

Failing the fight against corruption

Written by Wu Ching-chin 吳景欽
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An alleged corruption scandal involving an affordable housing development project in Taoyuan County's Bade City (八德市) was exposed last month. It is regrettable that, despite various mechanisms designed to prevent corruption and the imposition of heavy penalties for bribery, these scandals involving government officials keep occurring. What is wrong with the nation's bribery prevention policy?

Take the current scandal involving former Taoyuan County deputy commissioner Yeh Shih-wen (葉世文), for example. He is under detention and might have violated Article 4 of the Anti-Corruption Act (廉政法), which prohibits "demanding, taking or promising to take bribes or other unlawful profits by the acts that violate the official duties," and "taking kickbacks from public works or procurements" under one's charge as well as "acquiring valuables or property through the use of undue influence, blackmail."

According to the same article, any person who commits any of these acts faces imprisonment for life or a term of no less than 10 years and may also be punished by a fine not exceeding NT\$100 million (US\$3.33 million).

This shows that Taiwan imposes heavy penalties on bribery. If the government really wants to prevent bribery with heavy penalties more effectively, however, more prosecutions and higher conviction rates are necessary.

At the moment, Taiwan's major corruption prevention mechanism consists of the units established by the Agency Against Corruption (AAC) working at all government agencies. Since investigators in these units do not have the status of judicial police and are not independent, once they start an investigation, their work may be restricted and interfered with by superior agencies and they might even face retribution.

If the government does not clarify the status and duties of these investigators in a timely manner, their predicament is likely to remain unchanged. That being so, it will be difficult for them to fulfill their function and tackle corruption.

Bribery is a collective crime. Take the Bade case, for example — although Yeh was Taoyuan

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County deputy commissioner, it is questionable whether he could have handled that case by himself. This is why the AAC must show determination to thoroughly investigate and eliminate structures where corruption has become endemic. If it merely aims at limited prosecutions, regardless of how heavy penalties are, some people will continue to think they can get away with corruption.

Even if the evidence against a public official receiving cash is clear and definite and they are indicted for taking bribes, it is questionable whether the court will hand out severe punishments. As Article 8 of the Anti-Corruption Act states, if an offender surrenders and spontaneously hands over all unlawful gains, penalties may be commuted. If this leads to the uncovering of other principal offenders or accomplices, the accused is exempted from punishment. It is unfair that a penalty should be commuted or exempted in this way regardless of the level of corruption involved.

Moreover, since bribery is mostly conducted in secret, prosecutors usually need to rely on the cooperation of the person paying the bribe to uncover offenses by public officials. This is why the Anti-Corruption Act states that the penalty may be commuted or exempted if an offender surrenders and confesses to their crime.

However, this kind of treatment will hardly stop Taiwan's "red envelope culture," nor will it prevent some accused of corruption from making false accusations against others just to have their own penalties commuted or exempted. If the court is not cautious, it will be difficult to avoid lawsuit abuse or mismanagement.

A greater problem with the work against corruption is that the judicial system has yet to draw a clear line in its definition of the relationship between a public official's unlawful gains and official duties. Consequently, different judges have different opinions when handling cases of bribery, leaving offenders swinging back and forth between a guilty and not guilty verdict. The original intent was to deter bribery through heavy penalties, but this approach might weaken to the point it becomes ineffective.

Punishment is a last resort in the measures available for preventing bribery. If the government makes that its top priority or even its only measure, the situation will continue to deteriorate.

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Therefore, it should increase administrative efficiency, reduce the room of government agencies to make discretionary decisions and strengthen public officials' faith in the law in order to find a permanent solution.

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Translated by Eddy Chang

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