

THE OMBUDSMAN PUBLIC LECTURE

MANILA

12 NOVEMBER 2013

THE ESSENTIALS OF FIGHTING CORRUPTION

Bertrand de Speville¹

Context

The modern world has come to realise that ethical values, integrity and good governance are the foundations of a successful state. The world has also come to realise that corruption undermines those foundations. What is then likely to follow is collapse – collapse of the rule of law, collapse of the economic and political systems, collapse of social development, collapse of security and rage at the loss of the ethical underpinnings of our lives. It is hardly surprising that fighting the scourge of corruption has become vital

This paper focuses on what it takes to win the battle against corruption.

The necessary elements

Our leaders are worried by the growth of corruption. They see the consequences and they realise that things can only get worse if effective action is not taken quickly. It is little comfort to them (or us!) to know that ours is not the only country to be thus afflicted, nor that ours is nowhere near the worst of situations. Like all countries, our own country has its unique characteristics, and its corruption, no doubt, has some special features. However, corruption is a universal phenomenon – no country is devoid of it – and, despite its numerous manifestations, it has certain features wherever it appears. It is now widely

¹ Formerly Solicitor General of Hong Kong, Commissioner of the Independent Commission Against Corruption, Hong Kong and adviser to the Council of Europe Multidisciplinary Group on Corruption. Principal, de Speville & Associates - independent anticorruption consultants. Author of 'Overcoming Corruption: The Essentials' 2010, ISBN 978 0 9564788 0 1.

recognised that combating corruption successfully in any country requires certain conditions. These are the seven essentials:

- ❖ *Will* There must exist the political will to act against the problem.
- ❖ *Law* There must be strong laws comprising clear offences that reflect the values of the community, effective powers of investigation and rules of evidence that assist the proper prosecution of those charged with corruption offences.
- ❖ *Strategy* Fighting corruption requires a clear, complete and coherent strategy and the strategy must include three elements:
 - effective enforcement of the laws;
 - prevention of corruption by eliminating from systems, large and small, the opportunities for corruption;
 - educating the public about corruption and persuading people to help fight it.
- ❖ *Coordinated action* To be effective, the implementation of these elements must be coordinated.
- ❖ *Resources* National leaders must recognise that fighting corruption successfully requires resources, human and financial.
- ❖ *Public support* The authorities cannot fight the problem without the help of the people. Therefore the community must be involved from the beginning.
- ❖ *Time* Everyone must realise that beating corruption will take time and that, once the problem has been brought under control, it must be kept under control. In consequence the commitment must be long-term, and that means that the provision of adequate resources for the fight becomes a permanent item of annual national expenditure.

The strategy itself

The objective of the strategy is to reduce corruption in each of our countries to the point where first, it no longer undermines what we are trying to build in our

own country and second, our people will see corruption for the destructive menace that it is and guard against it.

As for the strategy itself, it is self-evident that one of its elements has to be the effective **enforcement** of the national laws against corruption. But it must be recognised that enforcement of the laws alone can never bring corruption under control. That lesson has been learned many times in different countries that have tried to deal with a growing problem by making and enforcing harsher laws, only to find that the problem gets worse. Prosecution and conviction do not in themselves provide a solution. While it is essential that there should be effective action in making corruption a crime that carries a high risk of being caught, convicted and punished, it is now generally recognised that there are two other elements equally essential to success. They are the product of two common sensical thoughts.

The first is that all of us live and work in and with **systems** – systems large and small. As members of an orderly society we function within them. These systems present us with the opportunities to take improper advantage of them. We are only human; sooner or later most of us will yield to the temptation presented by the system we work in. It is rightly said that a system is only as good as the people who make it work. But the converse is equally true: people are only as good as the systems they have to work with. If a system is bad because it offers opportunities for corruption, the people who operate the system are likely themselves to become bad. So it makes sense to examine each of these systems, large or small, and make some changes to the system, or even replace it or remove it altogether, so as to minimise or eliminate the opportunities for corruption that currently exist in it.

The second line of thought concerns **people** – all of us in the community. If we are to turn against corruption, we must first learn about corruption – what it does to our community, how it spreads like dry rot. Then we have to realise that it can

be beaten, but only if each of us is ready to play our part. Finally, we must shun corruption and determine that we will not allow it to be part of our daily lives, as it is now in so many countries including our own. So, for the whole community there must be education and there must be developed the willingness to help in the fight.

But people have an ambivalent attitude to corruption – an attitude of uncertainty compounded by tolerance, indifference or resignation, a feeling that corruption is so pervasive that nothing can be done about it and we might as well learn to live with it. There seems little point in helping the authorities to combat corruption – they themselves are corrupt!

That attitude must be changed for two reasons. First, if the laws against corruption are to be enforced, the allegations and suspicions of corruption have to be investigated. But, corruption being secretive and complicitous, there is nothing to investigate unless those who know that something is going on are prepared to say so. It is very difficult to develop the willingness to help in this way, especially in countries where denunciation to the authorities is anathema or where the authorities are deeply distrusted. But it must be done, for unless the authorities are given good information about what is happening, they will be powerless to do anything about corruption. People must therefore be brought to feel that corruption has to be resisted, that the information they have is essential in the fight and that in giving information they will be protected and respected.

The second reason why people's attitude to corruption must change is the practical recognition that in the long term success can come only with the development of intolerance of corruption in the hearts and minds of every one of us. The effectiveness of enforcement is limited – you can investigate and prosecute for ever; without a change of attitude throughout the community, enforcement will not overcome corruption. Eliminating the opportunities for corruption is limited - you can go on improving the systems for ever; without a

change of heart and mind in the people who operate the systems, the corrupt will always find a way round them.

These three elements of the strategy – enforcement, prevention and education - must move forward together and complement each other; for when they are made interdependent, any success in one of them enhances the other two. Now the strategy is more powerful than the sum of its parts – truly an effective weapon.

The mechanism for implementing the strategy

If it is decided that the three arms of the strategy must move forward together and complement each other, it follows that their implementation will have to be coordinated by a body or person. In many of our countries a special body has been created, or will be created, to perform that coordinating role. If coordination is to be effective, that anti-corruption body needs the power to direct the action to be taken. Our countries being countries governed in accordance with the rule of law, we probably insist that any powers granted to the coordinating body should be specified by law.

Implementing each of the arms of the strategy requires distinct skills, skills not usually found in a single individual. The investigator is unlikely also to be an educationist or a systems analyst. No doubt specialised people are to be found in existing agencies of government in our countries. So, one of the ways of implementing each arm of the strategy would be to make that arm the job of a particular agency or unit of government. That agency or unit should be part of the public administration, as opposed to a non-governmental organization, so that it can be properly kept under control and made properly accountable. If an existing government agency has the capacity to undertake the implementation of one of the arms of the strategy and can be trusted to do the job properly, it may be better to use that agency than to create a new implementing agency. If, for example, the investigation of corruption allegations can safely be left in the hands

of the police, it may be decided to leave investigation to the police. If however there is reason to doubt the ability or integrity of the police, it may be necessary to form an investigating unit separate from the police and to make it part of the anti-corruption body. That would also avoid the situation in which police officers responsible for investigating corruption have a dual system of accountability, namely accountability to the head of the police for administrative and personnel matters and operational accountability to the anti-corruption body as coordinator. This is a matter that the leadership of our respective countries will decide but, if the police are widely believed to be corrupt, a new and separate unit will have to be formed, at least so far as investigation is concerned.

The same reasoning applies in respect of the implementation of the two other arms of the strategy. If an existing agency can be given the responsibility and can be made operationally answerable to the anti-corruption coordinating body, that may be the better way to proceed.

All the details of implementing each arm of the strategy need not, indeed should not, be decided at the beginning. It is unnecessary to decide now exactly how the anti-corruption message will be conveyed to police recruits, nor whether the promotion system in the public administration should be the first system to be examined. It is the strategy and the institutional mechanism for putting it into practice that should be decided at this stage.

Steps for the adoption of the strategy

The campaign against corruption should be built step by step:

1. the adoption of the strategy and the institutional mechanism by which it will be implemented;
2. the determination of the main policy issues that will affect the course of the campaign;

3. the making of a survey of the current state of affairs and of public attitudes to corruption so as to provide a benchmark against which to measure future progress;
4. the preparation and enactment of the legislation that will state the strategy, create its implementing mechanism, grant the necessary powers and provide the safeguards against abuse;
5. the appointment of the coordinating body and the provision of financial and technical support that will be needed at the outset;
6. the selection and training of the personnel who will be given the responsibility for carrying out the coordinator body's instructions;
7. the raising of public awareness and expectation of the government's determination to deal with corruption;
8. the start of operations by the coordinator;
9. the development of the campaign over time;
10. finally, the regular accounting for the conduct and progress of the campaign.

It is also important that consensus should continue to be built at each stage in ever widening circles, so that before long the consensus becomes nationwide.

Priorities under each arm of the strategy

Each arm of the strategy – enforcement, prevention and education - is equally important to the success of the campaign. They must advance together, work together and support each other. It has to be recognised however that for the public it is the enforcement arm that will provide evidence that the government means what it says. The evidence will have to appear reasonably quickly for there to be any chance of convincing a sceptical public. Therefore the coordinating body's priority task should be to get the investigating unit operational by the time the government launches the campaign. In quick succession the coordinating body will then want to get the prevention and public education teams moving.

Priorities are of two kinds – organisational and operational. We've just considered organizational priorities. Now let me say something about operational priorities because an important policy issue arises in connection with investigations. While it is perhaps obvious that, in relation to prevention and public education, those tasks that are regarded as the most pressing or the most likely to succeed should be undertaken first, it does not follow that the most serious allegations of corruption should be given investigative priority. It is very important that every allegation should be quickly and properly investigated, no matter how insignificant it may seem to be. The reasons are these:

- ◆ What appears to be a minor matter quite often unravels into a much more serious case.
- ◆ For the citizen who has brought himself to make a complaint, the matter will be important. If it is dismissed as unimportant, he is unlikely ever to return to the authorities, perhaps with a crucial piece of information. If community support is to be won, the minor complaint must be taken seriously.
- ◆ Picking and choosing which reports to investigate and which to ignore gives rise to suspicion of improper influence having affected the decision or, worse, of corruption in the investigating unit.
- ◆ Ignoring some complaints gives the impression that some corruption is tolerated, that double standards apply.
- ◆ The fact is that widespread small scale corruption can do serious damage to the ethical climate of a country. Furthermore, a single small act of corruption can have catastrophic consequences.

Of course, the amount of resources put into investigating what is indeed a minor matter will be small in comparison to the resources put into investigating a major matter. What is important is that in both cases the public should feel the investigation has been properly done. And in that connection the community can have an important role to play.

The community's role in closing investigations

Every day the headlines tell us “Corruption here” “Corruption there”. It is not surprising we come to believe corruption is everywhere. Allegations of corruption fly around but never seem to be resolved. Nobody is charged, let alone convicted. We never know if the matter has been properly investigated. These allegations just accumulate, polluting the atmosphere. Before long we believe all our public figures, all our politicians and public officials, indeed all those around us are corrupt. We are obviously in need of fresh air.

This state of mind is not peculiar to any one country – it occurs in every country where people believe that allegations of corruption are not properly investigated.

One of the functions of an anti-corruption body is to investigate thoroughly corruption allegations that are made to it. But the public has to be satisfied about that. People have to be reassured that the anti-corruption body has done a proper job of investigation. Experience in places like Hong Kong and Singapore and Botswana shows us that most allegations or suspicions of corruption do NOT result in a prosecution in court. The reason is usually that the necessary evidence is lacking or even that the allegation was mistaken. The investigation can go no further and must therefore be closed, but not before we are satisfied it really has been properly investigated.

How can the anti-corruption body reassure the public about that? It would be disastrous to make available for public scrutiny all those investigations that have to be closed. It would wreck the confidentiality of the anti-corruption body. Some of the anti-corruption body's work must be confidential; the public expects it.

There is an alternative. It has been used successfully in Hong Kong over many years. A committee of trustworthy citizens is given the role of looking at investigations that investigators propose should be closed and of advising whether or not the investigation should be closed. These citizens meet about

once a month for half a day and consider the cases that are to be closed. They can question the investigating officers. If they agree with the proposed closure, they advise accordingly. If they do not, they can advise that further investigation should be done or that the legal advice should be reconsidered. Their work is, of course, confidential.

In that way the people are reassured that ordinary citizens, acting in the public interest and on behalf of the public, have satisfied themselves that investigations have been thoroughly done and can properly be closed. The air begins to clear.

B.E.D. de Speville
de Speville & Associates
November 2013

Ombudsman Integrity Lecture

FIGHTING CORRUPTION: THE ESSENTIALS



de Speville & Associates

November 2013

How do we fight?

- **Fight tough**
Fight fair
 - **Fight as long as it takes**
 - **Prepare for pain**
-

What do we need for the fight?

1. The will to win

2. Our values in law

3. A fight plan

And more

4. The plan in action

5. People power

6. Resources

7. Staying power

The fight plan: STRATEGY

- **Enforcement**
 - **Prevention**
 - **Public education & support**
-
- **The combination punch**
-

The strategy in action

- **Combination = coordination**
 - **Who coordinates?**
 - **The role of an anticorruption agency**
-

People power

- **Active support**
 - **People teaching people**
 - **Example**
 - **Involvement**
 - **Monitoring**
-

Resources

- **Money**
 - **People**
 - **Facilities**
-

Staying power

- **No pain no gain**
 - **Shedding the past**
 - **No quick fix**
-

Winning

- **Staying on top**
- **The rewards of success**



de Speville & Associates

November 2013
