



Hong Kong's ICAC – Simon Peh

[00:00:06] Welcome back to the podcast. I'm Alexandra Wrage, and today, I'm in vibrant Hong Kong with Commissioner Simon Peh of the Independent Commission Against Corruption, the ICAC. Mr. Peh has been Commissioner of the ICAC since 2012, and the organization will be known to many of you as a formidably effective group and a model for other anti-corruption bodies across Asia and elsewhere. Thank you for joining me, Commissioner.

[00:00:31] Welcome, Alexandra.

[00:00:31] Why don't you start by providing an overview of the ICAC — I think it is an older organization that most people know older than the FCPA in the United States — and how it's structured and the three pillars that you often talk about?

[00:00:47] The ICAC was established in 1974. At that time, the corruption problem in Hong Kong was very rampant, and at that time, the government had a determination to set up this independent agency to tackle corruption problems. The organization has been very successful, and the serious corruption problem basically was remedied in 10, 15 years. After that, we have been keeping the society clean, corruption-free, and up to now, I think Hong Kong is one of the cities in the world which has the least corruption. From the outset, our policing is we [inaudible] call it a three-pronged approach. We have the enforcement division, which will deal with the law enforcement. We have the community relations department, which will deal with education, publicity and enlisting support. Then we have the corruption prevention department, which deals with the systems, the procedures in government departments to make sure there is no corruption loophole. We feel that this three-pronged approach has been very effective, of course. For community relations, it takes a long time to reap the fruit because you have to educate the public, and it takes generations to make the whole population educated. But now we see that we are reaping the fruits now, and what we are proud of is that we have a culture in the society that people hate corruption. People report corruption, and this makes corruption in Hong Kong a high-risk crime.

[00:02:40] It's fascinating to me that Hong Kong was able to move from fairly rampant corruption when the ICAC was first founded to where you are today. What was the impetus for the ICAC back in the 1970s? Was there some tipping point that led to the foundation of the organization?

[00:03:01] Yes. Actually, the corruption problem was very bad in, I would say, not only the '70s, both also '60s, '50s, last century. At that time, corruption was dealt with by the police, and the problems at that time was the police was the most corrupt department in the government. There was a case which was a very senior police officer whose name was Peter Godber. He was investigated by police about corruption, but during that investigation, he fled to UK. The Hong Kong people at that time were very angry, and they went to the streets demonstrating, asking the government to send him back for trial. This is, I think, a tipping point, and the government then had a determination to set up an independent agency because they also felt that the police can no longer deal with corruption problems effectively. That is the birth of this organization.

[00:04:01] Can you explain a little bit to people who are less familiar with the ICAC just how independent it is? Because I really do think that's one of the things that sets it apart from law enforcement in other countries.

[00:04:12] Yes, I think this is quite a unique organization. It is independent in several senses. First, I, as a commissioner, report only to the chief executive, so I need not report to any minister or secretary or head of department in the government. Although we are part of the government, there will not be any interference from any department or any person in the government who is more senior than me in rank. This is very important because we can do our work, especially investigative work, without any interference. We can be impartial. Secondly, we recruit our own people. All our ICAC officers are recruited by ourselves. We train them, and we groom them. They will not be posted to any government departments to work there. Or vice versa: No other government officers will come to work in ICAC. They will not have the burden about, "If I will be posted to some government department some day, I don't know if then I will be revenged. I don't know." And they will have some burden. In that case, there's no burden. They joined the ICAC. They work here until they retire.

[00:05:31] You have an infrastructure here that's really phenomenal as well. I was fortunate enough to have tour. You have your own detention center for the protection of witnesses. If somebody is investigating police corruption, for example, having them in the custody of the police clearly doesn't make any sense, so the independence is top to bottom at the organization, and you really are pretty self-contained here.

[00:05:51] We are pretty self-contained, as you said. We have all the facilities. We have our own power to carry out our work, so in that sense, also, we do not rely on any other government department to help us on any areas of our work.

[00:06:09] You also have some extraordinary tools. I think people have heard about the — you even use the expression — draconian measures that are occasionally available. Can you describe the reversal of the burden of proof with respect to wealth of Hong Kong citizens?

[00:06:26] You are talking about Section 10, which is very draconian because if you want to prove somebody has taken a bribe, it's not easy because they will not do it openly. If you find an officer who has great wealth in his bank account, how can you prove that the money comes from bribery? There is Section 10 in our Prevention of Bribery Ordinance asking the officer to explain to the court the source of his wealth. I think this is very, very draconian, as you said, and helps us a lot in fighting corruption.

[00:07:05] Rather than you having to prove that they have ill-gotten wealth, they have to explain where that money came from.

[00:07:12] Yes.

[00:07:12] I am very happy to talk about the successes of the ICAC and the amazing work you've done, but there's always room for improvements. What are the areas that you're targeting for improvement at the ICAC?

[00:07:22] Several aspects for the Investigation Department. We are facing some new challenges. Financial technology, this is something, I think, will happen very fast. Also, the forensic accounting because, nowadays, managers go around the world. If we investigate, we have to trace the roots of the money flow. We have to go through a lot of checkings, not only in Hong Kong but also in other countries.

Another aspect is computer forensics. Nowadays, because the computer is so, so popular, whenever we have seized some exhibit, we need to analyze the evidence. Maybe we can find some evidence in the computer. That takes a lot of time and expertise to do that. I think these are a few areas we can see now which are challenges in the days to come. For the publicity education side, one aspect is that social media is getting popular. In the past, we have been relying on the traditional publicity methods for a long time — a TV program, maybe posters — things like that for a long time. But nowadays, in recent years, we see that social media is so popular and so welcomed by not only young people but maybe even middle-aged people. We can see that the patronage of TV programs are dropping, newspaper dropping, and we have to resort to social media as well so that we can continue our efforts in educating the Hong Kong people, especially the younger generation because, every day, we have babies born, and we have to keep on the education program for them, for the young people. We must turn to the latest media which they like. This we have done in the last few years, and I think we are quite successful in doing that. This is a new attempt. The second thing is that Hong Kong people, especially the younger generation, they don't know what corruption is. They have seen corruption for such a long time. Whenever we talk to them about corruption, it's something so strange, so unfamiliar.

[00:09:51] That's a nice problem to have. Most countries would like to have the problem of their younger generation not understanding corruption.

[00:09:57] But the problem is how to explain corruption to them. They don't know.

[00:10:00] And how do you keep them vigilant if it's not something they've suffered from?

[00:10:03] Yes. This is one trouble. Another trouble is that a few days ago I talked to a Hong Kong businessman. He has invested in one of the South Asia countries, and he told me there were a lot of corruption problems there. Another problem is that he brought along a few friends. They are also interested in investing in that country, but after visiting, they are scared away. "No, no, no, no, no. It's too problematic."

[00:10:36] Really?

[00:10:36] "We don't want to invest there." So that's a problem for the Hong Kong businessmen, when they want to invest somewhere else and they are so scared by the corruption problems. OK. That is education. For prevention, under the law, we only have the power to go to government departments and public bodies to check their procedures, systems, like that, because they are using public funds. But for the private sector — which constitutes, I think, almost more than 90 percent of our total economy in Hong Kong — we do not have a power in law to do that. What we can do is we just tell them the advantages of having no corruption in the company, especially, for example, with the procurement department which are more susceptible to corruption. We give them some guidelines, and we provide free training to their staff and free seminars to industries. We have engaged some of the largest Chambers of Commerce in Hong Kong, local and foreign chambers, so that through chambers, we can reach out to companies to let them know our service. This is something, I think for the prevention work, we have to try to work harder to expand our service to the private sector.

[00:12:08] It's very difficult to find somebody in the business community in Hong Kong who hasn't heard from the ICAC at some point at a conference or an in-house event. You've really permeated the market here, but you've also taken it on the road. Can you talk a little bit about that? You've been doing some training in other countries in the region about how to replicate or try to replicate the ICAC model.

[00:12:31] We have been doing training for a long time. Our counterparts in other countries, they would like to send their officers here for some training, maybe in a particular area or generally the whole ICAC operation. Some countries even copy our structure, our law, even our name in their countries, so this is on a long-term basis. Recently, we have strengthened this in a sense because under the UN Convention Against Corruption, we have a duty to assist other countries in fighting corruption. We want to beef up this part of our work. We set up a small unit. This is not only general training. What we do is that we will provide some consultancy services because on the success factor in fighting corruption, there are a basket of factors — not only the law, not only the organization, things like that. There are a lot of other factors — social, political, economic, a lot of factors. We will do some consultancy for an individual country or city. Then we will design or tailor-make a training program for the anti-corruption agency. The first one is East Timor. We have finished the consultancy. We have designed a training program for them, and we are waiting for the officers to come over to receive training, and then we will assist other countries. We have a few other countries in line that that we will do the same. This is something more than the general training we have done in the past because the situation in each country could be very different from Hong Kong. What works in Hong Kong may not work in that country for various reasons. I think we need to do some tailor-made training for them. This is our new attempt. We hope we can serve the international community, especially the anti-corruption agencies, better.

[00:14:41] It's complicated because we've talked a lot about the TRACE Bribery Risk Matrix this week and, of course, enforcement is key. It's very important that the public believe that there will be consequences for their misconduct, but there are also factors like reducing red tape. Hong Kong scores exceptionally well on that. I think it's the highest possible score on the reduction of red tape and transparency in government. Your training in countries like East Timor may be able to emphasize the importance of enforcement, but there is this whole system that is supporting opacity. I'm not sure you'll get to that. Of course, improving the enforcement situation is an objectively good thing to do, but that alone is not going to bring them up to Hong Kong standards.

[00:15:26] You are quite right. You are quite right. There are a lot of factors affecting whether the anti-corruption work is successful. Every time for an individual country, I would talk to the leaders of the anti-corruption agency. I have to let them know some important political, economic and social factors which need to be in place before your anti-corruption work can be successful. It's not only training. It's not only the skills. But I think it's something about changing the society, changing the culture. Training, I think, is one level, but there must be changes at a higher level in the government.

[00:16:04] This is interesting because it leads me to a question about mainland China. The "one country, two systems" is very much in place in a number of different aspects, but we've been hearing a lot about the Belt and Road Project, and the countries you're describing that you've been doing outreach with and training and consulting with — the ICAC has — are Belt and Road countries. Can you help people understand the interaction, if any, between anti-corruption efforts in Hong Kong and anti-corruption efforts across the boundary and the mainland?

[00:16:40] Actually, as you said, the "one country, two systems" principle has been very successful. Under that principle, there is no interference between China and Hong Kong. Hong Kong has a high degree of autonomy. Anti-corruption work is one of that. Ever since Hong Kong was returned to China in 1997, there was no interference from China on our anti-corruption work. And vice versa: We will not interfere with the anti-corruption work in China, but we have a mutual case assistance program, which is administrative. There is no legal backing on that, but because there are trans-border corruption

problems — ever since, I think, 30 years ago in 1987, we have started this kind of cooperation with the mainland government. The department was the Supreme People's Procuratorate because they are responsible for investigating corruption offenses in China. Then whenever we need to interview somebody in China — could be a suspect, could be a witness — we can always ask the SBP to help us to arrange. If the person is willing to see us, then they will arrange our place. Our officers will go up there to meet the person we want to see, and sometimes we need them to help us check some bank accounts or some documents or maybe the company information, things like that. We can always write to them, ask them to help. And vice versa: They would ask us to do the same. This is on a cooperation basis, and I would say this is the relation between Chinese anti-corruption agencies and us.

[00:18:36] It's an interesting situation because if it were two countries, you would have the MLAT process — the mutual legal assistance treaty — in place, but because of the "one country, two systems," it isn't a formal treaty-based arrangement. It's an informal arrangement.

[00:18:52] Yes, an informal arrangement and, actually, the Hong Kong government has been discussing with the central government about a mutual legal system to be in agreement. Since 1997 up to now, there is not yet a consensus on that. We are still waiting for maybe, in the future, we have a kind of consensus or maybe an agreement that will help us to work better with the mainland on this.

[00:19:24] It's interesting because there is another anomaly, too. The Chinese anti-bribery law has an extraterritorial component, and the Hong Kong law doesn't. Your work is here, in Hong Kong, directed at corruption within Hong Kong.

[00:19:38] Our law was made a long time ago, even before this organization existed. At that time, this so-called extraterritorial need is not that strong. But I would not say our law of Prevention of Bribery Ordinance is totally without extraterritorial consideration. For some cases, for example, you have a government officer who takes a bribe outside of Hong Kong — we can investigate. If there is a bribery situation which may not happen in Hong Kong, but some part of the activity happened in Hong Kong — for example, the money goes through Hong Kong or they discuss about this deal in Hong Kong — we can also investigate. So our law not totally without extraterritorial jurisdiction.

[00:20:38] You have organized for me just an exceptional week of meetings — some very high-level — this week, and I'm very grateful to you so I am going to cede the last word to you. What else would you like people to know about anti-corruption efforts in Hong Kong?

[00:20:51] I think the best thing is, just like you to see for yourself, not only anti-corruption work but also the society as a whole. As I said, anti-corruption, we cannot single out without looking at the other part of society because if you want to have a corruption-free society, there are a lot of other factors. As you said, transparency, rule of law and how to manage a civil service, when you go to the private sector about the corporate governance. I think this is a whole society thing. This is not only part of society, and you cannot look at an anti-corruption alone as a single issue because it has a very close relationship with every part of society. You have to look at it as a whole. Sometimes I share with my guests about a holistic approach in fighting corruption. It's not only an organization, a piece of law, a bunch of officers. Not only that, but it's a holistic approach. How do you change a society with one of the ultimate results of a corruption-free society?

[00:22:08] You provide a great model in the region and, frankly, worldwide for how you can take a community that has high levels of corruption and transform it into a community that not only has

exceptionally low levels of corruption, but also has engaged the public so there is an expectation that there will be no corruption.

[00:22:28] Yes.

[00:22:29] There's so many countries now that are discouraged and cynical about the levels of corruption, but here, I was really interested to hear about some of the survey work that's done here to talk to the people of Hong Kong about their awareness of the ICAC, their awareness of anti-corruption efforts. In spite of your concerns about the younger generation, that level of penetration into the community with the awareness and ownership of the issue, I think, is really to be commended. Thank you for your time, and thank you again for making the ICAC and a number of your partner organizations available to me for meetings this week.

[00:23:08] You're welcome. Thank you.