

ANTI-CORRUPTION REFORMS IN TAIWAN

*CONCLUDING OBSERVATIONS OF THE REVIEW COMMITTEE
OF INTERNATIONAL EXPERTS*

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Introduction

Corruption has become one of the most pernicious phenomena of our time. It prevents the fair distribution of wealth increasing poverty and generates inequality. Corruption weakens institutions and affects, governance, undermining democracy. It has a negative impact in human rights and constitutes a challenge to national and international security.

Nowadays we are also witnessing a new expression of this social disease, the so called Grand Corruption: the abuse of high level power that benefits the few at the expense of the many, and causes serious and widespread harm to individuals and society. Due to the power of its perpetrators, Grand Corruption often goes unpunished.

During 2017, Taiwanese authorities reported that 39 cases considered to be grand corruption were investigated and were reported by the media.

Taiwan is generally perceived as a country well positioned among Asia Pacific countries regarding perception of corruption. However, according to Transparency International's Asia-Pacific Global Corruption Barometer, Taiwanese citizens believe that the levels of corruption have increased, and they are generally not satisfied with the Government's anti-corruption efforts.

In 2003, the United Nations adopted the Convention Against Corruption (UNCAC), noting "the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law".

Even though Taiwan is not a member of the United Nations, as an expression of its commitment to fight the against corruption and the promotion of transparency and integrity, it decided unilaterally to implement the provisions of the UNCAC. For that purpose, on May 20, 2015, the government of Taiwan enacted and promulgated the "Act to Implement United Nations Convention against Corruption".

Consistent with its will to fully implement the UNCAC as soon as possible and in the best possible way, the Government set up a self-assessment mechanism to review the status of implementation of the Convention. In March 2018, the Government published an initial self-assessment report that reviews all the articles of the convention in Chapters two through six.

The Government of Taiwan then decided to submit the initial self-assessment report to a Committee of international experts chaired by José Ugaz, comprising Jon S.T. Quah, Peter Ritchie, Rick McDonell and Geo-Sung Kim. After a preliminary review of the report, the Committee met with more than 120 representatives of the Taiwan Government, representatives of four civil society organizations and three legislators.

During a two-day workshop held in Taipei on August 22 and 23 of 2018, the Articles of the Convention were extensively discussed from a technical point of view and a detailed record was made. As a result of this exercise, the Committee has prepared this summary that addresses the most relevant matters in the initial self-assessment report, and provides concluding observations and recommendations.

The committee recognizes the significant achievements of the government of Taiwan to adopt preventive measures, as well as operational instruments to fight corruption in a more efficient way.

Nevertheless, the committee considers that there is space for improvement in several areas.

Thus, we are presenting a set of recommendations regarding the provisions of the six chapters of the UNCAC, in such relevant matters as coordination and independence of the anticorruption agencies, private and public sector, public procurement, civil society, criminalization and law enforcement, international cooperation, asset recovery, and technical assistance and information exchange.

We also want to draw attention to the need to work more intensively to assure gender balance in the different aspects of the fight against corruption in Taiwan.

The committee wants to thank the government of Taiwan for this opportunity to contribute to the design and implementation of better policies and practices to fight corruption and build a better environment for the benefit of the citizens of Taiwan.

August, 24, 2018

Chapter II Preventive Measures

Preventive anti-corruption policies and practices

The Review Committee recognises Taiwan's achievements in these areas:

- The formulation of the nine strategies of the National Integrity Building Action Plan and the implementation of 39 of the 46 measures.
- The establishment of the Central Integrity Committee (CIC) to ensure the coordination of the anti-corruption efforts of the various agencies in Taiwan.
- The emphasis on corruption prevention in Taiwan is reflected in the adoption of preventive measures in 6 ministries, National Development Council, 2 directorates-general, Customs Administration, 2 commissions, National Audit Office, Central Bank, AAC, MJIB, and the Government Employee Ethics Units of the central agencies and local agencies.

The Review Committee recommends that Taiwan considers further work in these areas:

- The CIC should review the current anti-corruption organisational framework to identify any obstacles to cooperation and coordination among the agencies involved in combating and preventing corruption and to minimise overlapping and duplication of functions.
- As the preventive measures have focused mainly on the public sector, Taiwan should devote more attention to preventive measures in the private sector to meet the growing threat of private sector corruption.

Preventive anti-corruption bodies

The Review Committee recognises Taiwan's achievements in these areas:

- The establishment of the Ministry of Justice Investigation Bureau (MJIB) in 1949 and the Agency Against Corruption (AAC) in 2011 as the two agencies conducting anti-corruption work.
- The system of "resident prosecutors" stationed in the AAC to direct investigations and ensure their independence and the establishment of an advisory committee to provide external monitoring.
- The implementation of the AAC's Anti-Corruption Volunteers Programme has resulted in the recruitment of 8,745 integrity volunteers from 2011-2017.
- The commitment to the training of specialised staff is reflected in the AAC's conducting of 115 courses for 7,772 personnel from 2013-2017.

The Review Committee recommends that Taiwan considers further work in these areas:

- As the international best practice is to rely on a single dedicated anti-corruption agency (ACA), the government should consider adopting this practice and provide the ACA with the necessary resources to function effectively.
- In the meantime, the MJIB and AAC should continue to work closely together in the investigation of corruption cases in both the public and private sectors.
- To ensure better independence of the AAC's Advisory Committee, the Taiwan Government should consider the appointment of its AAC's members by the Premier.

Public Sector

The Review Committee recommends that Taiwan considers further work in these areas:

- Conducting, annually, the Integrity Assessment on public institutions to encourage internal efforts for better governance and integrity.
- Government, with the support of Legislative Yuan, should consider further restricting political donations from companies and associations.

Public Procurement

The Review Committee recommends:

- The Government should consider the establishment of a Clean Procurement Committee. Such a committee should also include representatives from civil society, academia, experts and the private sector.
- The Government should consider making it mandatory for public officials to declare to the AAC any improper approach to them by lobbyists

Private Sector

The Review Committee recommends that Taiwan considers further work in these areas:

- The Taiwanese Chamber of Commerce, Federation of (sectoral) Industries, Small and Medium Enterprises (SMEs), among others, should participate more actively to combat corruption and to promote good governance and combat corruption in the private sector.

Civil Society

The Review Committee recognises Taiwan's achievements in these areas:

- Taiwanese civil society organizations and academia have played an important role during the previous decade in promoting integrity and combating corruption, and have been a role model in the Asia Pacific region.

- There should be greater recognition of the role played by the media in promoting a corruption-free society, and the media to continue their involvement in anti-corruption efforts (eg investigative journalism) and promotion of integrity.

The Review Committee recommends that:

- The Government considers (i) the reinforcement or enhancement of the preventive functions of the AAC to encourage proactive prevention of corruption and to promote integrity in the public sector, (ii) integrity education in kindergarten and elementary schools should be included as a core task of the education sector in anti-corruption efforts.
- The media should continue their involvement in anti-corruption efforts (investigative journalism) and promotion of integrity.

Chapter III Criminalisation and Law Enforcement

The committee recognises Taiwan's achievements in the following areas:

- Establishment of specialised authorities to combat corruption (A. 36), the AAC and MJIB, with trained central and regional staff to prevent and combat corruption.
- Promoting effective cooperation between national authorities (A. 38) under the guidance of the CIC.
- Combating money laundering and to identify, trace, freeze and confiscate proceeds of crime (A. 31). Taiwan promulgated a revised version of the Money Laundering Control Act in December 2016 which aims to bring the legal basis for anti-money laundering into line with the FATF standards. In the view of the committee it largely accomplishes that objective, and this will provide a more comprehensive basis for anti-money laundering efforts including dealing with proceeds of crime derived from corruption and the seizure and confiscation of illegally acquired property.
- To combat corrupt practices in the private sector (A. 21), the Ministry of Justice Investigation Bureau established the Enterprise Anti-Corruption Section in 2014 to investigate corporate corruption cases, such as bribery, manipulation of stock prices, insider trading, kickbacks, and asset draining. This work is supported by outposts around the country staffed with specialized personnel to investigate corporate corruption.
- Establishing the liability of legal persons (A. 26) for participation in corruption and bribery offences including civil and administrative sanctions.
- Providing rewards, under the Anti-Corruption Act, for people who help to expose cases of corruption.

The committee noted Taiwan’s commitment to do further work in these areas:

- Prepare and implement Private-Sector Whistle-blower Protections (whether through a new Act or through amendments to existing legislation).
- Strengthen measures against obstruction of justice (A. 25) through The Criminal Law Amendment Taskforce of the Ministry of Justice, which is soliciting opinions from academia and the field of law enforcement and adjudication regarding potential improvements to offences and penalties.
- Undertake further consideration of time limits for the right to prosecute corruption and bribery offences (ie. statute of limitations, A. 29), ideally to arrive at consensus on the appropriate length of limitation periods, or the suspension of limitations in some circumstances.
- Strengthen the fight against money laundering and to recover proceeds of crime. The committee notes that Taiwan is currently amending the Company Act to regulate and identify the beneficial ownership of companies and the issuing of bearer shares. The committee encourages Taiwan in this effort including the need to consider prohibiting nominee shares and nominee directors, or to provide other mechanisms to ensure they are not misused for money laundering purposes. Taiwan is also implementing new rules (announced in 2016) for confiscation of proceeds of crime (A. 31) and to improve the management system for frozen and confiscated property.
- To examine potential future measures to protect experts (A. 32) from retaliation for giving testimony regarding corruption or bribery offences.
- Clarify, regarding trading in influence (A. 18), whether Articles 4, 5, and 6 of Anti-Corruption Act shall be applicable to a person acting as a “middle broker” who has real or supposed influence over a public official who carries out the actual administrative act, or failure to act.
- Consider incorporating whistleblower complaint channels and related protection mechanisms into the norms for internal control measures for the banking, financial holding, securities, and insurance industries, as well as into future inspection items; and to ensure the financial services industry to treat whistleblowers and complaints properly, protect whistleblowers’ rights and interests, and promote enhanced corporate governance in the financial industry.
- Strengthen systems for compensation for damage from acts of corruption (A. 35) through a draft amendment to the State Compensation Law.

In addition, the committee recommends Taiwan consider further work to:

- Criminalise the solicitation or acceptance of bribes by foreign public officials (A. 16).

Chapter IV International Cooperation

The committee recognised Taiwan's achievements in the following areas:

- Taiwan has recently enacted a revised Act on Mutual Legal Assistance in Criminal Matters which is consistent with the requirements of the UNCAC and has entered into agreements and arrangements with several countries in order to implement the Act. Where that is not possible Taiwan can provide mutual legal assistance in criminal matters based on the principle of reciprocity.
- With regard to extradition, Taiwan has a number of practical and legal mechanisms in place to effect the removal and return of fugitives to requesting countries in accordance with the type of relationship existing with requesting countries.
- One of those mechanisms is through the Law of Extradition and the current law is being revised in order to remedy some deficiencies and improve its coverage including, for example, the acceptance of bribes by public officials of a foreign country. The committee recognizes these proposed improvements and encourages the finalization and enactment of the revised draft.
- With regard to the transfer of sentenced prisoners Taiwan has, where possible, adequate agreements and arrangements in place to transfer sentenced prisoners.
- In relation to law enforcement cooperation Taiwan has various means available to it. These include mutual legal assistance in the investigation, pursuit and prevention of crime as well as joint law enforcement cooperation and exchanges of information on crimes such as economic crimes, narcotics, corruption and malfeasance and repatriation of fugitives. It can also, in some circumstances, access INTERPOL information, use dispatched police liaison officers and exchange information with foreign FIUs and through financial supervisory agencies. The committee recognizes the proactive nature of these efforts.
- In relation to special investigation techniques, Taiwan is able to use controlled delivery mechanisms and has done so in successful investigations. However, unlike in many other countries, it is not yet legally able to use undercover operations or access computer systems in the investigation of corruption or other serious crimes. The committee encourages Taiwan to proceed with consideration of the draft Undercover Investigation Act and to consider legal means by which evidence and intelligence can be obtained from computer systems during authorized investigations.

Chapter V Asset Recovery

The Review Committee recognises the challenges faced by Taiwan in recovering assets from corruption cases involving citizens and organisations based in those countries which do not have diplomatic relations with Taiwan. Nevertheless, Taiwan has been able to recover substantial assets in some cases.

Taiwan has implemented a new system of non-conviction-based asset confiscation. Taiwan is now able to confiscate assets that have been converted to cash.

Chapter VI Technical assistance and information exchange

The Review Committee recognises Taiwan's commitment to the training of specialised staff as mentioned above.

Taiwan has implemented successful projects to share anti-corruption expertise in the region. For example, Taiwan led a project with APEC member economies on best practices for whistle-blower legislation and systems. Taiwan should continue to explore the possibility of initiating joint training programmes with anti-corruption agencies in other countries and participation in regional or international anti-corruption workshops.