

# **Observations on Taiwan's Strategies for the Promotion of the Spirit of the UNCAC**

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Considering the potential for corruption to undermine national competitiveness and affect national security, the United Nations Convention against Corruption ("UNCAC") was adopted by the United Nations General Assembly on October 31, 2003, and entered into force on December 14, 2005, thus demonstrating the need for transnational cooperation to combat corruption. In its preamble, the Convention explicitly declares that "the illicit acquisition of personal wealth can be particularly damaging to democratic institutions, national economies and the rule of law," with the consensus that the eradication of corruption is the duty of the state in national development.

Although Taiwan is not a party to the UNCAC, on May 5, 2015, the Legislative Yuan enacted the Act to Implement United Nations Convention against Corruption ("UNCAC Implementation Act") in order to demonstrate its self-imposed requirement to align with the international order. In the spirit of the UNCAC, Taiwan has attempted to put forward specific anti-corruption measures in line with recommendations from the UNCAC through the integration of the legal and administrative systems, so that the prevention and control of corruption will no longer be limited to the narrow concept of sanctioning corruption in civil service. It will be a comprehensive study and implementation of the prevention and control regulations from the perspective of the UNCAC.

In order to implement the complementary measures set out in the UNCAC, the Agency Against Corruption ("AAC") of the Ministry of Justice has been actively coordinating with responsible central and local agencies and representatives of relevant NGOs since the adoption of the UNCAC Implementation Act, and has been actively working on the improvement of anti-corruption policies and legislation. In March 2018, the AAC submitted the "ROC's Initial Report under the United Nations Convention Against Corruption" ("Initial Report"). In August 2018, the first National Review Meeting on the Initial Report was held, and through the external review of international reviewers, a total of 47 concluding observations on "Taiwan's Anti-Corruption Reform" were consolidated, which served as an

important reference for improvement measures. Two years since the conclusion of the international review, the "Interim Report on the Concluding Observations of the Review Meeting of ROC's Initial Report under the United Nations Convention Against Corruption" was published in December 2020 on the progress made in the implementation of the concluding observations during this period. After the adjustment of the relevant legal system, in order to continue the self-examination mechanism under the UNCAC, in line with the 4-year cycle of international review, the Ministry of Justice published the "ROC's Second Report under the United Nations Convention Against Corruption" ("Second Report") in April 2022. The MOJ is expected to invite international experts to participate in an international review conference in August 2022, following the model set by the Initial Report, so that the world can understand Taiwan's anti-corruption efforts in practice.

In terms of observing the institutional perspective of Taiwan's anti-corruption efforts, we can indeed see Taiwan's strong ambition to participate in international cooperation and to present itself as part of the international order, and we cannot ignore the hard work of the relevant integrity agencies responsible for corruption prevention and control. In fact, the international community's recognition of Taiwan evident from the fact that Taiwan has consecutively achieved the best ranking in the past two years in the Corruption Perceptions Index rankings published by Transparency International. Nevertheless, Taiwan should not be complacent with its current anti-corruption efforts. In the two national reports, we observed that the legal system should, at least in the direction of legislative development, strengthen the implementation of appropriate sanctions in the basic law of the Whistleblower Protection Act, commercial bribery crimes, as well as bribery of foreign civil servants. Furthermore, legal sanctions against enterprises or organizations should also be in line with the complete response overall system.

### **1. The Whistleblower Protection Act**

The legal protection of whistle blowing in Taiwan is scattered amongst individual laws and regulations. This not only demonstrates the legal attitude towards the protection of whistle blowers remains inconsistent, but the biggest issue is the lack of legal declaration of comprehensive protection for whistle blowing. After the Initial Report, we observe that the AAC has proposed a Whistleblower Protection Act, and that the relevant regulatory framework for whistleblower protection has evolved from an initial focus on public sector whistleblowing to a draft whistleblower protection act that integrates both the public and private sectors. Although the draft Act is yet to be passed by the Legislative Yuan, the separation of the executive and legislative powers makes it difficult for the efficiency and timing

of legislation to be expressed in executive action. However, from the external observation of the international community, it is obvious that the response to the reasoning of legislative inefficiency lacks strong persuasiveness. We should actively promote the legalization of the Whistleblower Protection Act from the height of the observations of the Reports in the form of a basic law.

## **2. The Formulation Commercial Bribery Crimes**

Up to now, Taiwan's Criminal Code still does not have a legal provisions that takes the protection of fair competition as the starting point, and merely enforces criminal penalties for commercial bribery in a comprehensive manner by nature of the general Criminal Code. In fact, the attitude of the executive branch was relatively conservative in the early days as to whether to sanction commercial bribery with a full range of penalties. In 2013, a member of the Legislative Yuan proposed a draft of the Enterprise Bribery Prevention Act to sanction corporate bribery from the perspective that corporate bribery would affect the country's competitiveness. However, since the Ministry of Justice at the time considered that the relevant illegal actions were also related to the integration of sanctions under the Breach of Trust offense in the Criminal Act as well as the Banking Act. The draft was finally put on hold by the President of the Legislative Yuan and delivered for consultative discussions. Ultimately, the draft was terminated due to the end of the legislative term. It appears that the Legislative Yuan has since ceased to be concerned with the enactment of comprehensive criminal sanctions for commercial bribery. Although some scholars have argued that the nature of the criminal offense of Breach of Trust does not preclude criminal penalties for commercial bribery under the current criminal code, and believe that there is no need for a general commercial bribery offense in the criminal law. However, the interests protected by the crime of breach of trust are individual properties, and there is clearly a significant gap in this with the spirit of the UNCAC in preventing corruption. With the trend of globalization, transnational organizations and economic crimes have gradually widened the gap in the distribution of social resources, and the inequality between the rich and the poor and the phenomenon of stagnant class mobility have affected the common interests of society, which in fact have far exceeded the common interests infringed by the property crimes found in the current criminal code. The executive branch should take advantage of the legislative opportunity of the UNCAC Implementation Act to review the nation's anti-corruption system. Therefore, while maintaining the criminal law function of the principle of legal interest, constructing a new legal interest as the starting point to practice the prevention of corrupt behavior and strengthen administrative efficiency under the premise of fair competition shall

serve to truly achieve the economic order of proper resource allocation.

### **3. Considering the Legal Response to Bribery of Foreign Civil Servants**

Bribery of foreign civil servants should be criminalized in accordance with Article 16 of the UNCAC. In the traditional concept of punishing civil servants for corruption, bribery of civil servants is often punished on the basis that the acceptance of bribes by civil servants undermines the public's trust in the integrity of civil servants. In fact, from the perspective of globalization, there is no significant difference between the criminal wrongdoing of bribing a domestic civil servant and bribing a foreign civil servant in terms of the fair distribution of resources that may be affected by the improper influence of the public service system. The only real issue with the legal and regulatory system is probably the criminal jurisdiction that enforces the penalties for convictions. In thinking about the legislative policy response, it is important to grasp the different definitions of criminalization and jurisdiction. If we do not move beyond the previous legislation mindset of sanctioning civil servants for corrupt practices, it will be difficult for the executive branch to develop specific practices that respond to the spirit of the UNCAC's norms. The executive branch should thoroughly examine the potential impact of bribery of foreign civil servants on the equitable distribution of resources, categorize the pattern of bribery of foreign civil servants, for example, by distinguishing between domestic and foreign bribery, and more actively and progressively promoting the criminalization of bribery of foreign civil servants. This transcends the jurisdictional barrier mindset in our response to the UNCAC's criminalization recommendations.

### **4. Full Integration of Legal Effects of Criminal Law Applies to the System of Corporate or Organizational Liability**

Taiwan's criminal law sanction system has its own inherent line of development, and in the past, when considering the criminal liability of legal persons or organizations, the existence of the elements of crime was often gradually reduced from the capacity to commit crimes, and it seemed that linking the criminal liability of legal persons or organizations could only be "specially" sanctioned under the so-called special criminal law. In 2015, Taiwan's new amendments to forfeiture laws gave a new and proper basis for imposing criminal law legal effects (forfeiture) on legal persons under the provisions of general criminal law. The presentation of the newly amended forfeiture law, in the manifestation of state intervention in the unjust enrichment of legal persons, has been evaluated quite positively by general society. In the process of globalization, in order to prevent legal persons or organizations from using illegal acts to expand their dominant influence in society, it is necessary

to draw on the provisions or legislative process of Austria and Germany, which have similar criminal law systems to ours, in order to not only implement the spirit of the UNCAC, but also to fulfill the righteous expectation of sanctioning legal persons with the legal effects of criminal law. The executive branch can refer to this as a specific direction for improvement in the future implementation of the UNCAC's recommendations.

The two national reports do demonstrate Taiwan's concrete efforts to prevent and control corruption, but as for a self-examination role, the relevant government agencies should take a proactive view of "what has not been done, rather than what has been done" to indicate the general direction for the continued prevention of corruption in the future, and then propose specific reform goals in more detail. Transparency International's 2021 Corruption Perceptions Index sets a new chapter in our country's anti-corruption efforts and clean government, but also sets a higher threshold for future anti-corruption achievements. If a clear response can be given to the implementation of the above-mentioned regulations, a specific positive evaluation should be expected.