

C. Integrity in Politics

Chapter 7

Enforcing Accountability by and the Transparency of Political Parties

■ **Lim Guan Eng**

Integrity is a rare commodity, especially in politics. In an environment of systemic nonintegrity, politicians who aspire to live up to high standards of accountability often do not last. When the private and public sectors are closely intertwined, without the right links to the business world a political career is invariably an uncertain undertaking. Conversely, successfully managing a private enterprise is a difficult task without the right political connections. Most political parties have their own investment arms that monopolize the print and electronic media, the banking and financial sectors, and some industrial sectors. In such a system corruption and bribery find fertile soil.

CAPTIVE CORRUPTION

For a number of well-placed individuals, corruption can be beneficial; however, given the extensive harm that it does to a country's economy, the argument that corruption can contribute to its economic development by serving as grease money to speed up certain procedures can hardly be considered correct. Similarly, huge capital expenditure by governments is often said to be an indispensable engine of economic growth, but if corruption is present the reverse is more likely to be the case. According to Tanzi and Davoodi (1998), corruption combined with such large public investments is likely to reduce growth by

- Increasing total public investment while reducing its productivity
- Increasing public investment that is not adequately supported by nonwage expenditures on operations and maintenance
- Reducing the quality of existing infrastructure
- Decreasing the government revenues needed to finance productive spending.

Capital expenditure by governments presents another source of fertile ground for corruption. The total amount of current government expenditure determines the level of government revenues needed, while capital spending is the main determinant of economic growth. This risks to provide a blank check for unnecessary government borrowing to cover fiscal deficits in order to justify extensive capital expenditure and other forms of mismanagement of government revenue. With regard to public spending, while politicians' discretion is limited given that most current spending by governments reflects previous commitments, such as pension and interest payments, public debt repayments, salaries, and subsidies, the situation is different in the context of new capital projects, where their discretion is large, thereby opening up vast opportunities for corruption. Thus major public investments in an environment where corruption is endemic carry the risk of bringing about more economic harm than benefit to a country.

ACCOUNTING FOR ASSETS AND INTEREST

To combat systemic corruption, relying on politicians with personal integrity is not the complete answer. Transparency and accountability must be institutionalized, with rules in place that pertain to full disclosure, freedom of information, public declaration of personal assets, and open invitation to public scrutiny.

If government leaders are not required to declare their assets publicly, which is the situation in Malaysia and elsewhere in the region, they and their families can accumulate wealth that might not always be justified. In addition to depriving society of resources, and thereby hindering necessary public investments to reduce poverty and foster economic growth, this contributes to the decline of public trust in government. To counter this problem governments need to implement rules and regulations governing conflicts of interest and requiring the disclosure of personal assets and liabilities by politicians and civil servants.

EMPOWERING CIVIL SOCIETY

In this context, it is worrying that the particularly high public perception of the level of corruption in Malaysia, as reflected in Transparency International's corruption perception index and other similar indexes, is combined with a tendency among the public to be inured to, passive about, and even tolerant of perceived corrupt practices. The loss of significant public funds as a consequence of corruption is certainly a serious problem, but much more troubling is if such wrongdoing is not sanctioned. This leads to a

public that can only be shocked by scandals of particularly striking moral concern, such as the recent finding that law students, supposedly the future defenders of law and justice, are willing to pay large amounts of money for leaked examination papers.

Therefore awareness raising and capacity building in civil society to stimulate public opposition against corruption and gain civil society's support for the fight against corruption are crucial for bringing about change. The effectiveness of such public support was demonstrated in a case concerning improper management of the budget of the government of the Malaysian state of Malacca. Malacca's annual budget deficit increased by almost 400 percent, from RM50 million in 2000 to RM 242 million in 2001, or around RM350 for each of Malacca's 600,000 residents. This sudden increase was due to a public works and capital expenditure program, especially the construction of a RM500 million dam. While the need for additional water in Malacca was widely acknowledged, the construction of a large dam in a relatively small state was seen as a potential threat to the environment, the livelihood of residents, and the long-term sustainability of the rain forests, and provoked speculation that the dam project might be an attempt to justify a potentially illicit capital expenditure and to hide it behind the need for water.

Investigations into this case revealed that at a previous Malacca State Assembly meeting in 1999 the construction costs had been evaluated at RM161 million, as opposed to the RM500 million stated later. This resulted in a public campaign demanding full transparency and accountability in relation to this project, as well as an explanation of the RM339 million difference. The state government could not explain this increase in costs by, for instance, pointing to additional specifications to the dam, and consequently decided to call for a public tender.

An examination of 16 volumes of tender documents did indeed reveal some differences in specifications. The dam's height had increased by 5 percent and the crest length had increased by 44 percent, but these changes were not significant enough to justify such a large cost increase. Worse still, the dam's production capacity under the new tender had decreased by 400 percent. At the end of the investigation the state government had to give in to intense public pressure and award the tender for the dam at a cost of RM118 million. The resulting savings of RM382 million could immediately be used to maintain water rates at the same level for the following five years. Thus at a time when almost every state in Malaysia was increasing water rates, the Malacca state government was in a position where it could ensure that its citizens had access to water resources at adequate rates.

This was one of the few instances where a public campaign succeeded in curbing corrupt practices. It is also an example of how an empowered and educated civil society and a healthy democracy are probably the most effective tools against corruption. However, successfully mobilizing society requires sufficient resources, both in terms of finances and in terms of human capital.

ENFORCING ANTI-CORRUPTION LAWS

An independent judicial system based on the rule of law is another prerequisite for an effective fight against corruption. Malaysia's anti-corruption laws are governed by the 1997 Anti-Corruption Act, an extensive piece of legislation, and effected by the Anti-Corruption Agency. However, proper implementation and enforcement of these laws face challenges because of a lack of politicians with integrity and strong political will, and because of political interference in the agency's investigations. Only a few high-level political leaders have been prosecuted under these laws, and usually when they have been shorn of political support by those in power.

Strict enforcement of the act is more often punished than praised, as demonstrated by the investigation against a former Malaysian deputy prime minister. Instead of being praised for bringing a senior government civil servant to justice for an unexplained RM100,000 in cash found during a raid of his office, the head of the Anti-Corruption Agency was forced to abandon the case on the grounds that the raid had been conducted without the prime minister's permission. The senior civil servant accused in this case was subsequently appointed as head of Malaysia's central bank.

In the absence of political will and of politicians with integrity, the most rigorous laws become ineffective. Corruption exists everywhere and can never be completely eliminated, but effective enforcement of proper anti-corruption laws can help reduce it. Malaysia's opposition parties should do their part by dealing with this problem, starting within their own ranks. While the magnitude of the problem within opposition parties is less significant, their credibility is at stake if they do not uphold the underlying principles and values of a stand against corruption and apply these principles to themselves first.

CONCLUSION

No one dares to dispute the negative consequences of corruption, but some still tend to condone it as a necessary evil of economic development.

Many governments in the region were once examples of this kind of thinking; however, the fallacy of this argument was exposed following the 1997 Asian financial crisis, which demonstrated how corruption had short-changed the country. The example of Singapore was proof of the argument that a clean government is best positioned to handle an economic crisis.

How can integrity in politics be restored when corrupt practices are rampant? The primary and most important prerequisite for such undertaking is political will. Battling corruption is a painful task for many governments, but a necessary one, and a famous Chinese proverb says: "Better a short pain than a long pain." But how many are willing to endure even a short pain, especially when no rewards are in sight? When eliminating corruption means risking their own demise, few governments can muster the political will necessary for such an undertaking. Therefore to foster the necessary political will, society at large and top leaders have to recognize and publicly acclaim the benefits for all of a corruption-free society, and those that are actively engaged in taking action against corruption need to be rewarded for their courageous undertaking.

Equally important is a democratic culture based on the rule of law that permits open public scrutiny and effective political opposition. While a country may not be able to eradicate corruption completely, it should have sufficient institutional mechanisms to punish corrupt behavior and strong public opinion so that those who engage in corruption genuinely fear sanctions, and are deterred from continuing their wrongdoing. Another old Chinese proverb says: "If you are thinking a year ahead, sow a seed. If you are thinking 10 years ahead, plant a tree. If you are thinking 100 years ahead, educate the people." The most effective remedy is to educate the young so that they grow up abhorring corrupt practices and are given the knowledge necessary to build a clean and trustworthy society, free of corruption, to the benefit of all.

REFERENCES

Tanzi, Vito, and Hamid Davoodi. 1998. *Roads to Nowhere: How Corruption in Public Investment Hurts Growth*. International Monetary Fund, Washington, D.C.

Chapter 8

Bribery and Political Parties: The OECD Convention

■ Enery Quinones

This chapter focuses on bribery transactions that are criminalized under the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The convention has now been ratified by 34 countries: 29 OECD countries and 5 nonmember countries. The convention targets the practice of paying bribes to foreign public officials to obtain or retain international business.

Some are concerned that as the effectiveness of the convention increases, the likelihood of people finding ways to circumvent it will also increase. Their criticism is that by not expressly prohibiting bribery of foreign political parties or candidates for public office, payments that might have been made to foreign officials will be diverted to political parties and candidates in an attempt to gain favorable influence over government decisions.

DEFINITION OF FOREIGN PUBLIC OFFICIAL

It is true that the convention does not define political parties or party officers as people covered by the definition of foreign public official. This problem was discussed at length during the negotiations on the convention; however, because of divergent views among the different countries, consensus could not be reached. Those in favor of including political parties and party officers argued that bribing political parties and party officials was no less a breach of public trust than bribing public officials, and that the harmful consequences were no less pernicious. Those opposed to this view believed that their legal systems could not endorse the assimilation of these categories of people in the definition of foreign public official. In addition, they feared that because of the difficulty of defining a political party and a party officer, the autonomous definition of public official (one that does not rely on the definition of public official in a third country) in the convention would be endangered.

BRIBERY OF FOREIGN POLITICAL PARTIES

Even though the definition does not explicitly cover political parties and party officials, the convention does cover certain bribery transactions involving these people, namely:

- The bribing of a political party officer who also happens to be a public official, for example, a member of parliament, might be viewed as falling within the definition of foreign public official covered by the convention.
- A party officer who acts as an intermediary between a briber and a public official would also be included under the convention, because it covers both indirect as well as direct bribery.
- A bribery transaction between a briber and a public official that benefited a political party and party officer would also be covered by the convention.

In some situations coverage of bribery transactions involving political parties and party officers under the convention would depend on the actual circumstances of the case, for example:

- If party officers operate in a one-party state they may exercise public authority, in which case they could be treated as public officials under the convention.
- If political parties or party officers are in collusion with bribers they might be considered as a party, or co-author, to the transaction.

Let us now consider situations where bribery transactions involving political parties, and party officials are not covered and the significance of such noncoverage. Assume that someone has bribed a foreign political party officer to obtain an act or a decision by the party or the party officer. As this normally does not involve a government act or decision and as no foreign public official is involved, this may be a crime under some countries' national laws, but is not a crime under the convention. Similarly, if a foreign political party or party officials receive a bribe for the party or the officials to use their influence to obtain an act or decision by the government, this would also not be covered by the convention, but again, could be a crime under some national laws.

The question here is whether this behavior should be criminalized, and if so, in what manner? The next section assumes that the problem is significant enough to warrant such action and examines possible approaches.

SOLUTIONS

Some countries have already gone beyond the requirements of the convention and their national laws prohibit such conduct. For example, the United States includes bribery of a political party or a party official as an offense under its Foreign Corrupt Practices Act, and this covers both situations described in the previous section. Three other countries that have ratified the convention have included in their implementing laws the offense of bribing a party or a party officer in order to favorably influence a government decision. Other countries may have other national laws, such as those governing trafficking in influence, that may also cover this behavior. The problem is that the lack of uniformity could hamper the provision of mutual legal assistance or extradition where these are conditional on dual criminality.

A more uniform, multilateral approach, might be achieved in different stages as follows:

- In the short term, monitoring of the strict enforcement of the convention is imperative, so that the provisions that would punish bribery transactions involving political parties are applied by all countries party to the convention. This monitoring function implies reviewing by the OECD Secretariat of implementation laws to ensure that they effectively transpose the obligations of the convention (phase 1 of monitoring) and, more important, checking that countries are investigating, and if necessary, prosecuting, alleged bribery cases that would be covered under the convention (phase 2 of monitoring).
- In the medium term, continued assessment of the scope of the problem is needed. The OECD has begun to gather information on bribery in relation to political parties, party officials, and candidates for political office as part of the exercise to determine the significance of the potential loophole in the convention (see <http://www.oecd.org/daf/nocorruption> for the questionnaire). Depending on the responses, the OECD will consider steps to ensure more adequate coverage.
- By 2004 the OECD should be in a position either to issue a clarification that leaves no doubt about the scope of coverage of the convention or, if justified, to modify or amend the convention.

Another possible solution might be to develop a global convention that covers bribery in the private sector as well. The rationale would be to eliminate the current differentiation so that bribery of public officials and of anyone in the private sector would be considered as offenses. Before taking such a step, a study of the impact of a private sector convention on the

existing convention on combating public sector bribery would be necessary; however, some organizations like Transparency International are urging the OECD in this direction.

While striving to achieve a more comprehensive solution, we must not lose sight of our immediate objectives. We should be conscientious in applying the convention we already have. Effectively enforcing existing laws is the best way to maintain credibility and people's perceptions that we will succeed in reducing corrupt payments in international business transactions.