

EFFECTIVE MEASURES TO COMBAT CORRUPTION IN HONG KONG

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I. INTRODUCTION

I am honoured to have been invited by Mr Keisuke Senta, Director of UNAFEI and Professor Masahiro Yamada, the Programming Officer of the subject course to come to UNAFEI for the 12th time as Visiting Expert to share with you my 27 years of experience in fighting Corruption in Hong Kong, as well as my last 14 years of experience as an anti-corruption consultant in 25 different countries. I have maintained a strong passion for anti-corruption mission and thus I am most grateful for the opportunity to participate in this most meaningful course and share my experience with the participants from different countries.

II. SHORT HISTORY AND THE ACHIEVEMENT OF THE ICAC

From my international experience, I generally group countries into three levels of corruption. At the first and lowest level, corruption is only restricted to a “few rotten apples”. Even the most corruption free countries belong to this group, as no country can be totally immune from corruption. At the second level, corruption is relatively common but restricted to individuals. At the most serious level, i.e. the third level, corruption is not only widespread, it is openly operated and organized by powerful corrupt syndicates, often colluded with organized crime gangs. In the early 70s, Hong Kong belonged to the third level and was definitely one of the most corrupt places on earth. Corruption was widespread and regarded as a “way of life”. It existed “from womb to tomb”. Corruption in the public sector, particularly the law enforcement agencies, was well organized and syndicated, hence making a mockery of the criminal justice system. As a taxi-driver, you could even buy a monthly label from the corrupt syndicate to stick on the windscreen of your taxi and it would guarantee you from any traffic prosecution during that month! Such

*SBS, IDS, JP, Honorary Fellow, Adjunct Professor & Hon Course Director of Anti Corruption Program, Hong Kong University SPACE and Former Deputy Commissioner and Head of Operations Independent Commission Against Corruption (ICAC), Hong Kong. About the author: Mr Kwok joined the Hong Kong Independent Commission Against Corruption (ICAC) shortly after its inception in 1975, and hence had witnessed and participated in the successful battle in transforming Hong Kong from a most corrupt place to one of the cleanest city. He retired as Deputy Commissioner and Head of Operations in 2002, after having led the Commission through the smooth transition of sovereignty from a British Colony to China in 1997, despite international pessimism.

Since his retirement in 2002 he has been invited to 25 countries in a total of 220+ missions to share his anti-corruption experience. In particular, he has assisted a number of countries to set up their new anti-corruption agencies, including Mongolia, Cambodia, Serbia, Mauritius and Timor Leste.

He is a member of the UNODC Anti-corruption Expert Group (2006), Visiting Lecturer of the International Anti Corruption Summer Academy (2011 & 2012), Regional Coordinator (Asia) of the International Association of Anti Corruption Authorities; Honorary Anti Corruption Advisor to the Office of the Ombudsman of the Philippines and the Mongolian Independent Authority Against Corruption; Visiting Professor of the National Prosecutors College & four other universities in China. He is also the Past Chairman of the Chartered Management Institute, Hong Kong Branch.

In Hong Kong, he assisted the Hong Kong University in designing the world's first International Postgraduate Certificate Course in Corruption Studies and he is the Adjunct Professor and Honorary Course Director. Since the first launch in 2003, 13 annual courses have been organized and it has attracted over 350 delegates, mostly senior officials of anti-corruption agencies, coming from 38 countries. He received the “Outstanding Teacher Award” from the University in 2006.

In the Hong Kong National Day Honour List, Mr. KWOK was awarded the ICAC Distinguished Service Medal (IDS) by the Chief Executive in 1998 and the Silver Bauhinia Star (SBS) in 2002, in recognition of his contribution to the success of ICAC in the fight against corruption in Hong Kong. He was appointed as the Justice of the Peace (JP) in 2016.

was the scale of open corruption in Hong Kong. After the establishment of the Independent Commission Against Corruption, and within five years, all the overt and syndicated corruption were eradicated and now Hong Kong was regarded as one of the most corruption free societies in the world. The Hong Kong case was regarded as one of the very few successful model of turning from a very corrupt place to a clean one. It demonstrates that corruption can be effectively controlled, no matter how serious and widespread the problem is.

In its 42 years of history, ICAC has achieved the following success:

- Eradicated all the overt and syndicated type of corruption in the Government. Corruption now exists as a highly secretive crime, and often involves only satisfied parties. Citizens rarely suffer from extortion from government officials.
- Amongst the first in the world to effectively enforce private sector corruption, providing an excellent business environment for Hong Kong and a level playing field for all investors.
- Ensured that Hong Kong has a clean election in its transition from a British Colony to democracy
- Pioneered solutions through corruption prevention studies in most corruption prone areas and promulgated best practice guidelines in areas such as public procurement, construction, financial sectors, staff management etc.
- Changed the public's attitude to no longer tolerating corruption as a way of life; and supports the fight against corruption in not only willing to report corruption, but be prepared to identify themselves in the reports. Before ICAC was set up, most corruption reports were anonymous. Now more than 75% of the reports come from non-anonymous sources.
- As an active partner in the international arena in promoting international co-operation. ICAC is the co-founder of the International Anti Corruption Conference (IACC)

III. WHAT ARE THE HONG KONG ICAC'S SUCCESS FACTORS

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 of them are not 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. From my experience, it consists of the following eleven indispensable components

1. Three-Pronged Strategy

There is no single solution in fighting corruption. Hong Kong 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 and to prosecute the offenders; the Corruption Prevention Department to improve the corruption prevention systems and procedures in the public sector; and the Community Relations Department to educate the public against the evil of corruption and to enlist their support and partnership in fighting corruption.

2. Enforcement Led

The three prongs are equally important, but unlike many Anti-corruption Agencies (ACA), ICAC places priority in resources on enforcement. It devotes over 70% of its resources in the Operations Department. The reason is that any initiatives in corruption prevention and education are doomed to fail in a corrupt country where the corrupt officials are still around and powerful. Any successful fight against corruption must start with effective enforcement on major targets, so as to get rid of the obstacles, and demonstrate to the public the political will and determination to fight corruption at all costs, as well as to demonstrate the effectiveness of the anti-corruption agencies. Without that, the ACA is unlikely to get the public support, which is a key to success. Successful enforcement also assists in identifying problem areas for corruption prevention review and can clear any human obstacle in the change management. The successful enforcement stories also provide a basis for public education and act as deterrence for the other corrupt officials.

3. Professional Staff

Fighting corruption is a very difficult task, because you are confronting people who are probably very intelligent, knowledgeable and powerful. Thus, the corruption fighters must be very professional in their

jobs. The ICAC ensures that their staff are professionals in their diverse responsibilities — the Operations Department has professional investigators, intelligence experts, technical experts, accountants and lawyers as their staff. The Corruption Prevention Department has management experts and the Community Relations Department pools together education, ethics and public relations experts. Apart from professionalism, all ICAC staff are expected to uphold a high level of integrity and to possess a passion and sense of mission in carrying out their duties. ICAC strives to be highly professional in their investigation. ICAC is one of the first law enforcement agencies in the world to introduce the interview of all suspects under video; they have a dedicated surveillance team with over 120 specially trained agents who took surveillance as their life-long career. They also have a number of specialized units such as witness protection, an undercover unit, computer forensics and financial investigation.

4. 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 report centre manned on a 24-hour basis and there is a highly publicized telephone hotline to facilitate public reporting.
- Effective confidentiality system and protection of whistle-blowers and witnesses
- A quick response system to deal with complaints that require 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 an effective internal and external review system to ensure all investigations are professionally and promptly investigated.
- All successful enforcement is publicized in the media to demonstrate effectiveness and to cause maximum effect in deterrence.

5. Effective Prevention Strategy

The corruption prevention strategy aims at reducing the corruption opportunities in government departments and public institutions. The general principle is to ensure a high level of efficiency, transparency and accountability in all government services. The priority areas are public procurement, public works, licensing, public services delivery, law enforcement and revenue collection. Comprehensive corruption prevention strategy 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:

- Identifying risk in vulnerable areas and risk management
- Streamlining work procedure manual
- Enhancing staff supervision through surprise check system
- Enhancing internal auditing
- Maintaining proper documentation for accountability
- Information security policy
- Job rotation policy
- Performance indicators/performance pledges (service guarantee)
- E-government and e-procurement
- Exercising transparency & fairness in staff recruitment, appraisal & promotion

6. Effective Education Strategy

The ICAC has a very wide range of public education strategies, in order to enlist the support of the entire community as a partnership to fight corruption. It includes:

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

7. Effective Legal Framework and Anti-Corruption Law

Hong Kong has comprehensive legislation to deal with corruption. In terms of offences, apart from the normal bribery offences, it created three unique offences:

- a. offence for any civil servant to accept gifts, loans, discounts and passage over a certain limit, even if there is no directly related corrupt dealing, unless specific permission from a senior official is given
- b. offence for any civil servant to be in possession of assets disproportionate to his official income; or living above means
- c. Offence for conflict of interest. Any public officials abusing their authority to show favouritism to other persons, such as nepotism, can be criminally liable. It includes a statutory requirement to report potential conflicts of interest.

On investigative power, apart from the normal police power of search, arrest and detention, ICAC has the power to check bank accounts, require witnesses to answer questions on oath, restrain properties suspected to be derived from corruption, and hold the suspects' travel documents to prevent them from fleeing the jurisdiction. If justified and in serious cases, they can apply proactive investigation techniques such as telecommunication intercept, surveillance, undercover operations etc. Not only are they empowered to investigate corruption offences, both in the Government and private sectors, they can investigate all crimes which are connected with corruption.

The ICAC cases are prosecuted by a selected group of public prosecutors to ensure both the quality and integrity. The Judiciary of Hong Kong is a strong supporter of fighting corruption, ensuring that the ICAC cases are handled in courts by highly professional judges with fairness. The conviction rate for ICAC cases is very high, around 80%

8. Review Mechanism

As the Commission is independent and only answerable to the Chief Executive and 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 a majority of its members coming from the prominent citizens in the private sector, as representing the society to act as a watchdog over the ICAC. 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 before the Legislature for debate, 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 for debate

9. Equal Emphasis on Public & Private Sector Corruption

Hong Kong is amongst one of the earliest jurisdiction to criminalize private sector corruption, in 1970. ICAC places equal emphasis on public and public sector corruption. The rationale is that there should not be a double standard in the society. Private sector employees vastly outnumber the public-sector employees and unless they maintain the similar ethical standard, the society can never achieve corruption free status. Indeed, private-sector corruption can cause as much damage to the 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 buildings. Effective enforcement of private-sector corruption 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.

10. Partnership Approach

You cannot rely on one single agency to fight corruption. Everyone in the community and every institution have a role to play. 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 a government agency should appreciate that it is his solemn responsibility to clean his own house. Every government agency should have a tailor made anti-corruption strategy, translated into an anti-corruption action plan and should have a high power management committee to monitor the progress of the action plan, which should be subject to annual review and revision.

Other important partners of ICAC include:

- i. Civil Service Commission
- ii. Business community
- iii. Professional bodies
- iv. Civil society & community organizations
- v. Educational institutions
- vi. Mass media
- vii. International networking

11. Top Political Will, Independence and Adequate Resources

The most important factor in fighting corruption is “political will”. In Hong Kong, there is clearly a top 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 their investigation. The strong political support was translated into financial support. The ICAC is probably one of the most well-resourced anti-corruption agencies in the world! ICAC’s annual budget amounted to US\$90M, about US\$15 per capita.

12. Comparison with other ACAs

Some critics argue that the Hong Kong model can only work in Hong Kong because of the unique Hong Kong situation and cannot be applied to other countries. They usually give the following reasons:

1. Hong Kong is a small city whilst most corrupt countries have a large geographical area. This argument cannot stand. Hong Kong is a large city of over 7 million population. If any corrupt country can apply the Hong Kong model as a pilot scheme just on its capital city, and achieve equal success, it would have a tremendous impact on the whole country, and there is no reason why the successful model cannot then be applied throughout the country.
2. The country is unable to afford the resources like the Hong Kong ICAC. It is true that the HK ICAC has a large budget. But it merely accounts for 0.2% of the national budget. In most corrupt countries where the ACA are not seen to be effective, their budgets invariably are below 0.01% of the national budget, that speaks for the political will of these countries! If a corrupt country can raise their anti-corruption budget to the same level as the Hong Kong ICAC, i.e. 0.2% of the national budget, which clearly is justified, the budget should be more than adequate for any national anti-corruption agency.

3. The country has a unique cultural tradition of gift giving and nepotism. Hong Kong had the same corruption-friendly culture in the past, if not more prevalent. The Chinese tradition of giving “Laisee” or “red packet” containing money to all children and business associates in the Chinese New Year was an open way of giving/receiving bribes in the past. The Hong Kong experience is that through an effective public education campaign and law enforcement, this cultural problem can be solved.

Hence the problem is not that the Hong Kong model is not applicable. It is more the case of the lack of political will to fully adopt the Hong Kong model

IV. CONCLUSION

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

The Hong Kong experience offers hope to countries which have serious corruption problems that appear to be insurmountable. Hong Kong’s experience proved that given strong political will, a dedicated anti-corruption agency and a correct strategy, even the most corrupt place like Hong Kong can be transformed to a clean society within a rather short period of time.