part of this strategy, the CIAA also seeks close cooperation with the Government and other agencies in its preventive work, for instance in the establishment of clear and transparent procedures for service delivery, and puts emphasis on involvement of civil society, opinion surveys, publications, and the dissemination of information. It has held several workshops and seminars to ensure stakeholder participation in the CIAA's activities, to improve anti-corruption awareness among public servants and to encourage ministries and departments to adopt internal codes or manuals for good conduct.

The Commission's institutional strengthening program aims to review and amend the CIAA's organizational structure. It has resulted in the establishment of a planning division and several sector investigation divisions, including those specialized in revenue or licensing. Furthermore, as a pilot project, the CIAA has created decentralized units in ten districts to deal with corruption complaints promptly and effectively at the district level.

## Outlook

The CIAA of Nepal is well aware of its responsibility and role in exposing and penalizing corruption, inducing good governance and stabilizing democracy that has been undermined by indiscriminate corruption. Indeed, many people in Nepal attach their only hope for improvement to the CIAA. However, many obstacles still need to be overcome and improvements made. For instance, while prosecution and conviction rates have risen phenomenally, departmental action against improper conduct and initiatives in sector agencies remains rare.

The CIAA strives for continuous improvement of existing legal provisions, policies, practices and organizational structures. For this purpose, it continues to develop corresponding recommendations and suggestions to the Government. To fulfill its demanding tasks and responsibilities effectively, the CIAA must also rely on partners: in particular, the media and civil society are crucial in boosting the CIAA's morale and in urging the Government to provide sufficient resources for the fight against corruption, reward honest officials and businessmen and alert the judiciary.

The time has come to take concrete action against this great threat that impedes social and economic advancement in our societies. Most likely, the case of Nepal is not very different from the situations in many Asian and Pacific countries. Strong regional cooperation, such as that in the framework of the Initiative taken by ADB and OECD, solidarity and joint action are therefore important to further advance our respective anti-corruption efforts.

# D. Anti-Corruption Strategy of the Hong Kong Special Administrative Region of the People's Republic of China

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**T**he Independent Commission Against Corruption (ICAC) of the Hong Kong Special Administrative Region of the People's Republic of China (hereinafter referred to as Hong Kong, China) was set up in 1974. The ICAC, the principal agency with a statutory charter to investigate and prevent corruption in Hong Kong, China, is totally independent from the executive branch of the Government and reports directly to the Chief Executive. The principal objectives of the ICAC are to enforce anti-corruption laws vigilantly and professionally and to make corruption a high-risk crime, identify and eliminate opportunities for corruption in government departments and public bodies by reviewing their procedures and practices and promoting corruption prevention in private sector businesses, and to educate the community about the evils of corruption and enlist their support in the battle against corruption.

Since its inception, the ICAC has adopted a three-pronged approach in fighting corruption, namely investigation, prevention and education, through the Operations, Corruption Prevention and Community Relations Departments.

## Operations Department

The Operations Department is the investigative arm of the ICAC and the largest department within the Commission. The Department strives to deliver the highest standard of service by sparing no effort in the investigation of every pursuable report of corruption.

The Operations Department has developed, over recent years, a strategy to employ proactive investigation techniques to identify and prosecute instances of corruption that might otherwise go unreported. The strategy includes the use of undercover operations and broader and more effective use of intelligence and information technology (IT). The Department's investigators are given continuous professional training to keep pace with the changing commercial environment, technological advances and the latest developments in criminal investigation techniques. Such training embraces a wide range of topics, including financial investigation, IT applications, computer forensics, video interview techniques, case management and court proceedings.

Joint Operational Liaison Groups comprising senior officers of the ICAC and other local disciplined services continue to strengthen inter-departmental cooperation. These hold regular meetings with a view to stepping up operational liaison, addressing common concerns, and developing anti-corruption strategies within their respective services.

## **Corruption Prevention Department**

The main tasks of the Corruption Prevention Department are to reduce opportunities for corruption in government departments and public bodies and to advise private sector organizations on corruption prevention. The Department conducts detailed studies of practices and procedures of public sector organizations and assists them in the effective implementation of corruption prevention recommendations. The Department also provides expeditious consultation services to public sector organizations when new procedures or policies are being formulated or when quick corruption prevention advice is called for.

In addition, the Corruption Prevention Department provides free and confidential corruption prevention advice to private sector organizations on request. These include reviewing systems and procedures, drawing up codes of conduct and holding seminars on the prevention of corruption.

To help organizations develop their corruption prevention capability, the Corruption Prevention Department has produced easy-to-use best-practice packages on ways to minimize corruption opportunities in particularly vulnerable areas such as procurement, staff administration, information system security, contract letting and administration.



## **Community Relations Department**

The Community Relations Department educates the public against the evils of corruption and enlists its support in the fight against corruption. Community education is conducted through mass media programs and a network of regional offices. On a regular basis, the Department offers advice on departmental guidelines to government departments and conducts corruption prevention talks for government officers. Apart from civil servants, the Department regularly organizes training seminars for public body employees. Assistance is also provided to public bodies to encourage them to launch staff integrity promotion projects within their organizations.

The Community Relations Department also continues to maintain close liaison with various business organizations and professional bodies to promote the business ethics and corruption prevention services of the ICAC. The Hong Kong Ethics Development Centre, established in 1995 in conjunction with six major chambers of commerce, aims to promote business ethics in Hong Kong, China on a long-term basis. In November 2001, the Centre launched a website ([www.icac.org.hk/hkedc](http://www.icac.org.hk/hkedc)) to enhance the provision of its services.

## **Checks and balances**

The ICAC is subject to a stringent system of checks and balances. Its work is scrutinized by various independent committees—each chaired by a non-official member and comprising prominent members from various sectors of the community. All committee members are appointed by the Chief Executive of Hong Kong, China.

## **International cooperation**

The Government of Hong Kong, China is committed to playing a full part in international cooperation on enforcement against corruption. As an integral part of the anti-corruption strategy, the ICAC maintains regular operational liaison with other international law enforcement agencies. Since 1999, the ICAC has been a member of the Interpol Group of Experts on Corruption. Our efforts in strengthening international cooperation against corruption will continue.