

ANTI-CORRUPTION COMMISSIONS AS A TOOL FOR GOOD GOVERNANCE: Without “Political Will,” It Isn’t Worth It

Almost every country has tried decentralization, unfortunately, the results have mostly been poor.¹ When it comes to decentralization of the forest sector in particular, the results are even worse—in almost all cases, decentralization has failed to improve forest management, income equality, and the empowerment of local people.² The reasons for failure are varied, but where decentralization has been successful it is because governance is sufficiently strong to ensure public accountability.¹ This briefing examines **one of the most common tools to drive such accountability: anti-corruption commissions**, *i.e.*, ‘watchdog’ agencies with the specific purpose of minimizing corruption “by focusing on the prevention, investigation and prosecution of corrupt offences, and the education of the public on the adverse consequences of corruption.”³

Unfortunately, as with decentralization, **the track record for anti-corruption commissions is weak.**⁴ This briefing outlines how countries may avoid pitfalls that have sabotaged so many commission around the world. It reviews the major types of commissions and issues around their formation and operations. It leans heavily on the work of the World Bank,⁵ the U4 Anti-Corruption Resource Centre,⁶ UN Development Programme,⁷ and Transparency International.⁸ While this briefing discusses the role of Indonesia’s highly effective *Corruption Eradication Commission*, known locally by its acronym, the *KPK*—“a clear exception to the established pattern of ineffectiveness”⁹—a separate briefing¹⁰ provides a more thorough analysis of the *KPK*, its origin, functions, and challenges.

Introduction

Corruption is the abuse of entrusted power for personal gain. Where accountability is weak, politicians and bureaucrats can use their positions of power to act corruptly. Non-trivial, the IMF

¹ Blundell AG. 2016a. *Decentralization and the governance of natural resources*. Forest Trends. Washington DC; ‘forest governance’ can be defined as “the set of rules and institutions that control and determine what happens to a nation’s forests and who gains and who gets hurt as a consequence” (Contreras-Hermosilla A *et al.* 2008. *Forest Governance in Countries with Federal Systems of Government; Lessons and Implications for Decentralization*. CIFOR.)

² Larson AM, Soto F. 2008. *Decentralization of Natural Resource Governance Regimes*. Annual Review of Environment and Resources. 33: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1319919

³ Quah JST. 2014. *Combating Corruption in Asian Countries: What Lessons Have We Learnt?* Public Administration & Policy. 16.1:15-34.

⁴ Fjeldstad O-H, Isaksen J. 2008. *Anti-Corruption Reforms: Challenges, Effects and Limits of World Bank Support*. World Bank. http://siteresources.worldbank.org/EXTPUBSECRETF/Resources/Fjeldstad_anticorruption.pdf

⁵ Heilbrunn JR. 2004. *Anti-Corruption Commissions: Panacea or Real Medicine to Fight Corruption?* World Bank Institute. <http://siteresources.worldbank.org/WBI/Resources/wbi37234Heilbrunn.pdf>

⁶ <http://www.u4.no/themes/anti-corruption-approaches-in-sector-work/>

⁷ De Jaegere S. 2012 *Principles for Anti-Corruption Agencies: A Game Changer*. Jindal Journal of Public Policy. 1(1):79-120. <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.471.241&rep=rep1&type=pdf>

⁸ Wickberg S. 2013. *Best Practices for Anti-Corruption Commissions*. Transparency International. http://www.transparency.org/whatwedo/answer/best_practices_for_anti_corruption_commissions

⁹ Bolongaita EP. 2010. *An exception to the rule? Why Indonesia’s Anti-Corruption Commission succeeds where others don’t – a comparison with the Philippines’ Ombudsman*. U4 Issue 4. <http://www.u4.no/publications/an-exception-to-the-rule-why-indonesia-s-anti-corruption-commission-succeeds-where-others-don-t-a-comparison-with-the-philippines-ombudsman/>

¹⁰ Blundell AG. 2016b. *Lessons learned from Indonesia’s model anti-corruption commission*. Forest Trends. Washington DC.

reckoned that in the 1990s corruption in the Indonesian forestry sector represented 20% of operating costs;¹¹ more recently, for logging companies, the costs of corruption associated with just obtaining operating licenses was estimated at between US\$50,000–\$1.6 million per year, depending on the size of their forestry concession—enough to bankrupt some operators.¹² INTERPOL has estimated that worldwide, **the annual cost of corruption in the forestry sector is now some US\$30 billion in lost government revenue alone.**¹³

Unfortunately, the police are unreliable agents to curb corruption in the forest sector, in part because non-violent crime is rarely seen as priority.³ Instead, other mechanisms are needed to ensure “good governance”. These are often termed ‘checks and balances’ because the mechanisms act as a “check” on political power by helping sway the “balance” of power towards civil society in holding the elite accountable. Another briefing in this series examines these integrity mechanisms more fully,¹⁴ but they include institutions like a free press, an independent judiciary, and a Human Rights Commission, as well as a legislative framework that includes things like freedom-of-information and whistleblower protection. **This briefing focusses on a single institution important in checking the power of politicians, bureaucrats, and other elites: an *Anti-Corruption Commission (ACC)*.** How the elite support or reject such a commission can be seen as “a manifestation of a policymaker’s desire to renege on any stated commitment to reform.”¹⁴

The first ACC was established in Singapore in 1952, followed by Malaysia and Hong Kong, giving **Asia the reputation as the “cradle” of ACCs.**¹⁵ The United Nations Convention against Corruption (UNCAC) states that countries “ought to establish a body (or several bodies) to prevent and combat corruption through law enforcement.”¹⁶ Nearly every country now has an ACC; more than 150 have been established worldwide.⁶

In principle, ACCs are an important “accountability mechanism,” but in practice, unfortunately, they generally fail to reduce corruption.³ Indeed, the literature has “grown increasingly skeptical about their merits.”¹⁶ There are many reasons for this failure: “[t]he absence of rule of law, accountability, and political will¹⁷ are considered as fundamental challenges for establishing effective”¹⁶ ACCs. “[F]ew political leaders are able to bind themselves effectively to anti-corruption reforms over an extended period of time. Before too long, strong entrenched interests militate against the commission rendering it impotent or a tool to repress political opponents.¹⁸ In other circumstances,

¹¹ Tanzi V. 1998. *Corruption around the world: causes, consequences, scope and cures*. IMF Staff Papers, 45(4). IMF. Washington, DC.

¹² Kartodihardjo H, G Nagara, AW Situmorang. 2015. *Transaction Cost of Forest Utilization Licenses: Institutional Issues*. JMHT. 21(3):184-191.

¹³ <http://www.interpol.int/News-and-media/News/2016/N2016-033>

¹⁴ Blundell AG. 2016c. *Mechanisms that promote good governance*. Forest Trends. Washington DC; preventing corruption also requires civil servants to be paid a ‘living wage’ and commensurate with responsibilities/experience (Quah 2014).

¹⁵ http://www.transparency.org/news/feature/fighting_corruption_the_role_of_the_anti_corruption_commission

¹⁶ http://www.transparency.org/files/content/corruptionqas/Best_practices_for_anti-corruption_commissions_2.pdf

¹⁷ ‘Political will’ can be defined as “the demonstrated credible intent of political actors (elected or appointed leaders, civil society watchdogs, stakeholder groups, etc.) to attack perceived causes or effects of corruption at a systemic level”; without it, commitments for reform “remain mere rhetoric... To assess the political will of a government in curbing corruption, these two indicators can be used: (1) the per capita expenditure of the lead [ACC] (if there are many [ACCs]) is calculated by dividing its budget for a selected year by the population in the country for the same year; and (2) the staff-population ratio for the same [ACC] by calculating the ratio of the population in the country for the selected year that are served by the number of personnel in the [ACC] for the same year.” (Quah 2014).

¹⁸ For example, in “Cambodia, Prime Minister Hun Sen used the campaign against illegal logging to remove those

commissions represent little more than a perverse effort to signal commitment to international investors and donors while avoiding tough reforms that might improve transparency and accountability in the state.”⁴ ACCs may “have suffered from their success, ending up failing their duties because their zealous leadership are dismissed, imprisoned or forced to resign when they start questioning the status quo.”¹⁹

But where they are effective, ACCs can help move a country away from being a ‘corrupt society’ to being a country where corruption occurs (as has been said about Singapore [see Part 2.2, below]).

Part 1: Conditions for success:

Where anti-corruption commissions have been successful, De Jaegere (2012) “argues that *operational independence* of [ACCs] is the key requirement.” More generally there appears to be four underlying features that are key:

- **A precipitating crisis**—such as a scandal involving the elite (a President, his/her family, or the Chief of Police, *etc.*) or a major financial crisis that generates widespread hardship—that **drives popular support for reform**. Such a broad-based coalition becomes a ‘constituency for change’. Without a crisis, “building such a domestic coalition is a challenge for even the most popular leaders;”²⁴
- A “**free and robust media** that can report about corruption without fear or favour;”
- “**Political will**,” that is, a “**genuine interest and confidence at the highest political levels**”²⁰ about the benefits of having an independent and powerful anti-corruption agency”, and,
- **A charter for the ACC that gives it “the necessary combination of institutional independence, fiscal autonomy, and strong law enforcement powers, particularly in investigation.”**⁹

According to Bolongaita (2010) these are the “basic propitious conditions for the creation and operation of an effective anti-corruption agency”, so if they do not exist then “other anti-corruption instruments need to be considered and crafted according to the particular governance and corruption conditions of the context in question.”

But where these conditions exist, then it may be cost-effective to devote the political capital and the financial and human resources to establishing an ACC in order to increase accountability.

Part 2: Types of Anti-Corruption Commissions

Heilbrunn (2004) outlines four major types of anti-corruption commission:

1. **The *Universal Model*** that gives the ACC investigative, preventative, and communications

military officers who posed a threat to him.” (Quah 2014). Likewise, opponents to the former Presidents of Indonesia and Malaysia were charged with corruption, as have opposition leaders in China and Vietnam.

¹⁹ *e.g.*, South Africa, Portugal, and Italy (Wickberg 2013).

²⁰ One suggestion of measuring an aspect of ‘political will’ is the funding and staffing levels (per capita) of ACCs; in 2008, the median for Asia was Thailand (\$0.33/ and \$86,892/capita); Quah J. 2009, *Benchmarking for excellence: a comparative analysis of seven Asian ACAs* <http://www.scribd.com/rhythmpurple/d/68170515-A-Comparative-Analysis-of-Seven-Asian-Anti-Corruption-Agencies>

- functions, and is organizationally accountable to the Executive;
2. **The *Investigative Model***, a small, centralized organization with a focus on its investigative capacity, accountable to the Executive;
 3. **The *Parliamentary Model***, an organization independent from the executive and judicial branches, answerable to parliament; and,
 4. **The *Multi-Agency Model***, which “includes a number of offices that are individually distinct, but together weave a web of agencies to fight corruption.”

The remainder of this section describes these four models more fully, with a focus on four country examples.

2.1 The Universal Model

Like most ACCs, the Hong Kong’s *Independent Commission Against Corruption* (ICAC) uses a “three-pronged approach of law enforcement, prevention and community education to fight corruption.”²¹ It receives 3,500-4,500 complaints a year, although the ICAC also uses “proactive investigation methods to uncover corruption cases.”²⁸

After a corruption scandal in the early 1970s involving the Chief Police Superintendent, the ICAC was set up in 1974, independent of the Colonial Police. In addition to the ‘political will’ to establish an ICAC, new and amended laws were crucial to its effectiveness by criminalizing a list of offences that “include the obstruction of justice, theft of government resources, blackmail, deception, bribery, making a false accusation, or conspiracy to commit an offence...[The laws gave] authorities discretion to conduct searches, examine bank accounts, subpoena witnesses, audit private assets, and detain individuals...seize passports, property, and incarcerate suspects when evidence suggests a risk of flight.”²⁵ The ICAC “also has the right to protect [the] confidentiality of an investigation.”²⁸

A staff of 1,200+ officers—half of whom have worked at the ICAC for more than a decade⁵—work on a contractual basis, independent of civil service rules but subject to the ICAC’s code-of-conduct. Officers cannot enter the Hong Kong government after they leave the ICAC.

The majority of staff, and almost 74% of the budget (a total of \$112 million in 2012⁷) are for the *Operations Department* that investigates alleged violations.⁵ The smaller *Corruption Prevention Department* “examines practices and procedures of government departments and public bodies to reduce corruption opportunities and offers free and confidential corruption prevention advice to private organisations upon request.”¹⁸ The department also regularly reviews laws, and, based on the hundreds of studies it conducts each year,⁷ suggests reforms to prevent corruption. The *Community Relations Department* “educates the public against the evils of corruption and enlists public support in combating corruption”¹⁸ through campaigns, commercials, and “even films dramatizing the investigation and apprehension of corrupt officials by ICAC officers.”²⁵

The ICAC is held accountable by:

- The *Chief Executive*; the ICAC Commissioner reports to the *Executive Council* on major policy issues;

²¹ http://www.icac.org.hk/mobile/en/about_icac/bh/index.html ; note, however, that “[t]here is, however, a growing consensus in the literature that the Hong Kong experience is not replicable, as it benefited from a unique set of circumstances and favourable conditions” (Wickberg 2013).

- The *Legislative Council* “holds the authority of conferring and repealing the powers of the ICAC”⁵ and provides oversight regarding policy and funding matters;
- **Separate Power of Prosecution:** “[a]fter completion of investigations, the power to prosecute is vested with the *Secretary for Justice*, and the separation of powers ensures that no case is brought to the courts solely on the judgement of the ICAC”;²¹
- **Advisory Committees** comprised of prominent citizens appointed by the Chief Executive and chaired by civilian members, including:
 - *Advisory Committee on Corruption*;
 - *Operations Review Committee*;
 - *Corruption Prevention Advisory Committee*; and,
 - *Citizens Advisory Committee on Community Relations*.
- **An Independent Complaints Committee** “monitors and reviews all non-criminal complaints against the ICAC... [It] includes members of the Legislative Council and prominent members of the community appointed by the Chief Executive;”²¹ and,
- An internal investigation and monitoring unit, *L Group*, which investigates all allegations of corruption and related offences made against the ICAC staff.

Reports and statistics regarding prosecutions are published and disseminated on the internet, where they can be downloaded anonymously.

In addition to the Hong Kong’s ICAC, Indonesia’s *KPK*, Argentina, Botswana, Bosnia-Herzegovina, Guinea, India, Mauritius, and South Korea use the *Universal Model* for their ACCs.

2.2 The Investigative Model

Singapore’s *Corrupt Practices Investigation Bureau (CPIB)*²² was established in 1952, but reorganized in the 1970s when it was given “considerable powers to curb endemic corruption... [The] Government recognized that a credible commitment to fighting corruption was essential to attract investors to Singapore and build an environment conducive to economic growth.”⁵

The CPIB has a staff of only ~75, who’s narrow focus is on investigations. Under Singapore’s *Prevention of Corruption Act*, the CPIB is the only agency authorized to investigate suspects, their family and agents, in both the public and private sector, for corruption and related offenses. The CPIB may seize assets and establish preconditions for jail terms and fines. The CPIB does not conduct prosecutions; cases are turned over to the Attorney General.²³

Although investigations are the focus, the CPIB also makes recommendations on closing loopholes in laws to prevent corruption, and they “leverage on public education and community outreach efforts to spread the anti-corruption message.”²²

A short-coming of the CPIB is that it answers directly to the President of Singapore, which reduces its independence—“countervailing measures that might control the CPIB, or at a minimum place some constraints through oversight mechanisms, are absent.”⁵

²² <https://www.cpiib.gov.sg/>

²³ need to confirm this is correct

While legislation may not have eliminated corruption, it “is a fact of life rather than a way of life. Put differently, corruption exists in Singapore, but not a corrupt society.”²⁵

Lithuania established the Special Investigative Service (SIS)²⁴ in 1997, intentionally modeled on Singapore’s CPIB.⁵ In 2000 the SIS became independent of the Executive branch, answerable to the President and parliament.

2.3 The Parliamentary Model

The jurisdiction of the New South Wales’ (Australia) *Independent Commission Against Corruption* (NSW-ICAC)²⁵ extends to all public-sector agencies and employees (except the NSW Police Force²⁶), including government departments, local councils, members of Parliament, ministers, the judiciary and the governor. A staff of 110 work within an *Investigations Division*, a *Corruption Prevention Division*, and a *Corporate Services Division*, as well *Assessments and Communications* and *Media* sections.

The NSW-ICAC does not investigate private-sector actors “unless public officials and/or public authorities are involved or affected. In some circumstances, private contractors and consultants can be considered to be public officials if they are exercising public official functions.”²⁵ The NSW-ICAC does not have the power to prosecute, but it “can make recommendations that the *Director of Public Prosecutions* give consideration to prosecuting individuals for criminal offences.”²⁵

The NSW-ICAC is independent and does not answer to any Government Minister. It is held accountable through:²⁵

- A *Parliamentary Committee* with members from both houses of the NSW Parliament. A *Legal Unit* within the NSW-ICAC serves as liaison with the *Parliamentary Committee*;
- The *Inspector of the NSW-ICAC*, who may audit operations to monitor compliance with the law, investigate complaints, deal with maladministration (including delays in the conduct of investigations and unreasonable invasions of privacy) and assess the effectiveness and appropriateness of the NSW-ICAC's procedures;
- The *NSW Treasury* and *Auditor General*, who provide budgetary oversight;
- The *NSW Ombudsman*, who can inspect records of telecommunications interceptions, controlled operations and the use of surveillance devices; as well as,
- The *NSW Attorney General* and the judge who issued the warrant for each surveillance device.

The NSW-ICAC is subject to NSW’s privacy and freedom-of-information laws. Reports are available online, anonymously.

There are a number of drawbacks with the parliamentary model. “When the agency is linked only to the Parliament, then the security agencies have a disincentive to include parliamentary committees in their investigations. A competitive relationship may evolve among parliamentarians and national crime investigators. The anti-corruption commission thereby loses credibility as nothing more than a tool of the parliament.”²⁵

²⁴ <http://www.stt.lt/en/menu/about-stt/historical-background/#turinys>

²⁵ <https://www.icac.nsw.gov.au/>

²⁶ Unless the corruption by the police officer involves other (non-police) public officials. A separate Police Integrity Commission investigates corruption within the NSW police.

Moreover, “[t]he parliamentary model presupposes the operation of a functioning parliament with budgetary capacity to fund committees that provide critical checks on executive power...in the absence of independence, a parliamentary commission encounters serious difficulties. For example, Thailand’s Parliament established the National Counter Corruption Commission (NCCC)...[but, the Thai] Senate is subservient to the executive who has a decisive influence in determining the commission’s composition. This reporting structure prevents any independence of the NCCC from the executive and calls into question any effectiveness of Thailand’s anti-corruption efforts.”⁴

2.4 The Multi-Agency Model

The United States Office of Government Ethics (OGE)²⁷ is an autonomous office that represents one component of “cross-cutting agencies that investigate, prevent, and educate a mammoth public sector on corruption.”⁴ The OGE “oversees the executive branch ethics program and works with a community of ethics practitioners made up of over 4,500 ethics officials in more than 130 agencies... When government decisions are made free from conflicts of interest, the public can have greater confidence in the integrity of executive branch programs and operations.”²⁷

The OGE’s mandate is preventative: “to deter conflicts of interest by disseminating information on laws and regulations that govern public sector employment” such as “the length of time between when an official may leave office and accept employment with firms that conduct business with the government, the terms under which a government official may advise a private company, and regulates other activities that involve elected or appointed officials and private sector companies.

“Unlike ACCs in many other countries, the OGE has no investigative function...[R]eports are submitted to the President and Congress for review and when it determines evidence of malfeasance, it submits such evidence to the Department of Justice for investigation and prosecution.”⁴

Another example of a multi-agency approach is Uganda, where the “Museveni government established a triad of organizations to fight corruption through its Inspector General of Government, Auditor General, and Human Rights Commission.”⁵ In Asia, Cambodia, China, India, Laos, Philippines, Taiwan, and Vietnam all have a multi-agency approach to combating corruption.³ But such an approach is rare; most countries combine repression and prevention of corruption into a single agency.

The multi-agency model may create institutional confusion if the agencies’ mandates overlap, especially when they also conflict. In the absence of coordination—which is, unfortunately, often the case—multiple agencies can create duplication and a waste of resources.²⁸

Part 3: Choosing between models

If the conditions outlined in Section 1 exist, then environment may be right to establish, or more

²⁷ <https://www.oge.gov/>

²⁸ Quah JST. 2009, *Benchmarking for excellence: a comparative analysis of seven Asian ACAs*.

<http://www.scribd.com/rhythmpurple/d/68170515-A-Comparative-Analysis-of-Seven-Asian-Anti-Corruption-Agencies>

likely reform: the country's ACC,²⁹ choosing among the models above. This choice will depend on local conditions, but a number of issues should be considered.

3.1 Decentralization

Will the ACC be a centralized body or should regional authorities be responsible for their own ACC, as is the state of NSW in Australia? As covered by a separate briefing,¹ in theory, decentralization should foster accountability by putting decision-makers closer to the communities affected by the decisions made, such as who to investigate/charge with corruption. In reality, “[e]xperience suggests that **the level of centralisation/decentralisation [of ACCs] may not be the primary determinant of their effectiveness.** Factors such as the institution(s)’ independence, specialisation, integrity, capacity, and political back-up seem to influence their effectiveness to a greater extent.”²⁵ Just as a multi-agency model runs the risk of duplication and confusion, decentralization, if uncoordinated, may do the same. Indonesia chose to create a centralized KPK, and only after a decade of success has ‘scaling up’ by contemplated to create regional ACCs.

3.2 Scope

Having decided on the geographical coverage, another choice regards the scope of the ACC. The more functions, the higher the staffing requirements, and the higher the costs. The *Investigate Model*-ACCs in Singapore and NSW have fewer than 110 staff members, whereas the ACCs in Hong Kong and Indonesia, with their broader *Universal Model*, are ten times the size.

A mandate to investigate, prevent, and educate is generally the most effective in combating corruption, although the relative importance of investigations, research, and outreach varies. The NSW-ICAC “has adopted three principles as the basis of corruption prevention: First, prevention is better than the cure. Second, prevention is better than punishment. And third, prevention is better than management.”²⁵

In a few cases, the focus of the country's ACC is entirely on prevention through “corruption-related research, coordination of anti-corruption policies and action plans, monitoring conflict of interest regulations, elaboration of codes of conduct, facilitation of trainings,” policy development, and coordinating institutions. “This is a model that can be found in France, India, Albania and Montenegro, for example,”²⁸ as well as the US OGE.

As discussed in a separate briefing,¹⁰ the Indonesian *KPK* chose a dual mandate: prosecution and prevention. Prosecution acts as a deterrent by punishing corruptors. **Prevention ideally reduces the opportunities for corruption, in large part through legislative and institutional reform.** Truly complementary, the two mandates reinforce each other, an approach that uses both “carrots” and “sticks”. Prevention is the carrot, where actors are driven to comply because of the stick: prosecution. Although prosecutors can never charge all those corruptors, fewer actors would comply with the reforms outlined under the prevention mandate without the credible threat of prosecution. Repression on its own will never be sufficient to turn Indonesia from a corrupt society into a country where corruption occurs.

²⁹ Mongolia, Nicaragua [and] Columbia have, for example, built the anti-corruption expertise within existing institutions in the form of specialised units the Public Prosecutor office. Countries like South Africa, Bulgaria or Germany have also opted for strengthening existing institutions rather than creating a separate body. See: Chêne M. 2012. *Centralised versus decentralised anti-corruption institutions*. U4. <http://www.u4.no/publications/centralised-versus-decentralised-anti-corruption-institutions/>

3.3 Prosecution

Prosecution is, however, expensive, and many countries prefer to leave prosecution to the Attorney General's Office (AGO), even if its ACC is responsible for some aspect of repression, through detection and investigation, for example. However, **if the Department of Justice and the AGO are seen as irredeemably corrupt and/or incompetent—at least in the near term—then the ACC should be given this authority. In Indonesia, the KPK was not only given prosecutorial authority, but an entirely new and separate court (with its own *ad hoc* judiciary) was created under the new anti-corruption legislative framework.**³³

3.4 Additional responsibilities

As part of the prevention mandate, many **ACCs are responsible for anti-corruption initiatives like the monitoring the assets** (including gifts to politicians & bureaucrats), liabilities, and lifestyles of senior officials, including election candidates. Regardless of the range of responsibilities, the **ACC will need the concomitant resources to do their job, as well as the authority to compel compliance.**

3.5 Jurisdiction

A further aspect of scope relates to who the **ACC can target as suspects: only the public sector** (as with the NSW-ICAC) **or also the private sector** (as with the Hong Kong and Singapore ACCs). Further, in NSW, the ACC may not investigate the police (unless the police is involved with other government officials). Similarly, in Indonesia the *KPK* has not prosecuted the military. “[I]t appears that **exclusion—at least in the initial years of an anti-corruption agency—may be advisable for both strategic and tactical reasons.** Excluding the military reduces the risk of an anti-corruption agency being spread too thinly and eviscerated by violent retaliation before it could develop and consolidate itself.”³⁸

3.5.i Corruption related to natural resources during times of conflict

The illegal exploitation of natural resources, like forests, during war time is a war crime (pillaging) under the Geneva Conventions and many domestic statutes.³⁰ Moreover, for war crimes, there is no statute of limitations on prosecution. Even if ACCs do not have the ability to prosecute certain groups, like the military, in the near-term, **officers may be subject to the prosecution for the pillage of forest resources, should the “political will” for such accountability evolve.**

3.6 Materiality

A further decision relates to focus—who will the ACC investigate and prosecute: the small fry or the big fish. The Indonesian *KPK* has set a relatively high bar for its investigations: there must be at least US\$100,000 in state loss. This **high level of *materiality* helps ensure that ACCs are not used to harass minor players, but they instead focus on those elites behind the most corrupt schemes.**

Part 4: Principles and standards

Once a model and its scope is chosen, the **ACC must be established with a constitution and legislation that provides and protects it.** In 2012, countries agreed to just such a set of standards,

³⁰ Stewart J. 2011. *Corporate War Crimes: Prosecuting the Pillage of Natural Resources*. Open Society Institute. <https://www.opensocietyfoundations.org/sites/default/files/pillage-manual-2nd-edition-2011.pdf>

known as *The Jakarta Statement on Principles for Anti-Corruption Agencies*³¹ that include:

- **A broad and clear mandate** to tackle corruption through prevention, education, awareness raising, investigation and prosecution; this work should be conducted in **collaboration with state agencies, civil society, the private sector, and with international cooperation**;
- **Permanence guaranteed by a legal framework**, such as a constitution or a special law;
- **Neutral appointment** of leadership through a process that ensures their independence, impartiality, neutrality, integrity, apolitical stance, and competence;
- Removal of leadership and continuity: It is essential for the **independence** of ACCs that their heads have security of tenure and can only be dismissed through a procedure established by law³², and that clear lines of authority exist during the interim period while new leadership is put in place;
- **Ethical conduct and governance**: ACCs ought to adopt codes of conduct that set high standards for employees; **internal and external accountability**; and employees shall have **immunity** for acts committed within the performance of their mandate;
- **Resources**: adequate and reliable resources for a functioning ACC with a sufficient number of qualified staff, with the power to recruit and dismiss their own staff according to transparent, professional procedures, and financial autonomy;
- **Outreach**: public reporting and engagement provides both opportunities for civil society oversight and public confidence in the independence, fairness, and effectiveness of the ACC.

These broad principles can be operationalized through a number of measures.

4.1 Legal status

A strong legal mandate is essential. This should be codified in the ACC's constitution or in a special law to ensure the permanence of the ACC. **Establishing an ACC through executive order or decree is expedient, but too easily annulled.**⁵

4.2 Independence

The experience in South Africa with political interference in its anti-corruption policing is instructive:

In "*Glenister v. President of the Republic of South Africa and Others*, a case led by a disgruntled citizen of South Africa against the President of the Republic over the dissolution of the *Scorpions* [an agency independent of the South African Police Services (SAPS) tasked with fighting corruption and organized crime] and their replacement by the *Hawks* [an arm of SAPS], the Supreme Court ruled that 'international law [...] unequivocally obliges South Africa to establish an anti-corruption entity with the necessary independence [and...] infringes a number of rights, [including] the rights to equality, human dignity, freedom, security of the person, administrative justice, and [...] the rights to education, housing and healthcare'... '[T]he appearance or perception of independence plays an important role in evaluating whether independence in fact exists' and... 'public confidence [...] is indispensable...because public confidence that an institution is independent is a component of, or is constitutive of, its independence.'

4.3 Leadership

Choosing leadership through the participation of parliament helps provide the ACC with

³¹ https://www.unodc.org/documents/corruption/WG-Prevention/Art_6_Preventive_anti-corruption_bodies/JAKARTA_STATEMENT_en.pdf

³² One suggestion is that the process should be similar to that for the judiciary.

integrity as it better represents a consensus choice between the political majority and the opposition.⁷ “Experts tend to agree that a dismissal procedure involving only the judiciary and the executive powers is undesirable and that the parliament should have a say, through a two-thirds majority (IACC 2010). If the [ACC] head were to be suspended, dismissed, to resign or retire, [authority...] should be delegated by law to an appropriate official from the [ACC], within a reasonable timeframe until the appointment of a new head. Such a mechanism avoids [ACC] becoming paralysed in the absence of a leader.”⁸

4.4 Single vs. Collective Leadership

“The rationale for having a collective of commissioners is that they may be less susceptible to outside pressure, particularly if they are appointed through a shared process that loosens the ties between nominating groups and nominees. As is the case in Myanmar and the Republic of Korea, there may still be a decision-making hierarchy.”³³

4.5 Investigative authority

“Without the legal tools to go after venal officials, a commission cannot succeed” (Heilbrunn 2004). **An ACC “without the powers to conduct wiretaps, investigate financial records, freeze assets, and apprehend suspects is a useless entity... Endow the agency with both investigative and prosecutorial capacity, and shared responsibility for prosecutorial decisions.”**⁹

4.6 Resources

It goes without saying that the ACC must be **adequately staffed, provided with necessary equipment and a sufficient budget** in order to meet its mandate. “The European Partners against Corruption state that the adequacy of resources can be assessed by qualitative indicators, such as regular increases in resources, stability of human resources, reliability and integrity of staff members, efficiency of recruitment procedures, etc.”⁷

4.7 Confidentiality

A basic tension within ACCs is between transparency and confidentiality in order to protect witnesses and drive investigations. “[C]onsistent with freedom-of-information laws, the public has a right to information so that anyone in civil society can provide oversight. But this right is juxtaposed by the need for confidentiality: “The European Partners against Corruption point to **the importance of preserving the confidentiality of investigations to protect the interests of all parties** involved (whistleblowers, suspects, witnesses, etc.)”⁸ An Independent Inspector (as in the *NSW-ICAC*) can help provide oversight while maintaining the necessary confidentiality.

4.8 Reporting & Oversight

Oversight is bolstered by “a **clear reporting hierarchy** that comprises executive officials, parliamentary authorities, and oversight committees...[which] may seem elementary, but it is not a straightforward arrangement. An optimal hierarchy might be reports delivered to the director of the organization, oversight committees, and then simultaneously shared with the Parliament and the executive.”⁵

³³ Schütte SA. 2015. *The fish's head: Appointment and removal procedures for anti-corruption agency leadership*. U4. <http://www.u4.no/publications/the-fish-s-head-appointment-and-removal-procedures-for-anti-corruption-agency-leadership/#sthash.xfPRvAFi.dpuf>

Part 5: Conclusion

The successful decentralization of natural resource management is predicated on good governance.^{1,14} When run effectively, as in Indonesia for example,¹⁰ an anti-corruption commission (ACC) can be a vital mechanism to balance the power of civil society to check elites and hold them accountable. The good news is that the United Nations Convention against Corruption states that countries “ought to establish” an ACC and almost every country now has one.

The bad news is that most ACCs fail to make a meaningful impact on corruption and are often established merely to pacify international donors and delay real reform. To add insult, ACCs are expensive to operate (in terms of both financial and political capital) and thus preclude other, potentially more effective, integrity mechanism at providing checks and balances.

But it is possible to get it right. Where ACCs have been effective there has been a precipitating crisis that drove popular support for reform and the ‘political will’ at the highest political levels to allow the ACC “the necessary **combination of institutional independence, fiscal autonomy, and strong law enforcement powers, particularly in investigation,**”⁸ **guaranteed by a strong legal framework.**

Beyond these conditions, getting it right means understanding the national context to choose whether to simply coordinate agencies in the fight against corruption or to create [or reform] a single agency with this authority. Having made that decision, a choice must be made whether to give the authority to power to investigate/prosecute/educate or simply some subset of these tasks, and whether to make the authority answerable to the executive or more broadly to the legislature. As discussed in this paper, each decision has its implications (on cost and independence, for example).

In summary, while in theory ACCs can play a strong role in holding elites accountable and thus in generating ‘good governance’ crucial to the management of natural resources, if not society more broadly, in reality the experience around the world has been poor. Therefore, caution should be used in advocating that financial, human, and political resources be devoted to a country’s ACC. That is, **unless there is clear “political will” to pursue the fight against corruption through an ACC, it is worth evaluating whether other “integrity mechanisms” might not be more effective.**