

Independent Anti-Corruption Agencies

*There are several good protections against temptations, but the surest is cowardice.
Mark Twain, "Pudd'nhead Wilson's New Calendar," Following the Equator, 1897*

As the corrupt grow more sophisticated, conventional law enforcement agencies are becoming less able to detect and prosecute complex corruption cases. Furthermore, in a system in which corruption is endemic, conventional law enforcement mechanisms may themselves harbour corrupt officials.

In recent years, governments have sought to bolster detection efforts (or at least to create the impression of their intention of doing so) by introducing "independent" Anti-Corruption Agencies or Commissions.¹ Indeed, the institution has become fashionable. But is it, and can it be, effective?

It is, of course, possible to combine such an Agency with the office of the conventional Ombudsman (as in Uganda and Papua New Guinea). Others would argue that there is a clear distinction between the two roles: that the Ombudsman is there to promote administrative fairness, and that this is best achieved by winning the confidence of the bureaucracy. An Agency or Commission which is also charged with the investigation and prosecution of public servants is more likely to be feared than trusted.

It is important to understand from the outset why it is that the Hong Kong model has proved effective. This is not just because of the quality and determination of its staff, and of the excellent legal framework which has facilitated their work, but because the concepts of prevention and prosecution have both been functions of the Commission. Prevention has not been a last, single line - a draftsman's after-thought - in the law establishing their responsibilities. Prevention (and the community education and awareness-raising that goes with it) has been a core activity of the Hong Kong model, often informed by the revelations of investigators working on the enforcement side. This enabled the Commission to develop a coherent and coordinated set of strategies, with results that are the envy of many. Those who have tried to copy the model have largely failed because they have lacked both this coherent approach and the resources necessary to carry it through.²

Why anti-corruption agencies fail...

Anti-corruption agencies can fail because of:

- **Weak political will** – vested interests and other pressing concerns overwhelm the leadership
- **Lack of resources** – there is a lack of appreciation for the cost-benefits of a "clean" administration and of the fact that an effective Agency needs proper funding;
- **Political interference** – the Agency is not allowed to do its job independently, least of all to investigate officials at the higher and highest levels of government;
- **Fear of the consequences** – a lack of commitment and a readiness to accommodate the status quo lead to agencies losing independence, resources, or both;
- **Unrealistic expectations** – fighting systemic corruption is a long-term exercise;
- **Excessive reliance on enforcement** – the effective preventive capacities of the agencies are not fostered;
- **Overlooking the elimination of opportunities** – relying on enforcement after the event, corruption levels continue unabated;
- **Inadequate laws** – without enforceable and effective laws, an Agency is hamstrung;
- **Being overwhelmed by the past** – a new Agency, usually small and needing to settle in, can be overwhelmed by inheriting the total backlog of unfinished business from other enforcement agencies, crippling it from day one;
- **Failure to win the involvement of the community** – lack of public awareness campaigns, etc.;
- **Insufficient accountability** – if the Agency is not itself accountable in appropriate ways, it can become an Agency for persecuting government critics;
- **Loss of morale** – as people lose confidence in the Agency, its staff lose morale;
- **The Agency itself becomes corrupt...**

*Adapted from Bertrand de Speville,
"Why do anti-corruption agencies fail",
Vienna, Austria, April, 2000.*

¹ The usual "model" is the Hong Kong Independent Commission Against Corruption. This Commission serves not only to accept and investigate (but not prosecute) allegations of corruption, but also to run public awareness campaigns and to audit the

management systems of individual government departments and agencies, from an anti-corruption perspective.

² E.g. Zambia.

Pakistan's National Accountability Bureau to share in money recovered

Pakistan's National Accountability Bureau (NAB) will get a handsome share in any money recovered because of its efforts. The NAB will get different percentages of the recovered amount as five different categories have been created for this purpose. It will get three per cent as services and reward charges on money recovered from loan defaulters. In the case of the recovery of loans written off by the banks, the organisation will get 20 per cent of the recovered amount. When the NAB helps in the recovery of known taxes, it will get 10 per cent share while in the case of the recovery of evaded taxes etc, NAB's share will be 30 per cent. Money recovered from government officials earned through illegal means and corruption will fetch the organisation 25 per cent of the total recovered amount.

Dawn News Service, 13 July 2000

It is also important from the outset, to assess whether such a new body is necessary, and in particular, whether the costs of running a properly-funded Commission can be assured. An underfunded exercise will be doomed to failure. Some administrations provide their agencies with a "share" of what they recover, although this approach can lead to overzealousness and abuse.

Where should the Agency be positioned?

Success in Singapore owes much to the determination of its former Prime Minister and Head of Government, Lee Kuan Yew. Some writers have pointed to the Agency's placement in the office of the Prime Minister as being an important factor in its success.³ The positioning of the office was also a key factor in Hong Kong's highly successful onslaught, where it was placed in the office of the Governor, but where at the same time it reports to the Legisla-

ture and its separateness from the public service and its autonomy of operation were, and are, reflected in law and practice.

However, whether this particular feature is a model for others to follow depends very largely on whether appropriate accountability mechanisms are in place.⁴ Such an Agency can itself be used corruptly by turning it - and its formidable array of special powers - against political opponents. The introduction of any Agency must guard against this possibility. Continuing integrity at the highest levels of government is certainly an asset, but should not be assumed. The worst excesses of "grand corruption" can take place in and around the Office of the President. An Anti-Corruption Agency placed in such an office is hardly in a position to tackle superiors in the Office hierarchy unless it is supported by other accountability mechanisms. Thus, the Agency should be responsible to the Legislature and to the courts, in much the same way as an Ombudsman. Citizens' advisory committees monitor the daily work of the Hong Kong Independent Commission Against Corruption (ICAC), building added public confidence in the institution.

Conceptualising the framework of an Anti-Corruption Agency

To operate successfully, an Anti-Corruption Agency must possess the following:

- committed political backing at the highest levels of government;
- adequate resources to undertake its mission;⁵
- political and operational independence to investigate even the highest levels of government;
- adequate powers of access to documentation and for the questioning of witnesses;
- "user-friendly" laws (including the criminalisation of "illicit enrichment"); and,
- leadership which is seen as being of the highest integrity.⁶

It is also important that any special powers conferred on an Anti-Corruption Agency conform to international human rights norms, and that the Agency itself operates under the law and is

3 Singapore's legislation is found in the Best Practice section of the Internet version of this Source Book: www.transparency.org.

4 Hong Kong started with unusual advantages. It had an expatriate senior public servant as its Governor and head of government, not someone with family and a history of connections in the then-colony. He enjoyed a handsome pension and high status in retirement. He was thus someone uniquely quarantined from most of the pressure points to which a local citizen can become subject. At the time the Commission was established, Hong Kong already had a functioning judicial system, upholding the Rule of Law, and a prosecution service that could be relied upon to exercise discretions to prosecute, and to conduct

prosecutions, in a highly professional manner. (It subsequently prosecuted and jailed a director of public prosecutions when he stepped out of line.)

5 Some such Agencies have failed to get started at all because of a reluctance (or refusal?) to make adequate resources available to them.

6 Legislation can provide that the head of the Agency be appointed either by the leaders of the governing and main opposition political parties, or in the same way as a superior court judge. It can also provide that appointments be confirmed by the Parliament or Legislature.

accountable to the courts. In setting the parameters for the establishment of an Anti-Corruption Agency, a government must ask itself if it is creating something that would be acceptable if it were an opposition party. Very often the answer changes with perspective. The search should be for a formula which seems fair and workable to everyone, whether in or out of government. Above all, it should allot appropriate powers of investigation, prosecution and, sometimes most importantly, prevention. It must be such that the Agency will survive changes in power.

The following major considerations raise issues of appointment and accountability and should be borne in mind:

- an Anti-Corruption Commission may not be independent if it can come under political direction and be used as a weapon to attack critics; and,
- the Agency can, itself, become an agency for extortion and corruption.

Appointing the head of an Anti-Corruption Agency

From the outset, the shape and independence of an Agency or Commission (however styled) may well be determined by how the officeholder is appointed or removed. If the appointing mechanism ensures consensus support for an appointee through Parliament, rather than government, and an accountability mechanism exists outside government (e.g., a Parliamentary Select Committee on which all major parties are represented), the space for abuse or non-partisan activities can be minimised.

A flaw in many legislative schemes involves giving a President (or any political figure) too much control over the appointment and operations of an Anti-Corruption Agency. The President is the head of the Executive, and members of the Executive can also succumb to temptation. This could place the President in the impossible position of deciding whether or not to prosecute close political colleagues. For example, Tanzania's legislation provides that all reports be forwarded to the President in confidence, and, as a consequence, the Tanzanian anti-corruption system has not functioned with any real effect and has completely lost public confidence.⁷ By contrast, surveys of the public in Hong Kong over the years have confirmed a confidence rating of its ICAC among the population of between 98 and 99 per cent - well above that of any other agency of the administration.

It is therefore important that the appointment procedure be one which recognises that the task of the office holder will be to maintain a check on the Executive and, in particular, the political party in power. If the Executive or even the ruling party were to have a free hand in making the appointment, there would be an immediate loss of practical effectiveness and of public confidence. At best, appointees would risk being seen as hand-picked supporters who could be relied upon not to rock the boat. At worst, they would be seen as the party's "hatchet men". It follows that the appointment procedure must be one which involves a broader cast of actors than those presently in power.

The precise appointment procedure will vary from country to country, but each should address the issue of whether the proposed mechanism sufficiently insulates the appointment process. It must be one which ensures that an independent person of integrity is likely to be appointed,

⁷ Discussions with senior members of the Prevention of Corruption Bureau (Tanzania, 1995-98), revealed that when the late Julius Nyrere was President, the Tanzanian Prevention of Corruption Bureau functioned effectively. The President personally acted on its reports and had the moral authority to require eth-

ical conduct from other leaders. Under Nyrere's successor, however, the reports were ignored and corruption mushroomed. By the time Benjamin Mkapa was elected as the country's third President, the Bureau, along with many other institutions, had fallen into disrepair.

and that such a person is adequately protected while in office. The office-holder should also be afforded the same rights of tenure of office as those enjoyed by a superior court judge. Removal from office should never be at the discretion of the powers that be, but only in accordance with a prescribed and open procedure, and only on the grounds of incompetence or misbehaviour.

Checks and balances in designing the framework

It is also worth considering whether the framework should provide for a procedure to deal with the theoretical situation of the Anti-Corruption Agency or Commission finding evidence that a President may have acted corruptly. Although the likelihood of this happening may be remote, lawmakers must look ahead to unpredictable eventualities. They must also reflect on the issue of public distrust if the President is seen as being outside the scope of the Agency's effective jurisdiction. Even more significantly, a special provision will send the very important signal to the public that the government and Parliament are serious about countering corruption and that no-one is exempt from the Rule of Law. It has also been suggested that the public relations aspect of this provision alone warrants its inclusion.

The head of an Anti-Corruption Agency cannot generally prosecute a President while in office, as he or she is usually immune from suit or legal process under the Constitution. Impeachment proceedings will generally follow the Standing Orders of the Legislature or Parliament, with the Speaker presiding over the proceedings. This immunity gap can be closed if the anti-corruption legislation allows the head of the Anti-Corruption Agency to report the matter in full to the Speaker of the Parliament where:

- there are reasonable grounds to believe that the President has committed an offence against the Act; and
- there is prima facie evidence of this which would be admissible in a court of law.

Thereafter, it would be the responsibility of the Speaker to proceed in accordance with Standing Orders. An alternative is to provide for a Special Prosecutor, along the lines of the United States legislation.

Powers of suspension are rightly written into legislation. Where there is reasonable cause to believe that powers are being misused, it makes sense to be able to suspend officials while investigations are taking place. However, these powers can easily be abused. In one African country, for example, a high profile political figure was kept in jail simply because the regime had not appointed a judge to the Supreme Court.⁸ One can imagine a scenario in which the head of an Anti-Corruption Agency might be suspended by some President in the future, simply because he was investigating allegations which might be politically embarrassing. There must always be an appropriate check.

Is there a role for a Cabinet Minister in such a system of checks and balances, and if so, what should it be? For example, an Anti-Corruption Bill in Malawi stated that the Director or Head of the Anti-Corruption Agency "shall be subject to the direction and control of the [relevant] Minister on all matters of policy, but otherwise not be subject to the control or direction of any person in the performance of his professional duties".⁹

8 In Nigeria during the recently-ended era of military dictatorship, members of the Supreme Court disqualified themselves from hearing an appeal by Chief Abiola. Abiola was widely believed to have won a democratically-conducted presidential election, in June 1993, which had been aborted by the military regime before the results were announced. The judges disqualified themselves on the grounds that they were plaintiffs suing

one of Abiola's newspapers for defamation. As a result, the court lacked a quorum to hear the case and the military regime failed to make the necessary judicial appointments to enable Abiola's claim to be determined. Abiola died in prison in July 1998, without his appeal having ever been considered.

9 Section 5 (2).

But what does this actually mean? Where does “policy” end and “professional duties” begin? Would it be a matter of “policy” to decide not to investigate, for example, other Ministers? And why is this provision needed at all? Would it not be better that all instructions from the Minister to the head of the Agency be in writing and tabled in Parliament to ensure that the relationship is transparent? Or that the head of the Agency be equated to the Ombudsman: an independent officer reporting through the elected representatives to the people on a matter of common concern?¹⁰

In the customary African model, the report of an Anti-Corruption Agency or Commission investigating the allegedly corrupt conduct of any public official must generally go directly to the President or to the Minister. However, where a Commission has been placed wholly in a President’s Office (without the support of other separate accountability mechanisms), and so reports only to the President, it has generally been conspicuously unsuccessful in tackling high-level corruption.¹¹ In South Africa, where the “Heath Commission” required the approval of the Minister of Justice before it could act on a particular complaint, the working relationship collapsed on a change of Minister in 1999.

The relationship between the Anti-Corruption Agency and the Director of Public Prosecutions (DPP) is also a critical one. What use is evidence if the suspect cannot be prosecuted? Generally a DPP is given, under the Constitution, sole oversight for all prosecutions and is empowered to intervene in any criminal proceedings initiated by any other person or authority. However, in assessing the independence and the likely effectiveness of the Anti-Corruption Agency, the question arises whether, under the Constitution, the DPP enjoys sufficient independence in exercising the discretion to prosecute so as to ensure that there will be little scope for political interference after investigations by the Agency have been completed.

The Agency’s relationship with the public is also critical to success. Some Agencies, such as the highly-successful Hong Kong ICAC, have established formal arrangements whereby public participation in policy formulation is ensured. By providing for such an arrangement, which could take the form of a committee chaired by the Minister of Justice, the anti-corruption framework encourages public accountability.

The relationship with the public is also important in laying the foundation for the “prevention” function of an Anti-Corruption Agency. The framework must provide for the involvement of a wide range of people and interests in the formulation of prevention policies and their execution. In this way, various stakeholders become involved in the prevention process, and their own institutions - both within government and in the private sector - can be mobilised in support of the Agency’s efforts. Another important factor is how the Agency can, in practice, change corrupt practices without expanding its powers beyond its mandate to include enforcement.

It would be misleading to think that all recommendations from an Agency or Commission will always be relevant and practical. It might, therefore, be counterproductive to give an Agency the power to require that specific changes be made. It may be better for the head of the administration to direct departments to cooperate with the Agency, and for the Agency to sit down with a department’s line management and work out practical and acceptable changes to the system under review. Solutions thus worked out together should be implemented by the

10 These topics were debated by 120 MPs in Malawi at a workshop in Zomba in October 1995, at which the overwhelming view was that such an office “belonged” to the Legislature and that the less the Executive (whom it was to watch) had to do with

appointments, removals and its operations, the better.
11 For example, Zambia, Tanzania and Uganda (prior to the advent of the Museveni government).

department. If not, the department should owe an explanation to both the head of the administration and to the Agency. There may, for example, be some change of conditions that renders a recommended reform no longer appropriate.

Nevertheless, some countries have found that a public service can ignore an anti-corruption body's recommendations. What is the answer? Can Parliament, perhaps through the Agency's annual report or otherwise, be used as a forum in which departments who fail to cooperate can be questioned and held to account for any such failure to revise bad practices?

Another important factor to be considered in establishing the legal framework for an Anti-Corruption Agency or Commission is that adequate powers are given to access documentation and to question witnesses. In some countries, efforts are made to restrict the access of an Agency to information. However, there is no reason, in theory or in practice, why an Agency ought not to enjoy, as the Ombudsman does, all the rights of law enforcement officers and full access to government documents and public servants.

Should a new law be retrospective?

A new Anti-Corruption Agency is usually established in a situation where corruption has become out of control. There will be a large number of outstanding cases requiring attention, and at the same time, urgently needed reforms in official practices and procedures. There will also be a sceptical public, unsure as to whether the anti-corruption efforts are genuine. In such circumstances it is easy for a new Agency to be swamped by old cases, and quickly take on the appearance of being just another ineffectual body. How can these dangers be avoided?

It is generally most constructive for the legislative framework to provide that a new Agency or Commission will focus on the future, rather than be forced to deal with outstanding and perhaps crippling caseloads inherited from the police. Such a burdensome state of affairs could quickly overwhelm the new Agency with enforcement obligations at the expense of other essential tasks of prevention and containment. The Hong Kong ICAC, acknowledged as one of the most successful anti-corruption bodies yet to be established, overcame this through legislation which stated that:

Notwithstanding section 12 (jurisdiction), the Commissioner shall not act as required by paragraphs (a), (b) and (c) of that section in respect of alleged or suspected offences committed before 1 January 1977 except in relation to:

- (a) persons not in Hong Kong or against whom a warrant of arrest was outstanding on 5 November 1977; (b) any person who before 5 November 1977 had been interviewed by an officer and to whom allegations had been put that he had committed an offence; and (c) an offence which the Governor considers sufficiently heinous to warrant action.¹²

Such legislation leaves existing offences to be dealt with in the ordinary way (by the police) and under the existing law. However, it also allows flexibility with respect to those cases which occurred in the past but which a Head of Government deems in the public interest to be important enough to be investigated by the Commission. Including this kind of provision in the legislative framework helps a Commission begin on a "fresh footing" and allays any possible fears about witch-hunts over past events. It also makes the whole idea of putting the past aside more palatable.

¹² Section 18A, Hong Kong Independent Commission Against Corruption Ordinance (Cap. 204).

Freezing assets, seizing travel documents, protecting informers, professional privilege

It is important that the Anti-Corruption Agency or Commission have the power to freeze those assets which it reasonably suspects may be held on behalf of people under investigation. It should be able to do so prior to getting a court order when speed is of the essence. Without this power, bankers could simply transfer money electronically in a matter of minutes. There should also be a corresponding right of application to the High Court where a third party feels aggrieved.

It is also usual for an Agency to have the power to seize and impound travel documents to prevent a person from fleeing the country, perhaps in emergency cases even to do so temporarily without having to wait for a court order. This is needed as the Agency's power of arrest generally arises only when there is reasonable cause to believe that an offence has been committed.

It is also customary that the Agency have the power to protect informers. In some cases, informers may be junior government officials who complain about the corrupt activities of their supervisors. (They cannot be expected to complain if they risk losing their jobs or other forms of harassment.)

Not only should there be legislative protection for informers, but physical protection should also be available - extending, where necessary, to safe houses and, in exceptional cases, sanctuaries in other countries.

In the context of protecting all informants, the relevant provisions in Botswana's legislation read as follows:

45. (1) In any trial in respect of an offence under Part IV, a witness shall not be obliged to disclose the name or address of any informer, or state any matter which might lead to his discovery.
- (2) Where any books, documents or papers which are in evidence (contain his name, etc.) the court...shall cause all such passages to be concealed from view or to be obliterated so far as may be necessary...
- (3) If in any such proceedings...the court, after full inquiry into the case, is satisfied that the informer wilfully made a material statement which he knew or believed to be false or did not believe to be true, or if in any other proceedings a court is of the opinion that justice cannot be fully done between the parties thereto without disclosure of the name of the informer...the court may permit inquiry and require full disclosure...¹³

Legislation should also ensure that legal practitioners, accountants and auditors can all be required to disclose certain information about their clients' affairs notwithstanding professional privilege.

Monitoring assets and incomes of public sector decision-makers

A useful tool for the prevention of corruption, the prime purpose of any Agency or Commission, is a well thought-out, strictly limited and effective system for the monitoring of the assets, income, liabilities and life-styles of certain public decision-makers and public service

13 Corruption and Economic Crime Act 1994. The Act is in the Best Practice section of the Internet version of this Source Book:

<http://www.transparency.org>.

officials. In designing this, particular attention should be paid to respecting legitimate aspects of personal privacy.

Monitoring should be applied to those who hold positions where they transact with the public or are otherwise well-placed to extract bribes, for example, in the area of revenue assessment and collection and of the exercise of discretionary powers. Given that such a system should be implemented effectively, it must be decided whether the Agency should have responsibility for the random policing of income tax returns in respect of the officials whose incomes are being monitored.

Any tax secrecy provisions should not prevail against the exercise of investigative powers, but views may differ as to whether the authorisation to inspect them should come from a court order or simply be given to an investigator by the head of the Agency. If others are to have responsibility for the monitoring processes, the Agency must still be afforded timely access to the disclosures.

Azerbaijani President checks wrist-watches

Azerbaijani President Heydar Aliyev issued a decree to tackle the corruption that plagues the ex-Soviet republic and is frightening off potential investors, state newspapers said on Friday. The President also has called a number of government meetings, broadcast in their entirety on state television, in which he castigated officials for bribe taking - checking at one point the quality of wristwatches around the table.

Agence France Presse, Baku, 12 June 2000

Many hope to be able to use monitoring as a barrier to the acquisition of illicitly-acquired wealth, but at best this has not yet been proved. Creating a framework where persons are prosecuted where they make false declarations would only be really effective if they were then subject to a court ordering the forfeiture of the property which had not been declared. The prime value of declarations is that they can identify actual and potential conflicts of interest.

Corruption in public procurement

The use of “commissions” paid to local agents is the most frequent source of corruption in international transactions. Not only does this practice threaten sound decision-making, but also adds to the national debt. Little or no income tax is paid by those receiving the payments. The public loses out in all three respects.

Therefore, legislation establishing an Anti-Corruption Agency or Commission could oblige those tendering for public contracts - and their local and other agents - to make full disclosure of all commissions and performance bonuses paid in respect of their bid and to provide, on request, full details of the services rendered for those commissions. Such disclosures should be made at the time of the bidding and again within six months of the completion or abandonment of a contract.¹⁴

Foreign companies

Foreign suppliers often regard themselves as exempt from local laws, knowing that they are beyond the reach of authorities and free to breach the criminal law by paying bribes to public officials. This situation can be resolved, at least in part, by adding a remedying provision to the Act. Such a provision may state that where the Agency has evidence which establishes, on the balance of probabilities, that such a company or its subsidiary has committed an offence against the Act, the Agency can apply to the court for an order excluding that firm or its directors and all other companies associated with it, from undertaking any business with the government for a period of time decided by the courts.

¹⁴ These problems are discussed in detail in the chapter on Public Procurement.

Public hearings

The ICAC in New South Wales (Australia), another of the world's leading Anti-Corruption Agencies, has for some years been empowered to hold public hearings. On these occasions, witnesses are summonsed to give evidence and although their evidence cannot be used against them in criminal proceedings, the hearings provide an opportunity to enlighten the public as to precisely what has been taking place. Once illegal and highly questionable patterns of behaviour have been exposed in this way, it is reasonable to expect that those involved are likely to be shamed into changing their ways. In particular, an inquiry into abuses of travel privileges by elected Members of the State Legislature led to greater clarity in procedures and higher standards of conduct by those concerned.¹⁵

However, such public hearings have sparked an intense debate and led to a re-examination of the way in which the agency is to work in the future. Public hearings outside the criminal justice system can leave allegations floating and, worse, prevent the trial of the suspects who say justifiably that they could not now have a fair trial. Although the practice may well be abolished in New South Wales, in a country gripped by systemic corruption and anxious to put the past behind it, the approach may have value as a way of exposing to public view and closing down patterns of systemic corrupt practice. If there are to be no subsequent court proceedings (provided, of course, that full and honest disclosure has been made), it would serve as a way of shaming those from the past, and as a means of highlighting practices which were unacceptable and so must be changed.

A few words of caution

An Agency or Commission cannot be expected to fight the country's corruption on its own. It must have the support of every sector of the community, including the public sector. Government departments and other official agencies, including the police, should be required to provide appropriate assistance. It should vigorously pursue a three-pronged approach of prevention, prosecution and community education in a coordinated manner. Civil society and the private sector must be won over and made allies. Agency personnel can also be expected to develop specialist investigative skills necessary to track down the illicit gains made from corruption. For example, a senior government official, the subject of corruption allegations, was monitored by investigators from his country's Anti-Corruption Agency while on a holiday out of the country with his family. While away, the official spent large sums on expensive fashions and jewellery and purchased an apartment in the name of a relative. He used credit cards issued by a foreign bank. The investigators traced the balance of the illicit money through the bank which issued the credit cards.¹⁶ In this regard, cultivating the cooperation of foreign Anti-Corruption Agencies can be especially valuable.

Special care must be taken in appointment procedures, and in guaranteeing security of tenure for those at the top levels of the Agency, to ensure that only those enjoying wide public confidence hold these positions. More than this, particular attention has to be paid to monitoring the performance of officers at all levels within the Agency. However, just as an Anti-Corruption Agency can be susceptible to those at the highest levels of government, it can also be used as a weapon with which to persecute political opponents. Even where the independence of the office is respected and an Agency is able to operate freely, it occupies extremely difficult terrain. Imaginative thought has to be given as to how a powerful and independent anti-corruption

15 See *Corruption Matters: February/March/1999* No. 11, NSW ICAC publication at <http://www.icac.nsw.gov.au>

16 See *Methods for the Investigation of Corruption*, by Michael

Hershman, a paper presented to the Second Seminar of the Status and Prevention of Corruption, Santiago, Chile, 4-6 July 1994.

The experience of the State of New South Wales, Australia...

Swept to office on an anti-corruption ticket, the incoming administration established an Independent Commission Against Corruption. This met with such success that one of its earliest victims was none other than the State Premier who had been responsible for the initiative in establishing the Commission. He was found by the ICAC to have acted corruptly in offering a highly-paid professional post, heading an agency in the civil service, to a candidate whose sole qualification appears to have been holding, as an independent Member of Parliament, a seat which would otherwise have been held by the party of the Premier. A condition of the appointment to the new post was that the Member resign from Parliament so that the Premier's party could (and did) win the seat in a by-election. Outraged, the staff of the Agency then went on strike in protest at the manipulation.

Ominously, the Premier was defended by a political opponent, the then Federal Prime Minister, Bob Hawke, who claimed that this was simply the way the political game was played. The Director of the ICAC, who had made a highly effective assault on many aspects of corruption in contemporary New South Wales, was not re-appointed, and for a time the office had to struggle to survive. Subsequently, the courts quashed the original ICAC finding, holding that the Premier's actions were not "corrupt" within the definition contained in the relevant legislation (although to the person in the street it would certainly seem to be grossly improper).¹⁷

tion body can itself be made accountable, and corruption within the organisation minimised. One approach which has worked well in Hong Kong is to establish oversight committees on all aspects of the Agency's work (with participation from outside the Agency, including civil society and the private sector). A file cannot be closed or an investigation discontinued before one of these committees has been informed and has given its advice.

Unfortunately, Anti-Corruption Agencies have been more often failures than successes. For reasons not yet wholly apparent, they have tended to be much more successful in East Asia - in countries such as Singapore, Malaysia, Taiwan and Hong Kong - than they have been elsewhere. One factor is clear: in each of those countries the Agencies have enjoyed high levels of political and public support. They have also had adequate research abilities, and have adopted both rigorous investigative methods and adventurous programmes of prevention and public education. The comparatively recent introduction of similar Agencies in Botswana and Malawi is being watched with interest.

One may suspect that Anti-Corruption Agencies have been established in other countries with perhaps no real expectation of their ever tackling difficult cases at senior levels of government. They have been staffed and resourced accordingly. Some have done good work in attacking defects in integrity systems, but only at junior levels, however most have had a negligible impact on tackling "grand corruption". Even when Agencies or Commissions are well-resourced and established under model legislation, to be wholly successful they will still have to rely on other institutions. If the judicial system is weak and unpredictable, then efforts to provide remedies through the courts will be problematic. So where corruption is widespread, an Agency alone will not provide a complete answer but be an important part of a broader national plan of action.

Some indicators for assessing Anti-Corruption Agencies as integrity pillars

- Are the appointing procedures for the head of the Agency such as to ensure that he or she is competent, independent of the party in power, and likely to discharge the Agency's duties without fear or favour?
- Once appointed, is the head of the Agency independent from political control in the day-to-day conduct of the Agency's affairs?
- Is the Agency adequately resourced?
- Do other staff enjoy independence from political interference in the discharge of their duties? Are there "no go" areas for investigators?
- Are staff adequately trained?
- Are staff adequately remunerated?
- Is the Office of the President or Prime Minister within the Agency's jurisdiction? (If so, are the staff confident enough to exercise that jurisdiction should occasion arise?)
- Are staff in sensitive areas subjected to random "integrity tests"?
- Are there arrangements to ensure that the Agency itself cannot become a source of corruption?
- Can the services of staff whose integrity has become doubtful be quickly dispensed with?
- Is the Agency accountable to the Executive, the Legislature, the courts and the public?

¹⁷ See *Report on Investigation into the Metherell Resignation and Appointment*, June 1992 (ICAC, NSW). The office has subse-

quently won high standing, both inside the country and internationally, for the professionalism of its work.