

Draft Memorandum for Review
6th National Congress on Integrity (NCOI)
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UCSI University

Against Bribery and Corruption for all Malaysians
ABC4Malaysians

Corruption is often seen as too big and too complicated of an issue to be easily discussed and dissected, especially within the context of a forum or meeting with limited time, resources and expertise. This does not mean that interested citizens and groups who want to play their part in tackling this issue within the context of Malaysia should not try to find common ground in understanding this issue and then devise ways for people to come together to combat the scourge of corruption in this country.

It was with this intention in mind that a group of interested individuals gathered together on the 28th of July at the Malaysian Anti-Corruption Academy (MACA) as part of a preparatory meeting for the 6th National Congress on Integrity. The following report documents and highlights key points arising from this meeting.

This report uses the DEEP methodology of **D**escribing the Problem, **E**xplaining the Causes, **E**valuating the persistence of the problem and finally, **P**rescribing a way forward, in order to frame the content of the discussion on the 28th of July.¹ In doing so, a more systematic and structured way of understanding the problem or issue at hand can be obtained and the most suitable channels for moving forward this agenda forward can be more easily identified.

1. Describing the Problem

The approach taken by the professional process consultant and moderator was to contextualize examples of corruption within personal experiences (or that of their family and friends) and then to expand or extrapolate the thinking of participants to cover bigger and broader issues. The discussion was then generalized to other current examples of corruption within the larger context of Malaysia's socio-political system. The personalization of corruption allowed the participants to see how these experiences affected one's own feelings towards this issue and how it would shape an individual's future views on the matter. Through the contextualization of real life examples of corruption, various aspects of the problem, including definitional and theoretical issues, were also drawn out in the process.

Most of the personal experiences with corruption described by the participants involved dealings with various personnel at the lower echelons in the civil service (which includes the police). The example of being stopped by a member of the police force for a traffic infraction (whether real or not) and being asked to pay a bribe to be 'let off' was a common experience described by many of the participants. Most identified with this reality. It can be concluded to be a Malaysian way of life.

¹ The DEEP methodology of problem or issue analysis uses a simple four step approach and allows any problem, issue or concern to be adequately analyzed for seeking a decent problem resolution. The Faculty of Economics and Policy Science at UCSI uses this methodology for all its analysis of problems.

For example, Malaysian A related his personal experience about jumping the red light and how the police had stopped him and attempted to get a bribe from him. When A did not want to, the police kept pleading to give him something. His reflection of the experience was initially relief, then pity. This experience from his early formative years has colored his opinion of how he views corruption. Every time he returns to the location where it occurred, which was near Komtar in Penang, he can feel his heart beating faster.

Problem Description 1: Corruption occurs when a party which has the power to enforce law demands for a bribe or payment so that the law is not enforced. This is popularly known as “the close-one eye culture or the duit kopi culture.”

Another type of corruption was demonstrated through the experience shared by Malaysian B.

B’s friend had been caught for a violation with a motorbike, and asked for his help. He argued that the rules can be bent but cannot be broken. Corruption can be endemic but there are creative ways to deal with it. His friend, a Traffic Police Officer, had obviously figured it out – that you can bend the rules without breaking them; such is the case of “organisational grace”, wherein the system allows you to ‘legally admit fault and seek a lower fine.’

Even here, while it is not so much that a bribe was demanded but that a request was made for power to be abused so that the proper legal action would not be taken. In this case, the ‘price’ was the friendship between B and his friend. In other cases, such an abuse of power could easily have been accompanied by a bribe (or favours) to a high ranking official so that he or she would not follow through on the proper and legally specific punishment, sometimes even where such legitimate provisions for leniency is not provided.

Problem Description 2: Corruption occurs when a higher authority is asked (because of friendship, familial ties, personal favours, bribes, etc...) to exercise power, often over ruling another lower authority, so that the proper legal procedures (including punishments) can be circumvented.

Bribes are not necessarily extracted during the time when a favor is needed or when there is the need for normal procedures to be circumvented. Bribes could also be paid ‘in advance’ with the expectation that these are ‘down payments’ for yet to be specified favors to be expected in the future. Also, bribes may be paid after the fact (when the favor has already been done).

For example, Malaysian C described the experience of her father, who was a District Officer in Johor Bahru who would, as usual, during festive seasons, receive many goodwill hampers.

Problem Description 3: Corruption can also occur when gifts are given in advance of when a favor needs to be extracted with the expectation that these gifts or bribes can be ‘cashed in’ in the future or when gifts are given away after the favor has been extracted as a ‘thank you’ for past favors rendered. Since these gifts are not given during the period when the favor is done, it can ‘absolve’ the giver and the receiver of any guilt that this is indeed a corrupt act.

Another personal experience related by Malaysian C highlights the aspect that bribes can be extracted as part of the natural cost of doing business or overcoming transaction costs, if you will.

C's family opened a kiosk in Bukit Bintang and wanted it renovated. It cost only RM 20,000 but she claimed that she had to go to Dewan Bandaraya Kuala Lumpur as many as 19 times to get it approved. She related that the officers in DBKL said that she must use a runner; but after the 19th time, she met the minister and asked him why it is so difficult. Then the fasting month came, and she said she could no longer deal with DBKL and decided to close the kiosk. Soon after, the whole stretch of kiosks closed.

Problem Description 4: Corruption can occur when those in power put in additional procedural barriers in obtaining the necessary approval / paperwork as a means of extracting payment to ease these procedural steps. The addition of a 'runner' into the process provides a convenient layer so that there can be denial on the part of the approving authority that he or she asked for a bribe and also on the part of the person seeking the necessary approval, that the payment was just part of the cost of doing business

Systemic corruption unveiled

The issue of corruption at a more systemic level was highlighted in the discussion regarding a Malaysian Dr. D, a forensic pathologist who was shown to have falsified his autopsy report on a particular case, wherein a person of interest in a crime died whilst under police custody. Here, corruption occurred at a more serious institutional level when it seemed that Dr. D was compelled to falsify his report, presumably by higher up authorities, who wanted to (or was asked to) protect the public image of the police. Corruption may therefore also have occurred on the part of the Malaysian Medical Council (MMC) who let Dr D go "off the hook" with only a 'severe reprimand' over his actions.

A participant pointed out that there are two failures, in the case of Dr D and institutionalized "close one eye culture." It appeared that pressure was brought down upon the system by higher ups, while the MMC also "colluded and failed" to punish Dr D in regards to the gravity of the crime in a commensurate manner. International Medical guidelines had an established standard punishment for such crimes but which was obviously ignored.

The first failure can be seen as somewhat similar to Problem Description 2. A lower level officer was asked to 'close one eye' and ignore a minor violation but with much more drastic consequences, in this particular case, the failure to uncover the identity of a possible murderer. The second failure points to the more serious problem of institutionalized corruption where various bodies or arms of the government (and related agencies / organizations) operate within a system where there is an understanding that these different agencies would and could 'cover for one another'. Jerry Harvey, in his book, The Abilene Paradox and Other Meditations on Management calls this "a system of willing voluntary collusion" in wrong doing but when often absolve the actors excuse themselves with the argument that they were only following orders." Please read Hannah Arendt's Eichmann in Jerusalem.

Problem Description 5: An endemic system of corruption begins to appear when there is an understanding between various agencies (especially within government or related parties) that the abuse of power can and should take place in order to protect the interests and reputation of the government or representative community as a whole.

In addition, another medical professional and participant pointed out that within the current structure of the MMC, which was composed of a large number of "administrative insiders," such larger

numbers appointed by the President of the Council does not encourage transparent open and a accountable system. Apparently, the disciplinary committee of the MMC is made up of 3 to 6 members but only two are actually needed for a quorum. All of these are appointed by the President of the Council. While not all medical professionals may agree with the participants diagnosis of the weakness of the MMC's structure (including the disciplinary board), his views may describe the structural components of institutionalized corruption. The greater concern of the Consultation was that this mode of "institutionalized governance of professional bodies is becoming increasingly greater!" The latest model being debated is the Malaysian Press Council

Problem Description 6: The structure of organizations can influence the level of transparency and decision making and hence the ability to hide (or reveal) corrupt practices within the organization.

There are many more examples of encounters with corruption at a personal level and cases of corruption at an institutional level which would highlight different aspects of the problem and hence, different descriptions of the problem.

For example, one could mention the often heard examples of how a 'commission' is demanded from the allocation of a government project to a private corporation or through the sale of state owned land to a private entity and so on. The point to note here, through the examples of corruption at the personal and institutional level, is that it reveals corruption in different places taking on different forms. This obviously complicates the challenge of 'describing' corruption in a simplistic manner.

The intricacies revealed by these descriptions will be discussed in further detail in Part III of this report which evaluates the problem of corruption in a more systematic and structured manner.

The participants, however, did not only point to negative examples of corruption to describe the problem. Some also pointed to counter examples of how corruption was avoided at the personal as well as institutional level.

For example, Malaysian C described her father's rejection of all the hampers received during festive seasons because of their 'haram' nature. He did not want to feed his children with 'haram' money or gifts. Malaysian E shared his experience of how his father made him bike for 45 minutes because the father had forgotten to pay the hawker RM0.20. The father was a Chief Health Inspector and would similarly reject all gifts he received during festive seasons. For him, the true test of sincerity would be to see if he would be similarly appreciated after he retired and could no longer do any more 'favors' because of his position in the civil service.

While the returning of the 20 sen was not necessarily a case of avoiding corruption, the point made here was that one has to travel the extra mile in order to avoid being seen as corrupt. In addition, good examples set by parents are very effective in defining what corruption is and how to avoid corruption.

Problem Description 7: It is not sufficient to be uncorrupt but one has to take the extra step to avoid to be seen as possibly corrupt. Parents and elders have an important role here.

Problem Description 8: The corrupt acts of individuals will be seen by those closest to them and will negatively influence the younger generation and make them think that corruption is an

acceptable practice. Conversely, examples of honest and principled living will go a long way in influencing the younger generation to shy away from corruption.

The cases and experiences described above sets the scene for the next two sections which is to explain some of the causes of corruption using these problem descriptions and subsequently evaluating the problem in a more systematic fashion.

II. Explaining the causes

From the descriptions of the problem given above, a few causes of corruption can be identified. They are explained below.

Cause 1: Fear of the punishment of a person in authority using legal procedures

This was the experience of Malaysian A. He described being fearful when he was pulled over by the police. This fear can seem irrational given that the violation in question – running a red light – is not a criminal offense and can be resolved by the payment of a fine which is not prohibitively expensive (not more than RM300). But because of the fear evoked when confronting a person of ‘authority’, in this case, a police man, somehow irrationality kicks in. This means that even if the person is not guilty of the traffic offense, he or she may feel compelled to give a bribe because of the fear or uncertainty that he or she did indeed commit an offense. Or if the offense was indeed committed, the driver may feel compelled to pay the bribe out of fear even though he or she is willing to pay the legal fine because this is part and parcel of the larger socio-economic culture. There must be harmony in society.

Cause 2: It is often ‘cheaper’ to take the path of corruption

The decision to bribe a policeman to escape a traffic fine or to ask a friend or bribing an official for help in expediting certain applications saves a person valuable time and money. A bribe of RM50 is cheaper than paying a fine of RM300. A bribe of RM 1000 is cheaper than going to DBKL 19 or 20 times because this may mean lost revenue when a stall or a kiosk is not in operation. People accept corruption as a necessary transaction cost to save time and money. It is simply “the cost of doing business” in Malaysia.

Cause 3: Those taking bribes do it because they know that the chances of getting caught are minimal.

In every one of the cases described above, those who are guilty of asking for bribes or those who abuse their positions of authority are not punished for their actions. For example, even though almost everyone knows that police enforcing speed traps are using these opportunities to ‘extract’ money from drivers, there are no enforcement mechanisms to catch the police ‘in the act’. This means that such actions will continue to take place. In the example described by Malaysian C, even the Minister did not offer her any solutions to the problem she was facing. Similarly, in the forensic pathologist case, he escaped with merely a slap on the wrist from the MMC. Obviously, all those in authority are also colluding with this close one-eye culture and simply tolerating it!

Cause 4: Inequality in information / power

Those in positions of authority usually have more information (or more power to apply that information selectively) compared to those who are not in authority. Those who are not in authority usually do not have formal channels of appeal if those in authority decide to abuse their power. For example, the officials in DBKL will insist that the legal provisions require C's kiosks to have certain dimensions (even though this may not be the case) while C's staff would have no way of disputing this or cannot access a higher ranking official in order to seek greater clarification on some of these terms and conditions. The greater the complexity of the procedures involved, the greater the inequality of information and power, and the greater the opportunity for the abuse of power and the extraction of bribes.

Cause 5: Once unequal structures are put in place, they are very difficult to remove

All organizational structures have their inherent weaknesses which can be potentially exploited. Which is why there is a need for periodic reviews in these structures and regular rotation among those in power. But once these structures are in place, it empowers those in authority and those coming after them to benefit from these structures which means that the impetus to change these structures in order to remove or reduce institutionalized corruption is very difficult.

One can easily point to other causes of corruption which were not discussed in Section I including the needs of political parties and politicians for funds to run their political campaigns, the lack of institutional checks and balances within an organization, or in the larger government structure e.g. an Internal Investigations Department within the Police Department and the weakness of the agency in charge of anti-corruption prosecutions, the relatively low pay of civil servants and so on. The point to make here is that the descriptions of the problem highlighted in Section I can be linked to specific causes of corruption, a few of which has been highlighted in this section.

The more causes we reveal and then seek to understand, the greater the likelihood of identifying channels (including out-of-the-box ideas) of reducing or even eradicating the problem of corruption.

III. Evaluating the problem

One can have endless discussions about examples of corruption and even possible causes of this phenomenon. But in order to make these discussions more focused and more structured, a few questions need to be asked in regard to the different instances of corruption being discussed (or will be discussed).

Firstly, who are the actors involved? The simplest scenario would involve a willing payer and a payee, for example, the traffic offender and the traffic policeman. A more complex scenario would involve a middleman (or 'runner') between the willing payer and the payee (the DBKL example). An even more complex scenario may involve more than one willing payer, more than one runner and more than one payee. One could think of different permutations and combinations in terms of the number and type of actors under various corruption scenarios. The point here is that the actors in each case need to be identified whether in specific examples of corruption or when discussing larger structural problems involving institutionalized corruption (think of political parties and politicians as actors within this system, for example) so that the other issues linked to this problem can be better explained, evaluated and understood.

Once the actors have been identified, the next question to ask is the exact nature of the transaction which is being undertaken and what deviations from the norm need to occur in order for this transaction to take place. For example, are specific laws being overlooked or certain parts of certain legislation overemphasized? What laws are being flouted if the process involves favoring one party over others?

Thirdly, after the nature of the transaction and the deviations from the norm have been identified, the costs and benefits to each party involved in the transaction have to be considered. This involves not only the payment to the parties involved but also possible risks facing the participants including the cost of getting caught, reputational concerns as well as costs to society as a result of this transaction taking place e.g. falling hillside towers because of substandard construction standards. Some actions obviously have greater social costs than others. Allowing substandard construction standards will be most expensive and will also incur greater social costs (if a building collapses) compared to the simpler act of bribing a policeman over a traffic infraction. This kind of cost benefit analysis is important in order to prioritize the kinds of corrupt practices to target and how to ‘internalize’ these external costs so that appropriate levels of punishment and enforcement can be doled out.

Fourthly and finally, one has to ask questions regarding the larger environment in which these acts of corruption are taking place e.g. what is the reputation of enforcement agencies, what is the role of the media in being whistleblowers etc...

Table 1 below summarizes the main points in this evaluation section.

Table 1: Asking the right questions to obtain a more structured and deeper understanding of the issue

| Overarching Question | Points to consider |
|---|--|
| 1) Who are the main actors? | Are there only two actors? Who, along the hierarchy, needs to be ‘paid’ off? Who are the parties who may be complicit without being paid off? Are there any middlemen? |
| 2) What is the nature of the transaction | What laws are being flouted? Who is flouting them? What holds the advantage in the balance of power to necessitate this kind of transaction? What kinds of procedures need to be taken in order to this transaction to go through? |
| 3) Costs / Benefits involved | How much money is being paid out? If there is a middleman, how much is he or she getting? How much does the payee / briber stand to ‘save’ or ‘benefit’ from this transaction? What is the likelihood of being caught? What reputational concerns are at stake? What are the possible costs to society at large i.e. externalities? |
| 4) What is the larger anti-corruption environment in which these actors are operating in? | How much power to the enforcement agencies have? What active is the media in exposing these sorts of activities? |

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|--|--|
| | Are there strong whistleblower protections? How effective are those within the opposition in playing the role of check and balance? How active are the NGOs? |
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(Of course, there are additional questions which can be asked and alternative structures to frame the evaluation of the problem. Here, the point is to highlight the need for a structure that digs deeper into the root of the problem, that goes beyond a generic discussion of cases involving abuse of power and corruption)

IV. Prescribing the way forward

How then can we move forward?

Once a better understanding of the causes and characteristics of the issue of corruption, the next step is to identify ways to reduce or eliminate the problem. This is easier said than done. But the framework revealed in Sections II and III will be helpful in guiding the discussion on this section.

Firstly, given that any act of corruption involves different actors, different types of transactions and different costs, any policy prescription would need to identify which aspect in this complicated chain of corruption it intends to influence or change. For example, a policy of introducing internal audits for construction companies with the specific objective of uncovering bribery activities would make it more costly for the payer to pay out bribes to civil servants and would cost the company its reputation if discovered. The British Government for example has made this kind of a requirement into law. However, it still does not alter the unequal balance of power which exists between the civil servant (more power) and the developer (less power) or purchaser of service and the provider of the service.

Another example which targets the cost of accepting a bribe would involve religious figures and establishments. Asking religious authorities to partner in the fight against corruption by preaching to their followers would increase the cost of giving and also accepting the bribe in the form of a guilty conscience and the possibility of punishment in the afterlife.

Secondly, there needs to be a greater awareness of the areas in which civil society can influence by utilizing different strategies to target different parts of the corruption ‘chain’. For example, civil society can run a campaign empowering citizens not to bribe policemen or to report policemen who ask for bribes as a way of reducing the incentives for policemen to ask for bribes. Many times, these policemen will actually refuse to issue a ticket if the driver refuses to pay the bribe because this involves more paperwork. Hence, such empowerment campaigns, if effective, may reduce the incentives for policemen to set up unnecessary roadblocks and perhaps find other ways e.g. traffic cameras to slow down traffic at strategic traffic locations.

Thirdly, there also needs to be prioritization in terms of the specific areas of corruption which should be targeted based on the easiness of implementation and the benefits obtained. These objectives may often clash since low hanging fruit of traffic police asking for bribes would be easier to reduce but would have low societal benefits compared to more institutionalized practices of corruption (bribing politicians for example) which have more pernicious societal costs e.g. bad economic practices.

This then brings up the question of how to strategically structure the upcoming NCOI discussion on the 16th of September based on the findings and recommendations in this report?

Firstly, while having an open and candid discussion is helpful in terms of sharing experiences, these discussions should try to follow a structure (perhaps based on Table 1) so that the case experiences can be dissected and systematically discussed.

Secondly, workshops should be organized based on different 'links' within the chain of corruption so that they can be more focused.

Thirdly, the actions which can be taken need to be associated with the actors in which these actions are targeting and as well as specifying who will take these actions e.g. civil society, government agencies, political parties, media, or a combination of these actors.

This is clearly an issue which many Malaysians are concerned with. New ways of thinking and engaging with this issue is sorely needed and the NCOI can be structured creatively such that new ideas and new ways of doing things differently to combat the scourge of corruption can be identified.

V. Conclusion

The paper is designed as a real life case story of the actual experiences of some Malaysians and the dialogue was hosted by the MACC. The goal of this paper is to "em-courage Malaysians as ordinary citizens to get involved and have their say in the fight against corruption.

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