



ཕྱི་ཚེགས་གཉིས་པའི་ཚེགས་ཐངས་ ༡ པའི་ནང་གཞུང་གི་ལེགས་ལུན་ཚེགས་ཚུང་གིས་ཕུལ་བའི་

ངན་ལྟངས་བཀག་སྐོམ་ལྟན་ཚེ་གི་ལོ་བསྟར་སྟན་ལུ་ ༢༠༡༥ ཅན་མ།

༼སྤྱི་ཚེས་ ༠༧.༠༦.༢༠༡༦༽

**The 7th Session of the Second Parliament**  
**Report by Good Governance Committee**  
**on**  
**Annual Anti-Corruption Commission Report 2015**

**(Date: 07/06/2016)**

**ཚེགས་ཚུང་གི་འཇུག་མི།**

- |                      |                  |
|----------------------|------------------|
| ༡. ཡོ་གཤམ་མང་        | ཁྱིམ་འཛིན།       |
| ༢. ཀུན་དགའ།          | ཁྱིམ་འཛིན་འོག་མ། |
| ༣. དབང་འདུས་ལོ་རྒྱུ། | འཇུག་མི།         |
| ༤. བཟག་ལེགས་འབྲུག་པ། | འཇུག་མི།         |
| ༥. རིག་འཛིན་རྟོ་རྩེ། | འཇུག་མི།         |
| ༦. གོ་སྐུལ་གྱུ་རུང་། | འཇུག་མི།         |
| ༧. དཔོན་གྲུབ་བཟང་པོ། | འཇུག་མི།         |

## **Report of the Good Governance Committee**

The Good Governance Committee (GGC) is pleased to submit the following Report to the National Assembly of Bhutan.

The main issue covered in the Report is the Annual Report 2015 of the Anti-corruption Commission (ACC). Besides the ACC's Report, the Committee also discussed other aspects of its (GGC's) functions.

### **I. THE ACC'S ANNUAL REPORT**

The Report covered the salient aspects of its activities over the past 9 months including 5 months with the term of the new Commission. Among the various issues, the GGC discussed the following main issues and has made its comments and recommendations thereon.

#### **1. Initiatives**

##### **1.1 Organizational Restructuring**

The new Commission had taken the initiative of reassessing its strengths and weaknesses and had been reviewing the structure of its organization. Two years ago, the previous Commission had reformed the organization from the Department system to Sector focused system in which a team would be responsible for all three functions viz. Investigation, Prevention and Education.

The current Commission has reported that it was reorienting itself in order to bring a balance between its investigative function and its preventive awareness and education functions. The Commission felt that its investigative function had overshadowed its other major function. Accordingly, its organization had been rearranged. (Para. 1.2 Pages 12 & 13)

#### ***GGC's Comments***

*The GGC reviewed the matter in great detail and appreciated the initiative of the new Commission. At the same time, the GGC expressed concern that the effectiveness of the Commission so far had been primarily because of its investigative activities, and as such the Commission needed to balance it more carefully. The Commission's investigative activities have had a visible impact on the people, and these have been of tremendous deterrence to corrupt practices in the Bhutanese society. The people have gained tremendous confidence in democracy*

*by bringing the perpetrators of corrupt activities to justice, without fear or favour. The GGC viewed that while preventive and advocacy measures were important, it was extremely important that the momentum of anti-corruption ethos imbued in the Bhutanese society not be lost.*

## **1.2 Other Initiatives**

The Commission has reported on some initiatives undertaken by the previous commission such as:

- i) Co-ordination and Networking with Relevant Partners,
- ii) Operationalising the Investigation Management System,
- iii) Professionalising the Internal Operations of the ACC,
- iv) National networking with the RAA and the RCSC, and International Networking with SDC, ADB-OECD Anti-corruption Initiative and the Basel Institute on Governance.
- v) Engagement with local leaders,
- vi) Conducting awareness programmes on public procurement and contract administration, on Ethics, Integrity and Professionalism, and many others;
- vii) Development of the Corruption Risk Management (CRM) tool and application thereof in several organizations;
- viii) Conducted an integrity test of the judicial system with the use of a tool called the Judicial Integrity Scan.
- ix) Attempting to institute the use of Private Sector Integrity Programme tools in the private sector;
- x) Expansion of the use of Social Accountability (SAc) tools in administrative bodies;

### ***GGC's Comments***

*The continuation of initiatives undertaken was appreciated.*

## **1.3 Studies Undertaken**

The Commission had conducted study on

- i) Human Resources Management in the Civil Service which had resulted in recommendations such as the need to develop a policy on Whistle Blowing, policy for sharing information and taking actions on wrongdoings in the civil service, the need to incorporate an ethics and integrity course in the civil service' pre-service training courses and the need to strictly manage Conflict of Interest issues.

- ii) The Mining Industry to assess the causes and extent of corruption in the sector.;
- iii) Trade and commerce including tax administration, licensing and monitoring systems, etc.

***GGC's Comments***

*ACC should continue such corruption-prevention programmes which may be done also through outsourcing studies and researches by universities and institutes.*

**1.4 Long-term Priorities**

The ACC has listed out the following as its long-term priorities:

- i) Branding ACC as an Employer of Choice.
- ii) Budgetary Security,
- iii) Reducing the Backlog of Complaints'
- iv) Professionalizing and Enhancing the Management of Complaints and Investigations,
- v) Enhancing Prevention and Awareness Programmes,
- vi) Conflict of Interest Management,
- vii) Youth Engagement,
- viii) Engagement with Media

***GGC's Comments***

*The GG Committee appreciated the plan of action thus drawn up.*

**2. Complaints and Investigations**

The Commission has reported that during the period of the Report, it received 283 complaints of which 41 were assigned for investigations, and of the 41 cases, 36 had been forwarded to the OAG for prosecution.

More than 45% of complaints related to favoritism, nepotism or patronage by public servants and they largely occurred in the areas of funds and properties. Of the total complaints, only 14.8 % were decided for investigation, over 25% were dropped, 6.4% decided for discreet inquiry. The bulk (53.4%) were sent to other agencies for further scrutiny.

Currently, it had a backlog of 529 cases and mounting.

### ***GGC's Comments***

*The GGC noted with serious concern that the backlog was as high as 529, and felt that the Commission should ensure its minimization by the time of the next report.*

### **3. Phuentsholing Investigation Case**

The Commission had completed investigation of 30 cases including 27 cases of “fronting”, and sent to the OAG for prosecution. The **restitution** sought was Nu. 594.79 m.

It was reported during the presentation by ACC that they have assumed the investigation of land case, which was stalled due to the focus on the Phuentsholing case.

### ***GGC's Comments***

*The detailed investigation undertaken by the Commission in this respect was felt highly commendable. It had in the process unearthed many other acts of corrupt practices.*

### **4. Challenges**

The ACC's Report highlighted the following challenges:

#### **4.1 Institutional Challenges**

The challenges were as usual the following but they have mostly been addressed.

##### **i) Human Resources adequacy**

The ACC has submitted that they were working closely with the RCSC to address the human resources constraints. (Para. 4.2, Page 64)

### ***GGC's Comments***

*The Committee took note of the progress made in light of the repeated decisions made by the National Assembly. It needs to be repeated here that the RCSC should be more forthcoming especially when the ACC has been complying with the RCSC Act as opposed to the other such bodies.*

**ii) Policy on Financing of HRD**

The ACC has submitted that with the ending of donor-supported projects, the funding of its HRD was going to be affected adversely. On the other hand, under the Government's financing policy, budgetary support for HRD are not provided unless they are donor-funded. Therefore, in order not to let the HR quality deteriorate, the budget embargo on HRD be lifted in the case of ACC. (Para. 4.2 (a) Page 64).

***GGC's Comments***

*The point made by the ACC is valid, and the Government should relax this financing constraint in the case of HRD aimed at professionalizing the staff of the ACC.*

**iii) Budget constraints**

The ACC has reported that till now they had considerable support from donors in this respect. However, they were gradually diminishing given their policies towards Bhutan after its rising per capita income. Accordingly, they have sought ways to ensure adequate budget regularly by way of either a fixed percentage of the total national budget or to charge it to the Consolidated Fund. (Para. 4.1 Page 64)

***GGC's Comments***

*The GGC is in agreement with the ACC in this regard and appreciated the suggestions made. The suggestion to earmark a certain percentage would set an unhealthy precedent as there would then be many such ear-markings, and the same would apply to the charging to the Consolidated Fund, a practice which has been desisted for the same reason. The adequacy of budget was a concern for all such organizations and the laws dictate that they be provided with adequate budgets. Since it is so provided for in the law, the government will have to make it available as per the requirements of the constitutional bodies. The adequacy of budgets of such bodies must be ensured by the Parliament.*

**4.2 Inter-agency Challenges**

**i) Backlog of investigated cases pending prosecution**

The Commission has apprised that the efficacy of its activities had been hampered by the delays in prosecution. The Commission has reasoned that it has been due to the lack of adequate human resources in the prosecuting agency, namely the Office of the Attorney General (OAG). (Para. 4.3 (a) page 64).

### ***GGC's Comments***

*It was apparent that there was some communications gap between the OAG and the ACC. The OAG, in a hearing, submitted to the GGC that there had been no backlogs whatsoever, and that it had adequate human resources at its disposal. While this is a positive indication, the two organizations should meet and reconcile the differences in this area in the interest of the nation as a whole.*

#### **ii) Time involved in Court Judgements**

The Commission has also expressed concern on the considerable amount of time taken in the judicial system for cases. It has felt that it could be due to the large number of cases before the courts. The ACC has therefore suggested that separate courts or benches for prosecution of corruption cases be instituted. Alternatively, it has suggested that corruption cases be registered directly with the High Court. (Para. 2.5.4 Page 55 and Para. 4.3 (b) Page 65).

### ***GGC's Comments***

*The GGC agreed that there needed to be a faster system of dealing with corruption cases. It felt that the suggestions made by the ACC were reasonable and the Government should make more funds available to the Judiciary to enable the establishment of additional benches in the courts specifically for trying corruption cases. The second alternative, i.e. of registering cases directly with the High Court, would be more expedient if it can be accommodated by the Judiciary.*

#### **iii) Engagement of Dzongkhag Legal Officers by the OAG**

Prior to the information from the OAG that it had adequate human resources, the GGC mentioned that the OAG's workload could be lightened by engaging the services of the Dzongkhag Legal Officers. The Attorney General (AG) submitted that it had been found difficult because although the OAG had been designated as the parent organization of government legal officers, there were administrative obstacles as the Dzongkhag Legal Officers were not associated with the OAG unlike in the case of the Finance Personnel with the MoF.

### ***GGC's Comments***

*The GGC noted the submission made by the OAG.*

#### **iv) Change of Charge Sheets from Criminal Nature to Civil Nature at the OAG**

One of the challenges the ACC faced was that after months and months of investigation and filing the papers to the OAG for prosecution, the OAG changed the nature of the cases to civil cases and sending them to the respective organizations for civil prosecution. This frustrated the efforts of the ACC and laid to waste the immense resources expended in the investigations.

The AG mentioned that it had to examine clearly as to whether the cases would stand the test of judgment in a court of law, and when they were sure that they did not have a case, they chose not to prosecute, thus saving time and money for the government. He also stated that the current laws did not list “fronting” as a criminal act.

### ***GGC's Comments***

*The GGC observed that there were prima facie reasons to change the nature of the cases, but it was also a grey area as the ACC was also equipped with experienced legal personnel who would have the expertise to judge whether a case had the wherewithal to stand the test of judgement in a court of law. The GGC recommends that when such cases arise, the two organizations should discuss thoroughly and bring the decision to the public domain.*

#### **v) Restitution of Assets after receiving Court Judgements**

The ACC has mentioned that restitution has been a festering problem over many years, with no agency taking responsibility for it. A case in point was the Nu. 90 million which was still pending although the court judgement were passed over more than 4 years ago. Similarly, the funds embezzled by the MoH officials was also yet to be restituted even though the judgement was passed over almost 3 years ago. It has reported that, as per the Supreme Court, the responsibility fell on, the executive branch of government, and specifically on the OAG. The Commission has felt that here too perhaps the lack of human resources given the overwhelming number of cases for prosecution, had hampered the OAG in fulfilling this responsibility. (Para 2.5.4, Page 55 and Para 4.3 (c)).



### ***GGC's comments***

*This was an issue which had emerged repeatedly in the ACC's past reports and the National Assembly had discussed and decided that the Government should take the necessary action promptly. However, it seems that the Government had not been able to act on the Parliament's decision, thus rendering the courts' judgements ineffective and injustice prevailing.*

*The OAG, in the hearing cited above, admitted that it was an area where it had a lapse as there were many aspects which had to be looked into before taking action. The Attorney General submitted that the Property Enforcement Section was being established which would address the matter.*

## **4.3 Logistics Challenges**

### **i) Maintaining seized property**

The ACC has suggested that there be a separate agency created to maintain seized property as the Commission had neither the human resources nor the appropriately safe space to store them. The Commission has felt that there were other agencies too with seizing responsibilities which maintained such property with them. The Commission felt that a separate department altogether could be created for this purpose and the Department of National Property was not appropriate for it because it was responsible for government properties only. (Para 2.5.4 Page 55 and Para. 4.4 Page 65)

### ***GGC's Comments***

*The Committee appreciated the suggestion of the ACC in this regard as the quantity seized by different agencies put together would amount to substantial quantities and thus warrant the creation of a separate unit solely for the purpose. However, given the costs involved and the need to maintain the bureaucracy to a limited size, it would be more appropriate to create a division within the Department of National Property. It could be called Seized Property Division which should make appropriate storage spaces and systems to keep track of the items.*

## **5. Actions Taken on the Parliament's Resolutions**

### **5.1 Resolutions of the 5th Session of the Second Parliament National Assembly**

- i) That the ACC and the RCSC should continue to address the problem of human resource constraint in consultation with each other.*

A MoU between the two Commissions covering the exigent HR needs of ACC and providing for a degree of flexibility in HR management and administration is expected to be signed by June, 2016. At the same time, the organizational structure along with the staffing and recruitment proposals is being pursued with RCSC and a positive response has been indicated.

### ***GGC's Comments***

*The two agencies could have carried on the business at a faster pace. Even after one full year, it just talks about a MoU and that also to be signed yet. Second, it talks about only some positive responses having been indicated by the RCSC. Both agencies should take the Parliament's resolutions in earnest, and by the next session, not only must the MoU be signed but the plans must have been executed. A Report to this effect must be submitted to the GGC by the end of this year.*

- ii) The government and the ACC must hold discussion and clarify whether or not the policies for import of electric vehicles (EV) caused conflict of interest and if it was not in accordance with the Constitution and rules.*

The ACC had made three recommendations to the Government in order to resolve the issue as follows:

- a. Revoke or rescind the Government's order on allowing import of second hand Nissan Leaf Vehicles.*

Although the Government felt that the decision to allow import of used cars and electric cars was a policy issue and that such policies were subject to change from time to time, the Government had decided to reconsider the policy based on ACC's recommendation.

- b. To nullify or terminate the MoUs signed with NISSAN Motors Co. Ltd. (Japan) and Mahindra Reva Electric vehicles Private Limited (India).*

The MoU signed with Nissan Motor Co. Ltd had expired since 31 March 2015 and the government had not renewed it. The MoU with Mahindra Reva Private Limited (India) was broad and had no commitment on either of the parties.

c. *To return EV gifts.*

The two Leaf electric cars presented to the Royal Government by the NISSAN Motors Co. Ltd. had been offered to the Royal Secretariat. The third car had been included in the lottery prize list and given away during the celebration of His Majesty's Birth Anniversary held in Changlimithang on 21 February 2015. The Tesla electric car from Tesla Company had been registered as a Government vehicle (BG-1-A2323) while in the country and has been returned to the company in October 2015.

In light of the actions taken by the government, ACC had decided not to pursue this issue further. However, the ACC has rightly reiterated that while a Government initiative may be based on noble objectives, **due regard should be paid to avoid “perceived” and “potential” conflict of interests** as it has a bearing on free market growth and can affect the confidence of the public in the transparency and integrity of the government.

***GGC's Comments***

*The Committee noted the action taken and the reiteration made to the Government on paying due regard to the issue of “conflict of interest”. The Government is urged to bear this in mind.*

iii) *The Human Right Committee in co-ordination with the Commission should assess the investigation procedures of the people detained for corruption cases and report in the 6th session.*

The Human Rights Committee had presented its report on this resolution to the 6th Session of the Second Parliament on 16 November 2015.

***GGC's Comments***

*The GGC noted the action taken.*

iv) *ACC must prioritize and soon resolve pending cases which could not be resolved due to human resource constraint.*

The ACC has submitted that it had been doing its utmost to clear them on a priority basis with the limited manpower at its disposal. It mentioned that it was due to the sheer scale of the investigation operations in Phuentsholing that necessitated almost all its staff to be

engaged on the case over an extended period of time. Nevertheless, it was sorting out its HR problems in collaboration with RCSC and was optimistic on the outcome.

***GGC's Comments***

*The comments were noted by the Committee but recommended that the backlog be completely removed by the time of the presentation of its next report to the Parliament.*

**5.2 Resolutions of the 5th session of the National Council**

- i) Establish an effective appellate system for cases investigated by the Dzongkhag investigation team in collaboration with the Royal Government.*

The ACC has submitted that the appellate system exists and had explained it.

***GGC's Comments***

*The comments were noted.*

- ii) Annex the log sheet of complaints received and action taken in ACC's Annual Report.*
- iii) Include in the annual report the status of implementation of administrative actions taken by agencies to whom cases have been referred by ACC.*

The ACC has submitted that in view of the confidential and sensitive nature of the information sought, it was unable to provide such information in a public document such as the Annual Report. However, it was prepared and made a presentation on the above (Nos. 2 & 3) to the National Council.

***GGC's Comments***

*The presentation should be done to the NA also.*

- iv) Share report on systemic studies with the National Council.*

The ACC has submitted that it would be carrying out a review of the actions taken by agencies concerned on the recommendations made in the systemic studies. Thereafter, a report would be submitted to the National Council.

### *GGC's Comments*

*The presentation should be made to the NA also.*

## **6. Fronting**

The ACC has highlighted the issue of so-called “*fronting*” and associated illegal activities had been rampant and that mere administrative sanctions could not curb them. Therefore, the Commission has recommended that **‘fronting’ be included as a criminal offence in the relevant laws.** (Para. 4.5 Page 65)

### *GGC's Comments*

*The Attorney General too, in the hearing, mentioned that **unless it was included as a criminal offence in the statutes, it could not be prosecuted as such.** Another option would be-for the Government to undertake a study and examine other ways of resolving the issue.*

## **7. GGC's Recommendations to the National Assembly**

Overall, the GGC's recommendations are summarized as follows:

- i. The Government to ensure that adequate budgets are provided to the ACC as required by law, especially after the cessation of donor support.
- ii. Ministry of Finance (MoF) and the RCSC to lift the restrictions on RGoB-financing of ex-country HRD in the ACC's case.
- iii. To accelerate the prosecution of cases, the Government could request the judiciary to consider establishing separate benches in the courts specifically for corruption cases.
- iv. There are several law enforcement agencies including ACC that seize goods and properties. GGC recommends that a division under the Department of National Properties be created to manage seized goods and properties.
- v. Relevant laws should be amended to define "Fronting" activity as a criminal offense
- vi. On behalf of the Executive Branch as interpreted by the Supreme Court, the OAG assume the responsibility of execution of restitution of money and the enforcement of judgments passed by the Courts.

- vii. ACC should continue to outsource studies and research to universities and institutes as part of prevention measures.
- viii. OAG should avail the services of Legal Officers in the Dzongkhags for the prosecution of cases in their respective and nearby Dzongkhags. Accordingly, budgetary provisions should be kept to cover the costs involved in their travel etc.

## II OTHER ACTIVITIES OF THE GGC

The GGC discussed on the governance aspects of other government organizations especially those providing direct services to the people. These include the **public service delivery** such as the medical services, the education services, the Thomdey services, the Forestry services, the civil service, law and order services, the judicial services, trade and industries licensing services, financial services, etc. It was decided that it will look into the reports of these agencies with respect to the **promptness and fairness of service delivery, the appropriateness and efficacy of organizational changes**, etc. and **provide recommendations for improvement where need be**. A time table would be drawn up to examine these issues with both reports and Committee hearings.

## III CONCLUSION

The recommendations of the GGC in the past three years have had very good impact. The same is expected with this report too. The Committee underwent change in its membership and chairpersonship. It was a mark of great significance to the Committee that saw its chairperson elevated to the rank of a Minister. It also saw its members swell to seven with high capability and dedication. With this, the GGC hereby commends its Report to the august body of the National Assembly.

TASHI-DELEK

\*\*\*\*\*