

PREVENTING CORRUPTION: EFFECTIVE ADMINISTRATIVE & CRIMINAL JUSTICE MEASURES

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It is my pleasure to open the discussions at the Fifth Regional Seminar on Good Governance for Southeast Asian Countries. Before going into this year's seminar topic, let me provide a brief introduction to the activities of UNAFEI and our Good Governance Seminar.

I. INTRODUCTION

UNAFEI¹ is an international training and research institute in the field of crime prevention and criminal justice, established in 1962 by agreement between the United Nations and the Government of Japan. A major focus of its activities is to provide training programmes for criminal justice practitioners from around the world in a multinational format.

While the Japanese Government now bears the sole responsibility for administrative matters such as funding, facilities, and personnel, UNAFEI continues to be run under the joint auspices of the United Nations and the Government of Japan, and it endeavours to assist in the sound development of criminal justice systems and international cooperation among UN Member States, particularly in the Asia and Pacific Region, in line with the UN Conventions and its Standards and Norms.

Every year, UNAFEI offers four multinational training courses that last for five to six weeks, each of which addresses a different subject. The spring course covers offender treatment; the summer course is UNAFEI's basic anti-corruption programme; the autumn course tackles various criminal justice issues in investigation, prosecution, adjudication and international cooperation; and the winter course is called "The International Senior Seminar" and is designed for senior officials.

In choosing the specific topic to be addressed in each programme, every effort is made to incorporate the priority issues identified by the United Nations. As a result, we find ourselves more frequently and regularly choosing topics related to the challenges posed by transnational organized crime and corruption.

This provides the background to the present seminar. The Good Governance Seminar is a recent

¹ United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders

initiative, begun in 2007, in order to enhance our capacity-building and networking efforts in the field of good governance and anti-corruption. Every year, we choose one topic of substantive importance related to UNCAC,² and invite participants from eight Southeast Asian countries for discussion.

The topics for the first four seminars have been “Corruption Control in the Judiciary and Prosecutorial Authorities”, “Corruption Control in Public Procurement”, “Asset Recovery and Anti-Money Laundering”, and “Measures to Secure Witness Protection/Co-operation,” respectively. The first two seminars were held in Bangkok, in partnership with the Office of the Attorney General of the Kingdom of Thailand, and the next two were held in Manila, in partnership with the Department of Justice of the Republic of the Philippines.

This year, for the first time, we chose Tokyo, the home of UNAFEI, as the seminar venue, and took the opportunity to double the number of participants that we invite. Therefore, this year, we have participants not only from general criminal justice authorities but also from specialized anti-corruption agencies. Another advantage of this year’s format is that we were able to invite a number of speakers from Japanese government authorities. These features have enabled us to address issues and challenges that require multidisciplinary responses.

This brings us to this year’s seminar topic, “Preventing Corruption: Effective Administrative & Criminal Justice Measures.”

II. PREVENTING CORRUPTION

“Corruption threatens the integrity of markets, undermines fair competition, distorts resource allocation, destroys public trust, and undermines the rule of law. Corruption is a severe impediment to economic growth, and a significant challenge for developed, emerging and developing countries” – G20 Anti-Corruption Action Plan (2010).

Corruption undermines every legitimate goal that states strive so hard to achieve. It threatens the rule of law and democracy, impedes economic growth, and erodes the overall well-being of a state as a whole.

Anti-corruption efforts require a whole governmental and multidisciplinary approach that consists of prevention (including awareness-raising/education) and enforcement. This notion is enshrined in the UNCAC, the first legally binding global anti-corruption instrument, which devotes an entire chapter to preventive measures and another to criminal justice measures.

² United Nations Convention against Corruption

Of these two, it has been pointed out that, first and foremost, corruption requires prevention. Why is prevention so important?

As a general principle, prevention is better than taking subsequent remedial measures, and this is particularly true of corruption because it is difficult to detect and to prosecute after the fact. Unlike crimes of violence, corruption leaves no readily identifiable traces such as bloodstains or dead bodies. On the contrary, offenders will employ sophisticated *modus operandi* and technology to hide their corrupt activities and the proceeds derived therefrom. Further, corruption takes place between guilty parties. There is no victim to come forward and file a complaint; innocent or neutral witnesses are hard to come by; and the most corrupt and powerful offenders will do everything to discourage witnesses and accomplices from cooperating with the authorities.³ The nature of the offence thus makes preventive efforts essential.

It should be noted also that, while it may be difficult to prevent crimes that are committed in the heat of the moment, prevention works for corruption. We know where and under what circumstances corruption is likely to occur. Public sector corruption occurs in connection with governmental activities and involves government officials. Opportunities for corruption can be limited by promoting the efficiency, transparency, and accountability of governmental businesses, and corruption risks can be reduced by improving the integrity of officials.

One particular area identified by UNCAC as requiring special attention is public procurement (Article 9). We invited speakers from the Japanese Fair Trade Commission and Ministry of Finance to explain how they ensure objectivity and competition in public procurement and prevent corruption.

With respect to the integrity of government officials, UNCAC calls for adequate human resource management (Article 7.1), and mentions codes of conduct (Article 8.2) and reporting requirements (Article 8.3) for government officials. We invited speakers from the National Personnel Authority and Financial Services Agency of Japan to offer examples of how they endeavour to ensure staff integrity.

We also invited Ms. Jo Dedeyne-Amann from the UNODC,⁴ and Mr. Joseph Lee Yat-Sau from Hong Kong's ICAC.⁵ The UNODC is the guardian of UNCAC, and Ms. Dedeyne-Amann will talk about the Convention and prevention of corruption in general. ICAC is Hong Kong's anti-corruption

³ To remedy these difficulties, UNCAC requires States Parties to: introduce anti-money-laundering measures, including suspicious transaction reporting (article 14.1(a)); take appropriate witness-protection measures (article 32); consider adopting whistle-blower protection (article 33); and take appropriate measures to encourage cooperation with the authorities (article 37).

⁴ United Nations Office on Drugs and Crime

⁵ Independent Commission Against Corruption

authority, renowned for its success in keeping the Special Administrative Region clean. You will hear Mr. Yat-Sau talk about ICAC's strategies and measures for preventing corruption in Hong Kong.

III. CRIMINAL ENFORCEMENT

Turning now to criminal enforcement, the critical question is this: *If preventive measures and awareness-raising/education were appropriately implemented, would that make criminal justice measures unnecessary or less important?*

The answer is “No.” At the risk of contradicting myself, I need to emphasize that criminal punishment still is the key in the fight against corruption. Just think of the most corrupt and criminally minded: preventive measures and education alone will not stop them from taking advantage of their offices for personal gain. They will continue as long as the risks of detection and punishment are small. We need to make corruption a high-risk crime, and the only way to do that is to actually prosecute and punish those who commit corruption. In that sense, criminal justice measures have a special effect in preventing corruption – in criminal law parlance, this is known as “deterrence”.

Apart from providing specific and general deterrence, the significance of criminal enforcement is manifold. It sends out a strong message that corruption will not be tolerated, and especially when influential figures such as politicians or high-ranking officials are prosecuted, it demonstrates the political will and determination of the government to fight corruption. This in turn cultivates a culture of zero-tolerance and provides a basis for public education, especially of the younger generation. Moreover, the investigation may reveal the shortcomings of the existing system and give impetus for reform that would better prevent corruption. Two Japanese laws, which you will hear about during this seminar – The National Public Service Ethics Act of 1999⁶ and the Involvement Prevention Act of 2002⁷ – were enacted in the aftermath of large-scale scandals and are examples of such reform efforts. They show that prevention and enforcement are interrelated and that they must go hand-in-hand.

IV. CONCLUSION

There is a global consensus that a total anti-corruption package consists of prevention,

⁶ Act No.129 of 1999.

⁷ Act on Elimination and Prevention of Involvement in Bid Rigging, etc. and Punishments for Acts by Employees that Harm Fairness of Bidding, etc. (Act No.101 of 2002).

awareness-raising/education, and enforcement. There are different approaches and varying options regarding how countries design, mix, and implement these measures. To better prevent and fight corruption, learning from other countries' experiences and looking into emerging good practices should be particularly useful.⁸ This Seminar is intended as an opportunity to share experiences, exchange ideas, and to build a network of counterparts. Your fight is our fight, and I hope the seminar will help you in your efforts to curb corruption.

⁸ Paragraph 7 of the Marrakech Declaration on the Prevention of Corruption (Oct. 2011), adopted at the fourth session of the Conference of the States Parties to UNCAC, requests Member States to promote bilateral, regional and international activities to prevent corruption, including workshops for the exchange of relevant experiences and good practices.