

INTERNATIONAL CASE STUDY : STAMPING OUT CORRUPTION IN MALAYSIA

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I. PUTTING CORRUPTION IN A HISTORICAL CONTEXT

In 1957 when Malaya¹ became independent, corruption was hardly an issue. Both British and Malayan officers maintained the highest standards of integrity and the proud traditions of the Malayan Civil Service and were, on the whole, incorruptible. They lived well within their means. Ten years on, in 1967, the Government, sensing a gradual shift of attitude towards corrupt practices, an attitude that could be fairly described as ambivalent, felt constrained to create a special bureau to combat corruption, the forerunner of today's Anti-Corruption Agency. As you can see, the ACA has a longer history than, for example, the ICAC of Hong Kong, arguably the most successful corruption-busting organisation in the world today. It all goes to show that age is not always everything in fighting corruption. Political will is!

In my experience, it is impossible for us to even begin to understand the impact of corruption on a country without our being acquainted, however superficially, with that country's social, economic and political background. I make no apology, therefore, for delving a little into Malaysia's recent history, so that we may have a clearer idea of the causes of corruption in Malaysia and

the efforts made to curb it.

When Malaya became independent in 1957, it inherited a form of government based on the Westminster model which, with a few local adaptations, remains very much in place. Of equal significance, it also inherited an economy based on British colonial mercantile interests, centred almost exclusively on the export of rubber and tin. Palm oil came a little later. Malaya boasted the most efficient plantation economy in the world, so efficient, in fact, that in the immediate post-war years, Malayan foreign exchange earnings enabled Britain to repay much of its American war debt. It was not for nothing that Malaya was known as Britain's Dollar Arsenal. Economic prosperity, by the standards of Asia, is nothing new to Malaya or Malaysia, as it became later on. But it was a different kind of prosperity, an agriculture-based economy, offering nothing like the opportunities on which corruption was able to thrive in the 1970s.

As a result of the race riots in Kuala Lumpur in 1969 between the Malays and the Chinese, the Government, recognising that economic disparity between the two major races was at the heart of the tension, decided that unless the politically dominant, but economically deprived, Malays were brought into the mainstream of the nation's modern economic life, prospects for lasting peace and economic prosperity would be greatly reduced. The prescribed solution came in the form of massive social and economic engineering, going under the somewhat grand name of

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¹ Malaya became Malaysia in 1963 following the merging of British North Borneo, Sarawak and Singapore with the Federation of Malaya. Singapore was given independence by Malaysia in 1965.

the New Economic Policy or the NEP, for short.

A. Opportunities for Corruption Unlimited

The NEP was to be implemented over a 30 year period. It ran into controversy from day one, and was seen by Western liberals as unwarranted discrimination against a section of the Malaysian population. Its motive, though, was wholly transparent; it did not pretend to be anything other than positive discrimination, in the interest of national unity.

The Malaysian Government's diagnosis was spot on, and the prescribed remedy, painful and unpopular though it was, produced the desired results. Economically, the country took off, and with it came political stability which Malaysia continues to enjoy to this day. In less than 30 years, an agricultural economy was totally transformed, and, apart from a hiccup here and there, the country has not looked back. The lesson that Malaysia recognised, and learnt quickly, was that in a multi-racial and multi-cultural society, extreme economic disparities along racial lines, if neglected, could and would quickly create political and social instability, to the detriment of the democratic values we profess to uphold and cherish.

While the NEP has generally been successful in meeting nearly all of its main social and economic objectives, the creation of dozens of public enterprises to implement hundreds of socio-economic measures (enjoying wide discretionary powers) produced some not totally unexpected results. As with most government-inspired initiatives anywhere in the world, more often than not operating without the benefit of effective central coordination, they soon create enormous problems of their own; the most pervasive was corruption, both grand and petty. In

the closing years of the 1970s, corruption had become a factor of quite considerable significance in the national business equation.

Corruption and abuse of power had reached such unprecedented heights that the normally staid *The New Straits Times*, Malaysia's oldest English language newspaper, was moved to run an editorial on the subject;

"There was a time when a Malaysian could indulge in a little smile of condescension when stories about corruption in developing countries - other countries, of course-were detailed. That pride was entirely justified: virtually every aspect of public administration was clean, abuse of power was unheard of, departmental morale was high, public confidence vibrant. Perhaps there was a tendency to take this state of affairs for granted. For whatever reason, the present conditions have called forth a litany of exhortation from the various rulers, the Prime Minister, his deputy, and a number of ministers and departmental heads."

Malaysia had taken the first eager step on the slippery slope of national degradation.

II. GOVERNMENT ANTI-CORRUPTION MEASURES

A. The Early Years

As mentioned earlier, the Anti-Corruption Agency was set up in 1967. Its main function was to combat corruption, previously handled by the police. It was thought that with the growing sophistication of the economy, specialists were required to deal with white-collar crimes, including corruption. In the initial

years, the ACA, with full government backing, notched several notable successes, including the prosecution and conviction of several political leaders and senior civil servants.

Harun Hashim, the first Director of the ACA, and arguably the most effective in a long line of dedicated officers, recalled recently that his first duty was to know the extent of corruption in the country - what, where and who. Let him tell us what he did in his own words;

"Initially, pleas for information on corruption from the public, with the assurance that their identities would be kept a secret, did not meet with much response. The people were afraid of being victimised by the very people they had bribed. Bribery is a secret transaction between two individuals and if the secret is not kept, it must have been revealed by the giver. Victimisation is a natural consequence. But I had to know. So I established P.O Box 6000. The public were invited to write to me on anything they knew about corruption in government, or by any of its servants, without having to disclose their identity if they did not want to. Postage was free. The response was tremendous. Sometimes I received about 200 letters in a single day from all over the country. I read them all. I was then able to implement a plan of action of instituting measures to prevent corruption (the primary objective of the Agency) and where there was sufficient evidence, to sanction criminal prosecutions. The public would not have kept writing to the Agency if they did not see any result. Indeed the Agency could not have functioned without the assistance rendered by the thousands of anonymous letter writers who gave

vital information."

I have quoted Harun Hashim at some length because there are important lessons to be learnt from his pioneering work. The most important lesson is that combating corruption requires public support and cultivating public confidence in the system is crucially important. This involves, among other things, guaranteeing an informer that their anonymity will not be compromised, and they will not be victimised. Every scrap of information is important, nothing should be consigned to the waste paper basket without checking out and verifying the information given. As the saying goes, "nothing succeeds like success", and nothing is more encouraging to the public than a few successful prosecutions. The ACA, under Harun Hashim, was perceived to be free to act. The fact that he also had the power of a deputy public prosecutor was not lost on the corrupt.

B. Methods of Stamping Out Corruption in Malaysia

In the 1970s, when the NEP was installed, the Government intervened actively in economic activities, setting up large numbers of agencies to regulate and control every aspect of commercial and industrial life. Licensing, in particular, was the key instrument used to enforce the new requirements of the NEP. It is said that the British invented the red tape and the Indians subsequently improved it by tying it up in knots. The Malays, ever resourceful, turned it into a profitable personal revenue service.

Without naming names, the departments of government that exploited the opportunities presented to them by the need to obtain various approvals before a manufacturing license was granted, were those with powers to grant or withhold specific approvals. The approval process

was complicated and extremely time consuming. Several departments were involved and many businessmen were forced by circumstances to oil the wheels of bureaucracy. I speak from personal experience as a former businessman of the procedures involved, though not, mercifully, of having to bribe anyone. Foreign investments soon dried up, and the Government, recognising the need to reduce opportunities for corrupt practices, streamlined the procedures and introduced what came to be known as a one stop approving authority. The new system worked like magic; foreign, as well as local investments, poured in and, the rest, as they say, is history.

In time, various administrative reforms were put in place to improve civil service discipline. Among the more visible ones:

- (i) Clocking-in and clocking-out, involving every member of the civil service, the police, the armed forces and members of the cabinet, including the Prime Minister. Even judges are not exempt.
- (ii) The wearing of name tags by civil servants so that they can be identified.
- (iii) The introduction and improvement of the desk file and office procedures manuals.

These measures were intended to improve time management, accountability and facilitate work and decision-making processes. Subsequently, other innovations, including quality control circles, total quality management, clients' charter, and more recently, the ISO 9000 were introduced. While the emphasis has been on making the civil service more efficient, attention has also been given to improving the conduct and discipline of

public servants (a recent Hong Kong based survey put Malaysia just behind Hong Kong and Singapore in a public service efficiency poll. The comparison of two tiny city states with vastly different problems, is not, in my view, strictly valid. Malaysia is placed ahead of Japan, Taiwan and South Korea in terms of efficiency).

In 1993, the Public Officers (Conduct and Discipline) Regulations came into force. Disciplinary Board Regulations were introduced. In December 1994, the Judges' Code of Ethics was put in place, followed in 1995 by the adoption of Ethics in the Administration of the Institution of His Majesty the King. The recently retired head of the Anti-Corruption Agency, Dato' Shafee Bin Yahaya, believes that *"all these measures have made the Malaysian Civil Service more efficient and less prone to corruption. This has definitely contributed towards Malaysia's high rate of growth in the last eight to nine years."*

III. FURTHER MEASURES AGAINST ABUSE OF AUTHORITY & FINANCIAL MISMANAGEMENT

As early as 1988, the government recognised the need for a high-level national body to address weaknesses in public service financial administration. For this purpose, a Special Cabinet Committee on Government Management was set up under the chairmanship of the Minister of Finance. Matters highlighted by the Auditor-General, the Anti-Corruption Agency and the Treasury, are given serious attention, and remedial action taken. Compliance by heads of departments is crucial to the success of the Committee's work. Creative switching from one expenditure head to another goes on all the time, and eternal vigilance is the name of the game as far as the Committee is concerned.

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In Malaysia, members of the public who are aggrieved by bureaucratic misconduct may take their complaints to the Public Complaints Bureau or PCB. The PCB comprises of the Director-General of the Public Services Department, the Director-General of the Anti-Corruption Agency, the Senior Secretary-General of the Prime Minister's Department and the Director-General of the Malaysian Administrative Modernisation and Management Planning Unit. The PCB is responsible to the Chief Secretary of the Government, the country's top civil servant. To date, more than 70% of the complaints received have been successfully resolved.

A. Conflicts of Interest in the Public Service

The Federal Constitution prohibits a member of the Executive Council from engaging or taking part in any decision of the Executive Council respecting any trade, business or profession which may have a bearing on their pecuniary interests. Members of the Administration and Public Officers who abuse their position in order to obtain financial or other advantages will be subject to criminal proceedings, as provided under the Emergency (Essential Powers) Ordinance No. 22/70. The Ordinance has been enacted *"to widen the campaign against bribery and corruption, and now makes a penal offence any practice that comes within the definition of corrupt practice in the Ordinance, which previously would have escaped the net of the Penal Code"*, Mr. Justice Chang Min Tat in a Federal Court ruling. In practice, the Ordinance has proved to be an important instrument in preventing corrupt practices among members of the Administration, Members of Parliament, both State and Federal, as well as public officers. *"Over the years, the Anti-Corruption Agency has been fairly successful in taking action against the corrupt practices of public officers and politicians...."*, Director

General, ACA, August 1997.

IV. INTEGRITY - A NEW FOCUS

A. New Legal Framework & Greater Resources

In April 1997, the Government took another important step to develop and strengthen its own integrity system by setting up a high-powered Cabinet Committee on Integrity in Government Management. It is significant that the Government has chosen to embrace integrity, a word first used widely in the context of good governance when TI started to be active in Malaysia with a series of integrity seminars, as part of its anti-corruption public awareness programme. Coalition building is TI's strong point; working with individuals, civil society and organisations, both government as well as the private sector, fighting the same battle. In Malaysia, we have been able to develop an active, and effective, professional relationship with the Anti-Corruption Agency.

To give practical effect to public concerns about the damage caused by corruption to national life and prestige, the Government passed the Prevention of Corruption Act 1997, the most important weapon in the Government's legal arsenal with which to deal with the new, more sophisticated forms of corruption the country was facing. For the first time, the ACA was given wider investigative powers. Other features new to the corruption-busting scene are:

- (i) Minimum of 14 days mandatory imprisonment and a ten thousand ringgit fine or 5 times the amount or value of the bribe received, whichever is the higher.
- (ii) Requiring a suspect to explain how s/he has acquired their assets to the satisfaction of the Public Prosecutor.

If s/he fails to do so, s/he will be presumed to have acquired their wealth by corrupt means. The court may order forfeiture of the assets in such circumstances.

As part of its ongoing “cleaning up” process, the government has established, in departments and agencies in a position to engage in corruption, a departmental Committee on Integrity, Quality and Productivity. Quite apart from improving efficiency and transparency, the inculcation of “high moral values and good work ethics” is an important element in preventing corruption in the public service. The ACA has been revamped. Its functions have been expanded, and it is now required to:

- (i) Examine the practices, systems and procedures of public bodies in order to facilitate the detection and discovery of corrupt practices and to secure such further improvements as to make it difficult for corruption to rear its ugly head.
- (ii) Instruct, advise and assist any person, upon request, on ways in which corruption can be prevented.
- (iii) Educate the public against corruption.
- (iv) Enlist and foster public support in combating corruption.

The ACA is committed to working in partnership with civil society, and is prepared to ensure, under the law, that members of the public reporting corruption cases, are protected against victimisation. In this context, the Director-General has said *“Through public support, cases of corruption could be brought to light, the perpetrators prosecuted, and punishment meted out accordingly. The ACA also believes that members of the public will be*

more inclined... to come forward to give information on corruption and other malpractices when their identities are concealed and protected.”

The relevant provision in the Act states:

“Except as hereinafter provided, no complaint as to an offence under this Act or any prescribed offence shall be admitted in evidence in any civil or criminal proceeding whatsoever; and no witness shall be obliged or permitted to disclose the name or address of any informer; or state any matter which might lead to his discovery.”

I have taken you through a maze of methods, measures and legislation which have been put in place to minimise opportunities for corruption in my country. You may well ask, at this juncture, how effective the various measures have been in stamping out corruption in Malaysia?

V. CONCLUDING REMARKS

The measures I have described, unfortunately, have not succeeded in stamping out corruption. No anti-corruption measures known to man, and no country in the world, can claim to have succeeded in stamping out corruption. All that we can hope to do is contain it, and make corruption a risky and an unprofitable business.

That is precisely what Malaysia has been doing since the ACA was first established in 1967. The seriousness with which the Government views corruption is evident in the range of legal and administrative measures and resources that it has put at the disposal of the ACA. The political will is apparently there, but it is important for the Government to accept that corruption is not just about

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bribery; corruption is about the abuse of entrusted power for personal profit, a definition widely used by Transparency International. Corruption thrives in the absence of transparency and accountability. A grave shortcoming in the Malaysian anti-corruption mechanism is that the ACA is not an independent commission. It is a government agency, and members of the public suspect its impartiality, reporting as it does to the Prime Minister.

Happily, for the present at any rate, the Government has taken to heart the lessons of good governance, and the days of crony capitalism, the misuse of public funds for rescue operations of politically connected corporations and negotiated contracts are numbered. Malaysia, therefore, remains a good place in which to do business precisely because corruption, unlike in many countries, is not a major factor in our business equation.