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The Relationship between Anti-Corruption Practices and the Process of Decentralization and De-concentration: the People's Republic of China and the Commonwealth of Australia

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Researcher: Ms. Chea Sokun Minea

Assistants: Ms. Heng Nida

Ms. Vann Nary

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Executive Summary

Decentralization and De-concentration (D&D) is a system that many countries have been implementing since it is considered to represent good governance, to better provide public services to citizens at the local level. In addition, the system also widely contributes to anti-corruption practices.

In common with other countries, China and Australia have attempted to curb corruption through the development of anti-corruption agencies as well as legal frameworks. Both countries principally use Criminal Law in combating corruption. While Australia is known to have adequate anti-corruption laws, China has only recently enacted various regulations through its anti-corruption campaign. In spite of this, there are several remaining challenges facing the anti-corruption process in China and Australia. The influence of Chinese politics on corruption investigations seems to be a main challenge. With regard to Australia, the authority of its anti-corruption agencies both at the national and sub-national levels is not consistent throughout the Commonwealth, which constrains the anti-corruption process.

As D&D is expected to present a good governance model, the two countries have used this system to combat corruption. However, implementation of anti-corruption mechanisms through the D&D system is not always easy and there are several challenges particularly at the local level. For example, local authorities in China conduct investigations only when there are reports from the Party, and some anti-corruption agencies in Australia do not have the power to prosecute people giving bribes. As a consequence, both countries sometimes struggle to achieve success with their anti-corruption efforts.

1. Introduction

Decentralization and De-concentration (D&D) is seen as an important tool for strengthening good governance in many countries, particularly in developing countries.[1] While D&D is believed to enable local authorities to better provide public services for local citizens, this system also serves as an important component of anti-corruption efforts.[1] One example of how D&D helps in anti-corruption efforts is through reducing the number of bureaucrats who might be drawn into corruption.[1] In addition, the People's Republic of China and the Commonwealth of Australia have launched anti-corruption strategies and established anti-corruption agencies along with the implementation of the D&D system in their respective countries.

This research paper provides comparative views in respect of the anti-corruption processes in China and Australia, their legal frameworks and mechanisms in combating corruption, as well as the relationship between D&D and anti-corruption in these two countries. The paper is organized as a case-study approach by presenting China's case first followed by the Australian case. The findings from desk review and analysis aim to address the following research questions:

1. What is the current status of anti-corruption and D&D in China and Australia?
2. What are the challenges facing anti-corruption efforts in China and Australia?
3. What legal frameworks and mechanisms have been established to fight corruption in China and Australia?
4. How does D&D relate to the progress of anti-corruption efforts in China and Australia?

2. The People's Republic of China

2.1. Current Status of Anti-corruption, and Decentralization and De-concentration in China

2.1.1. Anti-corruption

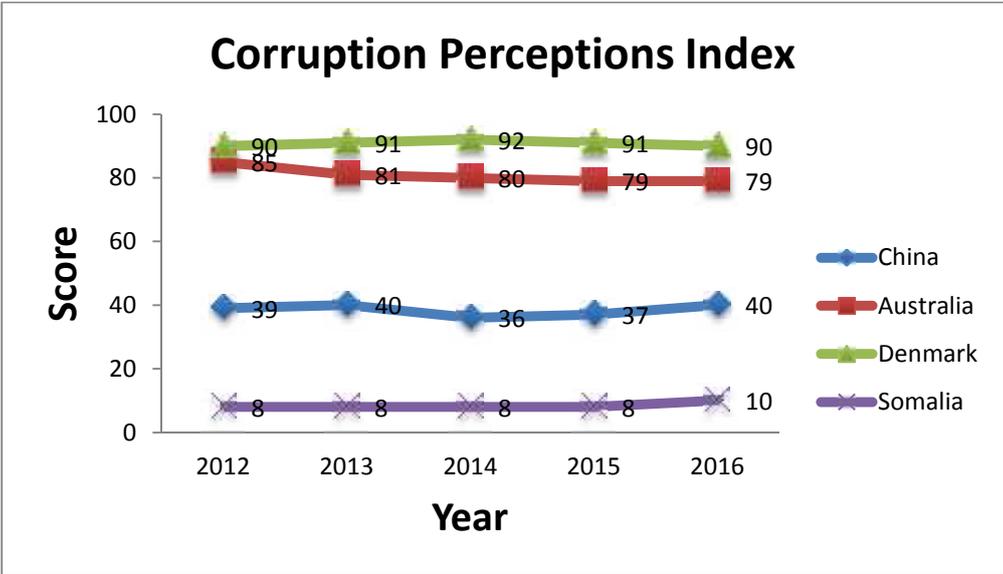
❖ Corruption

China has seen rapid economic growth for more than 30 years.[2] Despite this, the country also has a high degree of corruption (see Figure 1 below). A general definition of corruption is “the misuse of public office for private gain.”[3] However, China defines corruption as “any form of improper behavior by either a state official or a member of the Communist Party,” according to the study Intensification of Corruption in China, by Andrew Wedeman, 2004.[4]

Since the founding of the ‘New China’ – the People’s Republic of China – in 1949, corruption has been one of the country’s most severe problems.[5] Despite the government’s attempts to combat the problem, it has spread within all levels of the Chinese political system since the economic reform in 1978.[5] Additionally, corruption has also occurred in the form of bribery between business enterprises and government officials.[5] In addition, corruption is alleged to have slowed China’s economic growth to approximately 7.5 percent in 2015.[2]

As shown in Figure 1 below, China received a score of 37 out of 100 (0=people perceive there is a high level of corruption; 100 = people perceive no corruption) by Transparency International in 2015.

Figure 1: Comparisons made by the Corruption Perceptions Index of China, Australia, Denmark, and Somalia 2012-2016⁶



Source: Transparency International Organization

The score slightly increased to around 40 points in 2016. This indicates that corruption in China was still high in spite of anti-corruption efforts such as the establishment and implementation of anti-corruption laws as well as its recent anti-corruption campaign.

❖ Anti-corruption Mechanism

There are currently four main bodies charged with investigating and implementing anti-corruption practices in China including: (1) the Regional People's Procuratorates (the PPs); (2) Supervisory Bureaux; (3) the Public Security Bureau (the PSB); and (4) Discipline Inspection Committees.[7] Discipline Inspection Committees have been established by the Communist Party of China (CPC). They have the responsibility to investigate whether or not members of the party have breached party regulations.[7] The major roles of the other three main governmental bodies that have the authority to investigate corruption are: [7]

- Supervisory Bureaux. Basing their activities on administrative norms and regulations, these examine the activities of both government officials and public functionaries^a.
- PSBs investigate corruption and bribery in commercial deals.
- PPs investigate embezzlement related to national real estate and bribery conducted by government officials and public functionaries. Only the PPs have the authority to institute legal proceedings. Thus, investigations by the Supervisory Bureaux and PSBs must be submitted to PPs if there is adequate evidence for prosecution.

2.1.2. Decentralization and De-concentration

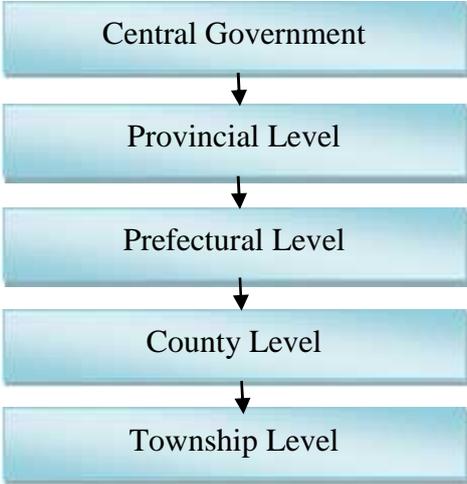
While D&D involves fiscal, administrative, and political dimensions,[8] China has only proceeded with fiscal decentralization while still being politically centralized.[9] Nevertheless, this system enables local authorities to make their own significant decisions with regard to the strictness with which they exercise adopted laws as well as to the way in which they prioritize the mandates^b in order to obtain the desired results.[9] This seems to help to ensure the realization of national goals,

^a "A public functionary is any person who (i) performs a public service in a state organization; (ii) performs a public service in a state-owned company or enterprise; (iii) is appointed by a state-owned company to perform a public service in a non-state owned company or enterprise; or (iv) performs a public service according to law," according to the Guide to anti-corruption regulation in Asia by Herbert Smith, LLP, 2011.

^b The mandates refer to the official orders from the central government.

since the lower government officials are in the best position to be aware of the needs of local citizens.[10]

Figure 2: Structure of Chinese Government¹⁰



Source: Annals of Economics and Finance (in Chunli, S., Jing, J., and Heng-fu, Z. 2012. Fiscal Decentralization in China: History, Impact, Challenges and Next Steps. p. 2)

The authorities at the local levels (see Figure 2 above) have been empowered to collect taxes within their jurisdiction. Following a disagreement between the central and local governments regarding the distribution of taxes, since 1994, the tax-sharing system has been reformed. [10] As a result, taxes in China have been divided into three types: central taxes; shared taxes; and local taxes (see Table 1 below).[10] However, the local levels still face financial crises, mainly caused by debts, as pointed out in a report on China’s Fiscal Position and Policy.[11] This is due to the fact that, in addition to the revenues obtained from local taxes, the financial status of the local governments relies on land and national property; and when the prices of national property as well as business deals regarding the land are unstable, the local governments have financial insecurity.

Table 1: Types of Taxes in China[11]

| Taxes | Central (%) | Local (%) |
|-----------------|-------------|-----------|
| Central tax | | |
| Tariffs | 100 | 0 |
| Consumption tax | 100 | 0 |

| | | |
|---------------------------------------|----|-----|
| Shared tax | | |
| VAT | 75 | 25 |
| Business tax | 3 | 97 |
| Stamp tax on security exchanges | 97 | 3 |
| Personal income tax | 60 | 40 |
| Company income tax | 60 | 40 |
| Local tax | | |
| Resource tax | 0 | 100 |
| Urban maintenance and development tax | 0 | 100 |
| Urban land use tax | 0 | 100 |
| Agriculture and related tax | 0 | 100 |
| Tax on contracts | 0 | 100 |
| Tax on the use of arable land | 0 | 100 |
| Vehicle purchasing tax | 0 | 100 |
| Other local taxes | 0 | 100 |

Source: Annals of Economics and Finance (in Chunli, S., Jing, J., and Heng-fu, Z. 2012. Fiscal Decentralization in China: History, Impact, Challenges and Next Steps. p. 2)

2.2. Challenges Facing Anti-Corruption activity

Attempts to promote anti-corruption in China face several challenges:

- Political influence: The level of corruption in China is very high, yet the process to fight against it is somewhat ineffective.[2] It was recently reported that, since 2012, no less than 100 government officials from high ranks have been prosecuted.[12] However, this is estimated to be only 3 percent of the total number of corrupt officials.[2] Moreover, the government can become involved in investigations[2] and hinder the anti-corruption agencies in conducting thorough investigations.[2]
- Cost and internal corruption: Anti-corruption processes have high costs[2] and they are difficult to undertake because many corrupt officials^c are working in government institutions, at both the national and sub-national levels, and it is possible that they also work within the bodies responsible for combating corruption.[2]
- Lack of data: It should be noted that the government of China regards corruption awareness among its citizens as important in

^c There is even a proverb used by officials, that goes “eat quietly, take gently, and play secretly.”

the anti-corruption process.[3] However, while information related to corruption cases and legal punishments is required to be widely publicized so that the citizens are able to be fully involved in the process, not all provinces reveal this data.[3]

- Criticisms: Leading politicians' desire for personal advancement can also play a significant role in anti-corruption activity. Since 2013, President Xi Jinping has been implementing an anti-corruption campaign that involves a large number of government officials being inspected and prosecuted.[13] However, public, government officials who have been accused of conducting corruption, and many big business enterprises have criticized this campaign as they believe it to be a strategy to remove enemies of the President rather than a way to combat corruption in China.[13]

2.3. Legal Framework and Mechanisms of Anti-Corruption

China has two major anti-corruption laws - the Criminal Law and the Anti-unfair Competition Law.[7]

- The Criminal Law was passed on 1 July 1979.¹⁴ The eighth amendment of the law was completed on 25 February 2011,[15] and the most recent amendment was undertaken in 2015.[16] This legislation prohibits all types of graft, particularly bribery, involving government officials, public functionaries, and foreign officials working in China.[17] For example, any person who provides government officials with property to illegally obtain benefits shall be regarded as conducting bribery, according to Article 389 of this law.[14] Punishment can be up to life imprisonment and property seizure.[18] For those who bribe non-government officials, punishment can be up to 10 years in prison along with a suitable fine.[18]
- The Anti-unfair Competition Law was adopted on 2 September 1993 and came into effect on 1 December 1993. [19] This law aims to ensure fair competition among business enterprises and the provision of better services and goods for customers.[20] It specifically forbids bribery (money or goods) which might occur in commerce. In accordance with Article 8 of the Anti-unfair Competition Law, business enterprises may not conduct any act of bribery in their day-to-day business operations.[20] Those undertaking bribery will be fined from 10,000 Yuan (around USD

1,500) to approximately 200,000 Yuan (around USD 30,000), as well as having their illegal revenues seized, according to Article 22 of the law.[20]

In addition to these two laws, a legal framework has been issued by the Supreme People's Court and the Supreme People's Procuratorate; including (1) Opinions on Several Issues of the Application of Law concerning the Handling of Criminal Cases of Commercial Bribery (2008) and (2) the Interpretation of Several Issues concerning the Application of Law for Handling Criminal Cases of Bribery (2012).[18] These two documents are of equal validity in Chinese law and they indicate how the anti-corruption laws are interpreted by the regulators.[21] Additionally, China is a state-party to the United Nations Convention against Corruption (2003) and a member of the Financial Action Task Force ^d(2007).[21]

As mentioned above, there are criticisms of the current anti-corruption campaign by President Xi Jinping. However, despite this criticism, the Chinese legislation indicated above has strengthened as the government is investigating not only officials, but also the private sector.[16] And, as part of this campaign, the Criminal Law has been amended by the Chinese Parliament (called the "National People's Congress of China") during the past two years. In addition, several binding anti-corruption regulations have been issued by different relevant institutions as follows: [16]

- The Regulations on the Establishment of Commercial Bribery Records in Medical Device and Pharmaceutical Sales and Purchase Areas by the National Healthcare and Family Planning Commission (2013); [16]
- The Provisions of the Supreme People's Procuratorate on Bribery Case File Inquiry by the Supreme People's Procuratorate (2013); [16] and
- The Interim Provisions on the Disclosure of the Information on Administrative Punishments concerning Industrial and Commercial Administration by the State Administration for Industry and Commerce (SAIC) (2014). [16]

^d The Financial Action Task Force is an international governmental body whose objectives are to establish and promote policies in order to fight against money laundering and terrorist financing.

2.4. Relationship between Decentralization and De-concentration and Progress made by Anti-Corruption Activities

Several reasons have been offered to explain why anti-corruption efforts in the D&D process in China have been ineffective. Because laws and policies can be implemented differently by the local authorities, progress to combat corruption can vary at the local level and, particularly, at the provincial level.[9] In addition, corruption has different definitions across China. Thus, some actions that are generally regarded as corruption might not be viewed that way in the Chinese context.[9] Moreover, some provincial authorities consider embezzlement to be only a minor offense even if it is against the Criminal Law in China. In this regard, many government officials are absolved from punishments or, alternatively, they might be punished by their Party.[9]

Additionally, elections of village heads (township level) are required to be held according to Chinese law, but the decision to hold elections is up to the township governments. The heads of the village are instead appointed by the political party .[9] This is to ensure that the village heads do not obstruct the implementation of the mandates. However, this may potentially enlarge the numbers of corrupt government officials at the township level.[9]

Within the D&D process, the authorities at all levels have responded to the anti-corruption initiative based on a rule of mandates (governing with priorities rather than laws).[9] Investigations in respect of corruption do not usually start from the crime committed; they can be conducted only when there is a report from the Party regarding the members' wrong-doings. Furthermore, since the information required for an investigation is limited, the local authorities at all levels who understand the process can more easily cover-up their crimes.[9]

3. Australia

3.1. Current Status of Anti-Corruption and Decentralization and De-concentration in Australia

3.1.1. Anti-Corruption

❖ Corruption

In common with China, corruption in Australia has mostly occurred within its political stream. Efforts to solve this issue began in the 1980s and 1990s,[22] but despite these, Australia still seems to experience corruption among officials in high positions.[22]

A national survey conducted in 2012 showed that corruption in the form of bribery was not very high. Most citizens did not encounter bribery when they received public services.[22] Nevertheless, the labor sector, especially young laborers, did face some instances of bribery.[22] In this regard, it is noticeable that Australian institutions, such as the Australian Defense Force, organizations providing public services, and the police force, have the least corruption while the media, trade unions, and political parties have more.[22]

According to Transparency International Organization, Australia scored 79 (out of 100) in 2016, the same as in 2015 (see Figure 1 above).[6] The score slightly decreased between 2012 and 2016, but it still indicated that Australia is one of the world's least corrupt countries.[6]

❖ Anti-Corruption Mechanisms

Australia has established several agencies responsible for anti-corruption activity in different states:[23]

- The Independent Commission Against Corruption (New South Wales, 1988);
- The Crime and Corruption Commission (Queensland, 1991);
- The Corruption and Crime Commission (Western Australia, 1992);
- The Integrity Commission (Tasmania, 2010);
- The independent broad-based Anti-corruption Commission (Victoria, 2012); and
- The Independent Commissioner Against Corruption (South Australia, 2012).[23]

Apart from these agencies, the government of Australia has developed two other commissions in order to enhance the country's capacity in combating corruption. These are:

- The Australian Commission for Law Enforcement Integrity that conducts investigations on the implementation of the law in relation to corruption, prioritizing serious and systemic corruption (2004); and
- The Australian Federal Police Fraud and Anti-corruption Centre that investigates specific areas such as fraud, foreign bribery, and corruption conducted by the Australian government officials (2013).[23]

In addition, several agencies contribute to curbing corruption in the private sector, including: [22]

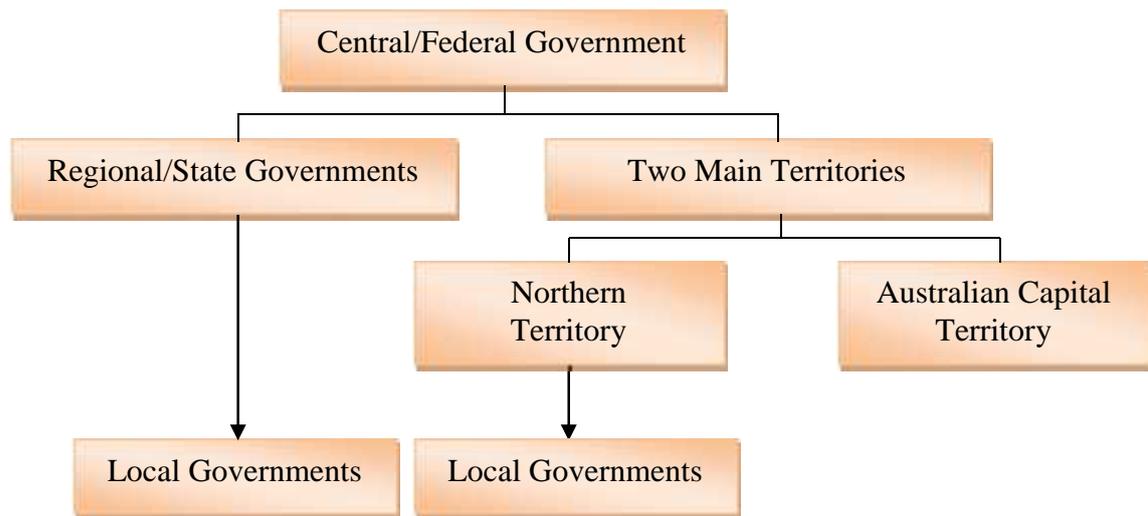
- The Australian Transaction Reports and Analysis Centre (AUSTRAC) that conducts investigations on crimes, and those involving corruption in the form of money laundering and money supporting terrorist activities.[22] The Australian Competition and Consumer Commission (ACCC) that provides both business enterprises and the general public with education on filing complaints and how to avoid corrupt practices.[22]
- The Australian Prudential Regulation Authority (APRA) that monitors the operation of banks and related institutions. [22]
- The Australian Securities and Investments Commission (ASIC) that investigates illegal activities in corporations. [22]

3.1.2. Decentralization and De-concentration

Australia is a federation of six states and two-self-governing territories each having its own constitution, Parliament and laws (see Figure 3 below).[²⁴] Each government has three branches of power - the executive, the legislative, and the judiciary. In respect of the legislation, the federal government has the power to make laws relating to tax collection and foreign affairs as well as national defense.[24] Concurrently, the states can adopt different laws on education, health care, and public transportation to be implemented within their boundaries. Although the state governments have this legislative power, the federal government can still enact legislation that can affect them and, as a result, there can sometimes be related disagreements.[24]

In addition to these two levels – federal and state – a local level has been developed within the states and the Northern Territory of Australia, as shown in Figure 3. This level is called local governments or local councils^e. Under the state governments and the Northern Territory, the local governments are responsible for collecting waste and producing town development plans among other things.[24]

Figure 3: Australian Government System



Between 2014 and 2015 there were approximately 570 local governments in Australia.[25] As shown in Table 2 below, federal, state, and local governments share tax revenue.

Table 2: Tax-Sharing Revenue of the Australian Government between 2014 and 2015[25]

| Revenue Source | Federal % | State % | Local % | Total % |
|--|-----------|---------|---------|---------|
| Taxes on income | 58.0 | - | - | 58.0 |
| Employers' payroll taxes | 0.2 | 5.0 | - | 5.0 |
| Taxes on property | - | 6.6 | 3.5 | 10.1 |
| Taxes on provision of goods and services | 20.9 | 2.5 | - | 23.4 |

^e Local governments can differently be called cities, shires, towns, or municipalities.

| | | | | |
|--|------|------|-----|-----|
| Taxes on use of goods and performance activities | 1.1 | 2.4 | - | 3.5 |
| Total | 80.1 | 16.5 | 3.5 | 100 |

Note: 0.2<0.5 does not count.

Source: Australian Government, Department of Infrastructure and Regional Development

3.2. Challenges Facing Anti-corruption Activity

Even though Australia ranks low on corruption indexes, anti-corruption initiatives face challenges:

- An absence of a Commonwealth anti-corruption agency: Australia has many anti-corruption agencies in each state and also has two other agencies at the federal government level. However, the two federal agencies, particularly the Australian Commission for Law Enforcement Integrity, have limited authority in dealing with corruption. An illustration of this is that their jurisdiction lies only within the Australian Federal Police and the Australian Crime Commission. They have no powers to conduct investigations in most public institutions in the Commonwealth of Australia. Consequently, there is a need for a Commonwealth anti-corruption agency whose authority covers all Australian institutions.[26]
- The dependence on journalists: The absence of a Commonwealth anti-corruption agency means that Australia sometimes depends on journalists to reveal the wrong-doings of officials or individuals. However, journalists' activities are limited by the Australian Defamation Laws.[26] Also, a national poll in 2012 showed that people have little confidence in media outlets and perceive them to be potentially corrupt. Whether or not this perception is correct, their public credibility is damaged to such an extent that they may not be able to serve as corruption watchdogs.[22]
- Insufficient resources: Australia has paid much attention to establishing legislation to combat corruption. However, those legal frameworks are not as effective as they are expected to be

because the government does not provide sufficient resources - financial or technical - to enforce them.[22]

- Lack of citizens' awareness: Australian citizens lack awareness about how to contribute to anti-corruption efforts. Most citizens do not know that the anti-corruption agencies exist so they normally report corruption to the police or the ombudsman instead.[22]

3.3. Legal Frameworks and Mechanisms of Anti-corruption

The Criminal Code Act 1995 is the principal anti-corruption law in Australia. Division 70 deals with corruption in the form of bribery conducted by foreign government officials^f. [27] This Division identifies someone who bribes as "any person who provides or offers the benefits to another person in order to obtain or retain an advantage." The punishment is 10 years' imprisonment. However, as stipulated in the Crime Act 1914, Section 4B, the court can set a fine (10,000 penalty units^g/ around USD 1.1 million) and/or confinement. [22,27] The application of this code also covers corporations for whom the punishment is more severe. [22]

In addition, Australia has established and implemented several other laws:

- The Crime Act 1914: In section 15GE of this act, corruption in the form of fraud and money laundering is considered to be a severe crime. Thus, people found guilty of corruption can be imprisoned for three years or more. [28]
- Taxation Administration Act 1953;
- Income Tax Assessment Act 1997; and
- Corporations Act 2001. [29]

Australia is also a member of several international organizations and conventions that relate to combatting corruption:

- Financial Action Task Force (1990);
- Organization for Economic Co-operation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1999);

^f The code was amended in the Section on Bribery of Foreign Public Officials in 1999 (**Criminal Code Amendment: Bribery of Foreign Public Officials Act 1999**).

^g The value of a penalty unit is set annually by the Department of Treasury and Finance, and is updated on 1 July each year.

- United Nations Convention against Transnational Organized Crime (2004); and
- United Nations Convention against Corruption (2005).[18,29}

3.4. Relationship between Decentralization and De-concentration and Anti-corruption Progress in Australia

While D&D has been regarded as a significant tool to combat corruption, the local authorities in Australia rather than dealing with corruption, have been empowered to manage such tasks as dealing with local waste, establishing and equipping recreational centers, and implementing development plans.[24] Anti-corruption is the responsibility of the anti-corruption agencies, particularly those established in each state.

Regardless of high expectations in dealing with corruption at the state level, corruption is sometimes defined differently in each of the states, which can affect the jurisdiction of anti-corruption agencies.[23] For example, the Independent Commission against Corruption in New South Wales could not investigate illegal activities conducted by the state prosecutor Margaret Cunneen SC^h since those activities were not referred to as corruption in the Independent Commission against Corruption Act 1988.[30] This agency's definition does not include bribery, blackmail, fraud and other related activities as stated by the High Court of Australia.[30]

In addition, the authority of anti-corruption agencies can differ across the country.[23] For example, the New South Wales Independent Commission against Corruption can hold public hearings whereas the Independent Commissioner against Corruption in South Australia cannot organize such hearings.[23] Moreover, not all agencies can prosecute corrupt people. In the case of the anti-corruption agency in New South Wales, no further action is taken after the agency has discovered corruption. As a consequence, many debates have arisen regarding the establishment of a common approach to ensure that all

^h Margaret Cunneen SC is a senior prosecutor in New South Wales. She was accused of attempting to change the results obtained from the police in regard to an accident involving one of her sons' girlfriends. It is called "perverting the course of justice".

the anti-corruption agencies in Australia have equal authority and can prosecute corrupt people.[23]

In order to tackle these sensitive issues, Transparency International's National Integrity System (NIS)ⁱ has been implemented by some state governments such as Queensland (2009), Victoria (2010), and South Australia (2012).[23]

4. Conclusion

In conclusion, China has a high level of corruption while Australia is one of the least corrupt countries in the world. Despite this difference, these two countries have established several anti-corruption agencies in a similar manner in the fight against corruption. Also, both countries have introduced related legal frameworks and mechanisms, while most anti-corruption laws can be found in their Criminal Codes. Through the process of D&D, anti-corruption activities at the local levels both in China and Australia have had limited success because of challenges, including the unclear definition of corruption. However, the central governments of both countries have made a strong commitment to curbing corruption within their own countries.

ⁱ A National Integrity System assessment examines both the formal framework of each pillar and the actual institutional practice. The analysis highlights discrepancies between the formal provisions and reality on the ground, making it clear where there is room for improvement.

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