

SUCCESSFUL  
ANTI-CORRUPTION  
STRATEGIES AROUND  
THE GLOBE

A REPORT FOR LOK SATTA COMPLETETD BY

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Botswana's DCEC 'supercow' (DCEC, 2000)

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## LIST OF ACRONYMS

ACAC - Anti-Corruption Advisory Committee  
ACP - Airport Core Program  
AG - Attorney General  
CE - Chief Executive  
CPIB - Corrupt Practices Investigation Bureau  
DCEC - Directorate on Corruption and Economic Crime  
DOJ - Department of Justice  
EDI - Electronic Data Interchange  
GDP - Gross Domestic Product  
ICAC - Independent Commission Against Corruption  
IMG - Investigations Management Group  
IT - Information Technology  
NGO - Non-Governmental Organization  
NSW - New South Wales  
OMC - Operations Management Committee  
ORC - Operations Review Committee  
PJC - Parliamentary Joint Commission  
PPS - Public Procurement System  
TAF – Taxpayer’s Against Fraud

## EXECUTIVE SUMMARY

This report examines several successful anti-corruption strategies that have been used throughout the world. The paper includes a discussion of the theory, a study of organizations designed to combat corruption, laws that have been successful, and finally an examination of processes that have affected positive change. This has been done, as combinations of all these elements are needed to effectively stamp out corruption. Corruption is a significant problem in India that detrimentally affects economic growth, health and equality. Fighting corruption is an uphill battle, as change must come from the top, yet those are the people who are in position to gain the most from corruption. It is often thought that corruption is inevitable and even 'necessary' in developing countries; but countries such as Singapore have shown otherwise. Corruption in fact hinders growth; the World Bank estimates that corruption in India cuts at least 3% annually in business growth, and reducing corruption will improve income growth 2-4% annually!

Critical examination of effective measures to combat corruption taken in other countries was undertaken, and these were then considered in the Indian context. Corruption is a secretive crime with few, if any, witnesses, and it therefore requires special measures to be taken in order to fight it. Hong Kong and Singapore, which were horribly corrupt nations are now some of the cleanest in the world and are scrutinized along with accomplishments in Australia and Botswana. These countries created powerful, independent anti-corruption agencies and laws that place the burden of proof on the accused to explain the source of their assets. The most successful agencies are generously funded, staffed and have extensive oversight bodies. The report examines the powers granted to these agencies along with their extensive supervisory bodies. The Australian agency conducts public hearings where statements made cannot be used in a court of law but act to 'shame' the individual into changing their ways and bring attention to policies that require reformation. This has a large potential for application in India due to the large cost and time involved in prosecuting all individuals when prevention is considerably cheaper and faster.

The False Claims Act in the U.S.A. with the Qui Tam provision allows private citizens to take a company to court that has defrauded the government. Since the law was strengthened in 1986, this Act has recovered US \$12 billion, and is estimated to have saved the US Treasury US \$100 billion due to deterrence. The law, originally designed to combat fraud in military contracts, has been successfully applied to the health care, natural resource, environmental, customs and loan industries.

Success in reforming the public procurement process in Hong Kong, South Korea, Ecuador and Brazil are investigated along with public education of corruption in Mongolia. Hong Kong's strict and detailed public procurement process is examined in the context of the Airport Core Program, a US \$21 billion project, reputed to be the most expensive public project ever. Due to the policies, only one minor case of corruption occurred and that was within a sub-contractor. Seoul, South Korea has taken efforts to combat corruption in the municipal government including annual rankings of various departments based on corruption. The lowest scoring departments are encouraged to internally reform, otherwise an external body will implement change.

Policies and procedures must be continually reviewed and streamlined to remove as much bureaucracy as possible to reduce the opportunities for corruption. A Freedom of Information Act along with an educated and skilled press to inform the public is necessary. Strict punitive measures such as fines, blackballing firms/employees that have been found to be involved in corruption should be created and enforced. In addition, contracts, permits etc granted under dishonest circumstances should be revoked. This will lead to greater internal monitoring, as insurance underwriters and financial backers will demand that their investment is secure.

Corruption is not inevitable or part of the 'culture' in Asian or developing countries. It can be fought, and countries such as Singapore and Chile that embarked on aggressive anti-corruption efforts are now less corrupt than Western European nations such as France and Spain. The economic and health benefits that accompany a corruption free society are clear. However, reform must come from the top, but efforts to clean up whilst top

officials remain corrupt are doomed to failure. A successful program must educate the public as to costs of corruption, reduce the opportunities for it to occur, and actively pursue those who are involved in corrupt practices.

## INTRODUCTION

Corruption is a worldwide problem that can have significant effects on a country's economy and development. It exists in private and public sectors, in all types of political systems and has been present throughout time and stages of development. Corruption creates inequity and unfairness and can put the lives and livelihoods of society at stake. The leading anti-corruption agency in the world, the Hong Kong Independent Commission Against Corruption (ICAC) considers corruption to occur "when an individual abuses his authority for personal gain at the expense of other people" (2004a). It occurs in both developing and developed countries and it breeds when complacency is the norm. It is unrealistic to expect that any anti-corruption policies will stop all corruption, but a successful strategy can restrict its breadth and cost.

In the past it was argued that corruption was beneficial in countries where wages were low, bribes could supplement income and essentially were a 'trickle down' effect. This has now been widely discredited, as systemic corruption paralyses a country's economy and development. It was also thought that corruption occurs in stages related to economic development. As a country developed, it was believed that corruption would intensify and then begin to decrease as happened in North America and Western Europe. This has not occurred, countries have not developed as quickly as was believed and corruption in many places are rampant. In developed countries, scandals involving corruption are now re-emerging. There have been large cases of corruption in the US, Canada, France, Italy and Japan amongst others which do not correlate to any development trend, although developed countries are mostly devoid of petty corruption. It has also been suggested that in some countries, such as India, corruption is part of the culture and that 'western values' i.e. anti-corruption, should not be imposed. Results in Singapore, Chile and Hong Kong, which are now all less corrupt than some Western European countries such as France, have demonstrated that this is not the case.

The World Bank conservatively estimates that in 2003 the payment of bribes cost the global economy US \$1 trillion (2004). The figure is staggering and it does not take into

account embezzlement or other forms of corruption, just looks at bribery alone. In addition, the World Bank estimates that corruption trims 3% annually off business growth in countries that are corruption prone, which includes India. The level of corruption can make a difference of 2-4% in the annual income growth between countries that are one standard deviation apart in the control of corruption. In addition, decreasing corruption has also been shown to improve health issues such as infant mortality rate. Transparency International ranks India 83<sup>rd</sup> in the world in terms of corruption, meaning 82 countries are less corrupt. Perhaps, more disturbing is that India is among the more corrupt half of developing countries, and is considered to have a 'high level of corruption' on the most recent Corruption Perception Index (Transparency International, 2003). Needless to say, left unchecked corruption can have a serious effect on India's future, including preventing it from reaching its goal of becoming a developed country by 2020, and hampering the Government of India's ambition of becoming a 'regional superpower' (2003).

The payment of bribes often acts as an unofficial 'tax' and the poor are the least able to pay. They are often in the least position to receive bribes themselves, and therefore it creates the case of the poor being the most adversely effected by corruption. The poor are typically the least educated about their rights, and therefore more complacent.

Corruption has many effects; it guarantees that the best contractor is not selected, and instead the one that pays the highest bribe is; it guarantees that laws are not uniformly obeyed, everything from traffic violations to organized crime. This is not healthy for the development of a country or the welfare of its citizens.

Many countries where corruption is pervasive have anti-graft laws, but they are poorly enforced. These laws are sometimes created to deflect criticism, or are imposed upon the country in order to receive development packages, or are just poorly written. Often there are significant array of problems presented to a country and corruption is not an immediate threat. The work is long and there is never a clear victory. The battle will always continue. A successful fight against corruption will help a country combat many

of its other concerns as it becomes more efficient and has more resources to devote to other issues. Any change needs to be institutionalized and systemic, it cannot be one powerful 'clean' individual directing the way, because once that person has gone, it will be difficult to sustain the changes.

Corruption thrives in environments where public servants are paid inadequate wages, leading them to rely upon bribes to 'get by' (Pope, 1999a, 107). It also thrives if there is little threat of being caught, there needs to be a perception that the consequences are real and significant. A free and independent press helps to fight corruption by creating a venue where all valid views can be heard. Public will is needed to bring about change, and media can inform the public of abuses that occur. Often, in corrupt nations, the press is poorly trained, and there is no Freedom of Information Act to permit the journalists to obtain necessary information (Ofosu-Amaah et al, 1999, 16).

Often, legislation and procedures can be a source of corruption. In many cases there are bewildering array of conflicting policies that make it difficult for any person or company to comply with all of them. This leads to an avenue of corruption where an official can be bribed to 'overlook' the issues.

The question becomes not whether it is in the interests of a country to fight corruption but how. Change needs to be directed from committed leadership. Often those in power are the ones who stand to gain the most from corrupt practices, which means there is little incentive for change. The impetus for change must come from the public. The most successful anti-corruption policies in Hong Kong, Singapore and the False Claims Act in the US have risen from intense public outrage. The public cannot be complacent about perceived corruption. Often people feel that there is little that they can do to combat it but widespread acceptance of it allows corruption to become systemic.

## **ANTI-CORRUPTION STRATEGY**

To combat corruption there must be commitment from top leadership. In many cases, this commitment is due to intense public anger at corruption, but if top officials remain corrupt, all efforts to reform those beneath them will fail (Utstein, undated). At the beginning of an anti-corruption program, the public have high expectations but are skeptical because they have heard politicians pay lip service to these efforts in the past. Public support for the program is critical in order to provide information and avenues of investigation, but is often missing. If the public's high expectations are not quickly met or preferably adequately tempered before the program begins, they will doubt the effectiveness of the actions, and support would be lost. This can be a self-fulfilling prophecy if the public is not convinced the efforts may be successful. Initial successes need to be made to convince the public that the government is serious this time in combating corruption (Pope, 1999b, 102).

Within corrupt government bodies, there exists a vast array of procedures and policies, which make it very time-consuming if not impossible to comply with all of them. This creates a conducive environment for corruption to flourish. Efforts must be made to streamline and simplify procedures in order to make compliance easy to understand and accomplish. In addition, policies should be reformed to reduce officials' discretion with clear and consistent rules and codes of conduct. A clear and enforceable policy on gifts and hospitality needs to be developed. Many countries ban all gifts and most hospitality unless approved by senior managers. An education program needs to be initiated to inform the public of how the system works, and what their rights and responsibilities are. An ethical work environment should be created, clearly spelled out, enforced and demonstrated by example from the top (Schloss, 1998, 5).

Banning corruption is not enough, enforcement must occur. This can be quite difficult as there are often no witnesses or direct evidence. To counter this, several countries have initiated a program where public servants have to declare their assets at the start of employment and every year there after. Any assets that are unexplainable are considered

to be fruits of corruption and therefore punishable. Political contributions should also be made public.

### *Create an Anti-Corruption Agency*

One option that has been successful in a number of countries has been the creation of an anti-corruption agency. A government cannot simply create an agency and expect it to function adequately. The agency must be given independence and the powers to investigate anyone and bring him or her to justice. There are several examples of anti-corruption organizations, which report directly to the Prime Minister or President, which ensures that this individual and their 'colleagues' will not be prosecuted (Rahman, 1986, 120). It may even distort the institution into a political witch-hunt. The agency must be given sufficient resources in order to timely investigate legitimate complaints. If this is not done, the public will lose trust. The money and personnel required to operate this organization can be significant, and the government must be prepared for this. Often the laws concerning corruption need to be reviewed and updated at the same time.

Anti-corruption agencies that are given sufficient powers, independence and resources can be successful. These are typically born in an environment where the public has become fed up and demands change, as they believe corruption is rampant. This means that when the agency begins to investigate allegations of corruption it will soon find itself overwhelmed with cases. In addition, they will likely encounter a lot of resistance from colleagues of the accused when investigating past cases. This is due to past acceptance of corruption, and people who participated in the activities in the past did not view it as 'wrong'. This occurred in Hong Kong when police, who were the target of many cases after the ICAC was created, demonstrated against the investigations. The police almost stopped the anti-corruption movement, but the Governor took a controversial stand and granted 'amnesty' to all past corruption cases, except for ones deemed 'significant' by the government (de Speville, 1999, 52). The police relented and general order was restored. It was an unpopular decision, and only the subsequent successes in prosecuting high-ranking officials restored public confidence. Amnesty is now regarded as essential, or

else a new agency will become hopelessly bogged down by past cases and will not be able to be proactive.

Hong Kong developed the first successful anti-corruption agency, and it has three goals, prevention, investigation and education. These departments are viewed as equally important. The creation of a powerful agency warrants the creation of oversight bodies that ensure the agency does not become corrupt. It is important to involve qualified citizens in this to develop a sense of public oversight and independence. In the Hong Kong model, the same agency also has a community relations department that operates public education programs, a prevention department reviewing procedures and policies in order to streamline them and develop codes of conduct, and an investigation department.

Investigators must be given adequate resources including the right to arrest suspects upon reasonable grounds with the permission of the justice department, the right to collect evidence, and if necessary remove travel documents to prevent flight. Those who have been convicted of corruption related offences should be banned from holding office or senior positions.

Adequate measures must be taken once corruption has been uncovered, not to simply remove the individual but to reduce the likelihood of corruption occurring in the future, by making necessary procedural changes and educate those involved. Reducing and simplifying procedures are a means corruption prevention. It must also make sure that honest individuals are promoted to the now vacant position. Prevention efforts would either remove or streamline legislation and policy matters, leaving clear, simple rules, which can easily be understood and followed. The public procurement process should be examined carefully as it contains significant potential for corruption. It should be designed to be transparent and fair and should have clear rules dictating the process of selection of contracts.

### *Education of the Costs of Corruption*

Education of the costs of corruption is a necessary component of an anti-corruption strategy, and should encompass the public, employees of government organizations along with private companies at their request. In Singapore the Corrupt Practices Investigation Bureau gives seminars frequently, and these help to instil a culture that does not tolerate corruption. The program explains what corruption is, the cost of corruption, and how to avoid and combat it (Leak, 1999, 64).

Any effort at reformation must have an achievable and specific goal in order to bring about concrete change. The changes must occur systematically, and the employees must take ownership and commitment to the reforms. Systematic changes to institutions help ensure that when the individual leading the charge departs, the legacy does not. This has occurred in a number of cases, for example in La Paz. The city derives most of its revenue from property taxes, and with a high inflation rate, over a short time the real value of the monies collected declines significantly if the property value is not re-evaluated. When the new mayor Ronald Abaroa took over, he realized this and announced a major re-evaluation. This received an enormous response from public servants and many quickly volunteered for this duty. It rapidly became apparent that these 'helpful' public servants were receiving kickbacks to significantly undervalue properties; depriving the city much needed money. The following year the mayor did away with the plan and announced that this time the public would evaluate their own property. This was based on the premise that individuals are basically honest but came with a catch. If properties were found to be significantly undervalued the city reserved the right to purchase the property at the quoted value! The response was tremendous and evaluations were up to ten times the previous year. This reform was successful until Abaroa left for federal politics, and his successor quickly did away with the plan and revenue fell drastically (Gultung, 1996). Reforms must include more than an individual with limited powers, which may be stopped by the existing corrupt government. This can occur even at the highest level. In 1995 President Mkapa of Tanzania declared his and his wife's assets and asked other leaders to follow suit. The Attorney General stated that the

law did not require the President's actions and it would be inappropriate for others to do the same, effectively halting reforms (Transparency International, 2000).

In the 1970's Singapore began their successful anti-corruption campaign by informing the heads of ministries to make their managers aware of the seriousness of the government's efforts to fight corruption. Creating more efficient practices and policies reduce delays, and rotating managers between departments prevent any inappropriate relationships from forming with the public. The effectiveness of supervisors to check the work of their staff was increased along with surprise checks on the supervisors themselves. Procedures were introduced to ensure that every five years anti-corruption policy is reviewed to further improve it (Leak, 1999, 62). Contact between public and staff was depersonalized to help prevent the development of relationships, and efforts such as unpredictability in which an official handles a matter reduced the possibility of a corrupt relationship developing. Increasing the use of technology helped reduced interaction with the public, which prevented corrupt relationships from forming.

### *Types of Accountability*

There are two types of accountability, vertical and horizontal. Vertical accountability occurs when the electorate monitors the government. Although essential, this encourages the government to conduct issues in secrecy, and promote issues that are popular in the short term instead of necessary long-term issues. Horizontal accountability has the government report to watchdog agencies, which have powers of investigation. This builds a circle of accountability where the institutions are accountable to each other, preventing one from dominating the rest (Transparency International, 2000).

The National Integrity System is a way of looking at the institutions that are responsible for managing society and how their horizontal accountability affects one another. These must all function together to ensure the success of a country. It is much more beneficial and economic to prevent corruption from occurring than it is to punish those who participate in it, and therefore it is within these critical institutions that things must

function without large-scale corruption. The system is built upon a society's values and public awareness. If values are lacking and/or the public does not express much interest in government, then the whole system will be weak. The main elements of the system are seen in Figure 1, below (Transparency International, 2000). They are the institutional frameworks that keep the system free from corruption. If these do not operate correctly or are not strong enough to resist corruption, then quality of life, sustainable development and rule of law will suffer.

The system must be built differently for each country's situation, designed for the intricacies of the society. To create or reform such a system is a large undertaking, but when it is accomplished, the health of the nation will be greatly improved. It should be created over time with help from people across the political spectrum, as it should be irrespective of politics (Transparency International, 2000).

<b>Institution</b>	<b>Corresponding core rules/practices</b>
Executive	Conflict of interest rules
Legislature/Parliament	Fair elections
Public Accounts Committee (of legislature)	Power to question senior officials
Auditor General	Public reporting
Public service	Public service ethics
Judiciary	Independence
Media	Access to information
Civil society	Freedom of speech
Ombudsman	Records management
Anti-corruption/watchdog agencies	Enforceable and enforced laws
Private sector	Competition policy, public procurement rules
International community	Effective mutual legal/judicial assistance

**Figure 1: INSTITUTIONAL RESPONSIBILITIES**

(Transparency International, 2000)

### *Methods of Combating Corruption*

An important source of initial information about corruption is from individuals professionally associated with the corrupt official. These people are often referred to as 'whistleblowers' and must be encouraged to bring information forward to the relevant organization. In many countries, there is either minimal or no protection for these people who risk their job, career and possibly life, in bringing forward allegations. This

protection must be available in an expedient manner. There must also be significant penalties for those who bring forward false claims as there are in Hong Kong and Singapore in order to deter slander. Protection of whistleblowers is lacking in India as demonstrated by the recent murder of Dubey (Indian Express, 2003). He wrote to the Prime Minister's Office with allegations of corruption occurring on the 'Dream Project' in Bihar. Dubey put his name on the document to add credibility to the allegations, as he was a manager on the project. Dubey requested anonymity when the information was passed onto the anti-corruption agency, but this was not adhered to, his name was leaked and he was subsequently murdered for his attempt to stop corruption. Protection must be provided if citizens are expected to bring forward evidence of corruption.

Other efforts to fight corruption have included blacklisting corporations that have been found to use bribes. This was first done in the 1990's in Singapore, and this caused a considerable uproar in the business community. The World Bank recently followed suit and posted a list of corrupt individuals and corporations on the web.

In situations where government organizations are systemically corrupt there is a temptation to privatize relevant companies. The subsequent need to earn a profit will force reform. This avenue must be approached with caution, as privatization must occur in a fair and transparent manner, avoiding allegations of favouritism and the creation of a monopoly.

The press must be free to report as they see fit and properly trained. In order to facilitate their actions, a freedom to information act should be created. The official secrets act should be examined to ensure it is not unnecessarily broad. There needs to be effective policies and procedures to protect whistleblowers that report cases of corruption.

There are several important issues to tackle when combating corruption. Public opinion needs to be mobilized. The public has to realize there is a problem, and demand that efforts are taken to combat corruption. Apathy must be removed. There needs to be adequate education of the public, civil servants and business people as to the costs of

corruption, and their rights. Concrete and realistic goals should be set out at the beginning of any anti-corruption strategy. It is important to realize that it is not feasible to get rid of all corruption, but large strides can be taken. This will not happen overnight and significant resources and time must be devoted to the cause. It is tempting to devote large-scale energies to the investigation and prosecution of individuals. This grabs headlines, which corruption education classes do not. It is the education and prevention of corruption, though, through systematic and procedural changes that is valuable to the future, and is much more economic than prosecution. Constant review is necessary in order to identify weak points and new accountability measures must be introduced or old ones improved. An ethical environment must be created across the public sector and consistently applied, adapted, enforced and owned. Through reform, education, changes in organization structure, legal battles, and establishment of ethical standards corruption can be controlled.

## **INDEPENDENT ANTI-CORRUPTION AGENCIES**

### **CONSIDERATIONS IN EVALUATING AN ANTI-CORRUPTION AGENCY**

A technique that has been used successfully in a number of countries to combat corruption is the creation of an anti-corruption agency. The head of the anti-corruption agency needs to be independent and largely free from political control, and have the ability to investigate individuals at the highest level. The procedures to select the head must ensure that the individual has the necessary skills, and will act without prejudice. The organization should be accountable to the public, courts, legislature and executive to help prevent it from becoming corrupt. Combating corruption is an expensive undertaking, and in order to help ensure the success of the organization it must be given adequate resources, including staff, training, appropriate salaries and investigation powers. The staff of the anti-corruption agency should receive clear guidelines and training and should be subjected to random integrity tests, and a manner in which to remove individuals who are suspected of being corrupt needs to be in place (de Speville, 1999).

Hong Kong, Singapore, New South Wales (Australia) and Botswana have each made great strides in combating corruption through agencies. Hong Kong and Singapore were the pioneers in creating effective anti-corruption agencies, in the 1960's and 1970's they were among the most corrupt societies in the world. The change to a clean society occurred due to strong public demand and the resulting political will to clean up.

The caveat in creating these all-powerful organizations is that they too could become corrupt. The anti-corruption agency should be responsible to the courts and the legislature. In Hong Kong and New South Wales, citizen advisory committees help oversee the ICAC. Everyone is potentially susceptible to corruption and therefore constant monitoring is prudent. If the anti-corruption community becomes corrupt, with its extensive power, it could be turned into an organization to both make money and remove opponents.

When these anti-corruption organizations are brought into existence it is often due to intense public pressure which is typically motivated by the perception of gross corruption. This means that these organizations are usually created in an atmosphere where corruption is rampant. A potential danger then, is that the new organization will become hopelessly involved in past corruption cases and find itself unable to deal with current issues. It is therefore advisable to grant amnesty to past corruption, as done in Hong Kong, with the exception of cases already under investigation, and any cases, which the government believes to be significant. In Hong Kong's situation, any other cases could still be investigated by traditional routes i.e. the police (Independent Commission Against Corruption Hong Kong, 2004a).

## **HONG KONG ICAC**

The Independent Commission Against Corruption (ICAC) is the most successful anti-corruption agency in the world. In the seventies, corruption was rampant in Hong Kong. The economy was booming and the government seemed powerless to combat corruption despite the large public outcry against it. Then in 1973 a Chief Police Superintendent came under investigation for corruption. The court gave him a week to explain his assets, during which time he fled the country. This led to huge public demonstrations and a call for him to be extradited. Two Commissions of Inquiry were launched, one into the circumstances of his escape and the other into what can be done to prevent this in the future. The second report concluded that the public would only be convinced that there was a just anti-corruption body if it was separated from the police force. The ICAC was set-up a few months later with the goals of investigation, prevention and education. The first case was against the former Chief Police Superintendent. The new ICAC was flooded with corruption allegations and the police saw themselves as the main target. The police held strikes and large demonstrations almost bringing the anti-corruption process to a halt. The governor granted an amnesty, a very controversial and unpopular move at the time. It was seen as capitulating to corruption. In retrospect it was a good decision otherwise the ICAC would have been overwhelmed with past cases and allowed police to

reform themselves. Prior to this time, corruption was 'acceptable', now it was known it was no longer the case and the investigators could focus on the minority who continued with corruption (Skidmore, 1996).

The duties of the ICAC include the revision of practices and procedures of government departments and public bodies which are conducive to corrupt practices; advise any person on ways in which corrupt practices may be eliminated; education of the public against the evils of corruption; and the fostering of public support in combating corruption. The ICAC operates based on a highly successful 'three-prong' approach targeting operations, prevention and public education of corruption.

- *The Operations Department:* carries out investigations and prosecutions. It is empowered to conduct searches, make arrests, collect evidence and remove travel documents. It is the punitive arm of the agency (Hong Kong Government Information Centre, 2004).
- *The Corruption Prevention Department:* makes recommendations to reduce opportunities for corruption in government departments and public bodies. It is empowered to be involved at the legislative stage and policy development, which is credited with giving it much of its success. It is able to provide advice and conducts research into suspect procedures. It also carries out talks on all aspects of corruption prevention to the public and private sectors. The Prevention Department has an excellent record to provide quick and appropriate response to correct procedures where corruption has been detected (Hong Kong Government Information Centre, 2004).
- *The Community Relations Department:* educates the public to the damage and consequences of corruption. This acts to raise the profile and support for the ICAC along with discouraging future corruption. These actions occur both in private businesses and in schools. ICAC also offers a free service of providing

encouragement and support in forming a code of conduct (Hong Kong Government Information Centre, 2004).

The reader will note that there are many committees that oversee all aspects of the Hong Kong commission and will discover that the other profiled agencies are similar. This may cause speculation if this detrimentally affects the organization. It is the opinion of the Hong Kong ICAC that the elaborate processes do add a measurable amount of time to projects, but are deemed necessary and are considered to save time in the end, as they act as a quality check and prevent abuses.

The success of the ICAC can be partly attributed to the efficient customer service. The growing public confidence can be seen in the figures, along with the large efforts conducted to discourage corruption.

- Between 1974 and 1975, the ICAC Operations Department investigated 2466 corruption complaints out of 6368 received. The number of cases brought to trial increased from 108 in 1974 to 218 in 1975.
- By the end of 1981, ICAC Corruption Prevention Department had carried out almost 500 studies on various policies and practices in government agencies. It had followed up many of these studies with full-scale monitoring reports on how well the recommendations were being implemented.
- Over 10,000 officials had attended ICAC training seminars on the prevention of corruption.
- By the end of 1981, the Community Relations Department had set up ten local offices, received more than 10,000 reports of corrupt activities, and held more than 19,000 special events such as seminars, camps, exhibitions, and competitions

All complaints of corruption can be reported in person, telephone or mail, and all with confidentiality. Any complaint of corruption is assessed that day, and within 48 hours an interview is arranged with the complaint maker, appropriate direction is provided if the complaint does not involve corruption. (Independent Commission Against Corruption Hong Kong, 2004b)
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(Camerer, 2001)

Due to the difficulty in proving the largely secret crime of corruption, ICAC were given special powers. One of the three laws<sup>1</sup> introduced is the Independent Commission Against Corruption Ordinance, which in detail spells out what corruption is (receiving 'any advantage'), the roles of various positions within ICAC, procedures to handle a suspect, the power to arrest, detain and grant bail, search and seizure, ability to take a forensic sample from a suspect, and ability to investigate any allegation of corruption by a public servant (Independent Commission Against Corruption Hong Kong, 2004c). There is also an Elections (Corrupt and Illegal Conduct) Ordinance which is in place to prevent illegal and corrupt conduct at elections; and specific offences involving the elections to select the Chief Minister, Legislative Council, District Councils, Heung Yee Kuk, Chairman, Vice Chairmen or Executive Committee of the Rural Committee and a village representative.

The other important law is the Prevention of Bribery Ordinance which details what bribery consists of; ICAC is permitted to search bank accounts, examine business and private documents; suspects must provide details of income, assets and expenditures; the ability to withhold travel documents and block property disposal to prevent a suspect from fleeing and confidentiality in an investigation. It also outlays protection to be given to whistleblowers. Specifically the Ordinance stipulates that public servants are subject to Sections 3, 4 and 10 of the act. Section 3 specifically removes the requirement of proof of a corrupt act and prevents public servants from receiving 'any advantage' without the permission of the Chief Executive. Section 4 states that a public servant cannot accept or solicit 'any advantage' due to a connection with his official responsibility, and a person who offers an advantage is committing a crime. Section 10 deals with individuals who have been corrupt for some time. It spells out that they may be found guilty even if their assets cannot be linked to a specific act of corruption. It also states that a public servant is

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<sup>1</sup>The site contains a copy of the Independent Commission Against Corruption Ordinance, Elections (Corrupt and Illegal Conduct) Ordinance, and the Prevention of Bribery Ordinance.  
<http://www.icac.org.hk/eng/power/index.html>  
<http://www.icac.org.hk/eng/main/>

not permitted to have assets beyond which they can legally explain (Independent Commission Against Corruption Hong Kong, 2004c).

Demonstrating the effectiveness of ICAC and the Prevention of Bribery Ordinance in creating a climate where corruption is not permitted to foster is the Airport Core Program (ACP) in Hong Kong. This is a link to an excellent case study on the reasons for lack of corruption during the construction of the US \$21 billion airport, reported to be the largest infrastructure project ever (Rooke & Weiher, 1999).

### **Application of the Prevention of Bribery Ordinance in the ACP**

The combination of the Prevention of Bribery Ordinance that lays out strict rules, and the ICAC, which is equipped with significant legal abilities and staff to enforce the legislation, prevented almost all corruption on the project. Corruption was further discouraged by the existence of clear rules, which spell out dispute resolution, the procurement process, the supervision of contracts and the enforcement of accountability of public servants and contractors. The working climate also aided in discouraging corruption, as adequate wages were paid to employees and a general non-acceptance of corruption. If a corrupt individual were caught, they would find it difficult to obtain subsequent employment in Hong Kong.

The value of the Prevention of Bribery Ordinance cannot be overlooked. It spells out that in regards to public contracts, no public servant or even a private person engaged in private-private transactions, may give/offer 'any advantage', which includes gifts, loans, loan forgiveness, employment or any favour. Entertainment is permitted, as long as it is not deemed 'excessive'.

In addition public servants are not permitted to be in 'the possession of unexplained property', that is having a standard of living beyond which can be legally accountable for (Independent Commission Against Corruption, 2004d). This is a crime 'unless s/he gives a satisfactory explanation as to the source of his wealth'. This provision may deal very

well with the largely secret crime of bribery but does present the disturbing scenario where an individual has to prove his/her innocence instead of the prosecution proving the person's guilt. Both the giver and taker of the bribe are equally guilty and face up to ten years in prison, confiscation of disputed assets, a fine and prohibition from future public employment. Protection is granted to whistleblowers, but there are also penalties for 'frivolous or malicious accusations'. Committee or board members must declare a conflict of interest when they assume a sensitive position and all other staff must declare a conflict of interest when a potential conflict comes to light.

The procurement process was quite detailed and created by the Corruption Prevention Department of the ICAC. No individual selects any contractor; they are all decided upon by committees or boards, with extensive background checks having been conducted on the potential contractors. This adds time to the selection process but it is the feeling of Hong Kong that overall it shortens the project due to the elimination of future delays by avoiding the selection of improper contractors. In addition, all contracts have provisions prohibiting corruption with termination of contract and future blackballing if involved in this activity and hold the contractor 'liable for any loss or damage'. In addition the contractor is responsible for the conduct amongst any sub-contractors they hire.

Special attention is paid to the selection of the consultant engineers. Hong Kong has come to the determination that these individuals can have a large and potentially negative effect on projects. Therefore, a process has been devised for the selection of these individuals. Committees decide the selection of consultant engineers and the selection is competitive.

The Highways Department in Hong Kong has its own elaborate method for selecting contractors. It begins by requested project briefs from a list of firms determined to have relevant expertise. Then an Assessment Panel is formed from members of different departments and they independently review and grade the submissions. These are sent to the Chair and at a subsequent meeting the top 3-4 firms are invited to prepare a proposal that will be selected 60% technical attributes and 40% financial. The weighting is 80%-

20% on projects deemed technically challenging, as the department has conducted research supporting this system. Once submissions are received a Technical Panel evaluates them and on the basis of their technical attributes and cost, the winning bid is selected. Detailed minutes are kept of all meetings (Rooke & Weiher, 1999).

### **Checks and Balances within ICAC**

In Hong Kong, the Chief Executive is the individual who is the elected, and then appointed by Beijing to be the ‘governor’, although in the most recent election he won uncontested, and Beijing has recently announced that there will not be an election in 2007 as scheduled. The Chief Executive chooses Executive Council members, and their term of office from the Legislative Council and public figures. The Legislative Council consists of 60 people. Twenty-four are directly elected from geographic areas, an additional six members appointed by the Election Committee and the other 30 by functional constituencies.

The Chief Executive appoints the Commissioner and Deputy Commissioner of the ICAC and the Commissioner may appoint such other staff as seen necessary, see Figure 2. The ICAC is directly responsible to the Chief Executive and the ICAC Commissioner reports to the Executive Council on significant policy issues. The Legislative Council has the ability to give and take away the powers of the ICAC and the Commissioner meets with the Executive Council to discuss funding and policy matters. The power of prosecution lies with the Secretary for Justice, which guarantees that the ICAC cannot bring a case to court without another department’s judgment. The Chief Executive also appoints the Secretary of Justice. The ICAC falls under judicial supervision, as it must receive court approval to utilize some of the powers of investigation etc. Also, court decisions on ICAC investigation procedures are taken into future consideration by ICAC. In addition, there are also four advisory committees, which consist of forty citizens who are appointed by the Chief Executive.

*The Advisory Committee on Corruption:* advises the Commissioner on operational policies; potential dismissals; disciplinary action; reports on expenditures; reviews the annual report before it is submitted to the Chief Executive and submit annual report to the Chief Executive on the work of the Committee. It will also bring to the attention of the Chief Executive any problems encountered by the ICAC.

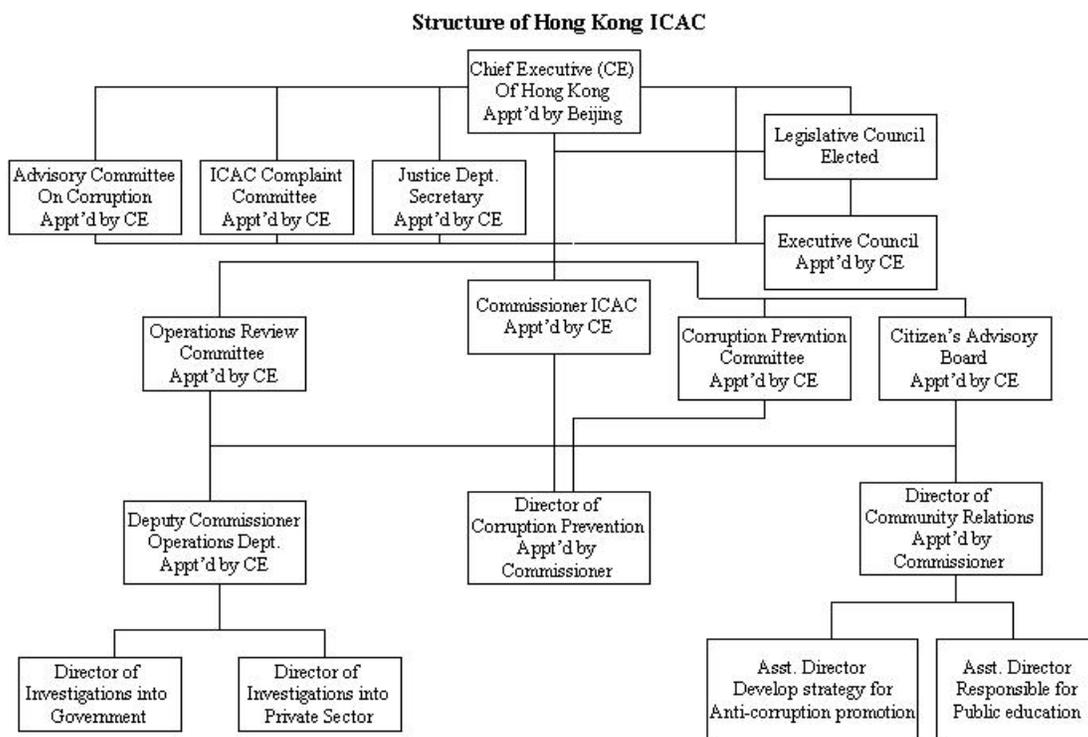
*The Operations Review Committee (ORC):* oversees the investigative arm by reviewing all complaints about corruption made to the ICAC and in what manner the ICAC is dealing with them. It reviews progress reports on all investigations lasting more than a year or requiring significant resources and the number of, and reasons for, warrants the Commissioner authorized. The ORC receives reports on cases where suspects have been bailed by ICAC six months plus and reports on completed investigations and advise on cases that are not being prosecuted. It reviews prosecutions and appeals and decides what information should be passed onto government departments along with any other matters felt necessary. The ORC brings to the Chief Executive's attention any problems within Operations department and submits annual reports to Chief Executive, which are published.

*The Corruption Prevention Advisory Committee:* calls for reports on procedures in government departments etc that could facilitate corruption. It prioritizes these and advises on the recommendations from such reports. The Committee monitors the action that has been taken on their own recommendations by the ICAC and reports to the Chief Executive.

*The Citizen's Advisory Committee on Community Relations:* advises what can be done to educate the public and calls for and receives reports from Community Relations Department of ICAC on this issue. The Committee also monitors public support and attitude toward corruption, and reports to the Chief Executive. Internal investigations are conducted into complaints received of corruption against ICAC staff. The Secretary of Justice advises on all investigations and completed investigations are sent to Operation Review Committee to determination necessary actions. There is an independent

committee chaired by an Executive Council member, which reviews and monitors complaints against the ICAC. The media keep the ICAC under close scrutiny and report to the public (Independent Commission Against Corruption, Hong Kong, 2004d).

The ICAC has identified some common problems where corruption may arise along with potential solutions. Where individuals abuse their position in office is due to insufficient supervision and directions, which can be alleviated by creating clear instructions and enforcing the accountability of supervisors. Selective enforcement is a sign of unclear enforcement policy and poor legislation, in which case legislation should be reviewed and a workable enforcement policy created. Delay in administration is often due to inefficient procedures, which need to be streamlined and the creation of a performance pledge. In situations the public may not be aware of their rights, which is due to inadequate policies, which can be rectified by increasing the transparency of operations.



**Figure 2: STRUCTURE OF HONG KONG ICAC**

## **CORRUPT PRACTICES INVESTIGATION BUREAU IN SINGAPORE**

Singapore is one of the most successful countries in combating corruption, only behind Hong Kong (Leak, 1999, 72). Both of these locations were previously rife with corruption. Singapore was corrupt due to weak laws, lack of public education regarding corruption and rights, inadequate pay for public servants and indebtedness of employees, non-professional anti-corruption officers - temporarily drawn from regular police force. In 1952 the Corrupt Practices Investigation Bureau (CPIB) was set up, before the police dealt with corruption charges. In the early days the Bureau was largely ineffective as they did not have proper legislation supporting them and they did not have the trust of the people. In 1959 the People's Action Party came to power, and brought with it a mandate to combat corruption. Prior to the strengthening of the CPIB, there were large public demonstrations demanding efforts be made to combat corruption. In addition to this public pressure the new Prime Minister was dedicated to fighting corruption. The leaders took the prominent role in the fight against corruption; they removed themselves from commercial and financial involvement and showed up for work before their employees. The Bureau became an independent organization whose director reports directly to the Prime Minister. It can investigate any sizeable charge, which is uncovered during a corruption allegation. Corrupt officials were removed from service with disgrace, which prompted others to resign in order to avoid investigation (Yak, 2002). The following year the legislation, the Prevention of Corruption Act, was tightened which permitted broader investigation power to CPIB and tougher penalties. An Anti-Corruption Advisory Committee (ACAC), which set guidelines for government departments to deal with corruption in a consistent manner and pursuing the bribe taker and giver. It also served to speed up procedures as it was witnessed that corrupt officials were delaying investigations and other measures to avoid prosecution. ACAC was dissolved two years later as their goal was achieved. The government has enacted legislation to retrieve proceeds of corruption, and any contract, permit or other matter, signed under corruption would be revoked. This compels insurance companies who underwrite contracts to conduct due diligence to reduce their risk. The CPIB oversees corruption prone departments and makes recommendations to change policies that could entice people

towards corruption. The CPIB also conducts regular lectures and information sessions to public servants about corruption avoidance. The organization is independent and free from government interference (Leak, 1999, 59-66).

As opposed to Hong Kong's ICAC, the CPIB is much smaller and receives substantially less funding. There are approximately 80 employees versus 1225 in Hong Kong, and most the training is conducted internally. When an employee does travel abroad for training, the individual conducts a training session to bring up to speed the rest of the staff (Challenge, 2004).

### **The Prevention of Corruption Act**

The Prevention of Corruption Act<sup>2</sup> increased punishments for corruption but the administrative changes were the most important. A permanent staff for the CPIB was set up, the organization was given independence and the ability to preventatively reform procedures was granted. Policies were streamlined and red tape cut, salaries were improved and a policy of black balling contractors found giving bribes for five years was adopted. Other restrictions included banning public officials from placing themselves under financial obligation to anyone who they deal with officially and cannot use official information for personal gain. Officials cannot receive entertainment from members of the public and cannot privately accept shares in a company without approval of the Finance Secretary. Public servants are not permitted to engage in any

The Bureau also has an interesting customer service policy - 90% of all people who come into the office will be seen within the first 5 minutes and the other 10% in less than 10 minutes. In addition, the phone will be answered within 3 rings and it will be decided whether a complaint is pursuable immediately for a walk in and within a week for a complaint received by mail. If it is deemed pursuable it will be acted upon in less than 48 hours. The investigation will be completed within two months, unless the scale of the charge demands a longer time period (Corrupt Practices Investigation Bureau, 2001).

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<sup>2</sup> A copy of the act can be found at [http://statutes.agc.gov.sg/non\\_version/cgi-bin/cgi\\_retrieve.pl?actno=REVED-241&doctitle=PREVENTION%20OF%20CORRUPTION%20ACT&date=latest&method=part](http://statutes.agc.gov.sg/non_version/cgi-bin/cgi_retrieve.pl?actno=REVED-241&doctitle=PREVENTION%20OF%20CORRUPTION%20ACT&date=latest&method=part)

outside business without approval. Public officials must declare their assets when hired and annually thereafter. If they cannot explain the source of their assets, they will be considered guilty of corruption. In addition, if a person whom the public servant has a close relationship with is considered to be in possession of unexplainable resources, then the public servant can be found guilty of corruption, 'having regard to his relationship to the accused person [the public servant] or to any other circumstances, there is reason to believe to be holding those resources.... on behalf of the accused' (Government of Singapore, 2002). This is somewhat extraordinary provision. The law extends to citizens of Singapore who commit corruption outside of Singapore. Fines for corruption were set at to \$100,000 and up to five years in prison for a private citizen and seven years for a public official.

In 1989 the Confiscation of Benefits law was passed which allowed for the freezing of assets from proceeds of corruption. In 1999 this law was replaced with one that included money laundering.

The CPIB also sets out guidelines and has taken steps to prevent corruption within it's own ranks. Its employees are paid competitively with the private sector to reduce the temptation for corruption and have simplified procedures. There are surprise checks on supervisors who are regularly rotated between departments and have the ability to check on their staff. Employees must declare their assets at the start of employment and undergo an annual review. They are not permitted to have unsecured debts totalling more than three months salary, cannot borrow from someone they have a professional relationship with and are not permitted to have external employment (Ali, 2000).

The success of the organization is attributed to the independence of the department to investigate anyone, the policies are regularly reviewed to combat changing realities and the political leaders are committed to fight corruption.

## ICAC IN NEW SOUTH WALES

This agency was created due to increased public pressure to combat perceived growing corruption in the public sector. Similar to the occurrence in Hong Kong, the creation of the New South Wales (NSW) ICAC followed a series of scandals that saw the imprisonment of a Chief Magistrate and a Cabinet Minister, criminal trials of senior officials, and an enquiry into the police force that led to the discharge in disgrace of a Deputy Commissioner of Police. The NSW ICAC has been modelled after the Hong Kong ICAC and is empowered by the Independent Commission Against Corruption Act 1988, ICAC (Commissioner) Act 1994 and the ICAC Amendment (Ethics Committee) Act 2003<sup>3</sup>. The ICAC has the ability to require public officials to produce information and documents. With written permission the ICAC can enter and copy relevant documents along with obtaining warrants for listening devices. A significant and sometimes vilified power is the ICAC's ability to hold public hearings where persons are compelled to testify. They are allowed legal representation, but what they say cannot be held against them in a court of law. This can act as a barrier to further trials as the defendant can justly claim that their access to a fair trial has become jeopardized. The hearings are designed not to punish people, but to reveal avenues of corruption, in order to shame individuals to stop and to identify areas where policy can be changed to prevent further corruption. In a largely corruption free society, this may not be the best practice, as it is more suited to a corruption plagued country, where the resources are not present to prosecute all suspected individuals. In that case, the public hearings may be a cost effective way of bringing to light corruption.

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<sup>3</sup> The ICAC Act can be found at the following sites.  
Independent Commission Against Corruption Act 1988  
[http://www.austlii.edu.au/au/legis/nsw/consol\\_act/icaca1988442/](http://www.austlii.edu.au/au/legis/nsw/consol_act/icaca1988442/)  
ICAC (Commissioner) Act 1994  
[http://www.austlii.edu.au/au/legis/nsw/consol\\_act/icaca1994582/](http://www.austlii.edu.au/au/legis/nsw/consol_act/icaca1994582/)  
ICAC Amendment (Ethics Committee) Act 2003  
[http://www.austlii.edu.au/au/legis/nsw/consol\\_act/icacaca2003674/](http://www.austlii.edu.au/au/legis/nsw/consol_act/icacaca2003674/)

## **Checks and Balances within the ICAC**

The Commissioner is appointed for a five-year, non-renewable term by the Governor of NSW, who in turn is appointed by the Premier to be the Queen's representative. The Deputy Commissioner along with the heads of the four divisions; Strategic Operations, Legal Division, Corruption Prevention and Education, and Corporate Services Division are appointed by the Commissioner. There are several different bodies that oversee aspects of the NSW ICAC, see Figure 3.

*The Parliamentary Joint Commission (PJC):* consists of members of parliament appointed from multiple parties, and it examines the relevance of the ICAC's work and relays public complaints to the ICAC. The PJC meets in public semi-annually with the Commissioner to receive evidence, and subsequently publishes this and reports to both Houses of parliament on non-operational issues of the ICAC. It also puts questions from both Houses to the Commissioner.

*The Investigation Management Group (IMG):* consists of the Commissioner, Deputy Commissioner and the Executive Directors who are the heads of the four divisions. The IMG oversees, directs and advises the ICAC on investigations.

*The Operations Review Committee (ORC):* is made up of eight individuals; the Commissioner, Deputy Commissioner, Commissioner of Police, Director General of the Attorney General's Office who is appointed by the Governor based on recommendation from the Attorney General with the agreement of the Commissioner of the ICAC, along with four community members appointed by the Governor from the recommendation of the Minister in concurrence with the Commissioner. The ORC does not appear independent to the author of this report as the appointed Commissioner has significant say into six of the seven other seats on the panel. The ORC meets with the Commissioner every two to three months and discusses operational matters it deems important. The responsibilities of the ORC are to advise the Commissioner if the ICAC should not begin or stop an investigation, and advise every three months whether an investigation should

continue. The ORC also takes ICAC recommendations and accepts, modifies, rejects or requests further investigation into them.

*The Operations Management Committee (OMC)* consists of the Commissioner, Deputy Commissioner and Executive Directors. The committee oversees and selects projects in corruption prevention, education and research to be taken by the ICAC.

*The Attorney General and the Ombudsman:* receive reports from the ICAC on the use of listening devices.

*The Treasurer:* oversees the expenditures of the ICAC (Independent Commission Against Corruption New South Wales, 2004).

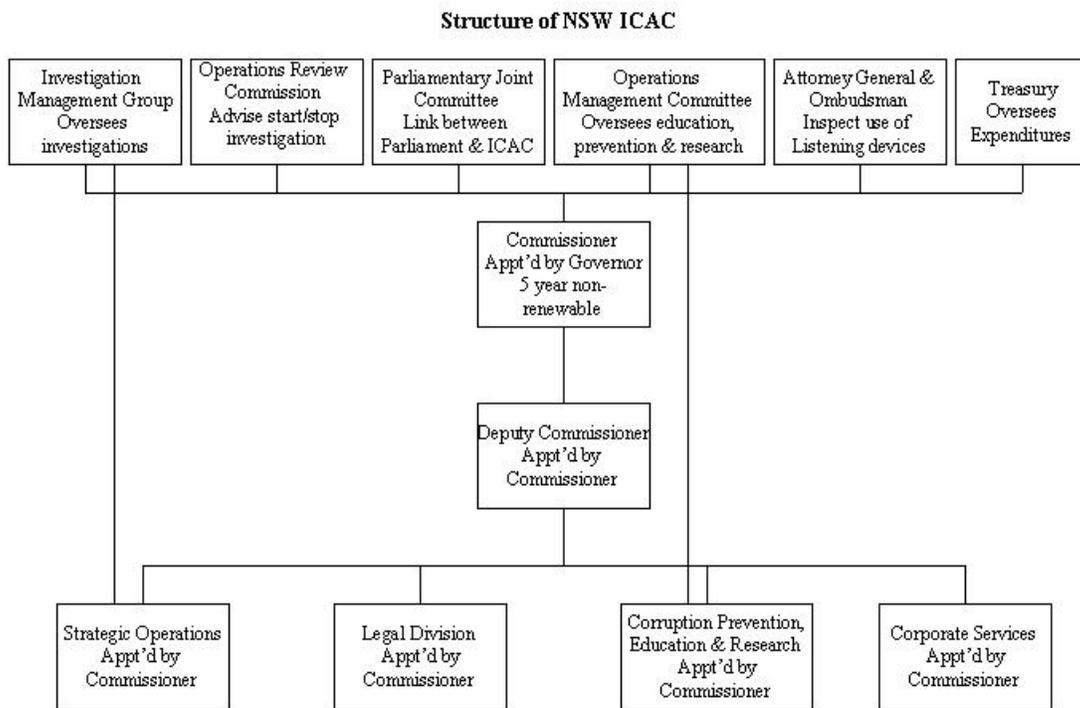
There appears to be a multitude of oversight bodies surrounding the ICAC. The only warning the author can detect is the prominent roles the Commissioner has on all the Committees, and can over time, 'stack' the committees in their favour. Redeeming features of this are that many of the appointments require the agreement of other outside bodies, and the Commissioners term is limited to five years.

The NSW ICAC has received a positive response from the public, as can be seen with the growing case load.

- In New South Wales during the last ten years the Commission's investigation reports have found 360 people to have acted corruptly and criminal charges have been laid against 140 people. Over 110 public sector employees have been dismissed or disciplined as a result of reports.
- 70 percent of the Commission's recommendations for improved operating systems or policies had been adopted.
- Chief Executive Officers and General Managers had increased their requests for ICAC assistance from less than 200 in 1992/93 to nearly 500 in 1997/98.

- The Commission made significant contributions to improvements in public sector legislation and operating procedures, for instance, managing relationships between the police and criminals, unauthorized release of governmental information, driver licenses, etc.
- As a result of the investigations carried out by the Commission sweeping changes were made in the public sector. These changes tightened specific requirements for public procurement, and established the code of conduct for local councils and public agencies.

(Camerer, 2001)



**Figure 3: STRUCTURE OF NSW ICAC**

## **DEPARTMENT OF CORRUPTION & ECONOMIC CRIME - BOTSWANA**

Botswana has taken the example of Hong Kong and has created the Department of Corruption and Economic Crime.

Botswana is a unique country in Africa. It gained independence in 1966 and has had multiparty elections every five years, and has never been under military rule. The economy has been booming and transforming the country from one of the poorest to very successful. In 1995 the GDP was US \$3025, nearly ten times higher than the median in black Africa (Riley, 1998, 148). The reason for success has been attributed to the commitment of political leaders to democracy, sound economic policies, and a central, efficient government. This led to a sense of complacency as the public service was seen as very honest and there was no anti-corruption force in place, as no need was seen. In the early 1990's a series of scandals involving politicians and public servants came to light. This involved several high-ranking ministers along with the Prime Minister and his family. This led to the creation of the Department of Corruption and Economic Crime in 1994, modelled after the ICAC in Hong Kong. In addition, an ombudsman was created to deal with crime involving civil servants, while the mandate of DCEC was to tackle high profile corruption and economic crimes. An economic crime, which is the mandate of DCEC, is defined as, but not limited to 'bribery, conflict of interest, diversion of public revenue, and possession of unexplained property' (Directorate on Corruption and Economic Crime, 2000).

The DCEC has been given powers of investigation to combat corruption. These include the ability to remove a person's travel documents; conduct inquiries and investigations; obtain records of private individuals and public or private agencies; to arrest without a warrant a person the Director believes has committed, or about to commit, a crime; and to search a premises that may bring a conviction. In addition the DCEC is empowered to use 'necessary force' to enter a vehicle.

The DCEC is set up similar to ICAC in Hong Kong ‘three pronged approach’, with separate departments that target Operations, Public Education and Corruption Prevention. The Public Education has been very successful informing the public the cost of corruption. They have created TV programs, phone in radio shows, pamphlets, newspaper ads, amongst others. The operations department has been significantly hampered by a lack of resources. The public education program has included the creation of Botswana’s first superhero ‘Mr. Honesty’ that graces the cover of this report, in the shape of a cow, which in the local culture represents “wealth and prosperity” (Directorate on Corruption and Economic Crime, 2000).

There are several issues, which may and should be improved upon. The agency is placed within the Presidential office under the Attorney General. To prosecute anyone the department must first obtain permission from the Attorney General. This, along with the massive backlog of cases within the court system, has led to the general population viewing the organization as largely ineffective despite evidence to the contrary. There has been criticism levelled at the DCEC from within Botswana, but many foreign observers believe the organization has been quite successful during its ten-year lifespan. In addition, the organization only consists of 137 individuals in 2001, with several senior vacancies. The agency faces a significant difficulty in recruiting individuals with necessary skills, especially in the legal and senior management areas. Even though the department is independent of the civil service, its recruiting is done by the civil service. This is an issue as it is the civil services policy not to recruit for a position until it is vacant. There is concern that individuals with the appropriate skills may not be able to recruit as the necessary skills are often lacking in Botswana and expatriates fill several senior positions.

In 2001, the DCEC completed 43 cases in court, where 24 cases resulted in guilty verdicts. In 12 cases the accused was acquitted by the court and 6 other cases were withdrawn from court as the main witness died or settled out of court. A significant issue raised in the 2001 annual report is the delay in cases. This is largely attributed to processing time in the Attorney General’s Chambers and the Courts, which has been

identified as a major obstacle to obtaining justice (Directorate on Corruption and Economic Crime, 2001). The growing confidence the public has in the DCEC is demonstrated by the rising numbers of cases that are reported to the organization each year, as seen in Figure 4.

	1994	1995	1996	1997	1998	1999	2000	2001	TOTAL
Number of reports received	254	896	1378	1511	1525	1023	1475	1841	9903
Number where complainants identified themselves	237	734	1003	1132	1052	741	1096	1362	7537
Number made anonymously	17	162	375	379	473	282	379	479	2366
Number of investigations commenced	170	411	417	316	318	362	390	413	2797
Number referred to other bodies or no action was taken	84	485	961	1195	1207	661	1085	1428	7106

**Figure 4: CASE LOAD OF DCEC**

(Directorate on Corruption and Economic Crime, 2001)

The DCEC has also identified inadequate funding for a number of issues as being detrimental. One of the significant issues is insufficient pay, which has led to sizeable attrition to the private sector where wages are higher.

The author of this report requested a copy of the pertinent legislation and organizational structure of the DCEC, but received no response.

#### **APPLICATION OF SUCCESSFUL ANTI-CORRUPTION AGENCIES**

The best approach appears to be a three pronged one, pioneered in Hong Kong and includes prevention, investigation and community relations. Why has the Hong Kong ICAC been so successful when other anti-corruption agencies failed? The ICAC in Hong Kong was born out of strong public outrage at corruption and the resulting political will to combat it. When the ICAC was created it was given significant powers and resources

that many ineffective anti-corruption agencies lack. An agency must be given sufficient resources and abilities or else it will fail.

Before a government sets up an anti-corruption agency it must answer questions as what it desires the role of such an agency to be. It should be determined if the agency will focus on organized or individual corruption; public or private; the relative roles of education, prevention and investigation; and whether to focus on petty or high level corruption (Camerer, 2001). These decisions will influence the type of resources, expertise as well as powers required by the agency and require careful strategic consideration.

Singapore and Hong Kong are somewhat unique cases as they are both city-states with authoritarian governments. South Africa is attempting to build an effective anti-corruption commission and has started the process with a two-year study of the types of corruption it is attempting to combat. It is investigating the type of corruption i.e. low level, high level, political or economic; corrupt areas i.e. judiciary, central bureaucracy, executive, legislature, government, local government, private sector, financial system and the effects i.e. political system, economic consequences, civil rights, law and order, democratic development.

The Hong Kong ICAC stands out by its level of funding and resources, which other agencies will find difficult to replicate. The ICAC employs approximately 1225 staff members and has a budget of over HK\$600million, approximately US\$77 million. By comparison Singapore has 140 staff, while Botswana has 130 employees (Camerer, 2001). In the latter case the significant lack of resources has been identified as a major impediment to the agencies ongoing effectiveness. There is typically intense competition between departments for scant government resources. The government must be prepared to devote significant resources or else the effort will result in failure.

South Africa has commissioned a two-year study into anti-corruption bodies to make recommendations to the government. They are in a similar situation as India, where there

are a number of agencies in existence with a mandate to combat corruption, but are doing so ineffectively. In the South African case, this is largely contributed to the lack of preventative strategy and not approaching the situation holistically. The commission concluded that at this time the creation of another anti-corruption agency was not in order and will only be once the existing agencies become functional and approach corruption strategically and holistically. Once this is done, then a single independent agency should be brought into existence.

This study also looked at example of other southern African countries, where the trend has been to coordinate approaches or create new agencies. The authors found this to be ineffective without the support of additional structures. In addition, expectations are generally quite high, and when the agency does not deliver in a short time, the public quickly loses confidence in them, and an agency cannot function properly without the public's participation. The agencies are given insufficient resources and strength in order to take on corrupt officials. Such is the case in Malawi and Swaziland who have seen no successful prosecutions from the new anti-corruption agency.

## FALSE CLAIMS ACT & ‘QUI TAM’ PROVISION IN U.S.

“*‘qui tam pro domino rege quam pro sic ipso in hoc parte sequitur,’* which means that ‘he who sues for the king in this matter sues for himself as well’” (TAF, undated).

### **AN OVERVIEW**

This piece of legislation<sup>4</sup> is unique and fascinating. It does not rely on a government organization to route out corruption, but rather empowers the citizen to take action on behalf of the government when fraud occurs. A private citizen can take a company or individual to court when s/he has information regarding fraud that has taken place against the government. This interesting and far-reaching legislation has a long history. Qui Tam is a provision within the False Claims Act in the U.S. It was initially created in 13<sup>th</sup> century England, where an individual could take legal action in a case where he knew the king was being defrauded. In return, he could keep a portion of the settlement. In the United States of America, it has been in place since 1776, although barely used. President Abraham Lincoln revived it in 1863 in an attempt to combat the corruption that permeated among the contract suppliers to the Union Army during the American Civil War. The army was receiving weapons that would not fire, uniforms that fell apart and in quantities lower than which they had paid. At the time, the government had few resources available to combat this as everything was directed at the war. The bill was designed to encourage whistleblowers to come forward with information, prosecute the offender, and receive part of the settlement. It was designed for military expenditures but enveloped all government spending. The whistleblower would bear all the legal cost of bringing the company to court and in return would receive 50% of the settlement. Despite the hope of the government, it was little used and in 1943, when the US was again at war, and having difficulty with its military suppliers again, the provision was further watered down. Corruption had won a reprieve. The whistleblower (relator) could not bring to court cases the government had knowledge of, and the relator’s share was reduced to a maximum of 25%. In the 1980’s, the US military was again setting budget records, this time it was the

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<sup>4</sup>A copy of the federal False Claims Act can be found at <http://www.taf.org/federalfca.htm>.

Cold War. As a characteristic of most successful anti-corruption efforts, the media became involved in highlighting cases where the government was being taken advantage, which garnered a lot of public support. It is easy to see why the public was angered; the taxpayer was paying in some cases ‘\$640 for toilet seats, \$7600 for coffee makers and \$1075 for bolts’ (TAF, undated). In 1986 the law was strengthened and the relator’s portion was increased to 30% if the government did not join the case and 15-25% if it did and the provision barring a relator bringing an issue to court if the government had prior knowledge was removed. Also the relator is now allowed to continue as a party if the government takes over the case, with the ability to recover their legal fees if the case is successful.

Qui Tam is a provision under the False Claims Act and has been traditionally applied to defence and health care industries, although its scope is widening. It specifically targets cases of fraudulent billing, where the government has received lower quality or quantity of goods it paid for, or any manner of fraud related to a contract except tax fraud. It is thought that it acts as an excellent deterrent for companies with contracts with the government, along with recouping losses. A party found to be guilty must repay triple the amount defrauded along with \$5,500 to \$11,000 fine for each instance. A whistleblower, called a relator, files a case against a company. This goes to the Department of Justice (DOJ) who then has 60 days to conduct an investigation and decide if the government will join the case. Typically the DOJ is granted an extension of up to two or three years in which to conduct their investigation. If the government declines, the relator is free to pursue their case, otherwise the government will take over the legal case (Kelton, 1999).

The False Claims Act is becoming a preferred method of anti-corruption enforcement because the burden of proof is much lower than in a criminal case. The plaintiff does not need to prove intent, as in a criminal case, only that the actions were done with ‘deliberate indifference’ or ‘reckless disregard’ of the truth. This means it is extraneous whether the company intended to commit fraud, simply that it occurred is sufficient.

The law has witnessed a number of challenges from the defence industry; a group of 46 defence companies campaigned that they would police themselves, and were almost successful, but were stopped in Congress. It was revealed that out of the 46 companies, nine of the top ten and a total of 39 were currently under investigation for fraud. (TAF, undated). The defence industry also challenged the Supreme Court that the Act is unconstitutional, but the case was found against them. The health care industry, which is now the largest source of cases, attempted to water down the bill in 2000, but were shunned out of Congress when it was revealed by NGO's that in 1999 over \$1 billion was reclaimed by the government from health care companies and that thousands of new cases were opened under this law (Bauman & Rasor Group, undated).

The revenue collected under the False Claims Act is staggering. In the 2003 fiscal year \$2.1 billion was recovered of which \$1.48 billion arose from Qui Tam cases initiated by whistleblowers, a majority of cases and convictions in health care. Relators' received \$319 million during the same period. The government has recovered over \$12 billion and \$1 billion by relators, since the law was strengthened in 1986; with \$7.9 billion arising from Qui Tam cases and the values are growing significantly each year. The number of Qui Tam cases rose dramatically in the first ten years as the public gained knowledge and confidence about the bill (Figure 5). Fifteen states have recently created their own Qui Tam acts as a result of the success of the federal version (Department of Justice, 2003a).

Beyond providing monetary benefit for the government and relator, it helps ensure that the government receives what it pays for. The False Claims Act, which primarily relies on Qui Tam, aids military personnel by helping to ensure the quality of equipment they receive, patients by preventing hospitals from performing unnecessary procedures and surgeries and companies from supplying unsafe medical equipment. It has been used to protect consumers from companies who repackage old equipment and sell as new, overcharging and under delivering. It has also targeted natural resource companies who illegally remove resources from public land and improperly disposing waste in which they were contracted to do in a proper manner (TAF, undated).

As of September 30<sup>th</sup>, 2003 since 1986:

Total recovered in Qui Tam cases: \$7.87 billion

Total recovered in False Claims cases, including Qui Tam: \$12 billion

Total recovered in Qui Tam cases when DOJ was involved: \$7.5 billion

Total recovered in Qui Tam cases by relators in cases declined by DOJ: \$362 million

Total number of Qui Tam cases: 4,294

<b>Fiscal Year</b>	<b>Number of Qui Tam Cases</b>	<b>Total \$ recovered in cases with DOJ involvement</b>	<b>Total \$ recovered in cases DOJ declined involvement</b>
1987	33		
1988	60	355,000	35,431
1989	95	15,000,000	0
1990	82	40,000,000	75,000
1991	90	70,000,000	69,500
1992	119	134,000,000	994,456
1993	132	171,000,000	5,900,000
1994	222	379,600,000	1,800,000
1995	277	245,000,000	1,800,000
1996	363	125,000,000	14,000,000
1997	533	622,700,000	7,000,000
1998	470	432,700,000	29,200,000
1999	482	454,000,000	62,500,000
2000	367	1,200,000,000	1,800,000
2001	310	1,160,000,000	125,600,000
2002	320	1,060,000,000	26,000,000
2003	326	1,390,000,000	85,000,000
<b>Total</b>	<b>4281</b>	<b>7,499,355,000</b>	<b>361,774,387</b>

**Figure 5: QUI TAM CASES**

(Department of Justice, 2003b).

These figures show the value of empowering citizens to combat corruption. A full two thirds of the revenue collected under the False Claims Act is due to ordinary citizens who have reported corruption. The people have been given the opportunity, the means and the reward to stop corruption and the success has been tremendous.

Since 1986 there have been 2,200 cases filed regarding health care and the government has recovered \$5.17 billion and the relators share an additional \$851.6 million. In the defence sector there have been 1,277 cases with a total government recover of \$1.59 billion and relators have collected \$291 million as of September 30<sup>th</sup> 2003. Since 1995, more than half the cases filed have been within the health care industry (Department of Justice, 2003b).

### **QUI TAM APPLICATIONS IN HEALTH CARE**

Currently health care is the largest target of Qui Tam cases, with over \$5 billion recovered since 1986, over 40% of the total funds collected. The following is an extract of examples of how the legislation has been used to prosecute health care companies defrauding the US government.

Obviously, the list is extensive and many of these charges could not have been proven in a criminal court where intent has to be shown. Prior to this legislation, many of these companies likely would have felt little fear of being discovered, as the government would not have the time or the resources to investigate these matters. By empowering individuals who have knowledge of the corrupt act and rewarding them, the government has created a powerful tool to protect itself from corruption.

### **QUI TAM ENVIRONMENTAL APPLICATIONS**

A recent development in Qui Tam has been the application to environmental issues. It does not have blanket application to harmful environmental actions such as illegally dumping waste etc. A relator has to prove that a company has made a false claim to the government, e.g. have contract to properly dispose waste but dump it and collect the money or someone who has a contract to clean a site and does not and states has done so. One difficulty with environmental considerations is that it can be difficult to attach a dollar figure to a claim, e.g. the cost to the government for illegal dumping. Despite this, it is gaining popularity amongst environmentalists because it is easier to prove.

A ruling in a Qui Tam case was made in 1996 that expands upon the environmental aspects. A suit was brought against a barge towing company who had illegally dumped waste. The case was successful because the vessel log had been falsified, by altering information of voyages when dumping occurred. This was deemed as making a false

‘Phantom billing’ - Billing for tests not performed.  
Performing inappropriate or unnecessary procedures.  
Charging for equipment/supplies never ordered.  
Billing Medicare/Medicaid for new equipment but providing the patient used equipment.  
Billing Medicare/Medicaid for expensive equipment but providing the patient with cheap equipment.  
A drug or equipment supplier completing a Certificate of Medical Necessity (CMN) instead of the physician.  
‘Reflex testing’ - Automatically running a test whenever the results of some other test fall within a certain range, even though the reflex test was not requested by a physician.  
‘Defective Testing’ - When a test or part of a test was not performed because of technical trouble (i.e.: insufficient or destroyed sample, machine malfunction) but is billed for anyway.  
‘Code Jamming’ - Laboratories inserting or ‘jamming’ fake diagnosis codes to get Medicare/Medicaid coverage.  
Offering free services or supplies in exchange for Medicare or Medicaid number.  
‘Unbundling’ - Using two or more Current Procedural Terminology (‘CPT’) billing codes instead of one inclusive code for a defined panel where rules and regulations require ‘bundling’ of such claims. Submitting multiple bills, in order to obtain a higher reimbursement for tests and services that were performed within a specified time period and which should have been submitted as a single bill.  
‘Double Billing’ - charging more than once for the same service, for example by billing using an individual code and again as part of an automated or bundled set of tests.  
‘Up Coding’ - Inflating bills by using diagnosis billing codes that indicate the patient experienced medical complications and/or needed more expensive treatments. (e.g., billing for complex services when only simple services were performed, billing for brand-named drugs when generic drugs were provided, listing treatment as having been for a more complicated diagnosis than was actually the case.)  
‘Phantom Employees’ - Expensing employees or hours worked that do not exist.  
‘Improper Cost Reports’ - Submitting false cost reports seeking higher Medicare reimbursements than permitted by actual facts.  
Providing substandard nursing home care and seeking Medicare reimbursement.

(Haron, undated)

statement to the government because the government relies on the logs for regulatory reasons. Since the company had altered the logs to avoid paying a fine for illegal dumping, this was ruled a false claim. [Pickens v. Kanawha River Towing, 1996 WL 56092 (S.D. Ohio 1996)]. The company was liable for three times the dumping fine, plus a fine under the Qui Tam legislation (Foster & Havian, 2000).

## **OTHER APPLICATIONS**

The largest sector, behind health care and defence to have cases brought against them is natural resources. These cases largely involve companies under representing the quantity of oil and/or gas removed from public lands, thereby avoiding paying royalties to the government. There are also examples of mining and logging companies defrauded the government in a similar manner.

This legislation extends to issues such as customs, where a company may change the country of origin, quantity or value of products imported in order to avoid higher duties or to receive preferential treatment granted to products from a certain origin, or to avoid anti-dumping (flooding the market with cheap imports) legislation. A US Federal court said, "there is clearly an existing obligation to pay the correct duty and, if not paid, the government has been deprived of duties to which it is entitled." This means the False Claims Act could be used based on information the government lost revenue on duties due to incorrect classification of imports (TAF, undated).

A further application of the legislation involves exaggerated bid prices. Under the False Claim Act, if it is demonstrated that a government contractor's price is above a reasonable cost, then a settlement consisting of the difference between the reasonable price and the quoted price will be tripled plus a \$5500-11,000 fine for each count will be awarded (Kelton, 1999).

Qui Tam has also been successfully used in cases involving loan guarantees, agricultural subsidies, research and public works. This legislation has only become well know within

the last ten years and its applications are spreading as it encompasses all government spending.

## **DETERRENCE**

Perhaps the most important effect of this legislation is the deterrent it has had on companies to commit fraud. It is much more expensive for the government to prosecute fraud than it is to prevent it and the best way to prevent it is to raise the cost and likelihood of being caught. The deterrence factor has been estimated to have added \$100 billion to the US Treasury since 1986 (Kelton, 1999). Recently a number of high profile, high value cases were settled in the governments favour in the health care field, which has caused many other companies to tighten internal controls to avoid future litigation. It is widely predicted that the act will have dramatic effect on customs and other areas in the future.

## **LIMITS**

Although the act is broad, as it was intended, there are a few restrictions placed on the legislation. The act cannot apply to tax fraud; to a current or past armed forces member against another; against a member of Congress if the information is already known to the government; a case in which there is another False Claim Act case or any other investigation with civil penalties; if the fraud has been made public - there is debate about what 'public' means, but if its been in the mass media, then it is definitely considered public.

## **POTENTIAL APPLICATIONS IN INDIA**

Many people in India speak of corruption that exists; presumably some people have evidence of this corruption. A similar piece of legislation would empower a citizen to take a stand and receive monetary benefit if their claim is proven. Many Indians feel that

there is little that they can do to stop corruption; if they take the issue to the authorities it will simply sit on a pile on a desk.

It appears that India is ripe for this type of legislation. The government devotes a large percentage of its budget both to military and health care, where most of the cases of fraud in the US have been detected. In 2003-2004 the government spent 28, 276.67 crore of rupees on the military, out of a total budget of 141, 776 crore while spending 6283 crore on health care with the majority of that 4700 crore, directed at Department of Family Welfare, while the Department of Health received 1583 crore (Ministry of Finance, 2004).

The military in 2001-2002 received 62, 000 crore of which nearly 20, 000 crore was consisted of capitol expenditures. Needless to say this is a significant amount of money that necessitates oversight. Indeed, military expenditures represent about 17% of the total budget (Centre for Monitoring the Indian Economy, 2000). This figure appears to be increasing, in 2003, the Indian military spent nearly US \$16 billion or 72, 000 crore rupees, which represents 2.5% of GDP (NationMaster, 2003).

Beyond this, the applications in health care and construction projects, along with customs, seem to meet the needs of India. Prime Minister Vajpayee's current 'Dream Project', a highway linking the major metropolitan centres, has a very large budget and it appears that corruption occurs, as demonstrated by Dubey's murder for alleging corruption. Obviously with involvement of organized crime in government procurement whistleblower protection measures should also be brought into effect (Indian Express, 2003).

Overall, it is a win-win situation in which the government can enact this law, combat corruption while not having to devote resources itself, while the public can be content that something is being done. In addition, whistleblowers are rewarded monetarily providing incentive, beyond morals to come forward and report corruption.

## OVERVIEW OF OTHER MEASURES

### **PUBLIC PROCUREMENT IN SOUTH KOREA**

In South Korea there exists the Public Procurement Services (PPS) who deal with all public procurements above a certain threshold, US \$45,000 for goods and services, US \$2.7 million for construction projects. Out of US \$45 billion spent annually on public procurement the PPS handles \$12.5 billion, or 28% leaving the rest to individual government agencies (Kang, B., 2000).

The PPS was created due to irregularities in the procurement process. Preferential treatment was being given to selected organizations during the determination of contract specifications and methods. This included unnecessarily limiting competition and abusing the use of private contracts. There were also examples of preferentially giving access to tender information, arbitrarily deciding selection criteria rather than a transparent and open manner, and in private contracts using different negotiation prices for different contractors, amongst other allegations.

Previously anti-corruption measures did not have clear objectives and were passively enforced. The PPS has changed the focus of the measures to a *customer centred model* versus the administrative expediency that existed before. When PPS was created it was assigned the following goals; create a customer centred procurement system; implement fair and transparent systems and procedures; develop an e-commerce system and a computerized database; build a economical and efficient procurement service; ensure the procurement administration follows the governments economic policies.

The PPS conducted a survey of employees and users, and came up with 180 specific reforms that should take place. The system and procedural changes they recommended are focussed on making public procurement more competitive and transparent. The PPS has done this by changing specific procurement requirements to more general ones, therefore widening the field of possible applicants. Now the PPS publicizes for seven

days the specifications required, then receives opinions from all concerned and uses this to improve specifications in order to make them more competitive. The PPS carry out independent investigation into the procurement specifications with the aim of generalizing them without hindering the user. The PPS has also tightened the requirements for private contracts/restricted competition by increasing the number of private contract evaluation points to over eighty. As a result, the number of private contracts within government procurement has fallen from a high of 14% in 1990 to 4% in 1999 (Kang, B. 2000). The PPS has made procurement information more readily available, at the beginning of the year the tender schedule is released, with specific information including important dates, budget, quantity and type of goods, being posted on the internet, government publications and elsewhere as seen applicable. Also when procurement requests are received by PPS the details are released at the PPS offices and on the Internet. Real time updates are made available on the details, status of procurement, along with rules and regulations (Kang H., 2000).

The PPS developed a code of conduct for its officers and created criteria for implementation of each type of contract and this information is distributed to guarantee fairness. The organization also defined the selection criteria of a successful bidder for each type of contract, and created criteria for price negotiations in private contracts to ensure a fair system.

In 2000 the PPS created the Electronic Data Interchange (EDI) where all purchases and accounting transactions between PPS, the public organizations and private supply firms are posted. Contract data has been computerized and simplified thus reducing the prospects of contract officers making contact with the suppliers illegally. Performance records from relevant organizations versus the contractor themselves can be accessed electronically and a database has been created for cost accounting information and qualification information. E-Commerce has been used successfully for the purchase of office supplies etc.

## **PUBLIC PROCUREMENT E-INITIATIVE IN ECUADOR**

Examples of utilizing information technology in order to make public procurement more transparent are widespread. Profiled is the case of Ecuador; many other governments have followed similar paths. This initiative came to life only after significant public pressure was exerted on the government, led by an NGO.

The project began with a series of workshops into the problems with public procurement were identified and solutions suggested. It was during this phase the use of IT was decided upon as a means of conveying information. The website and necessary databases were created and in September 2001 began a three month trial, permitting experts to test the system, make suggestions, and improvements would be made. After three months the system went public, announcements made in newspapers and TV along with directly informing existing clients. The information contained on the website consists of relevant dates, the institution, location, contract and project type. The information is in a searchable format and therefore easily accessed. 80% of the information is free for all to view but 20% is kept for paid subscribers. This controversial idea is based on the desire to have the service pay for itself. The information that is withheld relates to projects currently being bid on, but all information is available both for future and closed projects. With only 10% of the population online, the view is that this tool will only be used more in the future. One drawback is that current legislation only requires publication of information if the procurement costs are greater than US \$112,000, which means a vast majority of contracts are inaccessible.

The organization has made a number of suggestions for others attempting to emulate this project. These include; building a strong relationship with e-procurement experts such as [www.compranet.gob.mx](http://www.compranet.gob.mx) or [www.gem.wa.gov.au](http://www.gem.wa.gov.au), and a relationship with a software company as building the database and creating the software was the most expensive aspect of the project. The final suggestion is to create a real value-added in the pay section of the site to warrant its existence (Transparency International, 2002).

## **PROCUREMENT LAW IN BRAZIL**

The aim of this law was place public procurement in an open and readily accessible location for all to view. The invitations to bid, announcement of recipient and signing of contract are published. There are also requirements for the bidders, they must have 10% of the capitol and have to provide financial statements and guarantees, along with access to equipment and personnel. The selection process was simplified; the lowest bid gets the contract. Delays in the project will receive financial penalties and barring from bidding on future contracts. Also, additions to the contract are very limited, normally a new bidding process will have to be engaged. These conditions are in place for all but a few well-documented situations. The law also spells out that contractors must be paid in chronological order, as there were issues in the past that the supplier with the most influence would be paid first. Penalties are set out and enforced for officials who break the rules, and all related procedures are subject to internal and external audits (Sullivan, 2000).

## **BOLIVIA & ‘POSITIVE SILENCE’**

Bolivia has seen rampant corruption in government services. The statement ‘come back tomorrow’, meaning come back with money, was synonymous with public servants. Recent reforms in Bolivia include publicizing procedures and costs, all government offices have to display posters explaining the required paperwork and the exact costs of each transaction, to prevent government employees from demanding bribes. ‘Positive silence’ has also been introduced whereby citizens applying for occupational licenses, car registrations or other government certificates will be considered to have had their applications automatically approved if they are not rejected within 15 days. This measure may be a little excessive although it has been successful (Transparency International, 2000).

## **TRANSPARENCY IN SOUTH KOREA**

Beginning in 1998 when a new mayor took office, the municipal government of Seoul began to revamp their civil service who were rife with corruption. External experts were brought in to replace less qualified staff, and the overall workforce was reduced by 20%. A massive review of regulations was undertaken and 80% of confining procedures were scrapped or revised. Officials who dealt with the issue of permits, in the past had specialized in one area, changes were implemented that each day staff were given applications for different areas, ensuring a corrupt relationship cannot develop. Also a large-scale personnel shuffle occurred with 25 offices transferring 4000 employees (Kang, H., 2000).

Following Transparency International's lead, in 1999 the municipal government instituted a corruption index of its own departments. Each month a questionnaire is sent to those who had dealing with the local government in the areas identified as corruption prone. The mayor has indicated that these changes are serious and comes from the top and personally reads each one of the returned questionnaires. The poorly performing departments are given incentive to reform themselves and highlight areas that may require investigation.

The municipality of Seoul has also launched an on-line system (OPEN) to allow citizens to review permit applications status in real-time and the procedures involved in granting or denying these applications and expected time frame for a decision. This removes the ability of an official from unduly withholding approval and removes much of the personal interaction between the official and the applicant (World Bank Group, 2000).

The success Seoul has earned is attributed to several factors. Most importantly the leadership was strong and committed to reform, which is likely partially due to large-scale public pressure for reformation. The use of IT has also helped the cause a great deal; it has depersonalized many of the services, therefore reducing the opportunities for corruption and has allowed for instant two-way communication.

Also, a group called Citizen's Alliance for 2000 General Elections effectively used the internet, both email and web, to disseminate information on candidates who had been involved in corruption scandals and resistance to anti-corruption and democratic reforms. This effort was deemed largely successful, as 70% of candidates mentioned were not re-elected.

## **PROMOTING AWARENESS IN EL SALVADOR**

There is a nongovernmental organization, Probidad, provides anti-corruption information via email to domestic and international organizations. In addition, they maintain an interactive listserv of 500 Latin American journalists who form Journalists Against Corruption. The listserv provides information and services to the journalists to aid in their investigations into corruption. Once a month they also profile a website which has used the 'best practice' to curtail corruption activities (Transparency International, 2003b).

## **PROMOTING AWARENESS IN MONGOLIA**

Mongolia has a relatively low perceived corruption, but it is on the rise. A competition was held, largely for journalists, TV and radio reporters and artists on the topic of corruption. TV and radio channels were approached and they agreed to provide free slots for the winners and free advertisement. They helped with the drafting of the rules to ensure the format was compatible with their own. Judges were chosen from well-known corruption opponents. The event was well received and all entries were publicly displayed for a period of two weeks, which generated a lot of media interest. During the time frame when the advertisements were being played on TV and radio, while top essays were published in a daily newspaper, anti-corruption links received the most hits on the media sites. Subsequently, a selection of the essays and posters were printed and distributed across schools.

The project is thought to have been a success although that is difficult to gage. It has raised awareness though, during the weeks of displays, the anti-corruption information on the government website was the most frequented link. One drawback is the cost, substantial prize money was offered for winning entries, three categories with a top prize of \$1000 and two more at \$800, along with lesser prizes. Funding for this was provided by a NGO, 'The Partnership for Transparency Fund' (2000).

## **MALAYSIA**

Ten years after independence, the country was largely corruption free society, but was divided along cultural and racial lines, which eventually turned into race riots. The government instituted a thirty-year plan of positive discrimination to attempt to raise the politically dominant but economically weak Malays (versus the Chinese) and developed from an agricultural based economy.

The program met all its social and economic goals but the newly created public enterprises were poorly controlled leading to corruption. A new Anti-Corruption Act<sup>5</sup> was passed in 1997, which created the Anti-Corruption Agency (ACA), increased investigative powers and raised the fine to 5 times the amount of the bribe (Government of Malaysia, 2003). It also required public servants to declare their assets. There was a plea for public information that was largely ignored until a program was set up to ensure anonymity. These issues were dealt with in a timely manner, which provided proof to the public, who then continued to tip off the agency.

The government had previously set many regulatory agencies in all aspects of commercial and industrial life, including licensing. The system became so complicated and approval was required for so many issues, that it was the perfect environment to breed corruption. The ACA streamlined the approval process. This allowed foreign and domestic financing to pour in, corruption was discouraged from existing and the economy boomed.

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<sup>5</sup> A copy of the act can be found at <http://www1.jaring.my/bpr/English/mainact.htm>

### Administration reforms in Malaysia

- 1) Clocking in and out, all civil servants had to, including judges, armed forces and the Prime Minister!
- 2) Civil servants wore name tags, so they could be identified
- 3) Office procedures and manuals were introduced/improved

Quality control circles, total quality management, clients' charters, and ISO 9000 were introduced along with a code of ethics for judges. This has resulted in strong economic gains (Government of Malaysia, 2003).

## RECOMMENDATIONS

Corruption impedes a country's growth. Transparency International has ranked India in the lower half of developed countries and only marginally ahead of Pakistan. That should be enough to provide impetus for change! The costs of corruption to a country's development and to the poor have been established; the only thing to do is bring about change. Success has been experienced in Hong Kong and other countries that used to suffer from heavy corruption. Lessons can be learned from these locations but they cannot be directly transplanted, care should be taken so fits the Indian mould.

Perhaps the most important issue is education. India is the home to 300 million of the world's poor and approximately 2/3 of the population is rural. These pose problems to mass education, but they need to be overcome. Citizens must know their rights and what to do if they are infringed upon. With education of the costs of corruption and individuals' rights, will come intolerance to it, as people realize it does not have to be this way. A traveling education program could be created to inform rural dwellers the effects of corruption and their rights.

In many cases, there already exist rules against corruption and bribery but they are not enforced. Currently within India there are several less effective bodies that deal with corruption. The relevant authorities must be given the resources and independence to enact these laws. In addition to empowering authorities to combat corruption, efforts must be taken to reduce opportunities for it to happen. This includes streamlining legislation, increasing supervision and punishing those who break the law. Along with this comes a somewhat disturbing prospect for India if these laws are going to be applied, they must be applied to everybody. This could potentially mean a huge change for India, if for example traffic and building laws are enforced uniformly.

In order to implement single anti-corruption body, an examination of the traditional ability of the government to combat corruption, whether it is systemic within government departments and the pervasiveness in the general population. The creation of laws and/or

an agency must focus on the type of corruption it is aimed; is it organized, petty, high value such as procurement contracts, high level involving government ministers or a combination of above. These decisions will influence the type of resources; expertise and powers required by an agency. Once the type of corruption is identified then the strengths and weaknesses of existing institutions should be evaluated based on their ability to combat these. Based on the successes/deficiencies of the current agencies it can be determined whether they should be reformed or replaced.

The existence of one agency clarifies for the public and the agency where to go with a corruption complaint and whose responsibility it is to investigate. It is recommended that the relative strengths and weaknesses of existing anti-corruption institutions within India be critically evaluated. An examination into why certain agencies succeed/fail would reveal if India should adopt one powerful anti-corruption agency, or improve the existing ones.

Seemingly, the best approach is the highly touted Hong Kong ‘three-prong’ method focusing on education, investigation and prevention. All of these are seen as equally important, as education teaches people their rights and the costs of corruption, investigation stops individuals and puts fear into those considering corruption, whilst prevention reviews legislation, procedures etc and suggests changes to close avenues of potential corruption.

The ICAC in New South Wales holds public hearings into corruption and can compel individuals to testify. This information revealed cannot be used against the individual in court, but is used to bring to light corrupt areas and individuals. The theory is these people will be shamed into changing and the ICAC can examine and reform the policies and procedures that the individual was abusing, to reduce corruption in the future. This is criticized in Australia, because if the individual is ever brought to court on corruption s/he can plead that they do not have access to a fair trial. The same issue would likely arise in India, but there is widespread corruption and this could be a tool to identify areas that require reform while allowing the individual to go free.

Bringing into existence legislation such as the False Claims Act in the U.S. with Qui Tam provisions appears to be an excellent solution. The law would be much less of a direct threat to corrupt individuals, as a powerful anti-corruption agency would be and therefore would likely meet less opposition. It would provide the impetus for more whistleblowers to come forward. A critical examination of the legislation and ability of the courts to handle potential cases should be undertaken, but the author believes these obstacles can be overcome. Encouraging whistleblowers to come forward raises a dire issue of their safety. The recent Dubey murder has highlighted the need for a significant increase in the protection granted to these individuals. The protection must be independent and able to evaluate the situation and provide the resources deemed necessary in an expedient manner.

It has been argued that corruption in India will not disappear until there is social security. Only when people know that there is a safety net they will stop demanding bribes at any opportunity. At the same time, it is known that the current level of corruption in India significantly hampers the economy, and therefore the ability to provide this security. It is a vicious circle. It may be that petty corruption will be more difficult to remove as public officials often have to support many dependants and taking bribes can be seen as necessary. This argument cannot be applied to the level of corruption, to the systemic nature of the corruption or the large-scale corruption seen in procurement contracts.

Seoul's experience with a corruption perception index of their own departments has been quite successful and inexpensive. Individuals and corporations that have used the services of a department are contacted and questioned on their experience with the department. From this, a ranking is developed of the most corrupt departments, which compels reform to come from within.

The procurement process should be carefully examined to find ways to make it more transparent, such as publishing all bids, with clear guidelines for the selection process. The benefits of electronic procurement include increased transparency, reduction in

paperwork and public feedback. The electronic procurement process that has been created in Andhra Pradesh and Karnataka could be built upon and taken nation wide.

The statute of limitations should run from time the corruption came to light as opposed to the time the corruption was committed as corruption is a largely secret crime that is usually detected significantly after the event occurred. A mandatory review of anti-corruption procedures and policies can be put in place to ensure that policy keeps up with changing realities. In addition to the creation of a Freedom to Information Act, the Official Secrets Act should be reviewed to ensure that it is not too broad.

Paying agents a percentage of the duties collected could be an incentive for enforcing the laws and regulations to combat corruption within customs. This has been used successfully in a number of South American countries.

Most of the suggestions have concerned what a government can do to reform itself, but a large section of responsibility lies with companies acting ethically. Multi-nationals are a large source of bribe payments and until recently several European countries allowed tax deductions for domestic companies that paid bribes in developing countries, as it was seen as a cost of business. This has since been stopped, but it highlights the mentality that still permeates the industry. Enacting anti-bribery legislation that includes that holds the parent company responsible for actions of their subsidiaries, such as the US Foreign Corrupt Practices Act can encourage companies to act more transparently. In addition, contracts, permits etc. that are found to have been granted under corrupt circumstances should be automatically revoked. This will lead to greater diligence by insurance companies that underwrite such contracts. Businesses that have acted corruptly should be banned for a number of years, which has been quite effective in Singapore. The creation of realistic internationally accepted accounting standards would greatly aid in the effective monitoring of companies. Also, the establishment of independent auditing agencies, similar to the US General Accounting Office, would help effectively monitor companies. Corruption sometimes occurs simply because it is easier than attempting to comply with a bewildering array of conflicting regulations. In the US they have enacted a

small business exemption, excluding small businesses from certain requirements therefore simplifying regulations.

Barring government officials and their dependants from holding a paid position in a company helps prevent conflict of interest. At a minimum, such relationships should be disclosed and the officials barred from making decisions affecting those firms. Limits should be imposed on officials once they leave office to obtain positions in companies that conduct business with the department in which they worked. Recently Lok Satta and other civil society organizations forced candidates to reveal their assets. This should be extended to include all public servants and be done on an annual or bi-annual basis and any unexplainable wealth should be investigated. This would greatly encourage public servants to act in an honest manner.

The promotion of independent journalism that can keep watch on corruption is essential. The creation of a newsgroup or listserv amongst journalist, NGO's and others in order to disseminate corruption information can greatly assist informing the public of related issues.

One thing is certain; direction must come from the top that is dedicated to fighting corruption, preferably due to widespread public support. This begs for election reforms to prevent corrupt and criminal officials from office. Public sentiment must be mobilized and people must no longer accept corruption as a fact of life if there is to be change. Apathy is the best friend of corruption. Education must be improved, people must know that there are other ways and it is not necessary.

In this capacity Lok Satta is in the perfect position to make this an important issue. It must be forced as an issue, because in many ways it is not a pressing matter. The sky will not fall if anti-corruption matters are not taken today, but there are always issues such as nuclear war, drought, economy and re-election. It is the latter two issues that can be used to mobilize support. Educate people on the costs, make it an election issue, make it something that politicians HAVE to deal or else the sky will fall.

## CONCLUSIONS

The battle against corruption is long and hard, there is no clear victory and no end. Constant vigilance is required. With this come great rewards, improved economic growth, improved health, and a fair and equitable system among others. But significant change very rarely comes from within; external forces must push it. The political elite currently has no reason to seriously combat corruption. The people of India must make it an election issue.

As much as these policies detailed in the report have been successful in other localities and could potentially be quite effective in India, none of them will work if the political will is not there. Direct transfer of successful efforts in other countries should not be done, but lessons can be learnt and a framework can be built. Changes will have to be made for the different reality that exists in India, than does in Hong Kong or the U.S.A.

The people at the top must be willing to change things. Whether this arises from their own convictions or is 'encouraged' by an impassioned electorate does not matter, but they must believe and implement change. Initiatives can be taken, laws changed and education programs introduced, but if the high level, long-term and serious will to change is not present, these will only be short-term solutions. More than lip service must be paid to combating corruption. It will be very difficult for a good anti-corruption agency to 'clean up' a government. A government that wishes to resist it, as it has many more avenues of approach, will overpower the most powerful anti-corruption agency.

In conclusion, change can occur, should occur, and is in society's benefit to occur. The anti-corruption strategy should focus on education, prevention and investigation and encompass three effective items: laws, an anti-corruption agency, and judiciary. The only thing that remains is for people to demand it.

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