

NATIONAL ANTI-CORRUPTION STRATEGY: THE ROLE OF GOVERNMENT MINISTRIES

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I. INTRODUCTION

I am honoured to have been invited to UNAFEI for the seventh time to share with you my 27 years of experience in fighting Corruption in Hong Kong, as well as my last six years of experience as an anti-corruption consultant/trainer in 19 different countries. I joined the ICAC as a junior investigator shortly after its inception in 1975 and was subsequently promoted through a number of ranks to become the first Chinese Deputy Commissioner and Head of Operations in 1996. I witnessed and participated in the successful battle to turn Hong Kong from one of the most corrupt places on earth to now one of the cleanest. Having been a pioneer corruption fighter for 27 years, I have maintained a strong passion for the anti-corruption mission and thus, since my retirement, I have been offering my consultancy service in the international arena to help fight this common enemy. Hence I am most grateful for the opportunity to participate in this most worthwhile course and share with you my experience.

II. POLITICAL WILL

From my experience and observation in a number of countries which have a serious corruption problem, I come to the conclusion that the most important element of an effective anti-corruption strategy is “political will”. Without political will at the highest level, it is almost impossible to combat corruption effectively. However, all political leaders will claim that they have the will to combat corruption. I propose that we should be able to judge whether there is genuine political will by checking the following criteria:

- Firstly, how much support has the government provided in its anti-corruption budget? In Hong Kong, we set aside 0.3 to 0.4% of our government budget for the ICAC and we believe this is quite adequate. I think no government can claim that they cannot afford to set aside such a small percentage for combating corruption, particularly when corruption is one of their major problems. However, I have witnessed that in many “corrupt” countries, their anti-corruption budget is often less than 0.01% of the national budget, and very often this is the main reason why they are unsuccessful. If a Government wants to demonstrate its political will, it should ensure that the Anti Corruption Agency (ACA) is given adequate resources.
- Secondly, is there adequate legal support for the ACA to investigate corruption? Because of its secret nature, corruption is one of the most difficult crimes to investigate, and to carry out effective enforcement an ACA needs strong power and easier-to-prove offences. The government and parliament can demonstrate their political will by passing legislation which is anti-corruption friendly.
- Thirdly, is the ACA truly independent in carrying out its enforcement work without political interference?
- Fourthly, is the government adopting a zero tolerance policy on corruption? If there is a double standard in the society, where minor corruption is tolerated or private sector corruption is tolerated, then it is impossible for the society to become a genuinely clean society.

Apart from political will, I want to point out two misconceptions about fighting corruption.

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- Firstly, it should be realized that there is no single solution to the problem of corruption. You need a comprehensive approach. The Hong Kong model, which is now widely accepted internationally and included in the United Nations Convention against Corruption, is to combat corruption through a three pronged approach: enforcement, prevention and education.
- Secondly, it should also be realized that you cannot rely on one single agency to combat corruption. Apart from ACA, there should be a coalition of all social partners. The most important partner is the Government, which has an important role in cleaning its own house. Other partners should include the judiciary, the parliament, the private sector, professional bodies, civil organizations, international agencies, the media and the public.

III. WHAT IS AN EFFECTIVE ANTI-CORRUPTION STRATEGY?

As a result of the success of the Hong Kong model in fighting corruption, many countries followed Hong Kong's example in setting up a dedicated anti-corruption agency. However, many such agencies have not been effective and hence there are queries as to whether the Hong Kong model can be successfully applied to other countries. The point is whether there is a thorough understanding of the working of the Hong Kong model. In my view, it consists of the following eleven components.

A. Three Pronged Strategy

As stated earlier, there is no single solution in fighting corruption. Hong Kong's ICAC adopts a three pronged approach: deterrence, prevention and education. As a result, the Commission consists of three separate departments: the Operations Department to investigate corruption; the Corruption Prevention Department to examine the systems and procedures in the public sector, to identify the corruption opportunities and to make recommendations to plug the loopholes; and the Community Relations Department to educate the public against the evil of corruption and to enlist its support and partnership in fighting corruption.

B. Enforcement Led

The three prongs are equally important, but ICAC devotes over 70% of its resources to the Operations Department. The reasons are that any successful fight against corruption must start with effective enforcement on major targets, so as to demonstrate to the public the government's determination to fight corruption at all costs, as well as to demonstrate the effectiveness of the anti-corruption agencies. Without that, the public would be reluctant to come forward to report corruption. Successful enforcement assists in identifying problem areas for corruption prevention review and can clear any human obstacle in the review. The successful enforcement stories also provide a basis for public education and deter other corrupt officials.

C. Professional Staff

Fighting corruption is a very difficult task, because you are confronting people who are probably very intelligent, knowledgeable and powerful. Thus anti-corruption agents must be very professional. The ICAC ensures that its staff is professional in its diverse responsibilities – the Operations Department has professional investigators, intelligence experts, computer experts, forensic accountants and legal experts. The Corruption Prevention Department has management/technical experts and the Community Relations Department pools together education, ethics and public relations experts. Apart from professionalism, each ICAC staff member is expected to uphold a high level of integrity and to possess a passion and sense of mission in carrying out his or her duties.

D. Effective Deterrence Strategy

The ICAC's strategy to ensure effective enforcement consists of the following components:

- An effective public complaint system to encourage reporting of corruption by members of the public and referrals from other institutions. ICAC has a 24 hour report centre – a highly publicized telephone hotline to facilitate public reporting.
- A quick response system to deal with complaints requiring prompt action. At any time, there is an investigation team standing by, ready to be called into action.
- The ICAC adopts a zero tolerance policy. So long as there is reasonable suspicion, all reports of corruption, irrespective of whether it is serious or relatively minor in nature, will be properly

investigated.

- There is a check and balance system to ensure all investigations are professionally and promptly investigated, and free from political interference.
- Any successful enforcement will be publicized in the media to demonstrate effectiveness and to deter further corruption.

E. Effective Prevention Strategy

The corruption prevention strategy aims at reducing corruption opportunities in government departments and public institutions. The general principle is to ensure efficiency, transparency and accountability in all government businesses.

The most corruption-vulnerable areas are public procurement, public works, licensing, public services delivery, law enforcement and revenue collection. These should be the priority areas to introduce corruption prevention reform as success would undoubtedly enhance government revenue and reduce wastage, hence providing the government additional resources to tackle the poverty problem.

F. Effective Education Strategy

To enlist the support of the entire community to fight corruption the ICAC has a very wide range of education strategies. These include:

- Media publicity to ensure effective enforcement cases are well publicized, through press releases, media conferences and interviews, as well as TV drama series based on successful cases;
- Media education – use of mass media commercials to encourage the public to report corruption; promote public awareness of the evil of corruption and the need for a fair and just society, and as deterrence to the corrupt;
- School ethics education programmes, starting from kindergarten up to university;
- The ICAC Club, which accepts members who wish to perform voluntary work for the ICAC in community education;
- Corruption prevention talks and ethics development seminars for public servants and the business sector;
- Corruption prevention best practices and guidelines publications;
- In partnership with the business sector, the ICAC set up an Ethics Development Centre as a resource centre for the promotion of a business code of ethics;
- Organize exhibitions, fun fairs, and television variety shows to spread the message of a clean society;
- Wide use of websites for publicity and reference, youth education and ethics development.

G. Effective Legal Framework and Anti-Corruption Law

Hong Kong has comprehensive legislation to deal with corruption. Apart from the normal bribery offences, it created three unique offences. It is an offence:

- for any civil servant to accept gifts, loans, discounts and passage from persons who have official/business relationships with the government, even if there is no related corrupt dealings, unless specific permission is given;
- for any civil servant to be in possession of assets disproportionate to his or her official income; or to live above his or her means,
- for a public official to abuse his or her authority for private gain, whether for him or herself or other persons. This is a criminal breach of the rule against conflict of interest. It includes a statutory requirement to report potential conflict of interest.

On investigative power, apart from the normal police power of search, arrest and detention, ICAC has the power to check bank accounts, intercept telephone communication, require witnesses to answer questions under oath, restrain properties suspected to be derived from corruption, and hold the suspects' travel documents to prevent them from fleeing the jurisdiction. Not only are they empowered to investigate corruption offences, both in the Government and the private sector, they can investigate all crimes which are connected with corruption.

The ICAC cases are prosecuted by a select panel of public prosecutors to ensure both quality and integrity. The judiciary of Hong Kong is a strong supporter of fighting corruption, which ensures that the

ICAC cases are handled in courts by highly professional judges with absolute fairness. The conviction rate for ICAC cases is very high, around 80%.

H. Check and Balance Mechanism

With the provision of wide investigative power, there is an elaborate check and balance system to prevent abuse of such wide power. One unique feature is the Operations Review Committee. It is a high powered committee, with the majority of its members coming from the private sector, appointed by the Chief Executive. The committee reviews each and every report of corruption and investigation, to ensure all complaints are properly dealt with and there is no “whitewashing”. It publishes an annual report, to be tabled for debate before the legislature, thus ensuring public transparency and accountability. In addition, there is an Independent Complaint Committee where members of the public can lodge any complaint against the ICAC and/or its officers and there will be an independent investigation. It also publishes an annual report to be tabled before the legislature.

I. Equal Emphasis on Public and Private Sector Corruption

Hong Kong was amongst one of the first jurisdictions to criminalize private sector corruption. ICAC places equal emphasis on private and public sector corruption. The rationale is that there should be no double standards. Private sector corruption can cause as much damage to society, if not more so, than public sector corruption. Serious corruption in financial institutions can cause market instability; corruption in the construction sector can result in dangerous structures. Effective enforcement of private sector anti-corruption measures can be seen as a safeguard for foreign investment and ensures that Hong Kong maintains a level playing field in its business environment, thus a competitive advantage in attracting foreign investment.

J. Partnership Approach

You cannot rely on one single agency to fight corruption. Every one in the community and every institution has a role to play. The ICAC adopts a partnership approach to mobilize all sectors to fight corruption together. The key strategic partner of ICAC is the government agencies. The head of government agency should appreciate that it is his or her solemn responsibility to clean his or her own house. Other important partners of ICAC include:

- (i) The Civil Service Commission
- (ii) The business community
- (iii) Professional bodies
- (iv) Civil societies and community organizations
- (v) Educational institutions
- (vi) Mass media
- (vii) International networking.

K. Top-Level Political Will

The most important factor in fighting corruption is “political will”. In Hong Kong, there is clearly top-level political will to eradicate corruption, which enables the ICAC to be a truly independent agency. ICAC is directly responsible to the very top, the Chief Executive of Hong Kong. This ensures that the ICAC is free from any interference in conducting its investigations. The strong political support was translated into financial support. The ICAC is provided with adequate resources to combat corruption on all three fronts.

IV. WHY MANY ACAs FAILED

Many countries suffering from serious corruption problems set up Anti Corruption Agencies (ACAs). Countries in Asia that have established dedicated ACAs include Singapore, Malaysia, Thailand, the Philippines, Brunei, Indonesia, Sri Lanka, Timor Leste, Papua New Guinea, Pakistan, Bangladesh, South Korea, China, Bhutan and Mongolia. However, few of them are regarded as effective in reducing corruption. In some cases, corruption worsened. By comparison with the Hong Kong Model, one can identify the following reasons why they failed:

- Lack of understanding of the causes of corruption: The causes of corruption are due to available corruption opportunities, lack of ethical values of public officials and citizens, and lack of deterrence.

Some ACAs failed to understand and hence failed to take effective action against each of the three main causes. The most common error is the belief that corruption can be eradicated through good governance reform. Some ACAs have no jurisdiction to investigate corruption and can only deal with prevention and education. On the other hand, some ACAs focus on enforcement only.

- Lack of resources: In most corrupt countries where the ACA is not seen to be effective, it usually suffers from lack of resources. Such ACAs' budgets are invariably below 0.01% of the national budget. Hong Kong's anti-corruption budget is 0.38% of the government budget, which is already adequate and such small percentage is clearly affordable by most governments;
- Lack of independence: The ACA is subject to political interference in its investigations and prosecutions. Some ACAs were perceived to be used as political tools against the opponents of the government;
- Lack of legal support: The anti-corruption law is inadequate to enable the ACA to function effectively. Some ACAs do not have power to have access bank accounts, which is essential in corruption investigations. Some ACAs do not even have the power of arrest.
- Lack of public credibility: Some ACAs do not pursue a policy to encourage public reports. Some even discourage public reporting by imposing stringent conditions. In some countries, any corruption report should be in the form of sworn affidavit before it is accepted by the ACA. Some ACAs refused to investigate minor corruption complaints or those involving political sensitivity. Some failed to observe confidentiality with the corruption reports. Some are biased in their investigation or abuse their power. They all suffered from lack of public credibility and without public support, it is impossible for them to achieve success
- Lack of coalition: The ACA appears to be fighting a lonely battle, with little support from government institutions and legislature;
- Corrupt judiciary: making it most difficult to convict corrupt offenders, hence lack of deterrent effect. To tackle this problem, some countries, such as Pakistan and the Philippines, have to set up special courts to hear corruption trials;
- Lack of professionals: Some ACAs commence their operation prematurely before they have sufficiently experienced and professional staff. Hence their ineffectiveness was highly exposed and the initial public welcome was replaced by public cynicism;
- Lack of internal control: Some ACAs are perceived to have an internal corruption problem.

The overriding factor for failure is the lack of political will. If there is strong political will and determination, most of the above problems can be resolved

V. THE ROLE OF GOVERNMENT MINISTRIES

Apart from the ACAs, the most important players in combating corruption in a country are the government ministries. I had assisted the President of the Philippines and the Prime Minister of Mongolia to run top level anti-corruption workshops for their heads of ministries. It was amazing to note that initially these heads did not consider fighting corruption as their prime responsibility. But it is interesting to note that after the workshop, they then came to have a better understanding of their internal corruption problem and their responsibilities to clean their own houses. In these workshops, they came to accept that they have the following internal problems:

- Failure by the head of ministry to accept his or her responsibility to combat inhouse corruption;
- Inadequate and ineffective in-house anti-corruption strategy and action plan;
- Lack of integrity and ethics amongst staff;
- Lack of enforcement of ethical conduct and ethical training;
- Nepotism and conflict of interest in human resource management;
- Poor public service delivery due to bureaucracy and corruption;
- Outdated regulations, resulting in lack of transparency and accountability;
- Lack of fair procurement procedures and political interference;
- Weak internal audit.

They also agreed that there were indeed many things which they can or should do. These workshops ended with a consensus on an action plan which the government ministries should implement, such as:

- Set up its own Anti-corruption Steering Group;
- Review procedures and systems to make them more transparent and accountable;

- Formulate tailor-made codes of ethics and include regulation on acceptance of gifts and entertainment;
- Introduce a declaration system for conflict of interest;
- Practice an open and fair recruitment and promotion system, and include integrity checking;
- Introduce staff training on ethics and corruption prevention;
- Leadership by example;
- Promulgate zero tolerance policy;
- Set up internal staff monitoring unit & internal audit unit;
- Enhance and promulgate a public and internal confidential complaint channel with a complaint hotline;
- Prompt referral of cases to the ACA and full co-operation with the ACA in investigation.

The government ministry should have a comprehensive corruption prevention strategy which should include enhancement in the following management systems:

- Performance Management
- Procurement Management
- Financial Management
- Human Resources Management
- Complaint Management.

Examples of some of the corruption prevention practices are:

- Identify risk in vulnerable areas and risk management;
- Streamline work procedure manuals;
- Enhance staff supervision through surprise check systems;
- Enhance internal audits;
- Maintain proper documentation for accountability;
- Information security policy;
- Job rotation policy;
- Performance indicators/performance pledges (service guarantee);
- E-government and e-procurement;
- Exercise transparency and fairness in staff recruitment, appraisal and promotion.

In both the Philippines and Mongolia, there is now a system of monitoring the annual anti-corruption plan of the government ministries, to provide professional support and to ensure its sustainability through annual review.

VI. INTERNATIONAL BEST PRACTICES

Having travelled to different countries as an international anti-corruption consultant, I have collected some examples of international best practices in combating corruption:

- In South Korea, the public sector, the business sector and civil society joined hands in forming a coalition called Korea-PACT. Over 800 organizations signed the PACT and undertook to implement the agreed action plan. The progress was reviewed annually by an international evaluation team;
- In the Philippines, an expert team is going through the government ministries one by one to carry out a comprehensive integrity audit check and to make recommendations on what measures the respective government ministries should implement to combat internal corruption problems;
- In the Philippines, all public procurement in government ministries should be conducted through a “Bids and Award Committee”, and lay observers should be appointed to represent the public in monitoring the decision making progress;
- In Canada, all public officers have a legal obligation to report corruption;
- In Pakistan, the Philippines and Indonesia, special anti-corruption courts were formed to hear corruption trials;
- Malaysia set up its own Malaysian National Integrity Index to monitor its the integrity progress.

VII. CONCLUSION

There is no single solution in fighting corruption. Every country has to examine its unique circumstances and come up with a comprehensive strategy, which should embrace the three pronged approach - deterrence, prevention and education. Ideally, there should be a dedicated and independent anti-corruption agency tasked to co-ordinate and implement such strategy, and to mobilize support from the community.

The Hong Kong experience offers hope to countries which have a serious corruption problem which appears to be insurmountable. Hong Kong's experience proves that given top-level political will, a dedicated anti-corruption agency and a correct strategy, even a most corrupt place, like Hong Kong, can be transformed into a clean society.