

Eradicating Corruption: The Malaysian Experience

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Abstract

Corruption has long been a focus of concern. Studies have shown that there can be a huge array of anti-corruption institutions, regulations and laws available in a given society and there have been some success stories in fighting corruption. This paper examines the governance of corruption in developing countries. It reviews the relevant country experience, before it evaluates critically the Malaysian experience on governing corruption. It concludes with the question 'Can Malaysia eradicate corruption?' It is hoped that the paper could provide an analysis of corruption from the developing Asian countries.

Keywords: Corruption, governance, transparency, accountability, Transparency International (TI), regulations

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Introduction

In recent years there is widespread condemnation of corruption. Studies have shown that corruption has ‘toxic’ effects on societies (Carino, 1986). Corruption affects economic growth, investment and government expenditure (Campos, Lien & Pradhan, 1999; Mauro, 1997; Mehrez & Kaufmann, 1999), hurts the poor and worsens income inequality and poverty (Gray & Kaufmann, 1997; Gupta, Davoodi & Alonso-Terme, 1998; Kaufmann & Shang, 1999; Tanzi & Davoodi, 1998), reduces the efficiency of firms, and increases the transaction costs of doing business (Kaufmann & Shang, 1999). The report on Human Development in South Asia 1999 concluded:

“Corruption is one of the most damaging consequences of poor governance. It undermines investment and economic growth, decreases the resources available for human development goals, deepens the extent of poverty, subverts the judicial system, and undermines the legitimacy of the state. In fact, when corruption becomes entrenched, it can devastate the entire economic, political, and social fabric of a country...corruption breeds corruption – and a failure to combat it effectively can lead to an era of entrenched corruption” (1999: 96).

In countries where corruption is successfully controlled, there is greater inflow of foreign investments, higher per capita income growth, higher literacy rate and increased business growth (Kaufman, Kraay, & Zaido-Lobaton, 2000). Hence, eradicating corruption inevitably helps further poverty eradication and economic development.

In Malaysia several events, notably the Asian financial crisis, have helped to catalyse the shift in public perception of corrupt practices so that it has now become a critical component of public policy. This paper examines the governance of corruption in Malaysia. The paper starts with a short review of the literature on corruption. The next section reviews the relevant country experience. The paper then evaluates the Malaysian experience on governing corruption. It concludes with the question, ‘Can Malaysia eradicate corruption?’

Literature Review

Conceptualizing Corruption

‘Corruption’ is often used interchangeably with ‘rent seeking’ and there is a large area of overlap. Rent seeking is the effort to acquire access to or control over opportunities for earning rents.² These efforts are not necessarily illegal, or even immoral. However, of concern is what Bhagwati termed ‘directly unproductive’ rent seeking activities, because they waste resources and can contribute to economic inefficiency (Bhagwati, 1974, Krueger, 1974). Rents are unproductive when they are spent in resource reallocation rather than resource creation (Buchanan, 1980). The theory of rent-seeking argues that

² Rents are defined as “...that part of the payment to an owner of resources over and above that which those resources could command in any alternative use”. (Buchanan 1980: 3).

state incurs losses when resources are unproductively diverted in order to capture rents generated by state intervention (Buchanan 1980). State intervention is also identified as an arena of patron-client transactions which give rise to clientelism, an explanation alternative to that of rent-seeking. Clientelism refers to a form of social organization characterized by 'patron-client' relationships, where powerful and rich 'patrons' promise to provide relatively powerless and poor 'clients' with jobs, protection, infrastructure, and other benefits in exchange for votes and other forms of loyalty including labour. Patrons are often unaccountable for their actions. Thus, clientelistic relationships are often corrupt and unfair.

Often the dominant relationship underlying corrupt transfers is a patron-client relationship between the state acting as patrons and its clients, the recipients of subsidies, licenses or other valuable resources. Khan (1996) argues rent-sharing by bureaucrats usually happens in this context of patron-client transactions (a set of exchanges which overlap with corrupt transactions). The state in its status of patron is able to organize collusive transfers where officials can participate in share of the resources being transferred to clients or in the share of the wealth that is eventually created as a result of the transfer (Khan 1996). Corruption in patron-client exchanges is thought to have negative consequences because it favours particularistic arrangements that favour specific clients, which can give rise to allocative inefficiency as the most deserving clients do not necessarily get access to public resources. While the relationships may be characterized by rent capture, they can be classified as corrupt only if they are illegal. As Khan (1996) further argues, although particularistic arrangements are not always corrupt, they usually involved transactions which are. There is no universal or comprehensive definition as to what constitutes corrupt behaviour. For the purpose of this paper a public-interest-centred corruption is defined as "the abuse of public office for private gain" (World Bank, 1997: 8).

Caiden (1981) noted two important distinctions; first, whether corruption is a *fact* of life or a way of life. In a country where cases of corruption are exception rather than the rule, then corruption is a *fact* of life. In a country where corruption is rampant and becomes the norm rather than the exception, then corruption is a way of life (Caiden, 1981). Second, whether corruption is of grand or petty in nature. Grand corruption refers to corruption by political leaders and senior civil servants and usually involves large international bribes and hidden overseas bank accounts. Alatas (1991) argued that the involvement of senior management caused a permissive attitude which lead to its perpetuation. Petty corruption is practiced by junior civil servants who demand bribes to perform favours (Pope 2000). Effective anti-corruption strategies are those that are able to curb both grand and petty corruption simultaneously (Quah, 2003).

The causes of corruption are rooted in the particular political and economic conditions of each country and the complexity of which makes remedial efforts difficult (World Bank, 1992). Three main factors are identified as principle causes: opportunities, salaries, and policing (Palmier, 1985; Mauro, 1997). Palmier (1985) hypothesized that corruption depended upon a balance between the three causes or a continuum where at one end "with few opportunities, good salaries and effective policing, corruption will be minimal; at the other, with many opportunities, poor salaries, and weak policing, it will be considerable." (Palmier, 1985: 271-272).

Whilst the specific causes of corruption vary from country to country, there are some general methods of control that can serve as a useful starting point. One of the key points is the extent to which the rule of law prevails, as exemplified in the quality of the judicial system. Besides the formal rule of law which provides external control, the other is the informal and non-legal forms of control -- the values and cultural factors and the degree of trust existing in society (World Bank, 1997) that provide normative restraints and internal discipline and control. The informal form of control was deemed particularly relevant in the Asian context (Faruqi, 1995).

In Asian countries three patterns of corruption control have been identified (Quah, 2003):

1. There are anti-corruption laws but no specific agency that implement those laws (Mongolia which has instituted the Law on Anti-Corruption and three provisions restricting bribery in the Criminal Code).
2. The combination of anti-corruption laws and several anti-corruption agencies (Philippines, China and India).
3. The impartial implementation of comprehensive anti-corruption laws by a specific anti-corruption agency (Singapore, Malaysia, Hong Kong, Thailand and South Korea).

Corruption can be reduced if the public perceives it as a 'high-risk, low-reward' activity, i.e. when corrupt individual is likely to be caught and punished severely. For corruption to be perceived as 'high-risk, low-reward' activity, the government must publicise the detection of corrupt behaviour among the civil servants and political leaders through the mass media, and their punishment according to the law if they are guilty (Palmier, 1985; Stapenhurst, 2000).

In sum, an effective anti-corruption strategy is likely to remove the opportunities for corruption; raise the salaries of civil servants and politicians; ensure a high degree of policing through effective application of the formal rule of law and the informal controls which encompass values; culture, moral and society responsiveness; and provide a negative publicity as a deterrent.

The Malaysian Experience

Malaysia's ranking in Transparency International's global corruption-perception (Table 1) and the recent PERC survey (Table 2) show that the corruption mentality runs deep. Therefore, there are legitimate and widespread concerns that the corruption is not being stopped, let alone reversed. The Malaysian government acknowledged the prevalence of corruption and recognised the dangers of corruption to economic growth and has set itself the task of fighting corruption.

Table 1. Ranking and Scores* of Asian Countries on the Corruption Perceptions Index, 1995-2006.

Country	1995		1996		2000		2001		2005		2006	
	Rank	Score										
Singapore	3	9.26	7	8.80	6	9.1	4	9.2	5	9.4	5	9.4
Hong Kong	17	7.12	18	7.01	15	7.7	14	7.9	15	8.3	15	8.3
Japan	20	6.72	17	7.05	23	6.4	21	7.1	21	7.3	17	7.6
Malaysia	23	5.28	26	5.32	36	4.8	36	5.0	39	5.1	44	5.0
Thailand	34	2.79	37	3.33	60	3.2	61	3.2	59	3.8	63	3.6
Philippines	36	2.77	44	2.69	69	2.8	65	2.9	117	2.5	121	2.5
China	40	2.16	50	2.43	63	3.1	57	3.5	78	3.2	70	3.3
India	35	2.78	46	2.63	69	2.8	71	2.7	88	2.9	70	3.3
Indonesia	41	1.94	45	2.65	85	1.7	88	1.9	137	2.2	130	2.4

Score ranges from 0 (most corrupt) to 10 (least corrupt).

Source: Transparency International Corruption Perceptions Index. See <http://www.transparency.org>

Table 2. Ranking of 13 Asian countries - Political Economic Risk Consultancy, 1997-2007

Country	1997		2000		2001		2005		2006		2007	
	Rank	Score										
Singapore	1	1.05	1	0.71	1	0.83	1	0.65	1	1.30	1	1.20
Hong Kong	2	3.03	2	2.49	2	3.77	3	3.5	3	3.13	2	1.87
Japan	3	4.6	3	3.9	2	2.5	2	3.46	2	3.01	3	2.1
Malaysia	4	5.8	4	5.5	4	6.0	7	6.8	7	6.13	6	6.25
Thailand	7	7.49	6	3.33	8	3.2	8	3.2	59	3.8	63	3.6
Philippines	6	6.5	8	8.67	9	9.0	18	8.8	11	7.8	13	9.4
China	10	8.06	9	9.11	7	7.88	9	7.68	9	7.58	7	6.29
India	11	8.2	11	9.5	10	9.25	10	8.63	8	6.76	9	6.67
Indonesia	12	8.67	12	9.88	11	9.67	13	9.1	13	8.16	11	8.03

Scores range from 0 to 10, with 0 being the best grade possible.

Source: PERC. Available from: <http://www.asiarisk.com/lib10.html>

The Prevention of Corruption Act and the Anti Corruption Agency

The legal framework for Malaysia was the Prevention of Corruption Act 1961 (PCA61) and in 1967, the Anti-Corruption Agency of Malaysia (ACA) was established to implement PCA61. The major functions of the ACA were: (1) to investigate and prosecute offences under the act; (2) to introduce preventive measures against corruption in the civil service and statutory boards; and (3) to investigate disciplinary complaints against civil servants (Marican, 1979). The PCA61 was revised, and subsequently repealed and replaced with the Anti Corruption Act 1997 which came into force on 8 January

1998.³ With the revision the ACA, under the jurisdiction of the Prime Minister's Office, is said to have been strengthened.

A criticism of the ACA was a perception that although complaints of various forms of corruption and abuse of power abound, they were not vigorously pursued and slow in doing so. Between 2001 and 2004 the ACA 38,471 complaints were received, of which only 3,761 were investigated (Malaysiakini, 2005). It was also alleged that the ACA targeted the *ikan billis* or the small and middling fish and did not investigate cases involving 'big fish' (National Integrity Systems, 2003). Out of the 485 arrests for corruption in 2004 there was only one 'big fish'; a former Minister who was alleged to have used his position for financial gain. He allegedly approved the sale of 16.8 million shares in one business to another and was promised 3.36 million shares. More than two years later the case is undergoing a full hearing (New Straits Times, 2007). The law enables the ACA to seek out corruption but requires it to provide evidence. The problem seems to be the difficulty in obtaining evidence for prosecuting the public official or Minister suspected of corruption offences even though the public perception is that they are corrupt. Therefore, the call is that there needs to be a presumption of corruption and a public accountability clause in the law for effective management (Pillai et al., 1995).

The reason advanced for poor results is that while the ACA can conduct its investigations independently, the final decision to prosecute rests with the Chief Public Prosecutor Attorney General (AG). The AG and the Director-General of ACA are appointed by the *Yang di-Pertuan Agong* (King) on the advice of the Prime Minister. Unlike in most countries where the AG is a Member of Parliament, Malaysia's position is unique. The AG does not sit in Parliament and no one answers on his behalf, which made him the most protected individual, a privilege accorded to the position. The general perception is that the process of appointment leads to the non-prosecution of senior government officials and ministers that were under investigation. Also, the fact that the ACA is under the Prime Minister's Department raises doubts of the independence of the ACA.

One suggestion is that the government should free up the ACA, and institute due process in appointment and appointing mechanism that ensures consensus support for an appointee through the Parliament, rather than the Prime Minister. And that there should be an accountability mechanism outside the government, such as, a Parliamentary Select Committee on which all major parties are represented. Whichever mechanism that is introduced, the appointment process must ensure that the DG to be appointed is an independent person of integrity, and that he is adequately protected while in office. The DG should also be afforded the same rights of tenure of office as those enjoyed by a superior court judge. Removal from office should be in accordance with a prescribed and open procedure, and on the grounds of incompetence or misbehaviour, and not at the discretion of the executive.

³ Section 3(1), Act 575 which repealed the Prevention of Corruption Act 1961 and the Anti-Corruption Agency Act 1982.

The Public Accounts Committee

The Public Accounts Committee (PAC) at the beginning of every Malaysian Parliament has played an important role by mandating that the accounts of the Federation and the States be examined by the Auditor-General which then has to be submitted to the King and, finally, to the House of Representatives. The PAC acts to ensure financial accountability on the part of government agencies and departments. It initiates action on concerns expressed in the Auditor-General's report.⁴ It has the power under to summon for persons, or requests for issuing of letters, papers and records, and to issue statements to Parliament. The PAC will identify areas in the report which warrant explanation and may request relevant agencies or ministries to respond to queries of non-conformity raised in the Auditor-General's report. However, the PAC is held back by a lack of resources and does not have its own manpower (Samad, 2005).

National Integrity Plan and the Integrity Institute of Malaysia (IIM)

When Badawi assumed office as Prime Minister on 31 October 2003, he pledged to eradicate corruption and promote good governance and ethical values (Badawi, 2005). As new measures to combat corruption, he launched the National Integrity Plan (NIP) in April 2004 for the purpose "...to develop a society, which is morally and ethically strong, with its members possessing religious and spiritual values that are strong and steadfast, and is supported by good values." (Malaysia, 2004: vii, 18). An Integrity Agenda has been developed and targets not only the public sector which is perceived as the main perpetrators of corruption but aims to involve all sectors of society. Simultaneously the Integrity Institute of Malaysia (IIM) was also launched as a company limited by guarantee, to ensure that all the planning, implementation, coordination, monitoring and evaluation related to the implementation of NIP are carried out. Since its inception, IIM has conducted various activities on ethics and integrity for the public sector, and has thus provided the platform for citizens to voice their concerns on corruption. Although it is still early days to assess the effect of these programmes, they represent a step in the direction towards inculcating ethical values in individuals from all sectors of society.

Reforming the Police Force (PDRM): Royal Commission on Police

The Malaysian police force (PDRM) has constantly been criticised for abuses of power, violations of human rights and corruption. A seventeen member Royal Commission to Enhance the Operation and Management of the Royal Malaysia Police (RCP) (Malaysia, 2005) was appointed and came into effect on February 4, 2004. It was to make recommendations "to change the mindset and values of members of the police force [PDRM] so as to improve their service and to adopt zero tolerance towards corruption" (Malaysiakini, 2004).

⁴ The Auditor General's report relates to the accounts of the federation and the States (a) the accounts of the Federation and the appropriation of the sums granted by Parliament to meet the public expenditure;(b) accounts of public authorities and other bodies administering public funds as may be laid before the House;(c) reports of the Auditor-General laid before the House in accordance with Article 107 of the Constitution;(d) other matters as the Committee may think fit, or which may be referred to the Committee by the House.

The RCP's Report (released 16 May 2005) revealed widespread corruption within PDRM. Of the 926 complaints received by the RCP from the public between March 2004 and March 2005, 98 were on police corruption. The corruption activities included: collection of monthly payments from illegal factory owners and employers of illegal immigrants; demand of payment for providing food in the police lock-up to detainees or for allowing them to make a telephone call; and accepting bribes for not acting against people guilty of committing offences or for detaining and investigating innocent people. A survey conducted among police personnel found the awareness of corruption to be significantly low among personnel of all levels. Further, of the nine challenges confronting PDRM, police corruption was ranked third.⁵ Out of the 125 recommendations made by the RCP, 10 relate to eradication of corruption in the PDRM. The RCP gave a short time frame for the implementation of recommendations relating to corruption which were to be implemented by August 2005 while most of the other recommendations were given till December 2005 and June 2006.

After more than a year very little was reported of the outcomes of the recommendations except for a recent newspaper report (The Star, 26 March 2007) in which the Inspector-General of Police proposed a 20% salary increase as compared to any other government servant. It can be argued that an attractive salary is not the only factor that defines an effective force, but certainly it is a major contributor. It is hoped that a higher salary would also be a deterrent to corrupt practices, as Leiken (1997) recommended "when the people pay government functionaries decent salaries, they are buying a layer of insulation against patronage and bribery" (Leiken, 1997: 68).

The Public Complaints Bureau (PCB)

The Public Complaints Bureau (PCB) was established in 1971 as a channel for the public to lodge official complaints against government departments, agencies and the civil servants. Among the complaints are: delays in taking action, lack of public facilities, amenities and services, failure of enforcement, failure to adhere to procedures and abuse of power and misconduct by civil servants and unfair action. Complaints relating to corruption were referred to the ACA for investigation and further action. PCB provides a non-judicial, informal and inexpensive remedy to those with grievances against the administration. Since the PCB is not an independent constitutional agency, under the Prime Minister's Department, and supervised by the Chief Secretary to the government, the PCB does not have legal powers. It cannot order any decision to be reversed or any compensation to be paid or subpoena documents and persons or to prosecute anyone. It can merely ask government departments to look into the complaints and provide a reply. Under Abdullah's administration, the PCB is getting stronger and seeking more legal muscle. The powers sought include access to official government documents, power to enter premises of public agencies and power to question civil servants involved in complaints. A draft of proposals for investigative powers has been sent for approval from the Cabinet.

⁵ The other two priorities were reducing crime and compliance with prescribed laws and human rights.

Other preventive measures

There are other initiatives taken by the Malaysian government, such as the internal auditing system, responsible for auditing monetary and financial management of the government. A more recent strategy is the improvement of the public service delivery system to reduce the bureaucratic red-tape (The Star, 14 April 2007). The recent Malaysian Transparency Perception Survey showed that among the races, the Chinese have the highest bribe-paying experience, with 58 per cent, compared with Indians (23 per cent) and Malays (14 per cent). In response to the survey, a Minister was reported to have made a statement that the Chinese are forced to bribe in the face of bureaucracy and red tape and official impediments, which was echoed by a number of Chinese leaders (The Sun, 2007). The case in point is the perception that the public had to bribe officials to get things done. Another initiative taken by the Malaysian government is the Malaysian Code of Corporate Governance established in 2000 that sets out best practices for corporate governance; however, they have not been seen to be translated into positive results.

The Malaysian government is also fighting corruption through its Disciplinary Board and Code of Ethics to put an end to money politics and corruption among party members. The Code of Ethics requires that all elected representatives declare their assets every two years. They are also required to report on their work every three months. Regrettably, it is unclear how far the Code is being implemented, who or which body receives, monitors and evaluate the declarations of assets from the elected representatives, and whether sanctions have been imposed for breaches of the Code. The concern is that without a proper mechanism to monitor, evaluate and investigate the Code might be an exercise in futility without much effect in reducing corrupt practices among elected representatives.

The Malaysian media has also played a role towards exposing wrongdoings in the public and private sector. Complaints and comments from readers and viewers exposing wrongdoings are bold. However, as Faruqi (1995) observed, fundamental policies and principles are rarely challenged.

Informal and Non-legal Controls

As discussed earlier, for the formal institutions and principles to work adequately in the fight against corruption, it would also need to depend on the informal and non-legal forms of control that provide normative restraints and internal discipline. However, the absence of the socio-economic, moral, cultural and political pre-requisites for the performance of the institutions is felt in the matter of calling the Malaysian government for its accountability (Faruqi, 1995: 14). The reason for this situation is attributed to the government's and the people's preoccupation with nation-building, securing peace and economic prosperity, which have been commendably achieved by 'pragmatic' measures such as the Sedition Act, Internal Security Act and the Printing Presses and Publications Act. While these measures have helped to preserve social stability, it has been argued that they have also prevented the growth of openness and accountability in the government (Faruqi, 1995, Cumaraswamy, 2005).

Conclusion

So, will corruption in Malaysia be eradicated? Malaysia has a wealth of principles, procedures and institutions and the necessary infrastructure to fight corruption. There is also a vigorous exuberance on part of the government to eradicate corruption, as demonstrated by the many initiatives undertaken. However, apart from those initiatives, there are also other ingredients for anti-corruption strategies to be effective. Foremost, there must be honest and incorruptible political leaders. There need be strong policing, through a sole agency dedicated to the task of combating corruption that is not only independent but also incorruptible. Consequently, there also needs to be the 'high-risk, low reward perception' of the public for corrupt activities, through competitive salaries, severe punishment when detected, and publicity in the mass media. The successful experience of Singapore in curbing corruption proved that it is possible.

The results of the CPI and PERC surveys are grim warnings that the anti-corruption drive is not making much headway and there is an urgent need for drastic measures if the battle against corruption is not to be lost altogether. Quah (2003) observes, the critical factor for success is not in the number of anti-corruption measures, but whether these measures are impartially implemented. What is needed is the political will to implement the measures effectively:

“Political will is absent when the ‘big fish’ are protected from prosecution for corruption and only small fish are caught. Under these circumstances, the anti-corruption strategy lacks credibility and is doomed to failure” (Quah, 2003 p. 181).

For the political will to be established, the state capacity needs to be strengthened. Engaging more of the civil society and the private sector can be a key piece in the puzzle necessary to implement the necessary measures. The private sector's participation can help build the state and market institutions that will work together to create healthy competition in the economy through standard business practices. The various institutions that have been established need to be strengthened with the system of checks and balance restored. The government needs to demonstrate its political will and this requires the changing of mindsets of those in power.

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