Is establishing an Anti-Corruption Commission a necessary component of the UNCAC

- Article 36 (law enforcement perspective)
- Does this mean that the establishment of an ACC is needed to comply with Article 36 of UNCAC?

Is establishing an Anti-Corruption Commission a necessary component of the UNCAC

Trend appears to be Creating an ACC to Combat Corruption –but is it a good idea.

- One knows which institution will handle all corruption issues.
- Know who is responsible for success or failure of corruption efforts. Who to blame.
- All anti-corruption resources are placed in one institution
- Focus reform on only one institution – it becomes de facto expert in all things dealing with corruption.

Is establishing an Anti-Corruption Commission a necessary component of the UNCAC

But not necessarily a good idea. World wide few examples of ACC that, at least from a law enforcement perspective, are equipped to bring meaningful prosecutions

Why?

a) Political will fleeting

b) Economic resources fleeting

c) Institutional Weakness

Is establishing an Anti-Corruption Commission a necessary component of the UNCAC

Must ask yourselves is it really viable to stand up a institution who will be tasked with investigating and prosecuting the most difficult cases – with powers that will trump long standing institutions.

Generally the answer is no –Must take baby steps.

Under What circumstances will a newly established Anti-Corruption Commission Work?

There are however a few examples where setting up an ACC to prosecute has worked. Timing is right and that timing depends on huge popular/public support.

As luck would have it I worked with two systems in Asia that ably demonstrate how an ACC can operate and succeed and how another with the same mandate can operate and fail miserably.

Living in Asia I worked with the Philippine system which had Ombudsman and Sandigbayan Court and the newly created at the time Corruption Eradication Commission of Indonesia. (KPK)

KPK had 100% conviction rate in its first five years – in the same period the Philippine system approximately a 2% conviction rate.

Why?

Under What circumstances will a newly established Anti-Corruption Commission Work?

As Background I was working with the Philippine ACC when it was at its high point.

1) Politically Popular (Marcos v. Arroyo)
2) Led by Mr. Marcello (selfless attracts the best)
3) One major case Estrada –former President

Under What circumstances will a newly established Anti-Corruption Commission Work?

Estrada Case

1) One of Most corrupt in Modern history.

2) Public wanted him though ACC had no real investigative power – 6 years

3) Extradite Atong Ang – turns against Estrada and Estrada found guilty.

4) Guilty then pardoned.

5) Marcelo resigns from Exhaustion. New Ombudsman. Unpopular no enthusiasm by public

Under What circumstances will a newly established Anti-Corruption Commission Work?

Over next years after the Estrada case Indonesia's KPK getting 100% Conviction Philippines Ombudsman getting 1%.

Why

Both Entities have same Mandate

KPK has tougher cases – can investigate everyone but Military Philippines cannot investigate Legislative or Judicial Branch

Under What circumstances will a newly established Anti-Corruption Commission Work?

The ACC Needs to have the full Panoply of Investigative Powers.

KPK was given all powers to investigate – could look at bank records; wiretaps; freeze assets; get search warrants; take over corruption prosecutions from the AG.

Philippine's Ombudsman cold not look at bank records; do wiretaps; freeze assets; get search warrants; not only not take over prosecutions but jurisdiction limited.

Under What circumstances will a newly established Anti-Corruption Commission Work?

ACC Must Have Ability to develop Prosecutable Case

Both the ACC in Indonesia and the Philippines charged with Prosecuting but only in Indonesia did they have the ability – the Philippines could not investigate properly hence no cases.

Under What circumstances will a newly established Anti-Corruption Commission Work?

Organization of ACC must be compatible with model Prosecution Practices

KPK – Prosecutors and Police work hand in hand in same building. Case goes through rigorous internal review. Both Police and Prosecutors agree case is ready for Prosecution

Philippines – Prosecutors and police have no contact. Police bring case to Ombudsman. Prosecutors have no say as to whether it is ready for trial.

Under What circumstances will a newly established Anti-Corruption Commission Work?

Quality of Staff

KPK – Chose best and brightest form police and Prosecutors. Paid more. Recruitment done by independent firm. Importantly Public views KPK as respected, credible and important institution

Philippines – Did not chose seasoned Prosecutors or Police. Pay not better. Public began to view Institution suspiciously since new ombudsman was Minister of Justice under President before taking the new position.

Pros and Cons

Under What circumstances will a newly established Anti-Corruption Commission Work?

Performance Measures

KPK – Judged on number of convictions and Performance of Prosecutors

Philippines – Number of Cases disposed

Under What circumstances will a newly established Anti-Corruption Commission Work?

Anti-Corruption Court

Indonesia (Tipkor court) -- case including appeal must be completed within 8 months. No bail pending appeal.

Philippine (Sandigbayan court) – cases average 6.6 years. Followed by 3.2 year average in Supreme court appeal. Defendant is on bail. This results in

a. Public Interest Wanes

b. Prosecutors change – files and witnesses lost

c. Public loses confidence in courts

Indonesia (KPK) 15 times faster

Under What circumstances will a newly established Anti-Corruption Commission Work?

Sentencing

Tipkor Conviction – serve time – no bail

Philippines – Bail – can get pardoned.

Under What circumstances will a newly established Anti-Corruption Commission Work?

Public Support

Philippines – No support mostly – Marcos Established – Useful vehicle with Estrada –then disillusionment – corruption seen as inevitable. Set up to fail.

Indonesia – Little tolerance for corruption now. Would be difficult to take power away. Set up to succeed

Attacks against Ombudsman successful against KKP unsuccessful

Lessons Learned

- Anti-corruption Agency should be able to investigate all branches of government --Executive, Judicial and Legislative

- Equip the ACA with standard powers of investigation including
  - 1) search warrant
  - 2) access to bank and other records
  - 3) freeze assets
  - 4) wire taps
  - 5) arrest power

Lessons Learned

- Give ACC powers to investigate and prosecute and have both bodies work together.
- Make working for ACC desirable including pay and freedom form political interference
- Useful Performance Measurements – Convictions
- Anti-Corruption Courts that insist on speedy trials and do not give bail except in unusual circumstances.
- Work on building up public support for the ACC