

# THEME: A Case Study of Good Governance: The Independent Commission Against Corruption (ICAC), Hong Kong

## THE ISSUE

---

In order for governmental or other agencies to function effectively in promoting and protecting the human rights of all peoples, it is necessary for the agencies to have an independent mandate and structure. Especially in Asian countries, this is both vital as well as rare: in a region where societies are still 'transitioning' to genuine democracy, rule of law and the protection of human rights, governments and institutions both tend to be unaccountable and involved in political intrigue. This undermines the tenets of effective institutions and hinders—if not incapacitates—their protection of fundamental human rights.

It is only with institutional independence, adequate resources and accountability that such agencies can undertake their responsibilities effectively. The Independent Commission Against Corruption (ICAC) in Hong Kong is such an organization.

## THE LESSON:

---

This lesson is based on a presentation made by the ICAC 'An Independent Anti-Corruption Commission - The Hong Kong Experience,' by Gilbert Chan Tak-Shing, which is attached at the end of the lesson. The presentation covers the reasons for ICAC's success, namely

### **1. Institutional independence;**

**2. Adequate resources;** and

**3. Accountability.**

We thank the ICAC for their permission to use of this presentation.

## **Lesson 1**

---

### **A. Introduction - Historical background of ICAC**

“Hong Kong was in a state of rapid change in the sixties and seventies. The massive growth in population and the fast expansion of the manufacturing industry accelerated the pace of social and economic development. The Government, while maintaining social order and delivering the bare essentials in housing and other services, was unable to satisfy the insatiable needs of the exploding population. This provided a fertile environment for the unscrupulous. In order to earn a living and secure the services which they needed, the public was forced to adopt the "backdoor route". "Tea money", "black money", "hell money" - whatever the phrase - became not only well-known to many Hong Kong people, but accepted with resignation as a necessary evil.

At that time, the problem of corruption was very serious in the public sector. Vivid examples included ambulance attendants demanding tea money before picking up a sick person and firemen soliciting water money before they would turn on the hoses to put out a fire. Even hospital amahs asked for “tips” before they gave patients a bedpan or a glass of water. Offering bribes to the right officials was also necessary for the application of public housing, schooling and other public services. Corruption was particularly serious in the Police Force. Corrupt police officers covered up vice, gambling and drug activities. Social law and order was under threat. Many in the community had fallen victims to corruption. And yet, they swallowed their anger.

Corruption had no doubt become a major social problem in Hong Kong. But the Government seemed powerless to deal with it. The community patience was running thin and more and more people began to express their anger at the Government’s lukewarm attitude towards tackling the problem. In the early seventies, a new and potent force of public opinion emerged. People pressed incessantly for the Government to take decisive action to fight graft. Public resentment escalated to new heights when a corrupt expatriate police officer under investigation succeeded in fleeing Hong Kong. The case provided the straw that broke the camel’s back...[Police

officer] Godber's escape unleashed a public outcry. Students spearheaded a mass rally in Victoria Park, protesting and condemning the Government for failing to tackle the corruption problem. Demanding prompt government action, protesters with slogans like "Fight Corruption, Arrest Godber" insisted that Godber be extradited to stand trial...

[A report on the inquiry into the matter stated that] " ' the situation calls for an organization, led by men of high rank and status, which can devote its whole time to the eradication of this evil; a further and conclusive argument is that public confidence is very much involved. Clearly the public would have more confidence in a unit that is entirely independent, and separate from any department of the Government, including the Police.' " (www.icac.org.hk)

Hence in 1974 a deliberate attempt was made to strengthen the rule of law by establishing the Independent Commission Against Corruption (ICAC). It was established on the principle that control of corruption must be a function completely separated from the police. A large part of ICAC's initial work consisted of holding the police accountable under rule of law; its very first case was against ex-Police Commissioner Godber, who fled Hong Kong after making a fortune of about HK\$ 4 million, four times his life time salary. ICAC was able to get Godber extradited and prosecuted. In its early years, the ICAC's determined effort to bring the police under the rule of law led to a revolt by the police, however, its uncompromising approach ultimately led to a complete transformation in police discipline. This in turn improved discipline in other areas as well.

## **B. Questions For Discussion**

When discussing the following questions, please refer to the ICAC presentation at the end of the lesson.

### **Institutional independence:**

1. How important were the public protests and high corruption levels in Hong Kong in the years preceding the formation of the ICAC, and how did they influence the search for ending corruption?
2. What role does the expression of public opinion play in creating political will to generate change?
3. How important is political will and legislative support in the effective functioning of an institution?
4. Can you think of examples where political will has existed, but with no responding change? What is the

reason for this?

5. Would ICAC have been as successful if its officers had been recruited from the Hong Kong police force?
6. What role does the police force in your country play in anti-corruption agencies? Have there been attempts to create independent anti-corruption agencies?

### **Adequate resources:**

1. In many Asian countries, the lack or inefficient use of resources is the cause for many structural delays in effective human rights implementation. Discuss ICAC's use of resources, and how these may be applied in particular situations in your own countries.
2. The ICAC has emphasized training and education for both staff and for the public. Discuss how education can be used in your country to create a movement for change.
3. Do you think that adequate resources without institutional independence will negatively affect an organization? Can an organization with adequate resources overcome its lack of institutional independence?

### **Accountability:**

“Behind the legal concepts of transparency and accountability is the assumption that the principles of equality before law and fair-play underpin administration. Transparency simply means that all decisions are done in an open manner and can be justified by reasoning based on objective facts. Accountability means that those who take action on behalf of the government are held responsible for them. Both imply that there cannot be a situation where there is no record of how a decision was arrived at or where the decision-maker is not legally identifiable. Hence maintenance and protection of documents is fundamental to both concepts of transparency and accountability, as records reveal the process of decision making and those responsible for making such decisions.” (Basil Fernando, ‘Good Governance and the Rule of Law in Asia’.)

1. What are the factors that prevent the ICAC from abusing its authority? Discuss their legal implications.
2. Do you see any link between anti-corruption and rule of law? Anti-corruption and democracy?

3. In your opinion what is the key component to ICAC's success? Can this component be found in institutions of your country?
4. Choose a particular national organization/agency and apply the three tenets of effective institutions to them. Discuss how the tenets can be practically implemented.