

U4 Expert Answer



Elements of information on China and enforcement of anti-corruption laws abroad

Query

China punishes corruption in China harshly. It has one of the largest Supreme Audit Institutions in the world and is also active in INTOSAI. Aid has been used and technical assistance provided to develop and strengthen procurement legislation and regulations in various countries.

Question 1: Do you have any examples where UNCAC (or any other legal instrument/international convention) has been used in a dialogue with Chinese representatives? Does China have legislation forbidding Chinese companies bribing foreign officials? Are there any examples where China has pursued corrupt activities by Chinese companies outside China? In which international fora relevant to anti-corruption does China participate?

Question 2: Do you know of any studies or research where issues around governance/anti-corruption and Chinese investments and trade particularly with Africa are being assessed? Are there any visible concerns in China on these matters? What role does the China Enterprise Confederation (CEC) play in this regard? Do you know of any experience from working with CEC in relation to anti-corruption and Chinese investments?

Purpose

The query comes in light of Chinese involvement and investments in Africa being portrayed as something new and "fresh," providing Africa with opportunities that neither European private sector nor aid donors can.

Content

1. Chinese legislation on foreign bribery and other anti-corruption commitments
2. Governance and anti-corruption and Chinese investments and trade
3. Further reading

Caveat

In agreement with the enquirer, this U4 expert answer is only preliminary, pending more in-depth research that will address the inherent risks that Chinese investments represent for the integrity of national procurement legislations/rules. It provides elements of information on the very specific set of questions asked by the enquirer.

Author(s): Craig Fagan, Transparency International, cfagan@transparency.org

Reviewed by: Robin Hodess, Ph.D., Transparency International, rhodess@transparency.org

Date: 25 February 2011 **Number:** 272

1 Chinese legislation on foreign bribery and other anti-corruption commitments

Use of UNCAC in dialogue with China

Do you have any examples where UNCAC (or other legal instruments/international conventions) have been used in dialogue with Chinese representatives?

Under the new review mechanism of the UNCAC, China is to be assessed in 2013. The country has moved forward with implementation of the convention. China has revised criminal laws and introduced new legislation. It has also set up a national anti-corruption body.¹ In addition to the UNCAC, China is active in other multilateral and bilateral anti-corruption efforts, including the International Association of Anti-Corruption Agencies (IAACA).

Bilateral Dialogue

Canada has established a bilateral agreement for support to the judiciary titled the “Law Enforcement and Judicial Cooperation Consultations” (Government of Canada, 2009). Begun in 2008, the agreement provides for police-to-police cooperation in combating transnational crime and the repatriation of fugitives. A Memorandum of Understanding has been discussed to allow for greater cooperation at an early phase in the process.

The **United States** has used UNCAC and anti-corruption collaboration to shape its discussions with China through the “US-China Strategic and Economic Dialogue” initiative (US department of State, 2010).

Multilateral Dialogue

At the latest round of meetings in Seoul (2010), the **Group of 20** (G20) countries, which includes China, passed a G20 Anti-Corruption Action Plan (G20, 2020). The Action Plan clearly outlines the areas of the UNCAC that G20 members are to advance and includes specific reference to other anti-corruption

¹ See: Margaret K. Lewis, ‘Corruption: Spurring China to Engage in International Law’, China Rights Forum 2009 – Rule of Law – Facing June Fourth – “New China” at 60 – China’s Soft Power, CRF 2009, No. 1. <http://www.hrichina.org/public/contents/article?revision%5fid=161450&item%5fid=161449>.

instruments, namely the OECD Convention on Combating Bribery of Foreign Public Officials.

The **China-OECD** Corporate Governance Policy Dialogue, which dates to 2004, is another multilateral initiative that draws on the UNCAC as a way to promote improved business practices (OECD, 2010).

China currently reports on its anti-corruption work through the **OECD/ADB Anti-Corruption Initiative** (OECD, No date). This initiative, with 28 member countries, provides a framework of goals and standards to combat corruption in the economy, politics and society.

The **UN Global Compact** initiative has served as a platform for policy engagement with companies. The Compact is a “strategic policy initiative for businesses that are committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labour, environment and anti-corruption (10th Principle)”. The Compact has involved Chinese companies since its inception and in 2009 it established a local network in China. (UN Global Compaq, No date).

Chinese legislation of foreign bribery

Does China have legislation forbidding Chinese companies bribing foreign officials?

A white paper has been produced on the topic, which looks at international cooperation in combating corruption (December 2010). To date, China has signed 106 judicial assistance treaties with 68 countries and regions. According to the ministry of public security, China has set up 65 anti-corruption hotlines in 44 countries (Embassy of the People’s Republic of China in the United States, 2010).

The white paper, titled China’s Efforts to Combat Corruption and Build a Clean Government, was issued by the Information Office of the State Council (China Daily, 2020).

This would support legal opinions regarding China’s current legislation. While China’s domestic legislation does not outlaw foreign bribery by Chinese nationals, it does apply the “principle of extraterritoriality”. This means that “a Chinese citizen that commits a crime punishable by Chinese law outside Chinese territory, such as bribing a foreign official overseas, is guilty of an offence (the Criminal Law, Chapter 1)” (Business Anti-corruption portal, 2010). Moreover, as a ratifying nation

of the UNCAC, China is bound to the articles, which include foreign bribery (article 16). However, China does have a reservation included, which stipulates that if two parties disagree on the application of any parts of the UNCAC, the dispute cannot be brought before the International Court.

It is also important to note that modifications made to the country's anti-corruption law in July 2010 requires government officials to provide their financial details (i.e. investments, incomes and assets) as well as those of all family members (BBC, 2010).

Chinese enforcement of anti-corruption laws

Are there any examples where China has pursued corrupt activities by Chinese companies outside China?

Based on an expert assessment, no cases were found of China pursuing corrupt activities by Chinese companies outside of China. This information is largely drawn from the Transparency International monitoring report of the OECD Anti-bribery Convention. The 2010 version included China in the assessment. In 2009, the report also featured other emerging countries that are non-signatories to the convention (Transparency International, 2010).

According to the 2010 TI report, Chinese companies and individuals that have bribed abroad have not been punished in China. However, they have been charged and sanctioned in other jurisdictions. For example, "in January 2009, the U.S. Department of Justice alleged that in 2005, China Harbour Engineering, a subsidiary of China Communication Construction, paid bribes totalling US \$1.76 million to the Singapore account of the youngest son of a former Bangladesh prime minister in connection with the Bangladesh Chittagong Port project. In November 2009, the accused Bangladeshi party in the China Harbour Engineering case was charged with money laundering in connection with the alleged bribes." (see p. 66 in Transparency International Progress Report 2010: Enforcement of the OECD Anti-Bribery Convention).

China's participation in international anti-corruption fora

In which international fora relevant to anti-corruption is China participating?

China hosts the International Association of Anti-Corruption Authorities (IACA) in Beijing and sits on its Secretariat. It is an active member in UNCAC and the Conference of States Parties (including the working groups). It is also a member of the OECD/ADB initiative and has observer status to the OECD Working Group on Bribery.

It is important to note that China is not a member of the Extractive Industries Transparency Initiative (EITI). It has been argued that it would be an important step forward for the country to join EITI.

2 Governance and anti-corruption and Chinese investments and trade

Assessments on Chinese trade and investment and anti-corruption

Do you know of any studies or research where issues around governance/anti-corruption and Chinese investments and trade are being assessed?

Most of the assessments found on trade and investment, are related to anti-corruption and governance issues in China. Few studies were found that look at both of these concerns relative to how Chinese companies are behaving abroad as part of an index or survey. It is an area of research that is worth exploring, particularly as China becomes one of the leading sources of foreign direct investment (and aid) for developing countries.

Another group of research looks at China, both through the lens of its government and companies, and how it acts abroad. These are not comparative studies or rankings, but rather they provide anecdotal information on levels of accountability, transparency and corruption by Chinese companies. While the findings are useful, they must be viewed within a broader framework of how other countries' companies are also acting (hence, the usefulness of the rankings and multi-country surveys). The allegations of dubious dealings by Chinese and Western companies are well known in various countries and have been well-documented by local and global media.

There is a mixed assessment of the role of Chinese trade and investment when it comes to governance and anti-corruption. Analysts have made the same distinction about Western companies, stating that

allegations of poor governance and corruption plague companies regardless of whether they are Chinese or not.

However, the difference, analysts say, is that there is no “bargaining chip” with Chinese companies due to the nature of how they operate. They bring the entire operation from China (staff and materials, deal directly with the national government and keep their operations closed to the local community). As a result, there is no space for consultation, lobbying or engagement. Low transparency is a constant and is made worse when the national government is equally not transparent.

Existing surveys

Below is a list of some relevant surveys that compare China (either in terms of its domestic context or international activities) to other countries.

Bertelsmann Foundation’s Transformation Index

The index covers China and looks at changes and developments in the political and economic spheres of the country. For 2010, China is ranked 88 out of 128 countries, after Egypt (87) and before Venezuela (89). It falls within a group of countries that is considered very limited in terms of their economic and political transformation.

European Union Chamber of Commerce’s European Chamber Business Confidence Survey 2010

The survey results are based on the responses of over 500 European companies operating in China between March and April 2010. While it does not point at specific corruption dimensions, it does assess the regulatory environment.

- The respondents tend to be generally positive about their sectors growing but they still lack confidence in China as a “sustainable and predictable” environment to growth their business.
- The perception also remains that the regulatory environment for foreign companies is difficult and will worsen in the years to come. Nearly 40 % of those who responded to the survey said that the regulatory environment for their companies will worsen within the next two years. Not surprisingly, among the prime reasons cited for problems for their companies is the discretionary regulatory environment.

Heritage Foundation/Wall Street Journal: Index of Economic Freedom

The index assesses ten economic freedoms: business, trade, fiscal, government, monetary, investment, financial, property rights, anti-corruption, labour. It tracks 183 countries in total. In the 2011 index, China received a score of 52 and was ranked at number 135. This score places it in the “mostly unfree” category, according to the index.

- Its score was both below the regional (57, 4) and world (59, 7) averages. The score of “free economies” is 84, 1.
- In the global listing, China is ranked below Mauritania (134) and above Cameroon (136).

ADB/OECD Anti-Corruption Initiative for Asia and the Pacific’s self assessment report for China

As part of the ABD/OECD Anti-corruption Initiative, a self-assessment was done on anti-corruption provisions and practices of the public procurement process in Hong Kong, China. The analysis looks at the measures in place through existing regulation, which largely relates to the “Stores and Procurement Regulations” (SPR).

Political & Economic Risk Consultancy Ltd

This Hong Kong-based company did an assessment of countries in the Asia Pacific region based on the perceptions of corruption for doing business in these countries. The PERC’s corruption survey polled 2,174 middle, senior, and expatriate business executives in Asia, Australia and the United States.

- For 2010, the country risk rating placed China after Malaysia and before Cambodia in the listing. Australia and Singapore were considered the least risky countries to invest in the region. India was ranked as the most risky country.

Revenue Watch Institute – RWI Index

The index measures government disclosure regarding the management of oil, gas and minerals. Transparency is ranked for 41 countries. The score assesses seven parameters of transparency for: access to resources, generation of resources, institutional setting, state-owned companies, natural resource funds, subnational transfers and membership in the Extractive Industries Transparency Initiative (EITI).

- The index includes China as well as the world's top producers of petroleum, gold, copper and diamonds. China's score is 42.2 out of 100 points and falls in the category of "Partial Revenue Transparency".
- China's lowest scores were for "access to resources" information on natural resource reserves and the composition of the country's extractive sector, and the generation of revenues (payments the government receives from the extractive industries). The scores were 33.3 and 44.4, respectively.

Transparency International – Promoting Revenue Transparency Report, 2008

The report, produced in 2008, looks at levels of transparency for 42 oil and gas companies operating in 21 countries. Transparency is assessed based on publicly available information regarding their reporting, particularly on payments made to governments for resource extraction rights. Only a third of companies evaluated in the report are considered high performers. Both Chinese companies included in the report, China National Offshore Oil Corporation (CNOOC) and the China National Petroleum Corporation, were low performers on transparency outside their home country.

The next edition of this report will be released on 1 March 2011. It will cover 44 companies, including the two Chinese companies from the 2008 report and PetroChina.

Transparency International – Bribe Payer's Index (BPI)

The BPI, last released in 2008, ranks "22 leading international and regional exporting countries by the tendency of their firms to bribe abroad. The combined global exports of goods and services and outflows of foreign direct investment of these 22 countries represented 75 percent of the world total in 2006". In 2008, the BPI was calculated from the responses provided by 2,742 senior business executives from companies in 26 developed and developing countries. These countries were chosen by their high levels of imports and foreign direct investment." The next BPI will be released in 2011.

- Companies from China were perceived as the second most corrupt when doing business abroad. Of all 22 countries assessed, Russian companies were viewed as the most likely to engage in bribery

in their business dealings, based on the responses of the business executives that were interviewed.

- Out of a ranking of 10 points (the cleanest companies), Belgian and Canadian companies had the highest scores (8.8). The lowest scorers were Russian companies (5.9), followed by those from China (6.5), Mexico (6.6) and India (6.8).
- Of the respondents, 28 % noted that Chinese companies use bribery to low-level officials to "speed things up". About the same number (26 %) responded that Chinese companies used personal and familiar relationships to win public contracts.

Further reading

As mentioned above, broader studies have looked at dimensions of governance and corruption regarding how China behaves abroad. A selection of resources for further reading is provided below:

- Peter Bosshard, "China's Environmental Foot print in Africa", SAIS Working Papers in African Studies, 01-08, SAIS-Johns Hopkins University, 2008. <http://www.sais-jhu.edu/bin/i/f/BosshardWorkingPaper.pdf>
- Deborah Brautigam and Adam Gaye, "Is Chinese Investment Good for Africa?", Online Debate, Council on Foreign Relations, 20 February 2007, <http://www.cfr.org/china/chinese-investment-good-africa/p12622>.
- Martyn Davies and Johanna Jansson, "Are African Governments Ready for China?" Open Society Initiative for Southern Africa, 2008. http://www.osisa.org/resources/docs/PDFs/OpenSpace-May2009/2_4_economic_injustice_p040-047_martyn_davies_johanna_jansson_china.pdf.
- Pengtao Li, "The Myth and Reality of Chinese Investors: A Case Study of Chinese Investment in Zambia's Copper Industry, SAIIA Occasional Paper, No. 62, May 2010, South African Institute of International Affairs, <http://www.saiia.org.za/occasional-papers/the-myth-and-reality-of-chinese-investors-a-case-study-of-chinese-investment-in-zambia-s-copper-industry.html>.

- J. Gu, 'China's Private Enterprises in Africa and the Implications for African Development', *European Journal of Development Research, Special Issue on China, India and Africa* 21.4:570-87, 2009. <http://www.ids.ac.uk/index.cfm?objectid=9B1B7E1B-FE0C-393C-86FBE295E81B236F>.

Chinese concerns on corruption and trade/investments

Is there any visible concern in China on these matters?

There seems to be a growing concern in China about how corruption could undermine people's confidence in the government and its ability to govern effectively. Corruption, whether committed domestically or abroad, poses such a threat. This is evident in the government's release of the first ever white paper to strengthen the fight against corruption, titled "China's Efforts to Combat Corruption and Build a Clean Government" (China.org.cn, 2010).

It also seems evident in the government's decision to produce a white paper on China's aid policies (supposedly forthcoming). Given the close linkages between investment and aid decisions, the white paper will provide an opportunity to shape a framework for the provision of aid abroad. Transparency International plans to submit inputs on the issue of corruption in aid as part of the white paper process.

The role of the China Enterprise Confederation

What role does the China Enterprise Confederation (CEC) play in this regard?

The China Enterprise Confederation (CEC), which dates to 1979, serves as a confederation for enterprises and their directors. Members include individuals, companies, company employee associations, and relevant economic, scientific research, and media professionals.

The way that the CEC is relevant for anti-corruption work is that it is responsible for overseeing the UN Global Compact (discussed above). The Chinese Ministry of Foreign Affairs has tasked the office to serve as a standing member of the Coordination Committee of the China Global Compact Office. Since the Global Compact covers matters related to corporate

responsibility, including anti-corruption efforts (the 10th Principle), the CEC is a relevant entry point for improving efforts by Chinese companies who are signatories to the Global Compact. http://www.chinacsrmmap.org/E_OrgShow.asp?CCMOrg_ID=110.

Do you know of any experience from working with CEC in relation to anti-corruption and Chinese investments?

In 2007, the CEC and UNDP organised an International Conference on corporate social responsibility and corporate citizenship in Beijing. More than 500 individuals attended representing business, government, civil society and academia. The event allowed for an exchange of experiences between domestic and multinational companies operating in China on how to integrate the UN Global Compact's principles (UNDP, 2007).

3 References

ADB/OECD Anti-Corruption Initiative for Asia and the Pacific, *Self assessment report for China*, <http://www.oecd.org/dataoecd/34/30/35053895.pdf>

BBC, 2010, *China expands anti-corruption law*, <http://www.bbc.co.uk/news/10595981>

Bertelsmann Foundation, 2010, *Transformation Index*, <http://www.bertelsmann-transformation-index.de/120.0.html?&L=1>

Business Anti-corruption portal, 2010, *China country profile*, <http://www.business-anti-corruption.com/country-profiles/east-asia-the-pacific/china/initiatives/public-anti-corruption-initiatives/>

China Daily, 2010, *China's efforts to combat corruption*, http://www.chinadaily.com.cn/china/2010-12/29/content_11772722_10.htm

China.org.cn, 2010, *China issues first anti-corruption white paper*, http://www.china.org.cn/china/2010-12/29/content_21639859.htm

Embassy of the People's Republic of China in the United States, 2010, *China stresses int'l cooperation to combat corruption: white paper* <http://www.china-embassy.org/eng/gdxw/t783230.htm>

European Union Chamber of Commerce, 2010, *China: European Chamber Business Confidence Survey 2010*, <http://www.eurochamber.com.cn/view/media/publications>

G20, 2020, *G20 Anti-Corruption Action Plan*, http://www.seoulsummit.kr/filedown.g20?boardDTO.boardfile_seq=201011120000003812

Government of Canada, 2009, *Canada-China Joint Statement*, http://www.canadainternational.gc.ca/china-chine/highlights-faits/highlights-faits_14438.aspx?lang=en

Heritage Foundation/Wall Street Journal, 2010, *Index of Economic Freedom*, <http://www.heritage.org/index/country/China>

OECD, 2010, *China-OECD corporate governance policy dialogue*, http://www.oecd.org/document/61/0,3746,en_2649_33725_34970813_1_1_1_1,00.html

OECD, No date, *Supporting the fight against Corruption in Asia and the Pacific: The ADB/OECD Anti-Corruption Initiative* http://www.oecd.org/pages/0,2966,en_34982156_34982385_1_1_1_1,00.html

Political & Economic Risk Consultancy Ltd, 2010, *China: Executive Summary of Major Risks in 2010* <http://www.asiarisk.com/exsum.pdf>

Revenue Watch Institute – RWI Index: <http://www.revenuwatch.org/rwindex2010/index.html?q=rwindex>

Transparency International, 2010, *Progress Report 2010: Enforcement of the OECD Anti-Bribery Convention* http://www.transparency.org/publications/publications/conventions/oecd_report_2010

Transparency International, 2008, *Bribe Payer's Index (BPI)*, http://www.transparency.org/news_room/latest_news/press_releases/2008/bpi_2008_en

Transparency International, 2008, *Promoting Revenue Transparency Project*, http://www.transparency.org/policy_research/surveys_indices/promoting_revenue_transparency

United Nations Compaq, No date, *China*, http://www.unglobalcompact.org/NetworksAroundTheWorld/local_network_sheet/CN.html

UNDP, 2007, *Business plays a vital role in building a harmonious society: A UN Conference to promote Corporate Social Responsibility in China*, <http://www.undp.org.cn/modules.php?op=modload&name=News&file=article&catid=14&topic=34&sid=4142&mode=thread&order=0&thold=0>

US Department of State, 2010, *U.S.-China Strategic and Economic Dialogue 2010 Outcomes of the Strategic track*, <http://www.state.gov/r/pa/prs/ps/2010/05/142180.htm>