

Ethical Governance and Anti-Corruption in Greater China: A Comparison of Mainland China, Hong Kong and Macao

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Introduction

If ethical governance is narrowly defined as the constant attempts by national or regional governments to legitimize themselves through the emphasis on establishing a clean and honest civil service, anti-corruption is one of the major indicators of shaping it.¹ Other indicators embrace the emphasis on accountability and transparency, media scrutiny on the government, and the moral behavior of civil servants. In the context of Greater China, encompassing Mainland China, Hong Kong and Macao, the question of ethical governance has often been linked to anti-corruption. The objective of this paper is to compare anti-corruption and ethical governance in the regional governments of Hong Kong and Macao with that in the national government of the People's Republic of China (PRC).²

Indeed, the national government of the PRC encounters more difficult problems of anti-corruption than the regional governments of the Hong Kong Special Administrative Region (HKSAR) and the Macao Special Administrative Region (MSAR). The sheer size of the PRC, its complicated central-provincial dynamics, its decentralized nature of anti-corruption with overlapping jurisdictions among various agencies and the extent of corrupt officials have constituted major hurdles to anti-corruption.³ Still, the examples of

¹ For some of the recent literature on ethical governance, see Timothy Fort, *Ethics and Governance* (New York: Oxford University Press, 2001); Guy Peters and David J. Savoie, eds., *Governance in the Twenty-First Century* (Quebec: McGill-Queen's University Press, 2000); Samuel Agere, *Promoting Good Governance* (London: Commonwealth Secretariat, 2000); and Annie Hondeghem, *Ethics and Accountability in a Context of Governance and New Public Management* (Amsterdam: IOS Press, 1998).

² For a useful review of the governments and politics in Greater China, see Tony Saich, *Governance and Politics of China* (London: Palgrave, 2001 and the updated version in 2004); Kenneth Lieberthal, *Governing China: From Revolution Through Reform* (New York: W. W. Norton, 1995); John F. Copper, *Taiwan: Nation-State or Province?* (Cambridge, Massachusetts: Westview, 2003); James C. F. Wang, *Contemporary Chinese Politics: An Introduction* (New Jersey: Prentice Hall, 2002); June Teufel Dreyer, *China's Political System: Modernization and Tradition* (New York: Longman, 2004); Herbert Yee, *Macao in Transition: From Colony to Autonomous Region* (London: Palgrave, 2001); and Lo Shiu Hing, *Governing Hong Kong: Legitimacy, Communication and Political Decay* (New York: Nova Science, 2001).

³ The literatures on China's corruption are numerous. A number of good works can be found in Andrew Wedeman, "Great Disorder under Heaven: Endemic Corruption and Rapid Growth in Contemporary China," *The China Review*, vol. 4, no. 2 (Fall 2004), pp. 1-32; Ting Gong, "Dependent Judiciary and Unaccountable Judges: Judicial Corruption in Contemporary China," *The China Review*, vol. 4, no. 2 (Fall 2004), pp. 33-54; Wenhao Cheng, "An Empirical Study of Corruption within China's State-owned Enterprises," *The China Review*, vol. 4, no. 2 (Fall 2004), pp. 55-80; Melanie Manion, "Lessons for Mainland China from Anti-corruption Reform in Hong Kong," *The China Review*, vol. 4, no. 2 (Fall 2004), pp. 81-97; and Hilton Root, "Corruption in China: Has It Become Systemic?," *Asian Survey*, vol. XXXVI, no. 8 (August 1996), pp. 741-757.

the HKSAR and, to some extent, the MSAR, represent models for the central government to emulate if governance is aimed at creating a regime with honesty, integrity and free from the perennial problem of corruption.

The Case of Hong Kong

In colonial Hong Kong, corruption delegitimized the regime to the extent of establishing the Independent Commission Against Corruption (ICAC). The ICAC effectively curbed bureaucratic corruption, alienated the corrupt police officers who launched a mutiny and forced the colonial governor to issue an amnesty to deal with corrupt officials. This amnesty of corrupt officials represented a landmark in the development of anti-corruption, for they could have the chance of turning a new leaf in a new governing era. The experience of the ICAC was unprecedented in anti-corruption and governance in Hong Kong, for its powers and aggressiveness really constituted a turning point in bringing about a relatively clean administration in the British colonial from the mid-1970s from their departure on July 1, 1997.

It is often said that the organizational uniqueness of the ICAC, characterized by its operation, community prevention and community relations departments, symbolizes a success model for anti-corruption in the PRC. The rule of law environment in the HKSAR, including its powerful anti-bribery legislation, constitutes another important feature that cannot be easily emulated by other developing states where the legal instruments are monopolized by the corrupt regimes. Section 4 of Chapter 201 of the Prevention of Bribery Ordinance states:

“(1) Any person who, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, offers any advantage to a public servant as an inducement to or reward for or otherwise on account of that public servant's- (a) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as a public servant; (b) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by that public servant or by any other public servant in his or that other public servant's capacity as a public servant; or (c) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body, shall be guilty of an offence.
(2) Any public servant who, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his- (a) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as a public servant; (b) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by himself or by any other public servant in his or that other public servant's capacity as a public servant; or (c) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body, shall be guilty of an offence. (see Section 4, Chapter 201 of the Prevention of Bribery Ordinance, in <http://www.icac.org.hk/eng/main/>, accessed date: May 7, 2006).”

The scope of those people guilty of offering and accepting an advantage that affects the operation of a public body is so broad that the ICAC actually has comprehensive powers to tackle potential corrupt suspects.

Section 10 of Chapter 201 is another powerful legal tool for the ICAC to deal with corrupt suspects, for it states that “(1) Any person who, being or having been a prescribed officer- (a) maintains a standard of living above that which is commensurate with his present or past official emoluments; or (b) is in control of pecuniary resources or property disproportionate to his present or past official emoluments, shall, unless he gives a satisfactory explanation to the court as to how he was able to maintain such a standard of living or how such pecuniary resources or property came under his control, be guilty of an offence.” (*Ibid.*)

Although the Hong Kong law empowers the ICAC to combat corruption, the anti-corruption agency since retrocession has encountered several problems. First and foremost, the ICAC itself encounters an internal crisis in which investigators are hard-pressed to search for quick results. Some investigators in the investigation department complained that their workload and pressure were tremendous, thus leaving the ICAC for the private sector.⁴ Second, the court has occasionally found that the ICAC officers failed to find sufficient evidence in their cases of prosecuting corrupt suspects. Third, the ICAC heads since the late 1990s have no longer been occupied by prestigious and highly regarded individuals parallel to the status of the late Sir Jack Cater. Although the heads of the ICAC have been Hong Kong Chinese, their civil service career could not be compared to the rich experience and high profile of the much respected Jack Cater. Indeed, individual leadership cannot really affect the ICAC work; most members of the Hong Kong public appear to have a faint idea of who is leading the anti-corruption agency. Fourth, since economic integration between the HKSAR and China since the late 1990s, commercial crime such as fraud in the private sector has appeared to become more prevalent than before.⁵ The ICAC is facing a daunting challenge of how to educate the private sector on the need to maintain integrity in their commercial dealings. With more mainland Chinese enterprises listed in the HKSAR stock market, it remains to be seen how the Hong Kong Monetary Authority, together with the ICAC, monitors the process of the extensive penetration of hot money into the Hong Kong market and prevents the commercial sector from being plagued by hidden corruption and inside dealings.⁶ Finally,

⁴ Two of my former students left as they told me that the work pressure on them was tremendous. Personal discussion with the former students in July 2004.

⁵ Since Hong Kong's return to China, cross-border crime has been quite serious. See Lo Shiu Hing, “Cross-Border Organized Crime in Greater South China,” *Transnational Organized Crime*, vol. 5, no. 2 (Summer 1999), pp. 176-194.

⁶ In 2005, Legislative Council member Lee Cheuk-yan asserted that a lot of hot money flowing into Hong Kong from China were “corrupt.” His comments angered the Financial Secretary Henry Tang. Objectively speaking, however, the sources of the “hot money” were very suspicious and one cannot neglect the likelihood that a considerable amount was channeled by corrupt officials into Hong Kong. Similarly, the PRC government in 2005 launched an anti-casino campaign across its borders in order to curb the outflow of “dirty money” from China to other places, including Macao where casinos proliferate and have become the hotbed of money laundering and organized crime.

in recent court cases involving corrupt suspects, some experienced lawyers in the HKSAR knew how to use individual rights as a means to protect their clients against the prosecution attempts by the ICAC. In a sense the ICAC is now sandwiched between an increasing tempting economic environment conducive to corruption and the ability of experienced barristers to fight for the rights of their suspected corrupt clients.

Despite the fact that anti-corruption in the HKSAR encounters new challenges, the ICAC work remains generally successful and presents a model for both Macau and the central government in Beijing to emulate.

The Case of Macao

The Macao Commission Against Corruption (CCAC) was formed in December 1999 after the handover of Macau's administrative right from Portugal to the PRC.⁷ Compared to the Prevention of Bribery Ordinance, the definition of bribery in the MSAR appears to be ambiguous. Article 3 of Chapter 1 of the CCAC powers states:

“The Commission Against Corruption aims, within its scope of activity, at: 1) taking actions to prevent acts of corruption or fraud; 2) carrying out investigation and inquiry with regard to acts of corruption or fraud practised by public servants ..., 3) carrying out acts of investigation and inquiry with regard to acts of corruption and fraud practised in relation to electoral registration and to the elections of members of the institutions ..., [and] 4) promoting the protection of rights, freedoms, safeguards and legitimate interests of the individuals ... (See Nature, Status, Scope of Activity, and Powers of the CCAC in <http://www.ccac.org.mo/en/>).”

It is alarming that while the Hong Kong Prevention of Bribery Ordinance focuses on the powers of the ICAC, Chapter 1 of the CCAC mentions the agency's need to protect the rights and freedoms of individuals.

Although the CCAC since the retrocession has made strenuous effort at tackling corruption, educating the public on the evils of corruption, and emphasizing the declining number of corrupt complaints, the fact is that its powers to deal with corrupt electoral cases remains very limited. First and foremost, the electoral law in Macao does not empower the CCAC to publicize cases of suspected bribery of voters and the related candidates. As a result, candidates who were implicated in mobilizing the citizens to vote through illegal and bribery means could escape the attention of the public. Nor did they fall under the investigative umbrella of the CCAC. At most, the middle-level agents responsible for bribing voters were prosecuted and brought to the attention of the court. However, the penalties levied on the corrupt suspects appear to be minimal and cannot

⁷ Macao's politics and organized crime can be seen in the recent works of Herbert S. Yee, “The 2001 Legislative Assembly Elections and Political Development in Macao,” *Journal of Contemporary China*, vol. 14, no. 43 (2005), pp. 35-59; Bill K. P. Chou “Interest Group Politics in Macao,” *Journal of Contemporary China*, vol. 14, no. 43 (May 2005), pp. 191-206; and Lo Shiu Hing, “Casino Politics, Organized Crime and the Post-Colonial State in Macao,” *Journal of Contemporary China*, vol. 14 no. 43 (2005), pp.207-224.

constitute a threat or a deterrent to further corrupt activities in elections. While some observers have pinpointed the seriousness of patron-client politics and bribery in Macao's elections, others have pointed out that the court administration has to be streamlined so that the prosecuted cases can be handled in a more efficient way.⁸ Second, the CCAC relied on moral persuasion during the election campaigns to appeal to voters. Such moral persuasion, though effective to some extent, was limited in its impact in the 2004 Legislative Assembly elections when candidates competed among aggressively. Third, in light of the charges of money laundering activities in Macao, it remains to be seen how the Macao Monetary Authority cooperates with the CCAC to educate the employees in the banking and also the casino sectors on the need to prevent corruption. Fourth, the Macao CCAC does not have the power to check the bank accounts of corrupt suspects, unlike the Hong Kong ICAC which is powerful, aggressive and which serves as an effective deterrent against corruption. Fifth, the construction tenders in Macao are often lacking and critics have openly pointed to the collusion between the government departments concerned, especially the land department, and the businessmen who are influential, well-connected, and politically powerful. In a polity where the government-business relations are close and mysterious, anti-corruption is bound to be limited and to encounter hidden resistance.

Nevertheless, the World Bank data appear to view Macao's anti-corruption work highly. The data even put Macao's control of corruption slightly better than the Hong Kong situation in 2004 (see Table 1). It seems that the data on Macao did not take into account the hidden corrupt and bribery activities in Macao, especially during the election campaigns where voters preferred to accept materials and hidden benefits from the agents of candidates.

Although the World Bank data on Macao were perhaps slightly distorted in favor of its anti-corruption work, the real advantage of having a relatively high rating in Macao is that the Macao government and the CCAC will have to strive to maintain their laurels, combating corruption at all levels and earning the trust of the ordinary citizens. A majority of citizens did view the work of the CCAC in the 2004 Legislative Assembly elections as satisfactory but they also regard bribery in elections as inevitable.⁹ The irony is that while the CCAC work has been gaining public recognition, the challenge to curb bribery persists. Unlike Hong Kong where most citizens are relatively highly educated, Macao is populated with a large number of mainland Chinese immigrants whose political culture appears to accept reciprocal exchange, *guanxi* (the use of personal relations), and small material benefits in election campaigns. As long as the political culture of Macao voters does not change drastically, and as long as the Macao middle class grows slowly, electoral bribery cannot be easily curbed.

⁸ Bruce Kwong, "Political Corruption and the 2004 Legislative Assembly Elections in Macao," paper presented at the international conference on public administration in China, Taiwan, Hong Kong, and Macao at the University of Macao, May 13, 2006; and Eilo Yu, "Corruption in Macao," paper presented at the international conference on public administration in China, Taiwan, Hong Kong and Macao at the University of Macao, May 13, 2006.

⁹ Kwong, "Political Corruption and the 2004 Legislative Assembly Elections in Macao."

Table 1: The World Bank's governance data on China, Hong Kong, Macao and Taiwan, 1998-2004

	Percentile ranks of China, Hong Kong, Macao and Taiwan							
	China		Hong Kong		Macao		Taiwan	
	1998	2004	1998	2004	1998	2004	1998	2004
Voice/accountability	7.9	7.3	45.5	51.9	N/A	50	68.6	75.7
Political stability	49.6	46.6	82.4	91.3	N/A	87.9	83.6	62.6
Governmental Effectiveness	64.5	60.1	89.1	92.3	N/A	82.2	90.7	85.1
Regulatory quality	42	35	98.4	99.5	N/A	91.6	85.9	88.7
Rule of law	52.4	40.6	90.8	90.3	N/A	91.8	84.9	77.8
Corruption control	60.7	39.9	90.2	90.6	N/A	91.6	83.6	73.9

Source: The World Bank's governance data on Macao and Hong Kong in 1998 and 2004, <http://www.worldbank.org/governance/govdata/indexhtml>, accessed date: May 7, 2006.

Note: Voice and accountability refer to indicators such as human rights, civil liberties and the extent of citizen participation in the selection of government. Political stability measures the perception of government in power and the degree of instability including unconstitutional and violent means used by citizens to confront the government. Government effectiveness refers to the quality of public service provision, the quality of bureaucracy, the competence of civil servants, the independence of civil servants from political pressure, and the credibility of governmental commitment to policies. Regulatory quality measures the incidence of market unfriendly policies like price controls, inadequate bank supervision, and the perception of burden by excessive regulations in foreign trade and business developments. The rule of law refers to indicators such as the incidence of crime, the effectiveness and predictability of the judiciary, and the enforceability of contracts. The control of corruption is defined as the exercise of public power for private gains.

Despite the fact that the CCAC encounters substantial obstacles to anti-corruption, especially electoral bribery, its diligent work since the retrocession has made most civil servants aware of the risks and undesirability of corruption. Compared to the extent of corruption in Macao under Portuguese rule, the MSAR can be seen as a relatively successful model of anti-corruption, albeit more work has to be done.

From a comparative perspective, the World Bank data see China and Taiwan as comparatively weaker than both Hong Kong and Macau in terms of anti-corruption work. In particular, the five indicators on China all deteriorated from 1998 to 2004, especially the rule of law. In Taiwan, while accountability and regulatory quality slightly improved, political stability, governmental effectiveness and the rule of law declined. In Hong Kong, all the five indicators remained strong in 2004, but the data appear to underestimate the series of mass protests in support of democracy from July 2003 to July 2004.¹⁰

Anti-Corruption in China and its Problems

As long as the PRC judiciary is not free from bribery, anti-corruption in the Leninist state remains a difficult path. In December 2003, a top Guangdong court judge, Mai Sung-kai, who presided over the trial of the Big Spender, was convicted of accepting bribes totaling 1 million yuan from 1989 to 1998.¹¹ He was also charged of soliciting bribes so that his son could develop various businesses. The corruption case was exposed to the central government after Mai retired in 1998. Beijing instructed the Central Discipline Inspection Commission to look into the case and imprisoned him in Chun Shing prison.

During anti-corruption crackdown in the first six months of 2004, 1,252 Chinese Communist Party (CCP) members committed suicide, 8,373 fled overseas, and 6,528 disappeared.¹² In one case, Zhu Shengwen, a former deputy mayor of the northeastern city of Harbin, committed suicide after he had been sent to jail for accepting bribes. Yet, his family members asserted that Zhu was killed to cover up his investigation into official embezzlement. Guangdong was the most serious province with 1,240 cadres fleeing overseas. President Hu Jintao was determined to extradite these escapees and seize their assets. Still, corruption remained serious as official titles such as the transport bureau director and the director of the tobacco monopoly bureau in Shenyang could be bought.¹³

In February 2004, it was reported that 8,000 corrupt officials were hiding in foreign states after they had squeezed state coffers that amounted to 130 billion yuan.¹⁴ According to the Ministry of Public Security and the Supreme People's Procuracy, at least 4,000 corrupt officials were at large from 1991 to 2001. If so, the number of corrupt cadres escaping from the PRC increased sharply between 2001 and early 2004. From 2003 to

¹⁰ Johannes Chan "Some Thoughts on Constitutional Reform in Hong Kong," *Hong Kong Law Journal*, vol. 34, Part 1 (2004), pp. 1-12; Albert Chen, "The Constitutional Controversy of Spring 2004," *Hong Kong Law Journal*, vol. 34, Part 2 (2004), pp. 215-225; Carole J. Petersen, "National Security Offences and Civil Liberties in Hong Kong: A Critique of the Government's 'Consultation' on Article 23 of the Basic Law," *Hong Kong Law Journal*, vol. 32, Part 3 (2002), pp. 457-470; and Ian Holliday, Ma Ngok and Ray Yep, "After 1997: The Dialectics of Hong Kong Dependence," *Journal of Contemporary Asia*, vol. 34, no. 2 (2004), pp. 254-270.

¹¹ *Oriental Daily*, December 20, 2003, p. A30.

¹² Jonathan Watts, "Corruption crackdown led to hundreds of Communist party suicides," *The Guardian*, January 29, 2004.

¹³ *Ibid.*

¹⁴ *Asiaweek* (in Chinese), March 7, 2004, p. 24.

February 2004, 14 ministerial-level officials were penalized for corruption and their punishment was expulsion from the CCP.¹⁵

In response to the seriousness of bureaucratic corruption, the Party-state promulgated the Legislation on Internal Supervision of the Chinese Communist Party. The Legislation had been approved by the CCP's Politburo in December 2003. The purpose of the Legislation is to institute internal checks and balances against CCP members and government officials, for President Hu Jintao and Premier Wen Jiabao learn a lesson from the 1989 Tiananmen incident in which student demonstrators called for the CCP to cope with bureaucratic corruption in a more determined and an effective manner.¹⁶ The Legislation had five chapters and 47 stipulations. The penalties imposed on the corrupt offenders included dismissals and impeachment. According to the Legislation, the Central Discipline Inspection Commission (CDIC), an organization established in 1978 to be responsible for "educating" CCP members on the need to abide by party discipline and "managing the violation of party discipline by members," is under the CCP leadership.¹⁷ Moreover, the local-level Central Discipline Inspection Commissions are under the dual leadership of both the upper-level CDIC and the Party Secretary at the same level.¹⁸ Usually, the CDIC at the upper level sends work teams to inspect the lower-level governments.

According to the CDIC's investigation, the patterns of corrupt officials fleeing the PRC have included (1) the sending of their children and close relatives to foreign states as the first step of arranging long-term escape, (2) their investment in the property markets of foreign countries so as to transfer corrupt assets from the mainland to outside channels, and (3) the use of Hong Kong as a transit point for them to escape to various countries.¹⁹ In order to arrest the corrupt officials, the PRC has reached extradition agreement with some forty countries in the world. Sometimes arrest orders are issued through the Interpol, such as a corruption case involving a high-ranking official who was responsible for infrastructure development in Zhejiang province and who escape to the United States through Singapore in April 2003.²⁰

In February 2004, the PRC stepped up its efforts at improving the quality of its banking system and minimizing the opportunities for corruption. The CDIC examined nine banks to ensure that bad loans built up under the planned economy would be tackled, and that they would adopt stricter credit risk control in order to enhance internal governance.²¹ The nine banks under investigation included the China Development Bank, People's Bank of China, China Export and Import Bank, Agricultural Development Bank of

¹⁵ *Ibid.*, p. 25.

¹⁶ *Ibid.*, p. 25.

¹⁷ Zhu Guanglu, *The Governmental Processes of Contemporary China* (Tianjin: Tianjin People's Publisher, September 2002), p. 34.

¹⁸ *Asiaweek*, March 7, 2004, p. 26.

¹⁹ *Ibid.*, p. 27.

²⁰ *Ibid.*, p. 27.

²¹ Owen Brown and Victoria Ruan, "China's Anti-Graft Body to Investigate Nine Banks," Dow Jones Business Newswires, 8610-6588-5848, February 25, 2004.

China, Industrial and Commercial Bank of China, China Construction Bank, Agricultural Bank of China, Bank of China, and the Bank of Communications.

In the past, the CDIC was plagued by political infighting and factionalism. In 1994, 12 members of the CDIC tendered their resignation to the central government on the grounds that their work was obstructed by the CCP.²² In 1995, 19 of the 103 CDIC members abstained from voting for the Commission report because they protested against resistance to their work from government and CCP leaders.²³ Most importantly, the CDIC in the mid-1990s was split into three groups, with one group supportive of the former Premier Li Peng.²⁴ At present, the CDIC does not appear to be internally divided into any grouping engaging in power struggle. In 2004, the CDIC secured the support of the CCP, which decided to dispatch a task force to audit large state-owned commercial banks.²⁵

In March 2004, Jia Chunwang, the prosecutor-general of the Supreme People's Procuratorate, said in 2003 the central and local government prosecuting agencies probed 39,562 cases of corruption and dereliction of duty involving 43,490 officials.²⁶ In 2003, the agencies filed criminal charges against some 26,000 central government and local officials and recovered 4.3 billion yuan for the state. Of all the investigated cases, 18,515 involved major crimes such as corruption, bribery and the embezzlement of public funds. In July 2004, Beijing sent about one hundred officials from the CDIC and other government departments to Nanhai city in Guangdong province, looking into the corruption case of its former mayor Liang Fuchao.²⁷ Liang not only gambled heavily in Macau's Casino Lisboa together with his subordinates but also embezzled 40 billion yuan of public assets for personal gains.²⁸ In June 2004 he escaped from Hong Kong to Cambodia where the PRC agents could not track him down.²⁹ The pattern of corrupt bureaucrats escaping to foreign states through Hong Kong appears to be consistent.

Political dissidents in mainland China have attributed the persistent bureaucratic corruption to the single-party system. Bao Tong, a former policy adviser of Premier Zhao Ziyang, pointed to the absence of democracy as the root cause of the virus of corruption.³⁰ Shenzhen dissident Miao Xike also concurred with Bao, saying that anti-corruption encounters tremendous opposition from a majority of corrupt CCP members.³¹ Bao and Miao's views are similar to other political dissidents such as Wei Jingsheng,

²² *Cheng Ming*, March 1995, pp. 20-21.

²³ *Ibid.*, p. 21.

²⁴ *Frontline*, February 1996, pp. 28-32.

²⁵ *China Daily*, March 12, 2004, p. 4.

²⁶ Pamela Pun, "Anti-graft teams probed 43,000 officials," *The Standard*, March 11, 2004, p. A12.

²⁷ *Yazhou Zhoukan (Asiaweek)*, July 4, 2004, p. 28.

²⁸ *Ibid.*, p. 29.

²⁹ *Ibid.*, p. 28.

³⁰ "China's Anti-Corruption Plan Doomed By One-Party System: Beijing's graft-busting efforts barely scratch the surface," Radio Free Asia, January 16, 2004.

³¹ *Ibid.*

who in the late 1970s had already stressed the need for the PRC to undergo the fifth modernization—democratic reform—in order to eliminate bureaucratic corruption.³²

The PRC's political structure installs multiple checks and balances on bureaucratic corruption. The CDIC is responsible for investigating the corrupt behavior of CCP members. Its provincial-level body has to report corruption cases involving managerial-level CCP members to the central-level CDIC.³³ At the same time, the provincial-level CDIC is answerable to the same-level party-secretary for its personnel management, including recruitment and promotion of staff members.³⁴ Apart from the CDIC, the provincial-level procuratorate possesses an Anti-Corruption Bureau that deals with the prosecution of corrupt cadres who are not CCP members. Meanwhile, the Ministry of Supervision at both the central and provincial levels is responsible for detecting misconduct of not only CCP members but also non-CCP cadres.³⁵ The Ministry serves as the executive branch's internal checks and balances against maladministration and corruption. Overall, the division of labor within the PRC organs tackling corruption appears to be complicated, but it gives rise to the potential problem of whether the party-secretary at the provincial level may obstruct any possible attempt of the provincial-level CDIC to investigate corruption.

Understanding this potential obstacle to the fight against corruption, the CCP's Organization Department announced that the CDIC at the central level would be empowered to make personnel appointments of the party-secretary at the CDIC's provincial level.³⁶ This move aimed at enhancing the CDIC's power at both the central and provincial level. Under this design, the power of provincial-level CDIC would not be constrained by the party-secretary at the same level. As Fan Ren points out,

Currently, Party discipline inspection organizations dispatched by the CCP CDIC to various localities are under the dual leadership of the CDIC and local Party committees. This structure has severely weakened the function of discipline inspection organizations. To put an end to this awkward situation, the Party Central Committee is freeing discipline inspection organizations from the leadership of local Party committees, to ensure they work independently, improve their role in supervising local authorities and thus ward off corruption. After the reform, Party discipline inspection organizations and staff dispatched by the CDIC to various localities will be under the direct and sole leadership of the CDIC.³⁷

³² See James Seymour, ed., *The Fifth Modernization: China's Human Rights Movement, 1978-1979* (New York: Human Rights Publishing Company, 1980).

³³ I am indebted to Mr. James Tien and Ms. Lu Gui Hua, Research Analysts of the Policy Science Research Association of Guangdong Province, for information on the PRC's anti-corruption political institutions. Discussion with them on March 19, 2004.

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Apple Daily*, April 20, 2004, p. A22.

³⁷ Fan Ren, "Clampdown on Corruption," *Beijing Review*, May 6, 2004, p. 32.

Governments at various levels in the PRC each have a CCP discipline inspection organization, dispatched by the CDIC or set up by the local CCP committees. In 2004, the number of full-time staff members working with these organizations is about 300,000.³⁸ Each CCP branch, which is composed of ten CCP members on average, has part-time discipline inspection staff. Overall, the number of CCP members in mainland China reaches 66.35 million, with every ten members sharing one full-time or part-time discipline inspection worker on average.³⁹ However, a minority of government officials at the central level opposed the new reforms introduced to the CDIC's relations with local Party committees, for they thought that the CDIC would be too powerful and that its power would even exceed that of the judicial bodies.⁴⁰ Opposition to reform persists despite the fact that the augmentation of the CDIC's power is conducive to the combat against corruption.

Bureaucratic corruption in the PRC remains a teething problem that calls for multiple solutions. Apart from the need to install internal checks and balances as mentioned above, administrative reforms have to be accelerated, including the increase in the salaries of civil servants and the need to improve their ethical values and integrity. In March 2004, Shenzhen implemented administrative reforms along the line of the HKSAR, trying to make the municipal government more efficient and less red tape. However, Shenzhen's administrative reforms do not entail the political reform blueprint designed by former mayor Yu You-jun, who originally proposed dividing the government into three branches—policy-making, policy implementation and supervision.⁴¹ The idea was to make the Shenzhen government more open and accountable to the public than ever before. Nevertheless, the plan was shelved after Yu left Shenzhen for his new position as the vice-governor of Hunan province. As long as Shenzhen's administrative reforms are piecemeal and do not entail the introduction of more vigorous supervision, the question of bureaucratic corruption cannot be remedied effectively.

In April 2004, Shenzhen began to experiment with the system of accountability of the leading cadres, who will be expected to resign in the event of serious administrative blunders.⁴² Moreover, the Shenzhen government prepared a sum of money from the welfare funds of civil servants to reward those who remain honest and clean. Those civil servants whose performance is appraised as corruption-free will be able to acquire 1 to 2 million yuan of "clean government's provident fund" upon retirement.⁴³ To improve the supervision of government departments, forty-one agencies set up "the system of tracing responsibility for making mistakes."⁴⁴ Under the scheme, officials would be evaluated annually on their work performance and personal integrity.⁴⁵ Whenever an official made a mistake, his or her pension fund would be deducted. According to Zhang Weixiong,

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Apple Daily*, April 20, 2004, p. A22.

⁴¹ Chow Chung-yan, "Shenzhen rolls out reforms aimed at cutting red tape," *South China Morning Post*, March 24, 2004, p. A4.

⁴² *Wen Wei Po*, April 2, 2004, p. A6.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ Chow Chung-yan, "Officials to get payoff for staying graft-free:

Shenzhen's Supervision Bureau director, "It is part of the government's personnel reform. It could help in preventing corruption and make our officials more professional." His Supervision Bureau received 4,223 complaint letters about civil servants in 2003 and ninety-three officials who were found to breach the rules were punished. Moreover, the government auditors in Shenzhen criticized city officials for embezzlement. Overall, the Shenzhen government has implemented reforms along the line of the Hong Kong administration, where internal checks and balances are instituted against maladministration and bureaucratic corruption. In the event that the Shenzhen government can be Hongkong-ized further, the control on corruption will become more effective.

Shortly after the proposal of offering cash rewards to "clean" civil servants was publicized, the Shenzhen administration suddenly distanced itself from the scheme. The Guangdong newspaper *Information Times* revealed the proposal, but the Supervision Bureau later insisted that the scheme was still under discussion.⁴⁶ The proposal stirred up a heated discussion in mainland's websites, with some people questioning whether higher salaries would be able to deter corruption, whereas some raising the issue that Shenzhen remained a "rich" city different from the rest of mainland cities.⁴⁷ Indeed, the income gap between relatively "rich" cities and "poor" ones can become a sensitive issue shaping the direction of bold reforms, such as using monetary incentives to reward "clean" government officials.

In June 2004, a study group responsible to the NPC, CDIC, the Procuratorate and the Supervision Department suggested a partial amnesty to the corrupt officials.⁴⁸ The idea is to set up a government account for all corrupt officials to return the assets and cash that they have received. In so doing, corrupt bureaucrats will not be penalized within a particular timeframe regardless of their ranks. Moreover, their personal data will not be disclosed. However, if corrupt officials do not return the bribes to the government, penalties will be imposed on them after the deadline. The study group proposes a three-pronged strategy of combating corruption.⁴⁹ First, all government officials should be required to declare their interest and report their assets as well as investment to the authorities. Second, the salaries and benefits of civil servants should be enhanced in order to facilitate the process of building up a clean government. Third, a complaint mechanism should be established and incentives should be increased for citizens who act as whistle-blowers and whose reports can help the government receive at least fifty percent of the bribes. The study group identified Xinjiang, Zhejiang, Jiangsu, Anhui and Liaoning as the cities experimenting with anti-corruption policy parallel to its ideas. For instance, in Zhejiang, 19 million yuan of bribes were returned to the coffers after five months of the implementation of a clean government campaign.⁵⁰ Although some provinces may have enforced the idea of establishing clean administration, anti-corruption remains a

⁴⁶ Chow Chung-yan, "Shenzhen backs away from anti-graft scheme to reward its clean officials," *South China Morning Post*, April 3, 2004, p. A4.

⁴⁷ *Ibid.*

⁴⁸ *Oriental Daily*, June 15, 2004, p. A11.

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

decentralized way of implementation and its effectiveness appears to demand much stronger control and direction from the central government in Beijing.

When the Hunan provincial government in 2004 put forward the proposal of partial amnesty of corrupt officials after five years of research, public reactions were initially negative. Eighty percent of the Sichuan internet users opposed the idea; 62 percent argued that it violated the principle of the rule of law; 20 percent disliked the idea; and only 16 percent said the idea could be experimented.⁵¹ Even the Anti-Corruption Bureau chief in Sichuan's Procuratorate referred the idea to a "privileged treatment" of corrupt behavior.⁵² In 2002, the Fujian province had already opened a "clean government account" for corrupt officials to return the bribes they received. However, the result was "unsatisfactory" and the Fujian provincial administration decided to revoke the account.⁵³ Anti-corruption in the PRC encounters tremendous hurdles.

The PRC government, however, is keen to learn from the Hong Kong model of anti-corruption and attempts to embark on the establishment of a powerful and an independent graft-busting agency. The senior assistant director of public prosecutions of the HKSAR government, Alain Sham, suggested that Beijing should first rectify the flaws in the anti-corruption law. He remarked: "Corruption laws on the mainland are still confined to the concept of property—state employees receiving property—but the definition of property is real property or cash. This is a disadvantage in combating corruption."⁵⁴ Sham suggested the definition be revised to "advantage" instead of just property or cash. He pinpointed the absence of corruption in the PRC Criminal Code's money-laundering section—an inconsistency with the United Nation's Convention against Transnational Organized Crime of 2000. According to Sham, the PRC has to not only amend its laws but also integrate the various agencies responsible for the fight against corruption. Moreover, private-sector graft is not viewed as corruption in the PRC, but as an act of "disrupting the social market economy" and it is under the jurisdiction of the Public Security Bureau.⁵⁵ Due to the fact that the PRC system is a far cry from the Hong Kong one where some degree of separation of powers between the executive, judiciary and legislature exists, Sham suggests that mainland China should review its overlapping institutions that combat corruption and that it should tighten its anti-graft laws. Clearly, legal and institutional reforms are necessary for mainland China in its anti-corruption drive.

The prospects of anti-corruption in the PRC, however, appear to be gloomy at least in the short run. According to the Transparency International's corruption index in 2003, mainland China was ranked sixty-sixth; Taiwan thirtieth; and Hong Kong fourteenth amongst 133 countries, excluding Macau.⁵⁶ According to Guo Yong, corruption in the

⁵¹ *Ming Pao*, June 22, 2004, p. B12.

⁵² *Ibid.*

⁵³ *Ibid.*

⁵⁴ Marcal Joanilho, "Beijing seeks HK advice on beating graft," *The Standard*, June 21, 2004, p. B3.

⁵⁵ Marcal Joanilho, "China graft fight hit by legal woes, says expert," *The Standard*, June 24, 2004, p. B6.

⁵⁶ See "Transparency International Corruption Perceptions Index 2003," in <http://www.transparency.org/cpi/2003/cpi2003.en.html>, access date: June 24, 2004.

PRC is “relatively serious” compared with other countries.⁵⁷ He further added that mainland corruption was inevitable in the transitional period of economic and political changes. Guo had reservations about the new idea of granting amnesty to corrupt officials who could return their bribes to the authorities, saying that the measure would have detrimental impact on social values.

In a report prepared for the Global Corruption Report, Guo and Liao Ran outlined some positive measures taken by the PRC government to fight against corruption, but they both expressed reservations over the effectiveness of such measures.⁵⁸ First, the Government Procurement Act came into force in January 2003, regulating public procurement and having guidelines to prevent corruption. Second, amendments to the Criminal Code were ratified, including the stipulation that the abuse of authority and dereliction of duty by judicial officials would be subject to a penalty of ten years’ imprisonment. Third, Guo and Liao referred to Shenzhen’s political reforms of separating the powers of policy-making, enforcement and supervision. Fourth, they emphasized the new leadership under President Hu after March 2003 called for an acceleration of anti-corruption drive, like dispatching 45 inspectors of the CDIC to visit all provinces. Fifth, an administrative licensing law was passed in August 2003 to streamline and introduce transparency into the administrative system. According to the new law, license applications would be filed in writing so as to “avoid face-to-face contact with officials, hopefully lessening the incidence of ‘improper fee collection.’”⁵⁹ Undoubtedly, the PRC government is sincere in its attempt at controlling corruption.

Nevertheless, the opportunities for bureaucratic corruption continue to persist, especially as the preparations for the 2008 Olympic games in Beijing and Expo 2010 in Shanghai are underway. There has been widespread corruption in public procurement, leading to the necessity of reforming contractual procedures.⁶⁰ In Shanghai, experiments with open bidding began in 1996. Four year later, the Invitation and Submission of Bids Law came into effect and open bidding was injected into state-funded engineering projects. The 2003 Government Procurement Act standardizes the bidding procedures with the aim of increasing the transparency and fairness of all government contracts and tenders. Reforms are necessary to minimize the vast opportunities for public-sector corruption.

China’s Penal Institutions and Judicial Reforms

Death penalty in the PRC acts as an effective deterrent against both domestic crime and cross-border crime. In March 2004, four heroin traffickers were executed for heroin trafficking from Yunan to Shanghai from 2001 to 2002.⁶¹ Nevertheless, mainland China may strip lower courts the power to impose the death penalty, thus reducing the number of executions in the long run.⁶² In 2003, about 5,000 people were executed in the

⁵⁷ Sun Lixia, “Graft problems deepen: expert,” *South China Morning Post*, June 24, 2004, p. A4.

⁵⁸ Guo Yong and Lian Ran, “China,” in <http://www.globalcorruptionreport.org>, p. 178, access date: June 26, 2004.

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*, p. 180.

⁶¹ “Four executed for heroin trafficking,” *The Standard*, March 19, 2004, p. A13.

⁶² “Rethink on death penalty,” *The Standard*, March 11, 2004, p. A13.

mainland. According to the President of the People's Supreme Court, Xiao Yang, it was considering to take back the right to approve death sentences, thus standardizing the use of capital punishment in the long run. The PRC's new security head, Luo Gan, ordered fewer executions so as to cultivate a gentler image. In one case, the Supreme Court overturned a lower court's ruling in an unprecedented move, and changed the lower court's decision from giving a suspended death sentence to gangster and politician Liu Yong to death sentence. Capital punishment has been traditionally conducted with a bullet fired at close range into the heart of back of the head with convicts kneeling and hands tied behind their backs.

Despite the fact that the PRC since the mid-1970s has undergone tremendous changes in its legal reforms, judicial administration remains to be improved. More than half of the rulings in mainland civil-court cases are not implemented, thus seriously undermining the authority in judicial administration.⁶³ In Shanghai, forty percent of civil court judgments are not enforced. Moreover, the Xinhua news agency admitted that local protectionism made it difficult for the courts to enforce rulings, because local governments controlled the receipts and expenditure of courts.⁶⁴ According to Li Daoming, the president of the Henan Provincial Higher People's Court, inadequate funding also led to failure of enforcing the law. In 2002, staff members in 101 courts in Henan were owed 47.57 million yuan of unpaid salaries.⁶⁵ Clearly, the mainland legal system has loopholes that remain to be plugged albeit reforms have been implemented to strengthen "socialist legality."

In March 2004, the PRC Procurator-General Jia Chunwang admitted that the procuratorates at all levels had not done sufficiently to check the problems of unfairness in the implementation of laws, thus leading to corruption cases.⁶⁶ He also acknowledged that some police officers violated law and discipline in the process of implementing the laws. In 2003, the procuratorial organs "corrected 22,575 cases" that should be but were not put on file for investigation; disapproved 58,872 arrests; and canceled the prosecution of 27,957 cases that were not serious at all to undergo prosecution.⁶⁷ In criminal proceedings, the prosecutors protested against the ruling of 2,906 cases that they views as being "misjudged."⁶⁸ They also proposed that the judgment of 9,518 cases should be corrected because the litigation rights of the parties concerned were violated.⁶⁹ It appears that the procuratorial organs have improved their performance in not only the fight against crime but also the protection of the rights of litigants.

The quality of court judges remains to be improved so that any criminal-political nexus in the PRC can be smashed. In April 2004, the Supreme People's Court cautioned judges against abusing their power. Li Yucheng, the head of the court's discipline inspection

⁶³ "Courts fail to enforce rulings in more than half of all lawsuits," *Sunday Morning Post*, March 14, 2004, p. 5.

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ *People's Daily*, March 10, 2004.

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

body and a member of the CDIC, asked the judges to refrain from receiving gifts, money or invitations that affect their rulings.⁷⁰ He also exhorted court judges that they should bar their spouses, children and staff members from intervening in the trials and verdicts. In March 2004, members of the National People's Congress gave relatively poor ratings to the court and prosecution system, which received 74.62 percent of approval—a relatively low standard of the traditionally “rubber-stamp parliament.”⁷¹ In reality, some of the top judges were found to be corrupt. Two former vice-presidents of a Wuhan court were sentenced to thirteen years and six and a half years in prison for taking bribes. District court judges, who constitute the “street-level bureaucrats” interacting frequently with citizens, are also vulnerable to corruption.⁷²

The PRC government has implemented reforms to curb judicial corruption since 2002. Recent reforms have embraced the introduction of open trials; the separation of trials from enforcement and monitoring; the evaluation of judges; and the NPC's ratification of amendments to the Criminal Code in 2002 to impose a punishment of abuse of power by court officials to ten years' imprisonment.⁷³ In 2002, 24,886 court employees were arraigned or prosecuted for corruption.⁷⁴ In the same year, the Supreme People's Procuratorate cooperated with the World Bank and Tsinghua University to open anti-corruption courses for procurators. In 2003, lawyers, judges and procurators sat for a professional examination.⁷⁵

Lessons from the Cases of Hong Kong and Macau

Comparatively speaking, Hong Kong and Macau offer the models of anti-corruption in China. The amnesty issued by Governor Murray MacLehose to deal with corrupt civil servants could be a means by which the PRC government can consider establishing a clean break or a turning point away from the corrupt era. However, any amnesty in China will have to be preceded by accelerated reforms, including tightening the work of anti-corruption, minimizing the overlapping jurisdictions of anti-corruption agencies, implementing civil service reforms and inculcating a strong sense of accountability and governing ethics among the bureaucrats. In the event that these measures remain half-hearted and slow, the prospects of anti-corruption will remain pessimistic. Policy winds curbing corrupt officials cannot root out the problems of anti-corruption, including localism of street-level bureaucrats, the overlapping jurisdictions of anti-corruption agencies, and the problematic quality of some court judges and administrators.

The Macao model remains a short-term, albeit imperfect, model for China to implement anti-corruption. As with village elections in China, Macau's local elections, such as the

⁷⁰ “Top court warns judges against abuse of power,” *The Standard*, April 9, 2004, p. A7.

⁷¹ *Ibid.*

⁷² For the concept of “street-level bureaucrats,” see Michael Lipsky, “Street-Level Bureaucracy: The Critical Role of Street-Level Bureaucrats,” in Jay M. Shafritz and Albert C. Hyde, eds., *Classics of Public Administration* (Pacific Grove, California: Brooks/Cole, 1992), pp. 476-484.

⁷³ Guo Yong and Liao Ran, “China,” in <http://www.globalcorruptionreport.org>, p. 178, access date: June 26, 2004.

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*, p. 179.

2004 Legislative Assembly elections, are plagued by patron-client politics and electoral bribery. However, the Macao model presents a successful example of accelerating civil service reform alongside with the strengthening of the work of a single anti-corruption body. This Macao model can be considered by the PRC in the short run, but the Hong Kong model will require the development of the rule of law and the tightening of the Criminal Code in China, a process that will definitely require more time.

Moreover, accountability in Hong Kong and Macau are in full swing, with both local governments trying to be more accountable to the citizens than ever before. The PRC government is also implementing its own process of internally supervising various government agencies. *Jiandu* or supervision has been implemented in the PRC, but given the relatively weak mass media without sufficient checks and balances on the governmental abuse of power, accountability development in the PRC remains limited.

Conclusion

The models of Hong Kong and Macau are the successful cases of ethical governance in which the PRC can emulate. However, given the size of China, the seriousness of localism, the complexity of various anti-corruption agencies without a single most powerful organ, China's anti-corruption work remains a gigantic task that is bound to be piecemeal, limited and relatively ineffective. Policy winds or campaigns on anti-corruption will have to persist, but their impact will be limited. Ultimately, political reform along the path of enhancing accountability, instituting more internal and external checks and balances, consolidating civil service and judicial reforms, and empowering a single anti-corruption agency will be necessary for mainland China to control corruption. While the Macao model of anti-corruption and ethical governance is by no means perfect, it does highlight the importance of having one single anti-corruption body whose powers and propaganda have improved considerably in the recent years. In a sense, the Macao model represents a short-term solution for China's serious corruption problem. The Hong Kong model which is characterized by rule of law, a powerful and much respected ICAC and a popular ethical value of clean government will be the long-term model for China, which however has to first develop the legal system, accountability and civil service ethics. Without the preconditions of a consolidated legal system, accountable government and civil service ethics, anti-corruption remains a difficult task in a marketizing socialist polity of the PRC.