PREVENTION OF CRIME AND TREATMENT OF OFFENDERS

RESOURCE MATERIAL SERIES NO. 119

UNAFEI

Akishima, Tokyo, Japan **March 2025**

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INTRODUCTORY NOTE

It is with pride that the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) offers to the international community this issue of *Prevention of Crime and Treatment of Offenders*, UNAFEI's Resource Material Series No. 119.

This issue contains the work product of the 185th International Training Course on Preventing Inmate Abuse and Corruption in Correctional Facilities: Fostering a Rehabilitative Prison Environment and the 26th UNAFEI UNCAC Training Programme on Strengthening Prevention, Detection and Prosecution of Corruption, and Public-Private Partnership. These programmes were held to promote Goal 16 of the 2030 Agenda for Sustainable Development, which underscores the importance of governance and the rule of law in promoting peaceful, just and inclusive societies, as well as to follow-up on the implementation of the Kyoto Declaration adopted at the 14th United Nations Congress on Crime Prevention and Criminal Justice.

I would like to pay tribute to the contributions of the Government of Japan, particularly the Ministry of Justice, the Japan International Cooperation Agency and the Asia Crime Prevention Foundation, for providing indispensable and unwavering support to UNAFEI's international training programmes and other activities.

Finally, I would like to express my heartfelt gratitude to all who so unselfishly assisted in the publication of this series.

March 2025

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YAMAUCHI Yoshimitsu
Director of UNAFEI

PART ONE

RESOURCE MATERIAL SERIES
No. 119

Work Product of the 185th International Training Course

UNAFEI

REPORT OF THE COURSE

THE 185TH INTERNATIONAL TRAINING COURSE

"PREVENTING INMATE ABUSE AND CORRUPTION IN CORRECTIONAL FACILITIES: FOSTERING A REHABILITATIVE PRISON ENVIRONMENT"

1. Duration and Participants

- From 12th September to 8th October 2024
- 14 overseas participants from 12 countries
- 5 participants from Japan

2. The Purpose of the Course

The purpose of the training course was for participants to learn about the current situation, background and prevention efforts regarding inmate abuse and corruption in correctional facilities around the world, as well as to explore good practices. Additionally, it aimed to deepen mutual understanding among participants and to build a human network that can be utilized even after the training course ends. This network is intended to support the efforts of various countries in addressing the global challenge of inmate abuse and corruption, facilitating information sharing and cooperation.

3. Contents of the Course

(1) Lectures

- Overseas Experts

  A) "Creating Rehabilitative Prison Environments: Anti-corruption Policies in Argentina"
  "Effective Measures in Anti-corruption Policies: Argentina"
  Dr. Emiliano Blanco
  (Board Member, Board of Directors, International Corrections and Prisons Association)

  B) "Organizational Management for Building Correctional Facilities That Are Resistant to Inmate Abuse and Corruption"
  "Capacity-Building and Empowerment for Correctional Officers with High Integrity"
  Mikko Sarvela
  (Regional Prison Systems Adviser, International Committee of the Red Cross)

- Lectures by Japanese Experts

  A) "Status of Inappropriate Treatment and Corruption, and the Prevention at Correction Institutions in Japan"
  SHINIKETANI Ryo
  (Director, Inspection Office, General Affairs Division, Correction Bureau, Ministry of Justice of Japan)

  B) "Response to Violent or Unjust Incidents, and Efforts for Recurrence Prevention and Organizational Reform"
  NATORI Masako
  (Managing Director, Japan Legal Support Centre (Former Director-General of the Correction Bureau, MOJ))

  C) "Prevention of Inappropriate Treatment in Police Detention Facilities"
  AOYAMA Hitoshi
  (Deputy Chief, Detention Management Office, General Affairs Division, Commissioner General's Secretariat, National Police Agency)

(2) Individual Presentations

Each participant made an individual presentation describing the current situation and challenges in the participant's country. Participants asked many questions to the presenters and an active discussion was held.

(3) Study Visits

The participants visited the following facilities to learn about efforts to prevent inmate abuse and corruption in Japan.

- Fuchu Prison
- Aiko Juvenile Training School for Girls
- Training Institute for Correctional Personnel
- Police Detention Facility, Tokyo Metropolitan Police Department

(4) Group Discussion

The participants were divided into three groups, each focusing on specific themes. They engaged in discussions based on the knowledge gained from individual presentations, lectures and observation visits throughout the training. The results of these discussions were then presented in front of all participants and UNAFEI faculty members, followed by a question-and-answer session.

- Group 1: "Effective measures for the prevention of corruption in correctional facilities"
- Group 2: "Measures for promoting human rights protection in correctional facilities, including effective prevention and early detection of inmate abuse"
- Group 3: "Capacity-building and good governance of administration for fostering rehabilitative prison management"

4. Feedback from the Participants

Most participants highly evaluated the well-structured nature of the programme, noting that they were able to learn valuable information and practical approaches through the many lectures with expertise and experiences on key issues, as well as the study visits. Particularly, many participants noted that the lecture by Ms. Natori, Managing Director, Japan Legal Support Centre (Former Director-General of the Correction Bureau), was memorable. In her lecture, she shared her experiences regarding organizational reforms triggered by incidents of abuse and corruption in correctional facilities. Many participants commented that her lecture was encouraging and inspiring, especially for those who are currently struggling with issues of corruption and abuse in their respective countries.

Moreover, through individual presentations and group discussions, participants actively shared their experiences and insights, facilitating a learning process among peers. This mutual exchange led to a deeper understanding, with many participants feeling that they were able to find specific ideas and solutions applicable to their actual work. This collaborative learning environment was a key element in enhancing the quality and value of this training course.

5. Comments from the Programming Officer

Correctional institutions have two main responsibilities: to protect society from crime and reduce reoffending. To fulfil these responsibilities, criminal justice authorities are obliged to take necessary measures to ensure that inmates are safely held in custody, ensure that each offender's human rights are respected, and support their reintegration into society as law-abiding citizens.

However, inmate abuse and corruption within correctional facilities undermine both of these fundamental responsibilities. The closed nature of these institutions, the asymmetry of power, issues related to organizational culture, and a lack of personnel and resources make them particularly vulnerable to such abuses and corruption. In fact, many reports of inmate abuse and corruption have emerged from correctional facilities worldwide, including in Japan.

To explore effective measures for addressing the difficult issue of preventing abuse and corruption in correctional facilities, I decided to structure this training course around two approaches: "Strengthening governance of prison administration" and "Capacity-building."

The first approach focuses on organizational structure, including the establishment of clear organizational norms, an inspection system by third-party organizations, complaint system, legal aid and protections for whistle-blowers. However, as various social psychology experiments conducted in prison-settings by Dr. Philip Zimbardo and others demonstrate, even individuals who believe they possess strong ethical principles can fall into corrupt or abusive behaviours under specific situations or group pressures. Therefore, it is

crucial to establish a structure within the organization that does not permit abuse or corruption.

On the other hand, no matter how excellent the organizational structure is, if the staff working within it lack respect and compassion for the human rights of inmates, abuse and corruption will inevitably resurface. Thus, the second approach, "Capacity-building", focuses on correctional staff and their relationships, emphasizing the importance of recruitment, personnel development, empowerment and a transparent workplace environment. Additionally, the lectures also touched on the fact that building trust and good interpersonal relationships between correctional officers and inmates is also effective in ensuring security in correctional facilities (Dynamic security).

Having completed this training course, I have come to realize that in the context of correctional facilities—where the aim is to change people's habits, values, and ways of life—the environment's potential for true rehabilitation largely depends on the attitudes of the correctional staff. This is precisely why capacity-building is essential, and I believe that this training course itself is a crucial part of that process.

I sincerely hope that the knowledge and perspectives gained from this training course will contribute to the development of systems and operations in their respective countries, forming a foundation for building better correctional environments while respecting the human rights of inmates.

PARTICIPANTS' PAPERS

PREVENTING INMATE ABUSE AND CORRUPTION IN CORRECTIONAL FACILITIES: FOSTERING A REHABILITATIVE PRISON ENVIRONMENT

*Rae-Dawn Corbin**

I. STATUS OF INMATE ABUSE AND CORRUPTION IN GUYANA'S DETENTION FACILITIES

The Laws of Guyana Chapter 11:01 is the legislative basis for the Guyana Prison Service (GPS), establishing key parameters that include the articulation of the management structure of the Prisons as well as the main powers and responsibilities of key principals — the Director of Prisons and the Deputy Director.

Although the functions of the GPS are not clearly adumbrated in the Act (as noted in the *Report of the Disciplined Forces, 2004*), such responsibilities are implied in Part III:217 and 281. These sections determine that the GPS's main functions can be perceived to rest on two pillars — (a) Custodial and (b) Corrections.[1] The Act provides a sound framework within which the GPS has functioned since 1957; however, few revisions have been made.

In practice, the GPS long operated, within the framework of its name; that is, a *prison*. As defined by the *Oxford Dictionary*, a prison is a building in which people are legally held as a punishment for a crime they have committed or for which they are awaiting trial. This definition neither encompasses reformation for the individual nor enforces measures of positive correction.

The GPS began pursuing several initiatives, identified in its Strategic Plan in the year 2014, directed at transforming it from a primarily custodial institution to one with a strong focus on corrections. These include legislative reform, enhanced inmate programming, operational improvements, human resource capacity-building and infrastructural improvements, among other strategic initiatives.

A. Abuse

According to the 2019 research completed by an inter-disciplinary team of experts from the United Kingdom and Guyana titled *An Historical Perspective on Guyana's Jails*, since the 1830s, "infrastructure has shaped living conditions within this penal institution." It has resulted in harsh realities like chronic overcrowding, lack of meaningful activity, limited access to healthcare, enforced solitude, various forms of violence, poor sanitation and insufficient upkeep of familial relations for inmates. These realities align with what criminologists call "the pains of imprisonment" (Johnson & Toch, 1982).

Over the years, the lack of secure prison compounds has forced a significant proportion of prisoners in Guyana to be frequently locked in overcrowded dorms and cells for hours each day with limited means of occupation or exercise. The effect of such an environment on the mental health of prisoners was acknowledged as early as 1831, when contemporaries noted that bouts of melancholy, insolence and "idleness" were increasing.[2] The practice of confining persons deemed "criminally insane" in prisons as well added to this pressure.

Overcrowding is a major contributing factor to instances of abuse in Guyana. Guyana's prisons operate well above capacity, exceeding design limits by a significant margin (according to the US Department of State in 2022). Overcrowding coupled with few positive activities to utilize time creates a strained and violent environment, leading to increased risk of abuse by both inmates and prison officers. Overcrowding has

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[1] Disciplined Forces Commission. (2004). *Disciplined Forces Commission Report*, Guyana.

[2] Anderson, Clare. (2019). *An Historical Perspective on Guyana's Jails*, University of Leicester.

moved from a whopping 118.5 per cent as of March 2019 (according to the *Support for the Criminal Justice System Programme 2017 Report*) and now stands at 65 per cent, amidst massive construction and reconstruction works, as of April 2024.

Allegations of physical abuse by prison officers have surely been reported in the past (*MNS Disorders in Guyana's Jails Project*, University of Leicester, 2016). Physical aggression was used as a method to subdue, control and to instil fear and a false sense of respect for prison officers. Further, Guyana is yet to repeal Chapter 11:03 of its Laws: *Whipping and Flogging Act* from the Constitution. However, no sentence to such cruel and inhumane punishment has been ordered or instituted in decades. Moreover, there is now a Ministerial-ordered *Zero-Tolerance Policy* for abuse in any form towards inmates that has been instituted, beginning in the year 2021. Resultantly, investigations into matters of reported abuse are treated with high priority, and penalties for breaching this policy directive have been applied on several occasions. Additionally, human rights training continues to be rolled out across the employee pool through collaborations with the International Human Rights Association.

Public reports have highlighted inadequate sanitation, limited access to healthcare and a lack of sunlight in some facilities (according to the *Office of the United Nations High Commissioner for Human Rights*, in dialogue with Guyana during its 4109th meeting). However, sanitation is now prioritized, particularly on the heels of the global pandemic, Covid-19. Since the year 2020, the sanitization budget has tripled and designated Sanitation Workers are identified amongst the prison population to consistently upkeep sanitary environments. Unlike the high infection rates that a majority of the world's general population faced during the upsurge of Covid-19 cases, within the walls of Guyana's detention facilities only 10 per cent of inmates contracted the virus during the outbreak. Further, no related deaths were reported, all incoming inmates were tested, quarantined and retested before being introduced to the general population, and 85 per cent of the inmate population was vaccinated as of December 2021.

The very positive healthcare response to the Covid-19 pandemic was greatly owed to the team of healthcare experts that are employed by the GPS and those that are seconded to the work with the Prison Service by the Ministry of Health. Each of the five prison locations have a staffed Medical Unit. Medical Doctors at the largest prison facility attend to an average of 70 patients daily. This is added to the 40 inmates (average) that may seek the services of on-staff Nurses and Community Health Workers that are also present. Inmates have access to outpatient and some in-patient care, and any matter that may require added resources or expertise is referred to the closest Health Centre or Public Hospital. Ongoing infrastructural improvements will enhance the quality and scope of services offered to inmates through the Medical Department.

A negative response to prison escapes has resulted in inmate restrictions and chronic lockdowns. This is used as a means of control since prison infrastructure is not optimal and does not provide layers of security to prevent escapes. Massive construction and reconstruction are underway to recreate what Guyana knows as its Detention Facilities. This reconstruction and a modernization of security procedures will resolve this matter.

B. Corruption

Contraband continues to be introduced into Guyana's detention facilities through the schemes and ploys of inmates, their visiting family members and rogue prison officers. Daily searches, Random searches and monthly Joint Services Searches are carried out to rid the facilities of unauthorized articles. Admittedly, there is always something else to be found.

Prison officers that are suspected to be partaking in these activities are investigated departmentally and, depending on the severity of the infringement (for instance, the trafficking of drugs into the prisons), can be punished by Law to time spent in prison. In the past, there have been allegations of prison staff extorting monies from inmates or their families to provide favourable treatment to the incarcerated individual. The consistent reinforcement of prison rules, discussions on risks posed by engaging in such practices and the repercussions for persons found guilty have served as deterrents to this type of corruption.

As positive reinforcements, officers are offered a vast and wide range of short to long term training opportunities for their personal and professional growth. Also, the Service's Training Strategy and the

training opportunities offered have progressively sharpened its focus on meeting the correctional needs of a modern correctional facility.

II. LEGAL FRAMEWORK AND PRACTICES TO PREVENT INMATE ABUSE AND CORRUPTION

The GPS was established under the Prison Act #26 of 1975. As noted above, the Laws of Guyana Chapter 11:01 is the Legislative basis for the GPS, and it establishes parameters that include the articulation of the management structure of the prisons. In keeping, parameters are in place for the prevention of inmate abuse and corruption.

Firstly, there are provisions for the governing Minister to appoint a *Board of Visiting Justices* to provide oversight and strategic intervention into matters arising within detention facilities. Furthermore, all judges of the High Court and Magistrates are ex-officio *visiting justices* and have legal powers within the prisons of Guyana. The following excerpt applies:

Laws of Guyana, Chapter 11:01, Part VI

Powers and duties of visiting justice.

47. (1) A visiting justice may at any time visit any prison in respect of which he is a visiting justice, and may inspect any part of such prison, may enquire into and examine the food, diet, clothing, treatment and conduct of prisoners, may question any member of the prison staff or prisoner, may hear complaints from any prisoner, may enquire into any abuses and irregularities in any prison and shall ascertain as far as possible whether the provisions of this Act and the Prison Rules are being complied with, and may make a report upon any such matters to the Minister.

Secondly, provisions are made for independent Visiting Committees to provide general oversight into every area of operation. These committee members are chosen from wide expert backgrounds and are Cabinet appointed to provide oversight to prison operations. The following excerpt applies:

Laws of Guyana, Chapter 11:01, Part II

Investigation of reports.

9. The Visiting Committee shall attend to any report which they receive as to the mind or body of any prisoner being likely to be injured by the discipline or treatment to which he is subjected and shall communicate their opinion to the Minister. If the case is urgent they shall give such directions thereon as they deem expedient, and communicate the same to the Minister.

Thirdly, Prison Officers are legally bound to refrain from, and report, matters of abuse of officers to inmates, inmates to inmates or inmates to officers. The following excerpt applies:

Laws of Guyana, Chapter 11:01, Part II

Abuses.

181. Every prison officer shall at once communicate to the officer in charge any abuses or impropriety which may come to his knowledge.

Further, all prison officers have the legal duty to ensure that prisoners do not gain possession of

unauthorized articles as outlined within the Prison Act when within or under supervision outside of the walls of the prison.

Breaches of these statutes, operating procedures and the GPS Code of Ethics results in departmental penalties being laid against officers. As noted above, breaches related to matters of corruption are punishable by Law. If the infraction is a criminal offence like the trafficking of drugs, the infringement can result in an officer being sentenced to three years in prison. If found guilty of aiding and abetting an escape of an inmate who is serving a sentence for a term less than life, an ex-officer "shall be guilty of a felony and liable to imprisonment for seven years" (*Laws of Guyana, Chapter 8:01 Title 23: 342*). If the escapee was serving a sentence for a term of life imprisonment, an ex-officer "shall be guilty of a felony and liable to imprisonment for life" (*Laws of Guyana, Chapter 8:01 Title 23: 341*).

III. CHALLENGES TO THE PREVENTION OF INMATE ABUSE AND CORRUPTION

There remain significant challenges hindering efforts to prevent inmate abuse and corruption in Guyana's detention facilities. These roadblocks are:

A. **Overcrowding Due to Limited Spacing.** Overcrowding can create a tense environment, making it difficult to maintain order and prevent violence. Limited space also hinders proper oversight, increasing the opportunity for abuse and the spread of contraband.

B. **Resource Constraints.** With limited resources inclusive of staff, funding and sufficient infrastructure, supervising inmates is an especially difficult task. Limited funding has impacted improvements in facilities and holistic rehabilitative programming significantly pre-2022.

C. **Accountability and Oversight Structures.** A lack of robust mechanisms for investigating and prosecuting allegations of abuse and corruption creates a perception of impunity.

D. **Difficult Working Conditions for Prison Officers.** Officers that are negatively affected by (i) extremely long work hours, (ii) a perception of not earning enough for their time and energy or (iii) a harsh hierarchical organizational structure can be prime targets for accepting bribes or facilitating the flow of contraband. Being understaffed and feeling intimidated by a lack of "power" within a prison facility can also cause officers to facilitate the flow of contraband to keep the prison environment "peaceful".

IV. PROPOSED SOLUTIONS

Guyana's drive to embody a more holistic and rights-based framework must be championed within the walls of our detention facilities. The GPS must foster an environment that prioritizes rehabilitation, respects human dignity, and contributes to the overall advancement of human rights. To foster a more rehabilitative environment, I propose the following points:

A. Penal Reform

The GPS began pursuing several initiatives, identified in its strategic plan in the year 2014, directed at transforming it from a primarily custodial institution to one with a strong focus on corrections. The greatest pivot of the eight transformative strategic goals of the GPS is the Modernization of Penal Legislation. This requires the creation of a new statute that will repeal and replace the existing archaic record to one which reflects a philosophy of inmate rehabilitation and ex-offender reintegration.

This statute review must be a highly participatory process with strong groups of internal, external, direct and indirect stakeholders from every stakeholder group. Once completed the new Guyana Corrections Service Act will usher Guyana's detention facilities into a new era of being a highly functional correctional institution.

B. Physical and Non-physical Infrastructural Enhancements

With the construction of appropriately designed accommodations and additional facilities to create a holistic reformative environment of inmates, reliable systems must be put in place. New and expansive physical infrastructure must be supported by efficient and effective procedures that are aimed at improving the lives of men and women in Guyana's detention facilities.

Though the GPS has faced numerous challenges, many inmates have been able to earn positive experiences while living under difficult prison circumstances and have not returned to a life of crime. A low recidivism rate of 18 per cent as of 2023 proves that much can be accomplished even under otherwise trying circumstances. The Service aims to sustain the consistent decline in recidivists in prisons and to reduce the level of risk the prison population poses to the nation.

C. Dedicated Enforcement Arm

The creation of a dedicated investigative arm that is responsible for fostering external accountability and building a positive public perception would best combat issues of malpractice among prison officers. Speedy detection and resolution of cases that imposes just penalties would also serve as a disruptor to any entrenched corruption.

D. Enhanced Human Resource Capabilities

Added to secure infrastructure, prison officers must understand how to regain their powers as captains of the lives of inmates in our care. Among the numerous risks that corruption creates, loss of respect is a core issue that can manifest in many other ways. Providing prison staff with appropriate knowledge of the art of manipulation, negotiation and how to suitably hone their powers as the figure of authority within detention facilities will result in positive changes.

V. EFFORTS TO ENSURE TRANSPARENCY OF CORRECTIONAL FACILITIES

To ensure transparency and build public trust, the GPS has employed a few good measures:

- Employment of a structured Public Relations Strategy. Monthly newsletters and a monthly television programme serve to highlight developments and rehabilitation efforts across the Service. These media act as a forum to share important messages to the public;

- Facilitating regular inspections by government appointed teams as well as visiting justices, in addition to maintaining an open environment for all interested collaborators;

- Encouraging journalists and tertiary level researchers to access information about and exposure to the facilities to foster greater accountability;

- Five Prison Advisory Boards are in place to provide oversight and offer recommendations for improvements in five core areas of prison administration. Similarly, Visiting Committees are legally empowered to "promote the efficiency of the prison" (*Laws of Guyana, Chapter 11:01, Part II Rule #7*) to the prison authorities and to the governing Minister on the general administration of each prison location and events arising therein;

- 24-hour video monitoring that is always accessible by members of the Prison Directorate.

The GPS is in a prime position to revamp systems and procedures to create an environment that is rich with positive opportunities for the lives of the country's law-offenders and staff. The steps we take today must optimally prepare us for a better tomorrow. Learnings from our regional and international colleagues will truly serve not just the GPS but the citizenry of Guyana and support national development.

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CAUSES AND PREVENTION OF INAPPROPRIATE TREATMENT IN JAPANESE CORRECTIONAL INSTITUTIONS

MUTO Yoko[*]

I. INTRODUCTION

This paper addresses the most recent case of assault and inappropriate treatment of inmates that occurred in a Japanese correctional institution and considers some of the causes of inappropriate treatment. It will also introduce specific examples of effective measures to prevent similar inappropriate treatment, based on the author's experience. Finally, the paper will conclude with a discussion of the future issues and perspectives on the efforts.

II. THE PRESENT SITUATION OF INAPPROPRIATE TREATMENT IN JAPANESE CORRECTIONAL INSTITUTIONS

A. Nagoya Prison Staff Assault and Inappropriate Treatment of an Inmate

In December 2022, the assaults by Nagoya Prison officers were publicized by the Minister of Justice. The details of the case are as follows. More than 20 prison officers, mostly employed for 3 years or less and relatively inexperienced, had repeatedly abused inmates (e.g., grabbed them by the lapels, slapped them in the face or body, and used other forms of violence) and mistreated inmates more than 400 times between November 2021 and September 2022. Three inmates who were abused had difficulties communicating with others and adapting to group living, because of possibly having intellectual disabilities. The prison officers became angry at the attitude of the inmates for not following orders, for shouting or for repeatedly making the same request, and before long, the officers started to resort to violence.

In Japanese correctional institutions, maintaining discipline and order is considered to be essential to ensure the security of the officers and inmates, a rehabilitative environment for treatment and stable communal living. To maintain discipline and order, prison officers monitor the lives and prison work of inmates, admonish and give guidance to inmates during patrols, and respond to their requests. When it comes to assessment and understanding of the characteristics of inmates, prison officers, for the most part, rely on specialized staff trained in psychology and social welfare. Nevertheless, the inappropriate treatment by the prison officers in Nagoya Prison occurred despite the presence of specialized staff.

B. Recent Course of Treatment Prescribed by the Corrections Bureau

The Corrections Bureau has issued a policy of introducing treatment according to the characteristics of the inmates, for example, by developing risk assessment tools that incorporate the idea of the RNR Model.[1] In addition, while inmates had an obligation to perform prison work, the importance of providing social support and other measures to those who require more supportive treatment than prison work has been recognized, with the aim of providing flexible treatment based on the characteristics of each inmate. The Nagoya Prison case occurred at the time when correctional services in Japan were undergoing these major changes. This suggests some degree of institutional resistance to the new policies of the Corrections Bureau.

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[*] Section Chief of Juvenile Correction Division 2, Hiroshima Regional Correction Headquarters, Correction Bureau, Ministry of Justice, Japan.

[1] The Risk-Needs-Responsivity (RNR) Model consists of the Risk principle, the Needs principle, and the Responsivity principle, and in order to provide treatment that contributes to the prevention of recidivism, it is necessary to implement treatment that addresses the subject's criminogenic needs in a way that is individually tailored to the subject according to the subject's level of risk of recidivism.

In other words, the actual circumstances within the organizational culture that have been formed over a long history have limited the adoption of the new policies and practices imposed by the Corrections Bureau, such that they have not been fully adopted by line officers and are not reflected in the treatment.

In the course of the investigation by the Corrections Bureau, it became clear that some of the causes and background circumstances of this incident are not limited to Nagoya Prison but could exist in any correctional institution in Japan. From this perspective, this case must be taken seriously as a case that exposed the essential problems facing correctional institutions in Japan.

III. BACKGROUND ISSUES OF INAPPROPRIATE TREATMENT

According to the recommendation document[2] summarizing the results of the investigation by the third-party committee, several points were pointed out as background circumstances: (a) the lack of sufficient consideration and sharing of treatment methods appropriate to the characteristics of inmates, (b) a workplace that makes it difficult to express opinions freely, (c) an environment that places little awareness of human rights and excessive emphasis on discipline and order, (d) a work system under which a young prison officer handles inmates who need special consideration in treatment alone, (e) inadequate mechanisms for supervisory staff to detect inappropriate treatment in its early stages, and (f) dysfunctional systems to provide relief to inmates who have been inappropriately treated.

In this paper, I will focus on two points which can be approached by anyone and also which I have actually felt changes and effects in my experience. The next paragraph focuses on the background of the lack of sufficient consideration and sharing of treatment methods, and discusses measures to prevent its recurrence: promote understanding of the characteristics of inmates and establishing "team treatment" in order to enhance the treatment system. The following paragraphs focus on the background of the workplace that makes it difficult to express opinions freely and discuss ensuring psychological safety in the workplace as a necessary organizational culture change to implement measures to prevent recurrence.

IV. IMPORTANCE OF UNDERSTANDING INMATE CHARACTERISTICS

A. Circumstances in the Nagoya Prison Case

According to the survey, the prison officers had difficulty communicating with the victim inmate, who had a possibility of intellectual disabilities, and the officers had negative feelings (e.g., irritation, fear and anger) toward the inmate for not following instructions. These negative feelings occurred because of their lack of understanding of the inmate's characteristics. Nagoya Prison did not fully understand the characteristics of the inmates, and they took uniform measures to suppress the inmates by force in order to make them follow the rules, without considering and sharing appropriate methods of treatment depending on the characteristics.

B. Efforts to Prevent Inappropriate Treatment

I emphasize the establishment of a system for accurate understanding and sharing of the characteristics of the inmates as a measure to prevent inappropriate treatment, along with examples from my experience in work.

1. Issuance of Guidelines for Appropriate Treatment

In consideration of the proposal made by the third-party committee, "Guidelines for the Treatment of Inmates in Need of Support" were issued in June 2024. These guidelines aim at understanding the characteristics of inmates with intellectual and developmental disabilities, indicating how they should be treated.

[2] Nagoya Prison Staff Assault and Inappropriate treatment Third Party Committee, Proposal—Toward a New Treatment in the Era of Detention and Sentencing, submitted on 21 June 2023, available in Japanese at: https://www.moj.go.jp/content/001398333.pdf.

2. Establishment of a "Team Treatment" System

To implement the guidelines, an individualized support treatment promotion team was established. This is a new multidisciplinary approach involving prison officers, a vocational specialist, and education, psychology, social and welfare specialists to enhance the treatment according to the characteristics of inmates who need special consideration.

In a case I was involved in as a psychologist, an inmate who had been maladjusted in prison due to his developmental and intellectual disabilities was selected for team treatment after he attempted suicide. Prison officers and other specialists held a case conference to discuss how to support the inmate based on his characteristics, and how to provide treatment that would not only make his life easier but also reduce the burden on the prison officer in charge.

The result of this case is as follows. As a psychologist, I shared information about the inmate's maladjustment in society, such as the situations in which he often failed. Other members made suggestions to prevent similar situations and to help him lead an adaptive life in the prison. In addition, when I shared that the results of the individual intelligence test showed he was not good at either understanding the text by reading letters or understanding oral instructions, a social worker proposed to use easy sentences and pictures in the guide for living in prison and the procedure manual for prison work. Additionally, the prison officer in charge stated that there were times when he became irritated and impatient because instructions were not conveyed to the inmate. By receiving suggestions from other participants, the officer decided to incorporate some ideas of using illustrations and diagrams to give instructions. Afterwards, it was told to the inmate that staff members discussed how to make reasonable accommodations to make his life easier. In response to this, the inmate expressed gratitude for the necessary consideration, and instead of attempting suicide due to the disappointment over things not going well, he began to take a positive attitude, saying that he wanted to do the best to live his life. This is a case in which correctional staff with different areas of expertise shared information and exchanged ideas and considered how to treat inmates based on their unique needs and characteristics.

C. Challenges and Countermeasures

As I show in the circumstances of the Nagoya Prison case in the paragraphs above, few staff members have specialized knowledge about disabilities and individual characteristics. Considering this, training and study sessions are necessary to promote understanding of inmates' characteristics, but top-down instructions do not motivate the staff to learn knowledge on their own. Therefore, examining the ways and means to hold study sessions is important. It is desirable to provide opportunities to acquire knowledge during working hours, since training and study sessions held outside of working hours are likely to be burdensome for staff and increase dissatisfaction and resistance. In addition, it is also desirable to incorporate interactive and participatory training, such as group work and case studies, rather than one-way lectures, and to use actual cases of inmates as examples for case studies. This might facilitate understanding of inmates' characteristics and consideration of specific treatment to be provided. In addition, for example, by participating in practical training at welfare facilities, staff members can experience situations in which people with disabilities are actually receiving support, which may be effective in enhancing methods of treatment.

V. IMPORTANCE OF HIGH PSYCHOLOGICAL SAFETY[3] IN WORKPLACES

A. Circumstances in Nagoya Prison

The results of the survey show that psychological safety in Nagoya Prison is low. In a workplace with low psychological safety, staff members will be unable to talk about their opinions, fears and concerns freely. This is because low psychological safety makes interpersonal risks such as being blamed for reporting mistakes higher and makes it impossible to communicate frankly. This leads to staff members having difficulty receiving appropriate advice and support, and so, the negative feelings and stress associated with treatment accumulates. As a matter of fact, some of the staff members involved in the case said that they

[3] Psychological safety is a psychological term advocated by Amy C. Edmondson, who studies organizational behaviour, in 1999. It is the state of being able to express one's thoughts and feelings to anyone in an organization with confidence and defined as "a state in which you are confident that other team members will not reject or punish you for what you say."

were not given adequate responses when they consulted their superiors about the treatment of the victim inmates. Also, as an organization, lack of cooperation among staff members due to the low psychological safety among them has resulted in stagnation in sharing information and characteristics about inmates, and so, staff members were unable to learn important information about inmates.

B. Efforts to Prevent Inappropriate Treatment

In order to enhance psychological safety, to create a psychologically safe place where people can talk honestly and can be heard is necessary, and for that, introducing dialogue practices incorporating the Open Dialogue method might be very effective.

The Open Dialogue method is a technique of care that originated in Finland for the treatment of schizophrenia and other disorders and is now also being adopted as a way to deal with human relationships. In correctional institutions, it is considered to be effective in facilitating communication not only between staff members but also between staff members and the inmates. One of the core components of conducting Open Dialogue is a technique called the “reflective interview”. The unique feature of the reflective interview is that there is an “observer” who quietly listens while the speaker speaks to the listener, and the observers discuss afterwards what the speaker talked about, in front of the speaker. The speaker speaks only to the listener and can hear what the observers are saying to each other, and so, the speaker’s “speaking time” and “listening time” are separated. The division into internal and external conversation allows the speaker to talk to their own inner voice, which is more conducive to self-understanding than in a one-on-one interview situation, and because the observer does not directly instruct or advise the speaker, internal and essential changes of the speaker can be expected. Here are two cases of dialogue practices which I experienced.

1. <u>Dialogue Practice between Staff and Inmates</u>

An inmate who participated in the practice as a speaker obstinately refused to talk about her crime, which was the murder of her own child, but as time went by, she gradually started to talk about what happened when she committed the crime and her feelings toward her child. She revealed information about her characteristics, such as her tendency to panic when she is overwhelmed by multiple tasks, which was housework and childcare on that occasion. She also mentioned her tendency to go blank when she hears loud noises, on that occasion, her child crying and her husband yelling, and how she felt she was in such a trapped situation when the incident occurred.

By considering the questions raised by the observer who heard the inmate talk about her crime, the inmate became aware of her mental condition at the time of the incident and her own characteristics. This led to the deepening of her self-understanding of the circumstances in which she had felt distress. By repeating dialogue practice thoughtfully, she felt that it was a safe place to talk, and she became able to reveal her true feelings and concerns with peace of mind. It also helped us as staff to deepen our understanding of her sense of distress and characteristics, and this helped us to adjust treatment to her characteristics, such as mitigating her tendency to panic due to multitasking and her sensitivity to sound.

2. <u>Dialogue Practice between Staff Members</u>

In a dialogue practice between staff members, a prison officer revealed his concerns about how to treat inmates. A young male prison officer was the speaker, and I participated as a listener. As observers, veteran senior prison officers participated. The young officer talked about being assigned to treat female inmates for the first time, and that he felt an uneasiness which he did not feel when he treated same-sex inmates. Because of gender differences, he felt that he needed to treat female inmates in a manner that is more appropriate for women, but he was not given specific instructions on how to treat female inmates, nor did he have an opportunity to receive advice. The young officer said that he was not comfortable to consult anyone about it, and he had a strong fear of unintentionally treating inmates inappropriately. He also said that he feels that the workplace or his superior would not protect him if he unintentionally treated the inmates inappropriately and complaints were made.

The following factors may have contributed to his honest disclosure. I could not empathize, having never been in a similar situation, but I listened without interrupting him and never dismissing his concerns. Also, the senior staff members who participated as observers indirectly told him that there had been a time when they also had been dealing with similar concerns, and this might have given the young officer the courage to confide his feelings. The executive staff was also there to observe the practice, but because the dialogue

practice was held in a protected place and the framework as an equal relationship among the staff members was established, the officer was able to talk about things that he could not in the daily hierarchical relationship. By pouring out his concern, it led to a reduction of negative emotions and psychological burden from treating inmates.

C. Challenges and Countermeasures

In October 2023, a new general guidance for reform[4] "dialogue practice" was established and several prisons started to work on dialogue practices which incorporate the Open Dialogue method and approach. This dialogue practice is implemented for the purpose of motivating inmates to rehabilitate themselves and helping staff to deeply understand inmates. The importance of this initiative is expected to increase in the future, also to enhance psychological safety and to improve the work environment.

However, many staff members show resistance to the incorporation of the dialogue practices because it is impossible to incorporate the ideas and methods of the Open Dialogue as they are in correctional institutions, which have many restrictions in terms of security. The original way of conducting Open Dialogue is to let the speaker talk about what they want to talk about, and let the speaker take the initiative. Also, the practitioners are not supposed to be instructive or directive to the speaker. In correctional institutions, which put emphasis on security, discipline and order, staff members tend to be one-sided and instructive, and the idea of changing the inmates is strong. In addition, there is a belief that allowing inmates to talk freely about what they want to talk about may lead to cajolement, and this is why many staff members show resistance to the introduction of Open Dialogue. The two cases mentioned above were conducted in a prison where I worked, where inmates with less advanced criminality are detained. It may be more difficult and more problems may be faced when introducing Open Dialogue in other penal institutions that detain inmates with more advanced criminality in terms of security.

Currently, the Corrections Bureau has indicated that, in order to maintain order and discipline, the staff members — rather than the inmate — should take the initiative and decide the topics to be discussed when the correctional institution conducts Open Dialogue. Because there is a discrepancy from the original method of Open Dialogue, this current direction given by the Corrections Bureau is causing anxiety and confusion. Thus, it is necessary to consider how to incorporate methods and ideas of Open Dialogue in correctional institutions to the extent that it does not interfere with discipline, to establish concrete directions for conducting Open Dialogue in correctional institutions and to clearly indicate the directions by making an instruction manual.

VI. CONCLUSION

The following are suggestions based on my work experience. From now on, not just uniform treatment that focuses only on management and guidance but the ability and capacity to provide flexible treatment and support depending on the characteristics of each inmate, with help from experts in welfare, education and psychology, will be required. A drastic shift from discipline toward treatment which emphasizes "dialogue" aiming at well-balanced treatment between security and care is a pressing matter. Also, a work environment where opinions can be freely exchanged and collaboration can take place without being restricted by occupation or position is indispensable to treating inmates as a team. Establishment of a team treatment system with emphasis on "dialogue" might be an important key to preventing improper treatment.

[4] Guidance for reform is a programme implemented in Japanese correctional services which is aimed at rehabilitation.

BUILDING INTEGRITY: EXPLORING ABUSE AND CORRUPTION IN THE MALDIVES PRISON SYSTEM

Ibrahim Nashid[*]

I. INTRODUCTION

In 2003, the Maldivian Prison System faced the tragic death of Hassan Evan Naseem, a 16-year-old incarcerated for a drug offence. Evan Naseem's demise, attributed to torture inflicted by military officers, ignited outrage and catalysed a series of events that would ultimately reshape the Maldivian Prison System. News of Naseem's death triggered protests within Maafushi jail, with inmates demanding answers and these demonstrations spilled over into the capital city, Male', where the public, harbouring long-held suspicions of mistreatment within the penal system, erupted in protest. The initial call for democratic reform broadened to encompass a demand for a more humane prison system, one focused on rehabilitation rather than brutality. This public outcry forced a critical re-evaluation of Maldivian correctional facilities, pushing the nation towards a future where incarceration served not as a breeding ground for abuse but as an opportunity for reform.

The Maldives Correctional Services (MCS), established in 2013 by the Prison and Parole Act 14/2013,[1] serves as the Maldivian government's primary agency for prison administration and operation nationwide. The MCS houses both remand and convicted inmates and actively works to establish procedures for serving court-mandated sentences, ensuring inmates fulfil their legal obligations and potential to become law-abiding citizens upon release. This is done by prioritizing a multi-pronged approach to corrections through a four-phased rehabilitation programme which equips inmates with valuable skills necessary to foster offender reform and reintegration into society. Currently, the MCS houses 1,292 offenders.

Recognizing the importance of continuous improvement, MCS has actively undertaken efforts to establish a more humane and effective prison environment by addressing persistent allegations of inmate abuse and corruption. This paper examines the current state of inmate abuse and corruption within Maldivian correctional facilities. Furthermore, the paper analyses the existing legal framework and practices designed to prevent such abuses, followed by an identification of the key challenges hindering their effectiveness and the root causes of these issues. Finally, the paper proposes a series of solutions aimed at mitigating inmate abuse and corruption within MCS.

II. STATUS OF INMATE ABUSE AND CORRUPTION

A worrying trend of rising inmate abuse is seen from reports by the Human Rights Commission of Maldives (HRCM). In 2019, the HRCM documented 43 cases, and this number has increased to a staggering 114 cases in 2023, highlighting a more than two-fold increase.[2] Equally concerning are the reported cases of torture against MCS. These cases have also seen a sharp rise over the past five years, jumping from 17 in 2019 to a troubling 39 in 2023. Despite these alarming figures, only three cases were forwarded from the HRCM for prosecution, involving a total of seven prison officers. Furthermore, internal MCS records reveal five inmate abuse complaints against the organization in the past five years. Of these complaints, three were substantiated, prompting the MCS to take necessary measures to address the raised issues.

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[1] Prison and Parole Act (Act No. 14/2013).

[2] HRCM NPM Annual Report 2023.

An investigation into corruption within the prison system revealed that smuggling illegal substances into prison premises by prison officials is the most common type of corruption recorded. In the past five years alone, there have been seven documented instances of such smuggling and disciplinary measures have been taken against the involved officers, including termination for some. The investigation also brought to surface two separate incidents of inmate torture, resulting in disciplinary actions against the responsible officers.

III. CURRENT LEGAL FRAMEWORK TO PREVENT INMATE ABUSE AND CORRUPTION

The Maldives has a robust legal framework in place to protect the rights of inmates and prevent abuse and corruption within correctional facilities. This framework is anchored in the following key elements.

A. The Maldivian Constitution

The Maldivian Constitution serves as the cornerstone for protecting the rights of prisoners and ensuring their humane treatment.[3] It enshrines fundamental rights for all individuals, including those incarcerated within the correctional system. Article 54 specifically prohibits torture and cruel, inhuman or degrading treatment or punishment. This vital provision plays a critical role in safeguarding inmates from abuse within Maldivian correctional facilities,

B. Relevant Laws

Beyond the foundational principles established by the Constitution, several specific laws provide additional protections for inmates. Notable are the following.

1. The Penal Code

The Penal Code of the Maldives contains provisions that criminalize abuse and mistreatment of inmates. Offences such as assault, harassment or neglect of duty can be prosecuted under this law.[4]

2. The Prison and Parole Act

This legislation governs the operation and management of correctional facilities in the Maldives. It outlines the rights of inmates, including access to medical care, legal aid and accommodation in humane conditions.[5]

3. The Anti-Corruption Laws

While not directly focused on inmate abuse, these laws play a vital role in preventing corrupt practices within prisons. They target actions like bribery, embezzlement and abuse of power which can create an environment ripe for exploitation and mistreatment.[6]

4. The Anti-Torture Act

The Anti-Torture Act serves as a critical tool for preventing inmate abuse by explicitly prohibiting and criminalizing all forms of torture.[7] This act defines torture as acts that inflict severe physical or mental pain or suffering, often used to elicit information, punish, intimidate or discriminate against individuals. Importantly, the Act emphasizes that torture is a fundamental violation of human rights and human dignity and ensures the protection of all individuals in custody, including inmates, from any form of torture or ill-treatment.

C. Responsibilities of Correctional Facilities

Maldivian correctional facilities must uphold the rights of inmates as guaranteed by the Constitution and relevant laws. These facilities must provide a safe and secure environment for inmates, ensuring their physical and psychological well-being. Staff members are required to adhere to professional standards and codes of conduct to prevent abuse and corruption within the facilities. By adhering to the Maldivian

[3] Article 54 of Constitution of the Republic of Maldives (2008).
[4] Penal Code of Maldives (Act No. 09/2014).
[5] Article 68 and 69 of Prison and Parole Act (Act No. 14/2013).
[6] Prevention and Prohibition of Corruption Act (Act No. 02/2000).
[7] Anti-Torture Act (Act No. 13/2013).

Constitution, the Penal Code, the Prison and Parole Act and other relevant laws, correctional facilities in the Maldives are mandated to protect the rights of inmates, prevent abuse and combat corruption. Effective implementation and oversight of these legal provisions are essential for fostering a rehabilitative prison environment and upholding the dignity of all individuals in detention.

IV. CURRENT PRACTICES TO PREVENT INMATE ABUSE AND CORRUPTION

A. Staff Training Programmes

To ensure a safe and humane correctional environment, training sessions on ethical conduct are conducted for the staff. These sessions equip the staff with a thorough understanding of human rights principles and equip them with the skills to prevent abuse. By consistently reinforcing ethical behaviour, these training sessions can cultivate a culture of respect and professionalism within the facility. This fosters not only a safer environment for inmates but also a more positive work environment for correctional staff.

B. Monitoring Mechanisms

Several steps are currently being taken to prevent and address abuse within correctional facilities. Inspections by independent bodies like the Human Rights Commission of Maldives (HRCM),[8] Inspector of Correctional Service[9] and National Integrity Commission[10] regularly assess conditions and monitor inmate treatment. Additionally, surveillance systems are being implemented in key areas to deter misconduct. Moreover, confidential reporting channels have been established for staff to report abuse or corruption without fear of reprisal (Whistle-blowing).

C. National Preventive Mechanism (NPM)

The National Preventive Mechanism (NPM) established under the HRCM to fulfil its obligations under the Optional Protocol to the Convention against Torture (OPCAT).[11] This independent body conducts regular inspections of detention facilities to assess conditions, treatment of inmates and adherence to international human rights standards. The NPM's recommendations, based on these visits and analyses, guide constructive dialogue with the government to strengthen protections against torture and ill-treatment within the Maldivian prison system.

D. Reporting Protocols

Formal complaint mechanisms have been established within correctional facilities. These mechanisms allow inmates to report instances of abuse or corruption directly to designated personnel and relevant authorities, such as the Inspector of Correctional Services (ICS), HRCM and the National Integrity Commission (NIC).

Clear procedures for investigating reported incidents have also been implemented. These procedures focus on documenting evidence, conducting thorough interviews and taking appropriate disciplinary action based on professional standards. A dedicated Disciplinary Committee[12] oversees these investigations and ensures appropriate consequences for any misconduct identified.

V. THE PSYCHOLOGY OF INMATE VS GUARD AND PROPENSITY FOR ABUSE

The relationship between guards and inmates within correctional facilities is a complex case of power dynamics. Understanding the psychological underpinnings of this dynamic is crucial for mitigating abuse and fostering a more humane prison system. The Stanford Prison Experiment (SPE) by Professor Zimbardo, a seminal study in prison psychology, serves as a stark reminder of the transformative power of assigned

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[8] Human Rights Commission Act (Act No. 06/2006).
[9] Article 9 of Prison and Parole Act (Act No. 14/2013).
[10] National Integrity Commission Act (Act No. 27/2015).
[11] Article 4 of OPCAT.
[12] Article 45 of Prison and Parole Act (Act No. 14/2013).

roles.[13] College students randomly assigned as "guards" or "prisoners" within a simulated prison environment exhibited dramatic shifts in behaviour. Those tasked with guard roles displayed a concerning tendency towards authoritarianism and even abuse of power. This highlights the profound influence of assigned roles on behaviour, demonstrating how seemingly ordinary individuals can be swayed by the intoxicating allure of unchecked power.

The SPE further underscores the inherent dangers of power imbalances within prison settings. The experiment revealed a disturbing potential for prison environments to foster hostility and dehumanization, likely stemming from the stark power differential between guards and inmates. This dynamic can manifest in various forms, including guard brutality and bystander apathy among those unwilling to challenge the established power structure. Recognizing these psychological realities is paramount for implementing effective prison reform strategies. By acknowledging the ease with which abuse can occur under conditions of unchecked power, prison systems can prioritize robust oversight mechanisms and clear guidelines for guard conduct. Furthermore, fostering a culture of intervention within correctional facilities can help mitigate bystander apathy, encouraging guards to challenge instances of misconduct.

VI. ROOT CAUSES AND CHALLENGES TO INMATE ABUSE AND CORRUPTION

The MCS faces significant challenges in its fight against inmate abuse and corruption within its correctional facilities. While legal frameworks exist, ensuring their effectiveness remains a critical hurdle.

A. Lack of Robust Internal Oversight and Overcrowding

A major obstacle lies in the limited capacity for internal monitoring mechanisms. Resource constraints often hinder the ability to conduct regular and thorough inspections across the Maldives' geographically dispersed prisons. Without adequate internal mechanisms to identify and address potential issues, the risk of abuse, neglect and unsanitary conditions rises significantly. Furthermore, overcrowding, a persistent issue in Maldivian prisons, can exacerbate power imbalances and contribute to a climate of violence. Inmates confined in cramped and under-stimulating environments may be more susceptible to manipulation and exploitation by both guards and fellow inmates.

B. Professionalism and Staff Burnout

Another challenge lies in staff training and professionalism. Correctional officers in the Maldives receive limited training on human rights principles, de-escalation techniques and conflict resolution. This lack of preparedness can lead to a reliance on punitive measures and an increased risk of abuse. Additionally, low wages and poor working conditions for prison staff can contribute to feelings of resentment, a susceptibility to corruption and, ultimately, staff burnout. Guards facing financial hardship and chronic stress may become more vulnerable to bribery or involvement in smuggling activities, further compromising the system's integrity. The dispersed nature of the islands can exacerbate these issues, making oversight of staff conduct even more difficult.

C. Transparency, Accountability and Bystander Apathy

Finally, the effectiveness of existing legal frameworks can be hampered by a lack of transparency and accountability within the Maldivian prison system. A culture of secrecy can shield perpetrators of abuse from consequences, while inadequate grievance procedures, a lack of effective reporting channels and the social stigma of incarceration all contribute to a situation where inmates are hesitant to report abuse. This stigma, which may view inmates as deserving of their punishment, can lead to a tolerance of harsh treatment and a reluctance to intervene on their behalf, fostering bystander apathy among guards.

D. Difficulty Maintaining Order and Safety

The unique social fabric of the Maldives presents a distinct set of challenges in maintaining order and safety within its correctional facilities: inmates and officers often know each other personally, and it can hinder reporting of misconduct. Officers may be hesitant to report abuse by acquaintances, fearing repercussions outside the prison walls. Similarly, inmates might be reluctant to report abuse of other inmates

[13] Zimbardo, P. G. et al. (1973).

due to existing relationships or the fear of retaliation within the close-knit prison community. This dynamic creates blind spots for supervision, potentially increasing the likelihood of inmate-on-inmate violence and leaving vulnerable populations, such as people convicted of sexual crimes, particularly exposed.

VII. PROPOSED SOLUTIONS

The Maldives faces unique challenges in its fight against inmate abuse and corruption due to the scattered nature of its islands. Below is a breakdown of proposed solutions to address the key obstacles.

A. Limited Oversight and Overcrowding

To strengthen oversight, increased funding for independent oversight bodies is crucial. Additionally, utilizing technology like remote monitoring systems can overcome logistical challenges posed by the dispersed islands. Addressing overcrowding requires a multi-pronged approach. Exploring alternative sentencing options for non-violent offenders can help reduce prison populations. Investing in prison capacity expansion projects and prioritizing rehabilitation programmes to decrease recidivism rates are also essential steps.

B. Staff Investments

Investing in staff training on human rights, de-escalation techniques, conflict resolution and anti-corruption measures is vital. Improving working conditions through competitive wages, better benefits packages and mental health support programmes can create a more professional and resilient correctional workforce. Regularly rotating staff assignments between islands can further reduce opportunities for complacency and collusion.

C. Empowering Inmates

Empowering inmates through anonymous and confidential reporting channels, such as hotlines, online reporting systems or designated personnel, is key. Promoting transparency requires implementing clear and accessible grievance procedures for inmates to report abuse. Conducting regular inspections with independent oversight bodies and publishing reports can further enhance transparency. Shifting societal attitudes through public education campaigns and community outreach programmes is crucial to challenge the social stigma of incarceration and foster a culture of respect for human rights, including those of inmates.

D. Bolstering Security

The Maldives' unique geography necessitates bolstered security measures. Increased collaboration between island communities and prison authorities can improve information sharing and identify potential threats. Implementing stricter screening procedures for staff and visitors, including background checks and random inspections, is essential. Additionally, exploring the use of technology solutions like surveillance cameras, access control systems and contraband detection equipment can enhance monitoring and control within prison. By implementing these targeted reforms, the Maldives can move towards a more humane and rights-respecting prison system, where both staff and inmates are treated with dignity.

VIII. CONCLUSION

The MCS faces a growing challenge of a rising number of inmate abuse and corruption allegations documented by the HCRM reports and internal MCS records. This concerning trend necessitates a comprehensive response from the MCS, even though the existing legal framework provides a strong foundation for preventing abuse. The gap lies in effectively translating these legal protections into everyday practices within MCS facilities. To bridge the gap between legal protections and their practical application, the MCS must actively strengthen oversight mechanisms and implement robust reporting systems for abuse allegations. Furthermore, fostering a culture of transparency and accountability within the MCS is equally important as providing guards with necessary mental health support. This further mitigates the risk of inmate abuse and corruption. By actively implementing these solutions, the MCS can embark on a transformative journey towards creating a more humane and effective prison system in the Maldives. This system will prioritize the respect for the rights and dignity of all individuals, both inmates and staff.

PART TWO

RESOURCE MATERIAL SERIES No. 119

Work Product of the 26th UNAFEI UNCAC Training Programme

UNAFEI

REPORT OF THE PROGRAMME

THE 26TH UNAFEI UNCAC TRAINING PROGRAMME

"STRENGTHENING PREVENTION, DETECTION AND PROSECUTION OF CORRUPTION, AND PUBLIC-PRIVATE PARTNERSHIP"

1. Duration and Participants

- From 23rd October to 19th November 2024
- 25 overseas participants from 20 countries and regions
- 4 participants from Japan

2. The Purpose of the Programme

This programme, which had "Strengthening Prevention, Detection and Prosecution of Corruption, and Public-Private Partnership" as its main theme, aimed to:

1) Analyse the current situation and causes of corruption in each participant's country, share best practices in each country, and discuss effective future countermeasures;

2) Discuss measures to strengthen mutual coordination and cooperation between the public and the private sector at each phase of the prevention, detection and prosecution of corruption;

3) Foster mutual understanding and trust among participants and build a global network of criminal justice practitioners for the improvement of practices and the future exchange of information in each country.

3. Contents of the Programme

(1) Lectures

- Visiting Experts

A) "Foreign Corrupt Practices Act (FCPA) and Foreign Extortion Prevention Act (FEPA)"
Clayton Solomon
(Trial Attorney, Foreign Corrupt Practices Act Unit, U.S. Department of Justice)

Paul Hayden
(Trial Attorney, Foreign Corrupt Practices Act Unit, U.S. Department of Justice)

B) "Investigating and Prosecuting Corruption"
"Investigating Corruption: Putting It Together"
Kimberly Sokolich
(Resident Legal Advisor, Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT), U.S. Department of Justice)

C) "Selected provisions from UNCAC and implementation in Southeast Asia"
Annika Wythes
(Team Lead for Anti-Corruption Hub for Southeast Asia, United Nations Office on Drugs and Crime (UNODC), Regional Office for Southeast Asia and the Pacific)

D) "The OECD Anti-Bribery Convention and the OECD Working Group on Bribery"
Dr. Balázs Garamvölgyi
(Legal Analyst, Organisation for Economic Co-operation and Development (OECD), Anti-corruption Division)

- Japanese Experts

A) "Antimonopoly Act, Act on Prevention of Bid Rigging and Other Legislation"
FUJIWARA Takeshi
(Special Investigation Coordinator, Investigation Bureau, General Secretariat, Japan Fair Trade Commission)

B) "Detection and Investigation of Corruption Cases"
SUZUKI Shigetomo
(Assistant Director, Criminal Investigation Bureau, National Police Agency)

C) "Preventive Measures Against Corruption by Government Officials"
MATSUO Yuriko
(Chief Ethics Policy Planning & Coordination Officer, National Public Service Ethics Board)

D) "Detection, Investigation and Prosecution of Major Corruption Cases, Focusing on Proceedings with Investigation"
SEKIGUCHI Shintaro
(Public Prosecutor, Criminal Affairs Department, Tokyo High Public Prosecutors Office)

E) "The Use of Digital Forensics in Investigations of Crime"
Mcllroy Nanae
(Public Prosecutor, Japan Prosecutors Unit on Emerging Crimes (JPEC), Supreme Public Prosecutors Office)

(2) Opinion Exchange Sessions

A) Private Lawyers from Anti-Bribery Committee Japan (ABCJ)

NISHIGAKI Kengo (Attorney at Law)

INAGAWA Tatsuya (Attorney at Law)

MATSUO Nobuhiro (Attorney at Law)

FUKUHARA Ayumi (Attorney at Law)

B) Private Companies and Academia

YABE Hidetaka
(Executive Director, Global Compact Network Japan)

FUJINO Shinya
(Associate Professor, Vietnam Japan University)

OGAWA Toru
(Legal Department, TOYOTA Motor Corporation)

IMAI Takeyoshi
(Professor/ Lawyer, Hosei University Law School)

(3) Individual Presentations

Each participant made an individual presentation describing the current situation and challenges in the participant's country. Participants asked many questions to the presenters and an active discussion was held. Materials for presentation and overview sheets which described the legal system of the respective participants' countries were shared for reference by the participants.

(4) Study Visits

The participants visited the following facilities to learn about anti-corruption efforts in Japan.

- Yokohama Customs
- Supreme Court

(5) Group Workshops

The participants were divided into four groups. Based on the knowledge gained through the individual presentations, lectures by experts and study visits, the participants discussed measures for strengthening prevention, detection and prosecution of corruption. The results of the discussions were summarized as concrete action plans for possible future measures, and presented to all participants and staff of UNAFEI, followed by a question-and-answer session.

4. Feedback from the Participants

Most participants highly appreciated the well-structured programme, noting that they enhanced their knowledge and understanding of global trends and emerging anti-corruption issues through the lectures by UNAFEI professors and experts, learning good practices from other countries through individual presentations, and sharing knowledge through group discussions and presentations. Many participants also commented positively that the programme enabled them to foster friendship and trust among participants. To address the key topic of this programme — "multi-stakeholder partnership" — many experts from Japan and abroad, including from the private sector, were invited to provide lectures and to engage in active exchange of views and opinions with the participants. The participants expressed their appreciation for the lectures and opinion exchange sessions, as they not only enhanced their perspectives of anti-corruption initiatives through public-private partnership but were also greatly inspired with the potential to develop such partnership in their home countries.

5. Comments from the Programming Officer

Corruption undermines the rule of law and sustainable development, impeding public trust in the integrity of public officials and authorities, compromising the quality of public services and security. It can also result in the misappropriation of funds intended for development and discourage foreign investment. Despite a number of steps taken by the international community, including the UN Convention against Corruption and the OECD Convention against Bribery of Foreign Public Officials, an effective solution to this global problem remains elusive.

In order to effectively combat corruption, it is crucial not only to thoroughly detect, prosecute and impose serious punishments, but also to implement preventive measures, including education for youth and awareness-raising of the general public. In this regard, measures of prevention, detection, and prosecution of corruption taken by the public sector are not enough. Therefore, UNAFEI focused on public-private partnership in this programme, highlighting that investigation, prosecution and punishment by the public sector, when combined with preventive efforts by the private sector, are most effective when they complement and reinforce each other.

In this programme, UNAFEI brought together participants from 21 countries and regions to reflect on, learn about, and discuss anti-corruption measures over the course of a month. There is no universal, one-size-fits-all solution that can be applied to all these countries and regions, each with different systems, unique cultures and histories. Moreover, corruption is not merely a result of the greedy intentions or motives of the bribe-takers; rather, it is a complex issue intertwined with various social factors such as poverty, security, education, and historical and cultural contexts. Therefore, the reduction of corruption cannot be achieved solely through the introduction of specific legal systems or initiatives, nor by imposing severe punishments. Instead, it requires a long-term effort to gradually cultivate and foster societal climate and culture that does not tolerate corruption.

It is my sincere hope that the knowledge and perspectives gained by each participant through this programme will contribute to the development of anti-corruption measures in each country. There is a proverb that "a journey of a thousand miles begins with a single step", and I believe that this programme will be an important step in the "journey of a thousand miles" of the fight against corruption for each country.

EXPERT'S PAPER

PREVENTING CORRUPTION IN THE PRIVATE SECTOR AND THE ROLE OF PUBLIC-PRIVATE COLLABORATION IN CORRUPTION PREVENTION

*Dr. IMAI Takeyoshi**

I. THE CONCEPT OF CORRUPTION

Corruption refers to acts of hindering economic activities that should be free and fair. Such acts pose risks to the financial interests of consumers and to the property of citizens as taxpayers. With this understanding and for the purpose of this report, corruption is defined as follows:

"Corruption refers to acts that deviate from the institutional framework assumed for transactions (i.e., 'exchanges based on free and voluntary decision-making concerning goods or services') and that create risks of infringing various legal interests that should be protected during free and fair transactions."

The rationale for this definition is explained below. There are diverse interpretations of corruption, particularly concerning its relationship to bribery. However, neither concept currently has a universally accepted definition. For example, corruption has been defined as "the misuse of entrusted power for private gain"[1] or "the abuse of public office for private benefit."[2] These broad definitions are useful for expanding the scope of legal sanctions targeting corruption, but they are not definite.

From such a comprehensive perspective, corruption can include many existing crimes, such as bid-rigging, fraud, extortion, embezzlement, breach of trust, prostitution, breach of confidentiality, and insider trading. However, this broad approach risks making the concept of corruption ambiguous, turning it into a "black box".[3] Thus, it is necessary to clearly define what constitutes corruption that warrants legal punishment.[4] It is challenging to link corruption to specific legal interests, as noted above. Nonetheless, considering the problem mentioned above, a more suitable understanding should be explored. It would be as follows: *"Corruption constitutes a highly specific form of attack capable of infringing diverse legal interests."* [5] This perspective is also useful for understanding bribery, which is often considered as a typical example of corruption.[6]

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* Professor (Doctor of Law), Hosei University, Japan. This paper is a revised and expanded version of the manuscript for the presentation at UNAFEI on 11th of November 2024. The author would like to acknowledge and express appreciation to Ms. Caroline Lebreton (Lecturer of Criminal Law at Hosei University), Mr. Takahiro Ogawa (Japanese Attorney at Law), Mr. Yasushi Takayama (Attorney at Law, admitted to the New York State Bar) and Mr. Takashi Nakaota (Japanese Attorney at Law) for their many important comments on the draft of this paper.

[1] Transparency International, *Anti-Corruption Plain Language Guide*, 2009, p. 14.

[2] Cf. Till Zimmermann, *Die Universalgrammatik der Korruptionsdelikte*, GA 2024, p. 306.
Engels, *Heidelberger Zeitschrift für Wirtschaftsrecht* (HZ) 282 (2006), p. 313.

[3] Zimmermann, *ibid*., 302.

[4] Dölling, *Gutachten* C 61. DJT, Bd. 1, 1996, S. C 9.

[5] Kindhäuser, *Voraussetzungen strafbarer Korruption in Staat*, (ZIS) 2011, p. 461; Zimmermann, *ibid*., p. 307.

[6] This method of explaining the characteristics of a crime by focusing on forms that infringe upon multiple legal interests can also be observed in relation to other offences. For instance, the legal interest protected by the crime of document forgery is often understood as the social trust placed in documents, but this concept of trust is meaningless. Documents are protected from material forgery (*faux matériel*) and intellectual forgery (*faux intellectuel*) because various activities facilitated by documents involve the realization and protection of diverse legal interests. When documents are materially or intellectually forged, there is a risk of these legal interests being infringed. Accordingly, the crime of document forgery should be understood as a type of offence that infringes upon various societal interests through attacks on documents (see Takeyoshi Imai, "*An Examination of the Crime of Document Forgery (vol.6, Final)*," *Journal of the Jurisprudence Association(the University of Tokyo,Faculty of Law)*, Vol. 116, No. 8 (1999), pp. 1297 et seq.).

II. THE LEGAL INTERESTS PROTECTED BY BRIBERY LAWS

The legal interest protected by anti-bribery laws is often considered to be society's trust in the impartiality of public officials' duties.[7] However, without analysing the substance of such trust, the term "trust" remains as an abstract and ambiguous notion, and is insufficient to adequately explain the scope of bribery laws.

Bribery involves acts such as offering or promising benefits to public officials performing specific duties, thereby distorting the decision-making process of public officials engaged in official activities and obstructing the realization of duties prescribed by law. In other words, public officials are paid salaries funded by taxpayers; therefore, they may not distort their decision-making processes under the influence of benefits other than their salaries.

Public duties, which are inherently services or goods that cannot be purchased through the market, should not be acquired through the presentation of non-salary benefits to public officials tasked with determining and executing those duties. Such actions constitute prohibited and illegal interference in free market transactions, which deserve to be forbidden in relation to public duties.

This rationale underpins the basis for punishing bribery and explains why offering benefits to public officials responsible for specific duties is a necessary condition for bribery offences. It should be noted that influential traditional theories have effectively made similar claims. These include:

1. **Dr. Binding's Decision Theory:** This theory holds that the grounds for punishing bribery lie in the undue influence exerted on the decision-making processes of public officials in their official duties through the provision of benefits. It considers that the wrongness of the bribery offence lies in seducing or luring the public official to decide to act or refrain from acting for the benefit of the benefit-giver or a third party.

2. **The Non-Commercializability Theory:** This theory asserts that public duties are providing citizens with goods or services that cannot be purchased through the market, so actions involving their acquisition through benefits or inducements outside the market constitute punishable bribery.

Based on this understanding, this report examines approaches to preventing bribery as a typical example of corruption.

III. TYPES OF CORRUPTION

A. Overview

Corruption can be broadly categorized into Private Corruption and Public Corruption. The former, Private Corruption, is often referred to as business bribery. The latter, Public Corruption, can be further divided into Domestic Bribery (bribery within the country) and Foreign Bribery (bribery of foreign public officials).

Private Corruption can be punished under provisions such as Section 299(1) of the German Penal Code,[8, 9] while Japan's Penal Code lacks equivalent provisions.[10] In Japan, acts corresponding to Private Corruption are often prosecuted under crimes like embezzlement (Penal Code Sections 242, 253), breach of trust (Section 247), or fraudulent business interference (Section 233). The focus of this report is on the prevention of Public Corruption, which should be addressed by specific legal provisions (Section 197-198).

B. Public Corruption

1. Domestic Bribery

Hereafter, we will focus on Domestic Bribery within the context of Public Corruption. Domestic bribery occurs when a public official receives monetary or other benefits from a private party in relation to his or her official duties. These benefits are deemed bribes when the act is confirmed as domestic bribery.

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[7] Feuerbach, *Themis, oder Beiträge zur Gesetzgebung*, 1812, p. 187.

As mentioned earlier, domestic bribery is often seen as an act that harms public trust in the impartiality of official duties and, therefore, should be punished. However, this explanation alone does not fully clarify the basis for punishing domestic bribery.

To understand the appropriate justification of the crime, let us look at the following example. Ex: an employee of a construction company offers benefits to a staff member in charge of awarding a contract in a government building department, with the objective of securing a repair contract for their company. In that case, both the bribe-taking offence (Penal Code Section 197) and the bribe-giving offence (Penal Code Section 198) could be established. The substantive basis for both punishments lays in the potential waste of public funds caused by awarding contracts at an inflated price, which would ultimately lead to financial harm for taxpayers.

In other words, public duties are provision of services or goods that private individuals cannot purchase through the market. When individuals attempt to "buy" public duties by offering benefits to public officials responsible for executing those duties outside the prescribed process, they violate the intrinsic non-purchasability of public duties. This obstructs the proper execution of public duties and jeopardizes the property interests of the public — the end users (i.e., beneficiaries) of these duties. Therefore, such actions should be punished.

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[8] Section 299

Taking and giving bribes in commercial practice

(1) Whoever, in commercial practice in the capacity as an employee or agent of a business,

1. demands, allows themselves to be promised or accepts a benefit for themselves or a third party in return for giving an unfair preference to another in the competitive purchase of goods or services in Germany or abroad or
2. without the permission of the business demands, allows themselves to be promised or accepts a benefit for themselves or a third party in return for performing or refraining from performing an act in the competitive purchase of goods or services, thereby breaching the duty incumbent on them towards the business,

incurs a penalty of imprisonment for a term not exceeding three years or a fine.

(2) Whoever, in commercial practice,

1. offers, promises or grants a benefit to an employee or agent of a business or a third party in return for giving that person or another an unfair preference in the competitive purchase of goods or services in Germany or abroad or
2. without the permission of the business offers, promises or grants an employee or agent of a business or a third party a benefit in return for performing or refraining from performing an act in the competitive purchase of goods or services, and thereby breaches the duty incumbent on them in relation to the business,

incurs the same penalty.

Cf. https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html.

[9] The *UK Bribery Act 2010 (UKBA)* addresses private corruption through *Section 1* and *Section 2*, which respectively penalize *active bribery* and *passive bribery*. The *Section 1* and *Section 2 are as follows*:

1. *Section 1: Bribing Another Person (Active Bribery):* When a person offers, promises, or gives a financial or other advantage to induce or reward improper performance of a relevant function or activity, which includes activities in the private sector.
2. *Section 2: Being Bribed (Passive Bribery):* When a person requests, agrees to receive, or accepts a financial or other advantage, intending that, as a result, a relevant function or activity will be performed improperly.

The "relevant function or activity" includes roles in both the public and private sectors where there is an expectation to act with integrity, impartiality, or good faith.

A detailed examination of the specific application of *Sections 1* and *2* is beyond the scope of this paper.

[10] As an exception, for example, section 967, Paragraph 2 of the Companies Act in Japan stipulates the offence of bribery involving directors and other officers of a joint-stock company.

Section 967

(1) When any one of the following persons accepts, solicits or promises to accept property benefits in connection with such person's duties, in response to a wrongful request, such person is punished by imprisonment for not more than five years or a fine of not more than five million yen:

(i) any one of the persons listed in the items of section 960, paragraph (1) or the items of section 960, paragraph (2);
(ii) the person prescribed in section 961; or
(iii) financial auditor or a person who is temporarily to perform the duties of a financial auditor appointed pursuant to the provisions of section 346, paragraph (4).

(2) A person who has given, offered or promised to give the benefits set forth in the preceding paragraph is punished by imprisonment for not more than three years or a fine of not more than three million yen.

Cf. https://www.japaneselawtranslation.go.jp/ja/laws/view/3207#je_pt4at8

2. Foreign Bribery (Foreign Public Official Bribery)

Another form of public corruption is foreign bribery. This occurs when, for example, a person from Country α provides money or other benefits to a public official from Country β with the intention of obtaining favourable treatment regarding the official's duties, and the official accepts the bribe.

This type of offence gained international attention after the enactment of the US Foreign Corrupt Practices Act (FCPA) in 1977, followed by the adoption of the OECD Anti-Bribery Convention in 1999, which led to the incorporation of laws against foreign bribery into the domestic legal systems of OECD member countries.

The justification for punishing foreign bribery under domestic law can be explained as follows. For example, a company (Company X) from Country A, after undergoing a bidding process, attempts to provide goods or services to a public official (Official O) in Country B. Even if the goods or services offered by Company X are of inferior quality compared to those offered by a company (Company Y) from Country C through the bidding process, if Company X bribes Official O and wins the contract, citizens of Country B will end up receiving relatively inferior goods or services. This results in financial harm to the citizens, who unknowingly suffer from receiving substandard goods or services. In this case, the malicious nature of Company X's and O's actions justifies punishment.

Thus, it can be interpreted as follows: foreign bribery is to be punished because it hinders the free and fair transactions that citizens of the foreign country should expect, thereby endangering their economic rights. This justification for punishment is the same as domestic bribery.

3. Justification for Punishing Domestic and Foreign Bribery: A Recap

The crime of domestic bribery is often said to protect the trust in the duties of domestic public officials, as these duties cannot be bought or sold in the marketplace. When a public official engages in bribery, it undermines the trust in their ability to perform their duties impartially. In fact, it could violate the financial rights of the citizens, which justifies punishment.

Similarly, foreign bribery is often said to protect fair business transactions between businesses in different countries. It should be restated as follows: Foreign public officials are prohibited from selling their authority outside of their official capacity, and when they violate this prohibition, it disrupts fair trade and harms the economic interests of citizens in the foreign country, which deserves to be punished.

Both domestic bribery and foreign bribery have an aspect of crime against property. In both cases, the crime is not victimless and results in harm to citizens' financial interests. It is important to note that both types of bribery occur in competitive situations[11] and are not crimes without victims.[12]

This understanding of the protected legal interests is crucial for interpreting both types of bribery (domestic and foreign). To develop a deeper understanding of them, it would be useful to look at some precedents.

IV. SPECIFIC EXAMPLES

A. General Overview

In order for us to understand the substance of corruption concretely, it is helpful to review a few notable cases where corruption has been identified. Here, we will focus on cases from Germany and Japan. The reason for selecting these two countries is twofold:

1. Germany has a significant number of cases involving foreign public official bribery, making it a convenient context to study the application of foreign bribery laws.

[11] Pieth, *Bekämpfung der Korruption im internationalen Geschäftsverkehr* in Festschrift for FS Rehberg (1996), p. 233, 235.
[12] Zimmerman, *op.cit.*, p. 312.

2. In Japan, cases involving business bribery, which are related to corruption offences such as bid-rigging, provide insight into the extent of corruption deterrence in the country.

B. Specific Examples: Cases from Germany and Japan

Below are specific cases (with the case names and URLs for reference) from Germany and Japan, showcasing examples of private corruption and public corruption.

Nation	Case Name	Private Corruption	Public Corruption
Germany	Siemens (2008)[13]	○	○
	Ferrostaal (2011)[14]	○	
	VW Emission Scandal (2020)[15]	○	Possible
	Airbus (2020)[16]	○	○
Japan	Lockheed Scandal (1970s)[17]	○	Possible
	Recruit Scandal (1980s)[18]	Possible	○
	Dango (Bid-Rigging Scandals, 1990s-2000s)[19]	○	Crime of Collusion (section 96-2-2 of the Criminal Code)
	Olympus Scandal (2011)[20]	Crime of Violating the Financial Instruments and Exchange Act	
	Toyota Emission Check Scandal (since 2023)[21]	Crimes of Violating Consumer Law	

Note: *Private corruption* refers to cases involving bribery or unethical practices in private business transactions or corporate settings, while *public corruption* refers to cases where public officials are involved in bribery or unethical conduct related to their official duties.

The table highlights various corruption-related offences, such as domestic bribery, foreign bribery, collusion, and violations of specific laws like the Financial Instruments and Exchange Act and Consumer Law in Japan. These cases serve as concrete examples to understand how corruption manifests in both the private and public sectors in different legal and cultural contexts.

V. MEASURES AGAINST CORRUPTION: IMPORTANCE OF COLLABORATION BETWEEN THE PUBLIC AND PRIVATE SECTORS

A. Measures Needed for Combating Corruption: Proper Role Allocation between Regulatory and Criminal Sanctions

We will hereafter examine the measures applicable to natural and legal persons involved in public and

[13] https://www.reuters.com/article/business/-siemens-battles-corruption-scandal-idUSTRE4BE4ID/
[14] https://www.spiegel.de/international/business/corruption-investigation-germany-s-ferrostaal-suspected-of-organizing-bribes-for-other-firms-a-686513.html
[15] https://www.reuters.com/article/business/volkswagen-says-diesel-scandal-has-cost-it-313-billion-\euros-idUSKBN2141JA/
[16] https://www.occrp.org/en/investigation/as-bribery-probe-unfolded-airbus-kept-in-touch-with-middleman-on-controversial-kuwait-helicopters-deal#:~:text=In%202020%2C%20Airbus%20struck%20deals%20with%20French%2C%20U.K.%2C,secure%20contracts%20in%20at%20least%20a%20dozen%20countries.
[17] https://asiatimes.com/2016/12/lockheed-scandal-40-years-downfall-prime-minister-kakuei-tanaka/
[18] https://web.archive.org/web/20120627190521/http://www.yomiuri.co.jp/dy/business/T120626005277.htm
[19] https://www.mfj.gr.jp/web/lunch_seminar/documents/Ohashi20070122.pdf
[20] https://www.nytimes.com/2011/12/09/business/deep-roots-of-fraud-at-olympus.html
[21] https://english.kyodonews.net/news/2024/01/ae5a9a8eaf58-urgent-toyota-group-firm-rigged-data-on-diesel-engine-power-output.html

private corruption. More precisely, we will focus on how regulatory as well as criminal sanctions should be appropriately balanced and applied.

B. Analysis from the Traditional Legal Perspective

1. Viewpoint from the Comparison of Related Systems in Germany, the US and Japan

To prevent corruption, it is necessary to effectively differentiate and apply regulatory and criminal sanctions. As mentioned earlier, the concept of corruption is likely to be understood expansively within this framework, where some acts are deemed illegal but do not or should not necessarily lead to criminal sanctions.

This understanding can be meaningful in some cases. Indeed, when considering legal sanctions for those involved in bribery, one should first consider civil and administrative sanctions before considering criminal sanctions. In those stages, it is not unreasonable to understand the concept of corruption in a relatively broad sense. In Japan, the regulation of bribery as corruption is often based on criminal sanctions for individuals. However, in other countries, administrative sanctions[22] play a significant role. Therefore, we will overview the situations in Germany and U.S. federal law.

Firstly, in Germany, when a corporation is involved in bribery, an administrative fine may be imposed on the corporation.[23] A corporation may be fined up to 10 million euros based on the profits obtained through bribery. In addition to this maximum fine, the illegal profits may be confiscated.[24] This is not a criminal but an administrative penalty applied when a corporation fails to take measures to prevent illegal acts. Secondly, under U.S. federal law, both natural persons and corporations involved in bribery face civil, administrative and criminal sanctions.

- Civil sanctions under the FCPA:
  - The FCPA allows for the forfeiture of illegal profits and the imposition of fines as civil sanctions.[25]
  - These civil penalties are relatively easy to apply because the standard of proof is "preponderance of the evidence" rather than "beyond a reasonable doubt".[26]
  - Furthermore, companies and individuals involved in bribery may be debarred from federal government contracts.[27]
- Criminal penalties under the Foreign Corrupt Practices Act (FCPA, 1977) and the Federal Bribery Statute (18 U.S.C. § 201):
  - Individuals or corporations engaged in bribery may face fines or imprisonment.
  - The fine amount can be twice the profit obtained from the illegal act[28] or a specific amount[29, 30]). Additionally, profits derived from bribery may be subject to civil forfeiture.[31]

Thirdly, in Japan: In cases of bribery, criminal penalties are imposed on individuals involved under the

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[22] In this context, the term "administrative penalty" is more suitable than "regulatory sanctions" because it specifically highlights the nature of the sanction as distinct from civil and criminal sanctions. Administrative penalties typically refer to sanctions imposed by administrative agencies (such as government bodies) for violations of rules or regulations, and they are not criminal or civil in nature.

[23] Ordnungswidrigkeitenrecht (OWiG), Sections 30 and 130.

[24] OWiG, Section 30.

[25] 15 U.S.C. § 78u(d)(3); 15 U.S.C. § 78dd-2(g)(1).

[26] The FCPA also addresses violations of accounting and record-keeping obligations, which can play a key role in uncovering information relevant to suspected bribery cases (15 U.S.C. § 78u(d)(1), 15 U.S.C. § 78m(b)(2)(A), 15 U.S.C. § 78m(b)(2)(B)).

[27] 48 C.F.R. § 9.406-2, 48 C.F.R. § 9.406-3.

[28] 18 U.S.C. § 3571(d).

[29] For example, under the FCPA, up to 2 million dollars for corporations.

[30] 15 U.S.C. § 78dd-2(g)(1)(A).

[31] 18 U.S.C. § 981(a)(1)(c).

Penal Code (especially sections 197-198). Regarding corporations involved in bribery, Japan does not have an administrative fine system for corporations like Germany. However, administrative measures such as business suspension orders or the cancellation of permits to participate in bidding may apply in certain cases. Specifically, administrative sanctions similar to the debarment under U.S. federal law may also apply to corporations in Japan. These sanctions are enforced under the Antimonopoly Act, Public Works Contract Law, Administrative Procedures Act and Local Government Act, as well as exclusion clauses in competitive bidding rules established by public institutions and local governments.

In Japan's legal system, criminal penalties are not directly applied to corporations. An important exception to this is in cases of foreign bribery, where under the *dual penalties provision*, if an individual involved is identified, a corporation may be held liable for negligence based on the failure to supervise the individual.[32]

Thus, the systems of legal sanctions for natural persons and corporations involved in bribery differ across Japan, the U.S. and Germany in terms of the scope of corporate punishment, types of administrative sanctions and whether civil judicial proceedings are required to apply them.

With this understanding in mind, this paper will examine how to design an optimal division of roles between administrative and criminal penalties for natural persons and corporations. The analysis will first be approached from the traditional criminal law theory perspective, and then, insights from law and economics will also be considered.

2. Introductory Considerations on Enhancing the Effectiveness of Corruption Deterrence

The enhancement of corruption deterrence effectiveness must take into account the vital role of the private sector. To better understand this, let us consider a case of public corruption, such as domestic bribery. It is usually subject to initial investigation and sanction by the regulatory authorities. Once discovered, the regulatory agency typically conducts an investigation and considers sanctions. Then, a public prosecutor decides on whether or not to indict the case to the court for proving the offender to be criminally liable. After the case was charged, the court will decide on the conviction, and if deemed guilty, on the sentence (imprisonments or fine).

In relation to domestic bribery, the effectiveness of both regulatory and criminal sanctions lies in their potential to deter similar offences. It can be argued that regulatory sanctions should be aimed at addressing and deterring illegal activities without the need for criminal sanctions. However, this assumption may not always be sufficient, especially when an act of corruption involves public officials who hold discretionary power, which could hold a presumption of legality. But even in this case, the abuse of the discretionary power may be identified as the result of the bribe he or she received. So in this paper, such a case is also to be dealt with as a typical case of domestic and foreign bribery.

While a broader perspective, *retributive justice* — the legal condemnation of a wrongdoer based on their actions — has been a traditional focus of criminal sanctions, focusing purely on retribution may undervalue the deterrent effects of (not only criminal but also) regulatory sanctions. Retributive justice, which relies heavily on societal ethical intuitions, may not provide an objective basis for calculating the optimal amount of resources to be invested in deterring crimes including domestic bribery.

Both regulatory and criminal sanctions require the allocation of finite resources, and the implementation of these measures, which ultimately involve taxpayer money, should aim to maximize social benefits. The goal should be to optimize the deterrent effect of *domestic bribery* by considering the relationship between the effectiveness of regulatory and criminal sanctions, maximizing overall social utility.

This perspective is useful when discussing the prevention of corruption in the private sector, taking into account the collaboration between the public and private sectors in anti-corruption efforts. The prevention of domestic bribery, which is one of the key concerns of civil society, requires businesses to work closely with the relevant public authorities, especially when corruption is suspected. In such situations, private-sector businesses are likely to collaborate with the relevant public agency and consult with public prosecutors, keeping future possible criminal prosecution in mind.

[32] Unfair Competition Prevention Act, sections 22(1)(i), 18(1).

In each phase of this process, businesses should consider the potential losses they may face, the deterrent power of regulatory sanctions, and the role of criminal sanctions in supplementing these deterrent efforts. Therefore, by providing businesses with a predictable legal framework, including the potential legal outcomes, their willingness to cooperate in clarifying corruption cases could be increased. This approach will also enhance the overall effectiveness of anti-corruption measures, as businesses become more engaged in the resolution of such issues.

Thus, the integration of *regulatory and criminal sanctions*, along with *collaboration between the public and private sectors*, is critical to enhancing the effectiveness of corruption deterrence.

C. Analysis from a Law and Economics Perspective

1. Basic Perspective

When domestic bribery is uncovered, the private sector individual involved (such as an employee of a company) is supposed to be subject to internal sanctions by their employer (e.g., a violation of the employment contract leading to disciplinary actions[33]). Additionally, the company may report the suspicion of bribery to the relevant public authority, where the suspected public official works.

Upon receiving the report, the public authority (i.e., regulatory agency) may initiate an internal investigation to assess the allegations of bribery.[34] If the facts are established, the public official may face regulatory fine (denoted as "s", cf chart 2 below). It is important to note again that the accuracy of fact-finding by the regulatory agency does not need to reach the level of certainty required in a criminal trial (i.e., beyond a reasonable doubt). For a disciplinary procedure, the facts need only to be established in the degree of preponderance of the evidence.

As to the regulatory fines on the public official involved, if its expected deterrence effect is deemed sufficient to prevent future bribery offences of the same kind, further criminal prosecution may not be necessary. On the other hand, if the deterrence effect of the regulatory measure (denoted as "m", cf chart 2 below) is insufficient to prevent similar bribery cases, criminal prosecution may be required. In such a case, the prosecutor would bring charges, and the court would make a judgment. If the court convicts the public official for bribery, it may impose a penalty, such as a criminal fine (denoted as "f", cf chart 2 below),[35] on the official.

To assess the deterrence effect of the said legal sanctions to the suspected offender of bribery, both the regulatory sanction (f) and the potential criminal sanctions (s) should be evaluated together, considering the probability of enforcement. The total deterrence effect will depend on the combined impact of both types of sanctions (f+s) and the likelihood of each being imposed.

This approach follows a law and economics framework, where the optimal deterrence is determined by evaluating the expected social utility of different sanctions (regulatory and criminal one) and considering the costs and benefits associated with their enforcement. The goal is to maximize deterrence against bribery while balancing the resources and efforts required for enforcement.

The key consideration here is that private sector businesses have a critical role to play in collaborating with public authorities to prevent bribery. On the one hand, if the regulatory sanctions are effective in deterring bribery, businesses might not be involved in criminal proceedings. On the other hand, if regulatory sanctions fall short of this aim, criminal prosecution would be necessary. In both cases, the effectiveness of

[33] If a public official engages in misconduct such as accepting a bribe, the following disciplinary actions may be imposed in Japan as those stipulated in section 29 of the Local Public Service Act and section 82 of the National Public Service Act.

[34] Public officials who accept bribes may also face disciplinary actions, such as dismissal by their respective employers (i.e., governmental agencies). This is similar to how private-sector employees involved in bribery on the giving side are treated. With this in mind, this paper will discuss the administrative and criminal penalties applicable to public officials involved in bribery.

[35] Section 197 of the Japanese Penal Code prescribes imprisonment of up to five years as the lightest statutory penalty for the crime of simple acceptance of bribe. In contrast, section 198 provides that the offence of a giving bribe carries a penalty of imprisonment of up to three years or a fine of up to 2.5 million yen. This means that a bribe-giver may only be subject to a fine.

such sanctions should be assessed based on their expected impact on deterrence and the costs of enforcement. By conducting a cost-benefit analysis, it is possible to identify the most effective combination of regulatory and criminal sanction to reduce bribery in the public as well as the private sectors.

2. Model 1

The above understanding can be represented in a simple model which explains the bribery utility function. It is as follows:

$U=E(B)-[P(D)\times C(D)]-[P(A)\times C(A)]$

The words used in Model 1 are as follows.
(Chart 1)

U	*Utility* of engaging in bribery
B	Bribery
D	Detection by police or pubic prosecutor
A	Administration by the regulatory authorities
E(B)	*Expected benefit* from paying the bribe
P(D)	*Probability* of being detected for bribery
C(D)	*Cost* of criminal sanctions for bribery
P(A)	*Probability* of being sanctioned by the regulatory agency
C(A)	*Cost* of regulatory sanctions for bribery

To understand how each of these factors influences the *utility* of engaging in bribery, we can calculate the partial derivatives with respect to each independent variable. For example, the partial derivative of utility with respect to the expected benefit E(B) would be:

$$\frac{\partial U}{\partial E(B)} = 1$$

This means that as the expected benefit from bribery increases, the utility of committing bribery also increases, assuming other factors remain constant.

As another example, for the partial derivative with respect to the probability of detection P(D) would be:

$$\frac{\partial U}{\partial P(D)} = -C(D)$$

This suggests that as the probability of being detected for bribery increases, the *utility* of committing bribery decreases in proportion to the cost of criminal sanctions, assuming other factors remain constant. The magnitude of this effect depends on the *cost* C(D) associated with criminal sanctions. Other partial derivatives can similarly be calculated for the *cost* of criminal sanctions C(D), the probability of regulatory sanction P(A) and *the cost associated with regulatory sanction C(A)*. By performing partial differentiation for each variable, we can identify which variables have the strongest relationship with *utility*. This allows us to understand which factors most strongly influence the decision to engage in bribery.

Based on this model, we could design a system that would specifically target the most influential variables to achieve *optimal deterrence* of corruption. For example, if the probability of detection P(D) or the severity of the criminal sanctions C(D) has the strongest impact, then increasing detection rates or imposing stricter criminal sanctions may be the most effective way to deter bribery. In this way, we can approach the design of anti-corruption policies with a *cost-benefit analysis* framework, targeting the factors that most strongly influence the *utility* of engaging in bribery, ultimately leading to a more effective anti-corruption system. However, this view is limited to short-term economic fluctuations caused by bribery. In the long term, bribery is likely to reduce social utility. Considering the earlier example, the following problems are to be

mentioned:

1. **Priority of Self-Interest over Optimal Outcomes**
   Officials receiving bribes may prioritize their personal gain over providing optimal services or favourable trade conditions, potentially decreasing overall societal utility.

2. **Disruption of Market Functions**
   Widespread bribery undermines market mechanisms (in this case, the fair customs clearance system based on regulations), leading to increased prices for goods equivalent to the bribe amount. This negatively impacts consumers' economic interests in the importing country.

3. **Obstruction of Systematic Reforms**
   If customs delays are caused by outdated procedures, introducing new systems, such as electronic customs processes, could address the delays. Ideally, the appropriateness of such reforms should be determined through competitive bidding. However, if bribery is involved, this competitive process is bypassed, blocking pathways to protect consumer interests and ultimately harming consumers in the importing country.

In light of these points, Model 1 alone cannot adequately explain all the aspects of bribery. In fact, Model 1 is an equation that calculates the net gains of individual criminals involved in bribery. While it takes into account the activities of regulatory authorities and public prosecutors responsible for overseeing bribery, it does not analyse whether bribery results in net gains or losses to society as a whole.

Therefore, to examine the optimal system for deterring bribery, it is necessary to identify the societal gains or losses caused by bribery and construct a model that considers the activities of government agencies involved in regulating bribery. From this perspective, Model 2 will be introduced.

3. Model 2

With Model 1 in mind, a more sophisticated model to evaluate the level of the optimal deterrence against (domestic and foreign) bribery can be devised.[36] The words used in Model 2 are as follows.

(Chart 2)

W	Social welfare
Wi	Ideal Social welfare with no bribery in the society
Wa	Actual social welfare. It is calculated by subtracting the amount of cost resulting from the bribery offence from Wi.
b	The offender's gain from committing bribery
p(b)	The probability density function (PDF) of the distribution of illegal gains for each bribery opportunity in society, which is assumed to decrease monotonically as illegal gains increase[37]
g(b) (for reference)	Probability density function of b
G(b) (for reference)	Cumulative distribution function (CDF) of g(b)
d of G(b) (for reference)	Differential operator used in calculus to represent a small increment in a function or variable. In this case, d represents a marginal probability change over a small interval of b

[36] The following discussion is inspired by Nuno Garoupa and Fernando Gomez-Pomar's article, *Punish Once or Punish Twice: A Theory of the Use of Criminal Sanctions in Addition to Regulatory Penalties, American Law and Economics Review*, Vol. 6, No. 2 (2004), p. 415. However, Model 2 is conceived from the perspective of this paper. For example, the cost (denoted as θ 2) is borne by the public prosecutor, not the criminal court, as defined by Garoupa and Gomez-Pomar (*ibid.*). In their paper, no clear distinction is made between an ordinary regulatory agency and the public prosecutor, who alone has the authority to decide whether the offender should be charged in a criminal court. Additionally, the integral used to calculate W (i.e., social welfare) is based on b rather than G(b).

[37] p(b) could be considered as a component of g(b), as defined in the next footnote, but these concepts could be separated to clarify their respective meanings.

h	Social damage or harm
h+b (for reference)	Net social harm from the crime
m	Measures taken by the regulatory agency such as investigation or proof of wrongdoing; m could be used to explain the agency's enforcement effort[38]
p(m)	Probability of an offender be detected and sanctioned by the regulatory agency which cannot impose criminal sanction to offender.
$\theta 1$	Cost borne by the regulatory agency further investigation to the bribe-giver and bribe-taker (i.e., offender)
p(pp)	Probability of the suspect being investigated and indicted by the public prosecutor for bribery[39]
$\theta 2$	Costs borne by the public prosecutor to prove in criminal court that the defendant committed bribery[40]
f	Penalty imposed by a regulatory agency except the public prosecutor (i.e., fine as a regulatory penalty)
s	Sanction imposed by a criminal court (i.e., fine as a criminal penalty)
z(m,$\theta 1$,$\theta 2$,f,s)	The expected sanction to the offender

Using these terms, the actual social welfare (Wa) is calculated by deducting the costs incurred to address the bribery from Wi. In this process of cost deduction, the profits (i.e., b) seemingly obtained by the perpetrator are reduced to zero. This is because the apparent profits (i.e., b) gained through the bribery are, in the end, losses borne by the citizens, namely, the taxpayers.

Clarifying this reasoning process contributes to an accurate understanding of the mechanism by which losses arise from bribery. Therefore, when integrating the total costs, the amount b, which the perpetrator seemingly gained through bribery, is first recorded as profit. Specifically, Wa is calculated using the following formula by using integration with respect to b over the interval where b ranges from zero to infinity.

$$Wa = Wi - \int_0^\infty \{b-(h+b)+p(m)\theta 1+p(pp)\theta 2\}p(b)G(b-z(m, \theta 1, \theta 2,f,s))db$$

$$= Wi - \int (h^{41}+p(m)\theta 1+p(pp)\theta 2)p(b)G(b-z(m, \theta 1, \theta 2,f,s))db$$

This equation represents social welfare (W) as a function of various factors related to bribery and its enforcement. It aims to balance the benefits obtained by offenders and the social costs incurred through enforcement efforts to deter such crimes.

[38] If *m* (representing the measures invested by the regulatory agency) is successful in investigating a suspected bribery case, the agency will be rewarded by the government. The idea of rewarding government agencies for sanctioning bribery participants (both the bribe giver and the bribe taker) is part of a broader discussion on creating incentives within anti-corruption systems. The following potential rewards are considered:

1. **Increased Funding:** Agencies that successfully investigate and sanction bribery may receive additional government funding or budget allocations, incentivizing them to intensify their efforts in combating corruption.
2. **Enhanced Status:** Successful enforcement could elevate the agency's status within the legal and political system, granting it greater influence and recognition in future operations.
3. **Broader Authority:** The agency might be granted expanded powers to investigate and sanction other corruption-related crimes, increasing its scope and operational capacity.

The role of these elements cannot be explained more in this paper.

[39] The probability of bribery being detected by a criminal court (i.e., p(CC)) is conceivable but is not considered in this paper, given the general tendencies of criminal court case handling in Japan. The situation may differ in other jurisdictions.

[40] The costs borne by the criminal court to determine that the defendant committed bribery are also considerable, but they would not be taken into account as they are relatively small compared to those incurred by the public prosecutor, especially in Japan. Again, the situation may differ in other jurisdictions.

[41] Here, the negative sign is not attached to h because it is self-evident that h represents a negative asset as damage. It is necessary to calculate the total amount of costs to be deducted from Wi by summing the absolute value of h with other costs.

The significance of the equation is explained in more detail as follows:

p(pp)θ2: The cost borne by prosecutors to indict defendants in criminal court (θ2) is adjusted by the probability of indictment, p(pp).

p(b): The probability density function (PDF) of illegal gains (b) in cases of bribery in society reflects how frequently a certain level of illegal gains occurs. As b increases, p(b) could decrease, since higher illegal gains are less common.

G(b - z(m,θ1,θ2,f,s)): This shows the cumulative distribution function (CDF) of the amount obtained by subtracting the expected sanctions, z(m,θ1,θ2,f,s), imposed on offenders from the illegal gains (b). Here, z(m,θ1,θ2,f,s) represents the sanctions imposed by regulators (f) and criminal courts (s), as well as the enforcement efforts and associated costs borne by regulators, public prosecutor and criminal courts.

The integral (from 0 to ∞ with respect to b) represents the total impact of all possible values of illegal gains (b) on social welfare (W). It calculates how the probability of illegal gains, the enforcement costs of regulatory agencies, public prosecutor and criminal courts, and the interaction of sanctions imposed by these entities affect overall social welfare.

This equation models how bribery, the actions of various authorities, and the sanctions they impose on bribers impact overall social welfare. From this equation, the following points become clear:

1. Positive Impacts on Social Welfare (W)
   - **Reduction of Illegal Gains (b):** Strong deterrence mechanisms against bribery lead to a decrease in illegal gains (**b**).
   - **Increased Detection and Prosecution Probabilities:** Higher probabilities of detecting bribery (**p(m)**) and prosecuting it (**p(pp)**) reduce the attractiveness of engaging in bribery.
   - **Appropriate Sanctions:** It is essential to set appropriate sanctions (**f** and **s**) that offset the profits (**b**) obtained through bribery.

2. Negative Impacts on Social Welfare (W)
   - **Societal Harm (h):** Bribery can cause societal harm, such as undermining bidding systems, preventing contracts based on fair competition, and potentially causing financial harm to taxpayers.
   - **High Enforcement Costs:** The costs of enforcement incurred by regulatory authorities (**θ1**) and prosecutors (**θ2**) could be significant. These costs may outweigh the benefits gained from deterring bribery, such as ensuring proper implementation of bidding systems and concluding contracts at fair market prices.

In summary, this equation could serve the following purposes:

1. **Optimization of Bribery Detection Efforts:** In making a legal framework against bribery, it is indispensable to optimize efforts (**m**) for detecting bribery by taking into account the costs and probabilities of detection (**p(m)**), the costs and probabilities of prosecution and achieving a conviction (**p(pp)**).

2. **Designing Sanctions to Balance Deterrence and Costs:** In designing administrative fines (**f**) and criminal penalties (**s**) that maximize the deterrent effect against bribery, it is indispensable to minimize the enforcement costs borne by regulatory agencies, prosecutors and courts.

3. **Evaluating Policy Impact on Social Welfare:** In order to provide a framework for evaluating the impact of anti-bribery policies on overall social welfare, it should be ensured to effectively deter bribery while enhancing societal benefit.

When this equation is applied to a case, it can be assumed that W may either be positive or negative. The circumstances under which W may be positive are as follows:

1. When the product term of $\theta 1$ or $\theta 2$ is small,[42]

2. When h is small.[43]

On the other hand, the circumstances under which W may be negative are as follows: If regulatory agencies and public prosecutors are working very hard in order to completely eliminate bribery from society, then $\theta 1$ and $\theta 2$ will become extremely high. As the level of eliminating bribery from society is getting higher, so the workload of regulatory authorities and public prosecutors would decrease more, which could raise doubts about *raison d'être* of these agencies' existence. This may lead to a reduction in the budget available for these agencies to invest in bribery deterrence. As a result, the expectation that complete deterrence will not be realized is likely to be valid.

In addition to the above, using this equation, the following points can be further noted:

1. Likelihood of Regulation by Regulatory Agencies
   Firstly, the implementation of sanctions by a regulatory agency is more likely than indictment by a public prosecutor to a criminal court because the costs are lower for the regulatory agency. The burden of proof for imposing a regulatory penalty is lower compared to securing a criminal charge and a conviction of a defendant in court. For regulatory sanctions, it is sufficient to prove by a *preponderance of the evidence* that a person violated a specific section of the law. In many cases, it is unnecessary to determine whether or not the violation occurred with the state of mind of the violator that is required for criminal culpability (i.e., *mens rea*).

2. Limitations of Regulatory Measures Alone
   Secondly, achieving complete deterrence against bribery cannot rely solely on the efforts of regulatory agencies. While it is more effective for regulatory agencies to fine offenders than for courts to impose criminal sanctions, relying exclusively on regulatory enforcement leads to suboptimal outcomes. If complete deterrence is achieved solely through administrative efforts, the agency's expected profits diminish to zero, reducing its incentive to maintain the optimal enforcement effort as explained earlier.

3. The Role of Criminal Courts
   Thirdly, the role of the criminal court must be considered as a substitute for areas of under-enforcement by regulatory agencies. In other words, achieving an *optimal balance* between regulatory agencies and criminal courts remains a significant challenge. Resolving this issue requires further research from a law-and-economics perspective. Nevertheless, the following point can be highlighted in this paper.

4. Importance of Private Sector Cooperation
   Fourthly, it is crucial for the private sector to report signs of bribery to the regulatory agency as soon as they are discovered and to cooperate fully with the agency's investigation. By engaging in this way, the private sector can contribute to ensuring that the agency's enforcement activities will get closer to an optimal level. This, in turn, reduces the risk of being indicted and convicted for bribery-related criminal offences, as explained earlier. Therefore, the degree of deterrence against bribery targeted by the related agencies is a critical matter that cannot be decided without due consideration of the data they have gathered.

VI. FACTORS THAT PROMOTE DETECTION OF CORRUPTION AND THE ROLE EXPECTED OF PRIVATE BUSINESSES

A. Overview

From the past experiences in many jurisdictions, the following factors have been found as particularly

[42] This can be considered in a society where sanctions such as f and s are not functioning

[43] This could be in a society where the social loss due to bribery is small. In Japan, it has been explained that the situation during the Edo period when Tanuma Okitsugu held political power corresponds to this; however, there are recent strong criticisms that this does not align with historical facts at that time.

important in promoting the detection of corruption: (1) public whistle-blowing, (2) accounting audits, and (3) tax investigations. In this paper, only (1) will be discussed due to the page limit.

B. Whistle-Blower Protection System

1. Overview

Encouraging insiders within companies and other organizations, who are close to the scene of the misconduct, to report potentially corrupt actions to external authorities contributes to preventing corruption at a low cost. Collecting evidence related to corruption by police officers and prosecutors is a very costly process. Particularly in cases of bribery involving foreign public officials, investigation authorities generally do not have the authority to collect evidence abroad, making the cooperation of those close to the scene of the misconduct crucial for investigation authorities. Therefore, systems that increase the incentive for the private sector to provide criminal-related evidence to public institutions should be introduced. Indeed, from the perspective of law and economics, such systems represent one of the most cost-effective methods to achieve the greatest impact.

2. Issues with Japan's Whistle-Blower Protection System

Japan's whistle-blower protection system has been criticized for several issues regarding the reporting channel and the risk of retaliation.

(a) Reporting Channels (Current Law)

Under Japan's Whistleblower Protection Act, if an act of bribery is discovered within a company, the whistle-blower can report it to one of the following channels:

- Internal Reporting
  - Company's Internal Reporting Desk: Report to the internal reporting desk set up by the company.
  - Whistle-blowing Response Personnel: Notify the designated responsible person for whistle-blowing responses. It should be a system where all employees within the company are informed of who has been designated as personnel responsible for handling whistle-blowing reports. Also, it is requested to establish a system that allows whistle-blowing to be carried out as needed.

- External Reporting
  - Government Agencies: Report to the supervising authorities (e.g., Fair Trade Commission, police, public prosecutors offices, etc.).
  - Third-Party Agencies: They are, for example, lawyers, either anonymously or non-anonymously. Many companies designate lawyers or similar professionals as whistle-blowing channels (in addition to internal personnel). In such cases, the designated lawyers are considered part of the "internal" whistle-blowing channels. On the other hand, employees of the company can also delegate whistle-blowing to a lawyer other than the one designated by the company. This case is categorized as whistle-blowing using a third-party lawyer.
  - Media and Public Disclosure: If internal or governmental reporting is insufficient, public disclosure via media may be considered.

(b) Retaliation Under Current Law and Criticism

Although the Whistle-blower Protection Act aims to protect whistle-blowers, in practice, there are risks of retaliation. Below are examples and issues related to retaliation:

- Specific Examples of Retaliation
  - **Dismissal**: Losing one's job as a result of making a report.
  - **Demotion or Salary Reduction**: A decrease in position or salary.
  - **Forced Transfer**: Being transferred to an undesirable department to isolate the whistle-blower.
  - **Workplace Harassment**: Bullying or harassment by superiors or colleagues.
  - **Isolation**: Being cut off from communication in the workplace.

3. Efforts to Improve Japan's Whistle-Blower Protection System

In light of these issues, efforts to improve Japan's whistle-blower protection system are accelerating. The

most recent developments are as follows[44]:

- **Introduction of Criminal Sanctions**: It has been proposed to introduce criminal sanctions for businesses that engage in retaliatory actions against whistle-blowers.

- **Expansion of Whistle-Blower Protection**: Discussions are underway to extend the protection under the current system to include individuals who are less likely to be protected, such as former employees and business partners.

- **Promotion of Anonymous Reporting**: Measures have been proposed to encourage anonymous reporting, making it harder to identify whistle-blowers.

If these initiatives are implemented, it is expected that they will lower the barriers to reporting and reduce the deterrent effects on potential whistle-blowers, although it may take time to enact specific legal reforms.

C. Strengthening Deterrence through Public-Private Cooperation and Collaboration – Relationship with Criminal Sanctions

It is extremely important for the public sector to assist private businesses in eliminating barriers to public reporting, and in strengthening their active responses to accounting audits and tax inspections. Assistance, specifically, involves the establishment of systems that provide a reduction in legal sanctions for businesses that cooperate in deterring corruption by, for example, discovering instances of corruption and willingly reporting them to investigative authorities.

In making such a leniency system, presenting the elements necessary for exemption from regulatory or criminal sanctions are the most important issue. With regard to this matter, the dual penalty provisions in the Unfair Competition Prevention Act (section 18 and section 22, paragraph 1, item 1) are to be considered. According to the Act, businesses, whether corporations or individuals, are subject to criminal liability for foreign public official bribery offences. The basis for penalizing corporations lies in their failure to properly supervise employees to prevent acts that may constitute foreign bribery. In other words, discovery of the foreign bribery case would be considered as a failure to fulfil the duty of supervision over employees.

In this context, the concept of criminal *negligence* is to be referred to as the failure to take action that could have avoided harm, despite the harm being foreseeable. The concept of criminal *negligence* can be explained as the actor's awareness of the following situation:

$$C(\text{cost}) < P(\text{probability}) \times H(\text{harm})$$

In other words, this inequality represents the *perceived likelihood* of harm occurring due to the actor's actions.

This can be understood as applying the *Hand Formula* used in civil torts to the concept of criminal negligence.[45] An act that constitutes a crime is seen as an act similar to civil torts with the different degree of negligence. The characteristic of criminal negligence is found in anticipating the occurrence of future harm more clearly than in civil negligence. But the mechanism of civil negligence can also apply to criminal negligence as a basis for evaluating the costs. It must be applied to a criminal case to establish a clearer threshold over which criminal negligence can be determined more objectively.

Regarding *foreign public official bribery offences*, it can be understood as follows:

- In the country where the business operates, they should acknowledge the following:
  - The cost (C) of taking preventive measures to ensure that local employees can reject bribery demands.
  - The probability (P) for local officials to demand bribes.

[44] The following is cited from the draft report of the "Whistleblower Protection System Working Group" published on 24 December 2024.

[45] Cf. *U.S. v. Carroll Towing*, 159 F.2d 169 (2d Cir. 1947).

- The additional cost (H) incurred by providing a bribe to acquire related goods or services locally.[46]

With these factors in mind, if the actor recognizes that:

$C>P\times H$

and they have invested sufficient cost (C) in the preventive measures, then negligence can be denied.

For businesses operating overseas, at a minimum, the following measures should be taken by the company to prevent it from being charged and convicted for the negligent crime:

1. Directors must fulfil their duty to monitor and prevent bribery by employees in their respective departments.

2. As a prerequisite, they must conduct a detailed risk-based assessment considering the level of corruption and transparency of the public services in the local area.

3. Directors must check among themselves in board meetings that each director is fulfilling their supervisory duties as outlined above.

4. The CEO must ensure that a strict anti-bribery stance is communicated throughout the company.

5. The board of directors must verify whether the CEO is fulfilling their duties regarding the above obligations.

If these measures are taken by the directors, the board of directors, and CEO, the likelihood of criminal negligence being denied increases.

It should be noted that even if such a compliance programme is created in this manner and properly implemented, this does not guarantee the denial of corporate negligence in a particular case. Criminal negligence must be judged on a case-by-case basis, based on the evidence collected in each case. A compliance programme does not automatically exempt the company from criminal liability. This point must be carefully remembered.

On the other hand, if an effective compliance system for preventing foreign public official bribery has been established and adequately implemented company-wide, but a specific employee still violates the compliance rules and provides a bribe, the company's criminal liability will be substantially reduced. The existence of an effective compliance system itself can serve as a *mitigating factor* during a sentencing phase.[47]

Regarding regulatory sanctions, there is a system known as the *No Action Letter*, where inquiries made to regulatory authorities regarding regulatory measures can result in responses within a certain scope.[48] However, this does not apply to criminal sanctions. This is because criminal liability (or an element of *mens rea*) depends on the evaluation of evidence collected in a specific case, and there is no guarantee that performing a certain act will automatically exempt the actor from criminal responsibility.

However, again, if an appropriate compliance system is established and implemented, criminal liability (in the form of negligence of a related person including a legal one) may be denied. This provides an advantage to private businesses, allowing them to avoid creating excessive precautionary measures in their operations.

When presenting the conditions for reducing or exempting the criminal liability of businesses (including corporations) involved in foreign public official bribery offences, the FCPA (Foreign Corrupt Practices Act) provisions should be referred to once again. These provisions include the following:

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[46] The amount of H is usually equal to the amount of the bribe paid.
[47] Cf. SEC vs. Garth Ronald Peterson, No,12-cv-2033(E.D.N.Y.2012).
[48] Cf. https://www.soumu.go.jp/main_sosiki/gyoukan/kanri/kakunin/02gyokan01_04000424.html

1. Voluntarily disclosing the facts of foreign public official bribery to the authorities before an investigation is initiated by law enforcement.

2. Fully cooperating with the authorities during their investigation (e.g., voluntarily disclosing internal investigation information).

3. Taking appropriate corrective actions (e.g., implementing an effective compliance system to prevent reoffending).

Conditions 1) and 2) are mainly procedural requirements for criminal proceedings, while condition 3) is a substantive requirement under criminal law. This report focuses on item 3, and the requirements of the FCPA are understood to be valid.

VII. OUTLOOK

To deter corruption, collaboration between the public and private sectors is extremely important. The following points should be borne in mind again.

1. It is often difficult for investigative agencies to collect and evaluate evidence related to corruption, such as bribery.

2. It is crucial for private entities (businesses) to report criminal facts or submit evidence, as this is vital for the recognition, prosecution, and deterrence of crimes.

3. Furthermore, to achieve optimal deterrence of corruption (especially bribery), it is necessary to actively apply the insights of law and economics. This includes considering the deterrent effects of regulatory sanctions and judicial sanctions, the costs required to achieve these deterrence effects, and an objective model.

To accelerate and strengthen public-private collaboration, the following should be done:

i) Building an effective compliance system aimed at preventing corruption.

ii) The system should be constructed based on business practices in places where bribery is expected to occur (domestically or internationally), and after evaluating the risks of bribery (Risk-based approach).

iii) When implementing the system, the damages caused by corruption to the national economy should be estimated numerically. Then, by multiplying this by the probability of corruption occurring, the risk of damages can be calculated, and the necessary precautionary costs to prevent corruption should be measured (these numbers should serve as indicative benchmarks).

iv) Businesses that recognize they have invested more in anti-corruption measures than the calculated precautionary costs could be exempt from criminal negligence.

v) Even if criminal negligence is not denied in this sense, if the compliance system is considered effective in preventing corruption, a lenient sentencing decision should be made.

vi) Based on this understanding, it is desirable that the government presents to the public a model for a compliance system (which, if implemented, could lead to the negation of criminal negligence for businesses).

It is hoped that the ideas presented in this paper will be of some reference in the fight against corruption.

STRENGTHENING PREVENTION, DETECTION AND PROSECUTION OF CORRUPTION, AND PUBLIC-PRIVATE PARTNERSHIP

*Ahmed Ameen**

I. INTRODUCTION

Corruption is one of the major problems that undermine societies worldwide. Just as it does globally, it is also widespread in the Maldives, and severely impedes the nation's development, negatively impacts the well-being of its people and obstructs access to basic necessities.

The scale of corruption in the Maldives can be understood through the famous scandal involving the state-owned Maldives Marketing and Public Relations Corporation (MMPRC) that occurred during 2014 and 2015. The investigation into the MMPRC scandal revealed that the state lost more than $79 million, and the case is still being investigated jointly by the Anti-Corruption Commission of Maldives and the Maldives Police Service. Since most of the funds related to the scandal have been processed through the national bank, they have, therefore, taken steps to strengthen the whole system such as:

- Discontinuation of acceptance of endorsed checks;
- Yearly update of KYC for businesses;
- Reviewed their current process and procedures in accordance with international standards.

Additionally, reforms brought to law enforcement agencies include carrying out investigations based on in-depth financial analysis specially for the cases which involve financial related crimes. Thus, to combat corruption effectively, Maldives must undertake several actions, including raising awareness about the negative impact of corruption, investigating corruption allegations and holding those responsible accountable. Officially, this responsibility is entrusted to the Anti-Corruption Commission of Maldives.

Since corruption is a major problem affecting the entire country including the private and public sectors, both sectors must take crucial measures to combat it. For example, as mentioned in UNCAC,[1] a Convention to which Maldives also is a party,[2] each State Party should implement measures in accordance with the fundamental principles of its domestic law to prevent corruption involving the private sector. This includes enhancing accounting and auditing standards in the private sector, and, where appropriate, enforcing effective, proportionate and dissuasive civil, administrative or criminal penalties for non-compliance with these measures.

This paper will explore the current trends in corruption within the country, including the major awareness initiatives and investigative approaches utilized by the Anti-Corruption Commission of Maldives. Additionally, this paper will highlight the challenges encountered by the Commission in battling corruption and propose potential solutions. Furthermore, strategies for the Commission to collaborate with the private sector to strengthen anti-corruption initiatives will also be covered.

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[1] United Nations Convention against Corruption: Article 12.

[2] Maldives ratified the United Nations Convention against Corruption (UNCAC) on 22 March 2007.

II. ANTI-CORRUPTION COMMISSION OF MALDIVES

In 2008, a constitutional institution was established to combat corruption in the Maldives.[3] The Anti-Corruption Commission of Maldives (hereinafter referred to as ACC or the Commission) is an independent legal entity, possessing power to sue and suit against and to make undertakings in its own capacity.[4]

The ACC consists of five members, appointed by the President of the Maldives with the approval of the Parliament from those who apply for the position. The President of the Commission is the primary head and is responsible for overseeing and delegation of tasks to Commission members, the Secretary General and the staff.

The key responsibilities entrusted to the ACC are as follows[5]:

- To investigate offences of corruption and, accordingly, to investigate any complaint filed alleging that an individual has engaged in, is presently engaged in, or is on the verge of engaging in an act of corruption.

- To derive necessary findings and conduct investigations on own initiative, without a case being filed by an individual, without being notified by an individual, without receiving information from an individual, if the Commission receives information that an offence of corruption has been committed, is being committed, or is about to be committed, or if there is suspicion that such an offence has been committed or is being committed or is about to be committed.

- To formally request additional clarifications from governmental entities, non-governmental entities and private parties in connection with the investigations of the Commission. To formally serve notice upon an individual within the Commission's jurisdiction in relation to a matter under investigation by the Commission.

- Following the completion of investigation by the Commission, in instances where the Commission is of the opinion that there is sufficient evidence to prosecute, refer the case to the Prosecutor General for prosecution.

- To raise awareness among public servants, personnel employed by government entities and state-affiliated corporations concerning the injurious consequences and ramifications stemming from corrupt practices and to take necessary action to promote honesty and integrity in the administration of the State.

- To promote public integrity by raising public awareness of the devastating consequences and ramifications stemming from corrupt practices.

- Conduct necessary research to prevent corruption, recommend measures to be taken by public agencies and issue relevant notices to such agencies.

- Promote public awareness on prevention and prohibition of corrupt practice through seminars, workshops and other programmes.

- Collect, prepare and maintain statistics on the prevention and prohibition of corruption, conduct research and findings on the modus operandi, nature, types, causes and changes in corruption practices, disclose and publish such findings and take necessary action based on the findings.

- To publicly disclose matters relating to the prevention and prohibition of corruption and to publish pertinent statements.

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[3] The Constitution of Maldives 2008: Article 199.
[4] Act No 13/2008, The Anti-Corruption Commission Act: Article 2.
[5] Ibid.

- Develop, review, revise and implement anti-corruption policies at national level.
- To scrutinize the execution of plans, projects, rules and regulations to be devised and executed by governmental entities for the purpose of carrying out the policies stipulated in section (f) of this Article. This includes conveying notifications, overseeing adherence and appraising outcomes. Continuously evaluate and monitor the implementation and effectiveness.
- Investigate any suspected abnormal change in the wealth of public officials that does not correspond to their income and to probe illicit enrichment and take necessary action.
- Establish relationships with civil society organizations to raise awareness about corruption, acquaint people with integrity and prevent corruption.
- Investigate corruption offences in collaboration with law enforcement agencies and take necessary safeguards to prevent corruption in coordination with state agencies.
- Identify and submit to the relevant State authorities any amendments to the laws relating to the prevention and prohibition of corruption to further strengthen the investigation of corruption offences and the prevention and prohibition of corruption.
- Establishing relations with foreign governments, foreign relevant agencies, regional and international organizations in the fight against corruption, reaching an agreement on the issues that must be agreed upon and providing the necessary cooperation and seeking assistance in matters of mutual benefit to the Maldives.
- Develop policies, practices and systems to be adhered to prevent corruption in state agencies and private businesses, assess the degree of compliance therewith, make necessary amendments to the systems and enforce compliance.
- Refer complaints submitted to the Commission that do not fall within the jurisdiction of the Commission to the relevant institution and to refer the matter to that institution if it identifies a matter being investigated by the Commission that requires investigation by another agency.

III. RECENT TRENDS OF CORRUPTION IN MALDIVES

According to the 2023 Annual Report of the ACC, the Commission registered a total of 742 complaints. The types of cases are as follows[6]:

Type of Complaint	Number of Complaints
Job related	65
Procurement related	155
Housing related	216
Land related	56
License/Permit related	9
Island rent related	6
Training/Scholarship related	4
Loan scheme related	2
Election related	64
Salary/Remuneration related	20

[6] Annual Report of Anti-Corruption Commission 2023.

Using Public Funds related	112
Other	33

From the table above, it is evident that the most concerning areas are housing and procurement-related issues, as most of the complaints are related to these areas. In this regard, it is apparent that the most frequently occurring type of corruption offence involves the misuse of positional influence to secure and obtain undue advantages. Additionally, providing such undue advantages can lead to offences such as embezzlement.

With every election, the Commission has also observed a notable rise in complaints related to the electoral process. Specifically, numerous allegations concerning the awarding of major projects and the recruitment of individuals into public companies without justification are received. This trend indicates that election-related issues consistently escalate with each election.

Reviewing the cases concluded by the Commission last year, it is clear that procurement-related issues were the most prevalent. During the year 2023, 220 cases were resolved. Among them 18 cases were sent to the Prosecutor General's Office for prosecution. The table below shows the breakdowns of the categories of cases resolved.

Type of Case	Number of Cases Resolved
Job related	22
Procurement related	84
Housing related	8
Land related	14
License/Permit related	6
Island rent related	2
Training/Scholarship related	1
Loan scheme related	2
Election related	2
Salary/Remuneration related	6
Using Public Funds related	27
Other	46

Out of the 220 cases resolved, 84 were specifically related to procurement.[7] This highlights that procurement processes are a common avenue for corruption.

A recently[8] investigated and prosecuted case involving the Procurement Department of the Department of Judicial Administration of Maldives revealed that the department awarded numerous contracts to affiliated private companies at prices significantly higher than market rates. The investigation revealed that private companies were interconnected and submitted quotations collusively. It is evident that the public official was aware of this and due to his connections with these companies, granted them undue advantage. This case alone highlights the extent of corruption within the procurement system of state entities.

Various other procurement-related cases investigated by the ACC also revealed trends such as the use of bogus companies, the sharing of classified information by public officials with related or associated parties before the proposals were opened, and the use of State-Owned Enterprises (hereinafter referred to as SOEs) as vehicles for corruption. SOEs often fail to implement proper governance structures and create their own policies, which frequently contain loopholes.

Although these issues persist, robust public procurement policies have been established in recent years

[7] Annual Report of Anti-Corruption Commission 2023.
[8] The Case was referred for prosecution in the year 2023.

to address them. However, enforcement is lacking because most of the SOEs do not adhere to the relevant laws and regulations and face no consequences for non-compliance. The Public Finance Act[9] (PFA) and Public Finance Regulations[10] (PFR) mandate that all public institutions and offices establish and maintain audit committees.

Furthermore, according to Article 12 of UNCAC, each State Party should implement measures in accordance with the fundamental principles of its domestic law to prevent corruption involving the private sector. Nevertheless, many SOEs lack effective risk assessment functions, and audit functions are often inadequately implemented, as reflected in the rising number of corruption cases involving SOEs.

IV. MAJOR PREVENTION INITIATIVES

Since corruption prevention is mandated for the Commission under the ACC Act,[11] these activities are among the Commission's top priorities. Despite various challenges, significant progress is being made in these efforts. Here are some of the initiatives the Commission has undertaken:

- Establishing the Maldives National Anti-Corruption Academy (MNACA) to deliver corruption awareness sessions and training programmes for various target audiences. These include:
  - Conducting regular awareness sessions for public officials through civil service induction programmes.
  - Conducting "Business Integrity" sessions for State Owned Enterprises, Local Authority Companies, and other private businesses in partnership with the Capital Market Development Authority (hereinafter referred to as CMDA).[12]
  - The School Integrity Program which focuses on academic integrity sessions targeted for students, parents and teachers.
- Introducing a corruption risk-self assessment toolkit[13] through a digitized platform where agencies can easily self-assess corruption risks in both public and private sectors. The toolkit explains the concept and approach of corruption risk self-assessment. The purpose of this toolkit is to identify areas subjected to corruption risks, detect the risks, and formulate mitigation plans and monitoring and evaluation plans in order to attend to identified risks in institutions. The toolkit is designed in such a way as to encourage the implementing institutions to take ownership of the risks and its effective mitigation.
- Conducting focused research and surveys to identify systemic risks of corruption, its trends and causes.
- Development of a social audit toolkit which enables Civil Society Organizations and the public to enhance social accountability through monitoring the progress of government-implemented projects in their communities.
- Developing guidelines, policies and standards of conduct to ensure the correct, honourable and proper performance of public functions, and ensuring electoral integrity.

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[9] Act No 3/2006, The Public Finance Act.

[10] Regulation No R-158/2023, The Public Finance Regulation.

[11] Act No 13/2008, The Anti-Corruption Commission Act: Article 21.

[12] An independent institution established under Act 2/2006 (The Maldives Securities Act) for developing and regulating the capital market in the Maldives.

[13] Corruption Risk Assessment Toolkit published on 7 December 2023.

- Launching of a National Anti-Corruption Policy[14] that promotes participation of the society and reflects on principles of the rule of law, integrity, transparency and accountability within the public sector.

V. INVESTIGATIVE APPROACH

Given that not every complaint submitted to the Commission is within the purview of the Commission's mandate, the Commission has begun screening complaints under the Registrar's authority, by prioritizing those that substantiate allegations of corruption. This change allows the Commission to focus on high-priority cases with significant public interest during the investigation stage.[15]

To tackle the substantial backlog of pending cases, a prioritization mechanism has been established within the Commission. Consequently, a case prioritization policy[16] has been gazetted and implemented to determine which cases will be investigated in each quarter annually. Additionally, the Commission has established a dedicated unit within the Commission for financial and wealth analysis to expedite the handling of cases involving complex financial matters.[17]

In 2023, the Commission concluded 220 cases. Of these, 40 were forwarded to the Duty Prosecution stage, where Commission investigators collaborate with prosecutors from the Prosecutor General's office to assess whether there is sufficient evidence to proceed with prosecution.[18] This outcome highlights the effectiveness of the Commission's focus on prioritizing significant cases, as previously discussed.

VI. CHALLENGES TO COMBATING CORRUPTION

Combating corruption is a challenging task. It involves confronting numerous individuals, raising awareness about its detrimental effects and seeking support from a wide range of stakeholders. Therefore, significant challenges are unavoidable. The main challenges the Commission faces in this effort include:

- ACC cannot directly investigate money-laundering offences associated with corruption without the initiation and collaboration by the Maldives Police Service.

- ACC does not have the authority to prosecute corruption cases directly in court. Instead, ACC must first present ACC's findings to the Prosecutor General's Office, which holds prosecutorial powers granted by the Constitution. If ACC had prosecutorial authority, as in some other countries, it would be more effective in addressing and taking legal action against those involved in corrupt practices.

- The offence of illicit enrichment of public officials falls under ACC's purview, and the burden of proof lies with the State. However, offences of illicit enrichment of public officials are associated with other criminal offences such as money-laundering, which fall outside the ACC's mandate.

- The majority of financial transactions are processed through banks, which can play a crucial role in preventing corrupt activities. Timely intervention by banks could mitigate the damage to the State. For instance, in the MMPRC scam, illicit funds were channelled through numerous bank accounts. If banks intervened timely, the damage to the State could have been minimized or avoided.

- Most corruption allegations submitted to the ACC involve public officials. However, these corrupt actions often also involve private parties. The ACC, however, lacks the mandate to investigate the part involving private individuals, except for bribery.

[14] National Anti-Corruption Policy published on 13 December 2021.
[15] ACC Regulation No 2020/R-98, Investigation Regulation.
[16] Case Prioritization Policy gazette and published on 25 May 2022.
[17] Organizational structure of Anti-Corruption Commission.
[18] Annual Report of Anti-Corruption Commission 2023.

- The inadequate punishment of offenders, their continued presence in society and their frequent advancement to high-ranking positions within the state system make the fight against corruption more difficult.

- The lack of an effective asset recovery system in the Maldives is a significant obstacle to combating corruption and recovering state losses.

- Since the Maldives relies heavily on tourism, combating corruption in large-scale tourism projects, such as the development of tourist resorts, is particularly challenging. A notable example is the difficulty in repossessing the islands involved in the MMPRC scam.

- The failure to effectively implement and monitor recommendations provided to public agencies following corruption investigations and research further hinders the fight against corruption. For example, the recommendations from the white paper[19] published regarding the compensation for government projects have yet to be implemented.

- No deterrence when it comes to corruption crimes due to rare and few prosecutions, and inadequate punishment and consequences for the perpetrators. The root cause of this is loopholes in the legislation related to corruption and investigations. The nature of the corruption-related cases is mostly based on circumstantial evidence, and it requires inference and reasoning to prove the perpetrators intention and knowledge.

- There is a general lack of awareness about the widespread nature of corruption and its impact on everyone, especially the private sector.

- The wide distribution of the Maldives' islands makes it challenging to organize awareness sessions that effectively reach every island.

- The lack of a dedicated module, subject or programme within the educational curriculum to educate students about the risks of corruption and the importance of integrity is a major obstacle to raising awareness among the young generation.

- Lastly, a significant challenge in combating corruption is the lack of political will from the State.

VII. COUNTERMEASURES AGAINST CORRUPTION

To fight against corruption there are some countermeasures that must be taken immediately. Some of these are:

- Since we currently lack an asset recovery mechanism, we need to establish legislation outlining the comprehensive mechanism for asset recovery which aims at recovering the money stolen from the public funds.

- Conducting regular awareness sessions specially for private parties regarding integrity as well as business best practices.

- Conducting and publishing specific research reports regularly for areas where corruption-related activities are commonly committed.

- Establishing a mechanism where public officials are obliged to declare their financial, assets, conflicts and other interests in accordance with international best practice.

[19] White Paper: Transparency of the Settlement Process of Government Projects published on 2 September 2022.

- Address the loopholes in current legislation related to corruption and financial offences.

VIII. EFFORTS TO COLLABORATE WITH THE PRIVATE SECTOR AND OTHER PARTIES TO STRENGTHEN ANTI-CORRUPTION INITIATIVES

Article 12 of UNCAC states that each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.

As per article 12.2b, the State Party shall promote the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State.[20]

The Maldives has established the Institute of Chartered Accountants of Maldives (hereinafter referred to as CA Maldives) under the Chartered Accountants Act.[21] CA Maldives is responsible for setting regulations and standards for both the public and private sectors, including guidelines for accounting, auditing and ethical practices. Therefore, CA Maldives plays a crucial role in maintaining the integrity of the private sector as the regulatory body for accountants and auditors.

The ACC is currently not given the mandate to investigate corruption crimes related to the private sector, other than bribery. This limitation has led to a low level of engagement from the private sector in the fight against corruption. As a result, the ACC has requested the Attorney General to amend the law to broaden the scope of investigations and enhance effectiveness.

As outlined by Transparency Maldives,[22] to enhance effective business integrity practices within the private sector, the ACC regularly raises awareness about integrity and provides training to the governing boards and management of private and public organizations on conducting corruption risk assessments, in collaboration with CMDA,[23] each month.

Private companies are not compelled by law to provide information for corruption-related investigations; however, in many cases, they do cooperate and provide required information. For instance, during the investigation of allegations relating to the purchase of old dump trucks at a rate of higher than market rate by the Waste Management Corporation Limited, an SOE established for management of waste, private companies provided necessary and relevant information to the investigation, such as market rates of dump trucks.

Cooperation among countries is also essential to combat corruption effectively. To facilitate this, the Commission is signing Memorandums of Understanding (MOUs) with anti-corruption institutions in various countries. These agreements aim to enhance assistance and collaboration. So far, the Commission has signed MOUs with the Corruption Eradication Commission of Indonesia (KPK), the National Anti-Corruption Commission of Saudi Arabia (NAZAHA), Malaysian Anti-Corruption Commission (MACC) and the International Criminal Police Organization (INTERPOL).

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[20] UNCAC, Article:12.
[21] Act no 13/2020, Chartered Accountants Act: Article 1 (a).
[22] Transparency Maldives, Anti-Corruption Agenda for Clean Governance 2023.
[23] An independent institution established under Act 2/2006 (The Maldives Securities Act) for developing and regulating the capital market in the Maldives.

IX. CONCLUSION

The expected results in the fight against corruption cannot be achieved unless the aforementioned challenges are addressed. Therefore, changes must be made through the legal system, and mechanisms to close avenues for corruption must be implemented. For instance, amending the elements related to corruption offences such as amending the offence of illicit enrichment of public officials which are associated with other criminal offences fall outside the ACC's mandate.

Additionally, everyone at all levels of government must be committed to combating corruption. Both the private and public sectors should contribute to the effort against corruption to the best of their ability, such as by ensuring the participation of both public and private parties in the awareness session conducted specially for the private parties regarding the integrity and business best practices.

Simultaneously, it is crucial to introduce mechanisms to educate and raise awareness among the rising generation about the harmful effects of corruption and its pervasive impact on all aspects of society. Additionally, robust international cooperation is essential for effectively combating corruption. Strong and effective relations between countries are necessary because corruption negatively affects the entire world.

STRENGTHENING PREVENTION, DETECTION AND PROSECUTION OF CORRUPTION, AND PUBLIC-PRIVATE PARTNERSHIP

*Gobinda Khanal**

I. OVERVIEW OF THE CORRUPTION TREND

A. Corruption Trends in Developing Countries

Economic disparities and poor economic conditions provide fertile ground for corruption, with economic incentives playing a crucial role in fostering such practices.[1] In developing countries, corruption is pervasive, affecting all sectors from public service delivery to major infrastructure projects, thereby significantly hindering development and degrading the quality of life. This trend is driven by environments where public functionaries exercise significant discretion with minimal accountability, exacerbated by weak institutions and governance structures that fail to enforce accountability and transparency.[2] The societal norms and cultural acceptance of corruption further complicate efforts to combat it, especially in regions where petty corruption is culturally ingrained.[3] While international measures like the UN Convention against Corruption and other regional mechanisms play crucial roles in setting standards and promoting best practices,[4] the implementation of effective anti-corruption strategies in these countries remains challenging but necessary. These strategies often include enhancing legal frameworks, promoting transparency and fostering public awareness and engagement in anti-corruption efforts.[5] Given the varied drivers and widespread impact of corruption, a nuanced understanding is essential for devising effective policy interventions in developing countries.[6]

This paper aims to cover the following two key topics:

(1) Overview of recent trends of corruption, money-laundering and related offences;

(2) Barriers, challenges and possible solutions to the investigation and prosecution of corruption cases including the necessity and challenges of international investigations.

B. Corruption Trend in Nepal

According to the 2023 Corruption Perceptions Index (CPI), Nepal's CPI Score 2023 is 35 with Rank 108 in the index. These scores indicate moderate to low performance in various indices related to corruption perception and rule of law, placing Nepal towards the lower end of the global scale in terms of perceived transparency and governance integrity. The analysis of corruption trends from Fiscal Year 2021/2022 (078/79) and Fiscal Year 2022/2023 (079/80) reveals a persistent and evolving pattern of corrupt practices across various levels of government.

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[1] See generally, Paolo Mauro, *Corruption and Growth*, 110 Q.J. Econ. 681 (1995).

[2] See generally, Sanjeet Singh, *Fighting Corruption in Developing Countries: Dimensions of the Problem in India*, PIARC Seminar on Good Governance, Institutional Integrity, and Human Resources Management for Road Administrations, 20-22 Oct. 2005, Warsaw, Pol.

[3] See generally, Benjamin A. Olken & Rohini Pande, *Corruption in Developing Countries*, 4 Ann. Rev. Econ. 479 (2012).

[4] Id.

[5] Sanjeet Singh, *Fighting Corruption in Developing Countries: Dimensions of the Problem in India*, PIARC Seminar on Good Governance, Institutional Integrity, and Human Resources Management for Road Administrations, 20-22 Oct. 2005, Warsaw, Pol.

[6] Mushtaq H. Khan, *Determinants of Corruption in Developing Countries: The Limits of Conventional Economic Analysis, in International Handbook on the Economics of Corruption* 216 (Susan Rose-Ackerman ed., 2006).

1. Fiscal Year 2021/2022[7]

This year was characterized by the continuation of long-standing corruption issues. Key trends included bribery, revenue leakage, loss of public property and the illegal acquisition of wealth. Corruption was particularly prevalent at the local level, where public service delivery and development activities are most concentrated. Corruption by public officials was closely linked to financial transactions, resulting in malpractice in both revenue collection and expenditure. Additionally, there was a noticeable trend of public property being registered in the names of specific individuals, leading to encroachment issues. Public procurement and construction sectors also faced significant challenges, with frequent violations of procurement procedures and a tendency to make emergency purchases without prior preparation. The submission of fake educational certificates and other false documents to obtain public positions was another major issue, reflecting systemic corruption across multiple levels of government.

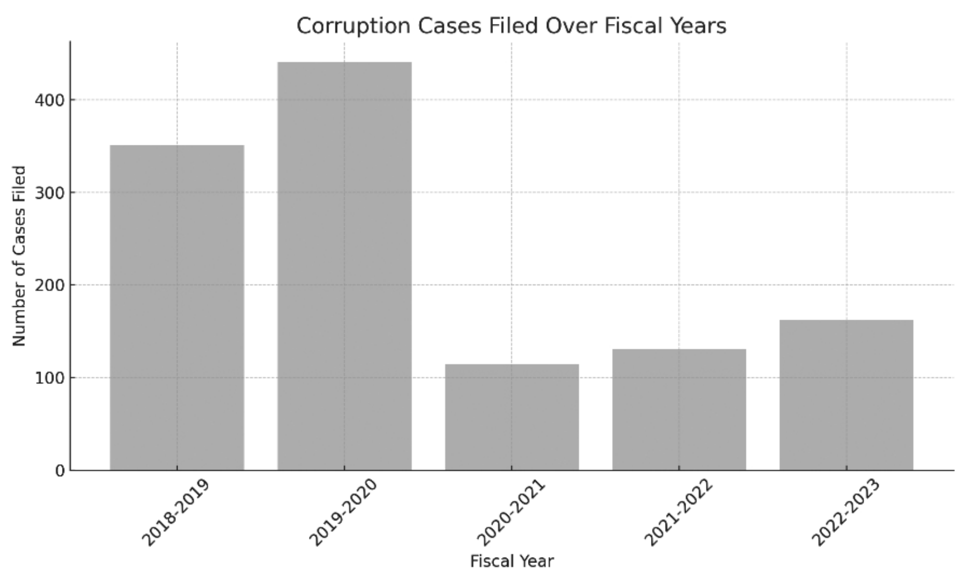
2. Fiscal Year 2022/2023[8]

In the following year, while the number of cases involving the loss of public property slightly decreased, cases related to illegal financial gains nearly doubled. This indicates a shift in the focus of corrupt activities rather than an overall reduction in corruption. Many of the previous year's corruption trends, such as dishonesty in recovering illegal gains or losses, damaging public property, taking bribes and providing false information, continued unabated. The trend of encroaching on public property by registering it in the names of specific individuals persisted, as did the issues in public procurement and construction, with no reduction in the violation of procurement processes or in the failure to perform quality work. The use of fake documents to secure public positions remained a significant problem. Corruption continued to be closely tied to financial transactions, affecting both revenue collection and government expenditure. Moreover, there was a growing tendency for public officials to exhibit anger towards customers during service delivery, further damaging public trust.

3. Overall Trend

Over the past two fiscal years, corruption has persisted in various forms across government income, expenditure, public property management, public procurement, construction and service delivery at all levels — local, state, and union. While certain aspects, such as the loss of public property, showed minor improvements, others, particularly illegal financial gains, worsened significantly. The systemic nature of these corrupt practices highlights the need for stronger anti-corruption measures and greater accountability to effectively address these ongoing issues.

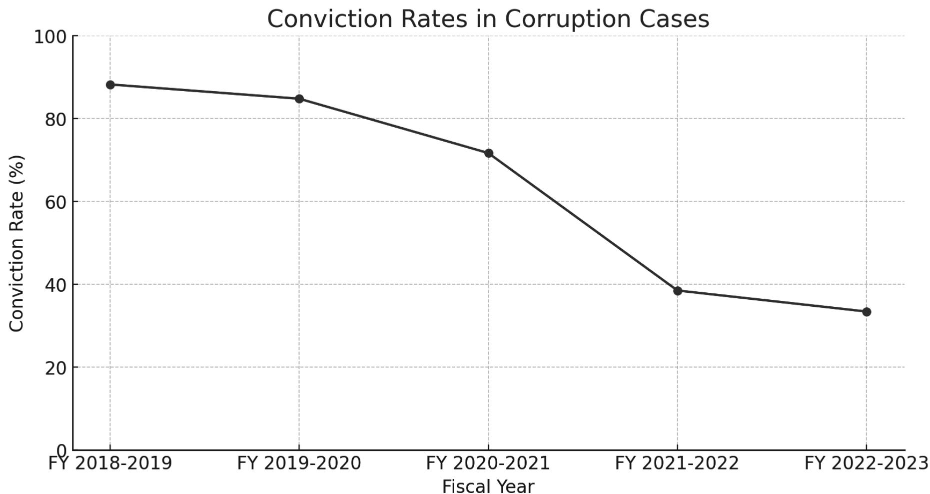
4. Corruption Trend in the Last Five Years[9]



[7] See, Commission for the Investigation of Abuse of Authority (CIAA), Annual Report, Fiscal Year 2021/2022 (2022).
[8] See, Commission for the Investigation of Abuse of Authority (CIAA), Annual Report, Fiscal Year 2022/2023 (2023).
[9] Commission for the Investigation of Abuse of Authority (CIAA), Annual Reports, from 2018-2019 to 2022-2023.

The chart above illustrates the trend of corruption cases filed over five fiscal years, from 2018-2019 to 2022-2023. From F.Y. 2018-2019 to 2019-2020, there was a notable increase in cases, rising from 351 to 441. However, in the following fiscal year (2020-2021), there was a sharp decline in cases, plummeting to 114, most likely influenced by external factors, particularly the global Covid-19 pandemic. During this period, government agencies, courts and anti-corruption bodies faced operational challenges due to lockdowns, remote working conditions and staff shortages, which could have slowed investigations and delayed case filings. The economic slowdown and legal delays also contributed, as fewer business activities and backlogged court systems reduced the detection and processing of corruption cases. In F.Y. 2021-2022, the number of cases slightly increased to 131 and further rose to 162 in F.Y. 2022-2023, showing a gradual recovery, although the figures have not yet returned to pre-2020 levels. Thus, the drop in cases is likely tied to the pandemic's multifaceted impact on society and institutions.

5. Conviction Rate[10]



The graph above illustrates the conviction rates in corruption cases over five fiscal years, from FY 2018-2019 to FY 2022-2023. There is a noticeable downward trend in these rates. The conviction rate began at 88.25 per cent in FY 2018-2019 and decreased steadily each year, reaching a low of 33.43 per cent by FY 2022-2023. This sharp decline could be indicative of various systemic issues, such as changes in legal frameworks or challenges in the investigation/prosecution of corruption cases. The significant drop particularly from FY 2020-2021 onwards suggests a critical shift that warrants further investigation to understand the underlying causes.

C. New Mechanism: Investigation and Prosecution of Money-Laundering

The 3rd Round APG Mutual Evaluation Report (MER) for Nepal recommended that Nepal pass the Amendments to Some Laws relating to the AML and Business Promotion Bill, which seeks to grant money-laundering (ML) investigation authority to the agency responsible for investigating predicate crimes,[11] thereby introducing new legislation[12] amending 19 different laws. This represents a significant advancement in Nepal's efforts to combat financial crimes. These amendments address the issue of duplication in the investigation process between predicate offences and ML. Under the new system, the investigating officer responsible for a predicate offence will also handle the investigation of related ML elements, thereby streamlining the process and ensuring that ML is addressed from the outset. This marks a departure from the previous system, where the Department of Money Laundering Investigation (DMLI) was solely responsible for ML investigations. Now, investigative responsibilities are distributed among law enforcement agencies

[10] Id.
[11] APG, Anti-Money Laundering and Counter-Terrorist Financing Measures – Nepal, Third Round Mutual Evaluation Report, 45 (2023).
[12] On 12 April 2024, the Nepalese Parliament enacted Amendments to Some Laws relating to AML and Business Promotion Act, 2024, which amended 19 different statues, including extensive amendments made to the Money Laundering Prevention Act, 2008.

handling predicate offences, including the CIAA.

D. Way Forward

Developing countries, including Nepal, exhibit a dynamic and evolving nature of corruption that adapts to changing economic and political conditions. This shifting landscape requires continuous adaptation of anti-corruption strategies to address emerging forms of corrupt practices. It must focus on strengthening anti-corruption frameworks by enhancing transparency, accountability and legal enforcement. Implementing rigorous public procurement procedures and increasing public engagement in anti-corruption initiatives will be crucial. For Nepal specifically, prioritizing the effective implementation of the newly amended laws on money-laundering is essential. This includes integrating investigative responsibilities among various law enforcement agencies to streamline the process and reduce duplication. Additionally, fostering a culture of transparency and accountability at all levels of government will help curb systemic corruption and improve overall governance. Enhanced international cooperation and adherence to global anti-corruption standards will further support these efforts, contributing to a more effective response to corruption and financial crimes. The Office of the Attorney General in Nepal has a specialized division and office representing the Government of Nepal in legal matters before the court. Further, there is a Specialization Training for the Government Attorneys on Anti-Corruption. However, the training course has not undergone any revisions in last three years, whereas the trend of corruption is changing every year. Learnings from other jurisdictions, analysis of the crime trend, and engagement with practitioners and experts can aid in enhancing the current course, thus further strengthening the capacity of government attorneys before the court.

II. OVERCOMING BARRIERS IN INVESTIGATIONS AND PROSECUTIONS OF CORRUPTION

Investigation and prosecution of corruption cases have observed several challenges which have been highlighted below.

A. Validation and Identification of Evidence

The difficulty in investigating and gathering sufficient evidence to ensure the punishment of those involved arises from the widespread and systemic nature of the corruption, often perpetrated by high-ranking officials, such as presidents, governors and prime ministers, who are or were responsible for the country's decision-making. Additionally, the use of complex mechanisms to conceal and launder the proceeds of corruption across multiple foreign jurisdictions further complicates the process.[13]

> "Criminals are leveraging digital channels more frequently, capitalizing on the low risk of detection, increased convenience, specialized skills, and greater gains for minimal effort." - World Governments Summit 2024[14]

<u>Nepalese Experience</u>

In Nepal, prosecution and investigation of corruption cases face significant challenges, as highlighted by several key decisions of Special Court. One recurring issue is the failure to authenticate or establish the authority of crucial evidence, such as audio recordings, leading to acquittals. For instance, in *Government of Nepal vs. Kumar Bahadur Raj Bhandari*,[15] and *Government of Nepal vs. Mohan Babu Yadav*,[16] the court acquitted the defendants due to the lack of authority over the audio records presented as evidence. This demonstrates the critical importance of proper validation and handling of evidence in corruption cases.

Another major challenge is the absence of key witnesses or complainants during the trial process. In

[13] Maíra Martini, Fighting Grand Corruption: Challenges and Successes, Transparency Int'l (2015), https://knowledgehub.transparency.org/assets/uploads/helpdesk/Fighting_grand_corruption_challenges_and_successes_2015.pdf.

[14] PwC, The Future of Crime: Emerging Trends and the Role of Technology 9 (2024), https://www.pwc.com/m1/en/publications/documents/2024/the-future-of-crime-eng.pdf.

[15] *Government of Nepal vs. Kumar Bahadur Raj Bhandari et al.*, 075-CR-0172.

[16] *Government of Nepal vs. Mohan Babu Yadav*, 076-CR-0009.

cases such as *Government of Nepal vs. Mohan Yadav*,[17] and *Government of Nepal vs. Binod Prasad Yadav et al.*, 076-CR-0001, the complainant or witnesses failed to appear before the court to give their statements. This significantly weakens the prosecution's case, as the lack of testimony from witnesses who are directly involved or have vital information can result in the inability to establish a firm case against the accused.

Furthermore, the lack of ample witnesses can also impede successful prosecutions. Cases like *Government of Nepal vs. Chabilal Pokharel*,[18] and *Government of Nepal vs. Ram Kishow Shah*,[19] highlight how the absence of sufficient witnesses can hinder the prosecution's ability to build a strong case, ultimately leading to acquittals. These challenges emphasize the critical need for thorough investigation procedures, reliable evidence collection and ensuring witness availability to achieve successful prosecutions in corruption cases.

B. Weak Legislative Framework

One of the significant challenges in combating corruption is the legislative framework, which often presents obstacles through complex and excessively complicated procedures. These intricate legal processes can slow down or even halt investigations, allowing corrupt practices to persist unchecked.[20] Addressing these challenges demands a multipronged approach, including law reforms, enhanced cross-border cooperation, and equiping enforcement agencies with the necessary tools and expertise to tackle corruption comprehensively.

Nepalese Experience:

> "Private corruption affects the entire supply chain, as it distorts markets, undermines competition, and increases costs to firms. It prevents a fair and efficient private sector, reduces the quality of products and services, and leads to missed business opportunities."
> – UNODC, 2013[21]

Articles 21 and 22 of the United Nations Convention against Corruption (UNCAC) focus on combating corruption in the private sector. Article 21 urges States to criminalize bribery in private businesses, including both the giving and receiving of undue advantages that lead to a breach of duties. Article 22 calls for the criminalization of embezzlement within the private sector, where individuals misuse assets entrusted to them due to their position. Both articles encourage countries to adopt legislative measures to address these corrupt practices within economic, financial and commercial activities. Although Nepal is a state party to the United Nations Convention against Corruption (UNCAC), it has yet to fully align its domestic laws with the convention's requirements. Notably, Nepal has not criminalized private sector corruption, focusing primarily on public sector offences. This gap in legislation leaves a significant area of corrupt practices unchecked, particularly those involving private enterprises, where corruption can be just as detrimental to economic integrity and governance. Strengthening legal frameworks to include private sector corruption is essential for Nepal to fully comply with UNCAC and combat corruption more effectively.

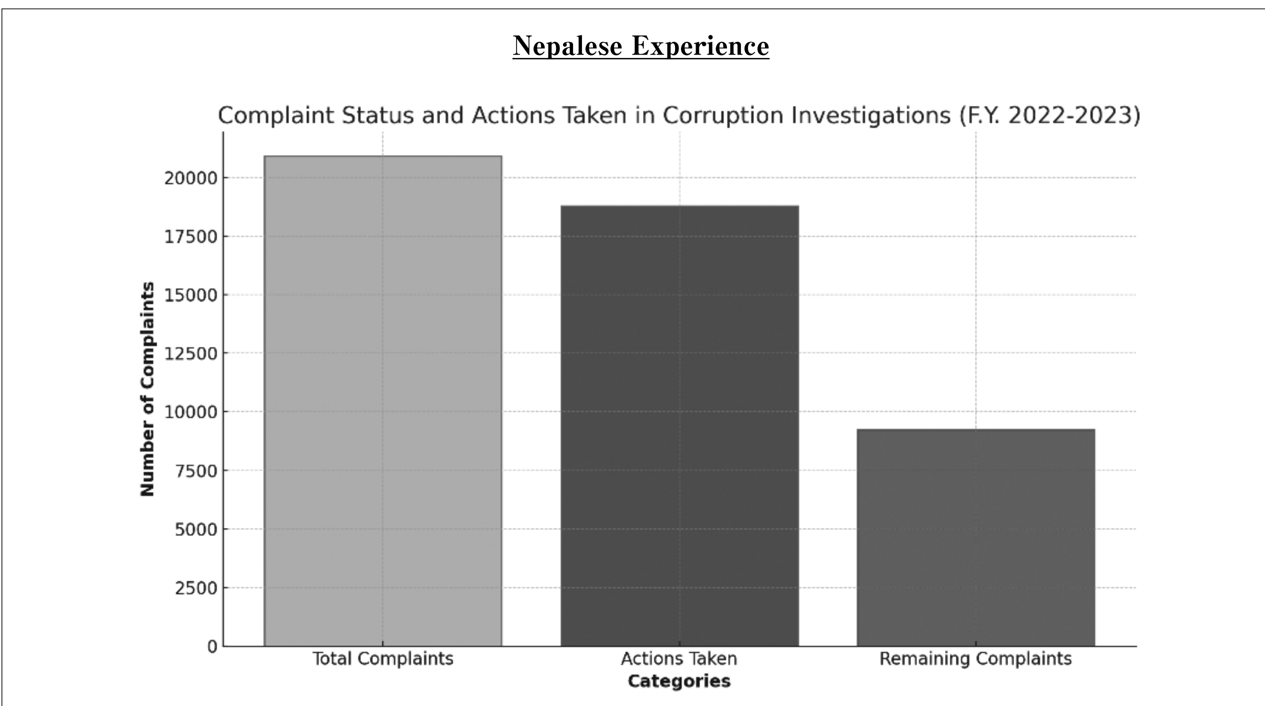
To effectively tackle the challenge of corruption, substantial legal reform is essential. In this endeavour, the United Nations Convention against Corruption (UNCAC) provides a crucial framework, offering globally recognized standards and practices for combating corruption. Additionally, examining and integrating successful anti-corruption practices from various jurisdictions worldwide can provide valuable insights and strategies. By aligning national laws with international standards and learning from the experiences of other countries, states can strengthen their legal mechanisms to prevent, detect and prosecute corruption more effectively.

[17] *Government of Nepal vs. Mohan Yadav*, 076-CR-0068.
[18] *Government of Nepal vs. Chabilal Pokharel*, 076-CR-0307.
[19] *Government of Nepal vs. Ram Kishow Shah*, 076-CR-0198.
[20] See, *Explanatory Report to the Criminal Law Convention on Corruption*, Council Eur., https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806ee8d4.
[21] Consequences of Private Sector Corruption, United Nations Off. on Drugs & Crime, https://www.unodc.org/e4j/zh/anti-corruption/module-5/key-issues/consequences-of-private-sector-corruption.html.

C. Resource Constraints

The effectiveness of law enforcement in tackling corruption cases is closely tied to the availability of sufficient human, financial and technical resources. Skilled and well-trained personnel are essential for dismantling the often intricate networks of corrupt activities. The tasks of identifying, analysing and taking enforcement actions require both a deep understanding of corruption and precise investigative abilities. However, a shortage of staff or insufficient training can significantly hinder law enforcement agencies' capacity to address the numerous challenges posed by corruption cases.[22]

Nepalese Experience



In F.Y. 2022-2023, a total of 20,905 complaints related to corruption were filed. Out of these, actions were taken on 18,799 complaints, demonstrating a significant level of engagement with the reported cases. However, 9,238 complaints remained unaddressed, indicating a backlog that may require further attention. The bar graph above visually represents the total complaints, actions taken and the remaining complaints, showcasing the effectiveness and the challenges faced in the investigation of corruption cases. When complaints are not processed in a timely manner, it leads to a perception that corruption is tolerated or ignored, potentially encouraging more such behavior and creating a cycle of impunity. Moreover, this backlog can stress judicial and administrative systems, and also result in the loss of evidence. One of the major tools of complaint could be referral of corruption from other public entity. However, due to lack of skilled and well-trained personnel in detection of corruption, there has been few referral from other public entities.

To effectively combat corruption, a comprehensive strategy is necessary that includes increased funding for anti-corruption agencies to hire more staff and improve technical systems, training programmes to enhance personnel skills in handling complex corruption investigations and improved cooperation among various government bodies to facilitate information sharing and streamline corruption-related processes.

D. Lack of International Cooperation

> "Corruption does not respect territorial boundaries. It therefore requires an international response, because of its links to transnational organized and other crimes. Countries now recognize the need for action that goes beyond borders and acknowledge the benefits of

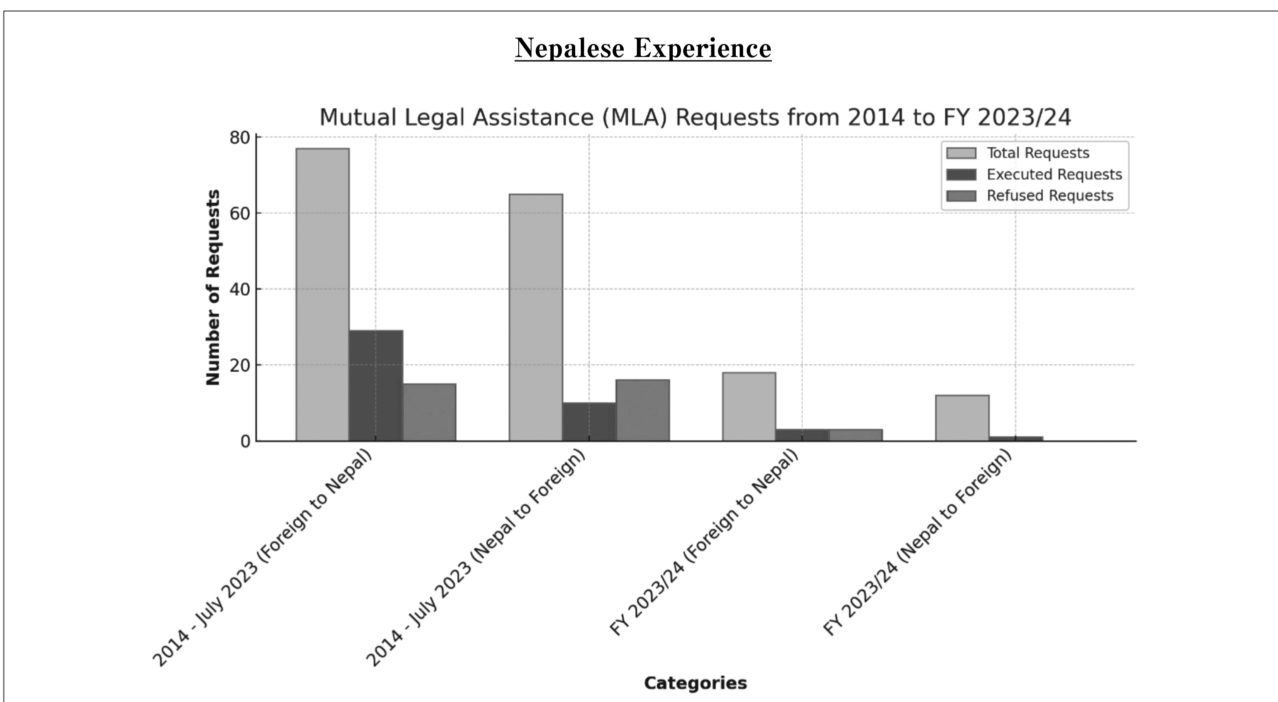
[22] Romli Arsad, Obstacles and Challenges in Law Enforcement Against Corruption in Public Services, 11 Russian L.J. 3336 (2023).

cooperation and the sharing of information".[23]

UNCAC focuses on international cooperation in addressing corruption, acknowledging its complex and cross-border nature. It establishes a framework for formal and informal collaboration among States, requiring the establishment of independent, specialized law enforcement bodies. States are encouraged to provide extensive mutual legal assistance and facilitate secure exchanges of information on ongoing corruption cases. It also covers various forms of international cooperation, including extradition, transfers of sentenced persons, joint investigations and the use of special investigative techniques. Additionally, it advocates for assisting one another in civil and administrative matters when appropriate.[24]

> "Differences in legal systems, laws and procedures; cumbersome and lengthy MLA and extradition procedures resulting in delays which impact investigations and prosecutions; limited resources for processing requests and utilising modern technology such as videoconferencing; and linguistic and terminology differences have all impacted the extent to which most States can provide and receive assistance."[25]

Nepalese Experience



Use of international cooperation in investigation and prosecution appears to be minimal in Nepalese experience. Nepal has faced challenges in handling mutual legal assistance (MLA) requests from foreign jurisdictions. Initially, Nepal received 77 MLA requests, but only 38 per cent were successfully executed, while nearly 20 per cent were refused due to legal and procedural complexities such as failure to meet thresholds, extradition issues and the inapplicability of MLA in civil matters. In FY 2023/24, Nepal received 18 MLA requests but executed only 17 per cent, with an equal number refused for similar reasons. Nepal also sent 12 MLA requests, with only one partially executed. These trends suggest a possible decline or stagnation in Nepal's MLA activities, highlighting the growing legal and procedural challenges in international legal cooperation. Addressing these issues will require efforts to streamline processes, enhance legal frameworks and improve cooperation with international partners. Further, there is lack of practice of international cooperation in corruption cases.

As a beacon of light, the Mutual Legal Assistance Act, 2014, has been amended by the Act to amend

[23] Pacific Anti-Corruption Factsheet: UNCAC Chapter IV, UN Dev. Programme, https://www.undp.org/sites/g/files/zskgke326/files/migration/pacific/pacific-anticorruption-factsheet-uncac-chapteriv.pdf.

[24] United Nations Convention Against Corruption, Chapter IV.

[25] UNODC, *International Cooperation for Investigation of Corruption Cases in Southeast Asia: Handbook* 7 (2019).

some acts related to Prevention of Money Laundering and Promotion of Business Environment, 2024, recently. The major relevant provisions of the amendments are:

i. The removal of "any particular" expands the scope of legal proceedings for which a foreign state can request mutual legal assistance from Nepal. Previously, the provision implied that requests for assistance were limited to specific legal proceedings. However, with the deletion of this phrase, requests can now be made for a broader range of legal matters without the need for specificity. This change suggests a more flexible approach to mutual legal assistance, allowing for a wider array of requests to be considered by Nepal, potentially enhancing international cooperation in legal matters.

ii. The recent amendment to the provisions governing mutual legal assistance in Nepal has notably expanded the scope of cooperation between Nepal and foreign states, particularly concerning matters related to judicial proceedings. The inclusion of provisions allowing for the exchange of mutual legal assistance in cases involving the transfer of confiscated property between Nepal and foreign states signifies a significant shift in the country's approach to international legal cooperation. One of the key effects of this amendment is the facilitation of processes related to the transfer of confiscated property. Specifically, the provision now allows for mutual legal assistance between Nepal and foreign states in cases where property belonging to Nepal has been confiscated abroad or where property belonging to a foreign state has been confiscated within Nepal.

To effectively address the transnational nature of corruption, a coordinated international approach is essential. The UNCAC framework facilitates this by promoting formal and informal cooperation among states, encouraging mutual legal assistance and enabling secure information exchange. For this, states must streamline mutual legal assistance (MLA) processes, invest in modern technology and enhance multilingual capabilities. Strengthening these aspects will help ensure timely and efficient collaboration, thereby improving the global response to corruption and related crimes.

III. KATHMANDU-TERAI FAST TRACK PROJECT: AN EXAMPLE OF PRIVATE-PUBLIC PARTNERSHIP IN DETECTION AND PREVENTION OF CORRUPTION

The Kathmandu-Terai Fast Track Project exemplifies the role of public-private partnerships (PPPs) in the detection and prevention of corruption through its adherence to transparency, competition and objective criteria in procurement. This ambitious highway construction project involved collaboration between the Department of Roads and multiple private construction firms, showcasing how effective PPPs can mitigate corruption risks, as provided below:

- *Joint Efforts in Transparency:* The project's use of a public tendering process ensured that all interested firms could compete fairly for contracts. By making contract details and award decisions publicly available, the project fostered a transparent environment where both public and private stakeholders could monitor and scrutinize the procurement process. This openness significantly reduced opportunities for corrupt practices, as it allowed for external oversight and accountability.

- *Collaborative Monitoring and Auditing:* Independent monitoring and auditing were integral to the project, with external auditors tasked with reviewing procurement processes and contract execution. This partnership between public authorities and independent auditors provided an additional layer of scrutiny, enabling the early detection and prevention of irregularities and conflicts of interest. The collaborative effort in monitoring and auditing enhanced the project's ability to maintain integrity and uphold anti-corruption standards.

- *Clear Criteria and Fair Evaluation:* The establishment of clear participation conditions and objective criteria for decision-making ensured that all firms were evaluated impartially. This clarity was crucial in preventing favouritism and ensuring that the selection process was based on merit and compliance with project requirements. The public-private partnership facilitated a fair and transparent evaluation

process, further mitigating corruption risks.

- *Effective Review and Remedies:* The project's mechanisms for reviewing procurement decisions and addressing disputes exemplify the collaborative approach to problem-solving in PPPs. These systems allowed for the resolution of grievances and provided remedies in case of any procedural issues, ensuring that the procurement process remained fair and accountable.

In summary, the Kathmandu-Terai Fast Track Project[26] highlights how public-private partnerships can play a pivotal role in preventing and detecting corruption. By integrating stringent anti-corruption measures, promoting transparency and fostering collaborative oversight, the project demonstrates the effectiveness of a well-structured PPP in enhancing procurement integrity and efficiency.

IV. CONCLUSION

In conclusion, the fight against corruption in Nepal faces multifaceted challenges, largely influenced by the nation's economic and social dynamics. Despite a notable increase in the prosecution of corruption cases over the last three years, the consistently declining conviction rates highlight substantial impediments within the investigative and prosecutorial processes. The recent legislative reforms aimed at enhancing international cooperation and addressing money-laundering-related corruption mark a significant step forward, yet their practical effectiveness remains to be assessed. The role of the Attorney General as the chief legal advisor is pivotal in navigating and addressing these challenges. To fortify the legal framework against corruption, Nepal must address several critical barriers, including the validation and identification of evidence, legislative inadequacies, resource constraints and the need for more robust international collaboration. The integration of private-public partnerships in the detection and prevention of corruption offers a promising model that could serve as a cornerstone for future anti-corruption efforts. By learning from global practices and continuously updating training programmes to reflect current trends, Nepal can enhance its judicial capabilities and effectively combat corruption, thereby ensuring justice and integrity within its governance structures.

[26] https://www.kathmanduteraifasttrack.gov.np/project-management-anti-corruption-measures.

STRENGTHENING THE PREVENTION, INVESTIGATION, AND PROSECUTION OF CORRUPTION CRIMES, AND PUBLIC-PRIVATE PARTNERSHIP IN PALESTINE

Ahmed Alattrash[*]

I. INTRODUCTION

Corruption remains one of the most critical challenges facing states globally, undermining governance and eroding public trust. In Palestine, the prevention, investigation and prosecution of corruption crimes are essential to promoting the rule of law, ensuring accountability and safeguarding public resources. The fight against corruption requires the active engagement of both public institutions and private actors, as well as strong international cooperation to tackle cross-border corrupt activities.

The legal and political situation in Palestine has been significantly impacted by the history of its Legislative Council and its relationship with Israel and internal political divisions. In *1996*, the first Palestinian Legislative Council elections were held under the newly established Palestinian Authority, following the Oslo Accords. These elections resulted in a mixed government with both Fatah and smaller parties represented in the Council. The establishment of the Legislative Council marked a key milestone in the self-governance of Palestine, providing a platform for legal debates, legislation and political expression within the Palestinian territories.

However, the *2006* elections marked a dramatic shift in the political landscape. Hamas, a political and militant group, won a majority of seats in the Palestinian Legislative Council. This victory led to increased political tensions between Hamas and Fatah, the latter traditionally holding power in the Palestinian Authority. Despite winning the elections, Hamas's victory was not accepted by some international actors and led to a blockade on Gaza and a split between the West Bank and Gaza. The legislative body was effectively paralyzed, and internal power struggles intensified.

In *2007*, the situation worsened when Israel arrested most of the Hamas-affiliated members of the Legislative Council. This move, combined with internal Palestinian political conflicts, rendered the Legislative Council inactive, with little capacity to legislate or function as a body. The arrest of elected representatives further deepened the political divide between the West Bank and Gaza, and undermined the functioning of the Palestinian government.

Finally, in *2012*, Palestinian President Mahmoud Abbas took the controversial step of dismantling the Palestinian Legislative Council, citing its dysfunction due to the political divide between Hamas and Fatah, as well as the Council's inability to function properly. The dissolution of the Council shifted legislative powers entirely into the hands of the President, consolidating executive authority and further centralizing governance in the West Bank. This move drew criticism from various quarters, as it eliminated a key democratic institution in Palestine, reducing the role of elected representatives in the legislative process and limiting checks on executive power.

These events highlight the complex interplay of Palestinian politics, governance and the legal structures meant to ensure democratic functioning. The ongoing political rift between Hamas and Fatah, along with Israeli interference, has made it difficult to establish a stable and functional legislative system in Palestine, leaving the country's legal and political framework in a state of flux.

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This paper provides a comprehensive analysis of the mechanisms for preventing, investigating and prosecuting corruption in Palestine, with an emphasis on legal instruments, institutional frameworks and the importance of public-private partnerships. Additionally, it highlights the challenges faced by Palestinian authorities in this area and offers recommendations for strengthening these efforts, particularly through enhanced international collaboration.

II. PREVENTIVE MEASURES AGAINST CORRUPTION IN PALESTINE: CHALLENGES AND RECOMMENDATIONS

Preventing corruption is often more cost-effective and efficient than trying to address its consequences after the fact. In Palestine, the introduction of preventive measures has been vital to tackling corruption at its roots. These efforts are aimed at fostering a culture of integrity within public institutions, enhancing transparency and reducing opportunities for corrupt behaviour. However, significant challenges remain in implementing these measures effectively.

A. Preventive Measures in General

1. Transparency and Accountability

Transparency is a fundamental pillar of any anti-corruption strategy. Public officials and institutions in Palestine must be held accountable for their actions, with clear processes for auditing and monitoring financial transactions and public service activities. Efforts to increase the transparency of government operations, such as public access to budgetary information and decision-making processes, are crucial to building public trust and reducing opportunities for corruption.

2. Internal Controls and Risk Management

Preventive measures often involve the implementation of robust internal controls within government agencies and public institutions. These controls include financial management systems, auditing processes and strict protocols for public procurement and contract management. Effective risk management systems can detect vulnerabilities and prevent corrupt practices before they occur.

3. Public Awareness Campaigns

Public engagement and education are essential in preventing corruption. Educating the public about the dangers of corruption and promoting a culture of honesty and integrity can reduce tolerance for corrupt activities. Public awareness campaigns can also encourage citizens to report corruption, which in turn strengthens the overall anti-corruption framework.

4. Whistle-Blower Protection

One of the most effective preventive measures is the protection of whistle-blowers who report corruption. Ensuring that individuals can report corruption without fear of retaliation creates an environment where public officials and private actors are held accountable. In Palestine, whistle-blower protection is an essential measure, ensuring that people who expose corrupt practices are shielded from harm.

B. Challenges in Implementing Preventive Measures

1. Political Interference

Political interference remains one of the most significant obstacles to effective corruption prevention in Palestine. Given the complex political environment, it is difficult to establish fully independent oversight bodies and implement reform measures without encountering resistance from powerful political groups. This makes it difficult for anti-corruption bodies to function effectively and with autonomy.

2. Limited Resources

Despite efforts to implement preventive measures, many institutions in Palestine face severe resource constraints. The lack of adequate funding for anti-corruption bodies, combined with limited human resources and expertise, hampers the development of effective preventive systems. This shortage of resources often leads to weak enforcement of anti-corruption policies and undermines the credibility of prevention mechanisms.

3. Weak Institutional Frameworks

While some legal and institutional frameworks for preventing corruption exist, there is a lack of coordination among various bodies responsible for enforcement. Fragmented efforts, overlapping mandates and weak institutional capacity make it difficult to ensure comprehensive prevention across the public sector.

4. Cultural and Social Factors

Cultural and social factors also play a role in perpetuating corrupt behaviour. In some cases, there is societal tolerance for small-scale corruption, such as bribery, which is seen as a necessary means to navigate bureaucratic hurdles. Changing these attitudes and promoting a culture of zero tolerance for corruption is a long-term challenge.

C. Recommendations for Strengthening Preventive Measures

1. Strengthening Institutional Coordination

To ensure the success of preventive measures, it is important to strengthen coordination among various governmental institutions, including anti-corruption bodies, the public prosecution and the judiciary. A centralized mechanism for monitoring and evaluating anti-corruption efforts would help reduce gaps in enforcement and ensure that preventive measures are applied consistently.

2. Building Capacity in Key Institutions

Increasing investment in the training and development of anti-corruption professionals — such as auditors, investigators and public servants — is crucial to improving the effectiveness of preventive measures. Moreover, specialized capacity-building programmes should be developed to address emerging corruption risks, such as those related to digital transactions and e-governance.

3. Enhancing Public Engagement

The government should invest in public awareness campaigns that emphasize the importance of integrity, the costs of corruption and the benefits of a transparent public sector. Encouraging citizens to participate in anti-corruption efforts, such as reporting suspected wrongdoing, would create a more proactive and accountable society.

4. Strengthening Legal Protections for Whistle-Blowers

It is essential to ensure the full protection of whistle-blowers who expose corrupt practices. Strengthening whistle-blower protection laws, providing anonymous reporting mechanisms, and offering legal and financial protection for those who come forward can help foster a more transparent and accountable environment.

III. LEGAL FRAMEWORK FOR PREVENTION, INVESTIGATION AND PROSECUTION OF CORRUPTION IN PALESTINE

To combat corruption, Palestine has adopted a series of legislative measures aimed at preventing corrupt practices across public institutions. These legal instruments serve as the foundation for creating a transparent and accountable public sector.

A. Anti-Corruption Law No. 1 of 2005

The Anti-Corruption Law (Act No. 1 of 2005) is the primary legal instrument for combating corruption in Palestine. This law provides the framework for establishing the Palestinian Anti-Corruption Commission (PACC), which is tasked with investigating corruption-related offences, promoting transparency and developing preventive measures.

The law sets forth the duties and powers of the PACC, including the authority to receive reports of corruption, investigate complaints and oversee the implementation of anti-corruption measures across the public sector. Article 16 of the law provides specific provisions regarding financial disclosures, which public officials are required to submit. The failure to comply with this obligation is punishable by fines, with the penalty increasing for repeated offences.

B. Decree-Law on Combating Money-Laundering No. 20 of 2015

Decree-Law No. 20 of 2015 plays a critical role in strengthening anti-corruption efforts in Palestine by addressing financial crimes, including money-laundering and the financing of terrorism. Article 45 of the law outlines the mechanisms for international cooperation in tracing, freezing and seizing assets related to money-laundering and corruption crimes. This legal framework provides the basis for Palestinian authorities to collaborate with international counterparts, sharing information and coordinating efforts to combat financial crimes.

C. Public Sector Accountability Framework

The Palestinian public sector is also governed by a variety of laws and regulations aimed at ensuring transparency and accountability. This includes guidelines on financial disclosure for public officials and a framework for assessing conflicts of interest. The introduction of a whistle-blower protection regime, as per Decision No. 7 of 2019, also complements the legal landscape by offering protection to those who report corruption and misconduct.

IV. INSTITUTIONAL FRAMEWORK FOR INVESTIGATING AND PROSECUTING CORRUPTION

The institutional mechanisms for investigating and prosecuting corruption crimes in Palestine involve several key bodies, each with distinct mandates. The effectiveness of these institutions is paramount to ensuring that corruption is detected, investigated and prosecuted in a timely and impartial manner.

A. Palestinian Anti-Corruption Commission (PACC)

The PACC, established under the Anti-Corruption Law, is the leading agency responsible for combating corruption in Palestine. It has the mandate to conduct investigations, analyse corruption risks and advocate for preventive measures across the public sector. However, the PACC cannot prosecute crimes of corruption as that is an exclusive power of prosecution. The PACC has the power to protect reporting persons, witnesses, informants and experts. In recent years, the PACC has taken steps to strengthen its capacity for handling complex corruption cases, including through capacity-building programmes and international partnerships.

B. Public Prosecution Office

The Public Prosecution in Palestine plays a vital role in prosecuting corruption crimes. It is tasked with reviewing the investigations conducted by the PACC and making decisions on whether to bring charges against individuals suspected of corruption, i.e. prosecute for corruption crimes. The prosecution office operates within the framework established by the Criminal Procedure Code of 2001, which outlines the legal procedures for criminal investigations and trials.

C. The Judiciary

The Palestinian judiciary, namely, the Special Court of Corruption Crimes, is responsible for adjudicating corruption cases. Judges are required to act impartially and base their decisions on the evidence presented during the trial. However, the independence of the judiciary has been an area of concern, particularly regarding political influence in sensitive cases. Ensuring the autonomy of the judiciary is critical to upholding the rule of law and promoting fair trials in corruption cases.

D. Financial Follow-Up Unit

The Financial Follow-Up Unit, operating under the Palestinian Monetary Authority, is tasked with monitoring financial transactions and preventing money-laundering. It works closely with other agencies, including the PACC and the Public Prosecution, to trace illicit financial flows linked to corruption. The unit also collaborates with international financial intelligence units as part of its efforts to combat cross-border corruption.

V. CHALLENGES IN INVESTIGATING AND PROSECUTING CORRUPTION IN PALESTINE

Despite the legal and institutional frameworks in place, several challenges hinder the effective investigation and prosecution of corruption in Palestine.

A. Political Interference

One of the most significant challenges faced by Palestinian authorities in investigating corruption is political interference. Given the complex political environment, where the Palestinian Authority's institutions sometimes face pressure from political actors, investigations into corruption, especially those involving high-ranking officials, can be delayed or obstructed. This undermines the public's trust in the anti-corruption institutions and their ability to act independently.

B. Limited Resources and Capacity

While the Palestinian Anti-Corruption Commission and the judiciary have made progress, they still face limitations in terms of resources and capacity. The lack of specialized training and insufficient funding for anti-corruption activities have hindered the effectiveness of investigations. Additionally, limited technical resources to trace illicit financial transactions or carry out complex financial investigations present another barrier to effective prosecution.

C. Weak Enforcement of Financial Disclosure Regimes

Although Palestinian law requires public officials to submit financial disclosures, enforcement remains weak. Many officials fail to comply with the reporting obligations, and penalties for non-compliance are often not applied in a consistent or timely manner. The lack of transparency in the financial dealings of public officials exacerbates corruption risks and undermines the prevention efforts.

D. Jurisdictional and Legal Barriers

The legal framework in Palestine does not provide sufficient provisions for the direct enforcement of foreign asset recovery orders or for confiscation of illicit proceeds obtained through corruption crimes. Jurisdictional challenges also arise when dealing with cross-border corruption cases, especially when foreign entities are involved. The absence of comprehensive mutual legal assistance agreements limits the ability of Palestinian authorities to effectively collaborate with foreign counterparts in corruption investigations.

VI. RECOMMENDATIONS FOR IMPROVING THE INVESTIGATION AND PROSECUTION OF CORRUPTION CRIMES IN PALESTINE

To enhance the effectiveness of Palestine's efforts to combat corruption, the following recommendations are made:

A. Strengthening Institutional Capacity

1. **Resource Allocation:** Increase funding and resources for the Palestinian Anti-Corruption Commission, the judiciary and other relevant agencies. This will allow for more comprehensive investigations and the implementation of anti-corruption measures across the public sector.

2. **Capacity-Building:** Provide specialized training for investigators, prosecutors and judges in handling corruption-related cases, including complex financial crimes and cross-border corruption cases. Collaboration with international organizations such as the United Nations Office on Drugs and Crime (UNODC) and the World Bank can facilitate this.

B. Enhancing International Cooperation

1. **Bilateral and Multilateral Agreements:** Palestine should prioritize the negotiation and signing of bilateral and multilateral treaties for mutual legal assistance in criminal matters, particularly in relation

to corruption. These agreements would streamline information sharing, asset recovery and the enforcement of foreign judgments.

2. **Membership in International Networks:** Palestine should continue efforts to join global anti-corruption networks such as the Egmont Group of Financial Intelligence Units. This would enhance its capacity to trace and recover assets linked to corruption crimes.

C. Strengthening Legal Frameworks

1. **Enforcing Financial Disclosure Regimes:** Strengthen the enforcement of financial disclosure requirements for public officials, ensuring that penalties for non-compliance are consistently applied. Consider expanding the scope of financial disclosure to cover foreign accounts and other assets.

2. **Expanding Asset Confiscation Laws:** Amend Palestinian law to allow for the confiscation of assets obtained through corruption crimes, even in the absence of a conviction. This would prevent corrupt officials from benefiting from illicit gains and enhance deterrence.

VII. PUBLIC-PRIVATE PARTNERSHIP IN PALESTINE

Public-private partnerships (PPPs) can play an integral role in strengthening the fight against corruption. These partnerships involve collaboration between government entities and the private sector to improve transparency, prevent corrupt practices and support anti-corruption initiatives.

A. Role of the Private Sector

The private sector in Palestine can support anti-corruption efforts in various ways. Private businesses, financial institutions and civil society organizations have a crucial role in promoting transparency and ethical practices within their organizations. By adopting rigorous internal controls, adhering to anti-corruption standards and reporting suspicious activities, private entities can contribute to a broader anti-corruption strategy.

1. Financial Sector Collaboration

Banks and financial institutions can be key players in preventing money-laundering and financial corruption. They are in a unique position to detect unusual financial transactions and work closely with regulatory authorities to ensure compliance with anti-corruption laws.

2. Corporate Social Responsibility (CSR)

Through CSR programmes, businesses in Palestine can foster a culture of integrity and transparency. Companies can engage in training programmes, support whistle-blower protection and advocate for anti-corruption measures within their supply chains.

3. Cooperation in Government Procurement

The private sector can help monitor public procurement processes by ensuring that government contracts are awarded based on merit and free from corrupt practices. This can be achieved through independent oversight mechanisms and collaboration with the government to ensure accountability.

B. Challenges in Public-Private Partnerships

While the private sector can be a valuable partner in anti-corruption efforts, several challenges hinder effective collaboration:

1. Lack of Trust

A significant barrier to effective public-private cooperation is the lack of trust between the government and the private sector. Business entities may be wary of working with government institutions due to fears of retaliation, corruption within public offices or political instability.

2. Limited Capacity

Many private entities in Palestine lack the capacity to engage fully in anti-corruption initiatives. They may not have the necessary resources, expertise or training to identify and prevent corruption risks within their operations.

3. Legal and Institutional Gaps

There is a lack of clear legal frameworks that outline the responsibilities and incentives for private companies to participate in anti-corruption initiatives. Additionally, the absence of effective mechanisms for public-private collaboration, such as joint task forces or committees, limits the potential for meaningful partnership.

C. Recommendations for Strengthening Public-Private Partnerships

To enhance the effectiveness of public-private partnerships in Palestine, the following recommendations should be considered:

1. Legal Framework for PPPs

Palestine should establish clear regulations that outline the roles and responsibilities of private entities in anti-corruption efforts. These regulations should incentivize businesses to adopt ethical practices and report corruption, while ensuring protection for whistle-blowers.

2. Building Trust Between Sectors

Initiatives aimed at building trust between the public and private sectors should be prioritized. Regular dialogues, joint workshops and shared anti-corruption objectives can help foster a cooperative environment.

3. Enhancing Capacity-Building

Capacity-building initiatives are essential for both public and private institutions. Training programmes focused on anti-corruption strategies, financial monitoring and legal compliance should be introduced to enhance the capabilities of all stakeholders.

4. Incentivizing Corporate Compliance

The government should offer incentives, such as tax breaks or certifications, to companies that demonstrate strong anti-corruption practices. Public recognition of ethical businesses could also encourage others to follow suit.

VIII. CONCLUSION

The fight against corruption in Palestine, like in many other countries, is a multifaceted challenge that requires strong institutional frameworks, effective legal instruments and comprehensive international cooperation. While significant strides have been made in establishing a legal foundation for anti-corruption efforts in Palestine, many challenges persist in the areas of prevention, investigation and prosecution. The key to overcoming these challenges lies in continuously strengthening the institutional capacities of relevant bodies, enhancing the transparency of government operations and ensuring that anti-corruption measures are applied consistently and effectively.

As outlined in this paper, Palestine has established several legal instruments and institutions that are designed to prevent, investigate and prosecute corruption crimes. The Anti-Corruption Commission (PACC) plays a central role in investigating corruption cases and overseeing the implementation of the anti-corruption laws. The enactment of laws such as Decree-Law No. 20 of 2015 on Combating Money Laundering and Terrorism Financing, and the Cybercrime Law No. 10 of 2018, reflects Palestine's commitment to aligning its legal framework with international anti-corruption standards. These laws are critical for fostering transparency, regulating financial flows and enhancing the capacity of law enforcement agencies to handle complex corruption cases, particularly those with transnational dimensions.

The establishment of a public-private partnership (PPP) model is another vital component in combating corruption. Engaging the private sector, civil society and international organizations in anti-corruption efforts

provides a robust platform for sharing resources, expertise and information. Through PPPs, Palestine can increase its outreach and collaboration with international partners, such as the Egmont Group and various regional financial intelligence units, to ensure that corruption cases are investigated and prosecuted in accordance with global standards. These partnerships also allow for better resource allocation, which can help overcome financial and capacity-related limitations in the public sector.

However, the full potential of these efforts has yet to be realized. Several systemic barriers continue to hinder the effectiveness of corruption investigations and prosecutions in Palestine. The lack of judicial independence, political influence and the inadequacy of enforcement mechanisms undermine the credibility and reliability of anti-corruption institutions. Furthermore, challenges related to the lack of coordination between domestic agencies and the limited use of international cooperation tools for asset recovery remain significant obstacles to effective anti-corruption strategies. These issues have led to a situation where many corruption cases, particularly those involving senior officials, remain unresolved, contributing to a climate of impunity and public distrust in the judicial system.

VIII. CASE-STUDY: FORGERY AND MISREPRESENTATION BY THE DEFENDANT IN MUNICIPAL PAPER

In this case, the defendant was involved in a legal matter concerning a municipal document that contained forged information. The defendant, who was associated with the land in question, had authorized a municipal paper which stated that a 3000 square metre plot of land belonged to him. The document, dated 2016, bore an official municipal stamp, marked with the inscription "Palestinian Authority."

However, this document raised immediate concerns due to the presence of the "Palestinian Authority" stamp. In 2012, all municipalities across Palestine had officially switched their stamps from "Palestinian Authority" to "State of Palestine" in alignment with the political changes and institutional reforms. This discrepancy pointed to the possibility of fraud, as the document presented a stamp that was no longer in circulation at the time it was supposedly issued.

To address these concerns, the municipal paper was sent for forensic analysis. The analysis confirmed that the document was indeed a forgery. The forensic report highlighted that the defendant had likely manipulated the document to falsely assert ownership of the land, using a stamp that was outdated and no longer valid for official documents.

Following the forensic findings, the case was referred to the Corruption Crimes Prosecution. The prosecution pursued charges against the defendant based on the evidence of forgery and fraudulent misrepresentation. After presenting the evidence in court, the verdict resulted in a conviction, affirming that the defendant had committed a crime by forging an official municipal document in an attempt to unlawfully claim ownership of the land.

This case underscores the importance of maintaining proper legal and administrative procedures in municipal governance, as well as the role of forensic analysis in uncovering criminal activities, particularly in cases involving forged official documents. The conviction serves as a deterrent against the use of fraudulent practices in the legal and real estate sectors, reinforcing the need for transparent and accurate public records.

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STRENGTHENING PREVENTION, DETECTION, AND PROSECUTION OF CORRUPTION AND PUBLIC-PRIVATE PARTNERSHIP

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I. OVERVIEW

The term "Corruption" can be defined simply as abuse of entrusted for personal gains. There is no specific definition for "corruption" and as per the Black's Law dictionary, the corruption is defined as follows: *"The act of doing something with an intent to give some advantage inconsistent with official duty and the rights of others."* [1]

According to Justice N. Santhosh Hedge, former supreme Court Judge of India, *"Corruption includes improper or selfish exercise of power and influence attached to a public office."* [2]

Although corruption intends mainly in line with the abuse of entrusted powers, it does not restrict only to that instance. Thus, it comprises bribery, misappropriation, extortion, nepotism, fraud, embezzlement and money-laundering as well.

Corruption is a multifaceted menace which brutally attacks to the economic spine of countries. Almost every country in the world is facing terrible consequences with the same outcomes, though it appears in various configurations. The corruption destroys the people's livelihoods and economy of the country by obstructing the state revenues and funds which are to be flowed to the General Treasury. It terribly affects to the rule of law and administrative integrity. it creates the social and economic inequality among the citizens. It discourages the investments and finally it creates pollical instability and insecurity in the society bringing the ill fame and putting that country into the corrupted list in global rankings.

There are no exact proofs to estimate a period of time or era and when and where corruption had its origin and in which form it was originated at the inception. However, the community of the world has realized now, that it is not a single act and it is not an issue, relevant only to the state. Thereby, only the efforts taken by the government or the state were not sufficient enough to combat against the corruption which was entangled in each and every aspect of the society. In the circumstances, since there should be a robust mechanism and frameworks to eradicate it, the role of the private sector in relation to the fighting against corruption was emerged significantly. Having understood said importance of forming collaborative efforts with the private sector, the concept of "public-private partnership against the corruption" (PPP) was originated and expanded all over the world due to its successful applicability of using as a tool to fight against the corruption. Thereby, Public-Private Partnerships (PPP) play a significant role in the scope of anti-corruption mechanisms and tools.

II. LEGISLATIVE AND INSTITUTIONAL FRAMEWORK IN SRI LANKA TO ACT AGAINST CORRUPTION

From the historical era of Sri Lanka, there were several legislative and institutional mechanisms which were set up from time to time in order to fight against corruption. Certain anti-corruption provisions were there in The Constitution and under the criminal law, Penal Code consists several provisions in relation to

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[1] pg.154, 3rd pocket edition of Black's Law Dictionary.
[2] Pg.06 of "Commentary on Anti-Corruption - Law", 2021- Justice N. Santhosh Hedge.

the bribery offences. Then Bribery Act[3], Declaration of Assets and Liabilities Law,[4] Commission to Investigate Allegations of Bribery or Corruption Act[5], Prevention of Money Laundering Act,[6] came into operation with extensive powers to act against the corruption. Several anti- corruption institutions were also set up in accordance with said legislative frameworks.

A. Legislative Scope in Relation to Act Against Corruption In Sri Lanka

1. The Constitution

The Legislature of Sri Lanka (The Parliament) has recognized and accepted to act against the corruption, prevention of corrupt practices and develop a culture with integrity in accordance with the provisions of United Nations Convention Against Corruption (UNCAC) the 21st Amendment made to the Constitution.[7]

Thereby, The Parliament passed the Anti-Corruption Act No.09 of 2023 in complying with the 21st amendment of The Constitution in order to set up an independent commission with the powers to investigate, prosecute, prevent the corruption and to take measures to implement the United Nations Convention Against Corruption (UNCAC) and any other international Conventions relating to the prevention of corruption, to which Sri Lanka is a party.[8]

2. Prevention of Money Laundering Act

As per the provisions of Prevention of Money Laundering Act, money-laundering becomes an offence if any person engages directly or indirectly in any transaction in relation to any property which derived from any unlawful activity or proceeds of crime knowing or having reasons to believe that such property is derived from any unlawful activity or proceeds of crime[9]. As per the interpretation unlawful activity includes the offences under the bribery law as well.[10]

3. Anti- Corruption Act, no.09 of 2023

The Anti-Corruption Act was enacted by the legislature by complying with the provisions of the 21st amendment to the Constitution. Accordingly, The Commission to Investigate Allegations of Bribery Or Corruption, Sri Lanka (CIABOC) was set up as an independent corporate body in order to investigate, prosecute the offences including corruption, bribery (both public and private sector), conflict of interest, trade in influence, money-laundering etc.

B. Institutional Framework in Relation to Act Against Corruption

Several institutions were also set up to fight against the corruption with the collaboration of the private sector in Sri Lanka. Some institutions were set up with the special laws passed in accordance with The Constitution of Sri Lanka.

1. The Commission to Investigate Allegations of Bribery or Corruption- (CIABOC), Sri Lanka

The Commission to Investigate Allegations of Bribery Or Corruption, Sri Lanka (CIABOC) which is empowered by the 21st Amendment of the Constitution of Sri Lanka and the Anti-Corruption Act, is the focal point and the main investigating, prosecuting and prevention authority in respect of the corrupt practices including bribery (public and private sector), corruption, undue accumulation of wealth, conflict of interest, trade in influence, declaration of assets and liabilities and money-laundering etc.

2. The Financial Intelligence Unit- (FIU), Central Bank of Sri Lanka

The Financial Intelligence Unit (FIU) was set up under the Ministry of Finance and Planning at the Central Bank in terms of the Financial Transactions Reporting Act No.06 of 2006. It is the main body which supervises the suspicious monetary transactions and act as the central repository of reported information. It has powers to collect information in relation to the unlawful activities which constitutes money-laundering,

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[3] Bribery Act, no.11 of 1954.
[4] Declaration of Assets and Liabilities Law, no.01 of 1975.
[5] Commission To Investigate Allegations of Bribery or Corruption Act, No.19 of 1994.
[6] Prevention of Money Laundering Act, no.05 of 2006.
[7] Article 156A (1) (c) of 21st Amendment of the 1978 constitution.
[8] Sri Lanka signed the UNCAC on 15/03/2003 and ratified it on 31/01/2003 and UNCAC entered into force on 14/12/2005.
[9] Section 3(1) of Prevention of Money Laundering Act, no.05 of 2006.
[10] Ibid, Section 35.

financing of terrorism and share them to the law enforcement authorities for legal actions and act with the local and global stake holders educate and prevent illegal practices of money-laundering and financing of terrorism.

3. Criminal investigation Department (CID) – Sri Lanka

Criminal investigation Department (CID) is another forum which is engaging in the investigations relating to the money-laundering, and other financial crimes with high value and complexed nature. CID mainly conducts money-laundering investigations and refer them to the Attorney General's Department for legal actions. The law relating to the money-laundering offences empowers the CID to investigate and seize the proceeds of crimes during the investigation too.[11]

C. Legislative Scope Facilitating Public-Private Partnership (PPP) in Relation to Detect, Prosecute and Prevent Corruption in Sri Lanka

The governing tool for combating against the corruption with the collaboration of the all sectors of the world is United Nations Convention Against Corruption (UNCAC). Therefore, being a signatory to the UNCAC, Sri Lanka has an obligation to comply with the provisions of the same and enact the laws, mechanisms and procedures to investigate, prosecute, and prevent the corruptions. Accordingly, the legislature of Sri Lanka constitutionally undertook to implement the provisions of the UNCAC by its 21st amendment to the constitution.

The provisions of the UNCAC drives its signatories to have strong laws and procedures including the in association with the private sector. The UNCAC provides that the state parties shall take measures to encourage the cooperation between national investigating and prosecuting authorities and entities of the private sector relating to the commission of offences and encourage its nationals and other persons to report to the investigating and prosecuting authorities if offences were committed.[12] In the above legal context, laws of Sri Lanka including the supreme law (the Constitution) have been adjusted as per above provisions in respect of the contribution of private sector in the anti- corruption movement.

III. STATUTORY PROVISIONS FACILITATING PUBLIC-PRIVATE PARTNERSHIP (PPP) AND RELATED INSTITUTIONS SET UP IN REATION TO DETECT CORRUPTION

Several legislations have been enacted by the Parliament of Sri Lanka in order to detect the corruption with the collaboration of the private sector. Prevention of Money Laundering Act no.05 of 2006, Financial Reporting Transactions Act, no.06 of 2006 and the Anti- Corruption Act, no.09 of 2023 are the main statutory laws enacted with that purpose.

A. Anti-Corruption Act no.09 of 2023

The newly enacted Anti- Corruption Act, was come into operation from 15/09/2023. The Bribery Act no.11 of 1954, the Commission to investigate Allegations of Bribery or Corruption Act no.19 of 1994 and the declaration of Assets and Liabilities Law no.01 of 1975 were repealed with the arrival of Anti- Corruption Act. Therefore, the new Act can be considered as a replacement with new updates regarding the detection, prosecution, prevention and reporting about the corruption.

There are several special provisions which facilitates for the detection of corruption with the partnership of the private sector. The Commission is empowered to conduct investigations, regarding the allegations contained in any information or complaint made to it or any material received by it or on *ex mero motu* where any such allegations or any material received discloses the commission of an offence under the Anti-Corruption Act.[13]

Such complaint or information can be provided to the Commission orally, in writing or by electronic mode

[11] Section7(01) of Prevention of Money Laundering Act, no.05 of 2006.
[12] Article 39(1), 39(2) of UNCAC.
[13] Section 41 of Anti- Corruption Act, no.09 of 2023.

of communication.[14] After the investigations, the Commission has the powers to direct the Director-General to institute proceedings in respect of such offence in the appropriate court.[15]

The Commission can direct any bank, a non-banking financial institution, or designated non-finance business to produce, any information relating to the account of any person in respect of whom any inquiry or investigation is being conducted and any bank, non-banking financial institution, or designated non-finance business to provide information and material to the Commission.[16]

The Commission has powers to conduct a joint-investigations for a specific period by an agreement between the Commission and any other investigative authority in Sri Lanka.[17]

Further, the CIABOC is the central authority on declarations of assets and liabilities. It should monitor and conduct a verification process in relation to the declaration assets and liabilities in order to detect, investigate and take actions against undue enrichment/ accumulation of illegal wealth and conflict of interests. The officers/persons whom were subjected to this law include even private staff members of the Members of Parliament, Executives of trade unions, Chairmen, Directors and staff officers of Companies, in which not less than twenty-five per centum of shares are held by the State, office bearers of media, office bearers of National Associations of Sports and many more categories listed out in the Act.[18]

B. Prevention of Money Laundering Act no.05 of 2006 — Criminal Investigation Department (CID)

As per the Act, it makes it an offence for not declaring any information to Financial Investigation Unit (FIU) relating to any property that has been derived from any unlawful activity.[19]

C. Financial Transactions Reporting Act, no.06 of 2006 — Financial Intelligence Unit (FIU)

FIU is the main supervisory authority to collect the information about suspicious financial transactions which fall within the definition of money-laundering and financing of terrorism and disseminate them to the appropriate law enforcement agencies for investigation or the prosecution.[20]

IV. STATUTORY PROVISIONS FACILITATING PUBLIC-PRIVATE PARTNERSHIP (PPP) AND RELATED INSTITUTIONS SET UP IN RELATION TO PROSECUTION OF CORRUPTION

As per above mentioned statutory provisions, mainly two institutions have been set up in order to take actions in respect of corruptions. The main prosecution body for offences of corruption is the CIABOC and the other authority is Attorney General's Department.

A. Anti-Corruption Act, no.09 of 2023 — The Commission to Investigate Allegations of Bribery or Corruption (CIABOC)

As far as the Anti- Corruption Act is concerned the Commission to Investigate Allegations of Bribery or Corruption (CIABOC) is empowered to conduct investigations, prosecutions and prevention in respect of corruption and other associated offences. The Anti- Corruption Act, makes it an offence for offering, solicitation or acceptance of a gratification by of private sector and if convicted be liable to a fine not exceeding 1 million Rupees or to a term of rigorous imprisonment not exceeding 07 years or to both fine and imprisonment.[21]

Anti-Corruption Act makes it an offence for offering or accepting a gratification in respect of threatening

[14] Ibid, section 43(1).
[15] Ibid, section 42.
[16] Ibid section 47.
[17] Ibid, Section 61(1).
[18] Ibid, Section 80.
[19] Section 05 of Prevention of Money Laundering Act, no.05 of 2006.
[20] Section 15 of financial transactions Reporting Act, no.06 of 2006.
[21] Section 106 of Anti- Corruption Act, No.09 of 2023.

or undermining the integrity of any sporting events including influencing the run of play or the outcome of the sporting event or non- reporting such acts to the higher authorities of the sporting body, regulatory authority or to the nearest police station. It also carries same punishment as stated above for the offence of "private sector bribery" under section 106 of the Anti- Corruption Act.[22]

There are several offences in respect of non-declaration of assets and liabilities and other associated offences such as misinformation and submitting wrongful details in it. There is an administrative fine at the 01st instance and a legal action is considered if the offence is continuously committed.[23]

The Commission is empowered to investigate and prosecute the offences of money-laundering, misappropriation, criminal breach of trust, frauds, forgery, falsification of accounts, offences against Public Property Act, and offences under the Computer Crimes Act no.24 of 2007 if those offences and other offences under this Act were committed during the same transaction.

When an offence was committed falls under section 106 (private sector bribery) and section 108 (offences relating to sporting events) of this Act, The Commission with the permission of the High Court, may enter into a deferred prosecution agreement with any person to suspend and defer the Criminal Proceedings against such person for a period not less than five years and not exceeding ten years subject to certain conditions.

Where the Commission agrees to suspend or defer the criminal proceedings, it shall pay due regard to-

- the state policy on prevention of bribery and corruption;
- the national interest and public interest;
- views of the victims of the offence, if any; and the representations that may be made by the accused person or on his behalf by his Attorney-at-Law.

Conditions to be fulfilled within a stipulated period and said conditions include following:

(i) to publicly express remorse and apology before the High Court
(ii) to provide reparation to victims of the offence
(iii) to publicly undertake that such person refrains from committing an offence under this Act; or
(iv) to pay as compensation to the State the full amount relating to the offence.[24]

B. Prevention of Money Laundering Act no.05 of 2006 and Financial Transactions Reporting Act, no.06 of 2006 — Attorney General's Department

Offences under the Financial Transactions Reporting Act, no.06 of 2006 and offences of Prevention of Money Laundering Act are being investigated by the officers of FIU and the CID but, prosecuted by the Attorney General's Department.

V. STATUTORY PROVISIONS OF ANTI-CORRUPTION ACT FACILITATING PUBLIC-PRIVATE PARTNERSHIP (PPP) IN RELATION TO PREVENT CORRUPTION

As a state party which became a signatory to the UNCAC, Sri Lanka has taken several mechanisms including legislative measures to combat against the corruption. The Anti- Corruption Act was enacted mainly in order to give effect to the provisions of the UNCAC. Moreover, the National Action Plan for Combatting Bribery and Corruption in Sri Lanka also was based mostly on the provisions of the UNCAC.[25]

[22] Ibid, Section 108.
[23] Section 90 of Anti- Corruption Act, No.09 of 2023.
[24] Section 71 of the Anti-Corruption Act, no.09 of 2023.
[25] https://ciaboc.gov.lk/media-centre/resources/national-action-plan-2019-2023.

A. Anti-Corruption Act no.09 of 2023- Sri Lanka

There are several new provisions in the Anti- Corruption Act in respect of the Prevention and Public Private Partnerships. Section 39(2) of the Act reads as follows:

> *"The Commission shall promote active participation of civil society, non-governmental and community-based organizations, in the prevention of and the fight against corruption to raise public awareness regarding the existence of, causes and gravity of and threats posed by corruption"*

As per the section 40 of the Act, the Commission can provide consultation, guidance, and advice to any institution public or private, on prevention strategies or measures to eradicate corruption and instruct, advice and assist any person for that purpose. Further, the Commission has powers to introduce codes of conduct for the private sector entities in order to develop good commercial practices, take measures to prevent corruption in the contractual relations between the Government and private sector entities, take measures to enlist and foster public support against corruption.[26]

B. National Action Plan for Combating Bribery and Corruption in Sri Lanka

The National Action Plan for Combating Bribery and Corruption was launched in 2019 with the approval of the Cabinet. The Action Plan is premised on 04 strategies for combating bribery and corruption in Sri Lanka namely as follows:

- Prevention Measures and value-based education and community engagement
- Institutional Strengthening of CIABOC and other Law Enforcement Agencies
- Law and Policy Reforms.

Under the "Prevention Measures", establishment of a Corruption Prevention Division at CIABOC, enhancing integrity and preventing corruption in the public and private sector, appointment of integrity officers and facilitation officers, forming corruption prevention committees, institutional Action Plans with risk assessment, gift rules, conflict of interest rules, codes of ethics, oath of integrity, integrity pledge, corruption free zone are several actions for the public and private sectors to be done.[27]

Further, for "Optimizing Citizen's Access to Public Services" includes, Citizen charter, electronic payment system, public display of standard processes, promote digitalization, reception officers were available. Under the "Preventing Corruption in the Private Sector" includes reviewing current codes of ethics, introducing codes of ethics and regulatory audits for integrity.

"Value-Based Education and Community Engagement" includes integrity education for children and youth, introducing a curriculum on integrity and anti-corruption to primary, middle and high school, developing a National Policy on Anti-corruption and Integrity Education in Universities, Promoting Youth Movements and Youth Coalitions committed to integrity, strengthening the role of media to promote a culture of integrity strengthening the role of media to promote a culture of integrity, strengthening civil society and citizens to enhance accountability, engaging the private sector towards a society of integrity, identifying private sector associations, Professional Associations, Social Service Clubs, and chambers of Commerce as partners and sign MOUs, incorporating corruption prevention and integrity programmes into Corporate Social Responsibility initiatives, Developing a model of Signing of Integrity Pacts between private companies and public sector institutions in public-private partnerships, training religious leaders on linking integrity, values, anti-corruption with religion etc.

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[26] Section 40 of Anti- Corruption Act.

[27] Page 41, Strategy one, National Action Plan for Combating Bribery and Corruption 2019-2023 https://ciaboc.gov.lk/media-centre/resources/national-action-plan-2019-2023.

VI. PRACTICAL APPLICATION OF PREVENTING CORRUPTION AND PUBLIC-PRIVATE PARTNERSHIPS IN SRI LANKA

A. Prevention Unit of the CIABOC

The CIABOC has set up a prevention unit with well - trained qualified graduate prevention officers in 2020 and they are conducting awareness on Anti- Corruption law and integrity concepts and prevention programmes for all sectors, conducting researches on the corruption issues of the institutions, identifying and preparing guidelines for all sectors, appointing and integrity officers and integrity clubs in all institutions including universities and schools and training them, training trainers for all institutions, inspecting laws and procedures of the institutes and assisting to buildup new mechanisms to minimize corruption issues. Currently, said Prevention officers, investigating officers and legal officers are conducting awareness programmes, trainer-trainee programmes as per the national and institutional action plan and have appointed nearly 1000 integrity officers in the public institutes.

B. Jointly Working with NGOs

The CIABOC, actively joined hands with non-governmental organizations (NGO) on prevention works. Accordingly, workshop for sharing experience with 50 NGOs were successfully conducted in 2023 and since then several projects have been planned out to carry out with the active participation of civil societies.

C. Conducting Awareness Programmes

The CIABOC conducting regular awareness programmes for public sector (ministries, departments, state companies, statutory boards etc.) private sector, civil society, media, school children and staff and undergraduates, and staff of the universities. Specially, conducting awareness programmes for the private companies to educate them on the new Anti- Corruption Act and integrity concepts. Accordingly, conducted awareness programmes at the private companies Prime Lands (Pvt) Ltd, Hatton National Bank, HNB-Assurance and Civil Aviation (Pvt) Ltd etc. further, the CIABOC has planned to issue guidelines and codes of conduct with the rules pertaining to the conflict of interest to the public sector to minimize the corruption issues and enhance the efficiency with a smooth running of business.

D. Signing Memorandum of Understanding (MOU)[28] with Stake Holders

1. <u>MOU signed with University of Sri Jayawardhana, Sri Lanka – 2023</u>

   Objectives of said MOU include:

   i. Providing clean and upright educational approach in Sri Lanka through value-based education and community engagement

   ii. socializing the message of integrity, creating awareness, empowering and creating a generation of students with integrity by the participation of the staff officers in the field of education, teachers, non-academic officers, apprentice and students with the collaboration of CIABOC, Ministry of Education and Higher Education, National Education Commission and the National Institute of Education.

   iii. Minimizing chances of bribery and corruption from the future society and promoting an anti-corruption culture both within and outside the educational system by developing upright attitudes.

   iv. Creating awareness of the university community.

   v. build a clean society against bribery and educating students, on the value of being an honoured citizen and to secure the resources of the country through installing positive values such as mutual respect, and self-discipline.

   vi. Developing integrity concepts in university community.

[28] https://ciaboc.gov.lk/media-centre/resources/publications

2. MOU Signed with Ministry of Education, Sri Lanka - 2022
The CIABOC has signed this MOU[29] with the Ministry of Education in order to achieve following Objectives:

i. Providing clean and upright educational approach in Sri Lanka.

ii. Socializing the message of integrity, creating awareness, empowering and creating a generation of students with integrity.

iii. Minimizing chances of bribery and corruption from the future society and promoting an anti-corruption culture.

iv. Creating awareness of the school community.

v. Realizing the students, the value of being an honoured citizen and to secure the resources of the country through installing positive values such as mutual respect and self-discipline.

vi. Developing integrity concepts in school community through value-based education and community engagement and spreading decent message to the society with a zero tolerance for bribery and corruption.

3. MOU Signed with The Financial Intelligence Unit (FIU) of Sri Lanka-2024[30]
The Commission to Investigate Allegations of Bribery or Corruption (CIABOC) entered into a Memorandum of Understanding (MOU) with The Financial Intelligence Unit (FIU) of Sri Lanka to exchange information relating to investigations and prosecutions of money-laundering, bribery or corruption, and other related offences.

VII. PRACTICAL APPLICATION OF DETECTING CORRUPTION AND PUBLIC-PRIVATE PARTNERSHIPS IN SRI LANKA

A. Mechanisms of Reporting Corruption

i. CIABOC has adopted several measures to enable citizens to conveniently make complaints on bribery and corruption, such as establishing a hotline for 24 hours, facsimile, postal and emails, online and walk-in complaints. The hotline "1954" is well known to the public and provides the first information on most of the raids conducted by CIABOC.

ii. Since 2015, all complaints are acknowledged with a reference number and the public can inquire about their complaints using the reference number. As per the Anti- Corruption Act, the complainant can obtain the progress of the investigation upon a request made by him.[31]

iii. CIABOC's website publicly disseminates and provides access to information on its activities on detections, prosecutions, prevention, other important events including press conferences, educational videos, international Anti- Corruption Day celebrations, and other local and international partnerships.[32]

iv. except above institutions, complaints can be made to the other institutions such as, police, criminal Investigation Department (CID), Fraud Bureau in respect of the corruption related offences according to the value and the purview of such institutions.

[29] https://ciaboc.gov.lk/media-centre/resources/publications
[30] https://ciaboc.gov.lk/media-centre/latest-news/1177-memorandum-of-understanding-signed-between-the-commission-to-investigate-allegations-of-bribery-or-corruption-and-the-financial-intelligence-unit-of-sri-lanka , https://fiusrilanka.gov.lk/docs/press_releases/2024/FIU_2024_06_18/FIU_2024_06_18_E.pdf
[31] Section 44 of Anti- Corruption Act no.09 of 2023.
[32] https://www.ciaboc.gov.lk .

B. Measures Taken Aimed at Enhancing Integrity, Transparency, and Accountability of Public and Private Entities

Measures pertaining to record-keeping, preparation of financial statements, accounting and auditing in the private sector are prescribed in the Accounting and Auditing Standards Act Companies Act, Securities and Exchange Commission Act, Monetary Law Act, Banking Act, Insurance Act and Finance Companies Act.

- Article 13 of the Constitution ensures due process and requires fair trial. The Establishment Code and Public Service Commission Rules govern the appointment, code of conduct, and disciplinary control of public officers.

- Government financial and procurement procedures are governed by Financial Regulations and government procurement guidelines. The National Procurement Commission is constitutionally required to formulate guidelines on rule of law principles on procurement.

- The Right to Information Act No. 12 of 2016 provides an opportunity for transparency and accountability.

- Sri Lanka Accounting and Auditing Standards Monitoring Board (SLAASMB).
  The Board is established as a body corporate for monitoring compliance of the Sri Lanka Accounting Standards and Sri Lanka Auditing Standards.

- Department of Registrar of Companies
  The Companies Act No. 07 of 2007 set out the obligations of all companies formed under the Companies Act to prepare financial statements. Section 120 of the Act regulates the company records which should be kept and available for public inspection.

- The Securities and Exchange Commission
  The Securities and Exchange Commission was set up under the Securities and Exchange Commission Act, no.19 of 2021. It ensures that the Sri Lankan regulatory setting is effective and that securities law is fitted to fulfil the needs of the market and international best practices. It provides additional compliance and disclosure requirements for all listed companies when preparing financial statements.

- National Procurement Commission (NPC)
  National Procurement Commission (NPC) was set up on 04/05/2023 in terms of the 21st Amendment made to the Constitution in order to preparing of guidelines and instructions, monitoring and regulatory activities pertaining to the procurements done by all government entities.[33]

C. Measures Taken Aimed to Protect, Informers, Witnesses, Victims and Whistle-Blowers in Relation to Corruption

1. National Authority for the Protection of Victims of Crimes And Witnesses.

National Authority for the Protection of Victims of crimes and Witnesses was set up in terms of Assistance to And Protection of Victims of crimes and Witnesses Act, No.10 of 2023. With the main objects of:

- setting out the rights and entitlements of victims of crime and witnesses and duties and responsibilities of the State, judicial officers and public officers in upholding, promoting and protecting the rights and entitlements of victims of crime and witnesses.

- providing assistance and protection to victims and witnesses, providing a mechanism to enable the victims of crime and witnesses to exercise and enforce their rights and entitlements and to obtain relief, granting of redress including compensation, restitution, reparation and rehabilitation to victims of crime and witnesses[34]

The National Authority for the Protection of Victims of crimes and Witnesses is in force now and they actively engage in the process of facilitating witnesses to testify from distant place thorough contemporaneous audio-visual means. Further they involve in the court cases for compensation and taking measures in respect

[33] Article 156 of 21st Amendment of the Constitution.
[34] Section -02 of Assistance to And Protection of Victims of crimes and Witnesses Act, No.10 of 2023.

of the complaints received by them.

2. Commission to Investigate Allegations of Bribery or Corruption. (CIABOC)

The CIABOC is empowered by the Anti- Corruption Act no.09 of 2023 with certain provisions in respect of the protection of informers, witnesses, victims and whistle blowers. Thereby, such information and the identity of the informer shall not be disclosed in any proceedings before any court, tribunal, or other authority and if violated, be liable a to a fine of one hundred thousand rupees or to a term of imprisonment not exceeding six months or to both such fine and imprisonment.[35]

Further, where a person provides information to the Commission to any other law enforcement authority believing that such information is true, he shall not be subject to civil or criminal liability for providing such information and also, an informer shall not be subject to adverse conditions of employment, reprisal, coercion, intimidation, retaliation, harassment, any injury to his person, or threatening and if he is a whistle blower, no disciplinary action shall be taken against him for providing such information. Despite any prohibition of or restriction on the disclosure of information under any other law, contract, oath or practice, a whistle-blower shall not be subject to detrimental action.

D. The Safety Measures to Be Taken by the CIABOC

The CIABOC can implement following safety measures to protect such person or any other person from intimidation, harassment, injury or threat. Accordingly, the Commission shall have the power to provide legal representation to any informer, whistle-blower or witness during an investigation, including inquiries at Magistrate's Court, and at a trial in the High Court into an alleged offence committed against such whistle-blower or witness.

VIII. CIABOC ACHIEVEMENTS

A. International Obligations and Commitments

There are number of conventions/treaties that Sri Lanka became a party in relation to combat against corruption.

1. United Nations Convention Against Corruption UNCAC

As the main international arm, setting up for against the corruption, Sri Lanka has signed and ratified it 2004. However, after having several reviewing circles, Sri Lanka managed to enact the Anti-Corruption Act with almost all the relevant provisions which are to be adopted to the domestic law. Thereby, complying with the provisions of the *UNCAC*, several new concepts and offences, mechanisms such as, prevention mechanisms, private sector bribery, Sports bribery, Conflict of interests, trade in influence, E-Asset Declaration system, witness and whistle blower protection, enhancing the punishments etc. were introduced to the Anti- Corruption Act with independent powers and the Commission was set up as an independent body corporate.

2. Open Government Partnership (OGP)

The Open Government Partnership (OGP) was formed in 2011 by governments and civil society organizations in order to work together to address difficult challenges. It was founded to have a better collaboration between governments, civil society, and citizens with the purpose of facing common challenges unitedly and successfully. Sri Lanka became a party in 2015 and now fulfilled most of the commitments including setting up an E-Asset declaration platform according to the 2019-2021 Action Plan.[36]

B. Local Initiatives to Fight Against Corruption

- The CIABOC has set up a new Money Laundering Unit and Asset Declaration Unit in terms of the newly introduced provisions under the Anti-Corruption Act and started investigations on newly introduced offences of money-laundering, sexual bribery, sports bribery, trade in influence, and conflict

[35] Section 73 of Anti- Corruption Act, no.09 of 2023.

[36] https://www.opengovpartnership.org/documents/sri-lanka-hybrid-report-2019-2021/ access on 04/07/2024.

of interest etc.

- The Prevention Unit has expanded its operations covering the public sector, private sector, Civil Societies, non-governmental organizations in respect of training, awareness of new Anti- Corruption Act, prevention programmes, sharing experience, preparing guidelines and entering into MOUs.

- The CIABOC has started sharing information with other investigation agencies such as Financial Intelligence Unit (FIU), Inland Revenue Department etc. and joint investigations as empowered by new Anti- Corruption Act.

IX. JUDICIAL INTERVENTION FOR INVESTIGATIONS AND PROSECUTIONS RELATING TO CORRUPTIONS OF PUBLIC – PRIVATE SECTORS IN SRI LANKA

A. Sexual Gratification Raid Conducted Against the Accountant Cum Manager - HR Of Thilanka Resort and Spa (Pvt) Ltd.[37]

Investigation Officers of the Commission arrested an Accountant cum Manager (Human Resources) of a private Hotel at around 26.01.2024 on a complaint made by a woman employee who is working as an Account Assistant of the same hotel. The suspect has solicited a sexual gratification from the complainant several times promising to pay her the full-service charge amount, instead of the 75% she is paid at present, and to make her permanent in the post.

The complainant lodged a complaint to the CIABOC over the phone, due to the repeated undue requests made by the suspect. The suspect has taken her to another hotel. The suspect was arrested inside the hotel room on allegations of soliciting and accepting sexual gratification. Further investigations are being conducted and an indictment to be filed against the suspect for the offence of soliciting and accepting of "sexual gratification"[38] under the section 106 of Anti- Corruption Act, no.09 of 2023, which is applicable even to the private sector bribery.

B. Corruption Case Filed and Tried in Permanent Trial-At-Bar Against Former President's Chief of Staff Dr. I.H.K. Mahanama and the Former Chairman of the State Timber Corporation P. Dissanayake[39]

The investigations were commenced on a complaint lodged by an Indian businessman who came to Sri Lanka to invest in Kanthale Sugar Factory. The first Accused Dr. I.H.K Mahanama has served as the Secretary of the Ministry of Lands since 2015 to 31.03.2018. He was the President's Chief of Staff from the year 2018 to 03.05.2018. The second Accused P. Dissanayake was the Chairman of the State Timber Corporation. In the first instance, the first Accused has solicited a bribe of USD 3 million to transfer the absolute ownership of the land, buildings and machinery of the Kanthale sugar factory to the complainant. Subsequently, the 1st and the 2nd Accused have solicited a bribe of Rs.100 million and accepted Rs. 20 million.

Indictment was served before the Permanent Trial- at- Bar against both suspects. Both accused were convicted at the end of the trial, sentenced to 20 years of rigorous imprisonment, a fine of Rs. 65,000/- and a penalty of 20 million and P. Dissanayake was sentenced to 12 years of rigorous imprisonment, with a fine of Rs.55,000/-. Both Accused appealed to the Supreme Court challenging the permanent Trial- at- Bar verdict on 11/01/2023 and it was heard before a Five-Judge Bench of the Supreme Court and they have unanimously upheld the Trial -at- Bar verdict and the appeal was dismissed.

[37] B/216/2024, Magistrate's Court- Kekirawa, Sri Lanka.

[38] Section 162 of Anti- Corruption Act, no.09 of 2023, "Sexual favour" means - sexual intercourse; or any act that may not amount to sexual intercourse, but may amount to or constitute physical, verbal or non-verbal conduct of a sexual nature, including the exposure of a private body part or any act performed by the use of information and communication technology or any other means.

[39] HC/PTB/1/04/2019, Colombo, Sri Lanka.

C. Corruption Case Filed Against Sajin De Vas Gunawardhana–Former Chief Executive Officer (CEO) of Mihin Lanka Air Lines (Pvt) Ltd.

Sajin Vass Gunawardena, who was accused of allegedly causing a loss of Rs. 883 million to the government while purchasing ground support equipment during his tenure as the Chief Executive Officer of the Mihin Lanka Air Lines (Pvt) Ltd. He was a former parliamentarian too. In 2007, Mihin Lanka called for tenders for hiring ground handling equipment and six companies had shown their interest as bidders. However, said Sajin De Vass Gunawardnana had entered into a contract with another company named "TPL International (Pvt) Ltd" for hiring ground handling equipments for a monthly rental of USD 223,000/- though that company was not a prospective bidder in this procurement process. The accused had presented a board paper stating that the best bidder to award the tender and accordingly, the tender was awarded to said "TPL International (Pvt) Ltd" without proceeding with the tender procedure further.

As per the agreement between the parties, Mihin Lanka is not liable to pay the freight charges and demurrages for the import of the goods. However, the Accused has authorized said payment of charges causing a loss of Rs.18,543,253/- to the government. After having an investigation, the CIABOC filed an indictment against the Accused and the case is still pending.

D. Bribery Case Filed Against Palitha Fernando- Chairman Of Rakna Arakshaka Lanka Ltd And Nissanka Senadhipathi – Chairman Of Avant Guard Maritime Services (Pvt) Ltd.[40]

01st Accused was the Chairman of the Rakna Arakshaka Lanka Limited which was a state-owned company and the 02nd Accused was the Chairman of the Avant Garde Maritime Services (Pvt) Ltd. Both companies had entered into an agreement for setting up a floating armoury in the High seas. No procurement procedure had been followed in relation to this contract. The initial discussions were commenced on the 08th of August 2012 and the agreement had been signed by 25/12/2012.

It was revealed that, during the execution of that agreement and afterwards, the 02nd Accused had deposited Rs. 35,500,000/= into the bank Account which was opened up by the 01st Accused in the name of "Palitha Fernando Trust". Both suspects were arrested and produced before the court by the CIABOC during the investigation for offences of offering and accepting Rs.35,500,000/= in 06 instances. Later, an indictment was filed against both Accused in the High Court for offering and acceptance of a bribe of Rs. 35,500,000/= through said bank account.

X. BARRIERS AND CHALLENGES FOR FIGHTING AGAINST CORRUPTIONS

Issues and challenges are main driving forces for anti- corruption agencies to have the innovative, optional and strong mechanisms to fight against the Corruption. Following challenges can be identified as the key challenges of the Public- Private Partnership engraved in the implementation of anti- corruption mechanisms.

A. Challenges Arising from Private Sector Entities

- The Anti- Corruption Act covers only the small area of the private sector. As per the interpretation of the private sector entity means specified business enterprise as defined in the Accounting and Audit Standards Act. It does not cover the sole proprietorships, partnerships as well.

- Most of the private sector entities do not have their own mechanism to regulate their business by identifying and disclosing their red flags, corruption risks to the law enforcement authorities.

- Most of the Private Sector entities do not act with Codes of Conduct and there is no proper supervisory system to enforce the internal regulations and disciplinary control over the integrity, conflict of interest, and corruption related issues.

- Some Private sector entities are acting neither in accordance with the existing procurement guidelines

[40] HCB/25/2017, High Court, Colombo, Sri Lanka.

nor their own approved mechanism in the procurement procedure.

- Most of the officers of private entities are not interested in reporting/complaining against their higher authorities due to ignorance, disinterestedness, lack of knowledge or fear.

- Some professionals such as, attorneys-At- Law do not report suspicious financial transactions to the FIU due to the issues relating to the Ethics for not divulging the identity of the clients.

Finding solutions for above issues, it is suggested to bring the necessary amendments to the Anti -Corruption Act and other relevant laws to cover all the sectors of the Private entities and to avoid clashes between the laws and professional ethics for the convenience of the professionals such as Attorneys-at- Law, implementing the provisions of the Anti-Corruption Act firmly regarding the monitoring, regulating the anti-corruption mechanisms in the private sector, enhance the prevention mechanisms for the private sector.

2. Challenges for Prosecution of Corruption

- Entertaining technical objections (such as directive of the all 03 Commissioners) raised by the defence party.

- Witnesses are reluctant to testify due to the lengthy legal proceedings and diminishing of interest to testify with the passage of time.

- Difficulty to prove charges with electronic evidence (audio-video recordings, CCTV etc.) due to the legal requirements relating to the complicated procedure of presenting them to court as admissible evidence.

- Difficulty to obtain the assistance of the witnesses since the suspects with political background stays in the same position or higher positions even after indictments were filed against them.

It is suggested to set up separate special court to try economic crimes such as corruption, money-laundering and conflict of interest etc. to avoid lengthy legal proceedings and postponements of cases, bringing required amendments to make the law relating to the admissibility of the electronic evidence uncomplicated, training the judicial officers in respect of the developed judicial proceedings and attitudes of integrity etc.

3. Challenges Coming from the Civil Society

- Failure to complain due to the lack of knowledge and attitudes, fear for intervention

- Victims of corruption with high profile do not complain against most of the corruptions since they act with unanimity with the corrupted officials.

- Less interest to assist for the investigations and prosecution due to the lack of knowledge about the economic crimes and consequences of the same.

It is suggested to enhance the awareness of the civil society in relation to the Anti- Corruption Act, negative impacts of the economic crimes and inculcate the integrity concepts with sophisticated prevention methods, strengthen the witness and whistle-blower protection implementing the provisions contained in the Anti- Corruption Act.

XI. CONCLUSION

Sri Lanka has stepped into a new path towards the battle against the corruption with the enactment of the Anti- Corruption Act no.09 of 2023 and other related legislations. Implementation of special provisions inserted to the Anti- Corruption Act, in complying with the *UNCAC* will strengthen the collaboration with

the different stakeholders such as private sector entities, civil society activists, general public etc.

The newly introduced offences, new investigation techniques, international cooperation, independent and justifiable implementation of powers and mechanisms in relation to the prevention of corruption in the public and private sectors will be the robust arms for the team of the CIABOC to have a successful battle against corruption and make the country corruption free with the public-private partnerships.

STRENGTHENING PREVENTION, DETECTION AND PROSECUTION OF CORRUPTION, AND PUBLIC-PRIVATE PARTNERSHIP: UKRAINIAN DIMENSION

Filip Sivoshko[*]

I. CURRENT SITUATION OF CORRUPTION

Corruption in Ukraine remains a critical issue impacting governance, economic stability and public trust. Despite significant efforts to reform and tackle corruption, the persistence of corrupt practices underscores the need for a multifaceted approach involving both public and private sectors. This paper examines the current situation in Ukraine, analysing recent trends, challenges and effective countermeasures. It highlights notable cases such as the attempted bribery of a high-ranking official using cryptocurrency and the case of the former Head of the Supreme Court, illustrating the complexity and systemic nature of corruption in the country.

A. Corruption and Money-Laundering Trends

Corruption in Ukraine has evolved in complexity, with emerging trends highlighting the sophisticated methods employed by individuals and organizations to engage in corrupt activities.

- **Increased sophistication:** Corruption schemes have become more intricate, often involving complex financial transactions and international connections. The use of cryptocurrency has emerged as a new tool for facilitating and concealing bribes and illicit financial flows. This digital currency enables anonymity and cross-border transactions, complicating traditional investigative methods.

- **High-profile cases:** Recent investigations reveal how these new trends manifest in real-life scenarios. For instance, a recent case involves a parliament member who allegedly attempted to bribe the Head of the State Agency for Restoration using cryptocurrency. This case illustrates the innovative tactics used in modern corruption schemes and highlights the need for regulatory and technological advancements to counter such practices. The involvement of cryptocurrency emphasizes the necessity for law enforcement and regulatory bodies to adapt to the evolving financial landscape.

- **High-profile cases continued:** Another significant case is that of the former Head of the Supreme Court of Ukraine, who was implicated in a major corruption scandal. The case revealed systemic issues within the judiciary, including bribery and manipulation of court decisions. This case underscored the deep-rooted problems in Ukraine's judicial system and highlighted the urgent need for comprehensive reforms and more effective enforcement mechanisms to address and prevent corruption.

II. NATIONAL LEGISLATION AND FRAMEWORKS OF ANTI-CORRUPTION MEASURES

A. Anti-corruption Legislation

- **Legislative reforms:** Ukraine has implemented several reforms, including comprehensive anti-corruption laws and codes of conduct for public officials. Continued legislative efforts are needed to address emerging challenges and improve enforcement.

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- **Compliance frameworks:** Ensuring that national and international standards are met through rigorous compliance measures is essential for maintaining the integrity of anti-corruption efforts.

III. ROOT CAUSES OF CORRUPTION

A Triggers for Detection

Effective detection of corruption relies on identifying various triggers that can lead to investigations.

- **Whistle-blowing:** Whistle-blowers play a crucial role in uncovering corruption. Reports from insiders or individuals with knowledge of illicit activities can provide valuable information for initiating investigations. In Ukraine, whistle-blower protection laws are essential to encourage reporting and ensure the safety of those coming forward with information. In 2020, the Law on Prevention of Corruption was amended, and there are huge changes pertaining to the protection of whistle-blowers. For example, provisions were introduced on the legal status of whistle-blowers, their rights and guarantees of protection, some conditions for disclosure information about corruption etc.

- **Financial Irregularities:** Suspicious financial activities often signal underlying corrupt practices. Anomalies in financial records, unexplained wealth and irregular transactions are common indicators that prompt further investigation.

B. Root Causes of Corruption Challenges in Ukraine

Understanding the root causes of corruption is crucial for developing effective strategies to combat it. Several factors contribute to the challenges faced in Ukraine:

1. **Historical legacy:** The Soviet legacy has left a lasting impact on Ukraine's governance and economic systems. The centralized control and lack of transparency characteristic of Soviet-era governance have fostered a culture of corruption and nepotism that persists today.

2. **War:** Ongoing conflicts, including the war with Russia, create opportunities for corruption by disrupting institutional stability and prioritizing security over governance. The war exacerbates economic pressures and weakens institutional capacities, further complicating anti-corruption efforts. The Ukrainian government has had to rapidly increase defence spending and procure military supplies on short notice. In such situations, corruption risks increase because emergency procurement processes often lack the transparency and regulatory oversight needed to prevent fraud. There have been cases of inflated military contracts, embezzlement of defence funds, and bribery, all driven by the urgency of the war. For example, it has been reported that corruption in military procurement has involved the overpricing of equipment or paying for supplies that were never delivered, directly impacting the country's defence capabilities.

3. **Weak institutions:** Many Ukrainian institutions struggle with inefficiencies, lack of resources and insufficient independence. Political interference and inadequate support undermine the effectiveness of anti-corruption bodies and hinder their ability to enforce laws and regulations.

4. **Political instability:** Frequent changes in government and political instability disrupt long-term anti-corruption strategies. Corruption often thrives in environments lacking political continuity and consistent governance. Each new government would announce new anti-corruption reforms, but the lack of continuity and consistent political will meant that many of these efforts were either half-implemented or stalled. For example, while former president government initiated several reforms, including efforts to address corruption in the energy sector, there was criticism that many of his associates benefited from corrupt practices. This inconsistency weakened public trust in anti-corruption measures and allowed corrupt networks to remain influential. The other example is that Ukraine's political instability has often been exacerbated by the influence of oligarchs who control vast sectors of the economy and media. Frequent political changes provided opportunities for oligarchs to shift their support between political figures and parties to protect their interests. This further disrupted

consistent governance and anti-corruption efforts, as political actors dependent on oligarchic support were less inclined to push for comprehensive reforms.

5. **Economic pressures:** Economic instability and rapid development needs can drive individuals and entities to engage in corrupt practices. In a competitive and uncertain economic environment, the temptation to engage in illicit activities increases.

6. **Legal framework limitations:** Although Ukraine has established anti-corruption laws, their enforcement is often weak. Legal loopholes and inconsistencies in the application of laws impede effective prosecution and prevention efforts. Ukraine's anti-corruption laws are a critical part of the country's efforts to combat widespread corruption, which has long been seen as a major obstacle to its political and economic development. Over the past decade, Ukraine has introduced several laws and institutional reforms aimed at addressing corruption. Here's an overview of the key components:

   - **National Anti-corruption Strategy**
     The **National Anti-corruption Strategy** (2021–2025) is a comprehensive framework designed to prevent and fight corruption. It outlines goals such as reducing opportunities for corruption, enhancing public accountability, and strengthening public trust in the government.

   - **Key anti-corruption institutions**
     Ukraine has established several independent institutions to investigate, prevent and prosecute corruption:

     • **National Anti-Corruption Bureau of Ukraine (NABU):** Founded in 2015, NABU is responsible for investigating high-level corruption cases involving senior government officials, judges and other influential figures. It operates independently to ensure unbiased investigations.

     • **Specialized Anti-Corruption Prosecutor's Office (SAPO):** Works in tandem with NABU to prosecute high-profile corruption cases, ensuring that cases investigated by NABU are pursued in court.

     • **National Agency for Prevention of Corruption (NAPC):** Responsible for developing anti-corruption policies, monitoring officials' asset declarations, and ensuring transparency. NAPC also monitors compliance with conflict-of-interest laws and oversees political party financing.

     • **High Anti-Corruption Court (HACC):** Created in 2019, HACC is a specialized court that handles cases related to corruption involving high-ranking officials. It is crucial for ensuring that corruption cases are tried fairly and efficiently.

   - **Asset declarations**
     Ukrainian officials are required by law to submit detailed *electronic asset declarations* annually. These declarations list personal assets, including income, real estate, vehicles and other properties. The goal is to prevent illicit enrichment and ensure transparency. The NAPC monitors these declarations and can launch investigations if discrepancies or suspicious activities are detected.

   - **Criminalization of corruption**
     Ukrainian law criminalizes various forms of corruption, including *bribery, abuse of power, misappropriation of state resources* and *illicit enrichment*. In 2020, the Ukrainian parliament passed a law reinstating criminal liability for officials who fail to adequately explain their assets, which had been annulled by a previous court ruling.

   - **Conflict of Interest and Public Procurement**
     The law imposes strict rules on conflict of interest for public officials, aiming to prevent personal gain from their official positions. The *ProZorro e-procurement system*, established in 2016, ensures transparency in public procurement by making all state purchases public, significantly reducing corruption in the procurement process.

- **International Cooperation**
  Ukraine collaborates with international organizations such as the *EU, GRECO* (Group of States Against Corruption), and the *OECD* to align its anti-corruption laws with international standards. These partnerships provide technical assistance, oversight and recommendations to enhance Ukraine's legal framework and enforcement mechanisms.

- **Challenges and Ongoing Reforms**
  Despite these reforms, corruption remains a significant issue in Ukraine, with challenges in enforcement and political interference occasionally undermining the effectiveness of anti-corruption efforts. However, the country continues to refine its legal frameworks, with pressure from civil society and international partners playing a key role in driving reforms.

7. **Conclusion:** Ukraine's anti-corruption laws are designed to create a transparent and accountable system of governance, with specialized agencies and legal frameworks aimed at preventing and prosecuting corruption. While progress has been made, continuous reforms and enforcement are essential to fully eradicate corruption and enhance public trust in government institutions.

B. Investigation and Prosecution Challenges

- **Institutional weaknesses:** Anti-corruption agencies in Ukraine face challenges such as limited resources and bureaucratic inefficiencies. These weaknesses can impede effective investigations and prosecutions.

- **International coordination:** Corruption cases often involve cross-border elements, creating challenges related to jurisdiction and international cooperation. Strengthening international partnerships and frameworks is essential for addressing these challenges.

C. Solutions

- **Enhanced training:** Investing in capacity-building and training programmes for anti-corruption agencies can improve their effectiveness. Training should focus on modern investigative techniques and the use of technology in detecting corruption.

- **International cooperation:** Strengthening cooperation with international bodies and enhancing frameworks for cross-border investigations can improve the effectiveness of anti-corruption efforts.

All in all, these solutions might be not enough. We need as well to build a resilient anti-corruption framework that involves not only legislative and institutional changes but also fostering a culture of transparency and accountability.

IV. CASE STUDY (ANALYSIS OF THE INVESTIGATION, PROSECUTION OF INDIVIDUAL CASES) AND/OR BEST PRACTICE OF ANTI-CORRUPTION ACTIVITIES

A. Case Examples

1. <u>Case of the Former Head of the Supreme Court</u>

- **Background:** The former Head of the Supreme Court was involved in a significant corruption scandal, which included accepting bribes to influence judicial decisions. This case exposed systemic corruption within the judiciary and highlighted the challenges of addressing high-level corruption within established institutions.

- **Details:** Investigations into this case revealed extensive bribery networks and manipulation of court outcomes. The involvement of top judicial officials demonstrated how deeply ingrained corruption can be and the difficulties in enforcing accountability at the highest levels. On 15 May 2023, the NABU and

SAPO uncovered that the Head of the Supreme Court received a $2.7 million bribe. This was major news, as this was the first time in Ukraine's history that a person of such high rank was suspected of corruption.

According to the investigation, the former Head of the Supreme Court, in collusion with a notary and a lawyer, organized a scheme to receive bribes for making favourable court decisions, particularly in favour of a major agricultural businessman.

Almost immediately after the suspicion was announced, the Plenary Session of the Supreme Court removed him from his position as head of the Court, and the accused was taken into custody with an alternative of 107 million UAH bail. This bail amount was subsequently reduced several times, and ultimately, on 31 January 2024, he was released from pretrial detention on bail of 18 million. As of 13 March 2024, the case is in the preparatory proceedings stage. The pretrial investigation lasted until 4 October 2023, and then the defence spent nearly five months reviewing the investigation materials. Currently, the case is being examined by a panel of judges in the High Anti-Corruption Court.

- **Outcome:** The case led to legal proceedings against the former Head and highlighted the need for judicial reforms. It emphasized the importance of increasing transparency and accountability within the judicial system to prevent similar instances of corruption in the future.

2. Recent Corruption Case Involving Cryptocurrency

- **Overview:** The case involving a parliament member's attempt to bribe a high-ranking official with cryptocurrency highlights the growing sophistication of corruption. The use of digital currencies in this context illustrates new challenges for detection and enforcement.

- **Details:** In November 2023 a parliament member was accused regarding an attempt to bribe the former Head of the State Agency for Restoration and Infrastructure Development. According to the investigation he offered a bribe equivalent to 50,000 dollars in exchange for assistance in allocating funds for the renovation of the university under his control. Currently, the case is being examined in the High Anti-Corruption Court. Nowadays the parliament member is hiding abroad and recently an international warrant to arrest was issued by the court.

- **Outcome:** The ongoing investigation into this case will provide insights into the effectiveness of current anti-corruption measures and the necessary adjustments to address emerging financial technologies.

V. PROPOSAL ON POSSIBLE COUNTERMEASURES

A. Prevention and Detection

- **Joint initiatives:** Collaborative programmes between the public and private sectors, such as the "Clean Business" initiative (It is not a concrete initiative in Ukraine, but something like my idea that means public authorities do their job fairly so business doesn't need to give bribes etc. On the other hand business also needs to be fair in issues regarding tax payments, hiring employees etc.), promote transparency and ethical practices. These initiatives help build trust and enhance detection capabilities.

- **Shared resources:** Leveraging expertise and resources from both sectors can improve detection and prevention efforts. Public-private partnerships can provide valuable insights and support for anti-corruption initiatives.

B. Prosecution

- **Unified approach:** Coordinated efforts between public authorities and private sector entities streamline the prosecution process. Collaboration ensures that cases are handled efficiently and effectively,

improving outcomes.

C. Reporting Channels and Whistle-Blowers Protection

- **Whistle-blower protection laws:** Implementing and enforcing whistle-blower protection laws is crucial for encouraging the reporting of corruption. Ensuring the safety and confidentiality of whistle-blowers helps gather valuable information and promote accountability.

  Ukraine introduced whistle-blower protection mechanisms as part of its broader anti-corruption efforts, particularly in the 2019 Law on Corruption Prevention and the establishment of the National Agency on Corruption Prevention (NACP). For example, whistle-blowers are legally protected from dismissal, demotion or discrimination in their workplace after reporting corruption. This extends to both public and private sector employees. Employers are prohibited from firing or penalizing employees for reporting corruption. Also, whistle-blowers can choose to report anonymously or under confidentiality agreements. The law mandates that the identity of the whistle-blower must remain confidential unless the whistle-blower consents to its disclosure. The protection of identity is essential in safeguarding individuals from potential threats.

  But, in practice, maintaining the confidentiality of whistle-blowers can be challenging, especially in high-profile cases. Corrupt officials may still find ways to uncover the identities of whistle-blowers, exposing them to threats or retaliation. The lack of comprehensive digital infrastructure to secure anonymity can further erode confidence in the protection system.

  Also in Ukraine, there is often a cultural stigma attached to whistle-blowing, with whistle-blowers viewed negatively as informants rather than as individuals acting in the public interest. This societal resistance, combined with institutional reluctance to support whistle-blowers, discourages people from reporting corruption despite legal protections.

- **Civil society monitoring:** Engaging non-governmental organizations and civil society in monitoring and oversight activities enhances transparency and accountability. Civil society plays a critical role in advocating for reforms and holding institutions accountable.

  In Ukraine, a wide range of NGOs are actively involved in promoting transparency, accountability and anti-corruption efforts. For example, the Anti-Corruption Action Center (AntAC) is known for conducting in-depth investigations into corruption at the highest levels of government, exposing corrupt officials and practices through reports, media campaigns and public forums. Also, this organization advocates for stronger anti-corruption laws and institutions. It played a crucial role in establishing independent anti-corruption bodies like the National Anti-Corruption Bureau of Ukraine (NABU) and the Specialized Anti-Corruption Prosecutor's Office (SAPO).

D. Internal Investigations

- **Developing procedures:** Establishing robust internal investigation protocols within private-sector organizations can help detect and address corruption. Regular audits and compliance checks are essential for preventing and mitigating corrupt practices.

- **Preventing recurrence:** Implementing measures to prevent future incidents of corruption, such as developing strong ethical guidelines and fostering a culture of integrity, is crucial for long-term success.

From my point of view there is a complex of measures that should be done to reduce the level of corruption and prevent future incidents, but firstly the understanding of the role of corruption in Ukrainian society needs to be changed, there should be zero tolerance to corruption and we need to mentally change our perception of corruption.

E. Education and Public Awareness

- **Educational programmes:** Anti-corruption education programmes for minors and the public help

raise awareness and promote ethical behaviour. Education initiatives should focus on the importance of integrity and the impact of corruption on society.

- **Awareness campaigns:** Public awareness campaigns play a vital role in highlighting the consequences of corruption and encouraging reporting. Campaigns should target various audiences to foster a culture of transparency and accountability.

F. Private-Sector Initiatives and Partnerships

- **Compliance programmes:** Private companies are increasingly adopting anti-corruption measures and working with public authorities to ensure ethical practices. Compliance programmes should be tailored to address specific risks and challenges within the organization.

- **Public-private partnerships:** Collaborative initiatives between the public and private sectors promote transparency and ethical behaviour. Public-private partnerships can enhance the effectiveness of anti-corruption efforts and build trust among stakeholders.

VI. CONCLUSION

Corruption remains a formidable challenge in Ukraine, deeply rooted in historical, economic and institutional issues. The persistent nature of corruption, illustrated by high-profile cases such as the involvement of the former Head of the Supreme Court and recent attempts to bribe high-ranking officials using cryptocurrency, underscores the urgency of a comprehensive anti-corruption strategy.

The evolution of corruption methods and the increasing complexity of financial transactions necessitate a multifaceted approach. Strengthening both public and private sector collaboration is essential for effective prevention, detection and prosecution of corrupt practices. The integration of modern technologies and enhanced regulatory frameworks are critical to addressing the sophisticated tactics employed by corrupt individuals and entities.

Furthermore, the root causes of corruption, including the Soviet legacy, ongoing war and institutional weaknesses, require targeted reforms and international cooperation. Building a resilient anti-corruption framework involves not only legislative and institutional changes but also fostering a culture of transparency and accountability.

By implementing robust measures, improving investigative and prosecutorial capacities and promoting strong public-private partnerships, Ukraine can make significant progress in combating corruption. Ultimately, creating a transparent and just governance system depends on collective efforts from all sectors of society to uphold integrity and ensure the effective enforcement of anti-corruption initiatives.

PUBLIC-PRIVATE PARTNERSHIP AND CIVIL OVERSIGHT AS A PART OF THE ANTI-CORRUPTION FRAMEWORK — A RECORD BRIBERY CASE OF A TOP UKRAINIAN OFFICIAL

Iraklii Kalandiia[*]

I. GENERAL OVERVIEW

This paper is divided into two parts. The first part touches upon the importance of collaboration between the public and private sectors in the formation of effective anti-corruption infrastructure. The article describes empirical examples of fruitful cooperation between civil society and public institutions that led to better transparency, efficiency, communication and cooperation within the anti-corruption framework. The second part is regarding a record bribery case, which is currently being tried in the High Anti-corruption Court of Ukraine. The author of the paper took part in the investigation in the capacity of analyst, which involved the analysis of financial agreements, banking documents, preparation of analytical reports and partaking in preparation of mutual legal assistance requests.

The case study part is divided into two subsections. The first one is a description of actions taken and challenges incurred during investigation of the predicate offence — undue advantage received by the Head of the SFS; the second one is about the money-laundering scheme used by him and his associates. Each part contains paragraphs about difficulties faced during investigation of each crime and comments regarding actions taken to mitigate or resolve the aforementioned difficulties.

II. IMPORTANCE OF PPP AND COLLABORATION WITH CIVIL SOCIETY FOR ANTI-CORRUPTION EFFORTS

A. Historical Context

After the Revolution of Dignity, Ukraine clearly chose the path of European integration and initiated efforts to combat deep-rooted corruption that permeated the State and its sectors. Over the past decade, through the combined efforts of the government and civil society, an anti-corruption framework has been established, relevant legislation enacted and reforms to the public procurement process implemented.

> Ukraine received 36 out of 100 points in the Corruption Perceptions Index for 2023, adding 3 points. These data were published today by Transparency International Ukraine. The country ranks 104th among 180 countries. Ukraine's growth by 3 points is one of the best results in the world over the past year. In total, over the past 10 years, Ukraine has added 11 points, which is the largest increase among the countries that currently have the status of EU candidates. Experts of Transparency International Ukraine highlight the key events that influenced the result.[1]

In the past 10 years, Ukraine has made more substantial progress in anti-corruption reforms than it did during the previous 23 years of its independence. This would not be possible without effective anti-corruption infrastructure. From 2014 to 2019, several anticorruption bodies were established, such as: National Anti-corruption Bureau of Ukraine (hereinafter NABU), Specialized Anti-Corruption Prosecutor's Office (SAPO), High Anti-Corruption Court (HACC), National Agency on Corruption Prevention (hereinafter NACP) and the

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[1] *Corruption Perceptions Index 2023: Ukraine improves its score by 3 points*, available at: https://nazk.gov.ua/

Asset Recovery and Management Agency (ARMA).

The country has also implemented a wide array of anti-corruption tools, including electronic asset declarations, the Prozorro public e-procurement system and the Prozorro sales platform for selling and leasing public property. Additionally, state registers have been made accessible, the institution of whistle-blower protection has been established and a unified portal for tracking public fund usage has been created, among other initiatives. Public-Private Partnerships (PPPs) and civil oversight played a crucial role in supporting anti-corruption efforts by fostering greater transparency, accountability and efficiency. Here's why PPPs are important in this context:

i. **Increased Transparency:** Collaboration between the public and private sectors often involves clearly defined contracts and frameworks, which improve transparency in decision-making processes. Private sector involvement can help expose inefficiencies and encourage the public sector to adopt best practices, reducing opportunities for corruption.

ii. **Enhanced Accountability:** By involving private entities, who often have a vested interest in ensuring integrity, PPPs introduce an additional layer of oversight. This external accountability reduces the likelihood of corrupt practices and strengthens the integrity of projects, especially those involving significant public funds.

iii. **Improved Efficiency:** Private companies often bring expertise, technology and innovative practices that can streamline processes and reduce bureaucratic red tape, which is where corruption tends to thrive. Efficient systems leave fewer loopholes for illicit activities.

iv. **Capacity-Building:** PPPs allow the public sector to learn from private sector approaches to ethics, governance and financial management, helping to develop better systems to detect and prevent corrupt practices.

v. **Mutual Checks and Balances:** Both sectors rely on each other for the successful execution of projects. This partnership creates a dynamic of mutual checks and balances where both sides are motivated to prevent corruption in order to maintain the partnership's success and their reputations.

B. Success of Prozorro

After the Revolution of Dignity in February 2014, reforming public procurement procedures became a top priority for the Ministry of Economy. A group of enthusiasts from the private sector, who had actively participated in the Maidan protests, stepped in to assist with this task.

The reform required legislative changes, as the existing laws were outdated and mandated paper-based procurement processes. The reform team consisting of ministry staff, representatives of business and civil society developed an electronic procurement system, co-created by Transparency International Ukraine. By early 2015, the new IT system, Prozorro, was officially introduced and launched.

A key milestone for the reform was the adoption of the Law of Ukraine "On Public Procurement", which established the primary principles and regulations for procurement. With the introduction of this law and the Prozorro system, public procurement became more transparent and competitive.

Under the law, the main method of public procurement is open bidding, a transparent process for selecting suppliers. This process is conducted within the Prozorro system, allowing all interested businesses to participate through electronic platforms. Information about all open auctions is made available on the Prozorro platform. Each announced purchase order has its own webpage, accessible without registration or special requirements, from anywhere in the world. On this page, users can view:

- The specific items or services the customer intends to purchase;

- The requirements for the goods, works or services, as well as for potential suppliers;

- The necessary documents for tender participation;

- The draft contract that will be signed, and more.

Throughout the tender process, all decisions made by the customer, participant proposals, appeal documents, state audit reports and other materials are transparently displayed. Any exceptions to competitive bidding are strictly regulated by law and must be reported in the system. As a result, users can track purchases by the State starting from $12,000.

Prozorro received the World Procurement Award in 2016, gaining recognition as a leading example of public procurement digitalization from the EBRD and Open Contracting Partnership. In 2020, Prozorro topped the Transparent Public Procurement Rating, and in 2021, together with the monitoring platform Dozorro, managed by TI Ukraine, it was recognized by the United States as a model for addressing corrupt practices.

Additionally, the Law of Ukraine "On Transparency in the Use of Public Funds" led to the creation of the E-data platform, which consolidates key resources like Spending.gov.ua and Openbudget.gov.ua. These platforms publish information about transactions made and contracts signed by budget fund managers.

Consequently, adherence to the principles of transparency and openness throughout all phases of the procurement process is likely to be widely regarded.

C. Public Councils as a Civil Oversight Mechanism

Ukrainian legislation includes provisions that allow civil society to monitor the activities of government bodies (via public councils attached to these bodies) and to participate in the development and oversight of state policies at both the central and local levels (through public examinations).

In May 2019, the Cabinet of Ministers updated the methodology for forming public councils within state bodies, introducing online voting for council members. This significantly enhanced the transparency of the selection process. For certain government bodies, special laws regulate anti-corruption institutions and the formation and operation of public councils. Notably, the Public Control Council at NABU, which emerged in 2015, was the first such body formed through an open online vote.

Today, public councils have been established under every anti-corruption body. A prime example of public involvement in state policy development is the work on the new anti-corruption strategy led by the NACP in 2020. The agency facilitated extensive cooperation with business and civil society representatives.

During June and July 2020, the NACP held eight public consultations, after which it presented a detailed report. A particularly commendable effort was the preparation and publication of a 676-page comparative table outlining the strategy's key provisions, along with comments and suggestions received. This approach to involving civil society and business should serve as a model for future public-government collaborations.

The NACP's 2023 annual report also highlighted public engagement in developing the State Anti-Corruption Program. It noted that 11 discussions were held, with 300 registered participants and over 9,000 viewers.

Another notable example of collaboration between government, civil society and business is the "Together Against Corruption" initiative, launched in 2016. This initiative involves various NGOs, including the Reanimation Package of Reforms (RPR), Transparency International Ukraine, the National Council of Reform' Project Office and over 30 public associations.

D. Conclusion

In the years following the Revolution of Dignity, Ukraine has made significant strides in combating corruption and aligning with European standards. Through collaboration between government institutions, civil society and the private sector, a robust anti-corruption infrastructure has been established, including key bodies like NABU, SAPO and HACC, as well as digital tools such as Prozorro and E-data platforms. These reforms have led to greater transparency, accountability and public oversight in areas like procurement and state governance. Ukraine's progress in the Corruption Perceptions Index, alongside its successful

public-private partnerships and civil engagement mechanisms, demonstrates a clear commitment to institutional integrity and anti-corruption efforts. This comprehensive approach is setting a strong foundation for Ukraine's future, both domestically and in its path toward European integration.

III. CASE PART I: BRIBE AS PREDICATE OFFENCE

A. Facts and General Overview

On 17 October 2022, the National Anti-corruption Bureau of Ukraine together with the Special Prosecutor's Office exposed the former Head of the State Fiscal Service (hereinafter SFS), who received a record bribe of USD 5.5 million and more than EUR 21 million from the owner of an agricultural holding.

In the course of the pre-trial investigation, it was established that in accordance with the Tax Code of Ukraine in the editions valid during 2015-2016, in the event that a business entity has a negative value in the difference between the amounts of the tax liability payment and tax credit within the reporting period, such an entity had the right to budget reimbursement of such amount on the basis of its application and declaration on the amount of budget reimbursement.

From 2015-2016, budgetary, value-added tax (hereinafter – VAT) reimbursement to the payer was carried out by the State Treasury authorities on the basis of the conclusion of the local tax authority and general information of the central authority of the state tax service. During 2015 – 2016 there was not enough money in State Budget to refund VAT for all entities entitled to such reimbursement.

During pre-trial investigation it was established that during August and December 2015 and January and February 2016 from the state budget of Ukraine in favour of a number companies in agricultural business, the ultimate beneficial owner of which is Mr. B, were paid USD 142.5 million as a refund of value-added tax. It was established that former Head of SFS, Mr. N, assisted in the VAT refund for those companies in exchange for receiving an illegal benefit from Mr. B.

According to the materials of the pre-trial investigation, such assistance consisted in providing illegal advantages to the listed taxpayers by prioritizing the inclusion of information about them in the summary information of the State Tax Service, while other taxpayers also eligible for such reimbursement were not included in the aforementioned summary. Repeatedly, the right to receive budget VAT refund for the payers arose earlier than for the listed companies, but they were not reimbursed and therefore the order of such compensation was violated.

At the same time Mr. N's obtaining of undue benefit was carried out with the help of his advisor at the time – Mr. K, who, in order to hide the nature of the funds received for the unlawful benefit, involved a number of abroad shell companies in such transfers. Mr. N also used a shell company controlled by him for crediting a part of the amount of unlawful benefit.

It was established that the funds of the unlawful benefit were paid by transfer from the accounts of non-resident companies controlled by Mr. B, through the accounts of companies with signs of fictitiousness to the accounts of non-resident companies controlled by 1) Mr. K, 2) Mr. N and 3) relatives of the latter.

Overview of information regarding investigation:

- Period of investigation: October 2017 – February 2023
- Number of Ukrainian companies involved: 31
- Number of foreign companies: 10
- Number of MLA requests: 12
- Number of foreign jurisdictions involved: 4

- Total amount of bribe: USD 5.5 million, EUR 21 million

B. Challenges Faced during Investigation

The most favourable way in approaching a bribery investigation is documenting an offence while it is in progress, meaning criminals and law enforcement move head-to-head while the latter create the basis for gathering robust evidence to be presented in court — so called catching the criminals red-handed. Information about the crime that is going to happen sometime in the future is often gathered from intelligence.

In this case, investigation started after the crime was committed. If there is no possibility to document the bribe in real time, then the amount of relevant evidence, both direct and circumstantial, to be gathered post-factum has to be of the highest standard; moreover, there is limited space for investigative manoeuvres because your case is built upon multiple pillars which are interconnected.

At the start of investigation when first searches were conducted investigators discovered that a significant amount of documents of the Ukrainian companies involved and related to VAT reimbursement were destroyed, so other avenues had to be explored. Copies of these were requested from the State Treasury. Basically, a limited amount of information was obtained during these searches, so investigators had to check whether any of such evidence was gathered within checks/audits/investigations of other controlling bodies and request this information from relevant bodies.

Another interesting issue occurred upon requesting information from the Ukrainian bank in which some of the companies controlled by Mr. B conducted business activities. As it turned out, the server with the records of transactions regarding VAT reimbursement malfunctioned, and it was not possible to obtain the necessary data. Coincidentally, Mr. B was the ultimate beneficial owner (hereinafter UBO) of that bank at the time. In order to gather information about incoming and outgoing wire transfers from companies benefitting from VAT reimbursement, several requests to counterparty banks were filed. For instance, funds from the State Treasury were wired from the state bank to the bank where Mr. B was UBO, so in order to get these records after failing to obtain them from the recipient bank, information was requested from the sender bank.

Once initial evidence about wire transfers to shell companies abroad was obtained, MLA requests to Latvia, Switzerland and the USA were prepared. Meanwhile, in Ukraine investigators were able to gather information about money flows from companies abroad through the means of covert actions, interviews and searches, i.e. important data was extracted from a seized notebook.

Execution of MLA requests can take significant time and can be cumbersome to obtain from some jurisdictions. Upon receiving first portions of MLAs and corroborating it with the evidence obtained during other investigative action such as searches, interviews and covert operations, it was discovered that money eventually was deposited in several Swiss banks, accounts controlled by Mr. N, his advisor Mr. K and relatives of Mr. N. According to Swiss banking secrecy laws upon receiving subpoenas from federal prosecutors regarding disclosure of banking information for MLA purposes, Swiss banks notify the client about such requests and the client is entitled to challenge the aforementioned request in court, which is what happened in this case, although with favourable outcome for law enforcement. The whole process became protracted and some MLAs for money-laundering part are still pending.

C. Results of Investigation

In October 2022, three persons were handed notices of suspicion — the former Head of SFS, his adviser and an agricultural businessman. On 2 February 2023, the investigation into the former head of the State Fiscal Service and his advisor was completed, and on 24 May 2023, the case was sent to court. The investigation into the owner of the agricultural holding was completed in April 2023. In February 2024, the indictment against him was sent to court (in absentia), as he had fled the country. In May 2024, the Head of SFS has been recently released on USD 1.4 million bail after spending 18 months in detention (initial amount of bail was set in equivalent of USD 13.2 million), he is prohibited from communicating with selected individuals, must wear an electronic bracelet and has surrendered his passport. As of October 2024, his case is being tried in the High Anti-corruption Court. The adviser and businessman are wanted. Overall, 12 MLA requests were sent, 16 searches were conducted and bank records of approximately 50 companies were analysed.

IV. CASE PART II: MONEY-LAUNDERING

A. Facts and General Overview

As described in Part I, in the period of 2015 – 2016 several non-resident shell companies were used for obfuscation of crime — bribe to the former Head of SFS in the amount of USD 5.5 million and EUR 21 million. After being transferred from non-resident companies controlled by agricultural tycoon Mr. B, money has been deposited in the accounts of these companies registered in the British Virgin Islands:

Company	Controller/Shareholder	Relation to Mr. N	Amount
R Group Ltd	Mr. N Jr.	Brother of former Head of SFS	USD 5.5 million
L Ventures Ltd	Mr. G	Father-in-law	EUR 13 million
N Leader Ltd	Mr. K	Adviser	EUR 8 million

During searches and covert action conducted at the end of 2022 several agreements regarding the purchase of real estate assets were discovered, as well as documents referring to unusual financial transactions. In the course of investigation, detectives were able to reconstruct three separate money flows originating from companies R Group Ltd, L Ventures Ltd and N Leader Ltd.

1. N Leader Ltd Controlled by Mr. K (advisor to Mr. N)

3 million EUR were transferred from N Ltd to Czech Agrarian Company (EUR 1 million) and Polish Agrarian Company (EUR 2 million) as prepayment for wheat, subsequently money from both companies was wired to a Hong Kong Company. 5 million EUR were converted into USD, were transferred to the account of the U.S. based Title Insurance Company, according to the agency agreement between N Ltd and Title Insurance Company. At the account of the US company, this transfer was mixed with other funds and presumably used for the purchase of real estate.

2. R Group Limited Formal Shareholder Brother of the Former Head of SFS

After receiving USD 5.5 million in 2015, money was transferred to Agrarian Investment company, where advisor, Mr. K, was holding the position of CEO, and the basis for the transfer was prepayment for purchasing wheat. At the beginning of 2017, approximately the same amount was wired back to R Group Ltd as return of funds for cancellation of an agreement. At the same period, part of these returned funds in the amount of EUR 4 million were transferred to the third company, controlled by father-in-law of former Head of SFS — Mr. G.

3. L Ventures Ltd Controlled by Mr. G, Father-in-Law of Mr. N

Mr. G, father-in-law of Mr. N has been involved in the construction/real estate development business for many years. In the end of May 2017 one of the companies owned by Mr. G, registered in Ukraine SKY LLC purchased Business and Residential complex (approx. 50 thousand m^2, 60% completion) in the central part of Kyiv for about USD 15 million. On the same day, Sky LLC sold property rights for apartments in this complex to its seller for USD 14 million. As a result, Sky LLC has spent approximately USD 1 million for the large business building in the city centre of Ukraine's capital, which is gross underpayment. During investigation another part of this deal was discovered. As it turned out, on the same days of May 2017 L Ventures Ltd had bought shares of Swedish company FRM AB for EUR 17 million. The seller of shares was St.AB company, a Sweden registered company which was under the control of a third party from Ukraine. FRM AB at the time was a sole shareholder of Ukraine registered company that sold property right to SKY LLC. EUR 17 million paid for shares of FRM AB to St.AB originated from a bribe paid by agro tycoon to Mr. N, originally 13 million and 4 million received from the second company, R Group Ltd. (previously returned funds for cancellation of wheat purchase contract). As a result, it was discovered that actual purchase of real estate was conducted by purchasing of shares of FRM AB from Swedish St.AB company. Mr. N and Mr. G used criminal proceeds to buy shares of FRM AB and became owners of real estate.

B. Challenges Faced during Investigation

In the money-laundering part of the case main there were several challenges, including:

- *Complex financial transactions:* complex and layered transactions were used to obscure the origins of

illicit funds, making it difficult for investigators to trace and connect the money to criminal activities. Substantive analytical procedures, review of contracts and understanding the nature of the transactions pertained to building robust foundation for the money-laundering charges.

- *Use of shell companies:* offshore accounts were used to hide the true ownership and origin of funds, complicating efforts to identify the individuals behind the transactions. Analysis of business activities of these companies and further reconciliation with the data obtained during searches and seizures led to identifying the true nature of these companies.

- *International jurisdiction issues:* due to the number of different jurisdictions involved, each with its specific regulations and enforcement practices, certain legal and logistical challenges arose as investigators needed to coordinate their efforts across different jurisdictions. During the investigation, a strong emphasis was placed on expediting MLA requests. The investigative team provided all essential details clearly and concisely, adhered strictly to legal protocols and maintained open communication channels with the foreign legal authorities handling the requests.

Several witnesses were interviewed, additional MLA requests were sent to Switzerland, Sweden, USA, Poland and Hong Kong. Investigation is on the finish line as of today, and the investigative team is still awaiting the last MLAs. As of today, part of the real estate in the city centre of Kyiv has been seized: 76 apartments in possession of Mr. G's company have been seized as proceeds of crime. The total value of the seized assets is approximately USD 5 million.

V. CONCLUSION

This paper is about the record bribe and transnational money-laundering case involving Ukraine's former top official and his associates. It highlights the challenges encountered during the investigation and the actions taken to mitigate and overcome adverse effects that arise from such obstacles. Challenges occurring during investigation of both episodes include, but are not limited to:

- Sophisticated techniques used by criminals to disguise the origin of illicit funds.

- Involvement of multiple jurisdictions, making it difficult to navigate within cross-border legal standards and cooperation levels.

- Complex financial transactions involving a wide range of instruments and institutions.

- Legal barriers, i.e. different countries have different laws and regulations regarding financial transactions, privacy and data sharing.

- Delays and complex bureaucratic process obtaining MLAs.

As of today, the case of bribery is being tried in the High Anti-corruption Court. The former top official posted bail after being detained for 18 months, and his advisor and businessman are wanted and indicted in absentia. Regarding the status of the money-laundering part, as of today it is still under investigation in its final stage.

PART THREE

RESOURCE MATERIAL SERIES
No. 119

SUPPLEMENTAL MATERIAL

UNAFEI

185th International Training Course
9 September to 10 October 2024
Preventing Inmate Abuse and Corruption in Correctional Facilities:
Fostering a Rehabilitative Prison Environment

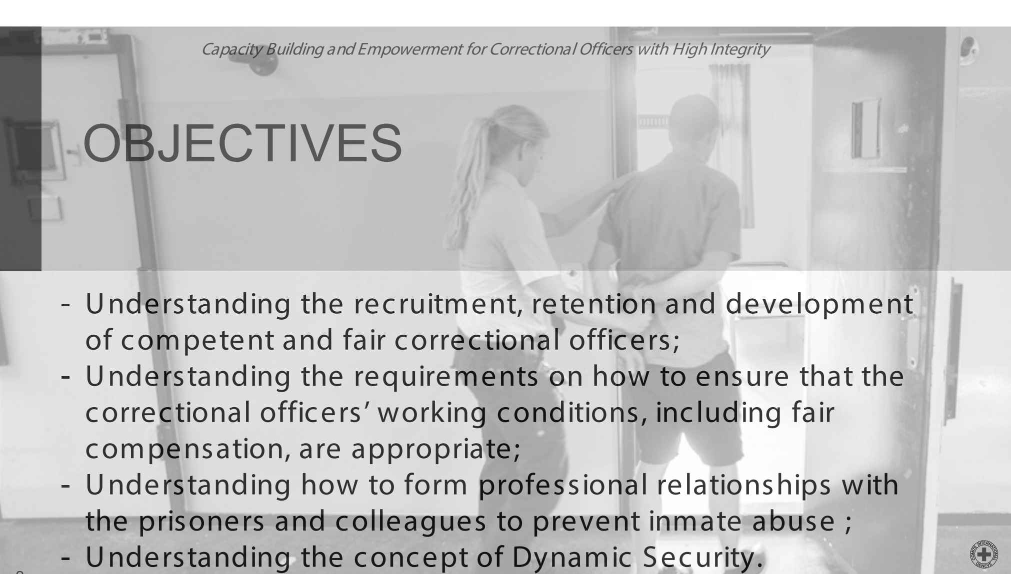
UNAFEI 2024

CAPACITY BUILDING AND EMPOWERMENT FOR CORRECTIONAL OFFICERS WITH HIGH INTEGRITY

01 OCTOBER 2024

MIKKO SARVELA, REGIONAL PRISON SYSTEMS ADVISER, ICRC UKRAINE

ICRC



Capacity Building and Empowerment for Correctional Officers with High Integrity

INTERNATIONAL STANDARDS AND NORMS

NELSON MANDELA RULES (NMR)
RULES 74 – 82 / INSTITUTIONAL PERSONNEL

Rule 74
Recruitment of personnel

Rule 75 – 76
Training of personnel

Rule 77
Conduct of personnel

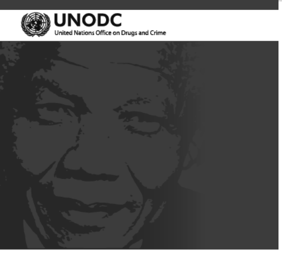
Rule 78
Specialist staff

Rule 79
Prison management

Rule 80
Language skills of staff

Rule 81
Women prisoners

Rule 82
Use of force



The United Nations
Standard Minimum Rules for
the Treatment of Prisoners
(the Nelson Mandela Rules)

3

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Capacity Building and Empowerment for Correctional Officers with High Integrity
PRISON STAFF
PROPER HUMAN RESOURCE MANAGEMENT
- Ability to properly manage and mobilise the necessary human and financial resources;
- Ability to make difficult decisions;
- Making the right choice if often a challenge;
- Having the right information available;
- Encourage consultations when making decisions;
- Support from international standards and managers' values
→ decision-making based on facts.
4
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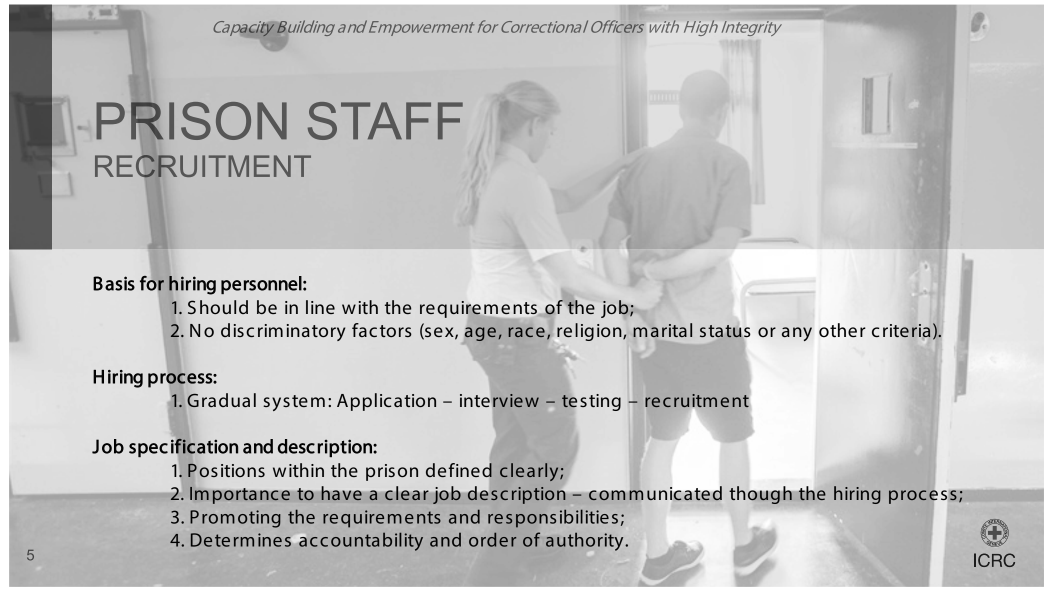
Capacity Building and Empowerment for Correctional Officers with High Integrity
PRISON STAFF
RECRUITMENT
Basis for hiring personnel:
1. Should be in line with the requirements of the job;
2. No discriminatory factors (sex, age, race, religion, marital status or any other criteria).
Hiring process:
1. Gradual system: Application – interview – testing – recruitment
Job specification and description:
1. Positions within the prison defined clearly;
2. Importance to have a clear job description – communicated though the hiring process;
3. Promoting the requirements and responsibilities;
4. Determines accountability and order of authority.
5
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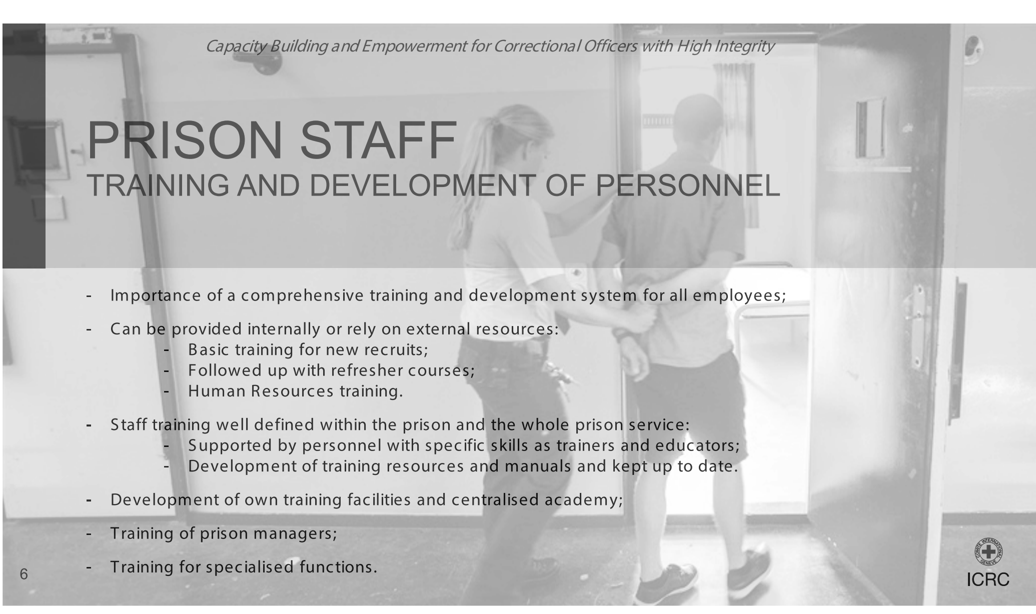
Capacity Building and Empowerment for Correctional Officers with High Integrity
PRISON STAFF
TRAINING AND DEVELOPMENT OF PERSONNEL
- Importance of a comprehensive training and development system for all employees;
- Can be provided internally or rely on external resources:
- Basic training for new recruits;
- Followed up with refresher courses;
- Human Resources training.
- Staff training well defined within the prison and the whole prison service:
- Supported by personnel with specific skills as trainers and educators;
- Development of training resources and manuals and kept up to date.
- Development of own training facilities and centralised academy;
- Training of prison managers;
- Training for specialised functions.
6
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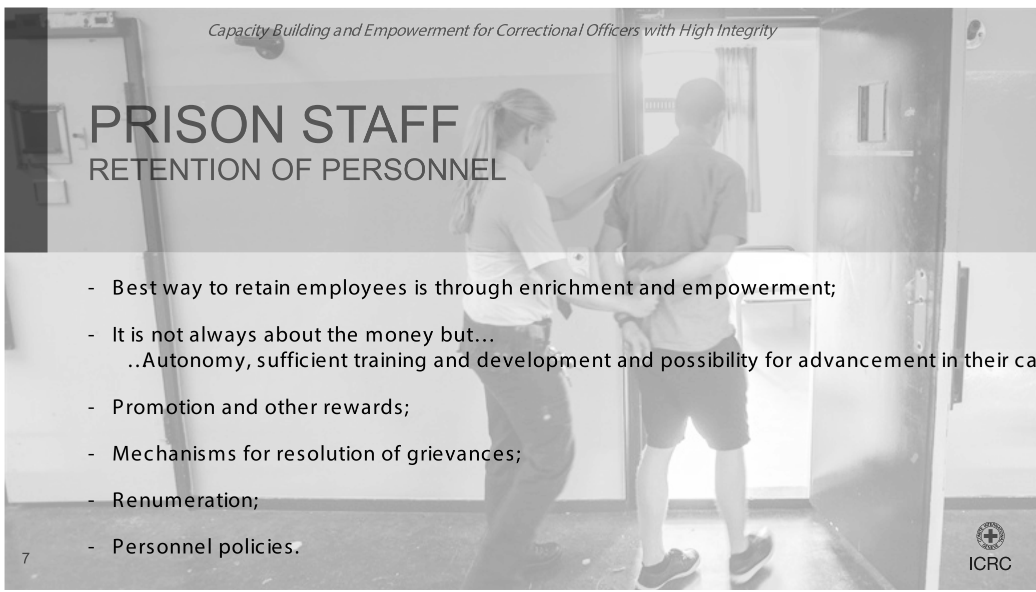
Capacity Building and Empowerment for Correctional Officers with High Integrity
PRISON STAFF
RETENTION OF PERSONNEL
- Best way to retain employees is through enrichment and empowerment;
- It is not always about the money but…
..Autonomy, sufficient training and development and possibility for advancement in their ca
- Promotion and other rewards;
- Mechanisms for resolution of grievances;
- Renumeration;
- Personnel policies.
7
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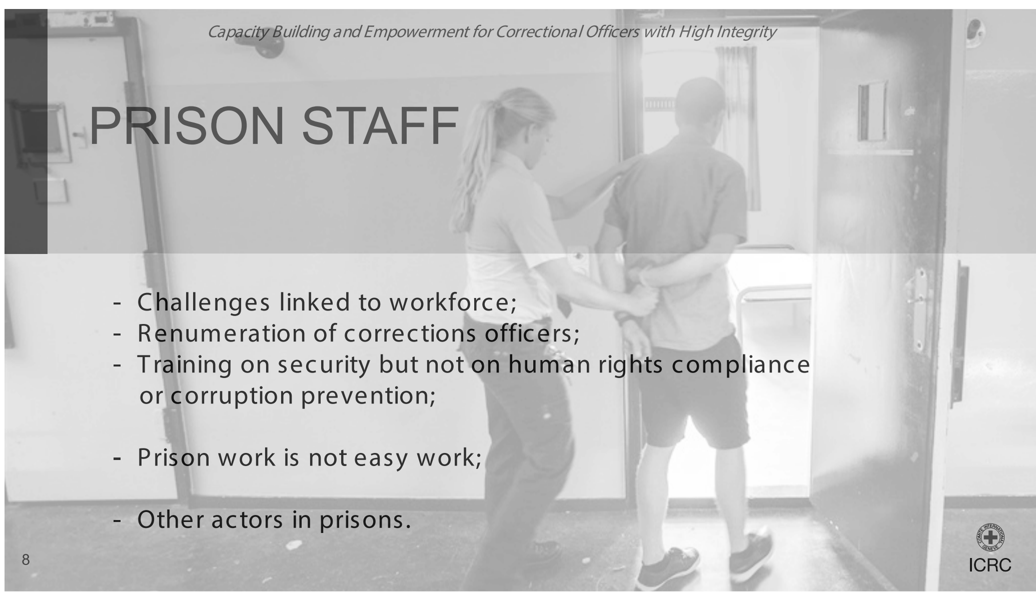
Capacity Building and Empowerment for Correctional Officers with High Integrity
PRISON STAFF
- Challenges linked to workforce;
- Renumeration of corrections officers;
- Training on security but not on human rights compliance or corruption prevention;
- Prison work is not easy work;
- Other actors in prisons.
8
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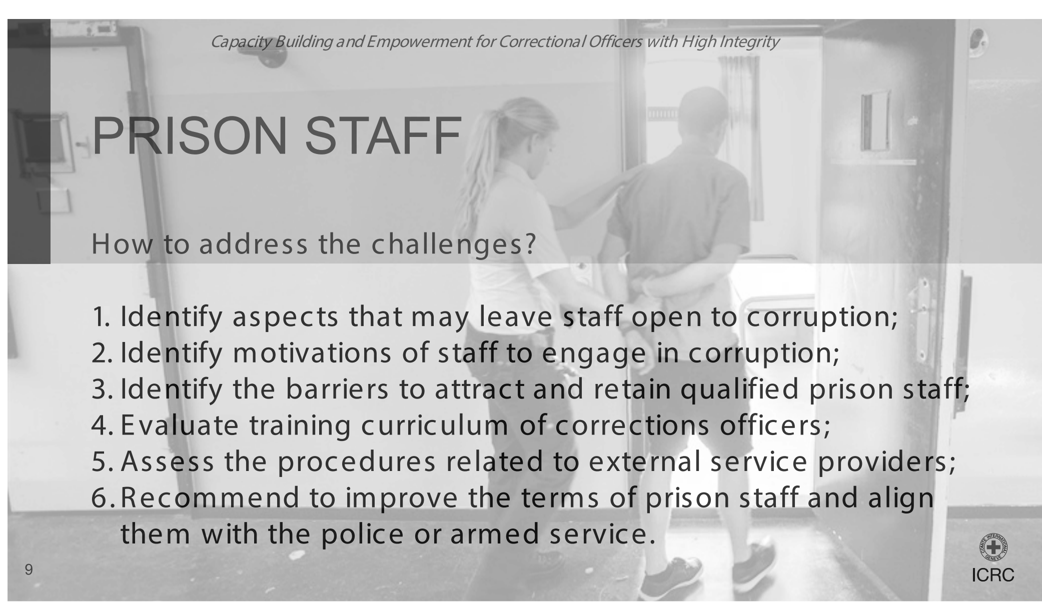
Capacity Building and Empowerment for Correctional Officers with High Integrity
PRISON STAFF
How to address the challenges?
1. Identify aspects that may leave staff open to corruption;
2. Identify motivations of staff to engage in corruption;
3. Identify the barriers to attract and retain qualified prison staff;
4. Evaluate training curriculum of corrections officers;
5. Assess the procedures related to external service providers;
6. Recommend to improve the terms of prison staff and align them with the police or armed service.
9
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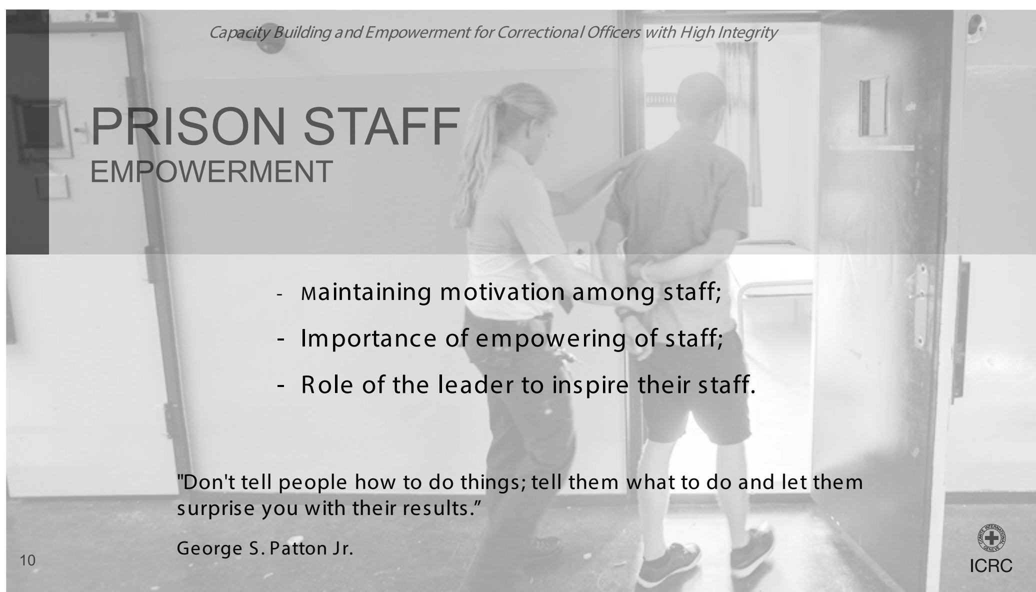
Capacity Building and Empowerment for Correctional Officers with High Integrity
PRISON STAFF
EMPOWERMENT
- Maintaining motivation among staff;
- Importance of empowering of staff;
- Role of the leader to inspire their staff.
"Don't tell people how to do things; tell them what to do and let them surprise you with their results."
George S. Patton Jr.
10
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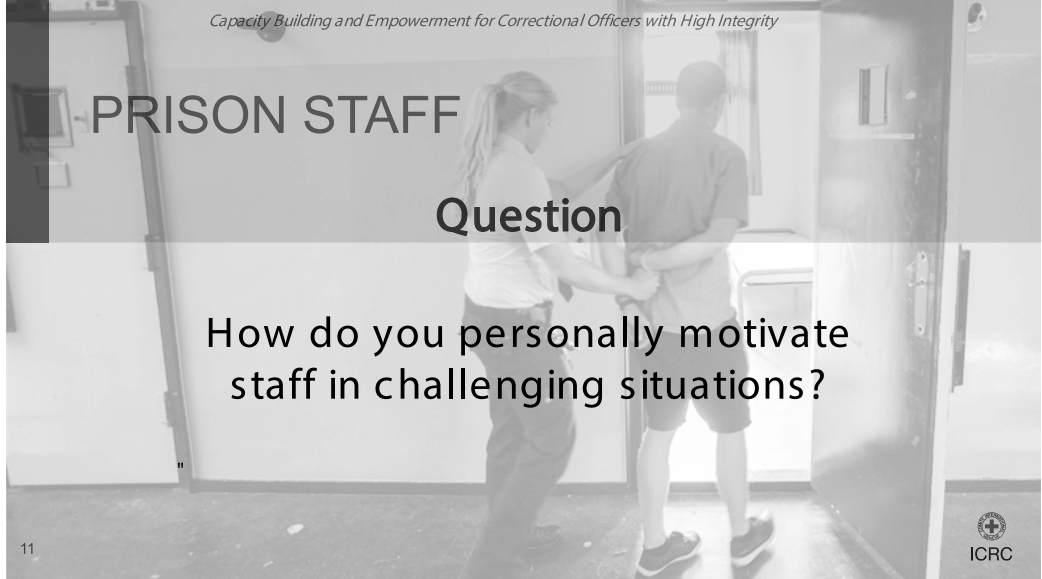
Capacity Building and Empowerment for Correctional Officers with High Integrity
PRISON STAFF
Question
How do you personally motivate staff in challenging situations?
11
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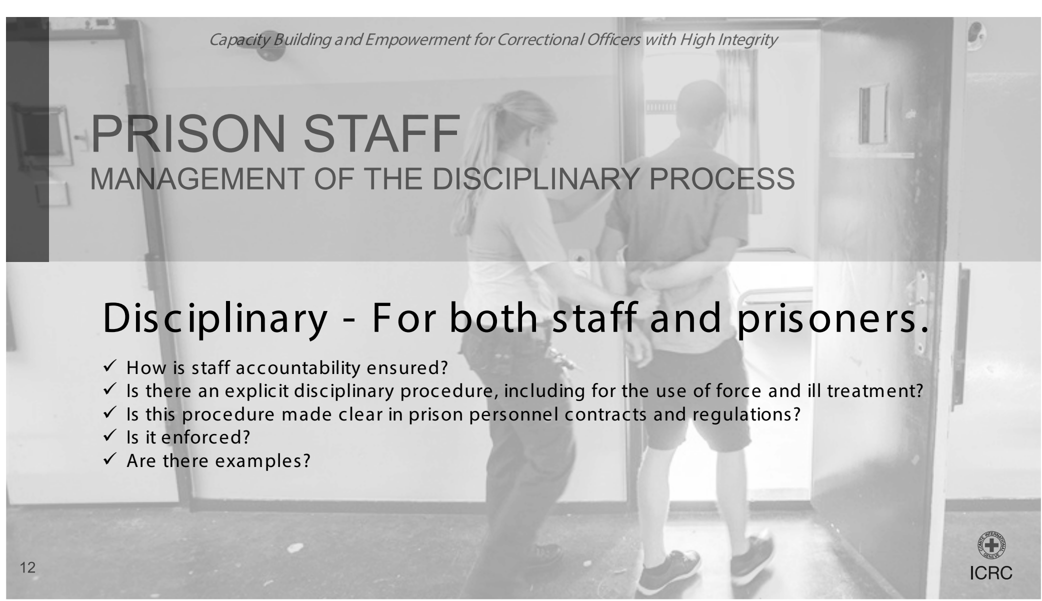
Capacity Building and Empowerment for Correctional Officers with High Integrity
PRISON STAFF
MANAGEMENT OF THE DISCIPLINARY PROCESS
Disciplinary - For both staff and prisoners.
✓ How is staff accountability ensured?
✓ Is there an explicit disciplinary procedure, including for the use of force and ill treatment?
✓ Is this procedure made clear in prison personnel contracts and regulations?
✓ Is it enforced?
✓ Are there examples?
12
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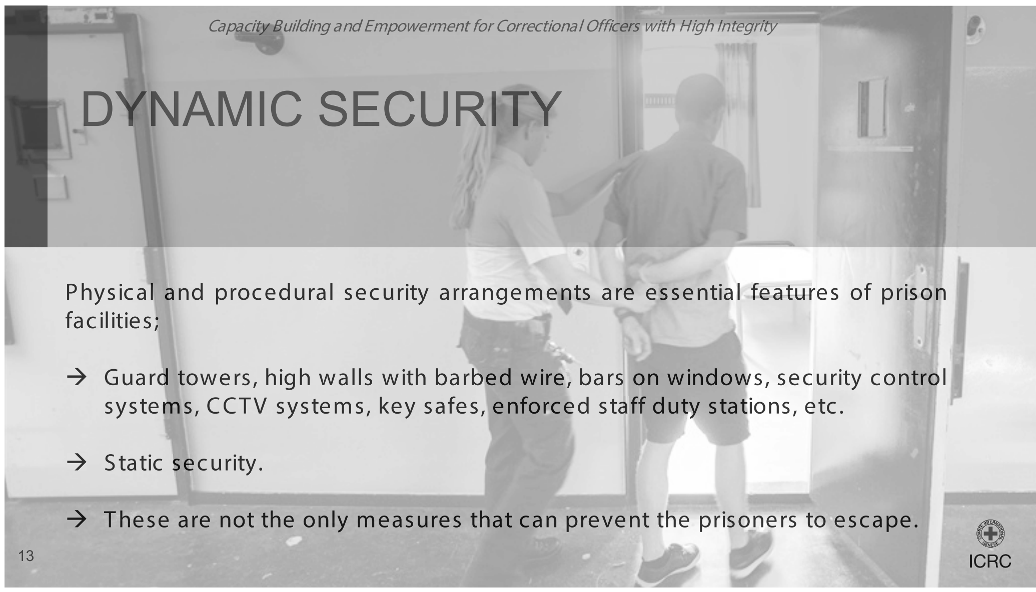
Capacity Building and Empowerment for Correctional Officers with High Integrity
DYNAMIC SECURITY
Physical and procedural security arrangements are essential features of prison facilities;
→ Guard towers, high walls with barbed wire, bars on windows, security control systems, CCTV systems, key safes, enforced staff duty stations, etc.
→ Static security.
→ These are not the only measures that can prevent the prisoners to escape.
13
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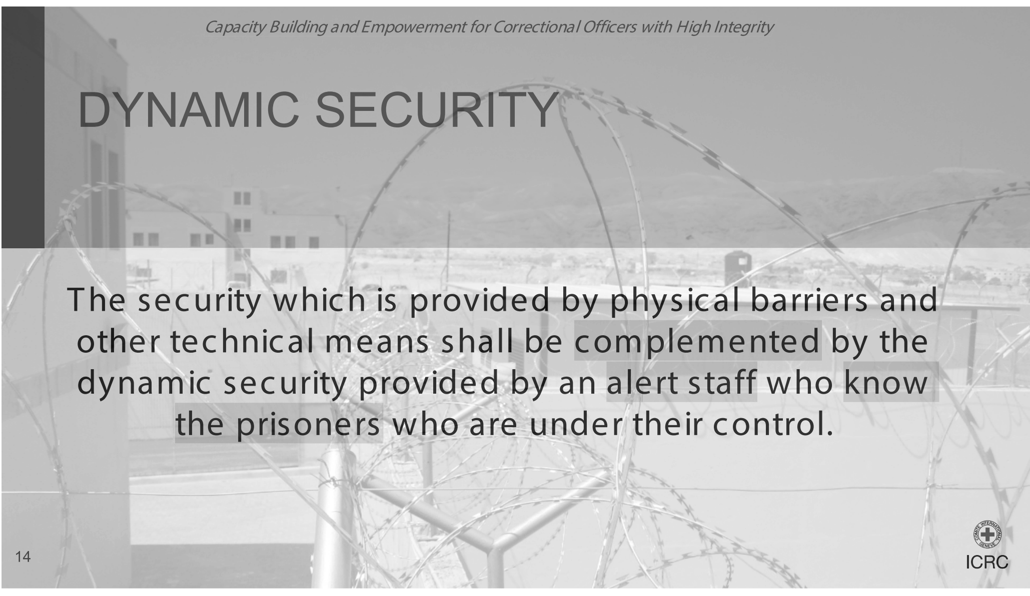
Capacity Building and Empowerment for Correctional Officers with High Integrity
DYNAMIC SECURITY
The security which is provided by physical barriers and other technical means shall be complemented by the dynamic security provided by an alert staff who know the prisoners who are under their control.
14
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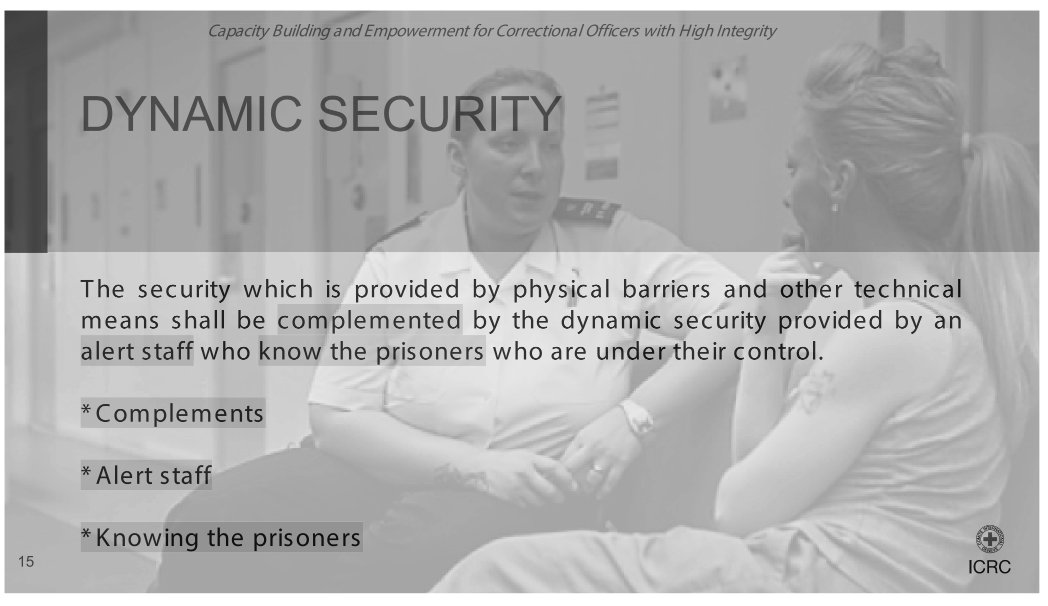
Capacity Building and Empowerment for Correctional Officers with High Integrity
DYNAMIC SECURITY
The security which is provided by physical barriers and other technical means shall be complemented by the dynamic security provided by an alert staff who know the prisoners who are under their control.
*Complements
*Alert staff
*Knowing the prisoners
15
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Capacity Building and Empowerment for Correctional Officers with High Integrity

DYNAMIC SECURITY

ESSENTIAL ELEMENTS OF DYNAMIC SECURITY

- Positive and professional relationships, communication and interaction between the staff and prisoners;
- Professionalism;
- Collecting relevant information;
- Insight into and improving social climate of the penal institution;
- Firmness and fairness;
- Understanding personal situation of the prisoner;
- Communication, positive relations and exchange of the information among all employees.

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Capacity Building and Empowerment for Correctional Officers with High Integrity

DYNAMIC SECURITY

PROFESSIONAL RELATIONSHIPS WITH PRISONERS

- Regular walks through the area in which the Officers are posted;
- Talking to prisoners, gaining their trust, and building rapport;
- Checking prisoners' physical welfare during rounds and when conducting head counts;
- Maintaining a consistent (firm and fair) approach to inappropriate behaviour;
- Encouraging positive behaviour and addressing negative behaviour;
- Engaging in case management process;
- Following up on requests in a timely manner; and
- Remaining calm during incidents.

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Capacity Building and Empowerment for Correctional Officers with High Integrity

DYNAMIC SECURITY

PROFESSIONAL RELATIONSHIPS WITH PRISONERS

Unprofessional and inappropriate relationships between detainees and staff

- Positive and constructive relationships;
- Inappropriate relationships;
- Manipulation and intimidation of staff.

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Capacity Building and Empowerment for Correctional Officers with High Integrity

DYNAMIC SECURITY

INTERPERSONAL SKILLS

- Communication, both verbal and non-verbal, is a two-way process;
- Communication skills are one of the most important elements in the effective application of dynamic security;
- Staff should be familiar with and understand the different groups (including religious, ethnic, cultural) that they may come across within their prison.
- Staff should be introduced to techniques (e.g. de-escalation, motivational interview technique, etc.) for dealing with conflict, such as appearing calm and in control of the situation.

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Capacity Building and Empowerment for Correctional Officers with High Integrity

DYNAMIC SECURITY
ROLE OF STAFF SELECTION AND TRAINING

- Training on Dynamic Security is most effective where there is a professional and well-trained group of staff;
- Include to the training curriculum of staff training academy but also provide continuous in-service training courses;
- Training on communication skills and relationship building;
  - Importance of these skills emphasised and reinforced by senior management of the Prison Service!
- Training should enable staff to understand the types of prisoners;
- Training on combating conditioning and manipulation;
- Training on antisocial personality patterns and disorders.

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Capacity Building and Empowerment for Correctional Officers with High Integrity

DYNAMIC SECURITY

"Sixth sense"

Experienced, senior prison staff often talk about developing a "sixth sense"; being able to feel if something is not right or normal in the facility/ wing/ department under their supervision.

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Capacity Building and Empowerment for Correctional Officers with High Integrity

DYNAMIC SECURITY
PRISON INTELLIGENCE AS PART OF DYNAMIC SECURITY

- Information +Analysis =Intelligence
- Critical component of any law enforcement organization;
- Helps to reduce uncertainty and to focus resources in the right areas;
- Some prisoners continue with their criminal activity while in prison and may apply corruption to officials to obtain their aims;
- All prisons should have in place a structured prison intelligence system;
- All staff have the responsibility to actively gather security information.

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Capacity Building and Empowerment for Correctional Officers with High Integrity

DYNAMIC SECURITY

PRISON INTELLIGENCE AS PART OF DYNAMIC SECURITY

Intelligence within the prison context can be defined as follows:

Prison intelligence function seeks, through objective strategic and operationally driven planned collection, to identify those prisoners, visitors, staff and organizations planning to engage in activity, or who are engaged in an activity that may be a threat to the good order, safety and security of a prison before the event occurs.

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Capacity Building and Empowerment for Correctional Officers with High Integrity

DYNAMIC SECURITY

PRISON INTELLIGENCE AS PART OF DYNAMIC SECURITY

Benefits of prison intelligence

- Preventing escapes, riots and disturbances;
- Identification and prevention of criminal activity by prisoners or staff;
- Identification and prevention of criminal activity in the external community ;
- Detection of staff corruption and smuggling;
- Identification of organized criminal and/ or terrorist groups and the nature of their activity within the prison system and the individuals in those groups who lead or facilitate criminal activity;
- Assessment of the organized criminal groups' influence and relationship in the prison system and their influence outside the prison system;
- Identification of the vulnerabilities in the prison system;
- Identification of radicalization and extremism in the prison system;
- Protection of vulnerable prisoners by identifying them and those who prey upon them.

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THANK YOU AGAIN FOR YOUR ATTENTION!

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RESOURCE MATERIAL SERIES
No. 119

APPENDIX

UNAFEI

PHOTOGRAPHS

THE 185TH INTERNATIONAL TRAINING COURSE

THE 26TH UNAFEI UNCAC TRAINING PROGRAMME

RESOURCE MATERIAL SERIES INDEX			
Vol.	**Training Course Name**	**Course No.**	**Course Dates**
1	Public Participation in Social Defence	25	Sep-Dec 1970
2	Administration of Criminal Justice	26	Jan-Mar 1971
3	[Corrections]	27	Apr-Jul 1971
	[Police, Prosecution and Courts]	28	Sep-Dec 1971
4	Social Defence Planning	29	Feb-Mar 1972
	Treatment of Crime and Delinquency	30	Apr-Jul 1972
5	United Nations Training Course in Human Rights in the Administration of Criminal Justice	n/a	Aug-Sep 1972
	Administration of Criminal Justice	31	Sep-Dec 1972
6	Reform in Criminal Justice	32	Feb-Mar 1973
	Treatment of Offenders	33	Apr-Jul 1973
7	[Administration of Criminal Justice]	34	Sep-Dec 1973
8	Planning and Research for Crime Prevention	35	Feb-Mar 1974
	Administration of Criminal Justice	36	Apr-Jun 1974
9	International Evaluation Seminar	37	Jul 1974
	Treatment of Juvenile Delinquents and Youthful Offenders	38	Sep-Nov 1974
10	The Roles and Functions of the Police in a Changing Society	39	Feb-Mar 1975
	Treatment of Offenders	40	Apr-Jul 1975
	NB: Resource Material Series Index, Nos. 1-10 (p. 139)	n/a	Oct 1975
11	Improvement in the Criminal Justice System	41	Sep-Dec 1975
12	Formation of a Sound Sentencing Structure and Policy	42	Feb-Mar 1976
	Treatment of Offenders	43	Apr-Jul 1976
13	Exploration of Adequate Measures for Abating and Preventing Crimes of Violence	44	Sep-Dec 1976
14	Increase of Community Involvement	45	Feb-Mar 1977
	Treatment of Juvenile Delinquents and Youthful Offenders	46	Apr-Jul 1977
15	Speedy and Fair Administration of Criminal Justice	47	Sep-Dec 1977
	Prevention and Control of Social and Economic Offences	48	Feb-Mar 1978
	Report of United Nations Human Rights Training Course	n/a	Dec 1977
16	Treatment of Offenders	49	Apr-Jul 1978
	Dispositional Decisions in Criminal Justice Process	50	Sep-Dec 1978
17	Treatment of Dangerous or Habitual Offenders	51	Feb-Mar 1979
	Community-Based Corrections	52	Apr-Jul 1979
18	Roles of the Criminal Justice System in Crime Prevention	53	Sep-Dec 1979
19	Arrest and Pre-Trial Detention	54	Feb-Mar 1980
	Institutional Treatment of Adult Offenders	55	Apr-Jul 1980
20	Institutional Treatment of Adult Offenders	55	Apr-Jul 1980
	Integrated Approach to Effective and Efficient Administration of Criminal Justice	56	Sep-Nov 1980
	NB: Resource Material Series Index, Nos. 1-20 (p. 203)		Mar 1981
21	Crime Prevention and Sound National Development	57	Feb-Mar 1981

	Integrated Approach to Effective Juvenile Justice Administration (including Proposed Guidelines for the Formulation of the Standard Minimum Rules for Juvenile Justice Administration: A draft prepared by UNAFEI on the basis of the reports of the study groups at the 58th International Training Course)	58	May-Jul 1981
22	Contemporary Problems in Securing an Effective, Efficient and Fair Administration of Criminal Justice and Their Solutions	59	Feb-Mar 1982
	Securing Rational Exercise of Discretionary Powers at Adjudication and Pre-adjudication Stages of Criminal Justice Administration	60	Apr-Jul 1982
23	Improvement of Correctional Programmes for More Effective Rehabilitation of Offenders	61	Sep-Nov 1982
24	Promotion of Innovations for Effective, Efficient and Fair Administration of Criminal Justice	62	Feb-Mar 1983
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25	The Quest for a Better System and Administration of Juvenile Justice	64	Sep-Dec 1983
	Documents Produced during the International Meeting of Experts on the Development of the United Nations Draft Standard Minimum Rules for the Administration of Juvenile Justice	n/a	Nov 1983
26	International Cooperation in Criminal Justice Administration	65	Feb-Mar 1984
	Promotion of Innovation in the Effective Treatment of Prisoners in Correctional Institutions	66	Apr-Jul 1984
27	An Integrated Approach to Drug Problems	67	Sep-Dec 1984
28	Contemporary Asian Problems in the Field of Crime Prevention and Criminal Justice, and Policy Implications	68	Feb-Mar 1985
	Report of the Fifth Meeting of the Ad Hoc Advisory Committee of Experts on UNAFEI Work Programmes and Directions	n/a	Mar 1985
	Report of the International Workshop on the Role of Youth Organizations in the Prevention of Crime Among Youth	n/a	Jul 1985
	Follow-up Team for Ex-Participants of UNAFEI Courses	n/a	Dec 1985
	Community-Based Corrections	69	Apr-Jul 1985
29	In Pursuit of Greater Effectiveness and Efficiency in the Juvenile Justice System and Its Administration	70	Sep-Dec 1985
30	Promotion of Innovation in Criminal Justice Administration for the Prevention of New Criminality	71	Feb-Mar 1986
	The Quest for Effective and Efficient Treatment of Offenders in Correctional Institutions	72	Apr-Jul 1986
31	Economic Crime: Its Impact on Society and Effective Prevention	73	Sep-Nov 1986
	Report of the International Seminar on Drug Problems in Asia and the Pacific Region	n/a	Aug 1986
32	Advancement of Fair and Humane Treatment of Offenders and Victims in Criminal Justice Administration	74	Feb-Mar 1987
	Non-institutional Treatment of Offenders: Its Role and Improvement for More Effective Programmes	75	Apr-Jun 1987
33	Evaluation of UNAFEI's International Courses on Prevention of Crime and Treatment of Offenders, and Drug Problems in Asia	76	Aug-Sep 1987
	Crime Related to Insurance	77	Oct-Dec 1987

	Report of the Sixth Meeting of the Ad Hoc Advisory Committee of Experts on UNAFEI Work Programmes and Directions	n/a	Sep 1987
	Report of the Workshop on Implementation Modalities for the Twenty-Three Recommendations Adopted by the International Seminar on Drug Problems in Asia and the Pacific Region	n/a	Sep 1987
34	Footprints, Contemporary Achievements and Future Perspectives in Policies for Correction and Rehabilitation of Offenders	78	Feb-Mar 1988
	Search for the Solution of the Momentous and Urgent Issues in Contemporary Corrections	79	Apr-Jul 1988
	Resolution of the Asia and Pacific Regional Experts Meeting	n/a	Mar 1988
	Report of the Meeting of Experts on the United Nations Draft Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules)	n/a	Jul 1988
35	Quest for Effective International Countermeasures to Pressing Problems of Transnational Criminality	80	Sep-Nov 1988
36	Advancement of the Integration of Criminal Justice Administration	81	Feb-Mar 1989
	Innovative Measures for Effective and Efficient Administration of Institutional Correctional Treatment of Offenders	82	Apr-Jul 1989
	Report of the Expert Group Meeting on Adolescence and Crime Prevention in the ESCAP Region	n/a	Aug 1989
37	Crime Prevention and Criminal Justice in the Context of Development	83	Sep-Nov 1989
	International Workshop on Victimology and Victim's Rights	n/a	Oct 1989
38	Policy Perspectives on Contemporary Problems in Crime Prevention and Criminal Justice Administration	84	Jan-Mar 1990
	Wider Use and More Effective Implementation of Non-custodial Measures for Offenders	85	Apr-Jun 1990
39	Search for Effective and Appropriate Measures to Deal with the Drug Problem	86	Sep-Dec 1990
40	Development of an Effective International Crime and Justice Programme	87	Jan-Mar 1991
	Institutional Treatment of Offenders in Special Categories	88	Apr-Jul 1991
	NB: Resource Material Series Index, Nos. 21-40 (p. 333)	n/a	n/a
41	Effective and Innovative Countermeasures against Economic Crime	89	Sep-Dec 1991
42	Quest for Solutions of the Pressing Problems of Contemporary Criminal Justice Administration	90	Jan-Feb 1992
	Further Use and Effectual Development of Non-Custodial Measures for Offenders	91	Apr-Jul 1992
43	Quest for Effective Methods of Organized Crime Control	92	Sep-Nov 1992
44	Policy Perspective for Organized Crime Suppression	93	Feb-Mar 1993
	Current Problems in Institutional Treatment and Their Solution	94	Apr-Jul 1993
45	Effective Countermeasures against Crimes Related to Urbanization and Industrialization—Urban Crime, Juvenile Delinquency and Environmental Crime	95	Sep-Dec 1993
46	Promotion of International Cooperation in Criminal Justice Administration	96	Jan-Mar 1994

	Effective Treatment of Drug Offenders and Juvenile Delinquents	97	Apr-Jul 1994
47	Economic Crime and Effective Countermeasures against It	98	Sep-Dec 1994
48	The Effective Administration of Criminal Justice: Public Participation and the Prevention of Corruption	99	Jan-Mar 1995
	The Institutional Treatment of Offenders: Relationships with Other Criminal Justice Agencies and Current Problems in Administration	100	Apr-Jul 1995
49	The Fair and Efficient Administration of Criminal Justice: The Proper Exercise of Authority and Procedural Justice	101	Sep-Dec 1995
50	Crime Prevention through Effective Firearms Regulation	102	Jan-Mar 1996
51	Improvement of the Treatment of Offenders through the Strengthening of Non-custodial Measures	103	Apr-Jul 1996
	International Cooperation in Criminal Justice Administration	104	Sep-Nov 1996
52	The Effective Administration of Criminal Justice for the Prevention of Corruption by Public Officials	105	Jan-Feb 1997
	The Quest for Effective Juvenile Justice Administration	106	Apr-Jul 1997
53	The Role and Function of Prosecution in Criminal Justice	107	Sep-Nov 1997
	The Ninth Meeting of the Ad Hoc Advisory Committee of Experts on UNAFEI Work Programmes and Directions	n/a	Oct 1997
54	Current Problems in the Combat of Organized Transnational Crime	108	Jan-Feb 1998
	Effective Treatment Measures for Prisoners to Facilitate Their Reintegration into Society	109	Apr-Jul 1998
55	Effective Countermeasures against Economic and Computer Crime	110	Aug-Nov 1998
	The Role of Police, Prosecution and the Judiciary in the Changing Society	111	Jan-Feb 1999
56	Participation of the Public and Victims for More Fair and Effective Criminal Justice	112	Apr-Jul 1999
	The Effective Administration of Criminal Justice for the Prevention of Corrupt Activities by Public Officials	113	Aug-Nov 1999
57	International Cooperation to Combat Transnational Organized Crime—with Special Emphasis on Mutual Legal Assistance and Extradition	114	Jan-Feb 2000
	Current Issues in Correctional Treatment and Effective Countermeasures	115	May-Jun 2000
58	Effective Methods to Combat Transnational Organized Crime in Criminal Justice Processes	116	Aug-Nov 2000
	Current Situation and Countermeasures against Money Laundering	117	Jan-Feb 2001
59	Best Practices in the Institutional and Community-Based Treatment of Juvenile Offenders	118	May-Jul 2001
	Current Situation of and Countermeasures against Transnational Organized Crime	119	Sep-Nov 2001
60	Effective Administration of the Police and the Prosecution in Criminal Justice	120	Jan-Feb 2002
61	Enhancement of Community-Based Alternatives to Incarceration at all Stages of the Criminal Justice Process	121	May-Jul 2002

62	The Effective Administration of Criminal Justice to Tackle Trafficking Human Beings and Smuggling of Migrants	122	Sep-Oct 2002
63	The Protection of Victims of Crime and the Active Participation of Victims in the Criminal Justice Process Specifically Considering Restorative Justice Approaches	123	Jan-Feb 2003
64	The Effective Prevention and Enhancement of Treatment for Drug Abusers in the Criminal Justice Process	124	Apr-Jun 2003
65	Effective Countermeasures against Illicit Drug Trafficking and Money Laundering	125	Sep-Oct 2003
	Sixth International Training Course on Corruption Control in Criminal Justice	6th UNCAC	Nov 2003
66	Economic Crime in a Globalizing Society—Its Impact on the Sound Development of the State	126	Jan-Feb 2004
67	Implementing Effective Measures for the Treatment of Offenders after Fifty Years of United Nations Standard Setting in Crime Prevention and Criminal Justice	127	May-Jun 2004
	Measures to Combat Economic Crime, Including Money Laundering	128	Aug-Oct 2004
68	Crime Prevention in the 21st Century—Effective Prevention of Crime Associated with Urbanization Based upon Community Involvement and Prevention of Youth Crime and Juvenile Delinquency	129	Jan-Feb 2005
69	Integrated Strategies to Confront Domestic Violence and Child Abuse	130	May-Jun 2005
	Seventh Special Training Course on Corruption Control in Criminal Justice	7th UNCAC	Oct-Nov 2005
70	The Use and Application of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power—Twenty Years after Its Adoption	131	Aug-Oct 2005
71	Strengthening the Legal Regime for Combating Terrorism	132	Jan-Feb 2006
	Eighth International Training Course on Corruption Control in Criminal Justice	8th UNCAC	Oct-Nov 2005
72	Effective Prevention and Enhancement of Treatment for Sexual Offenders	133	May-Jun 2006
73	Challenges in the Investigation, Prosecution and Trial of Transnational Organized Crime	134	Aug-Oct 2006
	Ninth International Training Course on Corruption Control in Criminal Justice	9th UNCAC	Oct-Nov 2006
74	Promoting Public Safety and Controlling Recidivism Using Effective Interventions with Offenders: An Examination of Best Practices	135	Jan-Feb 2007
75	Effective Measures for the Treatment of Juvenile Offenders and their Reintegration into Society	136	May-Jun 2007
76	Corporate Crime and the Criminal Liability of Corportate Entities	137	Sep-Oct 2007
	Tenth International Training Course on the Criminal Justice Response to Corruption	10th UNCAC	Oct-Nov 2007
77	Effective Legal and Practical Measures for Combating Corruption: A Criminal Justice Response	138	Jan-Feb 2008
78	Profiles and Effective Treatment of Serious and Violent Juvenile Offenders	139	May-Jun 2008

79	The Criminal Justice Response to Cybercrime	140	Sep-Oct 2008
	Eleventh International Training Course on the Criminal Justice Response to Corruption	11th UNCAC	Oct-Nov 2008
	The Improvement of the Treatment of Offenders through the Enhancement of Community-Based Alternatives to Incarceration	141	Jan-Feb 2009
80	Effective Countermeasures against Overcrowding of Correctional Facilities	142	May-Jun 2009
	Twelfth International Training Course on the Criminal Justice Response to Corruption	12th UNCAC	Jul-Aug 2009
	Ethics and Codes of Conduct for Judges, Prosecutors and Law Enforcement Officials	143	Sep-Nov 2009
81	The Enhancement of Appropriate Measures for Victims of Crime at Each Stage of the Criminal Justice Process	144	Jan-Feb 2010
82	Effective Resettlement of Offenders by Strengthening "Community Reintegration Factors"	145	May-Jun 2010
83	Attacking the Proceeds of Crime: Identification, Confiscation, Recovery and Anti-Money Laundering Measures	146	Aug-Oct 2010
	The 13th International Training Course on the Criminal Justice Response to Corruption	13th UNCAC	Oct-Nov 2010
84	Community Involvement in Offender Treatment	147	Jan-Feb 2011
85	Drug Offender Treatment: New Approaches to an Old Problem	148	May-Jun 2011
86	Securing Protection and Cooperation of Witnesses and Whistle-blowers	149	Aug-Sep 2011
	Effective Legal and Practical Measures against Corruption	14th UNCAC	Oct-Nov 2011
87	Trafficking in Persons—Prevention, Prosecution, Victim Protection and Promotion of International Cooperation	150	Jan-Feb 2012
88	Evidence-Based Treatment of Offenders	151	May-Jun 2012
89	Trafficking in Persons—Prevention, Prosecution, Victim Protection and Promotion of International Cooperation	152	Aug-Sep 2012
	Effective Legal and Practical Measures against Corruption	15th UNCAC	Oct-Nov 2012
90	Treatment of Female Offenders	153	Jan-Feb 2013
91	Stress Management of Correctional Personnel—Enhancing the Capacity of Mid-Level Staff	154	May-Jun 2013
92	Effective Collection and Utilization of Evidence in Criminal Cases	155	Aug-Oct 2013
	Effective Measures to Prevent and Combat Corruption and to Encourage Cooperation between the Public and Private Sectors	16th UNCAC	Oct-Nov 2013
93	Protection for Victims of Crime and Use of Restorative Justice Programmes	156	Jan-Feb 2014
94	Assessment and Treatment of Special Needs Offenders	157	May-Jun 2014
95	Measures for Speedy and Efficient Criminal Trials	158	Aug-Sep 2014
	Effective Measures to Prevent and Combat Corruption Focusing on Identifying, Tracing, Freezing, Seizing, Confiscating and Recovering Proceeds of Corruption	17th UNCAC	Oct-Nov 2014
96	Public Participation in Community Corrections	159	Jan-Feb 2015
97	The State of Cybercrime: Current Issues and Countermeasures	160	May-Jun 2015
98	Staff Training for Correctional Leadership	161	Aug-Sep 2015
	Effective Anti-Corruption Enforcement and Public-Private and International Cooperation	18th UNCAC	Oct-Nov 2015

99	Multi-Agency Cooperation in Community-Based Treatment of Offenders	162	Jan-Feb 2016
100	Children as Victims and Witnesses	163	May-Jun 2016
101	Effective Measures for Treatment, Rehabilitation and Social Reintegration of Juvenile Offenders	164	Aug-Sep 2016
	Effective Anti-Corruption Enforcement (Investigation and Prosecution) in the Area of Procurement	19th UNCAC	Oct-Nov 2016
102	Juvenile Justice and the United Nations Standards and Norms	165	Jan-Feb 2017
103	Criminal Justice Procedures and Practices to Disrupt Criminal Organizations	166	May-Jun 2017
104	Rehabilitation and Social Reintegration of Organized Crime Members and Terrorists	167	Aug-Sep 2017
	Effective Measures to Investigate the Proceeds of Corruption Crimes	20th UNCAC	Nov-Dec 2017
105	Enhancing the Rule of Law in the Field of Crime Prevention and Criminal Justice: Policies and Practices Based on the United Nations Conventions and Standards and Norms	168	Jan-Feb 2018
106	Criminal Justice Practices against Illicit Drug Trafficking	169	May-Jun 2018
107	Treatment of Illicit Drug Users	170	Aug-Sep 2018
	Effective Criminal Justice Practices through International Cooperation and Engagement of Civil Society for Combating Corruption	21st UNCAC	Oct-Nov 2018
108	Criminal Justice Response to Crimes Motivated by Intolerance and Discrimination	171	Jan-Feb 2019
109	Criminal Justice Responses to Trafficking in Persons and Smuggling of Migrants	172	May-Jun 2019
110	Tackling Violence against Women and Children through Offender Treatment: Prevention of Reoffending	173	Aug-Sep 2019
	Detection, Investigation, Prosecution and Adjudication of High-Profile Corruption	22nd UNCAC	Oct-Nov 2019
111	Prevention of Reoffending and Fostering Social Inclusion: From Policy to Good Practice	174	Jan-Feb 2020
112	n/a (Training programmes postponed due to the Covid-19 pandemic)	n/a	n/a
113	Tackling Emerging Threats of Corruption in the Borderless and Digitalized World	23rd UNCAC	Sep-Oct 2021
	Treatment of Women Offenders	175	Oct-Nov 2021
	Achieving Inclusive Societies through Effective Criminal Justice Policies and Practices	176	Nov-Dec 2021
114	Preventing Reoffending through a Multi-stakeholder Approach	177	Jan-Feb 2022
	Protection of the Rights of Crime Victims Including Children	First Inclusive Societies	Mar 2022
	Cybercrime and Digital Evidence	178	Jun-Jul 2022
115	Juvenile Justice and Beyond – Effective Measures for the Rehabilitation of Juveniles in Conflict with the Law and Young Adult Offenders	179	Sep 2022
	Chair's Summary, Enhancing Technical Assistance to Reduce Reoffending and Promote Inclusive Societies	n/a	Oct 2022

	UNAFEI's 60th and ACPF's 40th Anniversary Event	n/a	Oct 2022
	Identifying, Tracing, Freezing, Seizing, Confiscating and Recovering Proceeds of Corruption: Challenges and Solutions	24th UNCAC	Nov 2022
116	Promoting Legal Aid for Offenders and Victims	180	Jan-Feb 2023
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117	Effective Support for Reintegration of Released Inmates – Towards Seamless Support for Employment, Housing and Medical Care	182	Sep 2023
	Effective Corruption Investigation Utilizing International Cooperation	25th UNCAC	Nov 2023
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118	Management of Correctional Institutions in the 21st Century – With a Focus on the Nelson Mandela Rules	183	Jan-Feb 2024
	Effective Measures for Preventing and Responding to Domestic Violence	Third Inclusive Societies	Mar 2024
	Countermeasures against Trafficking in Persons, with a Focus on Trafficking in Persons for Sexual Exploitation	184	May 2024
119	Preventing Inmate Abuse and Corruption in Correctional Facilities: Creating a Rehabilitative Prison Environment	185	Sep-Oct 2024
	Strengthening Prevention, Detection and Prosecution of Corruption, and Public-Private Partnership	26th UNCAC	Oct-Nov 2024